

REGIONAL DISTRICT OF NANAIMO

**REGULAR BOARD MEETING
TUESDAY, MAY 24, 2011
(immediately following Regional Hospital Board meeting)**

(RDN Board Chambers)

A G E N D A

PAGES

- 1. CALL TO ORDER**
 - 2. DELEGATIONS**

10 **Heather Vallance**, re Clarification on a Request from the ALC for a Resolution on a Subdivision Application within the ALR.
 - 3. BOARD MINUTES**

11 - 25 Minutes of the regular Board meeting held April 26, 2011.
 - 4. BUSINESS ARISING FROM THE MINUTES**
 - 5. COMMUNICATIONS/CORRESPONDENCE**
 - 6. UNFINISHED BUSINESS**
- BYLAWS**
- Public Hearing & Third Reading.**
- 26 - 31 **Report of the Public Hearing held on May 17, 2011 on Bylaw No. 500.371 – Fern Road Consulting Ltd.** (Electoral Area Directors except EA ‘B’ – One Vote)
- 1. That the report of the Public Hearing held on May 17, 2011 on “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.371, 2011” be received.*
 - 2. That “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.371, 2011” be read a third time.*
- This bylaw rezones the subject property from Rural 1 (RU1) to Residential 1 (RS1) for the development of a 20-lot subdivision with park land dedication.

32 - 44

Report of the Public Hearing held on May 9, 2011 on Bylaw No. 1400.03 – Lakes District Neighbourhood Plan. (Attachments included as a separate enclosure) (All Directors except EA ‘B’ – One Vote)

1. *That the report of the Public Hearing held on May 9, 2011 on Bylaw No. 1400.03 be received.*
2. *That Bylaw No. 1400.03 be amended at third reading as set out in Schedule No. 1 of the staff report.*
3. *That “Regional District of Nanaimo Nanoose Bay Official Community Plan Amendment Bylaw No. 1400.03, 2011” be read a third time, as amended, and forwarded to the Minister of Community, Sport and Cultural Development for approval.*

This bylaw amends the Nanoose Bay Official Community Plan to incorporate the Lakes District Neighbourhood Plan for the majority of the remaining Fairwinds properties in Electoral Area ‘E’.

45 - 53

Report of the Public Hearing held on May 3, 2011 on Bylaw No. 1400.04 – Schooner Cove Neighbourhood Plan. (Attachments included as a separate enclosure) (All Directors except EA ‘B’ – One Vote)

1. *That the report of the Public Hearing held on May 3, 2011 on Bylaw No. 1400.04, be received.*
2. *That Bylaw No. 1400.04 be amended at third reading as set out in Schedule No. 1 of the staff report.*
3. *That “Regional District of Nanaimo Nanoose Bay Official Community Plan Amendment Bylaw No. 1400.04, 2011” be read a third time, as amended, and forwarded to the Minister of Community, Sport and Cultural Development for approval.*

This bylaw amends the Nanoose Bay Official Community Plan to incorporate the Schooner Cove Neighbourhood Plan for the Fairwinds-owned Schooner Cove properties located in Electoral Area ‘E’.

For Adoption.

Bylaws No. 867.05 & 1049.06. (All Directors – One Vote)

1. *That “Nanoose Bay Peninsula Water Service Area Amendment Bylaw No. 867.05, 2011” be adopted.*
2. *That “Nanoose Bay Bulk Water Supply Local Service Area Amendment Bylaw No. 1049.06, 2011” be adopted.*

These bylaws are to extend the boundaries of the Nanoose Bay Peninsula & Bulk Water Supply Services to include an Area ‘E’ Property (2834 Northwest Bay Road).

Bylaw No. 975.55. (All Directors – One Vote)

That “Regional District of Nanaimo Pump & Haul Local Service Amendment Bylaw No. 975.55, 2011” be adopted.

This bylaw reduces the boundaries of the Pump & Haul Service to exclude an Area ‘B’ property (Lot 7, Section 18, Gabriola Island, Nanaimo District, Plan 17698).

Bylaws No. 1628, 1629, 1630 & 1231.03. (All Directors – Weighted Vote)

1. *That “Regional Parks and Trails Service Loan Authorization Bylaw No. 1628, 2011” be adopted.*
2. *That “Regional Parks and Trails Service Security Issuing Bylaw No. 1629, 2011” be adopted.*
3. *That “Regional Parks and Trails Service Interim Financing Bylaw No. 1630, 2011” be adopted.*
4. *That “Regional Parks and Trails Service Amendment Bylaw No. 1231.03, 2011” be adopted.*

Authorizes the borrowing of funds towards the purchase of Moorecroft Regional Park and amends the parcel tax rate.

7. STANDING COMMITTEE, SELECT COMMITTEE AND COMMISSION MINUTES AND RECOMMENDATIONS

7.1 ELECTORAL AREA PLANNING STANDING COMMITTEE

54 - 55 Minutes of the Electoral Area Planning Committee meeting held May 10, 2011. (for information)

PLANNING

OTHER

Bylaw No. 1259.07 – Proposes to Amend the Regional District of Nanaimo Planning Services Fees and Charges Bylaw.

(Electoral Area Directors except EA ‘B’ – Weighted Vote)

1. *That “Regional District of Nanaimo Planning Services Fees and Charges Amendment Bylaw No. 1259.07, 2011” be introduced and read three times.*

(Electoral Area Directors except EA ‘B’ – 2/3 Weighted Vote)

2. *That “Regional District of Nanaimo Planning Services Fees and Charges Amendment Bylaw No. 1259.07, 2011” be adopted.*

Policy B1.8 – Subdivision and Non-farm Use Within the ALR. (All Directors – One Vote)

That the policy be referred back to staff for a report.

7.2 COMMITTEE OF THE WHOLE STANDING COMMITTEE

56 - 60 Minutes of the Committee of the Whole meeting held May 10, 2011. (for information)

FINANCE AND INFORMATION SERVICES

FINANCE

Bylaw 1498.01 – Extends the Boundaries of the Duke Point Sewer Development Cost Charges Service to Include an Area ‘A’ Property (1965 Walsh Road). (All Directors – One Vote)

That "Duke Point Sewer Service Area Development Cost Charges Amendment Bylaw No. 1498.01, 2011" be introduced, read three times and forwarded to the Inspector of Municipalities for approval.

Regional District of Nanaimo – 2010 Annual Report & Statement of Financial Information. (All Directors – One Vote)

That the 2010 Annual Financial Report Statement of Board and Committee Members Expenses and Remuneration and the Statement of Financial Information be approved and received as presented.

DEVELOPMENT SERVICES

BUILDING & BYLAW

Building Inspection Service - Proposed Expansion to Include Lumber Grading. (All Directors – One Vote)

That staff be directed to compile a referral list of certified lumber graders for home builders making use of site cut lumber to satisfy the requirements of the British Columbia Building Code.

RECREATION AND PARKS SERVICES

PARKS

Regional Parks & Trails - Island Corridor Foundation License of Occupation. (All Directors – Weighted Vote)

That the Licence of Occupation Agreement between the Regional District of Nanaimo, City of Nanaimo, District of Lantzville, City of Parksville, Town of Qualicum Beach and the Island Corridor Foundation be approved for the term of 25 years from 2011 to 2035.

REGIONAL AND COMMUNITY UTILITIES

WASTEWATER

Northern & Southern Community Wastewater Services - 2011 Open House Summary. (All Directors – One Vote)

That the report on Wastewater Services' French Creek Pollution Control Centre and Greater Nanaimo Pollution Control Centre 2011 Open Houses be received for information.

Greater Nanaimo Pollution Control Centre Digester 3 Project – Construction Award. (All Directors – Weighted Vote)

- 1. That the Board award the construction contract for the new Digester 3 at the Greater Nanaimo Pollution Control Centre to Maple Reinders Inc. for a value of \$9,459,600.*
- 2. That the Board award the engineering services during the construction of Digester 3 and the SCADA programming services to AECOM for a total value of \$403,625.*
- 3. That funds from the Southern Community Development Cost Charge Reserve Fund be used for the Greater Nanaimo Pollution Control Centre Digester 3 Project.*

WATER

Drinking Water & Watershed Protection Service – Watershed Snapshot Report 2010. (All Directors – One Vote)

- 1. That the Board approve the Watershed Snapshot Report 2010.*
- 2. That the Board direct staff to proceed with the recommendations in the report.*
- 3. That the Board direct staff to make the report available to the public and alert participants of its completion.*

Bylaws No. 1639 & 1640 – Establishes General Rates & Regulations for RDN Water Services.

(All Directors – One Vote/Two Thirds)

1. *That "Regional District of Nanaimo Water Use Regulation Bylaw No. 1639, 2011" be introduced and read three times.*
2. *That "Regional District of Nanaimo Water Use Regulation Bylaw No, 1639, 2011" be adopted.*

(All Directors – 2/3 Weighted Vote)

3. *That "Regional District of Nanaimo Water Services Fees & Charges Bylaw No. 1640, 2011" be introduced and read three times.*
4. *That "Regional District of Nanaimo Water Services Fees & Charges Bylaw No. 1640, 2011" be adopted.*

TRANSPORTATION AND SOLID WASTE SERVICES

SOLID WASTE

Solid Waste Disposal Service - Extend Contract to Haul Waste from Church Road Transfer Station. (All Directors – Weighted Vote)

That the Board approve an eighteen month extension to contract with Bobell Express Ltd. for waste hauling services from the Church Road Transfer Station under the current contract conditions.

Solid Waste Disposal Service - Award Tender for Regional Landfill Cell One Closure. (All Directors – Weighted Vote)

That the Board award the Regional Landfill Cell One Stage One final closure project to Knappett Industries Ltd. for the tendered amount of \$1,571,830 with a construction contingency of \$500,000.

COMMISSION, ADVISORY & SELECT COMMITTEE

Grants-in-Aid Committee.

(All Directors – One Vote)

1. *That the minutes of the Grants-in-Aid Committee meeting held May 4, 2011 be received for information.*

(EA's 'A', 'B', 'C', City of Nanaimo, District of Lantzville – Weighted Vote)

2. *That the following District 68 grants be awarded:*

| Organization | Amount Recommended |
|--|---------------------------|
| <i>BC Competitive Trail Riding Association</i> | <i>\$ 600</i> |
| <i>Gabriola Arts Council</i> | <i>1,000</i> |
| <i>Hope Centre</i> | <i>800</i> |
| <i>Jonanco Hobby Workshop Association</i> | <i>600</i> |
| <i>Poetry Gabriola Society</i> | <i><u>1,000</u></i> |
| | <i><u>\$ 4,000</u></i> |

(EA's 'E', 'F', 'G', 'H', City of Parksville, Town of Qualicum Beach – Weighted Vote)

3. *That the following District 69 grants be awarded:*

| Organization | Amount Recommended |
|--|---------------------------|
| <i>Arrowsmith Agricultural Association</i> | <i>\$ 1,000</i> |
| <i>Arrowsmith Community Enhancement Society</i> | <i>250</i> |
| <i>Coombs 100 Year Celebration (French Creek Community PAC)</i> | <i>500</i> |
| <i>Errington War Memorial Hall Association</i> | <i>1,500</i> |
| <i>Forward House Community Society</i> | <i>2,000</i> |
| <i>Friends of Nanoose Library Society</i> | <i>1,200</i> |
| <i>Lighthouse Community Centre Society</i> | <i>2,000</i> |
| <i>Oceanside Volunteer Association</i> | <i>1,000</i> |
| <i>Parksville & District Association for Community Living</i> | <i>2,000</i> |
| <i>Parksville-Qualicum Beach & District Branch of the SPCA</i> | <i>600</i> |
| <i>Vancouver Island Opera</i> | <i><u>1,000</u></i> |
| | <i><u>\$ 13,050</u></i> |

NEW BUSINESS

Regional Voting Unit. (All Directors – One Vote)

That given there will be new census figures completed at the end of 2011 that may result in a larger Board structure and associated increased cost implications, that staff prepare a report on the voting structure with options for consideration by the Board.

7.3 EXECUTIVE STANDING COMMITTEE

7.4 COMMISSIONS

7.5 SCHEDULED STANDING, ADVISORY STANDING AND SELECT COMMITTEE REPORTS

8. ADMINISTRATOR'S REPORTS

Green Building Outreach Program 2011 (Verbal Presentation).

- 61 - 131 Greater Nanaimo Pollution Control Centre Cogeneration Project – BC Hydro Energy Purchase Agreement and Confidentiality & Compliance Agreement. (All Directors – Weighted Vote)

9. ADDENDUM

10. BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

11. NEW BUSINESS

12. BOARD INFORMATION (Separate enclosure on blue paper)

13. ADJOURNMENT

14. IN CAMERA

That pursuant to Section 90(1)(c) and (e) of the Community Charter the Board proceed to an In Camera meeting to consider items related to personnel and land matters.

Burgoyne, Linda

From: Heather Vallance <sadsak@shaw.ca>
Sent: Thursday, May 12, 2011 10:16 AM
To: Burgoyne, Linda
Subject: Fw: setting a priority on the resolutions requested by ALC

Importance: High

From: Heather Vallance
Sent: Thursday, May 12, 2011 9:38 AM
To: Jane Armstrong
Subject: setting a priority on the resolutions requested by ALC

hi Jane

I would like to appear before the board to get clarification on the request from the ALC for a resolution on subdivision on application with in the ALR. I would also like to have this resolution (what ever that means) set as a priority so the ALC can deal with our application

Heather Vallance and crew
www.vallancecockers.com
British Columbia, Canada

REGIONAL DISTRICT OF NANAIMO

MINUTES OF THE REGULAR BOARD MEETING OF THE BOARD
OF THE REGIONAL DISTRICT OF NANAIMO HELD ON
TUESDAY, APRIL 26, 2011 AT 7:00 PM IN THE
RDN BOARD CHAMBERS

Present:

| | |
|-----------------------|------------------------|
| Director J. Stanhope | Chairperson |
| Director J. Burnett | Electoral Area A |
| Director G. Rudischer | Electoral Area B |
| Director M. Young | Electoral Area C |
| Director G. Holme | Electoral Area E |
| Director L. Biggemann | Electoral Area F |
| Director D. Bartram | Electoral Area H |
| Director M. Lefebvre | City of Parksville |
| Director T. Westbroek | Town of Qualicum Beach |
| Alternate | |
| Director B. Dempsey | District of Lantzville |
| Director J. Ruttan | City of Nanaimo |
| Director B. Holdom | City of Nanaimo |
| Director B. Bestwick | City of Nanaimo |
| Director J. Kipp | City of Nanaimo |
| Director D. Johnstone | City of Nanaimo |
| Director L. Sherry | City of Nanaimo |
| Director M. Unger | City of Nanaimo |

Also in Attendance:

| | |
|----------------|--|
| C. Mason | Chief Administrative Officer |
| M. Pearse | Sr. Mgr., Corporate Administration |
| N. Avery | Gen. Mgr., Finance & Information Services |
| P. Thorkelsson | Gen. Mgr., Development Services |
| J. Finnie | Gen. Mgr., Regional & Community Utilities |
| T. Osborne | Gen. Mgr., Recreation & Parks Services |
| D. Trudeau | Gen. Mgr., Transportation & Solid Waste Services |
| N. Hewitt | Recording Secretary |

CALL TO ORDER

The Chairperson welcomed Alternate Director Brian Dempsey to the meeting.

DELEGATIONS

Rob Christopher, Nanaimo Search & Rescue Society, re Annual Activity Update.

Mr. Christopher presented the annual activity update to the Board.

BOARD MINUTES

MOVED Director Holme, SECONDED Director Lefebvre, that the minutes of the regular Board meeting held March 22, 2011 and the Special Board meeting held March 29, 2011 be adopted.

CARRIED

COMMUNICATIONS/CORRESPONDENCE

Colin Fry, Agricultural Land Commission, re Local Government Forwarding Resolution – Agricultural Land Reserve Subdivision & Non-Farm Use Applications.

MOVED Director Bartram, SECONDED Director Ruttan, that the correspondence from Colin Fry of the Agricultural Land Commission be received.

CARRIED

BYLAWS

Public Hearing & Third Reading.

Report of the Public Hearing held April 11, 2011 on Bylaw No. 500.369 – RDN – 2834 Northwest Bay Road – Area ‘E’.

MOVED Director Holme, SECONDED Director Ruttan, that the report of the Public Hearing held April 11, 2011 on Bylaw No. 500.369 be received.

CARRIED

MOVED Director Holme, SECONDED Director Ruttan, that “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.369, 2011” be read a third time.

CARRIED

Report of the Public Hearing held April 13, 2011 on Bylaw No. 1285.15 – J.E. Anderson & Associates – 908 & 920 Little Mountain Road – Area ‘F’.

MOVED Director Biggemann, SECONDED Director Bartram, that the report of the Public Hearing held April 13, 2011 on Bylaw No. 1285.15 be received.

CARRIED

MOVED Director Biggemann, SECONDED Director Bartram, that “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 1285.15, 2011” be read a third time.

CARRIED

Report of the Public Hearing held March 28, 2011 on Bylaw No. 1620 – Electoral Area ‘A’ Official Community Plan.

MOVED Director Burnett, SECONDED Director Bartram, that the report of the Public Hearing held March 28, 2011 on Bylaw No. 1620 be received.

CARRIED

MOVED Director Burnett, SECONDED Director Bartram, that "Regional District of Nanaimo Electoral Area 'A' Official Community Plan Bylaw No. 1620, 2011" be amended at third reading as outlined in Schedule No. 1 of this report.

CARRIED

MOVED Director Burnett, SECONDED Director Bartram, that "Regional District of Nanaimo Electoral Area 'A' Official Community Plan Bylaw No. 1620, 2011" be read a third time, as amended, and forwarded to the Minister of Community, Sport and Cultural Development for approval.

CARRIED

For Adoption.

Bylaws No. 500.367 & 1335.

MOVED Director Bartram, SECONDED Director Holme, that "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.367, 2011" be adopted.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Amendment Bylaw No. 1335.05, 2011" be adopted.

CARRIED

Bylaw No. 975.54.

MOVED Director Holme, SECONDED Director Johnstone, that "Regional District of Nanaimo Pump and Haul Local Service Establishment Bylaw No. 975.54, 2011" be adopted.

CARRIED

Bylaw No. 1626 & 1627.

MOVED Director Burnett, SECONDED Director Bartram, that "Cedar Sewer Large Residential Properties Capital Financing Service Security Issuing Bylaw No. 1626, 2011" be adopted.

CARRIED

MOVED Director Burnett, SECONDED Director Ruttan, that "Cedar Sewer Large Residential Properties Capital Financing Service Interim Financing Bylaw No. 1627, 2011" be adopted.

CARRIED

Bylaw No. 1285.16.

MOVED Director Biggemann, SECONDED Director Bartram, that "Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Amendment Bylaw No. 1285.16, 2011" be adopted.

CARRIED

STANDING COMMITTEE, SELECT COMMITTEE AND COMMISSION MINUTES AND RECOMMENDATIONS

ELECTORAL AREA PLANNING STANDING COMMITTEE

MOVED Director Bartram, SECONDED Director Holme, that the minutes of the Electoral Area Planning Committee meeting held April 12, 2011 be received for information.

CARRIED

PLANNING

AMENDMENT APPLICATIONS

Bylaw No. 500.370 to Support Zoning Amendment Application No. PL2010-123 – Landeca Services Inc. – 2956 & 2962 Ridgeway Road – Area ‘C’.

MOVED Director Young, SECONDED Director Burnett, that Zoning Amendment Application No. PL2010-123 to rezone the subject property from Subdivision District 'D' to Subdivision District 'F' be approved subject to the conditions included in Schedule No. 1.

CARRIED

MOVED Director Young, SECONDED Director Burnett, that "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.370, 2011" be introduced and read two times.

CARRIED

MOVED Director Young, SECONDED Director Burnett, that the Public Hearing on "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.370, 2011" be delegated to Director Young or her alternate.

CARRIED

Bylaw No. 500.371 & Consideration of Park Land Dedication and/or Cash-in-Lieu of Park Land to Support Zoning Amendment Application No. PL2010-216 – Fern Road Consulting Ltd. – Wembley Road – Area ‘G’.

MOVED Director Bartram, SECONDED Director Holme, that the Summary of the Public Information Meeting held on March 30, 2011, be received.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that Zoning Amendment Application No. PL2010-216 to rezone the subject property from Rural 1 Subdivision District 'F' (RS IF) to Residential 1 Subdivision District 'Q' (RS IQ) be approved.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.371, 2011", be introduced and read two times.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that the Public Hearing on "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.371, 2011" be delegated to Director Stanhope or his alternate.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that the request to accept the dedication of park land, as outlined in Schedule No. 1 be accepted.

CARRIED

DEVELOPMENT PERMIT APPLICATIONS

Development Permit Application No. PL2011-047 – Keith Brown & Associates Ltd. – 1922 - 1940 Schoolhouse Road – Area ‘A’.

MOVED Director Burnett, SECONDED Director Bestwick, that Development Permit Application No. PL2011-047 to permit the construction of an industrial warehouse building be approved subject to the conditions outlined in Schedules No. 1- 5.

CARRIED

Bylaws No. 1335.05 & 500.367 – OCP & Zoning Amendments to Support Development Permit Application No. PL2010-198 - Fern Road Consulting Ltd. - 6120 Island Highway West – Area ‘H’.

MOVED Director Bartram, SECONDED Director Holme, that Zoning Amendment Application No. PL2010-198 for a Development Permit in relation to the proposed rezoning for the subject property be approved subject to the conditions included in Schedule No. 1.

CARRIED

DEVELOPMENT PERMIT WITH VARIANCE APPLICATIONS

Development Permit with Variance & Request for Frontage Relaxation Application No. PL2010-145 – Parrish – 2075 & 2081 Lazy Susan Drive – Area ‘A’.

MOVED Director Burnett, SECONDED Director Bartram, that Development Permit with Variance Application No. PL2010-145, in conjunction with a two lot subdivision be approved subject to the conditions outlined in Schedule No. 1.

CARRIED

MOVED Director Burnett, SECONDED Director Bartram, that the request to relax the minimum 10% perimeter frontage requirement for the proposed new lot and for the remainder lot be approved.

CARRIED

Reconsideration of Development Permit with Variance & Request for Frontage Relaxation Application No. PL2010-230 - Fern Road Consulting Ltd. - 6224, 6266, 6280 & 6290 Island Highway West - Area 'H'.

MOVED Director Bartram, SECONDED Director Holme, that Development Permit with Variance Application No. PL2010-230 in conjunction with a lot line adjustment subdivision be approved subject to the conditions outlined in Schedule No. 1.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that the request to relax the minimum 10% perimeter frontage requirement for proposed Lots A and B, be approved.

CARRIED

Development Permit with Variance Application No. PL2011-014 – Fern Road Consulting Ltd. – Island Highway & Linx Road – Area ‘H’.

A written submission from Kevin Buydens with respect to this application was circulated.

MOVED Director Bartram, SECONDED Director Holme, that Development Permit with Variance Application No. PL2011-014 be approved subject to the conditions outlined in Schedules No. 1 - 2.

CARRIED

DEVELOPMENT VARIANCE PERMIT APPLICATIONS

Development Variance Permit Application No. PL2011-036 – Stouffer – 1454 The Outrigger – Area ‘E’.

MOVED Director Holme, SECONDED Director Bartram, that Development Variance Permit Application No. PL2011-036 to legalize the siting of an existing garage and carport with a variance to the setback from the front lot line be approved subject to the conditions outlined in Schedules No. 1- 3.

CARRIED

OTHER

Consideration of Park Land Dedication and/or Cash-in-Lieu of Park Land & Request for Frontage Relaxation on Subdivision Application No. PL2010-169 – Glencar Consultants – 516 Wembley Road – Area ‘G’.

MOVED Director Bartram, SECONDED Director Burnett, that the request to accept a combination of park land and cash-in-lieu of park as outlined in Schedule No. 1 in conjunction with Subdivision Application No. PL2010-169 be accepted.

CARRIED

MOVED Director Bartram, SECONDED Director Burnett, that the offer to provide 0.83% of the appraised value of the subject property for park land development works in Electoral Area 'G' be accepted as outlined in Schedule No. 1.

CARRIED

MOVED Director Bartram, SECONDED Director Burnett, that the request to relax the minimum 10% perimeter frontage requirements for proposed Lots 16, 17, 18, 19 and 20 be approved.

CARRIED

Consideration of Park Land Dedication and/or Cash-in-Lieu of Park Land on Subdivision Application No. PL2011-018 – Fern Road Consulting Ltd. – 864 Cavin Road – Area ‘G’.

MOVED Director Bartram, SECONDED Director Holme, that the request to pay 5% cash-in-lieu of park land in conjunction with Subdivision Application No. PL2011-018, be accepted.

CARRIED

Request for Frontage Relaxation on Subdivision Application No. PL2011-016 – Fern Road Consulting Ltd. – 403 Lowry’s Road – Area ‘G’.

MOVED Director Bartram, SECONDED Director Burnett, that the request to relax the minimum 10% perimeter frontage requirement be approved.

CARRIED

COMMITTEE OF THE WHOLE STANDING COMMITTEE

MOVED Director Lefebvre, SECONDED Director Holdom, that that minutes of the Committee of the Whole meeting held April 12, 2011 be received for information.

CARRIED

COMMUNICATIONS/CORRESPONDENCE

Oceanside Development & Construction Association (ODCA), re RDN Liaison to ODCA.

MOVED Director Lefebvre, SECONDED Director Bestwick, that the correspondence from the Oceanside Development and Construction Association be received.

CARRIED

FINANCE AND INFORMATION SERVICES

FINANCE

Proposed Amendment to Community Charter – Authority to Borrow Temporarily Between Reserves.

MOVED Director Holdom, SECONDED Director Ruttan, that the following resolution be sent to the Ministry of Community, Sport and Cultural Development:

WHEREAS the Regional District of Nanaimo considers it desirable for Regional Districts to have the authority to transfer funds under section 189(4.1) and (4.2) of the Community Charter between capital reserve funds established in respect of different services as a means to address infrastructure requirements of an essential nature and/or to minimize the cost of long term borrowing on its residents;

NOW THEREFORE BE IT RESOLVED that the Minister of Community, Sport and Cultural Development be requested to confer on regional districts the authority under section 189(4.1) of the Community Charter to transfer by bylaw funds held in capital reserve funds, between funds established in respect of different services provided that the regional district bylaw to authorize the transfer includes repayment terms to ensure return of the money used to the transferor reserve fund no later than the date when the funds are required for purposes of the transferor reserve fund and an interest rate that meets the requirements of section 189(4.2) of the Community Charter.

CARRIED

Bylaws No. 1632, 1633, 1634 & 1635 – Establish a Regional Library Capital Financing Service and Authorize Borrowing & Issuance of Securities in Relation to the Service.

MOVED Director Holdom, SECONDED Director Holme, that the Regional District of Nanaimo support borrowing funds to be provided to the Vancouver Island Regional Library.

CARRIED

MOVED Director Holdom, SECONDED Director Holme, that "Regional Library Capital Financing Service Establishment Bylaw No. 1632, 2011" be introduced, read three times and forwarded to the Inspector of Municipalities for approval and proceed to the Alternative Approval Process to receive elector assent.

CARRIED

MOVED Director Holdom, SECONDED Director Holme, that the Elector Response Form as attached to this report be approved.

CARRIED

MOVED Director Holdom, SECONDED Director Holme, that "Regional Library Capital Financing Service Loan Authorization Bylaw No. 1633, 2011" be introduced, read three times and forwarded to the Inspector of Municipalities for approval and proceed to the Alternative Approval Process to receive elector assent.

CARRIED

MOVED Director Holdom, SECONDED Director Holme, that "Regional Library Capital Financing Service Security Issuing Bylaw No. 1634, 2011" be introduced and read three times.

CARRIED

MOVED Director Holdom, SECONDED Director Holme, that "Regional Library Capital Financing Service Temporary Borrowing Bylaw No. 1635, 2011" be introduced and read three times.

CARRIED

MOVED Director Holdom, SECONDED Director Holme, that the Chair and Senior Manager, Corporate Administration be authorized to execute the Indebtedness Agreement attached to this report if approved.

CARRIED

MOVED Director Holdom, SECONDED Director Holme, that elector assent for Bylaws No. 1632 and 1633 and the Indebtedness Agreement be obtained by using the alternative approval process for the entire service area.

CARRIED

Strategic Priorities Fund – Grant Application Recommendations.

MOVED Director Holme, SECONDED Director Holdom, that the Regional District of Nanaimo support a funding application for the Greater Nanaimo Pollution Control Center 3rd digester at a cost of \$8.1 million, to the General Strategic Priorities Fund program.

CARRIED

MOVED Director Holme, SECONDED Director Holdom, that the Regional District of Nanaimo support a funding application for the Arrowsmith Water Service aquifer storage reservoir detailed design at a cost of \$1.6 million, to the General Strategic Priorities - Innovations Fund program.

CARRIED

MOVED Director Holme, SECONDED Director Holdom, that the Regional District of Nanaimo support a funding application for a Regional Transportation Data Model & Transportation Plans at a cost of \$400,000, to the General Strategic Priorities – Capacity Building program.

CARRIED

DEVELOPMENT SERVICES

PLANNING

Official Community Plan Referral - Town of Qualicum Beach Bylaw No. 700.

MOVED Director Westbroek, SECONDED Director Lefebvre, that the Regional District of Nanaimo Board receive this report for information and that the comments provided in the report be forwarded to the Town of Qualicum Beach.

CARRIED

Area Agriculture Plan Update.

MOVED Director Burnett, SECONDED Director Lefebvre, that the Board appoint the Agricultural Advisory Committee as the steering committee for the Area Agricultural Plan.

CARRIED

REGIONAL AND COMMUNITY UTILITIES

WASTEWATER

Bylaw No. 889.60 – Reduces the Boundaries of the Northern Community Sewer Service by Excluding Fifty-Six Area ‘E’ Properties.

MOVED Director Holme, SECONDED Director Holdom, that "Regional District of Nanaimo Northern Community Sewer Local Service Boundary Amendment Bylaw No. 889.60, 2011" be introduced, read three times and forwarded to the Inspector of Municipalities for approval.

CARRIED

Greater Nanaimo Pollution Control Centre – Approval of Planning Grant Application to Update Odour Management Strategy.

MOVED Director Lefebvre, SECONDED Director Holdom, that the Board support an application to the Ministry of Community, Sport and Cultural Development for an Infrastructure Planning (Study) Grant application for the Odour Management Strategy Update for the Greater Nanaimo Pollution Control Centre.

