



THE MUNICIPALITY OF THE VILLAGE OF LIONS BAY

**SPECIAL MEETING OF THE COUNCIL
OF THE VILLAGE OF LIONS BAY
HELD ON TUESDAY, JANUARY 11, 2022 at 6:00 PM
COUNCIL CHAMBERS, 400 CENTRE ROAD, LIONS BAY
AND VIA ZOOM VIDEO CONFERENCE**

To join the meeting, click here:

<https://us02web.zoom.us/j/85836352416>

To join by phone, dial 778 907 2071 and enter meeting ID 858 3635 2416

AGENDA

1. **Call to Order**
2. **Adoption of Agenda**
3. **Public Participation (Recommendation that the time limits to be relaxed up to 10 minutes for the adjacent residents on either side of the applicants' property)**
4. **New Business**
 - A. CAO's Staff Report: Request for Decision - 52 Brunswick Beach Road Development Variance Permit and Encroachment Applications (Page 3)
5. **Public Questions & Comments**
6. **Closed Council Meeting**

Proposed topics for discussion in the absence of the public:

 - Land and Enforcement Matters
 - Labour Relations or other employee relations

THAT the meeting be closed to the public on the basis of matters to be considered under the following sections of the *Community Charter* and where required, the Council does consider that the matters could reasonably be expected to harm the interests of the municipality if they were held in public:

- 90** (1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:
- (a) personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the Municipality;

- (c) labour relations or other employee relations;
- (d) the security of the property of the municipality;
- (e) the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;
- (f) law enforcement, if the council considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of an enactment;
- (g) litigation or potential litigation affecting the municipality;
- (i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (n) the consideration of whether a council meeting should be closed under a provision of this subsection or subsection (2).

Council does not anticipate reconvening the open meeting for any purpose other than to report out, if applicable, and adjourn the meeting generally.

[OR]

Council anticipates reconvening the open meeting to discuss the following item(s):

- 7. Reporting Out from Closed Portion of Meeting**
- 8. Adjournment**



THE MUNICIPALITY OF THE VILLAGE OF LIONS BAY

Type	Request for Decision		
Title	52 Brunswick - Development Variance Permit and Encroachment Application		
Author	Peter DeJong	Reviewed By:	Pam Rooke and Nai Jaffer
Date	January 7, 2022	Version	
Issued for	January 11, 2022 Special Council Meeting ("this Staff Report")		

Recommendation:

(1) THAT Council select one of the options contained on pages 4 and 5 of this Staff Report.

Attachments:

1. Generic Notice Letter
2. Board of Variance Application Materials preceded by explanatory note
3. Millenia Architecture design for rampway without deck extension
4. Information and Processes Required – Questions and Responses
5. December 9, 2021 Proposal Letter from Ocean Tech
6. December 30, 2021 Ocean Tech Photo of Aluminum Attachment with Notes
7. Burrard Mechanical Ramp and Deck Design Drawing with Notes
8. Balanced Environmental – July 22, 2021 email report re. Repairs to Existing Concrete Stairs
9. Photo of Pre-Existing Concrete Steps to Beach
10. Millenia Architecture Rampway Proposal of April 28, 2021
11. Comments from Owner of 51 Brunswick Beach Road
12. Executed Encroachment Agreement re. pre-existing stairs
13. New Template for Encroachment Agreements and s.218-219 Covenants
14. Bunbury Site Survey dated February 26, 2019
15. Additional Photo of Concrete Works and Potential Alternative Design

Key Information:

Applicant/Owner: Carl and Nicole Lund

Location: 52 Brunswick Beach Road

Legal Description: 030-190-011; That part of District Lot 1815 Group 1 New Westminster District Plan EPP69335 (the Lands)

OCP Designation: Low Density Residential, OCP Bylaw No. 408, 2008, as amended

Zoning Designation: RS-1 (BBO – Brunswick Beach Overlay)



THE MUNICIPALITY OF THE VILLAGE OF LIONS BAY

The applicants, Mr. and Mrs. Lund of 52 Brunswick Beach Road, are applying to Council for:

- a. A variance of the front/rear yard (ocean facing) setback from 4.5 metres to 0 metres;
- b. An encroachment of an aluminum rampway structure over and onto the Municipality's Esplanade to facilitate access to the foreshore.

