



Making a difference...together

**REPORT TO WILDERNESS MOUNTAIN WATER SERVICE COMMISSION
MEETING OF FRIDAY 24 SEPTEMBER 2010**

SUBJECT PROPOSED TRANSFER OF OWNERSHIP OF WATERSHED LANDS

ISSUE

The owner of Lot 3, Section 130 and 131, Sooke District, Plan VIP73608 (PID 025-399-276, 706 Cains Way) is seeking to subdivide the property to create an additional residential lot. The property includes the primary water source for the Wilderness Mountain Water Service and is presently protected by a conservation covenant held jointly by the Capital Regional District (CRD), The Land Conservancy of British Columbia (TLC) and Habitat Acquisition Trust (HAT). The owner has filed a subdivision application with the Ministry of Transportation and Infrastructure for this purpose. In order for subdivision to proceed, the owner must obtain the consent of the CRD, HAT and TLC. In return for such consent, the owner has offered to transfer ownership of the bulk of the covenant area to the CRD.

BACKGROUND

The property (Lot 3, Plan VIP73608) is 9.8 ha located in the CRD Wilderness Mountain water service area in the Juan de Fuca Electoral Area, and includes the Wilfred Reservoir, a small man-made lake that is the primary water source for the CRD Wilderness Mountain water service. The CRD holds a water license for this purpose, owns two dams, a pumphouse and related works under a statutory right of way, and jointly holds a conservation covenant on the land with HAT and TLC. The covenant precludes subdivision without the consent of the covenant holders. Most of the land tributary to the Wilfred Reservoir is also contained within the property.

The property is owned by Mr. Chris Gilbert, who resides in a house located near the southeast corner fronting Cains Way. The majority of the property is protected by the conservation covenant. The owner proposes to subdivide the property into three parcels, including 1.0 ha containing his existing house, a second buildable 1.0 ha lot, and the 7.8 ha remainder (Attachment 1), which includes the Wilfred Reservoir and most of its tributary area, as well as all the CRD water service assets. The building site including septic field location on the second buildable lot will not encroach on the covenant area. The owner proposes to transfer ownership of the 7.8 ha remainder of Lot 3 to the CRD. Mr. Gilbert has requested that the CRD consider renaming the Wilfred Reservoir in his honour (i.e. as "Gilbert Lake" or similar), in recognition of the land transfer.

There are several covenants and other charges on title of Lot 3, Plan VIP73608. A summary of these is provided in Attachment 2.

Staff have consulted with representatives of TLC and HAT regarding the proposed subdivision. Although the owner will need to obtain their consent independently of the CRD, it is the understanding of CRD staff that their consent may be subject to the following or similar conditions:

- That the CRD establish a management plan for the remainder of Lot 3 as a water supply area, including habitat enhancement measures.

Wilderness Mountain Water Service Commission – 24 September 2010

Re: Proposed Transfer of Ownership of Watershed Lands

Page 2

- That the CRD establish a plan for use and management of the land at such time as it is no longer required for community water supply purposes (e.g. regional park).
- That the current owner endow funds for the purpose of managing the two additional covenant areas that will be created by the subdivision.

ALTERNATIVES

1. That the Wilderness Mountain Water Service Commission:
 - a) Recommend that the Capital Regional District Board have no objection to the subdivision of Lot 3, Plan VIP73608 as proposed by the owner subject to transfer of ownership of the 7.8 ha remainder to the Capital Regional District for the purpose of community water supply and verification at the owner's cost by a registered BC Land Surveyor that the area of the proposed Lot 2 that falls outside the Wilfred Reservoir catchment area is sufficient for construction of a permanent dwelling and a septic field;
 - b) Authorize the expenditure of up to \$10,000 from the Wilderness Mountain Water Service Capital Reserve Fund for staff time and expenses relating to the transfer of the land to the Capital Regional District; and
 - c) Deny the owner's request that the CRD agree to or provide support for renaming of the Wilfred Reservoir.
2. That the Wilderness Mountain Water Service Commission consent to the subdivision of Lot 3, Plan VIP73608 as proposed by the owner and decline transfer of ownership of the 7.8 ha remainder to the Capital Regional District for the purpose of community water supply.
3. That the Wilderness Mountain Water Service Commission withhold its consent to the proposed subdivision.