CARRIED

Bylaw No. 975.55 – Reduces the Boundaries of the Pump & Haul Service by Excluding an Area ‘B’ Property (1383 Sea Lover’s Lane).

MOVED Director Rudischer, SECONDED Director Bartram, that "Regional District of Nanaimo Pump & Haul Local Service Amendment Bylaw No. 975.55, 2011" be introduced and read three times.

CARRIED

WATER

Nanosee Bay Peninsula Water Service - Bill Adjustment for Area ‘E’ Property (3660 Dolphin Drive).

MOVED Director Holme, SECONDED Director Bestwick, that a water bill reduction at 3660 Dolphin Drive in the amount of \$1,488.51 be approved.

CARRIED

MOVED Director Holme, SECONDED Director Bestwick, that no further water bill reductions be considered for this property prior to May 31, 2017.

CARRIED

Bylaw No. 1636 – Sets Rates & Regulations for the Whiskey Creek Water Service.

MOVED Director Biggemann, SECONDED Director Bartram, that "Regional District of Nanaimo Whiskey Creek Water Service Area Rates and Regulations Bylaw No. 1636, 2011" be introduced and read three times.

CARRIED

MOVED Director Biggemann, SECONDED Director Bartram, that "Regional District of Nanaimo Whiskey Creek Water Service Area Rates and Regulations Bylaw No. 1636, 2011" be adopted.

CARRIED

TRANSPORTATION AND SOLID WASTE SERVICES

SOLID WASTE

Bylaw No. 1591.01 – Amends the Solid Waste & Recycling Collection Service Rates & Regulations Bylaw.

MOVED Director Westbroek, SECONDED Director Holme, that "Solid Waste and Recycling Collection Service Rates and Regulations Amendment Bylaw No. 1591.01, 2011" be introduced and read three times.

CARRIED

MOVED Director Westbroek, SECONDED Director Holme, that "Solid Waste and Recycling Collection Service Rates and Regulations Amendment Bylaw No. 1591.01, 2011" be adopted.

CARRIED

COMMISSION, ADVISORY & SELECT COMMITTEE

District 69 Recreation Commission.

MOVED Director Bartram, SECONDED Director Rudischer, that the minutes of the District 69 Recreation Commission meeting held March 17, 2011 be received for information.

CARRIED

Electoral Area 'A' Parks, Recreation and Culture Commission.

MOVED Director Burnett, SECONDED Director Holdom, that the minutes of the Electoral Area 'A' Parks, Recreation and Culture Commission meeting held March 9, 2011 be received for information.

CARRIED

MOVED Director Burnett, SECONDED Director Holdom, that the following Electoral Area 'A' Recreation and Culture Grants be approved:

CARRIED

| <i>Community Group</i> | <i>Amount Recommended</i> |
|---|---------------------------|
| Cedar Family of Community Schools (families first programs) | \$ 1,500 |
| Cedar Community Policing (drug awareness fair) | \$ 750 |
| Comets Sports, Recreation and Culture Society (summer basketball camp) | \$ 800 |
| Cedar 4-H Senior Advisory Council (Beban barnyard) | \$ 1,500 |
| Cedar Community Association (defibrillator) | \$ 1,500 |
| Friends of Morden Mine (brochures) | \$ 750 |

CARRIED

East Wellington/Pleasant Valley Parks and Open Space Advisory Committee.

MOVED Director Young, SECONDED Director Burnett, that the minutes of the East Wellington/Pleasant Valley Parks and Open Space Advisory Committee meeting held February 21, 2011 be received for information.

CARRIED

Nanoose Bay Parks and Open Space Advisory Committee.

MOVED Director Holme, SECONDED Director Bartram, that the minutes of the Nanoose Bay Parks and Open Space Advisory Committee meeting held February 7, 2011 be received for information.

CARRIED

MOVED Director Holme, SECONDED Director Bartram, that the issue of the Parks Department organizing a workshop of District 69 Parks and Open Space Advisory Committees for the purpose of sharing experiences in developing and implementing projects for their areas be referred to staff for a report.

CARRIED

MOVED Director Holme, SECONDED Director Bartram, that the Parks staff submission concerning the Fairwinds OCP amendment be made available to the Electoral Area 'E' Parks and Open Space Advisory Committee for information.

CARRIED

Electoral Area 'F' Parks and Open Space Advisory Committee.

MOVED Director Biggemann, SECONDED Director Bartram, that the minutes of the Electoral Area 'F' Parks and Open Space Advisory Committee meeting held February 28, 2011 be received for information.

CARRIED

Electoral Area 'H' Parks and Open Space Advisory Committee.

MOVED Director Bartram, SECONDED Director Holdom, that the minutes of the Electoral Area 'H' Parks and Open Space Advisory Committee meeting held January 26, 2011 be received for information.

CARRIED

Drinking Water & Watershed Protection Advisory Committee.

MOVED Director Bartram, SECONDED Director Burnett, that the minutes of the Drinking Water & Watershed Protection Advisory Committee meeting held March 31, 2011 be received for information.

CARRIED

BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

Oceanside Development & Construction Association (ODCA), re RDN Liaison to ODCA.

MOVED Director Lefebvre, SECONDED Director Bartram, that the request for a RDN liaison on the Oceanside Development and Construction Association be referred to staff for a report.

CARRIED

Melissa Noel, Coastal Invasive Plant Committee, re Invasive Plant Management – Update for Local Governments.

MOVED Director Holme, SECONDED Director Johnstone, that the request for a partnership between the Coastal Invasive Plant Committee and the Regional District be referred to staff for a report.

CARRIED

NEW BUSINESS

Island Corridor Foundation Railway.

MOVED Director Kipp, SECONDED Director Lefebvre, that staff send correspondence to Premier Christie Clark and to Transportation Minister, Blair Lekstrom requesting a \$15 million infrastructure investment to secure the future of Island Rail.

CARRIED

Electric Cars.

MOVED Director Lefebvre, SECONDED Director Holdom, that staff prepare a report that looks into the authority of the RDN to regulate the use of electric vehicles on roads in electoral areas.

CARRIED

SCHEDULED STANDING, ADVISORY STANDING AND SELECT COMMITTEE REPORTS

Regional Parks & Trails Advisory Committee.

MOVED Director Holdom, SECONDED Director Johnstone, that the minutes of the Regional Parks & Trails Advisory Committee meeting held April 5, 2011 be received for information.

CARRIED

MOVED Director Holdom, SECONDED Director Johnstone, that staff be directed to prepare a cost analysis report on costs required to plan, develop and maintain the proposed parkland that would be dedicated by Fairwinds as shown in the Lakes District Neighbourhood Plan.

CARRIED

MOVED Director Holdom, SECONDED Director Johnstone, that staff apply to the Province of British Columbia for a permit for a Regional Trail corridor through District Lot 137 to establish a trail linkage between the proposed regional park in Fairwinds and Moorecroft Regional Park.

CARRIED

Emergency Management Select Committee.

MOVED Director Bartram, SECONDED Director Biggemann, that the minutes of the Emergency Management Select Committee meeting held April 19, 2011 be received for information.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that the Emergency Reception Centre License of Use Agreement between the Regional District of Nanaimo and the Arrowsmith Agricultural Association for a 4 year term commencing May 1st, 2011 and ending on April 30th, 2015, be approved.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that the Gabriola Island Emergency Social Services Director agreement between the Regional District of Nanaimo and Nancy Rowan be approved for a fifteen month term commencing January 1, 2011 and ending March 31, 2012.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that the Cedar/Extension Emergency Social Services Director agreement between the Regional District of Nanaimo and Andrea Bonkowski be approved for a fifteen month term commencing January 1, 2011 and ending March 31, 2012.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that the 2011 Neighborhood Emergency Preparedness Facilitator agreement between the Regional District of Nanaimo and Mr. Robert Dendoff be approved for a fifteen month term commencing January 1, 2011 and ending on March 31, 2012.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that the Board approve payment of the annual maintenance fee of the Royal Canadian Legion Bowser and District Branch (211) emergency generator beginning in 2012.

CARRIED

MOVED Director Rudischer, SECONDED Director Bartram, that the Board approve a letter of support to the Minister of Public Works and Government Services Canada for secondary/emergency access through Crown land to Whalebone subdivision on Gabriola Island.

CARRIED

MOVED Director Bartram, SECONDED Director Holme, that the Board support an application under the strategic Wildfire Prevention Initiative funding program for the implementation of a Wildland Urban Interface fuel management plan.

CARRIED

Transit Select Committee.

MOVED Director Holdom, SECONDED Director Johnstone, that the minutes of the Transit Select Committee meeting held March 17, 2011 be received for information.

CARRIED

MOVED Director Holdom, SECONDED Director Johnstone, that staff prepare a report on communication issues regarding the implementation of the UPASS at VIU and bring this back for further discussion at the Transit Select Committee.

CARRIED

MOVED Director Holdom, SECONDED Director Johnstone, that the Board receive the report on the Gabriola Island Transit Service Feasibility Study for information and direct staff to investigate the full financial impacts of the various expansion options and to work with BC Transit to prioritize the proposed service increase and update the RDN Transit Business Plan as required.

CARRIED

MOVED Director Holdom, SECONDED Director Johnstone, that the application made by the PIBC North Island Chapter 2011 Conference Sponsorship Committee for the RDN to provide transportation for tours that are part of the Conference 2011 be approved.

CARRIED

MOVED Director Holdom, SECONDED Director Johnstone, that the 2010/2011 Annual Operating Agreement (AOA) Amendment #1 with BC Transit be approved.

CARRIED

MOVED Director Holdom, SECONDED Director Johnstone, that the Board authorize staff to approach School District No. 68 (Nanaimo-Ladysmith) and confirm their acceptance of a one (1) year trial period of the Free Fare for Class Rides program.

CARRIED

ADMINISTRATOR'S REPORTS

Waste Stream Management Licensing Application – Earthbank Resource Systems –Area ‘G’ (1424 Hodge’s Road).

MOVED Director Holme, SECONDED Director Johnstone, that the Board receives the report on the Waste Stream Management License application from Earthbank Resource Systems for information.

CARRIED

Southern Community Transit Service – Special Event Busing Request Nanaimo Port Authority Cruise Ship Shuttle.

MOVED Director Ruttan, SECONDED Director Bestwick, that the application made by the Nanaimo Port Authority for the Regional District of Nanaimo to provide bus service for cruise ships arriving in Nanaimo on May 7, May 20, September 10 and September 25, 2011, at the Port Authority's cost, be approved.

CARRIED

BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

Colin Fry, Agricultural Land Commission, re Local Government Forwarding Resolution – Agricultural Land Reserve Subdivision & Non-Farm Use Applications.

MOVED Director Bartram, SECONDED Director Burnett, that the Board direct staff to prepare a report outlining options available to the Board when considering requests to authorize the referral of Subdivision and Non-Farm applications in the Agricultural Land Reserve, to the Agricultural Land Commission.

CARRIED

NEW BUSINESS

East Wellington Fire Protection Contract.

MOVED Director Bartram, SECONDED Director Burnett, that staff be requested to review alternatives for fire protection in the East Wellington contract area including seeking a Superior Tanker Shuttle rating by the City of Nanaimo and/or boundary changes which would place residences as close as possible to a responding firehall

CARRIED

ADJOURNMENT

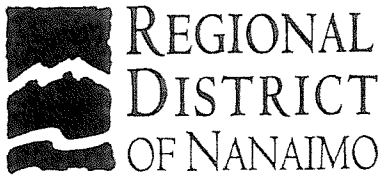
MOVED Director Holme, SECONDED Director Young, that pursuant to Section 90(1)(e) of the Community Charter the Board proceed to an In Camera meeting to consider items related to land matters.

CARRIED

TIME: 7:42 PM

CHAIRPERSON

SR. MGR., CORPORATE ADMINISTRATION



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| RDN REPORT | |
| CAO APPROVAL (RW) | |
| CAV | |
| COW | |
| MAY 18 2011 | |
| RHD | |
| BOARD | ✓ May 24/11 |

MEMORANDUM

TO: Dale Lindsay
Manager, Current Planning

DATE: May 18, 2011

FROM: Elaine Leung
Planner

FILE: PL2010-216

SUBJECT: Report of the Public Hearing held May 17, 2011 on Bylaw No. 500.371
Fern Road Consulting Ltd.
Lot 4, District Lot 81, Nanoose District, Plan 1799 Except That Part Lying to the South West of a Boundary Bearing South Thirty Degrees East From a Point on the North Westerly Boundary of Said Lot Distant 624.43 Feet From the North Westerly Corner of Said Lot - Wembley Road
Electoral Area 'G'

PURPOSE

To receive the report of the Public Hearing containing the summary of the minutes and submissions of the Public Hearing held on May 17, 2011, and to consider Bylaw No. 500.371, 2011 for 3rd reading.

BACKGROUND

Bylaw No. 500.371 was introduced and given 1st and 2nd reading on April 26, 2011. This was followed by a Public Hearing held on May 17, 2011. The summary of the minutes and submissions is attached for the Board's consideration (*see Attachment No. 2*).

The purpose of this zoning amendment bylaw is to rezone the subject property from Rural 1 (RU1) to Residential 1 (RS1) to facilitate the development of a subdivision proposal (*see Attachment No. 1 for location of the subject property*).

ALTERNATIVES

1. To receive the report of the Public Hearing and give 3rd reading to "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.371, 2011."
2. To receive the report of the Public Hearing and deny "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.371, 2011."

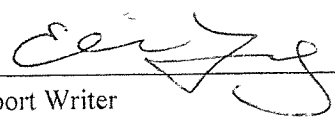
SUMMARY

The purpose of Bylaw No. 500.371, 2011 is to rezone the subject property from Rural 1 Subdivision District 'F' (RU1F) to Residential 1 Subdivision District 'Q' (RS1Q) in order to facilitate a twenty lot subdivision development. "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.371, 2011" was considered by the Board and given first and second reading on April 26, 2011.

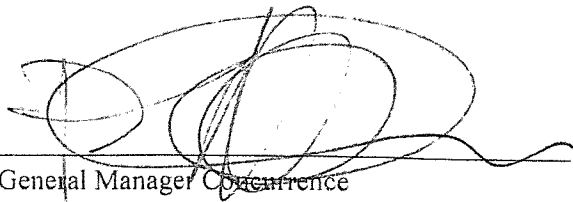
The associated Public Hearing was held on May 17, 2011. The bylaw must receive approval from by the Ministry of Transportation prior to final adoption. Therefore, staff recommends that Bylaw No. 500.371, 2011, be considered for 3rd reading.

RECOMMENDATIONS

1. That the report of the Public Hearing held on May 17, 2011 on “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.371, 2011” be received.
2. That “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.371, 2011” be read a third time.

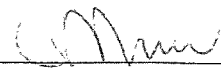


Report Writer



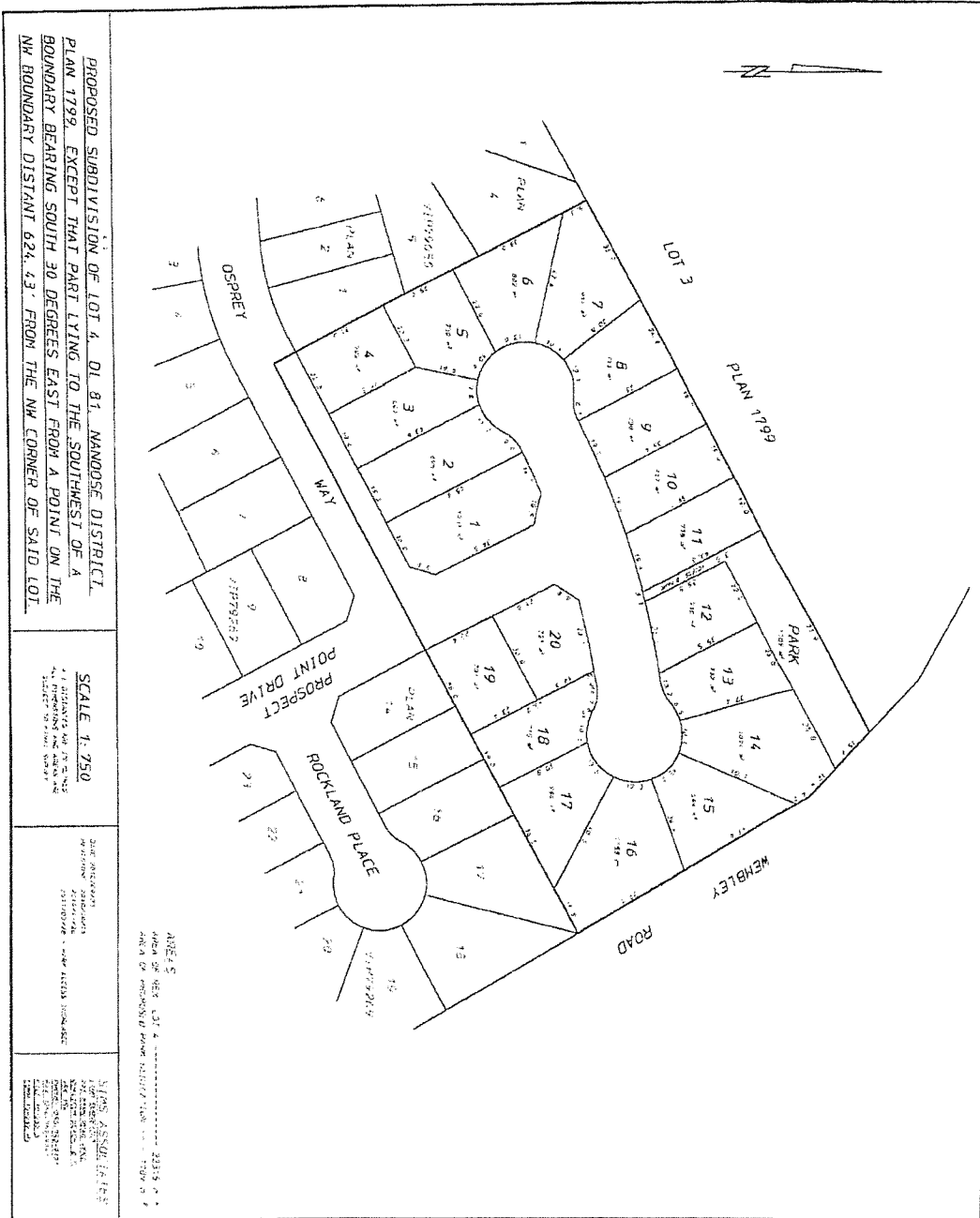
General Manager Concurrence

Manager Concurrence



CAO Concurrence

Schedule No. 1
Zoning Amendment Application No. PL2011-216
Proposed Plan of Subdivision
(as submitted by applicant / reduced for convenience)



Attachment No. 2
Summary of the Public Hearing
Held at Oceanside Place – Multi-purpose Room, 830 Island Hwy West
May 17, 2011 at 7:00 pm
To Consider Regional District of Nanaimo Zoning and Subdivision Amendment
Bylaw No. 500.371, 2011

Summary of Minutes and Submissions

*Note that these minutes are not a verbatim recording of the proceedings,
but summarize the comments of those in attendance at the Public Hearing.*

PRESENT:

Joe Stanhope
Elaine Leung

Chairperson, Director, Electoral Area 'G'
Planner

Present for the Applicant:
Helen Sims, Agent

There were twelve people in attendance.

The Chairperson called the Hearing to order at 7:00 p.m., introduced those present representing the Regional District, and outlined the procedures to be followed during the Hearing.

The Planner provided an outline of the Bylaw including a summary of the proposal.

Lloyd Sargison, 961 Rockland Place, stated that there were several concerns raised at the Public Information Meeting. He noted in his subdivision development, there were certain fencing requirements. He commented that sidewalks should be placed at Crystal Court, and also felt that approval standards are set low by the province. He stated that the Board should not pass the bylaw.

The applicant noted there will be no fencing restrictions, and will not have similar fencing requirements as Mr. Sargison's subdivision.

Bernie Mazur, 1006 Osprey Way, stated that he had a solution to road concerns on Osprey Way. Instead of trucks driving down Prospect, there should be a temporary road down Lowry's for them to use. The concern of increased construction traffic would no longer be there.

Lloyd Sargison, 961 Rockland Place questioned that if the public didn't say anything, whether the proposal would be approved.

Bernie Mazur, 1006 Osprey Way, commented that he had a solution for the people across the road from him: deer repellent, plant Cyprus trees. He believes that people are putting in the wrong evergreen trees to plant.

Mr. Sargison directed a comment at the Chairperson and asked; How will you know we don't want a change? There is a reasonable population who do not want the approval.

The Chairperson replied that Mr. Sargison is supposed to be making a presentation at a Public Hearing, and he should be making a presentation to the Chairperson.

The Chairperson asked the Planner if there were any written submitted comments.

The Planner noted there were no received submitted comments.

Jim Buzzeo, 1059 Osprey Way, stated that there was no sense of making a statement if the public can't stop the development.

The Chairperson replied that all comments received will be heard and considered by the Board of Directors at the Board meeting.

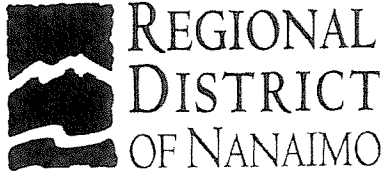
The Chairperson called for formal submissions with respect to Bylaw 500.371, 2011.

The Chairperson called for further submissions for the second time.

The Chairperson called for further submissions a third and final time.

There being no further submissions, the Chairperson adjourned the Hearing at 7:15 p.m.

Certified true and accurate this 17th day of May 2011.



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| RDN REPORT | |
| CAO APPROVAL | |
| EAP | |
| COW | |
| MAY 16 2011 | |
| RHD | |
| BOARD | |

MEMORANDUM

TO: Dale Lindsay
Manager, Current Planning

DATE: May 16, 2011

FROM: Susan Cormie
Senior Planner

FILE: PL2009-226

SUBJECT: Regional District of Nanaimo Nanoose Bay Official Community Plan Amendment
Bylaw No. 1400.03, 2011 – The Lakes District Neighbourhood Plan

PURPOSE

To receive the report of the Public Hearing containing the Summary of the Minutes and Submissions of the Public Hearing held May 9, 2011 and further to consider Bylaw No. 1400.03, 2011 for third reading.

BACKGROUND

Amendment Bylaw No. 1400.03, 2011 was introduced and given first and second reading on March 22, 2011. This was followed by a Public Hearing held on May 9, 2011. The summary of the minutes and submissions is attached for the Board's consideration (*see Attachment No. 1*).

The purpose of this Bylaw is to amend the Nanoose Bay Official Community Plan (OCP) Bylaw No. 1400, 2005 (OCP) to include The Lakes District Neighbourhood Plan.

PROPOSED AMENDMENTS

It has come to staff's attention that some of the Figures and Schedules include a private strata's common property within the park land labeled Powder Point Park and Anchor Way has been labeled as Anchor Drive. Although this area is outside the Plan Area, it is recommended that the applicable Figures and Schedules be amended to provide consistency with other RDN documents and to avoid any confusion for future users of the Plan (*see Schedule No. 1*).

ALTERNATIVES

1. To receive the report of the Public Hearing, grant third reading to Amendment Bylaw No. 1400.03, 2011, and refer the Bylaw to the Ministry of Community Sport and Cultural Development for approval.
2. To receive the report of the Public Hearing on Bylaw No. 1400.03, 2011 and not grant third reading.

LEGAL IMPLICATIONS

Included in the package of submissions received at the Public Hearing on Bylaw No. 1400.03, 2011 (The Lakes District Neighbourhood Plan) are written submissions that members of the public are entitled to submit during the Public Hearing in accordance with section 890(3) of the *Local Government Act* (see *Attachment No. 1 Summary of Minutes and Submissions*). Some of the written submissions relate to the Public Hearing held for Bylaw No. 1400.04, 2011 (Schooner Cove Neighbourhood Plan) for which the Public Hearing had closed at the time of the Public Hearing on Bylaw No. 1400.03, 2011 (The Lakes District).

Staff have reviewed the comments with the RDN solicitor, and are satisfied that the comments are overwhelmingly of a very generic effect indicating or reiterating support or positions that have already been articulated by members of the public during the course of the Public Hearing. As such, they likely contain no new information of a type that would in and of itself trigger a requirement for a further Public Hearing. However, it is the solicitor's recommendation that to the extent that the written submissions contain comments relating to Bylaw No. 1400.04 (Schooner Cove Neighbourhood Plan) that such comments should not be considered by the Board as part of its deliberations in relation to Bylaw No. 1400.04 (Schooner Cove Neighbourhood Plan).

SUMMARY/CONCLUSIONS

The Regional Board gave first and second reading to Bylaw No. 1400.03, 2011 at its regular meeting held on March 22, 2011. A Public Hearing was held on May 3, 2011 with approximately 300 persons in attendance. The Summary of the Minutes and Submissions of the Public Hearing is attached for the Board's consideration.

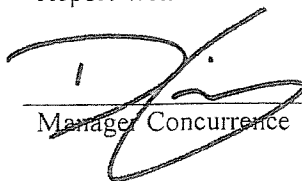
Recommended amendments are set out in *Schedule No. 1* of this report. As all requirements of the *Local Government Act* have been fulfilled, Bylaw No. 1400.03, 2011 may now be considered for third reading.

RECOMMENDATIONS

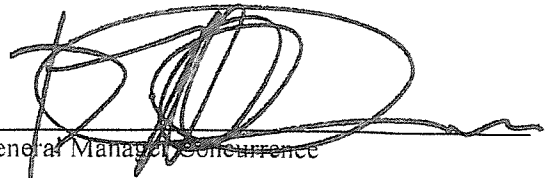
1. That the report of the Public Hearing held on May 9, 2011 on Bylaw No. 1400.03, 2011 be received.
2. That Bylaw No. 1400.03, 2011 be amended at third reading as set out in *Schedule No. 1* of the staff report.
3. That "Regional District of Nanaimo Nanoose Bay Official Community Plan Amendment Bylaw No. 1400.03, 2011" be read a third time, as amended, and forwarded to the Minister of Community, Sport, and Cultural Development for approval.



Report Writer



Manager Concurrence



General Manager Concurrence



CAO Concurrence

Schedule No. 1
The Lakes District Neighbourhood Plan Amendment Bylaw No. 1400.03, 2011
Proposed Amendments to be Considered by the Board at Third Reading

The following is a list of proposed amendments to the Nanoose Bay Official Community Plan Amendment Bylaw No. 1400.03, 2011.

1. By removing the portion of a private strata's common property area (panhandle area) shown to be within the park land labeled Powder Point Park on Figures No. 1, 6, 7 and Schedules A1, A2, A3, A5, A6, and A7.
2. By changing the name of the road labeled as Anchor Drive to Anchor Way as shown on Figures No. 1, 6, 7 and Schedules A1, A2, A3, A4, A5, A6, and A7.

Attachment No. 1

**SUMMARY OF THE MINUTES AND SUBMISSIONS OF THE PUBLIC HEARING
Held at Nanoose Place, 2925 Northwest Bay Road, Nanoose Bay on May 9, 2011
To consider Regional District of Nanaimo Nanoose Bay Official Community Plan
Amendment Bylaw No. 1400.03, 2011**

Note: That these minutes are not a verbatim recording of the proceedings, but summarize the comments of those in attendance at the Public Hearing.

PRESENT:

George Holme, Chairperson, Director, Electoral Area 'E'
Joe Stanhope, Director, Electoral Area 'G'
Joe Burnett, Director, Electoral Area 'A'
Maureen Young, Director, Electoral Area 'C'
Dave Bartram, Director, Electoral Area 'H'
Carol Mason, Chief Administrative Officer
Paul Thorkelsson, General Manager, Development Services
Dale Lindsay, Manager, Current Planning
Susan Cormie, Senior Planner
Karen Hamilton, Recording Secretary

There were approximately 300 persons in attendance.

The Chairperson called the Hearing to order at 7:01 p.m., introduced those present representing the Regional District, and outlined the procedures to be followed during the Hearing.

The Senior Planner provided an outline of the Bylaw including a summary of the proposal.

The Chairperson called for formal submissions with respect to Bylaw No. 1400.03, 2011.

Jack Kehoe, 3475 Cambridge Road, Nanoose Bay, spoke in favour of the proposal as set out in the attached submission.

Roger Stewart, 2836 Ashcraft Road, Nanoose Bay, stated he did not support the development and noted concerns with fire access, species at risk, water supply and specific wording in the Amendment Bylaw.

Perry Grue, 3683 Nautilus Road, Nanoose Bay, spoke in favor of project.

Roger Emery, 3580 Sheffield Place, Nanoose Bay, stated that he enthusiastically supports the proposed Bylaw.

Marie Emery, 3580 Sheffield Place, Nanoose Bay, spoke in full support of the Amendment Bylaw stating that there will be development in Nanoose and as it will come in one form or another, it is better to be well planned and carefully considered as is this proposal.

Linda Correy, 3572 Sheffield Place, Nanoose Bay, spoke in favour of the Plan.

Jim Edwards, 3572 Sheffield Place, Nanoose Bay, spoke in favour of the Plan and stated due diligence has been conducted.

Douglas Myers, 3575 Shelby Lane, Nanoose Bay, stated that the proposal is extremely necessary for the well-being of the entire community and both he and his wife fully support it.

Karen and Ron Hanson, 2251 Bonnington Drive, Nanoose Bay, both in favor of the project as set out in the attached submission.

Bill Crarer, 2137 Scottvale Place, Nanoose Bay, stated that he would go on record as being in full support of this application as the attached submission.

Sandra Crarer, 2137 Scottvale Place, Nanoose Bay, spoke in full support of this application as set out in the attached submission.

Marion Clark, 2385 Evanshire Crescent, Nanoose Bay, stated that she supports The Lakes District Neighbourhood Plan as set out in the attached submission.

Walter Clark, 2385 Evanshire Crescent, Nanoose Bay, stated he would like to go on the record that he is in favour of the development proposal submitted by Fairwinds as set out in the attached submission.

Anne Thompson, 3265 Huntington Place, Nanoose Bay, spoke in favor of the plan as set out in the attached submission.

Bruce McKnight, 3820 Amberwood Lane, Nanoose Bay, stated that he and his wife strongly support this Plan.

Gloria Dafoe, 2231 Foxrun Place, Nanoose Bay, stated that she strongly supports the Plan.

Francois Panetta and Diane Lauzon, 1983 Highland Road, Nanoose Bay, spoke together in favour of The Lakes Development Plan as set out in the attached submission.

Bill Burton, 2550 Andover Road, Nanoose Bay, spoke on behalf of him and his wife, stated they strongly support the Plan as set out in the attached submission.

