

REGIONAL DISTRICT OF NANAIMO

**BOARD MEETING
TUESDAY, JANUARY 22, 2008**

A D D E N D U M

PAGES

DELEGATIONS (Requires motion)

- 2 **Dr. Jennifer O'Farrell and Janet Moore**, re Proposed Subdivision – 711/713
Mariner Way -- Area 'G'.
- 3 **John Moore, French Creek House and French Creek Estates**, re Proposed Area
'G' Draft OCP Bylaw No. 1540, 2008.

COMMUNICATIONS/CORRESPONDENCE

- 4 **H. McCormick**, re Bylaw Contravention -- 2820 Extension Road – Area 'C'.

**SCHEDULED STANDING, ADVISORY STANDING AND SELECT
COMMITTEE REPORTS**

Regional Parks and Trails Advisory Committee. (All Directors -- One Vote)

- 5-27 Minutes of the Regional Parks and Trails Advisory Committee meeting held January
15, 2008. (for information)

1. *That the following resolutions from the Regional Parks and Trails Advisory
Committee meeting be received for information:*
 - a. *That funding be approved for the Nanaimo and Areas Land Trust
Society's grant request in the amount of \$30,000 to be used by the
Society for operations in 2008.*
 - b. *That the 2008 Regional Parks Function Provisional Budget be
supported with the inclusion of funding to replace sections of the
Morden Colliery Trail that were destroyed in the December 2007
storm.*
2. *That the consolidated non-exclusive renewable 2007-2011 TimberWest
licence for sections of the Arrowsmith and Trans Canada Trails be
approved.*

Lee, Clair

From: Jen [jenofarrell@shaw.ca]

Sent: January 22, 2008 9:59 AM

To: Lee, Clair

Subject: Englishman river OCP re proposed subdivision on lot 711, 713 Mariner way

Dr. Jennifer O'Farrell and Mrs. Janet Moore

Wish an opportunity to speak as to the subdivision Mr. D Cameron proposes for his acreage on the above named parcel.

Sincerely

Dr. J. O'Farrell

22/01/2008

Lee, Clair

Subject: FW: RDN Board of Directors Meeting Tonight at 7:00pm

-----Original Message-----

From: djmoore [mailto:djmoore@creekhousereresort.com]

Sent: Tuesday, January 22, 2008 2:47 PM

To: Burgoyne, Linda

Subject: RDN Board of Directors Meeting Tonight at 7:00pm

Dear Linda Burgoyne,

We hereby request to be placed on the above noted agenda as a delegation to address the Board of Directors

Name: French Creek House and French Creek Estates

Address: 1-1025 Lee Road, Parksville, BC V9P 2E1

Telephone: 248 3713

Topic: Proposed Area 'G' Draft OCP (Bylaw 1540. 2008).

Please confirm receipt and the sufficiency of this email by telephone at your earliest convenience. Thank you in advance.

Sincerely,
John Moore

JAN 22, 108

To R.D.N.

IN RESPONSE TO YOURS LETTER OF 11/10/07
WITH REGARDS TO PROPERTY AT #2820
EXTENSION ROAD LOT 11 BLOCK 4 SECTION 13 RANGE 2
CRANBERRY DISTRICT PLAN 716

AT THIS TIME ARE UNABLE TO FIND
M.H.P THAT CAN ACCEPT TRAILER IN R.D.N.
REGION WOULD ASK FOR EXTENSION ON
BY LAW (1250, 2001) FOR EXPANDED SEARCH
ON VANCOUVER ISL UP TO ~~6~~⁶⁻¹² MONTHS FROM
THIS DATE. PLEASE ACCEPT THIS AS NOTICE
OF INTENT TO MOVE TRAILER A.S.A.P
WHEN SUITABLE LOT IS FOUND.

A. McCormick

RECEIVED
JAN 22 2008
REGIONAL DISTRICT
of NANAIMO

REGIONAL DISTRICT OF NANAIMO

**MINUTES OF THE
REGIONAL PARKS AND TRAILS ADVISORY COMMITTEE MEETING
HELD ON TUESDAY, JANUARY 15, 2008**

RDN Committee Room

- Attendance:** Director Larry McNabb, City of Nanaimo -- Chair
Director Maureen Young, Electoral Area 'C'
Director Sandy Herle, City of Parksville
Director Dave Bartram, Electoral Area 'H'
Frank Van Eynde
Harriet Rueggeberg
Peter Rothermel
- Staff:** Tom Osborne, General Manager of Recreation and Parks
Wendy Marshall, Manager of Parks Services
Marilynn Newsted, Recording Secretary
- Regrets:** Director Joe Stanhope, Electoral Area 'G'
-

CALL TO ORDER

- 1 The Chair called the meeting to order at 12:00pm.

MINUTES

- 3 **MOVED** F. Van Eynde, **SECONDED** H. Rueggeberg, that the Minutes of the Regional Parks and Trails Advisory Committee Meeting held on November 6, 2007, be approved. **CARRIED**

COMMUNICATIONS/CORRESPONDENCE

- 5 **MOVED** F. Van Eynde, **SECONDED** M. Young, the following correspondence be received:
- Island Corridor Foundation re: ICF Tax Exemption
 - Federation of Mountain Clubs of BC, Peter Rothermel re: Mt. Arrowsmith Support
 - Minister of Community Services and Minister of Environment re: Sponsorship Letter Nominal Rent Tenure Application
 - W. Marshall to Front Counter BC re: Application Nominal Rent Tenure
- CARRIED**

REPORTS

- 8.1-2 **Monthly Update of Community Parks and Regional Parks and Trail Projects October to December 2007.**

Ms. Marshall presented a brief overview of the report noting the following items:

- Repairs are complete on the McBey Creek Bridge. Some work still required on the approaches to the bridge.
- Top Bridge Crossing final tasks are complete. The final archaeological report has been received and filed.
- Horne Lake Group Campsite has been cleared and graded. Seeding of the area will take place shortly. Outdoor facilities will be installed this year adjacent to the campsite area.
- Staff met with Ministry of Environment staff to look at Englishman River regarding the moving of the river and some erosion along the side. The erosion damage was not as bad as originally thought, however, money will be set aside in the next budget for a long term study of the river.
- At Descanso Bay Regional Park repairs were made to the roof and the deck of the gate house.
- A meeting was held with Trans Canada Trail representatives to review plans to move the trail back where it runs adjacent to the river and was impacted by flooding over the last few years. Also discussed, a broom management program, tree management plan and the signage program.
- With regard to the Community Tourism Program both the brochure and web page are underway. The large entrance signs are completed and awaiting installation at the various sites. One entrance sign has been installed at Top Bridge and over the next few weeks the others will be installed. The contractor will assemble the signs and is also mapping the trails for sign location. The kiosk design has been completed by Elaine McCullough, Parks Planner, and will now be forwarded to an engineer to prepare construction plans.
- The second draft of the Englishman River Management Plan has been received and will be reviewed over the next few weeks and presented at the June Board meeting.