IMPLICATIONS

Alternative 1

- a) Subdivision of Lot 3 would enable the construction of a new residence and septic field on the proposed Lot 2. There is a small potential increase in the risk of adverse impacts on water quality associated with future development on the proposed Lot 2. Covenant No. EW47310 prohibits the construction of a septic field within the covenant area except by permission of the CRD, HAT and TLC. The covenant area is defined by Plan VIP76871 (Attachment 3). Based on topographic maps included in EW47310, the covenant area boundary within the proposed Lot 2 is intended to correspond approximately with the catchment area of the Wilfred Reservoir, such that runoff from the buildable portion of the proposed Lot 2 would be diverted away from the water supply reservoir. Given the imprecision of the available plans, field verification of the watershed boundary would reduce the risk of runoff from a future dwelling or septic field to the community drinking water supply. In order to protect the water supply from contamination, all areas of Lot 2 within the allowable setbacks for building or septic field construction should be outside the catchment area for Wilfred Reservoir.

A driveway would be required through the water supply catchment lands (and conservation covenant area) to access the proposed building site. Construction of the driveway would require the prior approval of the covenantees (HAT, CRD and TLC), enabling the CRD to require measures to mitigate risks to the water supply during construction, and to require that the driveway design minimize migration of contaminants or silt into the reservoir, and minimize

diversion of water from the water supply catchment lands. These requirements may increase the owner's cost to develop the proposed Lot 2.

CRD ownership of the covenant area would reduce the number of direct stakeholders whose consent would be required to construct or modify waterworks infrastructure on the land, and would minimize conflict over the use of the land. Should the land dedication proceed, the Wilderness Mountain water service would assume responsibility for maintaining the land and complying with the covenants on title. Maintaining the land for water supply purposes is not expected to require significant effort, or to significantly impact the overall cost of water service.

The waterworks infrastructure on the parcel does not meet the permitted uses of the zone. Upon completion of a land transfer, staff would recommend an administrative amendment to the Land Use Bylaw to include waterworks infrastructure as a permitted use on the parcel.

- b) The cost to complete the transfer of title of the remainder of Lot 3, and associated tasks, including applicable staff time and legal fees, is estimated to be in the range of \$5,000 to \$10,000. The Wilderness Mountain Water Service Capital Reserve Fund currently holds an available balance of \$30,150.
- c) Officially renaming the reservoir would require provincial approval, and may not have the broad support of the community. Mr. Gilbert initially would or should have purchased the parent parcel at a price that reflected the impact of the covenant and statutory right of ways. The proposed land transfer is offered in exchange for consent to subdivide and create a new building lot, which is a significant benefit. Given that Mr. Gilbert is receiving subdivision rights in exchange for the transfer of the land, staff recommend that his request be denied.

Alternative 2

The implications of Alternative 2 are similar to those of Alternative 1, except that the implications of land transfer and ownership would not be realized. The CRD currently holds covenants and rights of way on the land that protect the water watershed and reservoir, and provide access to and use of the land sufficient to operate and maintain the water system. If the watershed lands are not transferred to the CRD, the current owner would remain a stakeholder in CRD use of the land for water supply purposes.

Alternative 3

The implications of Alternative 3 are similar to those of Alternative 2, except that the risks associated with access through the covenant area to a new building lot would be avoided should the Ministry of Transportation and Infrastructure deny the subdivision application.

CONCLUSION

The proposed transfer of ownership of 7.8 ha of land to the CRD, including the primary water supply source and catchment lands for the Wilderness Mountain water service, would significantly benefit the participants in the service. The primary benefit (reduction in the number of direct stakeholders whose consent would be required to construct or modify waterworks infrastructure on the land) outweighs the costs of transfer and ownership of the land (up to \$10,000 in transfer costs, potential risk of impacts on the watershed due to driveway access to a new building lot, and increased responsibility for maintaining the land and associated covenants). Subdivision without transfer of the remainder to the CRD would yield no apparent benefit to the water service, but would introduce the new potential risk of impacts on the watershed due to driveway access to a new building lot.