The variance is required in respect of the footing and post/bracket required to support and attach an approximately 36' aluminum rampway, as well as being required in respect of the top of the rampway affixed to the Lands within the setback area. An application in this respect had been made to the Board of Variance (BoV) but after a delay and subsequent resignation of two of the three board members, the applicants decided to abandon that application and apply directly to Council for a Development Variance Permit (DVP) to accomplish the variance of the setback requirement as described above.

It was agreed that their materials for the BoV application could stand, in part, as their application for the DVP. As noted in the prelude to the BoV materials, the applicants have also abandoned their previously proposed aluminum deck extension so aspects of those materials which reference the deck extension are no longer applicable. An updated design from Millenia Architecture (attachment 3) shows the rampway structure without the deck extension.

Attachment 4 consists of a series of questions posed by staff to the applicants, along with responses from Millenia and the applicants – staff comments to the responses are indicated where relevant. This document provided the applicants with information and the expected requirements about some of the issues pertaining to their application as well as giving them an opportunity to flesh out those aspects of their application which they consider to be most relevant. While there are a few statements within their responses and those of their consultants which are erroneous, or at best contentious, staff has, for the most part, opted to not take issue with these distractions so that Council can focus on the core issues.

Attachment 10 contains detailed submissions from the applicants' neighbour, Dr. Gregory Banta, the owner of 51 Brunswick Beach Road. The points raised by Dr. Banta speak for themselves and must be considered in full, but essentially boil down to the following:



THE MUNICIPALITY OF THE VILLAGE OF LIONS BAY

- a. He alleges a breach of the existing encroachment agreement between the Municipality and the owner of 51 Brunswick per Figure #1 of his materials in respect of the unauthorized pouring of the concrete landing and concrete stairs by the applicants over top of the pre-existing concrete stairs that provided beach access from the bottom of his pre-existing wooden staircase;
- b. He alleges that allowing the applicants to proceed with the proposed design will effectively cut off his own beach access as the Municipality will not have the authority to ensure equal access to the foreshore under an encroachment agreement (License of Occupation) for the applicants in respect of portions of the new concrete landing, concrete stairs and concrete ramp which sit below the high water mark (i.e. on the foreshore rather than the Esplanade) per Figure #6 of his materials;
- c. He requests that the applicants be forced to move their proposed aluminum rampway access further north to avoid conflict with his own licensed access.

With respect to the first allegation, it must be noted that the Lunds are not party to the existing encroachment agreement between the Municipality and the owner of 51 Brunswick. Thus, they cannot be in breach of the agreement and the alleged breach relates to the actions or omissions of the Municipality. However, the Municipality did not approve or condone the pouring of the new concrete on the foreshore over, in part, the existing concrete steps, which were also substantively on the foreshore since pre-1999 without a foreshore lease or license from the Province of BC (to the best of our knowledge).

Secondly, while a License of Occupation granted by the Municipality cannot govern lands on the foreshore, it must be noted that the Municipality, as the owner of the Esplanade lands adjacent to the foreshore, is the upland owner and therefore is the proper party to make application to the Province for a foreshore lease or license. Staff expects that the terms of such foreshore lease or license can stipulate the conditions upon which these foreshore lands may be used, including unobstructed access from the bottom of the existing wooden staircase protected by the existing encroachment agreement.

With respect to the third point above, Dr. Banta raises valid concerns about the logistics and enforcement of access due to the alleged history of actions and behaviour to date by the



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applicants and his request to relocate the proposed rampway structure several meters further north to provide a buffer between the bottom of the staircase and the bottom of the rampway is one which ought to be given consideration by Council, particularly from the perspective of limited staff resources for enforcement. One can see from the Millenia proposal of April 28th (attachment 10) that the original concept included a landing and ramp almost entirely on the Esplanade, leaving the pre-existing concrete landing and steps for the wooden staircase untouched and in place.

At the Council meetings of November 8 and 16, 2021, Council accepted the validity of the existing, assigned encroachment agreement (attachment 12) and instructed staff to work with Dr. Banta and legal counsel to enter into and register in the LTO an executed version of the new form of encroachment agreement and section 219 covenant approved by Council (attachment 13). It is therefore incumbent upon Council to consider the effects of any decision regarding the Lunds' application upon the pre-existing contractual agreement.