Mel Spotswood, 3240 Huntington Place, Nanoose Bay, spoke on behalf of him and his wife as set out in the attached submission.

Ted Hornick, 2612 Andover Road, Nanoose Bay, stated that he and his wife strongly support the Plan for The Lakes District.

Ross Peterson, 1482 Madrona Drive, Nanoose Bay, spoke against the Plan for a number of reasons as set out in the attached submission.

Patrick Murray, 3362 Rockhampton Road, Nanoose Bay, spoke in favour of the application, but noted some serious reservations regarding the connector road as set out in the attached submission.

Ken Carey, 2394 Green Isle Place, Nanoose Bay, stated that he would like to be on record that he supports the Official Community Plan amendment as set out in the attached submission.

Cathy Carey, 2394 Green Isle Place, Nanoose Bay, stated that she is in full support of the Plan.

Sheila Bates, 1491 Madrona Drive, Nanoose Bay, spoke to park land and sewers as set out in the attached submission.

Rosemarie Davenport, 1482 Madrona Drive, Nanoose Bay, spoke to the planning process as set out in the attached submission.

Peter Campbell, 1707 Brentwood Street, Parksville, stated that he supports the Amendment Bylaw.

Gerry Thompson, 3265 Huntington Place, Nanoose Bay, stated he supports this Bylaw as set out in the attached submission.

Helen Campbell, 1707 Brentwood Street, Parksville, stated that she supports The Neighbourhood Plan.

Fred Noyce, 2383 Andover Road, Nanoose Bay, stated he supports the Plan.

Judy Noyce, 2383 Andover Road, Nanoose Bay, spoke in favor of the Plan.

Linda Hamilton, 2430 Andover Road, Nanoose Bay, expressed favorable endorsement to the proposed Amendment and OCP as set out in the attached submission.

Ross Griffith, 3501 Carmichael Road, Nanoose Bay, spoke on behalf of the Fairwinds Golf Club Society, and stated that the members conveyed strong support for The Lakes District Neighbourhood Plan as based on a survey as set out in the attached submission.

James Sinclair, 3427 Simmons Place, Nanoose Bay, stated his support of the Plan as set out in the attached submission.

Karen Kenyon, 2453 Evanshire Crescent, Nanoose Bay, stated that she gave this project her full support as set out in the attached submission.

William Hamilton, 2430 Andover Road, Nanoose Bay, spoke to supporting the proposed amendments as set out in the attached submission.

Carole Fulton, 1942 Eagle Ridge Place, Nanoose Bay, stated that she supports The Lakes District Neighbourhood Plan.

Mike Matthews, 3443 Simmons Place, Nanoose Bay, stated that he is fully behind this project.

Christine Matthews, 3443 Simmons Place, Nanoose Bay, stated that she is in full support of this project.

Lou & Joan Racz, 3321 Schooner Cove Drive, Nanoose Bay, stated that they fully support this project.

Trevor Craddock, 2375 Evanshire Crescent, Nanoose Bay, stated that he is opposed to The Lakes District Amendment as set out in the attached submission.

David Collyer, 2447 Andover Road, Nanoose Bay, stated that he and his wife support the Plan as set out in the attached submission.

Allana Patterson, 2463 Ainsley Place, Nanoose Bay, spoke in favour of The Lakes District as set out in the attached submission.

John Patterson, 2463 Ainsley Place, Nanoose Bay, stated that he fully supports the project as presented as set out in the attached submission.

Mike Moore, 3433 Simmons Place, Nanoose Bay, urged the Board to exercise their good judgment and approve the Amendment Plan for The Lakes District Neighbourhood Plan as set out in the attached submission.

Dale Guenther, 3441 Simmons Place, Nanoose Bay, spoke in favor of the Amendment Plan and spoke favourably regarding Fairwind's and their ability to fulfill promises, stating it's easy to make promises, but harder to carry them out.

Muriel Anderson, #20 - 2655 Andover Road, Nanoose Bay, spoke in support The Lakes District.

Ken Anderson, 2655 Ainsley Place, Nanoose Bay, spoke in favour of the Plan.

Tony Ranson, 2460 Ainsley Place, Nanoose Bay, spoke on behalf of the Nanoose Naturalists, indicating support of the proposed amendment to the OCP as set out in the attached submission.

Gordon Buckingham, 3370 Redden Road, Nanoose Bay, stated he recommended that the RDN not approve this Amendment Bylaw currently proposed as set out in the attached submission.

Gordon Buckingham, spoke on behalf of Peter Law, 3417 Carmichael Road, Nanoose Bay, and read Mr. Law's submission which is attached, requesting that the application be denied.

Carolyn Dodd, 2345 Eaglesfield Place, Nanoose Bay, stated that while she is not opposed to development, she raises some concerns as set out in the attached submission.

Kevin and Pat Power, 2655 Andover Road, Nanoose Bay, stated that they support The Lakes District Plan.

Mr. Schlotter, 2985 Anchor Way, Nanoose Bay, stated he is in favour of the proposal.

Bob Stitt, 3480 Cambridge Road, Nanoose Bay, spoke in support of the proposed development.

Garnet Hunt, 2399 Andover Road, Nanoose Bay, spoke on behalf of him and his wife and he stated that they support the change in the Bylaw.

Jim Lettic, 2855 Ashcraft Road, Nanoose Bay, spoke in opposition of The Lakes District Neighbourhood Plan as set out in the attached submission.

Esther Reed, 3714 Mallard Place, Nanoose Bay, spoke on behalf of her and her husband expressing full support of this project.

Jean Russell, 3472 Simmons Place, Nanoose Bay, spoke in support of the development and stating that as “development is inevitable let’s do it properly”.

David Russell, 3472 Simmons Place, Nanoose Bay, stated that he supports the application for The Lakes District as set out in the attached submission.

Sharon Pearson-Seibt, 2230 Foxrun Place, Nanoose Bay, stated that she and her husband support the amendment as set out in the attached submission.

Dietmar Seibt, 2230 Foxrun Place, Nanoose Bay, stated that he supports the amendment as set out in the attached submission.

Joseph Lukian, 3611 Sheffield Place, Nanoose Bay, stated that both he and his wife are in full approval of this development as set out in the attached submission.

Robin Russell, 2435 Ainsley Place, Nanoose Bay, spoke in support of the Plan.

Ralph Hutton, 2435 Ainsley Place, spoke in support of the Plan.

Joe Giegerich, 2240 Chelsea Place, Nanoose Bay, stated that both he and his wife enthusiastically endorse The Lakes District Neighbourhood Plan as set out in the attached submission.

Ian Maxell, 3442 Sinclair Place, Nanoose Bay, stated that he is in favour of this new Plan as set out in the attached submission.

Heinz Dahn, 2248 Bonnington Drive, Nanoose Bay, stated that both he and his wife support the proposed amendments to The Lakes District Neighbourhood Plan as set out in the attached submission.

Wendy Hill, 3425 Redden Road, Nanoose Bay, stated that both she and her husband strongly support The Lakes District Plan.

Matt Altseimer, 2690 Harold Road, Nanoose Bay, stated that he has many concerns with the Plan as set out in the attached submission.

Ali Roberts, Parkville, spoke regarding concerns to future generations and to the ecosystem stating once it’s gone we cannot get it back. Ms. Roberts introduced Katie Lundman, Grade 4, and Olivia Lundman, Grade 1, who both spoke regarding Enos Lake as set out in their separate attached submissions.

Barb Murray, 3362 Rockhampton Road, Nanoose Bay, stated that it is not time to give approval to the amendment of the OCP as set out in the attached submission.

Debbie Mitchell, 3554 Collingwood Drive, Nanoose Bay, stated that she fully supports this Plan.

Jim Mitchell, 3554 Collingwood Drive, Nanoose Bay, stated that he was impressed with amount of work going into this Plan and approval should happen in an expedient manner, putting everyone in good standing.

Don North, 2265 Coventry Place, Nanoose Bay, stated expressed his approval and his wife's approval for The Lakes District Neighbourhood Plan.

Don Lawseth, 1895 Sea Lion Crescent, Nanoose Bay stated that he did not support the proposed application as it currently stands as set out in the attached submission.

Kathy Swangard, 3490 Carlisle Place, Nanoose Bay, stated her full support of the Plan.

Holly Marvin, 2490 Andover Road, Nanoose Bay, spoke in full support of The Lakes District Plan.

Dave Marvin, 2490 Andover Road, Nanoose Bay, stated he was very much in favour of the Plan as set out in the attached submission.

C. Stanners, 3101 Dolphin Drive, Nanoose Bay, stated that while the Schooner Cove connector road is desirable from the point of view of access and fire protection, he is not in favor of this Plan otherwise. Mr. Stanner also noted the effect on wildlife/habitat, water and fertilizers/herbicides flowing into Enos Lake and the ocean.

Ron Davies, 3429 Redden Road, Nanoose Bay, stated that he and his wife are in favour of the amendments to the OCP and The Lakes District Plan as set out in the attached submission.

Mary Crist, 3465 Cambridge Road, Nanoose Bay, stated that she supports the Plan as set out in the attached submission.

Jim Crist, 3465 Cambridge Road, Nanoose Bay, stated that he supports this Plan as set out in the attached submission.

Robert Grose, 2391 Andover Road, Nanoose Bay, stated that we now have a Plan we can be proud of and he supports The Lakes District as set out in the attached submission.

Wally and Laurie Debling, 2470 Evanshire Crescent, Nanoose Bay, stated they support The Lakes District Plan as set out in the attached submission.

Carol Bell, 1409 Marina Way, Nanoose Bay, stated that she does not support the Amendment Bylaw for the reasons set out in the attached submission.

Jill Davies, 9 – 1600 Brynmarl Road, Nanoose Bay, indicated she was opposed to the Plan for the reasons set out in the attached submission.

Barb and Dieter Giese, 3484 Simmons Place, Nanoose Bay stated that both she and her husband support this Plan.

Virginia Jolley, 3415 Redden Road, Nanoose Bay, stated that she supports The Lakes District Neighbourhood Plan as set out in the attached submission.

Dexter Jolley, 3415 Redden Road, Nanoose Bay, stated he supports this Plan.

Joe Straka, 2064 Radford Place, Nanoose Bay, stated he supports the Plan as set out in the attached submission.

Michael Cassidy, 2305 Coventry Place, Nanoose Bay, spoke to process as set out in the attached submission.

Bob Popple, 3510 Carmichael Road, Nanoose Bay, spoke on behalf of the Fairwinds Community Association and stated the membership's overwhelming support for the RDN approval of the Neighbourhood Plan. In addition, Mr. Popple provided submissions from association members as set out in the attached submission.

Don Macdonald, 3506 Carmichael Road, Nanoose Bay, stating that he and his wife support the proposed amendment as set out in the attached submission.

Wayne and Sandra Newhouse, 2252 Chelsea Place, Nanoose Bay, stated that they continue to support this Plan.

David and Dawn Campbell, 3500 Collingwood Drive, stated that they support the proposed amendment as set out in the attached submission.

Keith Thompson, 3370 Rockhampton Road, Nanoose Bay stated he and his wife support The Lakes District Neighbourhood Plan as set out in the attached submission.

Pamela May-Straka, 2064 Radford Place, Nanoose Bay, spoke in favour of the Neighbourhood Plan as set out in the attached submission.

Barbara Low, 1621 Marina Way, Nanoose Bay, on behalf of Kelsey Low, read Ms. Low's submission, which is attached. Further to this, Barbara Low also provided her submission, which is attached.

Rick Hollinshead, 3540 Shelby Lane, Nanoose Bay, spoke in favour of The Lake District Neighbourhood Plan as set out in the attached submission.

Cornel Sawchuk, 2352 Gary Oak Drive, Nanoose Bay, outlined a number of concerns, including water and sewer and asked the Board to take a second look at the Plan.

Marianne Duffley, 3621 Collingwood Drive, Nanoose Bay, stated her support for this project and development.

Dick Duffley, 3621 Collingwood Drive, Nanoose Bay, stated that he supports the complete project.

Pat Sali, 1778 Oakleaf Drive, Nanoose Bay, recommended approval of this Plan from the Board, as set out in the attached submission.

DiAnne Hill, 1412 Madrona Drive, Nanoose Bay, stated that she and her husband support this Plan.

Duncan Green, 1882 Douglas Crescent, Nanoose Bay stated that both he and his wife oppose the OCP amendment as set out in the attached submission.

Michael Jessen, 1266 Jukes Place, Parksville, spoke on behalf of Arrowsmith Watersheds Coalition Society, and asked that the proposal be sent back to the proponent and RDN staff for consultation using the services of independent environmental scientists as set out in the attached submission.

Kristi Ozero, 2883 Dolphin Drive, Nanoose Bay, spoke of growing up in Nanoose, does not want sidewalks or streetlights, and concluded that she wanted the spirit and heart of Nanoose to be maintained.

Christopher Stephens, 714 Ermineskin Avenue, Parksville, stated the application should not be accepted as set out in the attached submission.

Larry Waterman, 3440 Redden Road, Nanoose Bay, spoke in favour of the development as set out in the attached submission.

Douglas Moore, 3421 Simmons Place, Nanoose Bay, spoke in favour of The Lakes District Neighbourhood Plan as set out in the attached submission.

John Racinkas, 2360 Bonnington Drive, Nanoose Bay, spoke for both him and his wife in support of the Plan and how this Plan fits into the larger picture of the whole area, i.e., water, sewer and traffic.

Susan Croskery, 3349 Blueback Drive, Nanoose Bay, spoke to her concerns of the connector road as set out in the attached submission.

Romer Shewchuk, 2404 Greenridge Crescent, Nanoose Bay, spoke for her and her husband in favour of the Amendment.

Jack MacKenzie, 3049 Dolphin Drive, Nanoose Bay, expressed concerns with an alternative road connector and felt that Dolphin Drive is dangerous and that traffic is increasing.

Wendy Hollinshead, 3540 Shelby Lane, Nanoose Bay, asked the Board to approve this development Plan as set out in the attached submission.

Keith Pope, 2424 Greenridge Crescent, Nanoose Bay, stated both he and his wife support the Plan.

Barbara Low, 1621 Marina Way, Nanoose Bay, on behalf of David Low, read his submission which is attached.

Catherine Orban, #210 - 1977 Harlequin Crescent, Nanoose Bay stated she objects to the current Plans to amend the RDN Nanoose Bay OCP for the development being proposed as set out in the attached submission.

Shaughan Holden, 1985 Harlequin Crescent, Nanoose Bay, spoke on behalf of him and his wife indicating that they do not support this Amendment as set out in the attached submission.

Karen Wright, 3615 Collingwood Drive, Nanoose Bay, stated this is a far superior Plan and supports the Plan.

Rick Marshall, 3440 Simmons Place, Nanoose Bay, spoke on behalf of him and his wife indicating their full support of this application and hoped consensus could be reached.

Karen Herage, 1352 Reef Road, Nanoose Bay, spoke in favor of The Lakes District Application on behalf of her and her husband.

Annette Tanner, 563 Crescent Road West, Qualicum Beach, spoke in opposition to the amendment as set out in the attached submission.

Scott Tanner, 563 Crescent Road West, Qualicum Beach, spoke about his concern that people have not thought of the full impact of this development in terms of water, housing density, and habitat being destroyed.

Frank Oberle, 3516 Carmichael Road, Nanoose Bay, spoke regarding the process and the fact that the development will happen anyway and this Plan represents compromise.

Greg, 3615 Collingwood Drive, Nanoose Bay, spoke in favor of the plan and hoped the process would go ahead as quickly as possible.

Jill Davies, 9 – 1600 Brynmarl Road, Nanoose Bay, continued with her earlier submission stating that wisdom that comes with hindsight will be lost and asked everyone to use their very best judgment.

Karen Kenyon, 2453 Evanshire Crescent, Nanoose Bay, stated that she took exception to a previous comment concerning people leaving Fairwinds and that in her experience people do not want to leave and if alternate housing choices were available they would return, Ms. Kenyon also stated that the new plan is offering diversity in housing.

Gerry Thompson, 3265 Huntington Place, Nanoose Bay spoke to the clause in the Amendment Bylaw concerning where the Neighbourhood Plan shall prevail in the case of any discrepancy with the OCP and explained that this clause is required as the Neighbourhood Plan is the more detailed document.

Sheila Bates, 1491 Madrona Drive, Nanoose Bay, stated that she now supports the Neighbourhood Plan and is amazed at the park land proposal. Ms. Bates also stated that we need population in order to get infrastructure and to support the economy.

Pamela May-Straka, 2064 Radford Place, Nanoose Bay, clarified other comments made that we do need alternative housing and that there has been an extensive public consultation carried out for this Amendment Application.

The Chairperson called for further submissions for the first time.

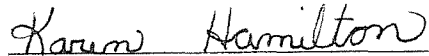
The Chairperson called for further submissions for a second time.

The Chairperson called for further submissions for a third time.

The Chairperson called for further submissions a final time.

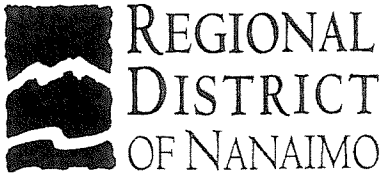
There being no further submissions, the Chairperson adjourned the Hearing at 11:50 p.m.

Certified true and accurate this



Karen Hamilton

Recording Secretary



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| RDN REPORT | |
| CAO APPROVAL | |
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| MAY 15 2011 | |
| RHD | |
| BOARD | |

MEMORANDUM

TO: Dale Lindsay
Manager, Current Planning

DATE: May 16, 2011

FROM: Susan Cormie
Senior Planner

FILE: PL2009-226

SUBJECT: Regional District of Nanaimo Nanoose Bay Official Community Plan Amendment
Bylaw No. 1400.04, 2011 – Schooner Cove Neighbourhood Plan

PURPOSE

To receive the report of the Public Hearing containing the Summary of the Minutes and Submissions of the Public Hearing held May 3, 2011 and further to consider Bylaw No. 1400.04, 2011 for third reading.

BACKGROUND

Amendment Bylaw No. 1400.04, 2011 was introduced and given first and second reading on March 22, 2011. This was followed by a Public Hearing held on May 3, 2011. The summary of the minutes and submissions is attached for the Board's consideration (*see Attachment No. 1*).

The purpose of this Bylaw is to amend the Nanoose Bay Official Community Plan Bylaw No. 1400, 2005 (OCP) by including the Schooner Cove Neighbourhood Plan.

PROPOSED AMENDMENTS

It has come to staff's attention that under section 4.1.1 Street Hierarchy – Neighbourhood Local, Dolphin Bay Road should read Dolphin Drive. As a result, it is recommended that the Plan be amended to show the correct road name to avoid any confusion for future users of the Plan (*see Schedule No. 1*).

ALTERNATIVES

1. To receive the report of the Public Hearing, grant third reading to Amendment Bylaw No. 1400.04, 2011, and refer the Bylaw to the Ministry of Community Sport and Cultural Development for approval.
2. To receive the report of the Public Hearing on Bylaw No. 1400.04, 2011 and not grant third reading.

SUMMARY/CONCLUSIONS

The Regional Board gave first and second reading to Bylaw No. 1400.04, 2011 at its regular meeting held on March 22, 2011.

A Public Hearing was held on May 3, 2011 with approximately 250 persons in attendance. The Summary of the Minutes and Submissions of the Public Hearing is attached for the Board's consideration.

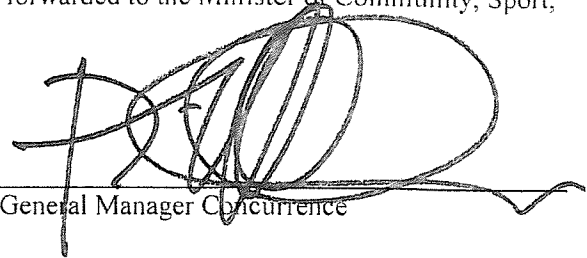
Recommended minor amendments are set out in *Schedule No. 1*. As all requirements of the *Local Government Act* have been fulfilled, Bylaw No. 1400.04, 2011 may now be considered for third reading.

RECOMMENDATIONS

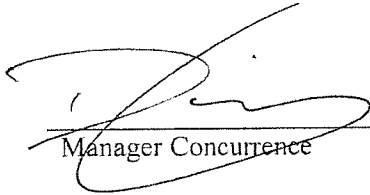
1. That the report of the Public Hearing held on May 3, 2011 on Bylaw No. 1400.04, 2011 be received.
2. That Bylaw No. 1400.04, 2011 be amended at third reading as set out in *Schedule No. 1* of the staff report.
3. That "Regional District of Nanaimo Nanoose Bay Official Community Plan Amendment Bylaw No. 1400.04, 2011" be read a third time, as amended, and forwarded to the Minister of Community, Sport, and Cultural Development for approval.



Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

Schedule No. 1
Schooner Cove Neighbourhood Plan Amendment Bylaw No. 1400.04, 2011
Proposed Housekeeping Amendments to be considered by the Board at Third Reading

The following is a proposed amendment to the Nanoose Bay Official Community Plan Amendment Bylaw No. 1400.04, 2011.

By changing the name of the road labeled as Dolphin Bay Road to Dolphin Drive as shown under section 4.1.1 Street Hierarchy, Neighbourhood Local on page 41 of the Plan.

**Attachment No. 1
Summary of Minutes and Submissions**

**Summary of the Public Hearing
Held at Nanoose Place, 2925 Northwest Bay Road, Nanoose Bay on May 3, 2011 at 7:00 pm
To Consider Regional District of Nanaimo Nanoose Bay Official Community Plan
Amendment Bylaw No. 1400.04 2011**

Summary of Minutes and Submissions

Note that these minutes are not a verbatim recording of the proceedings, but summarize the comments of those in attendance at the Public Hearing.

PRESENT:

| | |
|------------------|---|
| George Holme | Chairperson, Director, Electoral Area 'E' |
| Joe Stanhope | Director, Electoral Area 'G' |
| Joe Burnett | Director, Electoral Area 'A' |
| Bill Bestwick | Director, City of Nanaimo |
| Carol Mason | Chief Administrative Officer |
| Paul Thorkelsson | General Manager, Development Services |
| John Finnie | General Manager, Regional and Community Utilities |
| Dale Lindsay | Manager, Current Planning |
| Susan Cormie | Senior Planner |
| Karen Sanders | Recording Secretary |

There were approximately 250 persons in attendance.

The Chairperson called the Hearing to order at 7:02 p.m., introduced those present representing the Regional District, and outlined the procedures to be followed during the Hearing.

The Senior Planner provided an outline of the Bylaw including a summary of the proposal.

The Chairperson called for formal submissions with respect to Bylaw 1400.04, 2011.

Ross Griffiths, 3501 Carmichael Road, representing Fairwinds Golf Club Society, strongly supports of the neighbourhood plan (submission attached).

John Newall, on behalf of the Nanoose Bay Volunteer Fire Department, expressed concerns regarding building height and unit access as the fire department has neither the equipment nor the training to fight fires in buildings more than three storeys.

Douglas Myers, 3575 Shelby Lane, spoke in favour of the plan and strongly supports it (submission attached).

Cheryl Myers, 3575 Shelby Lane, strongly supports the plan.

Janet Gibson, 3564 Sheffield Place, supports the plan and totally agrees with the project.

John Gibson, 3564 Sheffield Place, strongly supports the plan.

Roger Emery, 3580 Sheffield Place, strongly supports the plan (submission attached).

Marie Emery, 3580 Sheffield Place, endorses the amendments to the OCP.

Ron Davis, 3429 Redden Road, representing the Schooner Bay Yacht Club, supports the plan and the Yacht Club members are also in support of the plan.

Bob Popple, 3510 Carmichael Road, Fairwinds Community Association representative, is in support of the plan. Based on a Fairwinds Community Association survey, 99% of the respondents are in support of the plan (submission attached).

Linda Hamilton, 2430 Andover Road, expressed her endorsement of the proposed amendments to the OCP as submitted by the Fairwinds Development Corporation (submission attached).

William Hamilton, 2430 Andover Road, expressed his endorsement of the proposed amendments to the OCP as submitted by the Fairwinds Development Corporation (submission attached).

Kamal Moghrabi, 2479 Andover Road, supports the plan.

Ron and Karen Hanson, 2251 Bonnington Drive, both support the Schooner Cove Neighbourhood Plan (submission attached).

Ken Carey, 2394 Green Isle Place, fully supports the Schooner Cove Neighbourhood Plan.

Cathy Carey, 2394 Green Isle Place, fully supports the Schooner Cove Neighbourhood Plan.

Muriel Anderson, 20-2655 Andover Road, fully supports the Schooner Cove Neighbourhood Plan.

Ken Anderson, 20-2655 Andover Road, fully supports the Schooner Cove Neighbourhood Plan.

Sheila Bates, 1491 Madrona Drive, as a Nanoose area resident (not of Fairwinds or Schooner Cove), expressed a number of concerns regarding the plans, such as an increase in taxes for development of the infrastructure and with the traffic flow on Northwest Bay Road. She also stated that the information regarding the tax base will not benefit the local schools as the funding for schools is based on the number of registered students (submission attached).

Rick Hollinshead, 3540 Shelby Lane, very excited about the possibilities of new facilities at Schooner Cove and is in support of the plan.

Judy Noyce, 2383 Andover Road, supports the amendments of the OCP.

Fred Noyce, 2383 Andover Road, stated the plan will result in the protection of the life style of the area residents and is in support of the plan.

Sandra Crarer, 2137 Scottvale Place, fully supports the application and urges speedy approval (submission attached).

Bill Crarer, 2137 Scottvale Place, is in full support and urges the Board to move quickly ahead (submission attached).

Karen Kenyon, 2453 Evanshire Crescent, strongly supports the proposed Schooner Cove Development (submission attached).

Peter Campbell, 1707 Brentwood Street, Schooner Cove Yacht Club member, endorses the plan.

Helen Campbell, 1707 Brentwood Street, Schooner Cove Yacht Club member, endorses the plan.

Gerry Thompson, 3265 Huntington Place, has been closely involved with the planning process and supports the plans (submission attached).

Gloria Dafoe, 2231 Foxrun Place, strongly supports the plan.

Joan and Lou Racz, 3321 Schooner Cove Drive, fully support the plan.

Pam May-Straka, 2064 Radford Place, supports the plan.

Pam May-Straka, on behalf of Sharon Pearson-Scibt and Dietmar Scibt of 2230 Foxrun Place, support the plan (correspondence attached).

Garnet Hunt, 2399 Andover Road, very impressed with the consultation process urges the Board to move forward as soon as possible.

Allana Patterson, 2473 Ainsley Place, supports the proposed Schooner Cove plan (submission attached).

John Patterson, 2463 Ainsley Place, fully supportive of the Schooner Cove development plans as presented (submission attached).

Chris Matthews, 3443 Simmons Place, is in favour of the proposed development.

Mike Matthews, 3443 Simmons Place, the area needs the development and he supports the plan.

Robin Russell, 2435 Ainsley Place, enthusiastic about the plan and supports it.

Ralph Hutton, 2435 Ainsley Place, wholeheartedly supports the plan.

Marion Clark and Walter Clark, 2385 Evanshire Crescent, are totally in favour of the development proposal (submissions attached).

Mel Spotswood, 3240 Huntington Place, the area needs commercial space and condos. He doesn't want to see boat trailers parked on Dolphin Drive.

James Sinclair, 3427 Simmons Place, supports the amendment to the OCP. "Let's get on with it!" (submission attached).

Robert Alexander, 2458 Greenridge Crescent, 100% support of the proposed Fairwinds Schooner Cove Development (submission attached).

Pat Power, 2655 Andover Road, wholeheartedly supports the plan.

Kevin Power, 2655 Andover Road, supports the plan 100%.

Bruce McKnight, 3820 Amberwood Lane, expressed support for the plan (submission attached).

Carole McKnight, 3820 Amberwood Lane, expressed support for the plan (submission attached).

Jim Crist, 3465 Cambridge Road, strongly urges approval of both plans (submission attached).

Catherine Schulhauser, 2449 Evanshire Crescent, fully supports the plan.

Bev and Jim Watson, 2421 Andover Road, 100% support for the plan, although they share concerns with the volunteer fire department and concern regarding the traffic on Northwest Bay Road.

Mary Crist, 3465 Cambridge Road, fully supports the amendments to the OCP (submission attached).

Bill Burton, 2550 Andover Road, strongly supports the expeditious approval of both proposals (submission attached).

Don MacDonald, 3506 Carmichael Road, fully supports the plan.

Jean Russell, 3472 Simmons Place, member of the Yacht Club and Golf Club; supports the plan.

Dave Russell, 3472 Simmons Place, member of the Yacht Club and Golf Club; supports the plan.

Dave Marvin, 2490 Andover Road, in favour of the development plan (submission attached)

Holly Marvin, 2490 Andover Road, in favour of the development plan.

Jim Lettic, 2855 Ashcraft Road, cannot support the plan and has numerous issues; public participation has been sparse and sporadic; the plan was not adequately presented to the public; the Master Water Concept will be paid by the whole community; lack of transparency (submission attached).

Robert Gross, 2391 Andover Road, fully supportive of the plan.

Joe Straka, 2064 Radford Place, urges the Board to approve the amendments and move forward with this community vision (submission attached).

Virginia Jolley, 3415 Redden Road, supports the plan which will greatly enhance the Nanoose Bay Community as a whole (submission attached).

Dexter Jolley, 3415 Redden Road, based on the assurances that water, sewage, traffic and parking will be addressed, he fully supports the proposed amendment to the plan (submission attached).

Jean Christopher, 3419 Redden Road, fully supports the Schooner Cove Neighbourhood Plan.

Don North, 2265 Coventry Place, speaks for himself and his wife in support of the plan.

Barb Murray, 3362 Rockhampton Road, supports the proposed plan, however, is concerned regarding the impact the connector road will have on the natural lands.

Randy Dunville, 3316 Rockhampton Road, fully supports the plan and feels if not approved, Fairwinds will decline further.

Mike Smith and Gail French, 3635 Collingwood Drive, wholeheartedly recommend approval of the plan (submission attached).

MJ Altseimer, 2290 Harold Road, is very much opposed to the plan and has serious concerns about the shortage of water.

Patrick Murray, 3362 Rockhampton Road, in favour of the plans, however, has serious reservations regarding the necessity of building the connector road at this stage of the development (submission attached).

Paul Grinder, 3349 Blueback Road, talked about the connector road and suggested there may be alternatives to building this road (submission attached).

Susan Croskery, 3349 Blueback Road, is not opposed to the Schooner Cove plan and asked for clarification that the Schooner Cove plan could be approved without the connector road.