8.3 Morden Colliery Trail

Ms. Marshall reported two foot bridges on Morden Colliery Trail were destroyed during a winter storm in December. Staff met on site with the Ministry of Environment and an engineer to discuss the replacement of the bridges. Estimated replacement costs run between \$45,000 to \$90,000. Staff are also considering the option of raising the trail and installing culverts where required at a lower cost of \$20,000 to \$25,000. Both the Ministry of Environment and the engineer agreed the culverts would be acceptable and a less expensive route to take. Removal of the bridge debris and to clean up the area will cost \$5,000. Also some trail research is required around some of the other bridges where there is erosion. The next step will be to hire an engineer to draw up the plan for the trail and the culverts and forward the information to the Ministry of Environment.

MOVED F. Van Eynde, SECONDED H. Rueggeberg, that the Monthly Update of Community Parks and Regional Parks and Trails Projects and the Morden Colliery Trail Update Report, be received.

CARRIED

NEW BUSINESS

9.1 Application Nominal Rent Tenure Mount Arrowsmith

Ms. Marshall reported the Nominal Rent Tenure Application for Mount Arrowsmith was forwarded to Front Counter BC December 11, 2007 and a confirmation of receipt just received. Staff are now required to stake the property and to advertise in the newspaper the intention to apply for disposition of crown land. This stage of the application process will be completed May 11, 2008.

9.2 Off Leash Dog Parks

Mr. Osborne noted currently in all Regional Parks, with the exception of campgrounds and conservation areas, the bylaw that allows dogs off leash as long as the dog is in control. Staff will explore the possibility of including dog-off leash information on the new signage. In regard to dog off leash park facilities, it was agreed by the Committee that these facilities are not appropriate for regional parks and should be considered by each municipality and electoral area community park service areas.

9.3 Development Cost Charges Regional Parks

Mr. Osborne reported the Committee recommendation that a regional parks Development Cost Charges (DCC) bylaw be considered by the Regional Board was approved. Staff will now meet with administrative staff from the four municipalities to investigate the implications of the possible implementation of DCC's for regional parks and report back to the Committee.

9.4 Regional Parks and Trails 2008 Budget

MOVED F. Van Eynde, SECONDED M. Young, that funding be approved for the Nanaimo and Area Land Trust Society's grant request in the amount of \$30,000 to be used by the Society for operations for 2008.

CARRIED

MOVED H. Rueggeberg, SECONDED S. Herle, the 2008 Regional Parks Function Provisional Budget be supported with the inclusion of funding to replace sections of the Morden Colliery Trail that were destroyed in the December 2007 storm.

CARRIED

The Committee discussed the need to have contingency funding in place to deal with storm related repairs as it is likely these type of events will be occurring more frequently in future years and directed staff to include such funding in future operation budgets for regional parks and trails.

9.5 TimberWest Licence Renewal – Arrowsmith Trail and Trans Canada Trail

Ms. Marshall reported that at the request of Timber West the two separate licences for Arrowsmith Trail and a portion of the Trans Canada Trail be combined.

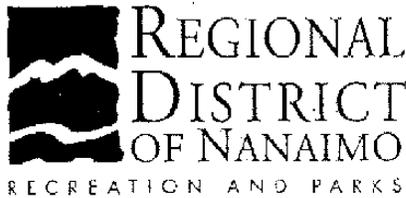
MOVED F. Van Eynde, SECONDED H. Rueggeberg, that the consolidated non-exclusive renewable 2007-2011 TimberWest licence for sections of the Arrowsmith and Trans Canada Trails be approved.

CARRIED.

ADJOURNMENT

MOVED F. Van Eynde, SECONDED M. Young, that pursuant to Section (90) (1) E of the Community Charter the Committee proceed to an In Camera meeting to consider land issues.

Chair



RDN REPORT	
CAO APPROVAL <i>[Signature]</i>	
EAP	
COW	
JAN 09 2008	
RHD	
BOARD	
<i>RPTAC - JUN 15th</i>	

MEMORANDUM

TO: Wendy Marshall
Manager of Park Services

DATE: January 10, 2008

FROM: Joan Michel
Parks and Trails Coordinator

FILE:

SUBJECT: TimberWest Licence Renewal
Arrowsmith Trail and Trans Canada Trail

PURPOSE

To seek Board approval of a consolidated non-exclusive renewable 2007-2011 TimberWest licence for sections of the Arrowsmith Trail and Trans Canada Trail.

BACKGROUND

In the spring of 2001, the RDN signed a non-exclusive five-year renewable licence with TimberWest to secure that part of the Arrowsmith Trail running on TimberWest's private lands. The following spring, the RDN concluded a similar licence for the Haslam Creek Bridge and associated Trans Canada Trail that TimberWest permitted on their lands. When the RDN sought renewal of the Arrowsmith Trail licence in 2006, TimberWest determined both existing trail licences should be consolidated into one agreement. Over the course of 2006-2007, RDN staff worked with the company on clarification of the Licenced Areas and improved agreement language. The negotiated licence with a term of January 1, 2007 to December 31, 2011 is attached.

The consolidated non-exclusive five-year renewable TimberWest licence now defines a three-metre wide trail corridor that increases in width to nine metres at the McBey Creek and Haslam Creek Bridges. The licence addresses all aspects of public trail operations from maintenance and development to special events. *Park Use Regulation Bylaw 1399* is recognized in the licence as the standard for controlling use of the Licenced Area.