RECOMMENDATION

That the Wilderness Mountain Water Service Commission:

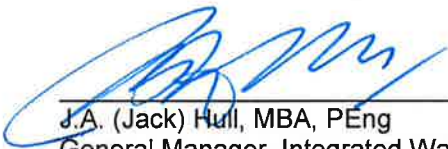
- a) Recommend that the Capital Regional District Board have no objection to the subdivision of Lot 3, Plan VIP73608 as proposed by the owner subject to transfer of ownership of the 7.8 ha remainder to the Capital Regional District for the purpose of community water supply and verification at the owner's cost by a registered BC Land Surveyor that the area of the proposed Lot 2 that falls outside the Wilfred Reservoir catchment area is sufficient for construction of a permanent dwelling and a septic field;
- b) Authorize the expenditure of up to \$10,000 from the Wilderness Mountain Water Service Capital Reserve Fund for staff time and expenses relating to the transfer of the land to the Capital Regional District; and
- c) Deny the owner's request that the CRD agree to or provide support for renaming of the Wilfred Reservoir.



Colwyn Sunderland, AScT
Local Services Engineering Coordinator



Tim Tanton PEng
Senior Manager, Infrastructure Engineering
Concurrence

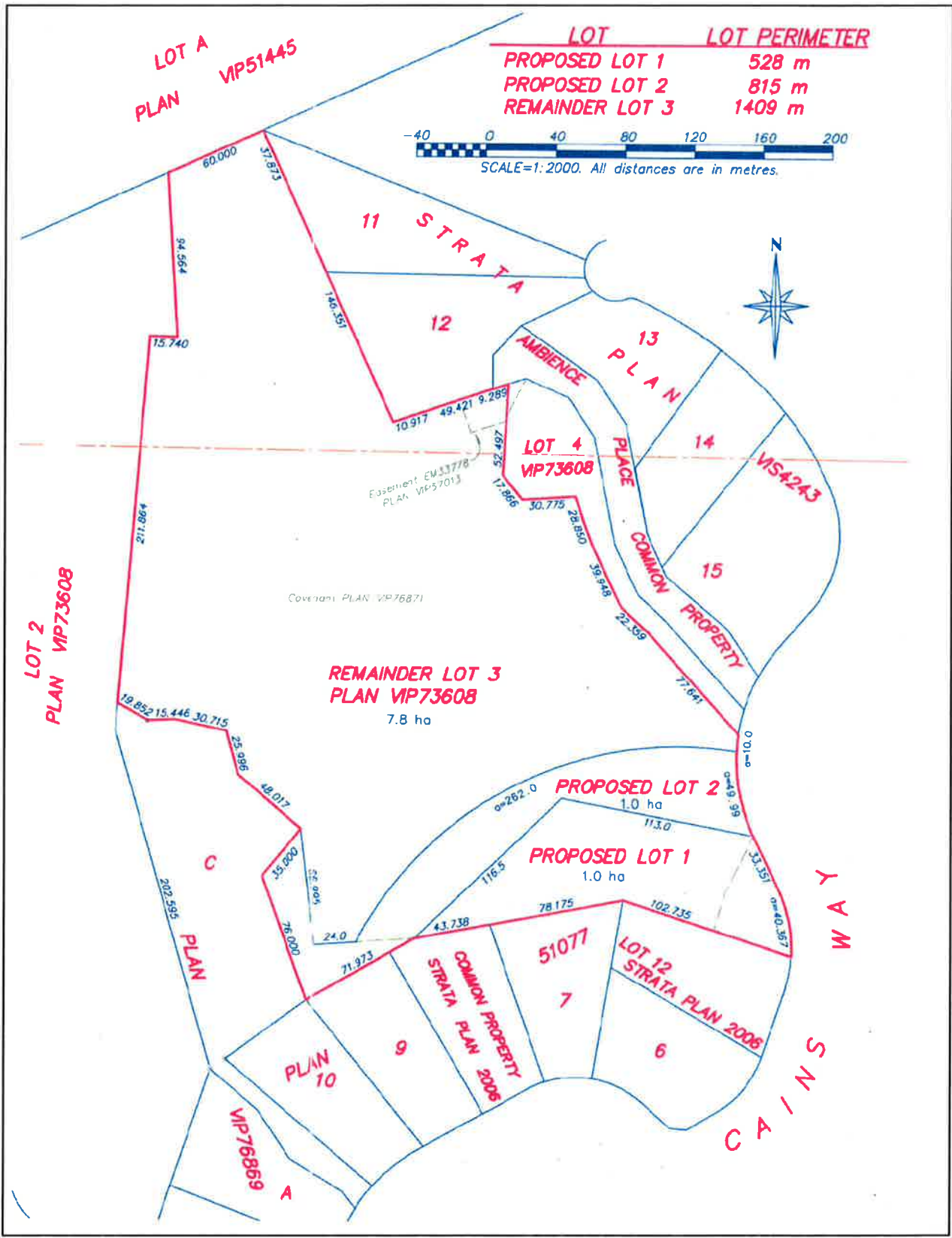


J.A. (Jack) Hull, MBA, PEng
General Manager, Integrated Water Services
Concurrence