T. DeFrancesco, 3470 Bradner Circle, in favour of the plan and the economic benefits for all the residents.

Diane Lauzon, 1983 Highland Road, strongly recommends that the Board approve the project (submission attached).

Ian Smith, 3487 Carlisle Place, fully support the plans (submission attached).

Trevor Craddock, 2375 Evanshire Crescent, has concerns on the impact on Nanoose as a whole, as well as concerns regarding the quality and quantity of water (submission attached).

Barb Giese, 3484 Simmons Place, totally agrees with plan.

Greg Ast and Karen Wright, Collingwood Drive, support the plan.

Wayne Newhouse, 2273 Chelsea Place, supports the plan.

Don Camerson, 711 Mariner Way, Parksville, has concerns regarding water issues.

Ursula Ceholski, 2320 Evanshire Crescent, stated the development is necessary; approve the project.

Steve Ceholski, 2320 Evanshire Crescent, stated that issues can be resolved if common is used; supports the plan.

Keith Thompson, 3370 Rockhampton Road, has no reservations and supports the plan.

Barbara Low, 1621 Marina Way, has reservations regarding the connector road and concerns regarding water, roads and cost sharing; traffic issues need to be addressed.

Linda Tosney, Shetland Place, approves of the plan in principle, however, has reservations regarding the height of condo buildings and concerns regarding traffic. She also feels the fire chief's concerns are valid.

Romer and Susan Shewchuk, 2404 Greenridge Crescent, expressed support for the plan (submission attached).

Pat Relph, 3420 Redden Road, fully supports the plan.

Geoff Relph, 3420 Redden Road, was very impressed with the consultants and developer throughout the process; fully supports the plan.

Carole Fulton, 1942 Eagleridge Place, fully supports the plan.

Duncan Green, 1822 Douglas Crescent, is of the opinion that the plan will not reduce vehicular traffic, that the roads need improvement, specifically Northwest Bay Road, water issues and that all Nanoose residents will be paying for the infrastructure costs.

Judy Schotter, 2985 Anchor Way, totally supports the plan.

Mel Spotswood, 3240 Huntington Place, houses need to be built with cisterns and there won't be a water issue.

Jill Davis, 911-600 Brynmarl (Beachcomber), has concerns regarding water, and fire and emergency services.

The Chairperson called for further submissions for the first time.

The Chairperson called for further submissions for the second time.

The Chairperson called for further submissions a third time.

The Chairperson called for further submissions a final time.

There being no further submissions, the Chairperson adjourned the Hearing at 9:00 p.m.

Certified true and accurate this 4th day of May, 2011.

Karen Sanders
Recording Secretary

REGIONAL DISTRICT OF NANAIMO
MINUTES OF THE ELECTORAL AREA PLANNING COMMITTEE
MEETING HELD ON TUESDAY, MAY 10, 2011 AT 6:30 PM
IN THE RDN BOARD CHAMBERS

Present:

| | |
|-----------------------|------------------|
| Director D. Bartram | Chairperson |
| Director J. Burnett | Electoral Area A |
| Director M. Young | Electoral Area C |
| Director G. Holme | Electoral Area E |
| Director L. Biggemann | Electoral Area F |
| Director J. Stanhope | Electoral Area G |

Also in Attendance:

| | |
|----------------|---------------------------------|
| C. Mason | Chief Administrative Officer |
| P. Thorkelsson | Gen. Mgr., Development Services |
| D. Lindsay | Manager of Current Planning |
| N. Hewitt | Recording Secretary |

MINUTES

MOVED Director Holme, SECONDED Director Burnett, that the minutes of the regular Electoral Area Planning Committee meeting held April 12, 2011 be adopted.

CARRIED

PLANNING

OTHER

Bylaw 1259.07 – Proposes to Amend the Regional District of Nanaimo Planning Services Fees and Charges Bylaw.

MOVED Director Stanhope, SECONDED Director Holme, that "Regional District of Nanaimo Planning Services Fees and Charges Amendment Bylaw No. 1259.07, 2011" be introduced and read three times.

CARRIED

MOVED Director Stanhope, SECONDED Director Holme, that "Regional District of Nanaimo Planning Services Fees and Charges Amendment Bylaw No. 1259.07, 2011" be adopted.

CARRIED

Policy B1.8 - Subdivision and Non-farm Use Within the ALR.

MOVED Director Holme, SECONDED Director Young, that the policy be referred back to staff for a report.

CARRIED

ADJOURNMENT

MOVED Director Holme, SECONDED Director Stanhope, that this meeting terminate.

CARRIED

TIME: 6:38 PM

CHAIRPERSON

REGIONAL DISTRICT OF NANAIMO

**MINUTES OF THE COMMITTEE OF THE WHOLE
MEETING HELD ON TUESDAY, MAY 10, 2011 AT 7:00 PM
IN THE RDN BOARD CHAMBERS**

Present:

| | |
|-----------------------|------------------------|
| Director J. Stanhope | Chairperson |
| Director J. Burnett | Electoral Area A |
| Alternate | |
| Director V. Hartman | Electoral Area B |
| Director M. Young | Electoral Area C |
| Director G. Holme | Electoral Area E |
| Director L. Biggemann | Electoral Area F |
| Director D. Bartram | Electoral Area H |
| Director M. Lefebvre | City of Parksville |
| Director T. Westbroek | Town of Qualicum Beach |
| Alternate | |
| Director B. Dempsey | District of Lantzville |
| Director B. Holdom | City of Nanaimo |
| Director J. Ruttan | City of Nanaimo |
| Director B. Bestwick | City of Nanaimo |
| Director J. Kipp | City of Nanaimo |
| Director D. Johnstone | City of Nanaimo |
| Director L. Sherry | City of Nanaimo |
| Director M. Unger | City of Nanaimo |

Also in Attendance:

| | |
|----------------|---|
| C. Mason | Chief Administrative Officer |
| W. Idema | A/C General Manager, Finance & Information Services |
| J. Finnie | General Manager, Regional & Community Utilities |
| D. Trudeau | General Manager, Transportation & Solid Waste |
| P. Thorkelsson | General Manager, Development Services |
| D. Banman | A/C General Manager, Recreation & Parks |
| N. Hewitt | Recording Secretary |

CALL TO ORDER

Chairperson welcomed Alternate Directors Veronica Hartman and Brian Dempsey to the meeting.

DELEGATIONS

Meryl Chahley, Meyers Norris Penny, re Annual Audit Report.

Ms. Chahley presented a visual and verbal overview of the Annual Audit Report.

MINUTES

MOVED Director Holme, SECONDED Director Holdom, that the minutes of the regular Committee of the Whole meeting held April 12, 2011 be adopted.

CARRIED

FINANCE AND INFORMATION SERVICES

FINANCE

Bylaw 1498.01 – Extends the Boundaries of the Duke Point Sewer Development Cost Charges Service to Include an Area ‘A’ Property (1965 Walsh Road).

MOVED Director Burnett, SECONDED Director Holme, that "Duke Point Sewer Service Area Development Cost Charges Amendment Bylaw No. 1498.01, 2011" be introduced, read three times and forwarded to the Inspector of Municipalities for approval.

CARRIED

Nanaimo Regional Hospital District - 2010 Audited Financial Statements.

MOVED Director Sherry, SECONDED Director Holdom, that the report on the 2010 audited financial statements of the Nanaimo Regional Hospital District be approved and received as presented.

CARRIED

Nanaimo Regional Hospital District – VIHA Request to Amend 2010/2011 Minor Capital Equipment List.

MOVED Director Sherry, SECONDED Director Johnstone, that the 2010/2011 capital equipment list totaling \$3,151,800 be amended as shown in the correspondence from the Vancouver Island Health Authority dated April 20, 2011.

CARRIED

Regional District of Nanaimo – 2010 Annual Report & Statement of Financial Information.

MOVED Director Westbroek, SECONDED Director Kipp, that the 2010 Annual Financial Report, Statement of Board and Committee Members Expenses and Remuneration and the Statement of Financial Information be approved and received as presented.

CARRIED

DEVELOPMENT SERVICES

BUILDING & BYLAW

Building Inspection Service - Proposed Expansion to Include Lumber Grading.

MOVED Director Bartram, SECONDED Director Kipp, that staff be directed to compile a referral list of certified lumber graders for home builders making use of site cut lumber to satisfy the requirements of the British Columbia Building Code.

CARRIED

RECREATION AND PARKS SERVICES

PARKS

Regional Parks & Trails - Island Corridor Foundation License of Occupation.

MOVED Director Holdom, SECONDED Director Lefebvre, that the Licence of Occupation Agreement between the Regional District of Nanaimo, City of Nanaimo, District of Lantzville, City of Parksville, Town of Qualicum Beach and the Island Corridor Foundation be approved for the term of 25 years from 2011 to 2035.

CARRIED

REGIONAL AND COMMUNITY UTILITIES

WASTEWATER

Northern & Southern Community Wastewater Services - 2011 Open House Summary.

MOVED Director Holme, SECONDED Director Burnett, that the report on Wastewater Services' French Creek Pollution Control Centre and Greater Nanaimo Pollution Control Centre 2011 Open Houses be received for information.

CARRIED

Greater Nanaimo Pollution Control Centre Digester 3 Project – Construction Award.

MOVED Director Holme, SECONDED Director Holdom, that the Board award the construction contract for the new Digester 3 at the Greater Nanaimo Pollution Control Centre to Maple Reinders Inc. for a value of \$9,459,600.

CARRIED

MOVED Director Holme, SECONDED Director Holdom, that the Board award the engineering services during the construction of Digester 3 and the SCADA programming services to AECOM for a total value of \$403,625.

CARRIED

MOVED Director Holme, SECONDED Director Holdom, that funds from the Southern Community Development Cost Charge Reserve Fund be used for the Greater Nanaimo Pollution Control Centre Digester 3 Project.

CARRIED

WATER

Drinking Water & Watershed Protection Service – Watershed Snapshot Report 2010.

MOVED Director Lefebvre, SECONDED Director Bartram, that the Board approve the Watershed Snapshot Report 2010.

CARRIED

MOVED Director Lefebvre, SECONDED Director Bartram, that the Board direct staff to proceed with the recommendations in the report.

CARRIED

MOVED Director Lefebvre, SECONDED Director Bartram, that the Board direct staff to make the report available to the public and alert participants of its completion.

CARRIED

Bylaws No. 1639 & 1640 – Establishes General Rates & Regulations for RDN Water Services.

MOVED Director Lefebvre, SECONDED Director Holme, that "Regional District of Nanaimo Water Use Regulation Bylaw No. 1639, 2011" be introduced and read three times.

CARRIED

MOVED Director Lefebvre, SECONDED Director Holme, that "Regional District of Nanaimo Water Use Regulation Bylaw No. 1639, 2011" be adopted.

CARRIED

MOVED Director Lefebvre, SECONDED Director Holme, that "Regional District of Nanaimo Water Services Fees & Charges Bylaw No. 1640, 2011" be introduced and read three times.

CARRIED

MOVED Director Lefebvre, SECONDED Director Holme, that "Regional District of Nanaimo Water Services fees & Charges Bylaw No. 1640, 2011" be adopted.

CARRIED

TRANSPORTATION AND SOLID WASTE SERVICES

SOLID WASTE

Solid Waste Disposal Service - Extend Contract to Haul Waste from Church Road Transfer Station.

MOVED Director Ruttan, SECONDED Director Holdom, that the Board approve an eighteen month extension to contract with Bobell Express Ltd. for waste hauling services from the Church Road Transfer Station under the current contract conditions.

CARRIED

Solid Waste Disposal Service - Award Tender for Regional Landfill Cell One Closure.

MOVED Director Unger, SECONDED Director Johnstone, that the Board award the Regional Landfill Cell One Stage One final closure project to Knappett Industries Ltd. for the tendered amount of \$1,571,830 with a construction contingency of \$500,000.

CARRIED

COMMISSION, ADVISORY & SELECT COMMITTEE

Grants-in-Aid Committee.

MOVED Director Young, SECONDED Director Westbroek, that the minutes of the Grants-in-Aid Committee meeting held May 4, 2011 be received for information.

CARRIED

MOVED Director Young, SECONDED Director Westbrook, that the following District 68 grants be awarded:

| <i>Organization</i> | <i>Amount Recommended</i> |
|---|---------------------------|
| BC Competitive Trail Riding Association | \$ 600 |
| Gabriola Arts Council | 1,000 |
| Hope Centre | 800 |
| Jonanco Hobby Workshop Association | 600 |
| Poetry Gabriola Society | <u>1,000</u> |
| | <u>\$ 4,000</u> |
| | CARRIED |

MOVED Director Young, SECONDED Director Westbrook, that the following District 69 grants be awarded:

| <i>Organization</i> | <i>Amount Recommended</i> |
|--|---------------------------|
| Arrowsmith Agricultural Association | \$ 1,000 |
| Arrowsmith Community Enhancement Society | 250 |
| Coombs 100 Year Celebration (French Creek Community PAC) | 500 |
| Errington War Memorial Hall Association | 1,500 |
| Forward House Community Society | 2,000 |
| Friends of Nanoose Library Society | 1,200 |
| Lighthouse Community Centre Society | 2,000 |
| Oceanside Volunteer Association | 1,000 |
| Parksville & District Association for Community Living | 2,000 |
| Parksville-Qualicum Beach & District Branch of the SPCA | 600 |
| Vancouver Island Opera | <u>1,000</u> |
| | <u>\$ 13,050</u> |
| | CARRIED |

NEW BUSINESS

Regional Voting Unit.

MOVED Director Holdom, SECONDED Director Ruttan, that given there will be new census figures completed at the end of 2011 that may result in a larger Board structure and associated increased cost implications, that staff prepare a report on the voting structure with options for consideration by the Board.

CARRIED

ADJOURNMENT

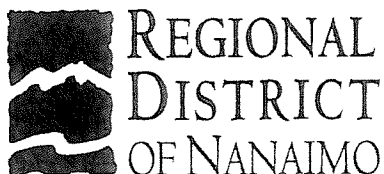
MOVED Director Holme, SECONDED Director Lefebvre, that pursuant to Section 90(1)(e) of the Community Charter the Board proceed to an In Camera meeting to consider items related to land matters.

CARRIED

TIME: 7:47 PM

CHAIRPERSON

SR. MGR., CORPORATE ADMINISTRATION



| | |
|--------------|--|
| RDN REPORT | |
| CAO APPROVAL | |
| EAP | |
| COW | |
| MAY 16 2011 | |
| RHD | |
| BOARD | |

MEMORANDUM

TO: John Finnie, General Manager
Regional and Community Utilities

DATE: May 2, 2011

FROM: Sean De Pol
Manager, Wastewater Services

FILE: 5330-20-GNPC-COGEN

SUBJECT: Greater Nanaimo Pollution Control Centre Cogeneration Project -
BC Hydro Energy Purchase Agreement, and
Confidentiality and Compliance Agreement

PURPOSE

To obtain Board approval to enter into an Electricity Purchase Agreement, and a Confidentiality and Compliance Agreement with BC Hydro.

BACKGROUND

Sludge generated from Greater Nanaimo Pollution Control Centre's (GNPCC) primary treatment process is currently digested in two anaerobic digesters, which produce biogas (methane and carbon dioxide) as a by-product. The construction of a third digester is planned for 2011. The fuel source from the digesters is considered to be sustainable (i.e. the biogas production is directly related to the number of people living in the GNPCC service area). The GNPCC currently uses approximately 40% of its biogas as a fuel for the boilers and to heat on-site processes and buildings. The other 60% of the biogas generated at the plant is flared (wasted).

In September 2009, the RDN Board directed staff to award the construction contract for the GNPCC Cogeneration Project to Island West Coast Development Ltd. The work involved the construction of infrastructure required for the cogeneration of electricity and heat, including the installation of cogeneration equipment and gas conditioning equipment.

On May 6, 2011, in accordance with the Builders' Lien Act, the Certificate of Completion was issued to Island West Coast Development Ltd. for the GNPCC Cogeneration Project. With the construction project now complete an interconnection testing and commissioning exercise is currently scheduled for June 2011. After successful completion of the testing and commissioning exercise BC Hydro will approve this project as an electricity generating facility that is suitable to produce power to sell to the grid as part of a Standing Offer Program.

The Standing Offer Program is provided by BC Hydro as a requirement of the Clean Energy Act, and is designed to encourage the development of small and clean electricity projects of up to 10 Megawatts throughout British Columbia. It allows small projects to sell electricity to BC Hydro at a fixed price and with standard contract terms and conditions.

However, before electricity can be sold to the grid, an Electricity Purchase Agreement, and a Confidentiality and Compliance Agreement must be signed by both the Seller (RDN) and the Buyer (BC Hydro). The RDN's solicitors, Staples McDannold Stewart have reviewed both of these agreements and recommend that they be signed. Staff support this recommendation. Copies of the agreements are attached.

ALTERNATIVES

1. Approve the Electricity Purchase Agreement, and the Confidentiality and Compliance Agreement between the Regional District of Nanaimo and BC Hydro.
2. Do not approve the agreements.

FINANCIAL IMPLICATIONS

Alternative 1

BC Hydro's Electricity Purchase Agreement will pay the RDN \$104.72 per MWh of clean energy from the GNPCC Cogeneration Facility. The Cogeneration Facility is capable of producing 0.33 MW continually. Assuming a downtime of 30% the facility would run a total of 6100 hours per year, producing 2000 MW, and generating approximately \$210,000 of revenue annually. Over the 20 year term of the agreement revenue is projected to exceed \$4,600,000.

Alternative 2

If the Electricity Purchase Agreement is not executed at this time the RDN will not be able to sell power from the GNPCC Cogeneration Facility to BC Hydro.

SUMMARY/CONCLUSIONS

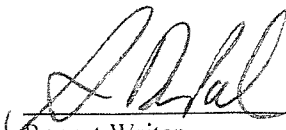
Construction of the GNPCC Cogeneration Facility was completed on May 6th, 2011. Testing and commissioning of the facility is scheduled for June 2011. At the successful completion of the testing and commissioning exercise BC Hydro will approve this project as an electrical generating facility that is suitable to produce power to sell to the grid.

BC Hydro has developed a Standing Offer Program that allows small projects of up to 10 Megawatts to sell power at a fixed price if the standard contract terms and conditions as identified in the Electricity Purchasing Agreement are met. This agreement must be executed by the RDN before electricity can be sold to the grid. BC Hydro also requires the RDN to enter into a Confidentiality and Compliance Agreement. The RDN's solicitors, Staples McDannold Stewart have reviewed both of these agreements and recommend that they be signed. Staff support this recommendation.

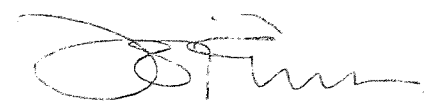
The BC Hydro's Electricity Purchase Agreement will pay the RDN \$104.72 per MWh of clean energy from the Greater Nanaimo Pollution Control Centre Cogeneration Facility. The Cogeneration Facility is able to generate approximately \$210,000 of revenue annually and \$4,600,000 over the 20 year term of the agreement.

RECOMMENDATION

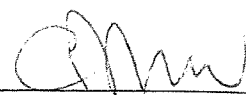
That the Chair and Senior Manager Corporate Administration be authorized to execute the Electricity Purchase Agreement, and the Confidentiality and Compliance Agreement between the Regional District of Nanaimo and BC Hydro be approved.



Report Writer



General Manager Concurrence



CAO Concurrence

BC HYDRO
ELECTRICITY PURCHASE AGREEMENT
STANDING OFFER PROGRAM

THIS ELECTRICITY PURCHASE AGREEMENT (“EPA”) is made as of _____, 2011 (the “Effective Date”)

BETWEEN:

REGIONAL DISTRICT OF NANAIMO a regional district incorporated pursuant to the *Local Government Act*, R.S.B.C. 1996, c. 323 with an office at 6300 Hammond Bay Road, Nanaimo, BC V9T 6N2

(“Seller”)

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the *Hydro and Power Authority Act* R.S.B.C. 1996, c. 212, with its head office at 333 Dunsmuir Street, Vancouver, BC V6B 5R3

(“Buyer”).

The Parties agree as follows:

1. INTERPRETATION

The definitions and certain principles of interpretation that apply to this EPA are set out in Appendix 1.

2. TERM

The term (“Term”) of this EPA commences on the Effective Date and continues until the 20th anniversary of COD, unless it is terminated earlier as authorized under this EPA.

3. CONSTRUCTION AND OPERATION

3.1 Construction and Operation Costs and Liabilities - Except as set out in Appendix 3, the Seller shall be responsible for all costs, expenses, liabilities and other obligations associated with the design, engineering, construction, Interconnection, commissioning, operation, maintenance and decommissioning of the Seller’s Plant.

3.2 Standard of Construction and Operation - The Seller shall own the Seller’s Plant and shall ensure that the Seller’s Plant is operated by qualified and experienced individuals. The Seller represents, warrants and covenants that the location, design, engineering, construction, Interconnection, commissioning, operation and maintenance of the Seller’s Plant, are and, except as otherwise consented to by the Buyer, shall be carried out at all times during the Term in compliance with: (a) the information

in the Application in all material respects; and (b) the Project Standards, provided that if the requirements for Clean Energy are amended or replaced after the Effective Date, the Seller shall make commercially reasonable efforts to operate the Seller's Plant in a manner that allows the Delivered Energy to continue to qualify as Clean Energy under the new requirements.

3.3 Project Changes - Without limiting any other section of this EPA under which the Buyer's consent is required, the Seller shall not make any change to:

- (a) those aspects of the Seller's Plant described in sections 1 - 3 of Appendix 2; or
- (b) any other aspects of the Seller's Plant or the information in any interconnection study completed for the Seller's Plant prior to the Effective Date where such change would increase the Buyer's liability for Network Upgrade Costs or any other costs with respect to the Seller's Plant or any other project,

in either case without the Buyer's prior consent, such consent not to be unreasonably withheld, conditioned or delayed. The Seller shall not make any change to the Plant Capacity without the Buyer's prior consent. The Seller acknowledges that the Buyer may require as a condition of its consent to any change described in this section, or any other change to the Seller's Plant for which the Buyer's consent is required under any other section of this EPA, that the Seller agree in writing to reimburse the Buyer for any incremental liability for Network Upgrade Costs with respect to the Seller's Plant or any other project, and any other losses, costs and damages incurred by the Buyer as a result of any change described in this section. The Buyer may also require the Seller to provide security to the Buyer to secure such reimbursement obligation.

3.4 Development Reports - The Seller shall deliver a Development Report to the Buyer on each January 1, April 1, July 1 and October 1 after the Effective Date until COD.

3.5 Network Upgrades - The Parties' obligations with respect to Network Upgrade Costs and Network Upgrade Security are set out in Appendix 3.

3.6 Revenue Metering Equipment - The Seller shall ensure that Revenue Meters are installed, operated and maintained at locations approved by the Buyer, acting reasonably. The Revenue Meters must be tested and sealed according to Measurement Canada standards by a facility that is accredited by Measurement Canada. The Revenue Meters must be capable of accurately measuring the quantity of Energy generated by the Seller's Plant and delivered to the POI independent of all other generation equipment or facilities. If there is any dispute regarding the accuracy of the Revenue Meters, either Party may give notice to the other Party of the dispute. In that case the Parties will resolve the matter in accordance with the *Electricity and Gas Inspection Act* (Canada). The Buyer may, at its cost, install duplicate revenue meters at the Seller's Plant at locations agreed to by the Seller, acting reasonably. The Seller shall allow the Buyer to access the Seller's Plant to install, inspect and maintain any such duplicate meters. The Seller shall make equipment and telephone access available to the Buyer as required for the duplicate revenue meter. If the Seller's Plant is rated 1.00 MVA or higher, the Seller shall ensure that the Seller's Plant is equipped with SCADA capability.

3.7 Insurance - The Seller shall at its cost obtain and thereafter maintain during the Term insurance covering such risks and in such amounts as would a prudent owner of a facility the same as or similar to the Seller's Plant. Such insurance shall include commercial general liability insurance with a per occurrence limit of liability not less than \$2,000,000 applicable to the Seller's Plant separate from all other projects and operations of the Seller. All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must include a cross

liability and severability of interest clause. The Seller shall provide evidence of such insurance to the Buyer on request.

3.8 Early COD - Except with the Buyer's prior consent, COD may not occur earlier than 90 days prior to Target COD. The Buyer shall not be required to incur any incremental expense or other liability of any kind to enable COD to occur prior to Target COD.

3.9 Change in Target COD - If the Estimated Interconnection Facilities Completion Date is later than 90 days prior to the Target COD, and unless otherwise agreed by the Parties in writing, the Target COD shall be postponed to the Estimated Interconnection Facilities Completion Date plus 90 days.

3.10 No Liability For Delay -The Buyer shall have no liability under this EPA for delays in completion of (i) any Network Upgrades, or (ii) other work undertaken by the Distribution Authority or the Transmission Authority on the Seller's Plant side of the POI, in each case howsoever arising.

3.11 First Nations Consultation

3.11.1 For the purposes of this EPA, the following terms shall have the following meanings, respectively:

(a) **"First Nations"** means:

- (i) for the purposes of this EPA (other than subsection 3.11.3), any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, that is identified by the Crown, before or after the Effective Date, as a band, band council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body with which consultation regarding any of the Potential Impacts is required in accordance with applicable Laws as a result of an application or request by the Seller or any Affiliate of the Seller for any Permit or tenure related directly to the Seller's Plant or any amendment, renewal, replacement, assignment or any other decision whatsoever by the Crown with respect to any Permit or tenure related directly to the Seller's Plant, and
- (ii) for the purposes of subsection 3.11.3, any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, whether or not identified by the Crown pursuant to the foregoing subsection (i) of this subsection 3.11.1(a),

(b) **"Order or Decision"** means:

- (i) any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC; and
- (ii) a writ or any other document commencing legal proceedings with respect to the Buyer or any written communication threatening to issue a writ or otherwise commence legal proceedings with respect to the Buyer, alleging that there has been a failure to consult with First Nations in relation to Potential Impacts, and which has received a Verification;

- (c) “**Potential Impacts**” means any adverse impact or potential adverse impact on the established or potential aboriginal rights (including title) of a First Nation as a result of the following matters (and which, for greater certainty, does not in any circumstance include any matters arising on the Buyer’s side of the Point of Interconnection or on the Transmission System):
- (i) this EPA;
 - (ii) the Project;
 - (iii) the interconnection of the Seller’s Plant to the Transmission System; or
 - (iv) any activities carried out by the Seller, any Affiliate, consultant or contractor of the Seller, or any other Person for whom the Seller is responsible at law directly related to the Seller’s Plant to enable the Seller to comply with its obligations under the EPA; and
- (d) “**Verification**” means that a lawyer, qualified to practice in British Columbia and acceptable to both the Buyer and Seller, has reviewed the writ or other document commencing legal proceedings or the written communication threatening to issue a writ or otherwise commencing legal proceedings, and verified in writing to both parties that there is a reasonable prospect of an order or decision of a court of competent jurisdiction or regulatory authority, including the BCUC, in favour of the party who has commenced or threatened the writ or other legal proceedings. The Buyer and the Seller shall each provide to the lawyer conducting such review such information and other assistance as may be requested by that lawyer to assist them in completing the review. If the Buyer and the Seller are unable to agree on an acceptable lawyer to provide the Verification within 15 days after the Buyer has provided the name of a proposed lawyer to the Seller, either Party may refer the matter to arbitration under section 7.5 and each of the Buyer and the Seller shall, within 7 days after the dispute is referred by either Party to arbitration, submit a list of lawyers that would be acceptable to that Party and the Parties shall ask the arbitrator to select the lawyer from the proposed lists that is, in the arbitrator’s opinion, after receiving any submissions from the Parties the arbitrator may request, the most qualified lawyer to provide the Verification. The Buyer and the Seller shall each pay 50% of the costs of obtaining the Verification. Each Party acknowledges and agrees that any lawyer providing a Verification is jointly retained by the Parties and any communications between the Parties and the lawyer and any work product of the lawyer in subject to solicitor client privilege.

3.11.2 If, prior to the second anniversary of COD, the Buyer is or may be required by an Order or Decision to consult with and/or accommodate any First Nations in relation to Potential Impacts, then the Seller, if requested to do so by the Buyer, by notice sent to the Seller as soon as practicable after the Buyer receives notice of the Order or Decision, shall:

- (a) carry out that consultation to the extent the Seller is legally capable of doing so and in accordance with applicable Laws, or assist the Buyer if and to the extent requested by the Buyer in the consultation process;
- (b) take measures, to the extent (if any) required under the Order or Decision, or under applicable Laws, to address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts; and

- (c) provide regular written reports to the Buyer concerning the Seller's compliance with this subsection, or such other information and communications as may be reasonably requested by the Buyer.

3.11.3 Notwithstanding subsection 3.11.2, the Buyer hereby confirms that the responsibilities of the Seller in subsection 3.11.2 do not in any way whatsoever encompass or apply to the following matters, whether arising prior to or after the second anniversary of COD:

- (a) any duty to consult or accommodate applicable to any Crown decision-maker or regulatory authority, which for greater certainty does not include the Buyer, that is considering or dealing with the Project in any way, including in connection with the consideration of the issuance of any of the Permits;
- (b) any measure of reconciliation or accommodation that the Buyer may offer or be required to provide to a First Nation related to land or resource use that is not associated with the Potential Impacts, including resource revenue sharing, or that is related to electricity policy, planning, regulation or export; and
- (c) any measure of reconciliation or accommodation that the Crown may offer or be required to provide to a First Nation related to land or resource use, including resource revenue sharing, or that is related to electricity policy, planning, regulation or export.

3.11.4 The Buyer will as soon as practicable notify the Seller of any written communication received by the Buyer that commences a legal proceeding with respect to the Buyer or that threatens to issue a writ or any other document commencing a legal proceeding with respect to the Buyer, with respect to which the Buyer intends to request the Seller to carry out its obligations under subsection 3.11.2. Any failure by the Buyer to notify the Seller as required under subsection 3.11.2 or subsection 3.11.4 shall not limit or otherwise affect the Seller's obligations under subsection 3.11.2 except to the extent the Buyer's failure to notify the Seller has a materially adverse effect on the Seller. For greater certainty, the covenant of the Buyer in section 10.9 applies to the obligations of the Seller in subsections 3.11.2 and 3.12, and the Seller shall reimburse the Buyer for all costs reasonably incurred by the Buyer in providing assistance to the Seller at the request of the Seller as contemplated under that section to assist the Seller to perform its obligations under subsections 3.11.2 and 3.12. Without limiting the generality of but subject to the foregoing (including the obligation to reimburse the Buyer for all costs reasonably incurred by the Buyer), for greater certainty, the Buyer will at the request of the Seller provide reasonable assistance to the Seller in the performance by the Seller of its obligations under subsections 3.11.2 and 3.12: including agreeing to reasonable amendments of the EPA as contemplated by section 3.12: provided however, that any proposed amendment of the EPA must be in the public interest.