As with past agreements, the attached TimberWest licence requires the RDN to hold a minimum of \$5,000,000 in comprehensive general liability and \$1,000,000 in fire fighting expenses liability insurance to cover any loss suffered in the Licenced Area. The RDN's policy has a \$35,000,000 per occurrence limit and well addresses the insurance requirements in respect of negligence by the RDN, its contractors and invitees. No insurance is however available to the RDN to defray the potential cost of negligence in the Licenced Area arising from the actions of TimberWest and its contractors and invitees. Although this risk is considered quite small, a request was made to the company to relieve the RDN of any associated

liability; TimberWest declined to alter the licence. Consequently and in this respect only, the RDN remains self-insured.

ALTERNATIVES

1. To approve the attached non-exclusive renewable 2007-2011 TimberWest licence for those sections of Arrowsmith and Trans Canada Trail located on the company's private lands.
2. Not approve the license and provide alternative direction to staff.

FINANCIAL IMPLICATIONS

The RDN's insurance policy includes a \$100,000 deductible and that amount has been set aside in the financial accounts as a reserve should it be required by the Parks function. In the event of a draw-down, a "repayment" over time would be worked out through the Parks function budget. No further reserve is considered necessary.

TimberWest is charging a one-time administrative fee of \$500 plus GST for the consolidated renewable five-year licence. Prior to consolidation, the RDN paid \$500 for each of its trail licences with TimberWest. The \$500 fee is reflected in Regional Park budget accounts.

SUMMARY

In 2001 and 2002, the RDN concluded five-year renewable trail licences with TimberWest for sections of the Arrowsmith Trail and Trans Canada Trail. At time of renewal, TimberWest requested a consolidation of the licences and an updated agreement was developed; see attached. The new non-exclusive five-year renewable licence better reflects the location and operation of Regional Trail on TimberWest's private lands. As with the previous licences, the RDN is fully liable for loss incurred within the Licenced Area, for which the RDN is insured or self-insures.

RECOMMENDATION

To approve the consolidated non-exclusive renewable 2007-2011 TimberWest licence for sections of the Arrowsmith and Trans Canada Trails.

Original signed by J. Michel
Report Writer

Original signed by T. Osborne
General Manager Concurrence

Original signed by W. Marshall
Manager Concurrence


CAO Concurrence

PID: 008-738-165
Block 1377, Cameron District

PID: 008-721-084
Block 1252, Bright District

- (e) **Commencement Date:** January 1, 2007
- (f) **Term:** The Term of the Licence will be five years, concluding on December 31, 2011.
- (g) **Administration Fee:** The Licensee will pay a one time Administrative Fee equal to \$500 (plus GST) for preparation of this Licence within (14) days of invoicing by Licensor.

The foregoing basic terms are approved by the parties. Any reference in this Licence to a basic term will be construed to include the provision set forth above as well as the additional terms and conditions of this Licence where the basic term is more fully set forth.

1.2 Definitions. The capitalized words and phrases used in this Licence have the following meanings:

- (a) **"Additional Amounts"** means all sums of money from time to time payable by the Licensee to the Licensor or otherwise pursuant to this Licence other than the Administration Fee and includes, without limitation, goods and services tax pursuant to section 3.3.
- (b) **"Applicable Laws"** means all statutes, laws, regulations, by-laws, building codes, orders and requirements of any federal, provincial, municipal or other public authority having jurisdiction at any time and from time to time in force.
- (c) **"Bridges"** means the McBey Creek Bridge and the Haslam Creek Bridge.
- (d) **"Commencement Date"** has the meaning set forth in section 1.1(e).
- (e) **"Environmental Laws"** means all Applicable Laws which impose any obligations relating to the protection, management, conservation or restoration of the natural environment or relating to Hazardous Substances or to the Release of Hazardous Substances into the environment including, without limitation, the *Environmental Management Act* (British Columbia), the *Fisheries Act* (Canada), the *Canadian Environmental Protection Act, 1999* (Canada), the *Explosives Act* (Canada), the *Transport of Dangerous Goods Act* (British Columbia), the *Transportation of Dangerous Goods Act* (Canada) and any regulations thereto.

- (f) "**Handling**" of a Hazardous Substance includes handling, manufacturing, using, storing, transporting, disposal, Releasing or other dealing with the Hazardous Substance.
- (g) "**Haslam Creek Bridge**" means the engineered bridge within the Licenced Area which cross over Haslam Creek, as identified on Schedule A.
- (h) "**Hazardous Substances**" means any contaminant, pollutant, dangerous or potentially dangerous or noxious or toxic good or substance, hazardous waste, special waste, flammable or explosive or radioactive material, urea formaldehyde foam insulation, asbestos, PCBs and substances or any other materials declared or defined to be hazardous, toxic, contaminants or pollutants, or which at any time are prohibited, controlled or regulated for the protection, management, conservation or restoration of public health or the environment, under or pursuant to any Applicable Laws.
- (i) "**Lands**" means the lands set out in section 1.1 (d), as the legal description of such lands may change from time to time.
- (j) "**Licence**" means this agreement, as amended from time to time.
- (k) "**Licenced Area**" has the meaning set forth in section 1.1(c).
- (l) "**McBey Creek Bridge**" means the engineered bridge within the Licenced Area which cross over McBey Creek, as identified on Schedule A.
- (m) "**Prime Rate**" means the rate of interest, expressed as a percentage per annum, declared from time to time by the main branch in Vancouver, British Columbia of the Royal Bank of Canada as its "prime rate".
- (n) "**Public Access Trail Use**" means walking, cycling and horseback riding, all without special invitation, as well as any organized commercial or non-commercial service, activity or event intended to attract or requiring participants or spectators including, without limitation, competitions, tournaments, gatherings, ceremonies, group training, recreational programming, television or motion picture filming, research and survey activity, provided that in the case of any such service, activity or event the Licensor has provided its prior written consent, such consent not to be unreasonably withheld or delayed.
- (o) "**Real Property Taxes**" means all real property, sewer, municipal and other property taxes and rates, whether general or special, of any nature whatsoever, including school or local improvement taxes and rates levied or assessed by any lawful authority against the Lands or the improvements thereon or against the Licensor on account of its ownership thereof but does not include any corporate, income, capital, profits or excess profits taxes of the Licensor.
- (p) "**Release**" includes release, spill, leak, pump, pour, flow, deposit, emit, empty, discharge, escape, leach, dispose, dump and includes all matters included in the words "introduce waste into the environment" in the *Environmental Management Act* (British Columbia), the word "deposit" in the *Fisheries Act* (Canada) or the word "release" in the *Canadian Environmental Protection Act* (Canada).
- (q) "**Term**" means the term of this Licence set out in section 1.1(f).