Options:

- (1) Reject the DVP and Encroachment applications and require the concrete poured on the Esplanade and the foreshore to be removed.
- (2) Approve the DVP and Encroachment applications subject to the following:
 - (a) requirement that the bottom landing area for the rampway be moved several meters to the north and east with a new concrete access ramp to the beach, going from south to north, to be poured on the Esplanade, rather than the foreshore, and not be joined to the newly poured concrete ramp until the present last square of concrete, if at all, subject to the Municipality approving such an amended design and applying for and receiving approval from the Province for a foreshore lease or license for any portions of the structure on the foreshore, with costs of the application, including consulting engineers or qualified environmental professionals, to be paid by the applicants, with the terms of use of the foreshore lease or license to be controlled by the Municipality to ensure separation of access as between the owners of 52 Brunswick and 51 Brunswick;



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- (b) the existing newly poured concrete ramp to remain in place over top of the pre-existing concrete landing and steps, pending application by the Municipality to and approval by the Province for a foreshore lease or license, with costs of the application, including consulting engineers or qualified environmental professionals, to be paid by the applicants, with the terms of use of the foreshore lease or license to be controlled by the Municipality to enable and ensure access to the beach by the owner of 51 Brunswick up to but not including the last square of newly poured concrete;
 - (c) stamped, certified schedules from qualified professional engineers, or other approvals in writing satisfactory to the Municipality, in accordance with the staff notes in attachment 4 to this Staff Report, the Information and Processes Required for Applications document, prior to any work taking place;
 - (d) an executed encroachment agreement and section 218-219 covenant substantially in accordance with the new template of agreement shown in attachment 13 to this report, including the foregoing conditions precedent, along with the balance of fees payable in respect of the registration of the covenant in the LTO;
 - (e) an irrevocable letter of credit or other credit facility acceptable to the Municipality in the amount of \$25,000 to secure the obligations of the applicants as set out above in paragraphs 2 (a) through (d) of this Staff Report, and an included requirement to remove the structures if the Province does not grant the Municipality a foreshore lease or license;
 - (f) such further and other requirements as may be recommended by the Municipality's legal counsel.
- (3) Dispose of the applications in some other manner and instruct staff accordingly.

Financial and Legal Considerations: All financial and legal obligations must be addressed prior to the commencement of any work regarding the matters covered in this Staff Report.

Follow Up Action and Communication Plan: Per Council direction.



December 31, 2021

Owner and/or Occupant

___ Brunswick Beach Road,
Lions Bay, BC V0N 2E0

This is to advise that a Special Council Meeting has been scheduled for January 11, 2022 at 6:00pm to consider the application of your neighbours, the Lunds at 52 Brunswick, for:

- a. a variance of the rear yard (ocean facing) setback from 4.5 m to 0 m, in order to accommodate an aluminum ramp structure attaching to their land at the top of slope and to the Esplanade at the bottom of slope; and
- b. an encroachment agreement in respect of the ramp over/on the Esplanade.

Application materials are attached and will be updated in advance of the meeting via the Applications web page at: www.lionsbay.ca/services/planning-and-development-services.

You are invited to provide comments via the Applications Comment Form and/or via email directly to me at cao@lionsbay.ca by noon, January 6, 2022, for inclusion in the staff report to Council. You may also attend the meeting via Zoom – materials will be posted to the Agendas page of the website by end of day Friday, January 7, 2022.

Please let me know if you have any questions. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter DeJong".

Peter DeJong
CAO, Village of Lions Bay

Explanatory Note re. Board of Variance Materials

The following materials were part of the package for the Lunds' abandoned Board of Variance application. It was agreed to accept these materials as part of their alternative application to Council for a Development Variance Permit (DVP) and Encroachment Application.

The DVP portion of the application has now been limited by the Lunds to just the location of the rampway structure within the rear yard (ocean facing) setback, so comments and design elements regarding a deck extension in these materials are not relevant to the applications coming to the Special Meeting of Council on Tuesday, January 11, 2022 at 6 pm.

The updated design showing just the rampway is also posted to this webpage.

PDJ

OCTOBER 25 2021

VILLAGE OF LIONS BAY

400 Centre Road
Lions Bay, British Columbia V0N 2E0

ATTENTION: BOARD OF VARIANCE
SUSAN LOUDET: SECRETARY
sloutet@lionsbay.ca

52 BRUNSWICK BEACH ROAD: Board of Variance Application

Thank you for the opportunity to submit our Application for a Variance in the rear yard of the Lund Family home at 52 Brunswick Beach Road.