3.11.5 At any time prior to the second anniversary of COD, the Buyer will not have any discussions with any First Nation with respect to the consultation or accommodation regarding the Project without first notifying the Seller of its intention to have such discussions and seeking the consent of the relevant First Nation for the Seller to participate in such discussions. The foregoing obligation does not extend to any properties or infrastructure owned by the Buyer.

3.12 Right to Terminate - If a measure or measures required to be undertaken by the Seller in order to comply with its obligations under section 3.11 of this EPA would impose a commercially unreasonable cost or other obligation on the Seller, or would require the consent of the Buyer under any provision of this EPA or would require agreement by the Buyer to an amendment of the EPA in order to address any such adverse impacts on established and potentially existing aboriginal rights (including title) and if such consent or agreement to amend is not provided within 60 days after the Seller's request

to the Buyer, then the Seller may terminate this EPA on notice to the Buyer, and such termination will be effective on the date that is 60 days after the date of delivery of such notice of termination unless, prior to that date, the Seller, by notice from the Buyer or otherwise, has been relieved of its obligation to take the measure or measures that would impose the unreasonable cost or obligation on the Seller or the consent or agreement to an amendment of the EPA has been provided, as applicable. A termination by the Seller under this section shall, for all purposes of this EPA, be treated in the same manner as a termination by the Seller under subsection 8.3(d) of this EPA. If the Seller terminates the EPA pursuant to this section, the Seller shall not be, or be deemed to be or have been, in breach of section 3.11 of this EPA for failure to implement the measure or measures that gave rise to the Seller's right to terminate the EPA under this section. For purposes of this section 3.12, "a commercially unreasonable cost or other obligation on the Seller" means a cost or obligation (i) to be borne by the Seller, (ii) that results, or can reasonably be expected to result, from the implementation of a measure or measures required under section 3.11, and (iii) that would impose upon the Seller a commercially unreasonable burden, having regard to all other financial benefits and burdens of the EPA to the Seller over the entire Term.

3.13 Planned Outages – The Seller shall:

- (a) give the Buyer not less than 90 days' prior notice of any Planned Outage, or such shorter period to which the Buyer may consent, such consent not to be unreasonably withheld, delayed or conditioned, and such notice shall state the start date and hour and the end date and hour for the Planned Outage. Notwithstanding the foregoing, at any time prior to 48 hours before the start of a Planned Outage that will be more than 7 days long, the Seller may change the proposed start time for the Planned Outage by not more than 24 hours and at any time prior to 48 hours before the end of the Planned Outage, the Seller may change the proposed end time of the Planned Outage on notice to, and without the consent of, the Buyer, provided that if as a result of such notice from the Seller the Planned Outage starts later or ends earlier than originally scheduled, there will be no deemed Delivered Energy under section 4.7 during the period between the originally scheduled start time and the revised start time and/or between the originally scheduled end time and the revised end time of the Planned Outage;
- (b) in accordance with the Buyer's written instructions, use the Buyer's web-based application or other system for communicating Planned Outages to the Buyer;
- (c) make commercially reasonable efforts to coordinate all Planned Outages with the Buyer's requirements as notified to the Seller; and
- (d) make commercially reasonable efforts to coordinate all Planned Outages with the Transmission Authority's maintenance schedule where such schedule is publicly available or otherwise notified to the Seller.

Not less than 30 days before a Planned Outage is scheduled to commence, the Buyer may request the Seller to reschedule that Planned Outage. Within 14 days after receipt of such a request, the Seller shall provide the Buyer with an estimate, together with reasonable supporting detail, including a reasonable contingency allowance, of the costs, if any, the Seller expects to incur, acting reasonably, as a result of rescheduling the Planned Outage in accordance with the Buyer's request. Within 7 days after receipt of such cost estimate, the Buyer shall notify the Seller if the Buyer requires the Seller to reschedule the Planned Outage, and upon receipt of such notice from the Buyer, the Seller shall adjust the schedule for the Planned Outage as required by the Buyer, provided that the rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant or on any facility that is a thermal host for the Seller's Plant. The Buyer shall reimburse the Seller for all costs

reasonably incurred by the Seller as a result of such rescheduling, but not exceeding the estimate delivered by the Seller to the Buyer under this section 3.13.

3.14 Notice of Outages – Other than for a Planned Outage for which notice has been given pursuant to section 3.13, the Seller shall promptly notify the Buyer of any outage, or any anticipated outage of the Seller's Plant.

4. PURCHASE AND SALE OBLIGATIONS

4.1 Pre-COD Energy - The Buyer shall make commercially reasonable efforts to accept delivery of Energy at the POI prior to COD, provided that the Buyer shall not be required to take any steps or to incur any incremental expense or other liability of any kind to enable delivery of Energy to the POI prior to 90 days before the Target COD.

4.2 Post-COD Sale and Purchase of Energy - From and after COD for the remainder of the Term, the Seller shall sell and deliver all Energy to the Buyer at the POI and the Buyer shall purchase and accept delivery of all Delivered Energy. The Buyer shall pay for all Delivered Energy after COD in accordance with section 5.2. Notwithstanding the foregoing, the Buyer shall have no obligation to take or pay for any Energy that is generated as a result of an increase in the Plant Capacity made without the consent of the Buyer in accordance with section 3.3. When the Seller is delivering Energy to the Buyer, the Seller shall make commercially reasonable efforts to operate the Seller's Plant in a manner that ensures delivery of Energy at the POI at a uniform rate within each hour during which Energy is delivered.

4.3 Transmission Outages - The Buyer will not be in breach or default of its obligations under section 4.1, section 4.2 or section 5.2 if the Buyer is not able to accept delivery of Energy at the POI as a result of a Distribution/Transmission Constraint or Disconnection. The Buyer shall have no liability with respect to a Distribution/Transmission Constraint or Disconnection, except as set out in section 4.7, if applicable.

4.4 Environmental Attributes - The Seller hereby transfers, assigns and sets over to the Buyer all right, title and interest in and to the Environmental Attributes.

4.5 Exclusivity - The Seller shall not at any time during the Term commit, sell or deliver any Energy or any Environmental Attributes to any Person, other than the Buyer under this EPA. The Seller shall not use or apply any Energy or Environmental Attributes for any purpose whatsoever except for sale to the Buyer under this EPA. These prohibitions do not apply when the Buyer is in breach of its obligations under section 4.2. The Seller acknowledges and agrees that the exclusive rights conferred by this section are of fundamental importance, and that, without prejudice to any right to claim damages, compensation or an accounting of profits, the granting of an interim, interlocutory and permanent injunction is an appropriate remedy to restrain any breach or threatened breach by the Seller of the obligation set out in this section.

4.6 Custody, Control, Risk of and Title To Energy - Custody, control, risk of, and title to, all Energy passes from the Seller to the Buyer at the POI. The Seller shall ensure that all Energy delivered to the Buyer under this EPA and all Environmental Attributes transferred to the Buyer under this EPA are free and clear of all liens, claims, charges and encumbrances. The Seller is responsible for all transmission losses and costs relating to the transmission of Energy from the Seller's Plant to the POI.

4.7 Distribution/Transmission System Constraint or Disconnection - If in any month after COD the Seller is unable to deliver Energy at the POI solely as a result of a Distribution/Transmission

Constraint or Disconnection that exceeds 30 continuous minutes in duration and such Distribution/Transmission Constraint or Disconnection:

- (a) is not caused by an event beyond the control of the Buyer or the Transmission Authority;
- (b) is not caused by the Seller or the Seller's Plant; and
- (c) occurs after Distribution/Transmission Constraints or Disconnections have been in effect for more than 24 hours in the aggregate, whether or not continuous, in that month;

then, notwithstanding that the Buyer is excused under section 4.3 from its obligations under section 4.2, the Buyer shall pay to the Seller an amount equal to the price payable for post-COD Delivered Energy under section 5.2 multiplied by the amount of Energy, not exceeding 0.33 MWh, that could have been generated and delivered at the POI in each hour after the 24 hours has elapsed but for the occurrence of the Distribution/Transmission Constraint or Disconnection less any costs the Seller avoided or, acting reasonably, could have avoided during the Distribution/Transmission Constraint or Disconnection. The Seller shall maintain accurate and complete records of all avoided or avoidable costs and shall report all such costs to the Buyer and provide the Buyer with all information required to calculate such costs. The Buyer or its designated representative may audit such costs and in that event the provisions of section 7.2 apply. The Buyer will not be required to pay for any Energy under this section during any period specified as a maintenance period in an Energy schedule delivered pursuant to section 7.7 or during any other period where the Seller's Plant would otherwise not have been operating. For greater certainty, the provisions of this section will not apply during any period when the Buyer is or would be excused, in accordance with section 7.9, from its obligation to accept delivery of Energy as a result of Force Majeure.

4.8 Buyer Dispatch/Turn-Down Right -

- (a) The Buyer may at any time during the Term deliver notice to the Seller requiring the Seller to turn down or shut off the Seller's Plant (a "**Dispatch/Turn-Down**") and the Seller shall forthwith comply with any such direction except to the extent that any operational, technical, regulatory or fuel storage constraint prevents or limits the Seller's ability to comply with such direction.
- (b) Energy, not exceeding 0.33 MWh, that could have been generated and delivered to the POI in each hour as Delivered Energy but for a direction from the Buyer pursuant to subsection 4.8(a) shall be deemed to be Delivered Energy and the Buyer shall pay to the Seller an amount equal to the price payable for post-COD Delivered Energy under section 5.2 multiplied by that amount of Energy less any costs the Seller avoided or, acting reasonably, could have avoided during the period of the Dispatch/Turn-Down.
- (c) There shall be no deemed Delivered Energy pursuant to this section in any hour specified as a maintenance period in any Energy schedule delivered pursuant to section 7.7 or during any other hour when the Seller's Plant would otherwise not have been operating if there had been no Dispatch/Turn-Down notice or in any period when the Buyer is excused under section 7.9 from its obligations under section 4.2 and 5.2.

5. PRICE AND PAYMENT TERMS

5.1 Pre-COD Energy - No price is payable by the Buyer for Energy delivered to the POI prior to COD.

5.2 Post-COD Energy Price - Subject to section 4.2, the price payable by the Buyer for each MWh of Delivered Energy after COD and prior to expiry of the Term is \$104.72/MWh, adjusted as follows:

- (a) effective as of January 1 in each year after the Effective Date in accordance with the following formula:

$$\text{Payment Price}_n = (.5 * \$104.72/\text{MWh} * \text{CPI}_{\text{January 1 } n} / \text{CPI}_{\text{January 1, 2011}}) + (.5 * \$104.72/\text{MWh})$$

Where:

n = the year for which the relevant calculation is being conducted

$\text{CPI}_{\text{January 1 } n}$ = the CPI for December in the year immediately prior to the year for which the relevant calculation is being conducted; and

- (b) for each hour, the price determined pursuant to subsection (a) for Delivered Energy during that hour will be adjusted to an amount (expressed in \$/MWh) equal to the percentage of that price applicable for that hour as set out in the table in Appendix 4.

5.3 No Further Payment - The amount payable by the Buyer as specified in section 5.2 is the full and complete payment and consideration payable by the Buyer for Energy delivered by the Seller to the Buyer under this EPA and for the Environmental Attributes transferred by the Seller to the Buyer under this EPA.

5.4 Statements and Payment -

- (a) **Statements:**

- (i) The Seller shall, by the 15th day of each month after COD, deliver to the Buyer a statement for the preceding month. The statement must indicate, among other things, the amount of Delivered Energy for that month (including any deemed Delivered Energy and any associated avoided or avoidable costs pursuant to section 4.7), the price payable for the Delivered Energy, and any Final Amounts owing by either Party to the other Party. The statement must set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed and be accompanied by sufficient data to enable the Buyer, acting reasonably, to satisfy itself as to the accuracy of the statement.
- (ii) Either Party may give notice to the other Party of an error, omission or disputed amount on a statement within 36 months after the statement was first issued together with reasonable detail to support its claim. After expiry of that 36 month period, except in the case of willful misstatement, fraud or concealment, amounts on a previously issued statement will be considered accurate and amounts which were omitted will be considered to be nil, other than amounts disputed in accordance with this subsection within the 36 month

period, which will be resolved in accordance with this EPA.

(b) Payment:

- (i) Within 30 days after receipt of a statement delivered under subsection 5.4(a), and subject to section 5.6, the Buyer shall pay to the Seller the amount set out in the statement, except to the extent the Buyer in good faith disputes all or part of the statement by notice to the Seller in compliance with subsection 5.4(a)(ii). If the Buyer disputes any portion of a statement, the Buyer must nevertheless pay the undisputed net amount payable by the Buyer pursuant to the statement.
- (ii) Any amount required to be paid in accordance with this EPA, but not paid by either Party when due, will accrue interest at an annual rate equal to the Prime Rate plus 2%, compounded monthly. Any disputed amount that is found to be payable will be deemed to have been due within 30 days after the date of receipt of the statement which included or should have included the disputed amount.

5.5 Taxes - All dollar amounts in this EPA do not include any value added, consumption, commodity or similar taxes applicable to the purchase by the Buyer of Delivered Energy and Environmental Attributes, including HST and any successor thereto, which, if applicable, will be added to each statement and paid by the Buyer.

5.6 Set-off - If the Buyer and the Seller each owe the other an amount under this EPA in the same month, then such amounts with respect to each Party shall be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed, provided that:

- (a) this section applies only to any purchase price for Delivered Energy owing by the Buyer to the Seller, any amount owing by the Seller to the Buyer in respect of an Auxiliary Fuel Overage Credit, any Final Amount or any amount under Appendix 11 owing by either Party to the other Party or any amount owing by the Seller to the Buyer under Appendix 3; and
- (b) no Final Amount or amount owing by the Seller to the Buyer under Appendix 3 of this EPA shall be added to or deducted from the price owing by the Buyer to the Seller for Delivered Energy unless that amount remains unpaid 30 days after the Buyer gives notice to the Seller of the amount owing. For greater certainty, this subsection (b) does not apply to any amount owing by the Seller to BC Hydro under Appendix 11.

Except as otherwise expressly provided herein, each Party reserves all rights, counterclaims and other remedies and defences which such Party has, or may be entitled to, arising from or related to this EPA.

6. ENVIRONMENTAL ATTRIBUTES – CERTIFICATION AND ADMINISTRATION

6.1 EcoLogo^M Certification - Without limiting the Seller's obligation to comply with subparagraph (e) of the definition of Project Standards, if required by the Buyer, the Seller shall use commercially reasonable efforts to obtain EcoLogo^M Certification for the Seller's Plant and all the Delivered Energy, other than that attributable to the use of Auxiliary Fuel to the extent permitted under this EPA, and shall use commercially reasonable efforts to maintain EcoLogo^M Certification for such period during the remainder of the Term as the Buyer may specify. The Seller shall notify the Buyer forthwith if the Seller fails to obtain EcoLogo^M Certification as required hereunder or if, at any time during the period of

the Term specified by the Buyer, the Seller does not have EcoLogo^M Certification. If the Buyer requires the Seller to obtain EcoLogo^M Certification, the Buyer shall be responsible for all certification, audit and licensing fees required to obtain EcoLogo^M Certification, unless the Seller requires EcoLogo^M Certification to comply with subparagraph (e) of the definition of the Project Standards or the Seller fails to obtain or maintain EcoLogo^M Certification, in either of which cases the Seller shall be responsible for all such fees.

6.2 Alternate Certification - The Seller shall, at the Buyer's request and at the Buyer's cost, use commercially reasonable efforts to apply for, and diligently pursue and maintain, any certification, licensing or approval offered by any Governmental Authority or independent certification agency evidencing that the Seller's Plant and the Delivered Energy has Environmental Attributes as an addition or an alternative to the EcoLogo^M Certification. Any failure by the Seller to use commercially reasonable efforts pursuant to this section 6.2 is a "material default" for the purposes of this EPA, and the Buyer may terminate this EPA under subsection 8.1(i).

7. EPA ADMINISTRATION

7.1 Records - The Seller shall prepare and maintain all Records, or duplicates of such Records, at the Seller's Plant or following the expiry of the Term or the earlier termination of this EPA, at such other location as may be agreed in writing between the Parties, for a period of not less than 7 years from the date on which each such Record is created. The Audit Parties may take copies of such records for the purposes of an inspection or audit under section 7.2.

7.2 Inspection and Audit Rights - For the sole purpose of verifying: (a) compliance with this EPA; (b) the accuracy of invoices and other statements or calculations delivered by the Seller to the Buyer under this EPA; (c) the qualification of the Energy, excluding Energy generated from Auxiliary Fuel to the extent the use of which is permitted hereunder, as Clean Energy; (d) the qualification of the Seller's Plant and the Energy for the Environmental Certification; or (e) the liability of each of the Parties for Network Upgrade Costs, the Seller shall, on reasonable prior notice from the Buyer, provide the Buyer and its Affiliates, representatives, consultants, advisors and any third party with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes and their Affiliates, representatives, consultants and advisors (the "Audit Parties") with prompt access during normal business hours to the Seller's Plant and all records relating to the Seller's Plant, including any Seller Confidential Information, to enable the Audit Parties to conduct an inspection or audit thereof. The Audit Parties shall exercise any access and audit rights under this section in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by any of the Audit Parties may not be relied upon by the Seller, or others, as confirming or approving those matters. Where the Buyer requires the Seller to provide access to the Seller's Plant and/or records relating to the Seller's Plant to a third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes or any Affiliate, representative, consultant or advisor to any such third Person, the Buyer shall first obtain from the third Person an agreement to maintain the confidentiality of any Seller Confidential Information to which such Person may have access and to limit the use of such Seller Confidential Information as required to verify the Environmental Attributes.

7.3 Seller Consents - The Seller shall promptly provide any consents required to enable any of the Audit Parties to make enquiries with any Governmental Authority or any Person administering the Environmental Certification concerning any or all of the following: (a) the qualification of the Energy as Clean Energy; (b) the qualification of the Seller's Plant and the Energy for Environmental Certification, the status of the Environmental Certification and copies of any audits, inspections or reports prepared in connection with the Environmental Certification; and (c) compliance by the Seller with Laws and

Permits applicable to the Seller's Plant.

7.4 Assignment -

- (a) **Requirement for Consent:** The Seller may not Assign this EPA except with the prior consent of the Buyer, which consent may not be unreasonably withheld, conditioned or delayed. Any Assignment (other than an Assignment to a Facility Lender) is subject to the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the Seller under the EPA arising both before and after the Assignment, providing any Network Upgrade Security as applicable at the time of Assignment, and providing the representations and warranties set out in the Application and in section 9.1 effective as at the time of Assignment, subject in the case of the representation and warranty in subsection 9.1(c) to such exceptions as the Buyer consents to acting reasonably.
- (b) **Time for Request:** Any request by the Seller for the Buyer's consent under subsection 7.4(a) must be delivered to the Buyer not less than 30 days before the date of the proposed Assignment. A request under this section must be accompanied by such information as reasonably required by the Buyer to assess the request for consent including the name, address and ownership structure of the assignee, a list of the directors and officers of the assignee and information concerning the assignee's operations, experience and financial status.
- (c) **Assignment to Facility Lender:** If the Seller seeks consent to Assign this EPA to a Facility Lender, the Buyer may require, as a condition of its consent to the Assignment, that the Seller and the Facility Lender enter into a Lender Consent Agreement with the Buyer.
- (d) **Costs:** The Seller shall reimburse the Buyer for all costs reasonably incurred by the Buyer in connection with any request by the Seller for the Buyer's consent pursuant to subsection 7.4(a).

7.5 Dispute Resolution -

- (a) **Arbitration:** Any dispute under or in relation to this EPA will be referred to and finally resolved by arbitration conducted by a single arbitrator in Vancouver, British Columbia and administered by the British Columbia International Commercial Arbitration Centre ("BCICAC") pursuant to its rules. Except as otherwise expressly provided in this EPA, the arbitrator shall have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. It shall not be incompatible with this agreement to arbitrate for a party to seek from the Supreme Court of British Columbia, or for that court to grant, interim measures of protection pending the outcome of arbitral proceedings. The decision of the arbitrator will be final and binding on the Parties.
- (b) **Effect of Arbitration:** All performance and payments required under this EPA will continue during any dispute under this EPA, provided that the Parties may, notwithstanding the foregoing, exercise any right to terminate this EPA in accordance with the terms of this EPA. Any payments or reimbursements required by an arbitration award will be due as of the date determined under subsection 5.4(b)(ii) or, where that subsection does not apply, as of the date determined in the award. Without duplication with subsection 5.4(b)(ii), any payments or reimbursements required by an arbitration

award will bear interest at an annual rate equal to the Prime Rate plus 2% compounded monthly from the date such payment was due until the amount is paid.

- (c) **Confidentiality:** The Parties shall maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrator's award, provided that each of the Parties shall be entitled to disclose such matters: (i) as required by applicable Law or for regulatory purposes (including pursuant to the rules of any stock exchange on which the shares of the Seller or its Affiliates are traded); (ii) as required to enforce any arbitration award; (iii) to that Party's consultants and professional advisors who have a need to know such information; and (iv) in the case of the Buyer, to representatives of the Government of British Columbia.

7.6 Notices - Any notice, consent, waiver, declaration, request for approval or other request, statement or bill that either Party may be required or may desire to give to the other Party under this EPA must be in writing addressed to the other Party at the address for that Party stated in Appendix 1 and:

- (a) notices under section 7.9, section 8.1, section 8.3 and section 4 of Appendix 3 must be delivered by hand or by a courier service during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day;
- (b) all notices other than notices described in subsection 7.6(a) may be delivered by email during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day; and
- (c) either Party may change its address for notices under this EPA by notice to the other Party.

7.7 Energy Schedules - By September 15 of each year, the Seller shall deliver to the Buyer a schedule of the expected total deliveries of Energy to the POI in each month during the 12 month period commencing on October 1 of the year in which the schedule is delivered and a schedule of the maintenance outages expected for the Seller's Plant during that period. The Energy schedules are provided for planning purposes only and do not constitute a guarantee by the Seller that Energy will be delivered in accordance with the schedules and do not limit the amount of Energy the Seller may deliver during the periods covered by the schedules. The Seller shall deliver a revised schedule to the Buyer promptly upon becoming aware of any expected material change in a delivered Energy schedule.

7.8 Confidentiality

7.8.1 Confidentiality and Compliance Agreement - The Standing Offer Confidentiality and Compliance Agreement continues in full force and effect in accordance with its terms.

7.8.2 Additional Confidentiality Obligation - Without limiting the effect of the Standing Offer Confidentiality Agreement, during the Term and for two years thereafter (i) the Buyer shall treat as confidential, and shall not disclose to any third Person, Seller Confidential Information, and (ii) the Seller shall treat as confidential, and shall not disclose to any third Person, Buyer Confidential Information, provided however that nothing in the foregoing obligations, and nothing in this EPA, prevents or restricts:

- (a) disclosures that are expressly authorized under any section of this EPA, or as otherwise set out in this EPA;
- (b) disclosures that are necessary to enable either Party to fulfill its obligations under this EPA;
- (c) in the case of the Buyer, disclosure of Seller Confidential Information:
 - (i) to any ministers, deputy ministers, servants or employees of the Province of British Columbia; and
 - (ii) to its directors, officers, employees and Affiliates, consultants and advisors;provided that each of the foregoing to whom Seller Confidential Information is disclosed is advised of the confidential nature thereof;
- (d) in the case of the Buyer, disclosure of Seller Confidential Information in any regulatory proceeding, whether in respect of this EPA or in respect of other matters, to the extent that the Buyer considers disclosure necessary or desirable to support its position in any such proceeding, provided that, to the extent reasonably practicable, the Buyer gives reasonable notice to the Seller before making the disclosure, and, to the extent requested by the Seller, requests the relevant tribunal to treat all or any part of the disclosure as confidential or to limit its further disclosure;
- (e) in the case of the Buyer, disclosure to any Person or any Governmental Authority of any Seller Confidential Information with respect to:
 - (i) the Seller's Plant that the Buyer is required to disclose to verify qualification of the output of the Seller's Plant as Clean Energy or to provide confirmation to any such Person or Governmental Authority that the output from the Seller's Plant qualifies as Clean Energy; or
 - (ii) the Energy and/or the Seller's Plant that the Buyer is required to disclose to enable the Buyer to obtain or realize the full benefit to the Buyer of the Environmental Attributes, including sales of Environmental Attributes to third Persons;
- (f) in the case of the Buyer, disclosures to a third Person of any Seller Confidential Information that was known by that third Person before disclosure thereof by the Buyer, including information that originated from that third Person or that the Seller or any other Person has given the third Person, in either case as indicated on the face of any document or as acknowledged by the Seller in any discussions with the Buyer;
- (g) in the case of the Seller, disclosure of the Buyer Confidential Information to its directors, officers, employees, consultants and advisors, provided that each of the foregoing to whom Buyer Confidential Information is disclosed is advised of the confidential nature thereof and undertakes in writing to respect such confidentiality on the terms of the EPA, provided that the Seller shall give to the Buyer, at its request, a copy of each undertaking;
- (h) without limiting the Buyer's disclosure rights under subsection 7.8.2(d) above,

disclosures required to be made by a Party by an order of a court or tribunal or under any law, regulatory requirement or requirement of any stock exchange that is binding upon it, provided that (i) to the extent reasonably practicable, the Party making such disclosure gives reasonable notice to the other Party before making the disclosure, and (ii) limits the disclosure to that required by the applicable order, law, or regulatory or stock exchange requirement:

- (i) disclosures in any legal proceedings for the enforcement of this EPA; or
- (j) disclosures of the Seller Confidential Information or the Buyer Confidential Information, as the case may be, by written agreement or consent of both Parties.

7.8.3 Freedom of Information and Protection of Privacy Act - The Seller and the Buyer each acknowledge that the other Party is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and the Parties agree that their respective non-disclosure obligations under this EPA are subject to the provisions of that legislation, as amended from time to time.

7.8.4 Exemption from Disclosure - The Parties confirm that Seller Confidential Information constitutes commercial and financial information of the Seller, which has been supplied, or may be supplied, in confidence and the disclosure of which could reasonably be expected to harm significantly the competitive position and/or interfere significantly with the negotiating position of the Seller. Accordingly, the Parties confirm their intention that, subject to section 7.8.3, all Seller Confidential Information disclosed by the Seller to the Buyer shall be deemed to be confidential and exempt from disclosure to third Persons in accordance with section 21 of the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time.

7.9 Force Majeure -

- (a) Neither Party will be in breach or default as to any obligation under this EPA if that Party is unable to perform that obligation due to an event or circumstance of Force Majeure, of which notice is given promptly to the other Party identifying the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure. Subject to any limitations expressly set out in this EPA, the time for performance of such obligation will be extended by the number of days that Party is unable to perform such obligation as a result of the event or circumstance of Force Majeure. The Party invoking Force Majeure shall promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure and shall give prompt notice of the end of the Force Majeure.
- (b) Notwithstanding the definition of Force Majeure in Appendix 1, and without limiting the application of the definition of Force Majeure to any circumstance that is not specifically described in this section 7.9, any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC, that is binding on the Buyer and/or the Seller, the compliance with which would prevent the Buyer and/or the Seller from performing all or any of its obligations under this EPA, which is based in whole or in part on any failure or alleged failure of the Buyer to adequately consult with, and/or accommodate, any First Nation, in relation to this EPA, the Project, the Seller's Plant or the interconnection of the Seller's Plant to the Distribution System or the Transmission System, as applicable (which, for greater certainty, does not include any failure to consult with, and/or accommodate any First Nation, with respect to activities occurring after COD on the Buyer's side of the Point of Interconnection or on the

Transmission System). shall be an event of Force Majeure that may be invoked by the Party or Parties so prevented, provided that the Party or Parties so prevented shall use commercially reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure to the extent that it is within the control of that Party to do so, provided that in the case of the Buyer, this obligation is subject to the Seller complying with, or having complied with, its obligation under section 3.11.2.

- (c) A Party may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 7.9(b) if such order or decision results from a wilful act or omission of a Party, provided that the failure or alleged failure of the Buyer to have adequately consulted with, and/or accommodated, any First Nation may only be considered a wilful act or omission where the underlying event or circumstance giving rise to the duty to consult or accommodate was or is fully within the control of the Buyer and provided further that, for greater certainty, any activities of the Seller will not be considered to be within the control of the Buyer regardless of any consent, waiver, declaration or approval under the EPA, including any further amendment of the EPA that the Buyer may provide in respect of the Seller's activity.
- (d) The Seller may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 7.9(b) if such order or decision results from a failure by the Seller to comply with its obligations under section 3.11 of this EPA.
- (e) The Buyer may not invoke Force Majeure as a result of such order or decision referenced at subsection 7.9(b) if:
 - (i) the Buyer has received notice in writing from the Seller that the Seller is attempting to resolve, cure, fulfill or remedy, as the case may be, at its own initiative and at its own expense, the issues, orders or obligations raised or required by the order or decision;
 - (ii) the Buyer is not incurring additional expense, risk or liability as a result of the Seller taking the steps described in paragraph (a) and the Buyer has received written confirmation from the Seller that the Buyer will not be subject to any liability to the Seller for breach of this EPA as a result of the Buyer's compliance with that portion of the order or decision that prohibits the Buyer from performing its obligations under this EPA while at the same time not being able to invoke Force Majeure as a result of this provision;
 - (iii) the Seller is at all times moving expeditiously and in good faith to resolve, cure, fulfill or remedy the issues, orders or obligations raised in the order or decision; and
 - (iv) the Buyer would not be in breach of the order or decision as a result of the Seller taking the steps described in subsection 7.9(e)(i).