- (r) **"Trail Works"** means the improved public access trail constructed or to be constructed in the Licenced Area, including, without limitation:
- (i) all soil, dirt, fill, gravel, drains, drainage channels and all other attachments, fittings and appurtenances in connection with such public access trail, and
 - (ii) the Bridges.
- (s) **"Transfer"** means any assignment of this Licence in whole or in part, any sublicense of all or any part of the Licenced Area or the Trail Works or any transaction whereby the rights of the Licensee under this Licence are transferred to a third party, or any transaction by which any right of use or occupancy of all or any part of the Licenced Area or the Trail Works is conferred upon a third party.

1.3 Schedules. The following schedule forms part of this Licence:

Schedule A Plan of Licenced Area

2. LICENCE

2.1 Grant of Licence. The Licensor grants to:

- (a) the Licensee the non-exclusive, full, free and uninterrupted right and licence, at all times hereafter, by night and by day, and at the Licensee's will and pleasure, to enter upon, go across, pass over and repass over, within, upon and along the Licenced Area, for the following purposes:
- (i) constructing, installing, inspecting, cleaning, maintaining, repairing, renewing, replacing, altering, relocating and operating the Trail Works;
 - (ii) bringing onto the Licenced Area all equipment, tools and materials the Licensee requires or desires in connection with the exercise of its rights hereunder;
 - (iii) clearing the Licenced Area and keeping it clear of anything which, in the reasonable opinion of the Licensee constitutes or may constitute an obstruction or danger to or interference with the Trail Works (including, without limitation, the cutting of timber within the Licenced Area as contemplated in section 7.2(a)); and
 - (iv) doing all acts and things which, in the reasonable opinion of the Licensee, are necessary or incidental to the foregoing; and
- (b) the Licensee and all of its licensees and invitees, including members of the public, all without the need for any further invitation, the non-exclusive, full, free and uninterrupted right and licence, at all times hereafter, by night and by day, to enter, use, go, return, pass and repass along, over and upon the Trail Works on foot or by bicycle or horse only (and, for the sake of certainty, not by motorcycle or other motorized vehicle) for the purpose of obtaining access thereto and egress therefrom as a public access trail, in common with the Licensor and all others using the Licenced Area but subject always to the terms and conditions set out herein.

The Licensee acknowledges and agrees that the Licensor has not made, and will not make, any representation or warranty as to the state of the Licenced Area (including, without limitation, the environmental condition of the Licenced Area), the fitness of the Licenced Area for the purposes

contemplated in this Licence or any other matter in any way related to or connected with the Licenced Area and the Licensee's intended use thereof and the Licensee acknowledges and agrees that it has satisfied itself with respect to all such matters as it considers necessary related to or in connection with the Licenced Area and the Licensee's intended use thereof and that the Licensee is accepting the Licenced Area for such use strictly on an "as is, where is" basis. The Licensee acknowledges and agrees that although the Licensor believes it is the owner of all the lands on which the Trail Works are or are intended to be situated, the Licensor has not taken and is under no duty to take any steps to confirm that it has the right to grant unbroken access across the whole of such area. The Licensor is only granting this Licence over a portion of the Lands (of which it is the owner) and is not responsible for providing the Licensee with any rights of access over lands not within the Lands and not owned by the Licensor.

2.2 Term. The Term of this Licence will be for the period set out in section 1.1(f) and will commence on the date specified in section 1.1(e).

2.3 Non-exclusive Use. The Licensee agrees that:

- (a) the rights granted under this Licence do not constitute any interest in land in the Licenced Area or entitle the Licensee to exclusive possession of the Licenced Area;
- (b) the Licensee's rights under this Licence are at all times subject to the rights and interests of the Licensor as owner of the Licenced Area;
- (c) the Licensor may enter upon and use the Licenced Area at any time for any purpose ancillary to the conduct of the Licensor's business provided that it does not unreasonably interfere with the exercise of the rights of the Licensee under this Licence or, in the case of the Bridges, cause structural damage; and
- (d) the Licensor may permit third parties to use the Licenced Area for purposes associated with the Licensor's business from time to time and may grant licences of use and occupation to third parties unrelated to the Licensor's business in respect of the Licenced Area provided that the exercise of such rights or licences does not unreasonably interfere with the exercise of the rights of the Licensee under this Licence or, in the case of the Bridges, cause structural damage.

2.4 Reservation. Notwithstanding the licence granted in sections 2.1(a) and (b), the Licensor hereby reserves to itself the right to temporarily interrupt the rights granted under this Licence including, without limitation, the use and enjoyment of the Trail Works or any portion thereof, if such interruption is necessary, in the Licensor's sole discretion, in connection with:

- (a) the planned business activities of the Licensor to be carried out on the Lands or lands adjacent to or in the vicinity of the Lands; or
- (b) extreme wildfire hazards or other emergency situations prevailing on the Lands or lands adjacent to or in the vicinity of the Lands.

If the Licensor elects to temporarily interrupt the rights granted hereunder pursuant to this section 2.4, it will:

- (c) provide the Licensee with not less than two day's prior written notice, unless the need for such interruption arises from an emergency situation as determined by the Licensor, acting reasonably;

- (d) post conspicuous signage at the ingress and egress points of the affected portion of the Licenced Area and, if deemed necessary by the Licensor, erect fencing to block ingress and egress;
- (e) ensure that such interruption continues only for so long as is reasonably required; and
- (f) promptly notify the Licensee by faxed written notice upon cessation of such interruption.