Kelly Daniels
CAO Concurrence

CS:ls
Attachments: 2



Document No.	Covenantee	Notes
K72766	Crown	Covenant - Comptroller of Water Rights, to preserve a suitable area of land for the purpose of the water utility. "Upon transfer in fee simple of a portion of the land sufficient for the water utility to function properly, the Covenantee shall release and discharge this Restrictive Covenant from the land."
K72768	Capital Regional District	Statutory Right of Way for the purpose of establishing a water utility. "The Covenantor shall transfer and convey in fee simple to the Grantee, a portion of the right of way, sufficient in size to permit the Grantee to operate a water utility to provide water to the service area, and, upon said transfer [sic] occurring, the Covenantee shall cancel, release and discharge this statutory right of way."
M76303	Director of Soldier Settlement	Undersurface rights. Document is not available from Land Titles.
N10949	Capital Regional District	Restrictive Covenant – no construction where drainage cannot be diverted either to a roadside ditch, natural drainage watercourse or 120 cu.ft. rock pit
EK61836	Wilderness Mountain Water Corporation (CRD)	Rent Charge. Grantee (utility) releases Grantor (owner of Lot 1 as of 20 November 1995) from rent charge if the utility is taken over by a public authority with taxing powers (i.e. CRD).
EM33778	Owner of Strata Lot 12, Plan VIS4243	Easement as shown on VIP67013 (595 m ² adjacent to reservoir site) for the purpose of vehicle parking for Lot 12.
EN83614	Crown	Restrictive Covenant - no subdivision without MOE consent
EN83615	Crown	Priority Agreement (EN83614 over EK61836, EM106167, EM111406, EN29369)
EN83616	Crown	Restrictive Covenant – no removal of vegetation or other changes to land within 7.5m of high water mark without prior written permission of Regional Fish, Wildlife and Habitat Manager (MOE).
EN83617		Priority Agreement (EN83616 over EK61836, EM106167, EM111406, EN29369)
ET42822	Crown	Covenant to protect wetlands: No construction within 15m of natural boundary (wetland); No construction at elevation less than 1.5m above natural boundary
ET42823		Priority Agreement (ET42822 over EK61836, EM111406, EN29369 (see EN 30792), EN106256)
ET42833		Statutory Building Scheme: grants development plan approval authority to 573132 BC Ltd, for design, siting, setbacks, building heights, maintenance of landscapes. Allows residential buildings only, and no diversion of water (page 8 of 8).
ET42839		Easement: Provides access by owner of Lot 3 access over Lots 1 and 2, Plan VIP73608; and access by owner of Lot 4 over Lots 1, 2 and 3; for construction, operation and maintenance of one water supply utility pipeline. Lot 4 is the CRD reservoir site.

ET42841		Easement appurtenant to Lot 4, Plan VIP73608
ET42844		Priority Agreement (ET42841 over EK61836, EM111406, EN29369 (see EN 30792), EN106256)
EW47310	Habitat Acquisition Trust The Land Conservancy of BC Capital Regional District	Covenant, part as shown on Plan VIP76871. Intent is to preserve natural state of land, and to permit operation of the water utility. Restrictions per Section 4, pp. 8-9 of 42. Allows removal of vegetation for utility maintenance, but does not permit construction of any buildings, roads or improvements without consent of all covenantees. Owner is subject to \$2,000 "rent charge" plus 110% of market value of any lost or damaged flora, fauna or mineral resulting from a breach of the covenant. Prohibits subdivision.
EW47311	Habitat Acquisition Trust The Land Conservancy of BC Capital Regional District	Statutory Right of Way, part as shown on Plan VIP76871
EW47312	Habitat Acquisition Trust The Land Conservancy of BC Capital Regional District	Rent Charge
FB220631	Computershare Trust Company of Canada	Mortgage