8. TERMINATION

8.1 Termination by Buyer - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Buyer may have under this EPA or at law or in equity in respect of any of the following events, the Buyer may terminate this EPA by notice to the Seller if:

- (a) COD does not occur by the second anniversary of Target COD for any reason whatsoever (including Force Majeure), provided that the Buyer may terminate the EPA under this provision only if the Buyer delivers a termination notice prior to COD; or
- (b) at any time after COD, the Seller does not deliver any Energy to the Buyer for a period of 730 continuous days for any reason whatsoever (including Force Majeure or a Distribution/Transmission Constraint or Disconnection), but excluding a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
- (c) at any time after COD, the Buyer is unable to accept delivery of Energy at the POI for a period of 730 continuous days due to Force Majeure invoked by the Buyer in accordance with section 7.9 or a Distribution/Transmission Constraint or Disconnection other than a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
- (d) the Seller breaches section 4.5; or
- (e) the Seller fails to complete any application, payment, filing, study, document or other step in the process for interconnecting the Seller's Plant to the Transmission System or the Distribution System in accordance with the requirements of, and within the time limits, including any cure periods, specified by the Transmission Authority or Distribution Authority, as applicable, and such failure results in a loss of the interconnection queue position for the Seller's Plant or otherwise could reasonably be expected to have an adverse impact on the Buyer; or
- (f) the Seller is Bankrupt or Insolvent; or
- (g) the Seller, as a result of an act or omission of the Seller, ceases to be exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant and the sale of Energy to the Buyer under this EPA, and the loss of such exemption could reasonably be expected to have an adverse effect on the benefit to the Buyer of this EPA; or
- (h) an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Buyer has given notice of the default to the Seller; or
- (i) the Seller is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), unless within 30 days after the date of notice by the Buyer to the Seller of the default the Seller has cured the default or, if the default cannot be cured within that 30 day period, the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A "material default" includes any purported Assignment of this EPA without the consent of the Buyer and any failure by the Seller to comply with section 3.2 in respect of subsection (e) of the "Project Standards" definition, section 4.5, section 6.1 or section 6.2.

Any termination pursuant to this section shall be effective immediately upon delivery of the notice of termination to the Seller.

8.2 Notice of Termination Event - The Seller shall notify the Buyer promptly if the Seller is Bankrupt or Insolvent or if there is a material risk that the Seller will become Bankrupt or Insolvent or if the Seller has defaulted under any agreement with a Facility Lender or if any Permit or land tenure agreement for the Seller's Plant is terminated or expires.

8.3 Termination by the Seller - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Seller may have under this EPA or at law or in equity in respect of any of the following events, the Seller may terminate this EPA by notice to the Buyer if:

- (a) the Seller has not been able to achieve COD for a period of 180 days after Target COD solely as a result of a delay in completion of Interconnection Network Upgrades where such delay is not attributable directly or indirectly in whole or in part to the Seller or the Seller's Plant; or
- (b) after COD, the Buyer has not accepted delivery of Energy for a period of 180 continuous days due to an event described in section 4.3 or any event of Force Majeure and the Seller is not entitled to receive any payment pursuant to section 4.7 in respect of that period; or
- (c) the Seller's Plant has suffered Major Damage;
- (d) the Seller has been unable to achieve COD for a period of 730 days after Target COD or has been unable to deliver Energy to the POI for a period of 730 continuous days after COD in either case solely as a result of Force Majeure invoked by the Seller in accordance with section 7.9 or a Distribution/Transmission Constraint or Disconnection other than a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
- (e) the Buyer is Bankrupt or Insolvent; or
- (f) except where an amount has been disputed in the manner specified in subsection 5.4(a)(ii), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Seller has given notice of the default to the Buyer; or
- (g) the Buyer is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), and such default has not been cured within 30 days after the Seller has given notice of the default to the Buyer or, if the default cannot be cured within that 30 day period, the Buyer fails to demonstrate to the reasonable satisfaction of the Seller that the Buyer is working diligently and expeditiously to cure the default or the default is not cured within a further reasonable period of time.

Any termination pursuant to this section shall be effective immediately upon delivery of the notice of termination to the Buyer.

8.4 Effect of Termination - Upon expiry of the Term or earlier termination of this EPA in accordance with its terms:

- (a) the Parties may pursue and enforce any rights and remedies permitted by law or equity

in respect of any prior breach or breaches of the EPA, and may enforce any liabilities and obligations that have accrued under this EPA prior to the expiry of the Term or the date of termination or that are stated to arise on termination of this EPA (including any claims by the Buyer for amounts payable by the Seller under Appendix 3), subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA; and

- (b) both Parties will remain bound by Article 5 and Appendix 3 with respect to the satisfaction of residual obligations for the period prior to termination or that are specified to arise on termination, and sections 7.5 and 7.8 and all provisions of the EPA with respect to Environmental Attributes but only with respect to Environmental Attributes associated with Delivered Energy prior to termination of this EPA; and
- (c) the Seller will remain bound by sections 7.1 and 7.2 for a period of 36 months following expiry or termination of this EPA

and, in all such cases, both Parties will remain bound by any other provisions necessary for the interpretation and enforcement of the foregoing provisions.

8.5 Buyer Payment on Seller Termination - If the Seller terminates this EPA under any of subsections 8.3(e), (f) or (g), the Buyer shall pay to the Seller an amount equal to the positive amount if any by which the Seller's Losses and Costs exceed its aggregate Gains. The Seller's Gains, Losses and Costs shall be determined by comparing the reasonably estimated quantities of Delivered Energy for the remaining Term and the price payable for those quantities under this EPA had it not been terminated to the relevant market prices for equivalent quantities of electricity for the remaining Term either quoted by a bona fide arm's length third party or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices will be adjusted for differences between the product subject to the market prices and a product, inclusive of Environmental Attributes, equivalent to that specified under this EPA available from a generator meeting the eligibility requirements for the Buyer's Standing Offer Program in effect at the Effective Date, including with respect to quantity, place of delivery, length of term and each element of the eligibility requirements. The Seller shall not be required to enter into a replacement transaction in order to determine the amount payable by the Buyer under this section. The Seller's Gains, Losses and Costs will be discounted to the present value of those Gains, Losses and Costs at the effective date of termination of the EPA (to take into account the time value of money for the period between the effective date of termination of the EPA and the date the Gains, Losses and Costs would have occurred but for the termination of the EPA) using the Present Value Rate. If the Seller's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this EPA, the amount of the payment by the Buyer to the Seller under this section shall be zero. If the termination of this EPA by the Seller occurs prior to COD, the Buyer's liability for any payment under this section will be 115% of the Development Costs less the net realizable value of the assets forming part of the Seller's Plant at the date of termination.

8.6 Calculation and Payment - The Seller shall calculate the amount of any payment owed by the Buyer under section 8.5 and shall notify the Buyer of such amount and provide reasonable particulars with respect to its calculation within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any payment under section 8.5. The Buyer shall pay any amount owing by the Buyer under section 8.5 within 30 Business Days after the date of delivery of an invoice by the Seller to the Buyer. Any amounts owing by the Seller to the Buyer under this EPA will be netted against any amount owing by the Buyer to the Seller under section 8.5.

8.7 Exclusive Remedies - Subject to section 8.4, payment by the Buyer of the amount determined

under section 8.5 is the exclusive remedy to which the Seller is entitled, and the Buyer's limit of liability, for termination of this EPA by the Seller pursuant to any of subsections 8.3(e), (f) or (g). Subject to section 8.4, termination of this EPA is the exclusive remedy to which the Buyer or the Seller as the case may be is entitled if the Buyer or the Seller elects to exercise its right to terminate this EPA under any of section 8.1, subsection 8.3(a), (b), (c), or (d) or section 4 of Appendix 3 as applicable. For greater certainty, subject to section 8.4, the Seller shall not be required to pay any termination payment on termination by the Buyer of this EPA. Neither Party will have any right to terminate this EPA except as expressly set out herein.

9. REPRESENTATIONS AND WARRANTIES AND LIABILITY LIMITATIONS

9.1 Seller's Representations - The Seller represents and warrants to the Buyer, and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:

- (a) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms;
- (b) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Seller; and
- (c) **Application** - all information in the Application is true and correct in all material respects and there is no material information omitted from the Application that makes the information in the Application misleading or inaccurate in any material respect. The representations and warranties by the Seller in the Application are true and correct.

9.2 Buyer's Representations - The Buyer represents and warrants to the Seller, and acknowledges that the Seller is relying on those representations and warranties in entering into this EPA, as follows:

- (a) **Corporate Status** - The Buyer is a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c.212, is validly existing and is in good standing under the laws of British Columbia, is lawfully authorized to carry on business in British Columbia, and has full corporate power, capacity and authority to enter into and to perform its obligations under this EPA;
- (b) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms; and
- (c) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Buyer.

9.3 Limit of Liability - The Buyer's liability for damages for any failure to take or pay for Delivered Energy under this EPA is limited to the price payable by the Buyer for that Delivered Energy under Article 5 and any interest thereon calculated under this EPA less the amount of any revenue received by the Seller from any third Person for that Delivered Energy.

9.4 Consequential Damages - Neither Party shall be liable to the other Party for any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this EPA.

10. GENERAL PROVISIONS

10.1 Electric Service to the Seller - If at any time the Buyer makes electric service available to the Seller's Plant, then that service will be provided under and in accordance with the Buyer's electric tariff applicable at the relevant time, and not under this EPA.

10.2 Independence - The Parties are independent contractors, and nothing in this EPA or its performance creates a partnership, joint venture or agency relationship between the Parties.

10.3 Enurement - This EPA enures to the benefit of the Parties, their successors and their permitted assigns.

10.4 Entire Agreement - This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and Environmental Attributes and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof including, without limitation, the documents related to the Standing Offer Program and all questions and answers and any other communications of any kind whatsoever by the Buyer in connection therewith or relating thereto, except only those representations, warranties and covenants contained in the Application which shall remain in effect notwithstanding this EPA. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory between the Parties other than as expressly set out in this EPA, except only those representations, warranties and covenants contained in the Application which shall remain in effect notwithstanding this EPA.

10.5 Amendment - This EPA may not be amended except by an agreement in writing signed by both Parties.

10.6 No Waiver - Other than in respect of the specific matter or circumstance for which a waiver is given, and except as otherwise specified in this EPA, no failure by a Party to enforce, or require a strict observance and performance of, any of the terms of this EPA will constitute a waiver of those terms or affect or impair those terms or the right of a Party at any time to enforce those terms or to take advantage of any remedy that Party may have in respect of any other matter or circumstance.

10.7 Interconnection Agreements and Distribution and Transmission Authorities - Nothing in the Facilities Agreement or the Interconnection Agreement and no exercise of any right thereunder, restricts or otherwise affects any right, obligation or liability of either Party under this EPA, except to the extent set out expressly herein, and no notice, consent, approval or other communication or decision under or in relation to the Facilities Agreement or the Interconnection Agreement shall constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA. For the purposes of the interpretation and application of this EPA, the Distribution Authority and the Transmission Authority shall be treated in all instances as though they are entirely separate legal entities from the Buyer.

10.8 Commodity Contract/Forward Contract - The Parties agree and intend that this EPA constitutes an "eligible financial contract" under the *Bankruptcy and Insolvency Act* (Canada) and *Companies' Creditors Arrangement Act* (Canada) and that this EPA and the transactions contemplated under this EPA constitute a "forward contract" within the meaning of section 556 of the United States Bankruptcy Code and that the Parties are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.9 Further Assurances - Each Party shall, upon the reasonable request of the other Party, do, sign

or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this EPA including, in the case of the Seller, completing any registration process required in respect of Environmental Attributes as requested by the Buyer.

10.10 Severability - Any provision of this EPA which is illegal or unenforceable will be ineffective to the extent of the illegality or unenforceability without invalidating the remaining provisions of this EPA.

10.11 Statutory Powers - Nothing in this EPA shall be interpreted as prejudicing or impairing the Seller in the exercise of any statutory legislative powers under the *Local Government Act*, R.S.B.C. 1996, c. 323 or any other enactment, all of which may be exercised as if this EPA had not been executed.

10.12 Counterparts - This EPA may be executed in counterparts, each of which is deemed to be an original document and all of which are deemed one and the same document.

IN WITNESS WHEREOF each Party by its duly authorized representative(s) has signed this EPA effective as of the date set out on page one of this EPA.

For **REGIONAL DISTRICT OF NANAIMO**

Authorized Representative

Print Name and Office

Date

For **BRITISH COLUMBIA HYDRO AND POWER AUTHORITY:**

Authorized Representative

Print Name and Office

Date

APPENDIX 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

References in an Appendix to a section or subsection mean a section or subsection of the EPA, and not an Appendix, unless otherwise stated. The following words and expressions wherever used in this EPA have the following meaning:

- 1.1 “**Affiliate**” means, with respect to the Seller or any third party, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller or the third party, and with respect to the Buyer, any Person directly or indirectly Controlled by the Buyer and, if at any time the Buyer is not Controlled, directly or indirectly, by the Province of British Columbia, shall include any Person directly or indirectly Controlling, or under common Control, with the Buyer.
- 1.2 “**Application**” means the application and all supporting documents and information with respect to the Seller’s Plant filed by the Seller with the Buyer in the Standing Offer Program.
- 1.3 “**Assign**” or “**Assignment**” means to assign or dispose of this EPA or any direct or indirect interest in this EPA, in whole or in part, for all or part of the Term and, without limiting the foregoing, each of the following is deemed to be an Assignment of this EPA by the Seller:
- (a) any sale or other disposition of all or a substantial part of the Seller’s ownership interest in the Seller’s Plant, or of all or any interest of the Seller in this EPA or revenue derived from this EPA;
 - (b) any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s Plant or the Seller’s ownership interest therein; and
 - (c) any change of Control, merger, amalgamation or reorganization of the Seller.
- 1.4 “**Audit Parties**” has the meaning given in section 7.2.
- 1.5 “**Auxiliary Fuel**” means any combustible fuel other than Biogas.
- 1.6 “**Auxiliary Fuel Annual Baseline**” has the meaning given in Appendix 11.
- 1.7 “**Auxiliary Fuel Energy Overage**” has the meaning given in Appendix 11.
- 1.8 “**Auxiliary Fuel Overage**” has the meaning given in Appendix 11.
- 1.9 “**Auxiliary Fuel Overage Credit**” has the meaning given in Appendix 11.
- 1.10 “**Bankrupt or Insolvent**” means, with respect to a Person:
- (a) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or
 - (b) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law; or

- (c) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Person or the Person has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy; or
 - (d) the Person has voluntarily suspended the transaction of its usual business; or
 - (e) a court of competent jurisdiction has issued an order declaring the Person bankrupt or insolvent.
- 1.11 “**BCUC**” means the British Columbia Utilities Commission or any successor thereto.
- 1.12 “**Biogas**” means the gaseous products (primarily methane and carbon dioxide) produced from organic waste material.
- 1.13 “**Business Day**” means any calendar day which is not a Saturday, Sunday or British Columbia statutory holiday.
- 1.14 “**Buyer**” means British Columbia Hydro and Power Authority and its successors and permitted assigns, but for the purposes of the interpretation and application of this EPA it excludes the Distribution Authority and the Transmission Authority.
- 1.15 “**Buyer Confidential Information**” means technical or commercial information disclosed by the Buyer to the Seller that the Buyer directs, and clearly marks, as confidential, including this EPA whether or not so directed and marked, and any communications by the Buyer with any lawyer providing a Verification and all work product of the lawyer providing a Verification, but excluding information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Seller, or (ii) is known to the Seller before disclosure to it by the Buyer, or becomes known to the Seller, thereafter by way of disclosure to the Seller by any other person who is not under an obligation of confidentiality with respect thereto.
- 1.16 “**Clean Energy**” means Energy that qualifies as energy generated by a clean or renewable resource under British Columbia’s *Clean Energy Act*, SBC 2010, c.22, as amended from time to time.
- 1.17 “**COD**” or “**Commercial Operation Date**” means the date that is the later of:
- (a) 90 days prior to Target COD, unless the Buyer has consented to an earlier date pursuant to section 3.8; and
 - (b) the date on which all of the following conditions have been satisfied in respect of the Seller’s Plant:
 - (i) the Seller has obtained all Permits required for the construction, commissioning, and operation of the Seller’s Plant and all such Permits are in full force and effect;
 - (ii) the Seller is not: (A) Bankrupt or Insolvent; (B) in default of any payment obligation or requirement to post security under this EPA; (C) in material default of any of its other covenants, representations, warranties or obligations under this EPA; or (D) in material default under any Permit or Law applicable to the construction, commissioning or operation of the Seller’s Plant or under any land

tenure agreement for the site on which the Seller's Plant is located or under the Facilities Agreement or the Interconnection Agreement;

- (iii) Revenue Meters have been installed in accordance with section 3.6;
- (iv) the Seller has delivered to the Buyer:
 - (A) a Declaration of Compatibility-Generator (Operating), or such other document(s) of similar effect as may be substituted therefor, in respect of the Plant Capacity issued by the Distribution Authority/Transmission Authority to the Seller under the Interconnection Agreement,
 - (B) proof of registration by the Seller with Measurements Canada as an energy seller with respect to the Seller's Plant, and
 - (C) a COD Certificate;

and for purposes of this EPA, COD will be deemed to have occurred at 24:00 PPT on the later of the dates set out above.

- 1.18 "**COD Certificate**" means a certificate in the form attached as Appendix 5.
- 1.19 "**Control**" of any Person means:
 - (a) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares, or the equivalent, representing 50% or more of the power to vote in the election of directors, managers or persons performing similar functions;
 - (b) ownership of 50% or more of the equity or beneficial interest in that Person; or
 - (c) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
- 1.20 "**Control Centre**" means the Greater Nanaimo Pollution Control Centre located at 4600 Hammond Bay Road, Nanaimo, British Columbia.
- 1.21 "**Control Centre Load**" means the electrical energy consumed by the Control Centre.
- 1.22 "**Costs**" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by the Seller in entering into new arrangements which replace this EPA and legal fees, if any, incurred in connection with enforcing the Seller's rights under this EPA.
- 1.23 "**CPI**" means the British Columbia Consumer Price Index, All Items (Not Seasonally Adjusted) as published by Statistics Canada or any successor agency thereto, adjusted or replaced in accordance with subsection 2.9(c) of this Appendix.
- 1.24 "**Crown**" means Her Majesty in the Right of the Province of British Columbia or Her Majesty in Right of the Government of Canada.

- 1.25 “**Delivered Energy**” means in each month after COD the amount of Energy delivered by the Seller at the POI in that month as recorded by the Seller’s metering equipment described in section 3.6, or where that equipment is not functioning correctly, the duplicate revenue meter installed by the Buyer under section 3.6, if any.
- 1.26 “**Development Costs**” means all costs reasonably incurred or committed by the Seller after the Effective Date for the development of the Seller’s Plant and all costs reasonably incurred, or that are reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, to terminate all contractual commitments with respect to the development of the Seller’s Plant and to otherwise cease development of the Seller’s Plant, but excluding any lost profits, loss of opportunity costs or damages and all other special, incidental, indirect or consequential losses.
- 1.27 “**Development Report**” means a report in the form attached as Appendix 8, describing the progress of the financing, design, engineering, construction, Interconnection, and commissioning of the Seller’s Plant.
- 1.28 “**Dispatch/Turn-Down**” has the meaning given in subsection 4.8(a).
- 1.29 “**Distribution Authority**” means the Person or Persons who is or are responsible for the planning, asset management and operation of the Distribution System, in whole or in part, including an independent system operator.
- 1.30 “**Distribution System**” means the distribution, protection, control and communication facilities in British Columbia that are or may be used in connection with, or that otherwise relate to, the transmission of electrical energy at 35 kilovolts or less, and includes all additions and modifications thereto and repairs or replacements thereof.
- 1.31 “**Distribution/Transmission Constraint or Disconnection**” means any disconnection of the Seller’s Plant from the Distribution System or the Transmission System, as applicable, or any outage, suspension, constraint or curtailment in the operation of the Distribution System or the Transmission System preventing or limiting deliveries of Energy at the POI or any direction from the Distribution Authority or the Transmission Authority to reduce generation of the Seller’s Plant as a result of any outage, suspension, constraint or curtailment in the operation of the Transmission System or Distribution System.
- 1.32 “**EcoLogo^M Certification**” means certification pursuant to Environment Canada’s Environmental Choice^M program confirming that the Seller’s Plant and all or part of the Energy complies with the “Guideline on Renewable Low-Impact Electricity” as amended from time to time and is therefore entitled to the EcoLogo^M designation.
- 1.33 “**Effective Date**” means the date set out on page one hereof.
- 1.34. “**Energy**” means all electric energy expressed in MWh generated by the Seller’s Plant, excluding electricity required to service the Seller’s Plant.
- 1.35 “**Environmental Attributes**” means:
- (a) all attributes associated with, or that may be derived from, the Energy and/or the Seller’s Plant having decreased environmental impacts relative to certain other generation facilities or technologies including any existing or future credit, allowance, “green” tag.

ticket, certificate or other “green” marketing attribute or proprietary or contractual right, whether or not tradeable;

- (b) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions at any location other than the Seller’s Plant as a result of the generation, purchase or sale of the Energy;
- (c) On-Site Emission Reduction Rights; and
- (d) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing, but for certainty not including:
 - (i) benefits or proceeds from environmental incentive programs offered by Governmental Authorities that do not require a transfer of the attributes in (a) to (c) above; or
 - (ii) benefits or proceeds from social programs, including programs relating to northern or rural development, employment or skills training, or First Nations, that do not require a transfer of the attributes in subsections (a) to (c) above.

1.36 “**Environmental Certification**” means either or both of the following:

- (a) EcoLogo^M Certification; or
- (b) any alternate certification the Buyer requires the Seller to obtain under section 6.2.

1.37 “**ESA**” has the meaning given in Appendix 2.

1.38 “**Estimated Interconnection Facilities Completion Date**” means the most recent estimated date for completing the Interconnection Network Upgrades, as set forth in the Final Interconnection Study Report.

1.39 “**Facilities Agreement**” means the agreement between the Seller and the Distribution Authority which provides for the design and construction of the facilities that enable the flow of electric power from the Seller’s Plant to the Distribution System and the payments associated with the design and construction of such facilities, as amended or replaced from time to time.

1.40 “**Facility Lender**” means any lender(s) providing any debt financing or debt hedging facilities for the design, engineering, construction and/or operation of the Seller’s Plant and any successors or assigns thereto and any Person taking any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s Plant.

1.41 “**Final Amount**” means an amount owing by either Party to the other Party under this EPA, including as a result of a breach of this EPA, where such amount is: (a) undisputed by the Party owing such amount; or (b) has been finally determined by an arbitration award under section 7.5 or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.

- 1.42 “**Final Interconnection Study Report**” means the final report issued to the Seller by the Distribution Authority in respect of the interconnection of the Seller’s Plant, consisting of a project interconnection requirements study dated November 19, 2010.
- 1.43 “**First Nations**” has the meaning given in subsection 3.11.1.
- 1.44 “**Force Majeure**” means any event or circumstance not within the control of the Party, or any of its Affiliates, claiming Force Majeure, but does not include:
- (a) any economic hardship or lack of money, credit or markets;
 - (b) an event or circumstance that is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws;
 - (c) a mechanical breakdown or control system hardware or software failure, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the breakdown or failure was caused by a latent defect in the design or manufacture of the equipment, hardware or software, which could not reasonably have been identified by normal inspection or testing of the equipment, hardware or software;
 - (d) an event or circumstance caused by a breach of, or default under, this EPA or a wilful or negligent act or omission by the Party seeking to invoke Force Majeure;
 - (e) any Distribution/Transmission Constraint or Disconnection; or
 - (f) any acts or omissions of: (i) any Affiliate, employee, director, officer, agent or other representative of the Party invoking Force Majeure; (ii) any vendor, supplier, contractor, subcontractor, consultant or customer of or to the Party invoking Force Majeure; or (iii) any other Person for whom the Party invoking Force Majeure is responsible at law, unless the act or omission is caused by an event or circumstance that would constitute Force Majeure if the person described above was a party to this EPA in place of a Party invoking Force Majeure.
- 1.45 “**Fuel**” has the meaning given in Appendix 11
- 1.46 “**Gains**” means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 8.5.
- 1.47 “**Good Utility Practice**” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the Western Electricity Coordinating Council region.
- 1.48 “**Governmental Authority**” means any federal, provincial, local or foreign government or any of their boards or agencies, or any regulatory authority other than the Buyer and the Seller and entities controlled by the Buyer or the Seller.

- 1.49 “**HST**” means harmonized sales tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) as that Act may be amended or replaced from time to time.
- 1.50 “**Interconnection**” means the facilities and procedures that enable the flow of electric power from the Seller’s Plant to the Transmission System or the Distribution System and vice versa.
- 1.51 “**Interconnection Agreement**” means the agreement between the Seller and the Distribution Authority or the Transmission Authority, as applicable, which enables the flow of electric power from the Seller’s Plant to the Distribution System or the Transmission System, as applicable, and vice versa, as amended or replaced from time to time.
- 1.52 “**Interconnection Network Upgrades**” has the meaning given in Appendix 3.
- 1.53 “**Laws**” means any and all statutes, laws (including common law), ordinances, rules, regulations, codes, orders, bylaws, policies, directions, standards, guidelines, protocols and other lawful requirements of any Governmental Authority in effect from time to time.
- 1.54 “**Lender Consent Agreement**” means a lender consent agreement in the form attached as Appendix 7.
- 1.55 “**Losses**” means an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 8.5.
- 1.56 “**Major Damage**” means damage to the Seller’s Plant caused by Force Majeure where the cost to repair the damage exceeds the net present value (using the Present Value Rate) of the expected revenues under the EPA for the remainder of the Term less the net present value (using the Present Value Rate) of the estimated operating and maintenance costs for the Seller’s Plant for the remainder of the Term.
- 1.57 “**MW**” means megawatt.
- 1.58 “**MWh**” means megawatt-hour.
- 1.59 “**Network Upgrades**” has the meaning given in Appendix 3.
- 1.60 “**Network Upgrade Costs**” has the meaning given in Appendix 3.
- 1.61 “**Network Upgrade Security**” has the meaning given in Appendix 3.
- 1.62 “**On-Site Emission Reduction Rights**” means any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever whether or not tradeable resulting from or otherwise related to the reduction, removal, or sequestration of emissions at or from the Seller’s Plant.
- 1.63 “**Order or Decision**” has the meaning given in subsection 3.11.1.
- 1.64 “**Party**” means: (a) the Buyer and its successors and permitted assigns; or (b) the Seller and its successors and permitted assigns, and “**Parties**” means both the Buyer and the Seller and their respective successors and permitted assigns, provided that the Distribution Authority and the

Transmission Authority shall be deemed not to be a "Party", whether or not owned or operated by the Buyer.

- 1.65 "Permits" means permits, certificates, licences, and other approvals required for the design, construction, ownership, operation, maintenance and decommissioning of the Seller's Plant and the delivery of Energy to the POI.
- 1.66 "Person" means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
- 1.67 "Planned Outage" means an outage for purposes of scheduled inspections, repair and/or maintenance in the Seller's Plant.
- 1.68 "Plant Capacity" means the electrical capacity of the Seller's Plant as set out in Appendix 2.
- 1.69 "POI" or "Point of Interconnection" means the point at which the Seller's Plant interconnects with the Distribution System or the Transmission System, as applicable, as described in Appendix 2.
- 1.70 "PPT" means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
- 1.71 "Present Value Rate" means the annual yield on a Government of Canada bond having a term and maturity date that most closely matches the remaining Term (as at the date of the applicable calculation) and expiry date of the EPA, plus 3%.
- 1.72 "Prime Rate" means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, or any successor thereto, expressed as an annual rate, as the reference rate it will use to determine rates of interest payable on Canadian dollar commercial loans made in Canada.
- 1.73 "Project" means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller's Plant.
- 1.74 "Project Standards" means:
- (a) all applicable Laws;
 - (b) the terms and conditions of all Permits, including land tenure agreements, issued in connection with the Seller's Plant;
 - (c) Good Utility Practice;
 - (d) the description of the Seller's Plant in Appendix 2;
 - (e) the requirement that Energy, excluding Energy generated from Auxiliary Fuel, must qualify as Clean Energy;
 - (e) the requirement that Auxiliary Fuel, excluding Start-up Fuel as determined in GJs used in any year must not exceed the Auxiliary Fuel Annual Baseline for that month

- (f) the terms and conditions of this EPA, the Facilities Agreement and the Interconnection Agreement; and
- (g) the Code of Conduct Guidelines Applicable to the Buyer Contracts attached as Appendix 10.

1.75 **“Records”** means all records and logs required to properly administer this EPA, including:

- (a) Energy generation records and operating logs;
- (b) a log of all outages of the Seller’s Plant and other reductions in Energy output (specifying the date, time, duration and reasons for each such outage and each reduction in Energy output);
- (c) meter readings;
- (d) maintenance reports;
- (e) invoice support records;
- (f) documents concerning compliance with Permits and applicable Laws, but excluding any such documents that are protected by solicitor-client privilege;
- (g) records related to Development Costs;
- (h) all information the Buyer requires to verify qualification of the output from the Seller’s Plant as Clean Energy;
- (i) records of the total Energy in each year from each of Auxiliary Fuel, Start-up Fuel and Biogas, and records of any Auxiliary Fuel Overage, Auxiliary Fuel Energy Overage and Auxiliary Fuel Energy Overage Credit in any year; and
- (j) information relating to the Environmental Certification, information relating to the existence, nature and quality of Environmental Attributes, information required for the purposes of any Environmental Attributes or energy certification or tracking system, and any other information the Buyer requires to enable it or any of its Affiliates to obtain and realize the benefit of the Environmental Attributes,

all consistent with Good Utility Practice.

1.76 **“Revenue Meter”** means a revenue meter leased by the Buyer to the Seller that is: (a) capable of being remotely interrogated; and (b) calibrated to measure on an hourly basis the quantity of Energy delivered by the Seller to the POI after adjusting for any line losses associated with the transmission of Energy from the Seller’s Plant to the POI.

1.77 **“Seller”** means the Party so identified on page one of this EPA, and its successors and permitted assigns.

1.78 **“Seller Confidential Information”** means any of the Seller’s confidential technical or financial information provided by the Seller to the Buyer in confidence with express written notice to the Buyer of the confidential nature of the information and any communications by the Seller with

any lawyer providing a Verification and all work product of the lawyer providing the Verification, but excluding:

- (a) this EPA; and
 - (b) information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Buyer, or (ii) is known to the Buyer before disclosure to it by the Seller, or becomes known to the Buyer thereafter by way of disclosure to the Buyer by any other Person who is not under an obligation of confidentiality with respect thereto.
- 1.79 “**Seller’s Plant**” means the Seller’s plant described in Appendix 2 and all rights, property, facilities, assets, equipment, materials, Permits and contracts required to design, engineer, procure, construct, commission, operate and maintain the plant described in Appendix 2 and to interconnect that plant to the Distribution System or the Transmission System, as applicable, whether real or personal and whether tangible or intangible including all land tenure and all books, records and accounts with respect to the Seller’s plant described in Appendix 2.
- 1.80 “**Standing Offer Confidentiality and Compliance Agreement**” means the confidentiality and compliance agreement, a copy of which is attached as Appendix 9 to this EPA.
- 1.81 “**Standing Offer Program**” means the Buyer’s power procurement program described as the Standing Offer Program.
- 1.82 “**Target COD**” means the first day of the month immediately following the month in which the Effective Date occurred, as revised pursuant to section 3.9.
- 1.83 “**Term**” has the meaning given in Article 2.
- 1.84 “**Transmission Authority**” means such Person or division of a Person, which for greater certainty may be a division of the Buyer, that carries out the interconnection and grid operation functions that British Columbia Transmission Corporation carried out prior to July 5, 2010.
- 1.85 “**Transmission System**” means the transmission, substation, protection, control and communication facilities: (a) owned by the Buyer or by the Transmission Authority; and (b) operated by the Transmission Authority in British Columbia, and includes all additions and modifications thereto and repairs or replacements thereof.
- 1.86 “**UCA**” means the *Utilities Commission Act* (British Columbia).
- 1.87 “**Verification**” has the meaning given in subsection 3.11.1.