3. AMOUNTS PAYABLE BY LICENSEE

- 3.1 Additional Amounts.** The Licensee will pay as Additional Amounts all amounts (other than the Administration Fee) required to be paid by the Licensee under this Licence within five (5) business days after demand unless a later date is otherwise set out in this Licence.
- 3.2 Payment for Irregular Periods.** The Additional Amounts will accrue from day to day and, if for any reason it will become necessary to calculate the Additional Amounts for irregular periods of less than one month or year, as may be applicable, an appropriate pro-rata adjustment will be made on a daily basis.
- 3.3 Goods and Services Tax.** The Licensee will pay goods and services tax or any other tax imposed on the Licensor with respect to the Administration Fee or any Additional Amount to the Licensor on any payment of the Administration Fee or any Additional Amount under this Licence.

4. TAXES

- 4.1 Taxes Payable By the Licensee.** Throughout the Term, the Licensee will pay when due all taxes or other charges that may be levied against or in respect of the Trail Works, including goods and services tax or similar value added taxes, if applicable.

5. REAL PROPERTY TAXES

- 5.1 Real Property Taxes.** The Licensee will pay to the Licensor, within 30 days of receipt of any notice in respect thereof, any increase in the amount of Real Property Taxes which are assessed, levied or charged from time to time by any competent authority upon the Lands or upon the Licensor by reason of (a) this Licence, (b) the use or occupation by the Licensee of the Licenced Area or (c) the Trail Works constructed or placed on the Licenced Area by or on behalf of the Licensee, as such increase is evidenced by any tax assessment or is estimated by the Licensor, acting reasonably. If any competent authority invoices the Licensee directly in respect of any such increase in the Real Property Taxes, the Licensee will pay the invoice amount to the competent authority prior to the date payment is due and will provide proof of payment to the Licensor.

6. USE OF THE LICENCED AREA

- 6.1 Use of the Licenced Area.** The Licensee may use the Licenced Area for Public Access Trail Use only. The Licensee will not be entitled to use the Licenced Area for any other purpose without the prior written consent of the Licensor, which may be arbitrarily or unreasonably withheld.

7. TRAIL WORKS AND TIMBER

7.1 **Alterations to Trail Works.** At any time after the Commencement Date, the Licensee may, at its expense, make any such minor alterations, additions, expansions and improvements to the Licenced Area as will better adapt the Licenced Area for the purposes for which the Licenced Area is permitted to be used under this Licence. Such work will be carried out in a good and workmanlike manner and in accordance with all Applicable Laws. Notwithstanding any rule of law or equity, as between the Licensor and the Licensee the Trail Works will remain throughout the Term of this Licence the property of the Licensee, notwithstanding that the same may be annexed or affixed to the freehold, and will at any time and from time to time be removable in whole or in part by the Licensee.

For greater certainty, the Licensee agrees that it will be solely responsible for and liable for any damages or costs in any way related to any work carried out by or on behalf of the Licensee on the Licenced Area or the Lands (including, without limitation, any costs or loss in fair market value related to the destruction of any timber by fire or otherwise) and that the indemnity contained in section 9.3 includes an indemnity in favour of the Licensor in respect of any claims, actions, damages, liabilities and expenses (including, without limitation, all legal fees on a solicitor and own client basis, expert fees and disbursements) suffered or incurred by the Licensor in any way related to the work carried out by or on behalf of the Licensee on the Licenced Area or the Lands.

7.2 **Timber Removal.** The parties hereby agree as follows concerning the cutting and removal of timber from the Lands:

- (a) in connection with the clearing of the Licenced Area as contemplated in paragraph 2.1(a)(iii), the Licensee may trim or fell any trees or growth in the Licenced Area which in the reasonable opinion of the Licensee constitutes or may constitute an obstruction or danger to or interference with the Trail Works;
- (b) in connection with its maintenance of the Trail Works as contemplated in section 8.1(d), the Licensee may trim or fell all or any trees or growth now or hereafter situated within the Licenced Area as required by the Licensee, acting reasonably;
- (c) the Licensee will not trim or fell any trees situated on the Lands which are not situated within the Licenced Area without obtaining the prior written consent of the Licensor, such consent not to be unreasonably withheld; and
- (d) title to all timber cut within the Lands by the Licensee will vest in the Licensor. If the Licensor does not wish to remove any such cut timber from the Lands it will so advise the Licensee and the Licensee will thereafter have the right, but not the obligation, to make use of any such cut timber for trail edging or structural purposes in connection with the Trail Works.

8. LICENSEE'S COVENANTS

8.1 **Licensee's Covenants.** The Licensee covenants with the Licensor:

- (a) Payment. To pay the Administration Fee and Additional Amounts required to be paid by the Licensee hereunder in accordance with the terms of this Licence.
- (b) Applicable Laws. At the Licensee's sole cost and expense, to comply with all Applicable Laws (including all Environmental Laws) pertaining to the Licenced Area, the Lands and

adjacent areas, to all work carried out by or on behalf of the Licensee on the Licenced Area or the Lands or to the use of the Licenced Area, the Lands or any of the Trail Works.