2. INTERPRETATION

2.1 **Headings** - The division of this EPA into Articles, sections, subsections, paragraphs and Appendices and the insertion of headings are for convenience of reference only and do not affect the interpretation of this EPA.

2.2 **Plurality and Gender** - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.

2.3 **Governing Law** - This EPA is made under, and will be interpreted in accordance with, the laws of the Province of British Columbia. Subject to section 7.5, any suit, action or proceeding (a "Proceeding") arising out of or relating to this EPA may be brought in the courts of the Province of British Columbia at Vancouver, and those courts have non-exclusive jurisdiction in respect of any Proceeding and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.

2.4 **Industry Terms** - Technical or industry specific phrases or words not otherwise defined in this EPA have the well known meaning given to those terms as of the date of this EPA in the industry or trade in which they are applied or used.

2.5 **Statutory References** - Reference to a statute means, unless otherwise stated, the statute and regulations, if any, under that statute, in force from time to time, and any statute or regulation passed and in force which has the effect of supplementing or superseding that statute or those regulations.

2.6 **Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.

2.7 **Reference Indices** - If any index, tariff or price quotation referred to in this EPA ceases to be published, or if the basis therefor is changed materially, there will be substituted an available replacement index, tariff or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index, tariff or quotation that has so ceased or changed. This EPA shall be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by written agreement between the Parties, or failing agreement, by arbitration under section 7.5.

2.8 **Conversions** - If a value used in a calculation in this EPA must be converted to another unit of measurement for purposes of consistency or to achieve a meaningful answer, the value will be converted to that different unit for purposes of the calculation.

2.9 **Payment Calculations** - All payments under this EPA will be calculated applying the following principles:

- (a) all payment calculations will be rounded to the nearest cent;
- (b) Energy will be expressed in MWh rounded to two decimal places; and
- (c) if Statistics Canada (or the then recognized statistical branch of the Canadian Government):
 - (i) computes, at any time after the Effective Date, the CPI on a basis different to that employed at the Effective Date, then the CPI will be converted using the appropriate formula recommended by Statistics Canada (or the then recognized statistical branch of the Canadian Government);
 - (ii) at any time ceases to publish or provide the CPI, then the provisions of section 2.7 of Appendix 1 will apply;
 - (iii) has not published the CPI for a relevant period at the time the Seller is required to provide the Buyer with an invoice, the Seller shall prepare the invoice based on the CPI in effect at the time the invoice is issued and when the CPI for the relevant period is published, the Seller shall recalculate the invoice amounts in

the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or

- (iv) recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then the Seller shall recalculate the invoice amounts for the relevant period in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

2.10 **Additional Interpretive Rules** - For the purposes of this EPA, except as otherwise expressly stated:

- (a) “this EPA” means this EPA as it may from time to time be supplemented or amended and in effect, and includes the Appendices attached to this EPA;
- (b) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this EPA as a whole and not to any particular section, subsection or other subdivision;
- (c) the word “including” or “includes” is not limiting whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto;
- (d) the words “year” and “month” refer to a calendar year and a calendar month;
- (e) any consent, approval or waiver contemplated by this EPA must be in writing and signed by the Party against whom its enforcement is sought, and may be given, withheld or conditioned in the unfettered discretion of the Party of whom it is requested, unless otherwise expressly stated;
- (f) all rights and remedies of either Party under this EPA are cumulative and not exclusive of any other remedies to which either Party may be lawfully entitled, and either Party may pursue any and all of its remedies concurrently, consecutively and alternatively; and
- (g) any notice required to be given, or other thing required to be done, under this EPA on or before a day that is not a Business Day, shall be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

3. ADDRESSES FOR NOTICES

3.1 **Notices to Buyer**— Except as noted below, all notices addressed to the Buyer shall be delivered to the following address:

Commercial & Portfolio Management, Energy Procurement
333 Dunsmuir Street, 10th floor
Vancouver, B.C.
V6B 5R3
Attention: Manager, Commercial & Portfolio Management
Email: IPP.Contract@bchydro.com

Invoices and Statements

To: IPP Invoicing
333 Dunsmuir Street, 9th floor
Vancouver, B.C.
V6B 5R3
Attention: IPP Invoicing
Email: IPP.Invoicing@bhydro.com

Insurance and Network Upgrade Security

To: Commercial & Portfolio Management, Energy Procurement
333 Dunsmuir Street, 10th floor
Vancouver, B.C.
V6B 5R3
Attention: Manager, Commercial & Portfolio Management
Email: IPP.Contract@bhydro.com

3.2 **Notices to Seller** - All notices addressed to the Seller shall be delivered to the following address:

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, B.C.
V9T 6N2
Attention: Sean De Pol, Manager Liquid Waste
Fax: 250-390-1542
Email: sdepol@rdn.bc.ca

APPENDIX 2

SELLER'S PLANT DESCRIPTION

1. Location: Nanaimo, British Columbia, 49°13'56.49N latitude, 123°58'23.457 W longitude, Lot 1, District Lot 51, Wellington District, Plan 26263
2. Fuel: 97% biogas, 3% natural gas.
3. Point of Interconnection: The POI is on feeder 25F114LTZ located 9km east of Lantzville substation at the secondary side (600V cable) of PMT 1357.
4. Final Interconnection Study Report: The data and assumptions set forth in the Final Interconnection Study Report.
5. Plant Capacity: 0.33 MW
6. ESA: Electric Service Agreement between BC Hydro and Regional District of Nanaimo for the Control Centre that has been stamp dated "completed" by the Buyer on April 3, 1987
7. General Description:

The Seller's Plant will utilize Biogas generated as a result of the digestion of biomass and organic waste to produce electrical power using one generator. The specifications for the generator follow:

Manufacturer: STAMFORD

Model: HCI 534D

Rating: 1 x 0.415 MVA, 3-phase, 0.6 kV, pf 0.8 (lag and lead) synchronous type

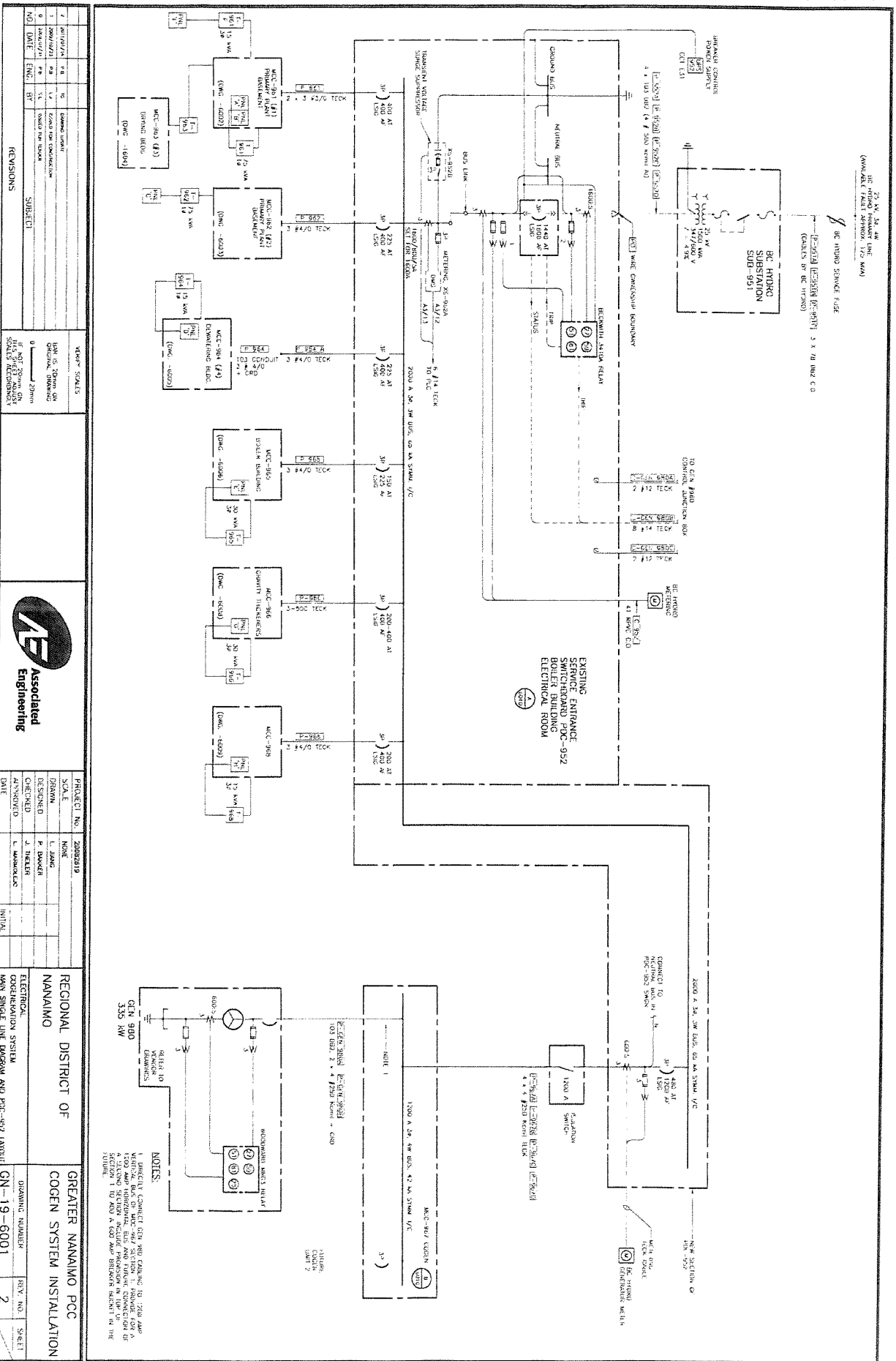
The Biogas is first treated in a gas conditioning system to remove contaminants and then sent to the cogeneration system for use. The cogeneration system is manufactured by GE Jenbacher, and is a self-containerized internal combustion reciprocating engine driving an electrical generator. The cogeneration system will start up on natural gas for a short period before blending over to full Biogas consumption for continuous operation. During normal operation, the cogeneration operation will generally follow the trend of the amount of Biogas available. As Biogas is produced from a biological process, some variations in gas volume is expected.

Attached as Schedule 1 to Appendix 2 is a single line diagram of the Seller's Plant.

Schedule 1 to Appendix 2

Single Line Drawing

Please see attached.



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NOTES:
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 SECTION 1 TO AND A 200 AMP BREAKER IN THE
 INFLUENCE.



PROJECT NO: 20082819
 SCALE: NONE
 DRAWN: L. JAMES
 DESIGNED: P. DAVIES
 CHECKED: J. HEDDERLEY
 APPROVED: L. WILSON
 DATE: 2/20/10

REGIONAL DISTRICT OF NANAIMO
 GREATER NANAIMO PCC COGEN SYSTEM INSTALLATION

ELECTRICAL COORDINATION SYSTEM
 MAIN SINGLE LINE DRAWING AND PCC-992 TANKS
 DRAWING NUMBER: CN-19-6001
 REV. NO: 2
 SHEET: 1

APPENDIX 3

NETWORK UPGRADES

1. Definitions

In this Appendix 3 or elsewhere in the EPA, the following words and expressions have the following meanings:

- (a) **“Base Case”** means the base power flow, short circuit and stability data models used for the most recent dated interconnection study prior to the Effective Date.
- (b) **“Interconnection Network Upgrades”** means additions, modifications and upgrades to the Transmission System or Distribution System that are determined by the Transmission Authority (as to the Transmission System) or the Distribution Authority (as to the Distribution System) to be interconnection network upgrades under the applicable policies of the Distribution Authority or under the Transmission Authority’s OATT in effect from time to time.
- (c) **“Interconnection Network Upgrade Costs”** means all costs incurred by the Transmission Authority and/or the Distribution Authority after the Effective Date for the design, engineering, procurement, construction, installation and commissioning of Interconnection Network Upgrades.
- (d) **“Letter of Credit Failure”** means:
 - (i) a failure to renew or replace the Network Upgrade Security by no later than 30 days prior to the expiry thereof; or
 - (ii) the Seller fails to amend or replace the Network Upgrade Security as required under subsection 3(d) of this Appendix by no later than the date specified in that subsection; or
 - (ii) the issuer of the Network Upgrade Security fails to maintain a credit rating of at least the minimum rating specified in this Appendix; or
 - (iii) the issuer of the Network Upgrade Security fails to comply with or perform its obligations under the Network Upgrade Security; or
 - (iv) the issuer of the Network Upgrade Security disaffirms, disclaims, repudiates, terminates, rejects, in whole or in part, or challenges the validity of, the Network Upgrade Security; or
 - (v) the Network Upgrade Security fails or ceases to be in full force and effect for purposes of this EPA (whether or not in accordance with its terms) prior to the date specified in this Appendix for return of the Network Upgrade Security to the Seller.
- (e) **“OATT”** means the Transmission Authority’s Open Access Transmission Tariff, as filed with and accepted by the BCUC, as amended and refiled from time to time.

- (f) “**Network Upgrades**” means both Interconnection Network Upgrades and Transmission Network Upgrades.
- (g) “**Network Upgrade Threshold**” means \$49,500.
- (h) “**Network Upgrade Costs**” means all Interconnection Network Upgrade Costs and Transmission Network Upgrade Costs.
- (i) “**Network Upgrade Security**” means a letter of credit in an amount described in subsection 3(d) of this Appendix that:
 - (A) is in the form of the Network Upgrade Security set out in Appendix 6, with such modifications as approved by the Buyer in writing.
 - (B) is issued by a Canadian bank or financial institution with a long-term credit rating not less than Standard & Poor’s A-, Moody’s A3, or Dominion Bond Rating Service A (low) (or other financial institution as approved by the Buyer in writing).
 - (C) is available for presentation in Vancouver, British Columbia, and
 - (D) has a term of not less than one year and provides that it is renewed automatically, unless the issuing financial institution advises otherwise by the date specified in Appendix 6.
- (j) “**Transmission Network Upgrades**” means additions, modifications and upgrades to the Transmission System or Distribution System that are determined by the Transmission Authority (as to the Transmission System) or the Distribution Authority (as to the Distribution System) to be transmission network upgrades under the applicable policies of the Distribution Authority or under the Transmission Authority’s OATT in effect from time to time.
- (k) “**Transmission Network Upgrade Costs**” means all costs incurred by the Transmission Authority and/or the Distribution Authority after the Effective Date for the design, engineering, procurement, construction, installation and commissioning of Transmission Network Upgrades.

2. Network Upgrades

- (a) **Buyer’s Obligation** - Except as otherwise set out in this EPA, the Buyer shall pay (i) all Interconnection Network Upgrade Costs up to an amount not exceeding the Network Upgrade Threshold; and (ii) all Interconnection Network Upgrade Costs in excess of the Network Upgrade Threshold to the extent those costs are solely attributable to, and would not have been incurred but for, a change in the Base Case after the Effective Date, and where the change in the Base Case is not attributable, directly or indirectly, in whole or in part to the Seller or the Seller’s Plant; and (iii) all Transmission Network Upgrade Costs.
- (b) **Seller’s Obligation** - The Seller shall pay all Interconnection Network Upgrade Costs in excess of the Network Upgrade Threshold, except for those costs for which the Buyer is responsible pursuant to subsection 2(a) of this Appendix. The Seller shall pay any

Interconnection Network Upgrade Costs for which the Seller is responsible under this Appendix within 15 days after receipt of an invoice for such costs from the Buyer.

- (c) **Payment on Termination** – If this EPA is terminated by the Buyer under any section of this EPA on or before the date that is 90 days after COD or by the Seller under subsection 8.3(a), (c) or (d) on or before COD, the Seller shall within 15 days after receipt of an invoice from the Buyer reimburse the Buyer for: (i) all Interconnection Network Upgrade Costs incurred by the Buyer, or which the Buyer has become contractually obligated to pay, prior to the termination of the EPA including, for greater certainty, Interconnection Network Upgrade Costs the Buyer would otherwise be responsible for under subsection 2(a) of this Appendix; (ii) any incremental Interconnection Network Upgrade Cost liability the Buyer will incur as a result of the termination of the EPA up to a maximum amount not exceeding the required amount of the Network Upgrade Security; and (iii) any Network Upgrade Costs the Seller is responsible for under any reimbursement agreement pursuant to section 3.3 of this EPA or section 7 of this Appendix.

3. Network Upgrade Security

The following terms and conditions apply to the Network Upgrade Security:

- (a) The Seller shall deliver the Network Upgrade Security to the Buyer after receipt by the Seller of the Final Interconnection Study Report and prior to entering into the Facilities Agreement with the Distribution Authority.
- (b) The Buyer shall return the Network Upgrade Security, less the amount of any draws on the Network Upgrade Security the Buyer is entitled to make under this EPA, within 10 Business Days after the date that is 90 days after COD.
- (c) The Buyer may draw on the Network Upgrade Security in an amount equal to the amount of any Interconnection Network Upgrade Costs or liabilities the Seller has failed to pay to the Buyer under section 2 of this Appendix and for any Network Upgrade Costs the Seller is responsible for under any reimbursement agreement pursuant to section 3.3 of this EPA or section 7 of this Appendix. The Seller shall within 5 Business Days after any such draw, replenish the amount of the Network Upgrade Security to comply with the requirements of subsection 3(d) of this Appendix.
- (d) The required amount of the Network Upgrade Security from time to time shall be equal to the full amount of the Interconnection Network Upgrade Costs estimated from time to time by the Distribution Authority and the Transmission Authority less the amount of any Interconnection Network Upgrade Costs previously paid by the Seller under section 2 of this Appendix and the Seller shall increase the amount of the Network Upgrade Security as necessary to comply with this section within 5 Business Days after delivery to the Seller of a revised estimate of the Interconnection Network Upgrade Costs prepared by the Distribution Authority or the Transmission Authority. The Seller acknowledges that the Buyer may request a revised Interconnection Network Upgrade Cost estimate from the Transmission Authority or the Distribution Authority at any time.
- (e) The Seller shall notify the Buyer of any Letter of Credit Failure forthwith. If a Letter of Credit Failure occurs, the Seller shall deliver replacement Network Upgrade Security in

the amount and form required under this EPA within 5 Business Days after the Letter of Credit Failure occurred.

- (f) The Buyer may draw on the Network Upgrade Security if a Letter of Credit Failure occurs. The Buyer may hold the proceeds of such draw until the Seller delivers replacement Network Upgrade Security in the required form and amount.
- (g) If the Seller has failed to maintain the Network Upgrade Security at the level required hereunder, subject to any cure period specified in this Appendix, the Buyer may withhold payment of any amount owing by the Buyer to the Seller under this EPA until 5 days after the date when the Seller has delivered the required amount of Network Upgrade Security to the Buyer. Any amounts withheld by the Buyer in accordance with this subsection will not bear interest.

4. EPA Termination

In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA, the Buyer may terminate this EPA by notice to the Seller if:

- (a) the Seller has failed to deliver the Network Upgrade Security to the Buyer as required under subsection 3(a) of this Appendix within 5 Business Days after notice from the Buyer; or
- (b) the Seller has failed to replenish or increase the amount of the Network Upgrade Security as required under subsection 3(c) or subsection 3(d) of this Appendix; or
- (c) if a Letter of Credit Failure has occurred and the Seller has failed to deliver a replacement Network Upgrade Security within 5 Business Days after the Letter of Credit Failure occurred.

5. Consent to Disclosure of Information

The Seller hereby consents to the Distribution Authority and the Transmission Authority disclosing to the Buyer on request:

- (a) all information with respect to Network Upgrades, including any information provided by the Seller to the Transmission Authority or the Distribution Authority that relates to, or affects, Network Upgrades, including any Interconnection applications, studies and reports and all information, data and calculations relating to such applications, studies and reports;
- (b) all metering data collected by, or provided to, the Transmission Authority or the Distribution Authority with respect to the Seller's Plant;
- (c) copies of any notice of a breach of, or default under, the Facilities Agreement or the Interconnection Agreement given or received by the Transmission Authority or Distribution Authority, as applicable; and
- (d) any other information provided by the Seller to the Transmission Authority or the Distribution Authority or vice versa that is relevant to the administration of this EPA.

6. Requirement to Provide Interconnection Studies

The Seller shall provide to the Buyer a copy of all interconnection studies completed by the Transmission Authority or the Distribution Authority with respect to the Interconnection of the Seller's Plant to the Transmission System or the Distribution System, as applicable, promptly on receipt by the Seller of any such reports. The Seller shall comply with the requirements of subsection 3(d) of this Appendix based on the estimated Interconnection Network Upgrade Costs as set out in each such report.

7. Advancement of Network Upgrades

The Seller shall not request the Distribution Authority or Transmission Authority to complete any study or work or take any other step of any kind whatsoever that would change the position of the Seller's Plant in the interconnection queue or otherwise affect the validity of any interconnection study for the Seller's Plant without the prior consent of the Buyer. The Seller acknowledges that the Buyer may as a condition of its consent require that the Seller agree to reimburse the Buyer for any incremental liability for Network Upgrade Costs with respect to the Seller's Plant or any other project incurred by the Buyer as a result of such study, work or other step and that the Seller provide security to the Buyer to secure such reimbursement obligation.

APPENDIX 4

DELIVERY TIME ADJUSTMENT TABLE

1. **Definitions:** In this Appendix 4, the following words and expressions have the following meanings:

- (a) **“Off-Peak Hours”** means all hours other than Super-Peak Hours and Peak Hours.
- (b) **“Peak Hours”** means the hours commencing at 06:00 PPT and ending at 16:00 PPT, and commencing at 20:00 PPT and ending at 22:00 PPT, Monday through Saturday inclusive, but excluding British Columbia statutory holidays.
- (c) **“Super-Peak Hours”** means the hours commencing at 16:00 PPT and ending at 20:00 PPT Monday through Saturday inclusive, but excluding British Columbia statutory holidays.

| Month | Time of Delivery Factor (TDF) | | |
|-----------|-------------------------------|------|----------|
| | Super-Peak | Peak | Off-Peak |
| January | 141% | 122% | 105% |
| February | 124% | 113% | 101% |
| March | 124% | 112% | 99% |
| April | 104% | 95% | 85% |
| May | 90% | 82% | 70% |
| June | 87% | 81% | 69% |
| July | 105% | 96% | 79% |
| August | 110% | 101% | 86% |
| September | 116% | 107% | 91% |
| October | 127% | 112% | 93% |
| November | 129% | 112% | 99% |
| December | 142% | 120% | 104% |

APPENDIX 5

COD CERTIFICATE

_____ PROJECT

TO: British Columbia Hydro and Power Authority (the "Buyer")

RE: Electricity Purchase Agreement ("EPA") made as of ●, 20__ between the Buyer and ● (the "Seller") for _____ Project

I, [name of senior officer], in my capacity as [title of senior officer] of the Seller, and not in my personal capacity, certify on behalf of the Seller that:

1. **Defined Terms** - Words and phrases having initial capitalized letters in this Certificate have the meanings given in the EPA.
2. **COD Requirements** - The Seller has satisfied the requirements for COD as set out in the definition of "COD" in Appendix 1 of the EPA. Attached to this Certificate is all evidence required to demonstrate that the Seller has satisfied all such requirements.
3. **No Material Default** - No event which would entitle the Buyer to terminate the EPA has occurred. The Seller is not in material default under any Permit (and all Permits are in full force and effect), or Law applicable to the construction, commissioning or operation of the Seller's Plant or under any land tenure agreement for the site on which the Seller's Plant is located or under the Facilities Agreement or the Interconnection Agreement.

Dated this ____ day of _____, 2_____.

[name of senior officer]

[title of senior officer]

[Note to Seller: Attach to the COD Certificate in tabbed format all documents and evidence required to demonstrate that COD has occurred in accordance with the definition of "COD" in Appendix 1. Where documents have previously been provided to the Buyer, so indicate and attach a copy of the letter transmitting such documents to the Buyer.]

APPENDIX 6

SAMPLE FORM LETTER OF CREDIT

[Issuing Bank Name and Address]

Date of Issue: [Date]

Irrevocable Standby Letter of Credit

No. [Number]

Applicant:

Beneficiary:

[Seller Name and Address]

British Columbia Hydro and Power Authority
333 Dunsmuir Street
Vancouver, BC
V6B 5R3

At the request of and for the account of the Applicant, we hereby establish in favour of the Beneficiary our irrevocable standby Letter Of Credit No. [Number] (hereinafter called the “**Letter of Credit**”) for an amount not exceeding [Currency and Amount both in letters and numbers].

We, [Issuing Bank Name and Address] hereby unconditionally and irrevocably undertake and bind ourselves, and our successors and assigns, to pay you immediately, the sum, which you claim upon receipt of the following documents:

- (1) your signed written demand specifying the amount claimed (not exceeding [dollar amount]), and certifying that such amount is due to you by [Insert name of Seller] under the terms of an Electricity Purchase Agreement between you and [Insert name of Seller]; and
- (2) this original Network Upgrade Security - Letter of Credit must be presented with your demand for payment for endorsement purposes.

Partial drawings are allowed. The amount of this Network Upgrade Security - Letter of Credit shall be automatically reduced by the amount of any drawing paid hereunder.

This Network Upgrade Security - Letter of Credit takes effect from the date of issue set forth above, and shall remain valid until [Date]. However, it is a condition of this Network Upgrade Security - Letter of Credit that it will be automatically extended without notice for a further one year period from the present or any future expiry date unless at least ninety (90) days prior to such expiry date we notify you in writing by courier or registered mail at your address above that we elect not to consider this Network Upgrade Security - Letter of Credit to be extended for any additional period.

This Network Upgrade Security - Letter of Credit is subject to the International Standby Practices 1998 (“ISP98”). All matters not covered by ISP98 will be governed by the laws applicable in the Province of British Columbia. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of British Columbia. The number of this Letter of Credit must be quoted on all documents required hereby.

Authorized Signing Officer
[*Bank Name*]

Authorized Signing Officer
[*Bank Name*]

APPENDIX 7

SAMPLE FORM LENDER CONSENT AGREEMENT

(See section 7.4(c))

THIS AGREEMENT is made as of _____, 20_____

AMONG:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212, having its head office at 333 Dunsmuir Street, Vancouver, British Columbia, V6B 5R3,

(the "Buyer")

AND:

[COMPANY], a company under the laws of _____ having an address at _____.

(the "Company")

AND:

[LENDER], a _____ under the laws of _____ having an address at _____.

(the "Lender").

WHEREAS:

- A. The Buyer and the Company entered into an Electricity Purchase Agreement made as of _____ (as amended from time to time, the "EPA");
- B. The Company has obtained certain credit facilities (the "Credit") from the Lender for the purposes of financing the design, construction, operation and maintenance of the Seller's Plant (as defined in the EPA);
- C. To secure the due payment of all principal, interest (including interest on overdue interest), premium (if any) and other amounts payable in respect of the Credit and the due performance of all other obligations of the Company under the Credit, the Company has granted certain security to and in favour of the Lender, including an assignment of the right, title and interest of the Company under the EPA and security on the Seller's Plant (collectively, the "Lender Security"); and
- D. The Lender has requested the Buyer to enter into this Agreement confirming certain matters.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$10 and other good and valuable consideration now paid by each of the Company and the Lender

to the Buyer (the receipt and sufficiency of which are hereby acknowledged by the Buyer), the parties covenant and agree that:

1. **Additional Definitions:** In this Agreement, including the recitals:
 - (a) “**Assumption Notice**” means a notice given by the Lender to the Buyer pursuant to subsection 6.1(a) of this Agreement;
 - (b) “**Default or Termination Notice**” means a notice given to the Company by the Buyer under the EPA that, with or without the lapse of time, entitles, or shall entitle, the Buyer to terminate the EPA, subject to rights, if any, of the Company to cure the default or other circumstance in respect of which the notice is given;
 - (c) “**Receiver**” means a receiver, manager or receiver-manager appointed or designated by, or on the initiative of, the Lender; and
 - (d) words and phrases defined in the EPA, and not otherwise defined herein, when used herein have the meanings given in the EPA.

2. **EPA Amendments:** The Buyer and the Company acknowledge and agree that the EPA is in full force and effect, and that the EPA, as originally executed, has been amended only by the documents attached hereto as Schedule A.

3. **Buyer Confirmations Concerning the EPA:** The Buyer confirms to the Lender that:
 - (a) the EPA has been duly authorized, executed and delivered by the Buyer;
 - (b) the Buyer has not received any notice of assignment by the Company of all or any part of their right, title and interest in and to the EPA, except to the Lender;
 - (c) the Buyer has not given any Default or Termination Notice;
 - (d) the Buyer is not aware of any default or other circumstance that would entitle the Buyer to give a Default or Termination Notice, provided however that the Buyer has not undertaken any investigation or due diligence in respect of this confirmation; and
 - (e) the Buyer shall not enter into any agreement with the Company to materially amend the EPA, or enter into any agreement with the Company to terminate the EPA, without giving the Lender not less than 30 days’ prior written notice.

4. **Assignment of EPA to Lender:**
 - 4.1 *Buyer Acknowledgement:* The Buyer acknowledges receipt of notice of, and consents to, the assignment by the Company to the Lender of all the right, title and interest of the Company in and to the EPA made pursuant to and in accordance with the Lender Security.
 - 4.2 *Lender Acknowledgement:* The Lender acknowledges that:
 - (a) it has received a copy of the EPA; and

- (b) the assignment by the Company to the Lender of the EPA pursuant to the Lender Security is subject in all respects to the terms and conditions of the EPA and this Agreement.

4.3 *Confidentiality:* The Lender covenants and agrees with the Buyer to be bound by the provisions of section 7.8 of the EPA regarding confidentiality, as if an original signatory thereto.