- (c) Clear Builders' Liens. Not to suffer or permit any builders' lien or claim of builders' lien to be filed against the Lands by reason of work, labour, services or material supplied or claimed to have been supplied to the Licensee in connection with the Licenced Area or the Lands; if any such lien or claim will at any time be filed against the Lands, the Licensee will cause a discharge of the lien or claim to be registered within 30 days after the filing of the lien or claim has come to the notice of the Licensee.
- (d) Repairs and Maintenance. At its own cost, to repair and maintain the Trail Works in good order and repair, reasonable wear and tear excepted, and to keep the Licenced Area in a safe and tidy condition.
- (e) Rules and Regulations. To comply with any reasonable rules and regulations that the Licensor may impose in respect of the use, occupation and administration of the Licenced Area and the Lands and, in order to better regulate the Public Access Trail Use of the Licenced Area, to enforce the Licensee's Park Use Regulation Bylaw 1399 as against all persons (other than the Licensor and its employees, agents and contractors) as if the Licenced Area were park land subject to such bylaw.
- (f) Nuisance and Waste. Not to do anything on the Licenced Area or the Lands which may be or may become a nuisance, danger or disturbance to the Licensor or to any other occupants or users of the Lands (including the Licenced Area) or adjacent areas or to any works or structures or installations of any of them on, under or over the Lands (including the Licenced Area) and not to commit any waste upon the Licenced Area or the Lands (and, in particular, not to root up, cut down or destroy any trees or bushes or break up any turf except as permitted by and in accordance with the terms of this Licence).
- (g) Legal Fees. To reimburse the Licensor on demand for the Licensor's legal costs incurred in respect of the enforcement or interpretation of the terms of this Licence or with respect to any matter or thing which is the obligation of the Licensee under this Licence.
- (h) No Fires. Not to start or permit or suffer to start any open fire or any fire menace on or near the Licenced Area, the Lands or any roads or other property of the Licensor at any time and to take every reasonable precaution to prevent and to extinguish, at its own expense, all fires regardless of cause or origination, and to prevent the escape of fire on or to any of the Licensor's lands and timber.
- (i) No Work. Not to carry out any work on the Lands unless such work is permitted under this Licence or the Licensor has granted its consent in writing to such work.
- (j) No Interference. To ensure that the exercise of its rights under this Licence does not cause interference to the Licensor's activities on the Lands.
- (k) Signage. To post and maintain conspicuous signage acknowledging the Licensor's participation in facilitating the Trail Works, the content and locations of such signage to be approved by the Licensor, acting reasonably.
- (l) Parking. To provide such parking areas and facilities as may be required in connection with the use of the Trail Works. Without limiting the generality of the foregoing, the Licensee acknowledges and agrees that the Licensor will not be responsible for providing or maintaining any such parking areas or facilities and that the indemnity included in

section 9.3 will be deemed to cover any loss, cost, damage or injury to persons or property arising in any such parking area or facility.

- 8.2 Hazardous Substances.** The Licensee will not bring or permit to be brought onto the Lands, and will not use or permit the use of the Lands or any part thereof, directly or indirectly for the Handling of any Hazardous Substance except in strict compliance with all Applicable Laws and environmental permits. The Licensee will not Release nor permit the Release of any Hazardous Substances into the environment or into culverts, drains or sewers.
- 8.3 Hazardous Substances Property of Licensee.** If any Hazardous Substance is brought onto the Lands or created upon the Lands during the Term or any renewal thereof by the Licensee, or its employees, agents, contractors, invitees, or any other persons for whom the Licensee is responsible or who is on the Lands as a result of the Licensee's use or occupancy of the Lands, such Hazardous Substance will be the sole and exclusive property of the Licensee and not of the Licensor, notwithstanding the degree of affixation of the Hazardous Substance or the goods containing the Hazardous Substance to the Lands and notwithstanding the expiry or sooner termination of this Licence.
- 8.4 Removal of Hazardous Substances.** On or before the expiration or sooner termination of this Licence, the Licensee will remove all Hazardous Substances which have been brought onto or created on or about the Lands during the Term of the Licence by the Licensee, or its employees, agents, contractors, invitees, or any other persons for whom the Licensee is responsible or who is on the Lands as a result of the Licensee's use or occupancy of the Lands including, without limitation, any Hazardous Substances which may have been Released into the environment.
- 8.5 Notice to Licensor.** The Licensee will advise the Licensor forthwith of any Release of any Hazardous Substances on or from the Lands or any adjacent property and will provide the Licensor with all information, notices, reports and other documents it has or receives regarding such Release and the remediation steps being undertaken by the Licensee with respect to the Release or as may reasonably be required by the Licensor of the Licensee. The Licensee will also forthwith provide the Licensor with any oral or written notice it receives from a governmental authority under or in respect of an Environmental Law regarding or in respect of the Lands or from any other third party in respect of any claim, demand, action or other proceeding regarding an environmental matter pertaining to the Lands or the Licensee's use or occupancy thereof.
- 8.6 Cleanup Plans.** If any Hazardous Substance is Released on the Lands or any adjacent lands by the Licensee, or its employees, agents, contractors, invitees, or any other persons for whom the Licensee is responsible or who is on the Lands as a result of the Licensee's use or occupancy of the Lands, the Licensee will, at its own risk and expense:
- (a) prepare all necessary studies, plans and proposals to clean up such Hazardous Substances and submit them for approval;
 - (b) provide all bonds and other security required by any governmental body or by the Licensor;
 - (c) carry out the work required to clean up such Hazardous Substances in such manner as is approved by the Licensor;
 - (d) keep the Licensor fully informed regarding the contamination and remediation thereof;
 - (e) provide to the Licensor full information with respect to the proposed plans and comply with the Licensor's reasonable requirements with respect to such plans; and

- (f) obtain a certificate of compliance under the *Environmental Management Act* in respect of such remediation.

8.7 Clean up by the Licensor. Notwithstanding section 8.6, upon written notice to the Licensee, the Licensor may itself undertake remediation of any contamination at the reasonable cost and expense of the Licensee which cost will be paid by the Licensee within 30 days after receipt of an invoice on account of such cost.

8.8 Indemnity To Licensor. The Licensee will indemnify, save harmless and defend the Licensor, its related companies and its and their directors, officers, employees and agents, successors and assigns from and against all loss, expense (including investigation and remediation expenses), claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs and liabilities including, without limitation, any reduction in the market value of the Lands, damages for loss or restriction in use of the Lands, sums paid in settlement of claims, legal fees, consultants' fees and experts' fees which arise during or after the Term and are in any manner based upon, arise out of or are connected with (i) the presence or suspected presence of any Hazardous Substance or any other contamination in, upon, above, under or about the Lands or has been or is in the future Released from the Lands, caused by, contributed to or aggravated by the Licensee, or its employees, agents, contractors, invitees or any other person for whom the Licensee is responsible in law or who is on or about the Lands as a result of the Licensee's use or occupancy of the Lands; or (ii) any breach by the Licensee of this Licence. For greater certainty, this indemnity applies to expenses incurred by the Licensor to investigate and remediate contamination even if not required to do so by a governmental authority or by law.

9. INSURANCE, RISK AND INDEMNITY

9.1 Insurance.

- (a) The Licensee will take out and keep in full force and effect at all times during the Term comprehensive general liability insurance with respect to the Licenced Area in which the limit of liability will not be less than \$5,000,000 per person and \$5,000,000 per occurrence in respect of injury or death to one or more persons and in which property damage or loss liability occurring in connection with any exercise of the rights of the Licensee under this Licence by the Licensee, its successors or any of their respective employees, agents, contractors, customers, permittees, invitees or Licensees or any other persons for whom the Licensee is responsible at law will not be less than \$5,000,000, and fire fighting expenses liability insurance in which the limit of liability will not be less than \$1,000,000. Such insurance will be with such insurers and on such terms and conditions as are acceptable to the Licensor, acting reasonably. The Licensee will ensure that such insurance includes the Licensor and its partners and its and their directors, officers, employees and those for whom the Licensor is responsible at law as additional insureds, provides a waiver of the insurer's right of subrogation against the Licensor, its partners and its and their directors, officers, employees and those for whom the Licensor is responsible at law and contains a cross-liability and severability of interests endorsement so that such insurance will protect the Licensor, the Licensee and the other insureds as if each were alone insured under such insurance. The Licensee will pay all premiums for such insurance and will provide a copy of the certificate evidencing such insurance to the Licensor on request, such certificate to state the name of the insurer and the insured, the amount of insurance carried, the coverages provided, the expiration date of the policy and the date to which premiums have been paid and will contain an endorsement requiring the insurer to give at least 30 days prior written notice to the Licensor before making any material change to or cancelling the policy. The Licensee will deliver a replacement

certificate to the Licensor not less than 30 days prior to the expiration date of the then current certificate.

- (b) If the Licensee is self-insured, then notwithstanding paragraph (a) above the Licensee will not be required to take out insurance of the type described in paragraph (a) for so long as the Licensee continues to be self-insured provided that the Licensee provide a letter to the Licensor on request confirming it is self-insured. The Licensee will not discontinue its self-insurance without giving reasonable notice to the Licensor and will thereafter comply with paragraph (a).

9.2 Risk and Limitation of Liability. The Licensee agrees that it will use the Licenced Area and the Lands at its own risk, and that the Licensor will not be liable for, and the Licensee hereby waives, any claim, action, damage, liability, cost or expense which the Licensee may suffer, incur or be put to in connection with any occurrence on the Licenced Area or the Lands or with the use and occupation of the Licenced Area or the Lands by the Licensee or its employees, agents, contractors, invitees, or any other persons for whom the Licensee is responsible or who is on the Lands as a result of the Licensee's use or occupancy of the Lands. The Licensor will not be liable to the Licensee in connection with this Licence, whether based in contract, tort (including negligence and strict liability), under warranty or otherwise, for any special, indirect, incidental or consequential loss or damage whatsoever. The waiver set out above will be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Licence with respect to any loss of, or damage to, property of the Licensee. As the above waiver may preclude the assignment of such claim, by subrogation or otherwise, to an insurance company (or any other person), the Licensee agrees immediately to give any insurance company which has issued policies in respect of such insurance, written notice of the terms of such waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of such waiver.

9.3 Indemnity. The Licensee will indemnify the Licensor and save it harmless from and against any and all claims, actions, damages, liabilities and expenses (including, without limitation, all legal fees on a solicitor and own client basis, experts fees and disbursements) in connection with (a) loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Licenced Area or the Lands in any way related to the exercise by the Licensee of its rights under this Licence, (b) any breach by the Licensee of any of the terms of this Licence and (c) any claim, action, damage, liability, cost or expense suffered or incurred by any of the Licensee's contractors, invitees, or any other person who is on the Lands as a result of the Licensee's use or occupancy of the Lands for which the Licensor is held liable.

10. TERMINATION

10.1 Termination. In addition to such other termination rights as may be set out elsewhere in this Licence, the Licensor and the Licensee agree that the Licensor may terminate this Licence:

- (a) immediately if the Licensee breaches or fails to comply with any of its obligations under this Licence and fails to remedy the breach or failure within thirty (30) days of receiving written notice of such breach or failure or, if such breach or failure reasonably requires more than thirty (30) days to remedy, if the Licensee has not commenced diligently remedying such breach or failure within ten days of receipt of such notice or thereafter fails to continue to diligently and expeditiously remedy such breach or failure; and
- (b) on three month's prior written notice to the Licensee if so determined by the Licensor, in its sole discretion.

- 10.2 Obligations on Expiry or Termination.** Upon the expiry of the Term (provided that the Term has not been renewed automatically in accordance with section 11.1) or other termination of this Licence, the Licensee will:
- (a) quit the Licenced Area peaceably and deliver up possession of the Licenced Area to the Licensor; and
 - (b) at the Licensee's cost, demolish and remove from the Lands the Trail Works, repair any damage caused to the Licenced Area or the Lands as a result of its use of the Licenced Area or its demolition and removal of the Trail Works, and restore to the reasonable satisfaction of the Licensor the Licenced Area and the Lands as closely as is practically possible to the condition they were in prior to the construction or placement thereon of any of the Trail Works (or any improved condition which is acceptable to the Licensor).
- 10.3 Survival of Obligations.** Upon the expiry of the Term or other termination of this Licence, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as at the date of expiry or termination and all of the provisions of this Licence relating to the obligation of either of the parties to perform actions or to account to or to indemnify the other and pay to the other any monies owing as at the date of expiry or termination in connection with this Licence will survive such expiry or termination.
- 11. AUTOMATIC RENEWALS**
- 11.1 Automatic Renewals.** Upon the expiry of the Term or any renewal thereof, provided that the Licensee is not then in default hereunder, the Term will be automatically renewed for a further period of five years on the same terms and conditions as set out in this Licence, with the exception that after the third such five year renewal there will be no further automatic renewals of the Term.
- 12. MISCELLANEOUS**
- 12.1 Expropriation.** If during the Term the Licenced Area or any part thereof is acquired or condemned by expropriation for any public or quasi-public use, then the Licensor and the Licensee may separately claim, receive and retain awards of compensation for the loss of their respective interests, but neither the Licensor nor the Licensee will have any claim against the other in respect of such loss or the unexpired Term.
- 12.2 Late Payments.** If the Licensee does not pay to the Licensor any amount which the Licensee is required to pay to the Licensor under this Licence on the due date under this Licence, such amount will thereafter bear interest at a rate equal to the Prime Rate plus 2% per annum, calculated and compounded monthly on the first day of each month until paid.
- 12.3 Time.** Time will be of the essence herein.
- 12.4 Waiver.** No condoning, excusing or overlooking by the Licensor of any default, breach or non-observance by the Licensee of any covenant, proviso or condition herein contained will operate as a waiver of the Licensor's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of the Licensor herein in respect of any such continuing or subsequent default, breach or non-observance. No waiver will be inferred from or implied by anything done or omitted by the Licensor save only an express waiver in writing.