4.4 *Company Representation:* The Company represents and warrants to the Buyer that the Lender is the only person to whom it has granted a security interest in the EPA or the Seller's Plant.

5. **EPA Notices:** The Buyer covenants and agrees with the Lender that, except as hereinafter otherwise permitted, the Buyer:

- (a) shall give the Lender a copy of any Default or Termination Notice concurrently with, or promptly after, any such notice is given to the Company;
- (b) shall not exercise any right it may have to terminate the EPA until the later of: (i) the date that is 45 days after the date on which the Buyer delivered to the Lender a copy of the Default or Termination Notice entitling the Buyer to terminate the EPA; and (ii) the date on which the Buyer is entitled to terminate the EPA;
- (c) shall not, provided that there is no other Buyer Termination Event under the EPA, terminate the EPA based on the Bankruptcy or Insolvency of the Seller if the Lender is promptly and diligently prosecuting to completion enforcement proceedings under the Lender Security until 30 days after the expiry of any court ordered period restricting the termination of the EPA; and
- (d) shall not exercise any right it may have under section 5.6 of the EPA to deduct any amounts owing by the Seller to the Buyer under the EPA from amounts owing by the Buyer to the Seller under the EPA until the date that is 15 days after the date the Buyer provides the Lender with a copy of the notice delivered by the Buyer to the Seller under section 5.6 of the EPA.

Nothing in this Agreement prevents or restricts: (i) the exercise by the Buyer of any other right or remedy that it may be entitled to exercise under or in relation to the EPA; or (ii) the right of the Lender to cure, or cause the cure of, any default of the Company under the EPA that would be curable by the Company, whether or not an Assumption Notice is given.

6. **Realization by Lender:**

6.1 *Assumption Notice and/or Sale:* If the Company has defaulted under the Credit or the Lender Security and the Lender has elected to take possession of the Seller's Plant, either by a Receiver or in any other way, pursuant to the Security, the Lender shall either:

- (a) give the Buyer written notice (an "**Assumption Notice**") stating that the Lender is assuming the EPA, whereupon:
 - (i) the Lender shall be entitled to all the rights and benefits, and shall have assumed, and shall perform and discharge, all the obligations and liabilities, of the Company under the EPA, and the Lender shall be a party to, and bound by, the EPA as if an original signatory thereto in the place and stead of the Company;

- (ii) notwithstanding subparagraph (i), the Lender shall not be liable to the Buyer for defaults of the Company occurring before the Assumption Notice is given, except to the extent that such defaults continue thereafter; provided however that the Buyer may at any time before or after such notice is given exercise any rights of set-off in respect of any such prior default under or in relation to the EPA which the Buyer would otherwise be entitled to exercise; or
- (b) give written notice to the Buyer that the Lender wishes to cause the Company to assign all of the Company's right, title and interest in and to the EPA and the Seller's Plant to a third person or persons, subject however to the Company and the assignee complying with all provisions of the EPA relative to such assignment.

The Buyer agrees that if the Lender enters the Seller's Plant for the purpose of viewing or examining the state of repair, condition or operation thereof such shall not constitute taking possession thereof.

6.2 *Lender Liability and Release:* The Lender assumes no liability to the Buyer under the EPA unless and until the Lender gives an Assumption Notice. Thereafter, if the Lender completes an assignment to a third person or persons pursuant to and in accordance with the applicable provisions of the EPA, the Lender shall be released from all liability and obligations of the Company to the Buyer under the EPA accruing from and after completion of that assignment.

6.3 *Company not Released:* Nothing in this Agreement, and neither the giving of an Assumption Notice, nor any assignment pursuant to subsection 6.1(b) of this Agreement releases the Company from its obligations and liabilities to the Buyer under and in relation to the EPA.

6.4 *Receiver Included:* References in this section 6 to the Lender include a Receiver.

7. **Notices:** Any notice required or permitted to be given under this Agreement must be in writing and may be given by personal delivery, or by transmittal by facsimile, addressed to the respective parties as follows:

(a) Buyer at:

British Columbia Hydro and Power Authority

Attention: _____

Facsimile No.: _____

(b) [Company] at:

Attention: _____

Facsimile No.: _____

(c) [Lender] at:

Attention: _____
Facsimile No.: _____

Notices given by facsimile shall be deemed to be received on the Business Day next following the date of transmission.

8. **Choice of Law:** This Agreement is governed by British Columbia law, and the laws of Canada applicable therein.

9. **Jurisdiction:** Each party to this Agreement attorns irrevocably and unconditionally to the courts of the Province of British Columbia, and to courts to which appeals therefrom may be taken, in connection with any action, suit or proceeding commenced under or in relation to this Agreement. Notwithstanding the foregoing, the Lender acknowledges that upon an Assumption Notice being given, the Lender shall become party to, and bound by, the agreements to arbitrate contained in section 7.5 of the EPA.

10. **Termination:** This Agreement, and all rights and liabilities among the parties hereunder shall terminate upon the full and final discharge of all of the Lender Security. The Lender shall give the Buyer prompt notice of the full and final discharge of all of the Lender Security.

11. **Amendment:** This Agreement may be amended only by an instrument in writing signed by each of the parties hereto.

12. **Enurement:** This Agreement enures to the benefit of, and is binding upon, the parties hereto, and their respective successors and permitted assigns.

13. **Counterparts:** This Agreement may be executed by facsimile and in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same document.

14. **Effective Date:** This Agreement is not binding upon any party unless and until executed and delivered by all parties, whereupon this Agreement shall take effect as of the day first above written.

IN WITNESS WHEREOF each of the parties have duly executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

[COMPANY]

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title: _____

[LENDER]

By: _____
(Signature)

Name: _____

Title: _____

APPENDIX 8

SAMPLE FORM DEVELOPMENT PROGRESS REPORT

Quarterly Development Report

For the quarter ending: _____

Report Number: _____

Project Name: _____

| Tasks: | Percentage of Completion | | | | | Comments |
|--|--------------------------|-----|-----|-----|------|----------|
| | 5% | 25% | 50% | 75% | 100% | |
| Permitting: | | | | | | |
| | | | | | | |
| Financing: | | | | | | |
| Construction | | | | | | |
| Project Equity | | | | | | |
| Long Term Financing | | | | | | |
| Project Design: | | | | | | |
| Preliminary | | | | | | |
| Final | | | | | | |
| Interconnection: | | | | | | |
| Studies (Please describe the status of each interconnection study) | | | | | | |
| Construction | | | | | | |
| Major Equipment: | | | | | | |
| Ordering | | | | | | |
| Delivery | | | | | | |
| Installation | | | | | | |
| Construction: | | | | | | |
| Road | | | | | | |
| Powerhouse | | | | | | |
| Other | | | | | | |

| Key Project Tasks: | Target | Actual |
|---------------------|--------|--------|
| Permitting Complete | | |
| Financing Complete | | |

| | | |
|----------------------------------|--|--|
| Facilities Agreement Signed | | |
| Major Equipment Ordered | | |
| Commence Construction | | |
| Interconnection Agreement Signed | | |
| Begin Commissioning | | |

COD:

Target COD: _____

Current Estimate: _____

Prepared by: _____

Submitted by: _____

APPENDIX 9

STANDING OFFER CONFIDENTIALITY AND COMPLIANCE AGREEMENT

Please see attached.

STANDING OFFER PROGRAM

CONFIDENTIALITY AND COMPLIANCE AGREEMENT

Issued: January 2011

This Confidentiality and Compliance Agreement (the “*Agreement*”) is made as of _____, 2011 [Note: Date to be completed by BC Hydro at time of signing by BC Hydro.]

BY AND BETWEEN

REGIONAL DISTRICT OF NANAIMO, of 6300 Hammond Bay Road,
Nanaimo, British Columbia, V9T 6N2

(“*Counterparty*”)

AND

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a British
Columbia Crown Corporation, having an office at 333 Dunsmuir Street,
Vancouver, British Columbia, V6B 5R3

(“*BC Hydro*”)

(the foregoing may be referred to individually as a “*Party*” or collectively as the “*Parties*”)

WHEREAS BC Hydro and the Counterparty wish to enter into discussions, which may include negotiations concerning an electricity purchase agreement (an “*EPA*”), pursuant to BC Hydro’s standing offer program (the “*Standing Offer Program*”).

NOW THEREFORE, in consideration of the Parties entering into this Agreement and the mutual promises and agreements contained in this Agreement, the Parties agree as follows:

1. DEFINITIONS

1.1 Confidential Information. “*Confidential Information*” means any of the Counterparty’s confidential technical or financial information provided by the Counterparty to BC Hydro in confidence in connection with the Standing Offer Program and/or any related EPA with express written notice to BC Hydro of the confidential nature of the information, whether such confidential information is provided orally, in writing, electronically or by any other media, but excluding any executed and delivered EPA or related securities delivered thereunder or any agreement collateral thereto, and also excluding information that:

- (a) is or becomes in the public domain, other than as a result of a breach of this Agreement by BC Hydro;
- (b) is known to BC Hydro before disclosure to it by the Counterparty, or becomes known to BC Hydro thereafter by way of disclosure to BC Hydro by any other person who, to BC Hydro’s knowledge, is not under an obligation of confidentiality with respect thereto; or
- (c) is, or has been, disclosed by the Counterparty to any government authority in connection with any permit, approval or tenure for any project proposed by the Counterparty in the Standing Offer Program and any information that is directly related to or that is based on or derived from that information, other than any financial information relating to the Counterparty or any such project.

1.2 **Affiliate.** “*Affiliate*” has the meaning given in the Standard Form Electricity Purchase Agreement for the Standing Offer Program.

1.3 **Discussions.** “*Discussions*” means discussions, including negotiations, between the Parties pertaining to the Standing Offer Program and/or any related EPA whether before or after the effective date of this Agreement to the termination of such discussions or an EPA, if any, between the Parties is fully executed and delivered, whichever shall first occur.

1.4 **Rules.** “*Standing Offer Program Rules*” means the BC Hydro document so entitled dated January 2011 and available on the website at www.bchydro.com/standingoffer.

2. **CONFIDENTIALITY OBLIGATION**

2.1 **Confidentiality Obligation.** BC Hydro shall treat as confidential, and shall not disclose to any third person, Confidential Information, and both Parties shall treat as confidential and shall not disclose to any third person, all or any part of the Discussions, provided however that the foregoing obligations, and nothing in this Agreement, prevents or restricts:

- (a) disclosure of the fact that Discussions, if any, are occurring, or have occurred, and/or the fact that this Agreement exists and the general nature hereof;
- (b) in the case of BC Hydro, disclosure of the Discussions and/or Confidential Information:
 - (i) to any ministers, deputy ministers, servants or employees of the Province of British Columbia; and
 - (ii) to BC Hydro’s directors, officers, employees, subsidiaries, consultants and advisors;

provided that each of the foregoing to whom Discussions and/or Confidential Information is disclosed is advised of the confidential nature thereof;

- (c) in the case of BC Hydro, disclosure of Discussions and/or Confidential Information in any regulatory proceeding, whether in respect of an EPA entered into with the Counterparty pursuant to the Standing Offer Program or in respect of other matters, to the extent that BC Hydro considers disclosure necessary or desirable to support its position in any such proceeding, provided that, to the extent reasonably practicable, BC Hydro gives reasonable notice to the Counterparty before making the disclosure, and, to the extent requested by the Counterparty, requests the relevant tribunal to treat all or any part of the disclosure as confidential or to limit its further disclosure;
- (d) in the case of BC Hydro, disclosure:
 - (i) of the Counterparty’s questions in the Q&A process under the Standing Offer Program without attribution to the Counterparty;
 - (ii) to a third person of Confidential Information that was known by that third person before disclosure thereof by BC Hydro, including information that originated from that third person or that the Counterparty or any other person has given to the third person, in each case as indicated on the face of any document or as acknowledged by the Counterparty; and
 - (iii) such information as BC Hydro considers necessary to provide any publicly available report on the conduct and outcome of the Standing Offer Program, including the Counterparty’s participation in the Standing Offer Program and the conclusion of an EPA with the Counterparty (if applicable), the location and capacity of any project proposed by the Counterparty, and the energy associated with any project proposed by the Counterparty;

- (e) in the case of the Counterparty, disclosure of Discussions to its directors, officers, employees and affiliates, consultants and advisors, provided that each of the foregoing to whom Discussions are disclosed is advised of the confidential nature thereof and undertakes in writing to respect such confidentiality on the terms of this Agreement, provided that the Counterparty shall give to BC Hydro, at its request, a copy of each such undertaking;
- (f) without limiting BC Hydro's disclosure rights under section 2.1(c) above, disclosures required to be made by BC Hydro or the Counterparty by an order of a court or tribunal or under any law, regulatory requirement or requirement of any stock exchange that is binding upon it, provided that, (i) to the extent reasonably practicable, the Party making such disclosure gives reasonable notice to the other Party before making the disclosure, and (ii) limits the disclosure to that required by the applicable order, law, or regulatory or stock exchange requirement;
- (g) disclosures in any legal proceedings for the enforcement of this Agreement and/or any EPA or in the defence of any legal proceedings brought by any third person(s) against either or both the Parties in any way relating to the Standing Offer Program; or
- (h) disclosures of the Discussions and/or Confidential Information by agreement or consent of both Parties.

2.2 **Disclosure of EPA.** Disclosure of any executed EPA, or any summary thereof or information contained therein, will be governed by the EPA.

2.3 **Freedom of Information and Protection of Privacy Act.** The Counterparty and BC Hydro each acknowledge that the other Party is subject to the British Columbia *Freedom of Information and Protection of Privacy Act* and associated regulations, and the Parties agree that BC Hydro's and the Counterparty's non-disclosure obligations under this Agreement are subject to the provisions of that legislation, as the same may be amended or replaced from time to time.

2.4 **Term:** BC Hydro's obligation of confidentiality with respect to Confidential Information expires three years after the date hereof.

3. COMPLIANCE OBLIGATION

The Counterparty acknowledges and agrees that it is bound by, and will comply with, the terms and conditions of the Standing Offer Program Rules, including without limitation Section 8 therein, in relation to its participation in the Standing Offer Program.

4. MISCELLANEOUS

4.1 **Liability Exclusion.** In no event will either Party be liable to the other Party in connection with any breach of this Agreement for any indirect, incidental or consequential damages, including loss of profits.

4.2 **Governing Law.** This Agreement shall be interpreted, governed and construed under the laws of the Province of British Columbia and the laws of Canada applicable therein as if it were executed, and to be performed wholly, within the Province of British Columbia.

4.3 **Equitable Relief.** Each Party agrees that in the event of a breach of this Agreement, or to prevent a breach or contemplated breach, by that Party, the other Party shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity.

- 4.4 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all prior agreements and communications relative to such subject matter.
- 4.5 **No Implied Terms.** No terms or conditions whatsoever may be implied in this Agreement.
- 4.6 **Amendments.** This Agreement shall not be modified, except by a written agreement dated after the date of this Agreement and signed by both Parties.
- 4.7 **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party, without releasing the liabilities and obligations of the Counterparty hereunder.
- 4.8 **Enurement.** This Agreement is binding upon and enures to the benefit of the Parties and their respective successors and permitted assigns.
- 4.9 **Execution In Counterparts.** This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.
- 4.10 **Facsimile Signature.** This Agreement may be executed and delivered by signatures transmitted by facsimile or other electronic means.

4.11 **Relationship.** Entering into this Agreement shall in no way be construed to:

- (a) preclude in any way either Party from pursuing any business opportunities;
- (b) establish any relationship between BC Hydro and the Counterparty with respect to such business opportunities; or
- (c) establish any other relationship between BC Hydro and the Counterparty with respect to any project proposed by the Counterparty under the Standing Offer Program.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first above written.

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

By: _____

Name: _____

Title: _____

REGIONAL DISTRICT OF NANAIMO
Full legal name of Counterparty

Signature

Name: _____

Title: _____

APPENDIX 10
CODE OF CONDUCT GUIDELINES

Please see attached.

Code of Conduct guidelines applicable to BC Hydro contracts

Attachment 1 to Director and Employee Code of Conduct

In its ongoing efforts to ensure that BC Hydro and its subsidiaries behave and are perceived to behave as ethical corporations, BC Hydro has adopted a Code of Conduct that provides guidelines for the behaviour of its Directors, Officers and Employees and for BC Hydro's expectations of the behaviour of its suppliers, consultants, contractors and business associates.

Unless it is inappropriate to do so, the guidelines set out below are to be included in every tender call, request for proposals and contract with BC Hydro and its subsidiaries.

A supplier, consultant, contractor or business associate may be required to give assurances that it conducts itself in accordance with the standards set in these guidelines before it will be considered qualified to enter into a business relationship with BC Hydro.

A supplier, consultant, contractor or business associate with which BC Hydro has a contract will be expected to comply with the standards set in these guidelines. Failure to do so, may be treated by BC Hydro as a reason for terminating the contract. In some cases, other terms of a specific contract may impose a higher standard. In these cases, the contract terms with the higher standards apply.

Guidelines

In these guidelines:

"BC Hydro" means BC Hydro and Power Authority or any of its subsidiaries that has entered into the Contract described in these guidelines;

"Contractor" means the contractor, consultant, supplier or business associate who has a contract with BC Hydro in which these guidelines are included as a term of the contract.

*1. The Contractor shall act at all times with integrity and honesty

- a) in its dealings with BC Hydro, and
 - b) in its dealings with a third person if, in those circumstances, the Contractor is acting as a representative of or on behalf of BC Hydro.
2. If the conduct of business with a competitor of BC Hydro during the term of the Contract would require the Contractor to act contrary to the best interests of BC Hydro, the Contractor shall not conduct such business unless the Contractor has the prior written permission of BC Hydro.
3. Before the Contract is entered into and from time to time as circumstances require, the Contractor shall disclose in writing to BC Hydro to the best of the Contractor's knowledge:
- a) any business relationship that the Contractor or any of its owners or officers has with a Director or Employee of BC Hydro,

* See next page.

- b) the name of any Director or Employee of BC Hydro who is a relative of the Contractor or any of its owners or officers, and
 - c) the name of any Director or Employee of BC Hydro with whom the Contractor or any of its owners or officers is connected by frequent or close association.
4. The Contractor shall read BC Hydro's Code of Conduct that is available from Hydro's contract representative or available at BC Hydro's web site at www.bchydro.com and shall take all reasonable steps to avoid placing a Director or Employee of BC Hydro in a conflict of interest as contemplated by the Code.
 - *5. The Contractor shall keep confidential all information provided to it by BC Hydro or developed during performance of the Contract and shall not use that information for any purpose unrelated to performance of its obligations under the Contract.
 6. If the Contractor is given access to any BC Hydro property in order to perform the Contract, the Contractor shall use that property solely for purposes of performance of the Contract.
 7. The Contractor shall not attempt to secure preferential treatment with BC Hydro by offering entertainment, gifts or benefits to BC Hydro Directors or Employees. Reasonable exchanges common to business relationships are acceptable.
 8. Unless the Contractor has the express permission of BC Hydro, the Contractor shall not offer employment to a BC Hydro employee during the term of the Contract.
 9. The Contractor shall provide its employees, including any employees of BC Hydro with whom the Contractor has a close working relationship, with a safe and healthy workplace that is harassment and discrimination free.
 10. The Contractor shall ensure that when it is participating in any public discussions or taking a position of leadership in other organizations that it does not represent itself as a spokesperson of BC Hydro unless the Contractor has been retained specifically to act in that capacity.

Contractors who wish further information or advice on the application of these guidelines to particular circumstances are encouraged to speak to BC Hydro's contract representative.

Clarification

Issued August 2000

This discussion provides clarification of the intention of Item 3 of the Code of Conduct Guidelines applicable to BC Hydro Contracts which refer to "owners" of a Contractor. The following may be used to determine whether a disclosure is required for a particular owner of the Contractor.

If the Contractor is a corporation with more than two shareholders, a disclosure will only be required for a shareholder who is:

1. an individual who beneficially owns, directly or indirectly, more than 20 per cent of the voting rights attached to all outstanding voting shares of the Contractor, or
2. an individual who together with his or her associate** beneficially owns, directly or indirectly, more than 20 per cent of the voting rights attached to all outstanding voting shares of the Contractor.

* See Clarification issued September 2005 in this attachment to the Code (overleaf) on "Conflicts of Interest", "Integrity and Honesty", and "Confidentiality" (items 1 and 5 above).

If a Contractor is a partnership with more than two partners, a disclosure will only be required for a partner who is:

1. an individual who beneficially owns, directly or indirectly, more than 20 per cent interest in the partnership, or
2. an individual who together with his or her associate** beneficially owns, directly or indirectly, more than 20 per cent interest in the partnership.

** "associate" means

1. a spouse*** of the shareholder or partner,
2. a son or daughter
 - of the shareholder or partner, or
 - of the spouse of the shareholder or partner,

if the son or daughter is under 19 years of age or is living in the family residence of the shareholder or partner, or

3. a relative of the shareholder or partner who is living in the family residence of the shareholder or partner.

*** "spouse" means a person to whom the shareholder or partner is married or with whom the shareholder or partner is living in a marriage-like relationship, including a person of the same gender, but does not include a person from whom the shareholder or partner is separated or living apart and with whom the shareholder or partner has entered into an agreement to live apart or who is the subject of an order of a court recognizing the separation.

Clarification

Issued September 2005

This discussion provides clarification of items 1 and 5 of the Code of Conduct Guidelines applicable to BC Hydro Contracts with respect to Conflicts of Interest; Integrity and Honesty; and Confidentiality.

Item 1

Item 1 states: The Contractor shall act at all times with integrity and honesty

- a) in its dealings with BC Hydro, and
- b) in its dealings with a third person if, in those circumstances, the Contractor is acting as a representative of BC Hydro.

Although this obligation has a broader scope than this discussion, this document is intended to address specifically the issue of conflicts of interest that may arise in the course of a Contractor providing services to BC Hydro or otherwise acting for or on behalf of BC Hydro. In such circumstances BC Hydro expects that a Contractor acting with integrity and honesty will conduct itself as follows:

1. At all times during the term of a contract, the Contractor will avoid any potential conflicts of interest between its interests and those of BC Hydro.
2. Before a contract is entered into, the Contractor will make a written disclosure of any potential conflicts of interest that might arise during the term of the contract.
3. If a potential or actual conflict of interest arises during the term of an existing contract, the Contractor will make a written disclosure of the circumstances at the earliest possible opportunity to the BC Hydro representative responsible for the contract.

4. After making the required written disclosure, the Contractor will take any steps reasonably required by BC Hydro to ensure that BC Hydro's interests are protected, including refraining from any activity or ceasing any activity that has given rise to the conflict of interest. For these purposes, BC Hydro's interests include non-economic considerations such as reputation.

These expectations are consistent with those required of the employees and directors of BC Hydro as set out in its Code of Conduct for Employees and Directors.

Potential conflicts of interest are more likely to occur if the Contractor has been engaged to perform the following types of activities:

1. To administer or manage other BC Hydro contracts. For example, if the Contractor is engaged to administer or manage the contract of another BC Hydro contractor that is a competitor of the Contractor, the Contractor has a conflict of interest if it has access to the other contractor's proprietary information or methods for carrying out the contract or if the Contractor has the opportunity to treat the other contractor in an inequitable or unfair manner.
2. To carry out purchasing functions including preparing all or part of the tender documents or RFPs, conducting the tendering or RFP process, recommending award of contracts. For example, if the Contractor has been engaged to prepare the scope of work or services for a contract upon which it, or any related business (see interpretation at the end of this discussion), intends to or is considering submitting a bid or proposal, the Contractor has a conflict of interest.
3. To develop or manage a budget. For example, if the Contractor has been engaged to develop or manage a budget for BC Hydro operations and the Contractor's current business relationship or future business relationship with BC Hydro is or could be affected by that budget, the Contractor has a conflict of interest.
4. To provide services to or manage a special project. For example, if the Contractor has been engaged to evaluate BC Hydro's needs in respect of a certain issue e.g. adequacy of equipment; business organization, and the Contractor is in the business of supplying or refurbishing equipment or providing business management services, the Contractor has a conflict of interest.
5. To conduct negotiations on behalf of BC Hydro. For example, if the Contractor has the opportunity in these negotiations to benefit itself – other than as contemplated in the contract with BC Hydro – the Contractor has a conflict of interest.
6. To speak for BC Hydro.

The Contractor has an actual conflict of interest if the Contractor, while performing these activities, has the opportunity to further its own interests. The Contractor has an apparent conflict of interest when a reasonably well informed person could perceive that the Contractor's ability to perform these activities was or may be affected by the Contractor's interests.

For purposes of this discussion, a Contractor's interests include the interests of the Contractor's directors, officers, employees and of a related business.

For purposes of this discussion, "related business" includes, but is not limited to:

1. an affiliate, as defined in the Business Corporations Act SBC 2002, as amended from time to time, of the Contractor;
2. an owner as described in the Clarification Statement issued August 2000 in respect of the Code of Conduct Guidelines applicable to BC Hydro Contracts; and
3. any other entity in which the Contractor has an ownership or financial interest.

Item 5

Item 5 of the Guidelines, although dealing specifically with confidential information, is often related to Item 1 discussed above.

Item 5 states: The Contractor shall keep confidential all information provided to it by BC Hydro or developed during performance of the Contract and shall not use that information for any purpose unrelated to performance of its obligations under the Contract.

A Contractor acting with integrity and honesty will take special care to ensure that any confidential information it has been provided by BC Hydro or that it has developed for BC Hydro will not be used for its own purposes. For example, this information should not be used by the Contractor to prepare any bids or proposals in response to a BC Hydro tender or proposal call or to take advantage of any business opportunities disclosed in the information or to acquire a competitive advantage over other businesses or to harm BC Hydro.

For further advice on issues relating to conflicts of interest or confidentiality of information please contact your BC Hydro representative responsible for the contract or BC Hydro's Code of Conduct Advisor.

APPENDIX 11

SPECIAL TERMS AND CONDITIONS

To the extent there is any conflict between the provisions of this Appendix 11 and any other provisions of this EPA, the provisions of this Appendix 11 govern.

1. DIRECT INTERCONNECTION

If either the Control Centre or the line that interconnects the Control Centre to the Distribution System ceases to be owned by the Seller or if the Control Centre ceases to be a customer of BC Hydro, the Seller shall ensure that effective from and after the date of transfer of the Control Centre or the date on which the Control Centre ceases to be a customer of BC Hydro, the Seller's Plant is directly interconnected to the Distribution System at a location approved by BC Hydro in writing prior to installation of such interconnection. The Seller acknowledges that BC Hydro may require as a condition of its consent to such interconnection amendments to this EPA in order to reflect the installation of such direct interconnection and to address any adverse impact on BC Hydro arising from such interconnection. The Seller shall be solely responsible for all costs and expenses to secure such direct interconnection including, without limitation and notwithstanding Appendix 3 of this EPA, all Interconnection Network Upgrade Costs. The Seller shall also be responsible for, and shall indemnify BC Hydro from and against, all costs, expenses, losses, damages and liabilities suffered or incurred by BC Hydro as a result of the installation of the direct interconnection for the Seller's Plant.

2. BILLING GUIDELINE

The Seller shall comply with any reasonable written billing guideline, including any requirements with respect to the form of statements pursuant to section 5.4 of the EPA and any adjustments to the ESA and billing procedures thereunder reasonably required to accommodate this EPA, issued by the Buyer, provided that any such billing guideline shall not vary the express terms of this EPA. If there is any conflict between a billing guideline and this EPA, this EPA shall govern.

3. FUEL

3.1 **Definitions** - In this section 3 of Appendix 11 or elsewhere in this EPA, the following words and phrases have the following meanings:

- (a) **"Auxiliary Fuel Annual Baseline"** means 3% of the total Fuel, excluding Start-up Fuel, and determined in GJ, used to generate Delivered Energy in each calendar year.
- (b) **"Auxiliary Fuel Energy Overage"** means Delivered Energy generated in any year from any Auxiliary Fuel Overage for that year.
- (c) **"Auxiliary Fuel Overage"** means that portion, if any, of Auxiliary Fuel, excluding Start-up Fuel, and determined in GJ per year, that is used in any year to generate Delivered Energy and that exceeds the Auxiliary Fuel Annual Baseline for that year.
- (d) **"Auxiliary Fuel Overage Credit"** means, with respect to any year, the amount (in dollars) equal to:
 - i. the Auxiliary Fuel Energy Overage for that year, if any: multiplied by

- ii. an amount equal to the price payable by BC Hydro for post-COD Delivered Energy under section 5.2.
 - (e) **“Fuel”** means Biogas, and any Auxiliary Fuel, used to generate Energy at the Seller’s Plant.
 - (f) **“Start-up Fuel”** means that quantity of Auxiliary Fuel, expressed in GJ, that is used in a “black start” or “cold start” of generation facilities, from the time when Fuel is first combusted until the time when generation is stabilized.
- 3.2 **Auxiliary Fuel Overage Credit** - The Seller shall pay to BC Hydro the Auxiliary Fuel Overage Credit arising in any year not later than the 15th day of February that follows that year. The Seller may satisfy any Auxiliary Fuel Overage Credit that arises in any year by showing such Auxiliary Fuel Overage Credit as a credit owing to BC Hydro in the statement delivered to BC Hydro pursuant to section 5.4 in February.
- 3.3 **Annual Report** - The Seller shall ensure that the amount of Delivered Energy generated by the Seller’s Plant in each year that is not Clean Energy does not exceed the Auxiliary Fuel Annual Baseline. By no later than February 28 of each year, the Seller shall deliver to BC Hydro written confirmation from a senior officer of the Seller together with supporting documents (including, at the Seller’s cost, third party audits and/or confirmations if requested by BC Hydro, acting reasonably) to confirm the fuel types and quantities used in the Seller’s Plant during the immediately preceding calendar year and the amount of Energy generated by the Seller’s Plant in such year that was not Clean Energy and any such other evidence as BC Hydro may request, acting reasonably, to demonstrate compliance by the Seller with this section 2. Any breach by the Seller of this provision is a “material default” for purposes of subsection 8.1(i) of the EPA. BC Hydro may, on written notice to the Seller and without any liability or obligation to the Seller, suspend accepting deliveries of Energy under this EPA if BC Hydro has reasonable grounds to believe that the Seller is in breach of its obligations under this EPA until such time as the Seller has provided evidence satisfactory to BC Hydro acting reasonably that the Seller is in compliance with this section. Upon receipt of such evidence BC Hydro shall resume accepting deliveries but shall have no obligation to pay for any Energy that could not be delivered during the period when BC Hydro suspended accepting deliveries of Energy in accordance with this section.