- 12.5 Remedies Cumulative.** All rights and remedies of the Licensor in this Licence contained will be cumulative and not alternative.
- 12.6 Section and Article Headings.** The headings appearing in this Licence are inserted only as a matter of convenience and in no way define or limit the scope or intent of the sections and articles of this Licence.
- 12.7 Entire Agreement.** This Licence sets forth all of the covenants, promises, conditions, agreements and understandings between the Licensor and the Licensee. No subsequent amendment of this Licence will be binding upon the Licensor or the Licensee unless reduced to writing and signed by them.
- 12.8 Governing Law / Exclusive Jurisdiction.** This Licence will be construed and governed in accordance with the laws of the Province of British Columbia, which will be deemed to be the proper law hereof, and the courts of British Columbia will have the exclusive jurisdiction to entertain and determine all claims and disputes arising out of or in any way connected with this Agreement (subject, however, to the obligation of the parties to arbitrate any disputes pursuant to section 12.11 hereof).
- 12.9 No Registration of Licence.** The Licensee acknowledges and agrees that this Licence does not contain a grant in favour of the Licensee of any interest in the Licenced Area or any part of the Lands and, accordingly, the Licensee agrees that it will not be entitled to register this Licence in any public registry.
- 12.10 Notices.** Any notice, demand, request or other instrument (each herein called a "Notice") which may be or is required to be given under this Licence, will be delivered in person, transmitted by facsimile using the fax number set out in section 1.1(a) or 1.1(b), as appropriate, or sent by mail postage prepaid and will be addressed:
- (a) if to the Licensor, to the address and person set out in section 1.1(a); or
 - (b) if to the Licensee, to the address and person set out in section 1.1(b).

Any such Notice will be conclusively deemed to have been given or made on the day upon which such Notice is delivered, or if sent by facsimile then twenty-four (24) hours after transmittal, or if mailed then on the fifth business day following the date of the mailing unless there is between the day of mailing and actual receipt a mail strike, slow down of postal service or other labour dispute which adversely affects mail service, in which case the party giving the Notice will deliver personally or will transmit by facsimile such Notice and the time of giving such Notice will be the time of actual receipt or twenty-four (24) hours after transmittal, as appropriate. Either party may at any time give Notice in writing to the other of any change of address or fax number of the party giving such Notice (or of any other person to receive a notice) and from and after the giving of such Notice, the address or fax number therein specified will be deemed to be the address or fax number of such party or person for the giving of Notices hereunder.

- 12.11 Arbitration.** If any dispute arises between the parties hereto, then the matter will be determined by arbitration pursuant to the provisions of the *Commercial Arbitration Act* (British Columbia). The matter will be referred to a single arbitrator if the parties can agree on one, or if the parties cannot so agree within 14 days after they have started to negotiate as to who the single arbitrator will be, each will select one arbitrator and the two so selected will within 21 days of the appointment of both of them select a third arbitrator. An award by the majority of arbitrators will be binding on the parties. Each party will pay the cost of the arbitrator appointed by it. The costs of the third arbitrator will be paid by the parties equally.

- 12.12 Successors.** All rights and liabilities herein given to or imposed upon the respective parties hereto will extend to and bind the several respective heirs, executors, administrators, successors and permitted assigns of the said parties.
- 12.13 Business Day.** Where the time limited to perform anything or to pay any amount herein falls on a Saturday, Sunday or statutory holiday in the province where the Lands are located, the time so limited will extend to and the thing may be done or the amount may be paid on the next day which is not a Saturday, Sunday or statutory holiday.
- 12.14 No Transfers.** The Licensee will not enter into, consent to or permit any Transfer unless the Licensee will have first requested and obtained the consent in writing of the Licensor thereto (which consent the Licensor may unreasonably or arbitrarily withhold).
- 12.15 Joint and Several.** If the Licensee comprises more than one person, the covenants, agreements, representations, warranties, obligations and liabilities of the Licensee pursuant to this Licence are joint and several covenants, agreements, representations, warranties, obligations and liabilities of each of the persons comprising the Licensee.
- 12.16 Counterparts.** This Licence may be executed in any number of counterparts, with the same effect as if all the parties had signed the same document, and will become effective when one or more counterparts have been signed by all of the parties and delivered to each of the other parties. All counterparts will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be deemed to be dated the date first above written, and only one of which need be produced for any purpose.
- 12.17 Execution by Facsimile.** This Licence may be executed by the parties and transmitted by facsimile and if so executed and transmitted this Licence will be for all purposes as effective as if the parties had delivered an executed original Licence.
- 12.18 Severability.** If any provision of this Licence or any part thereof is determined to be invalid for any reason it will be severable and severed from this Licence and the remainder of this Licence will be construed as if such invalid provision or part had been deleted from this Licence.

IN WITNESS WHEREOF the parties hereto have executed this Licence the day and year first above written.

Licensor

TIMBERWEST FOREST COMPANY, by its
Managing Partner, TimberWest Forest Corp.

Licensee

REGIONAL DISTRICT OF NANAIMO

By:

(Authorized Signatory)

By:

(Authorized Signatory)

Schedule A

Plan of Licenced Area

Haslam Creek Bridge

TRANS CANADA TRAIL

08-2002
CH 17252

TIMBERLANDS MAIN