The existing rear yard has as an attractive cut granite retaining wall set back from the west property line, bordering the turf of the yard that wraps around the house. The space from the wall to the property line is the top of a boulder "armoured" slope down to the beach and Esplanade, with a partially level space at the top which is large boulders and fill, about 4 feet below the yard.

The Lunds wish to extend their yard space and turf out to the property line. Within the VLB Bylaws it is possible to build a retaining wall at the property line and retain fill with turf on top, but the existing bank is not suitable to carry that kind of weight and presents a hardship to build within the Bylaws with significant engineering challenges and costs.

What is proposed is an elevated aluminum structure on columns and concrete piers, with the top surface finished in turf to match the rest of the yard. When complete, it will appear from the yard and above as a level turf surface to the property line, with a 42" guard to match the aluminum and cable railings of the existing house. From below you would see an aluminum structure over the bank and planting, with the attractive stone retaining wall behind. Even if possible with cost and engineering, we think a large concrete retaining wall at the property line would be less attractive.

The extension is in keeping with both neighbours yards:

- 51 has a level yard that extends well beyond the property line, encroaching into the Esplanade.
- 53 has a level concrete deck extending to their property line.

Both neighbours yards extend within our sight lines. Both neighbours have maximized the usable exterior areas of their properties, as the Lunds would like to.

Hardships: from the Lund family perspective

Three very large VLB significance Fir trees bordering our property line causing us hardships - safety, property damage, and blocking views and sunlight:

52 BRUNSWICK BEACH ROAD: Board of Variance Application Page 2

- The VLB trees have dropped numerous large and heavy scaffold branches on to our lower yard and deck. On the night of October 24 in the high winds a large section fell onto the stairs causing significant damage. The middle tree crown blew off in a windstorm a few years ago. Arborist reports confirm the trees will continue to fail, with our home and property as the direct target. The trees drop hundreds of cones as well. One fell and hit our son in the eye when he was lying on a lounge located 20 feet away from the base of one of the trees. These VLB trees pose concerning safety issues, impacting the enjoyment of our small backyard. The proposed yard extension would be the only area within our property that would be somewhat safer to house furniture, away from falling cones and branches.

- The VLB trees have questionable health. Sap is oozing at an alarming rate from the trunk of the tree closest to our property and it is falling from overhanging branches. Our retaining wall and turf are very noticeably permanently damaged by a significant amount of sap. Furniture, railings, windows, and the concrete deck are also being damaged by sap droplets that blow from the branches of the trees (in particular the branches that the VLB had trimmed). Sap falls on us as well, landing in our hair and damaging our clothing. It sticks to our bare feet and shoes when we walk on the turf and it sticks to our dog's paws and fur. The sap from the VLB trees presents a quality of life issue, as it impacts our use and enjoyment of our small backyard and deck. The proposed yard extension would be the only area within our property that would be far enough away from the tree where the sap would not be causing as great of a nuisance or damage.

- The VLB trees block morning and afternoon sunlight. While neighboring properties or basking in the sunshine, our backyard and deck are in the dark. During the summer months, the trees block sunshine until around 3:00 PM. During the winter months, the trees block all sunlight from our backyard. The yard extension is sunniest location within our property. The extension would give us approximately 2 more hours of sunshine during the summer months, as the sunlight hits this area of our property sooner than the rest of our developed backyard.

- The VLP trees block views. During the winter months, sunsets occur behind the trees making them not visible from our developed backyard and deck. the yard extension would provide a place to enjoy the winter sunsets in full view.

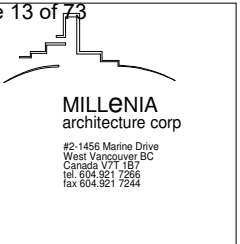
Subject to separate VLB approval, the Lunds would like this structure to carry a suspended aluminum ramp structure down to the beach, over the VLB Esplanade. This would be to facilitate access for everyone, but most particularly their disabled son who loves the beach and water but does have challenges getting down to that significantly lower level. This will also give them access away from the sensitive tree root zone on the south edge of the Esplanade fronting their property.

While not part of this Variance application (as it is on the village Esplanade), The entire bank surface will be planted in drought resistant native plantings with minimal irrigation. This will stabilize and beautify the bank down to the water.

Please feel free to call or email with any questions or clarifications,

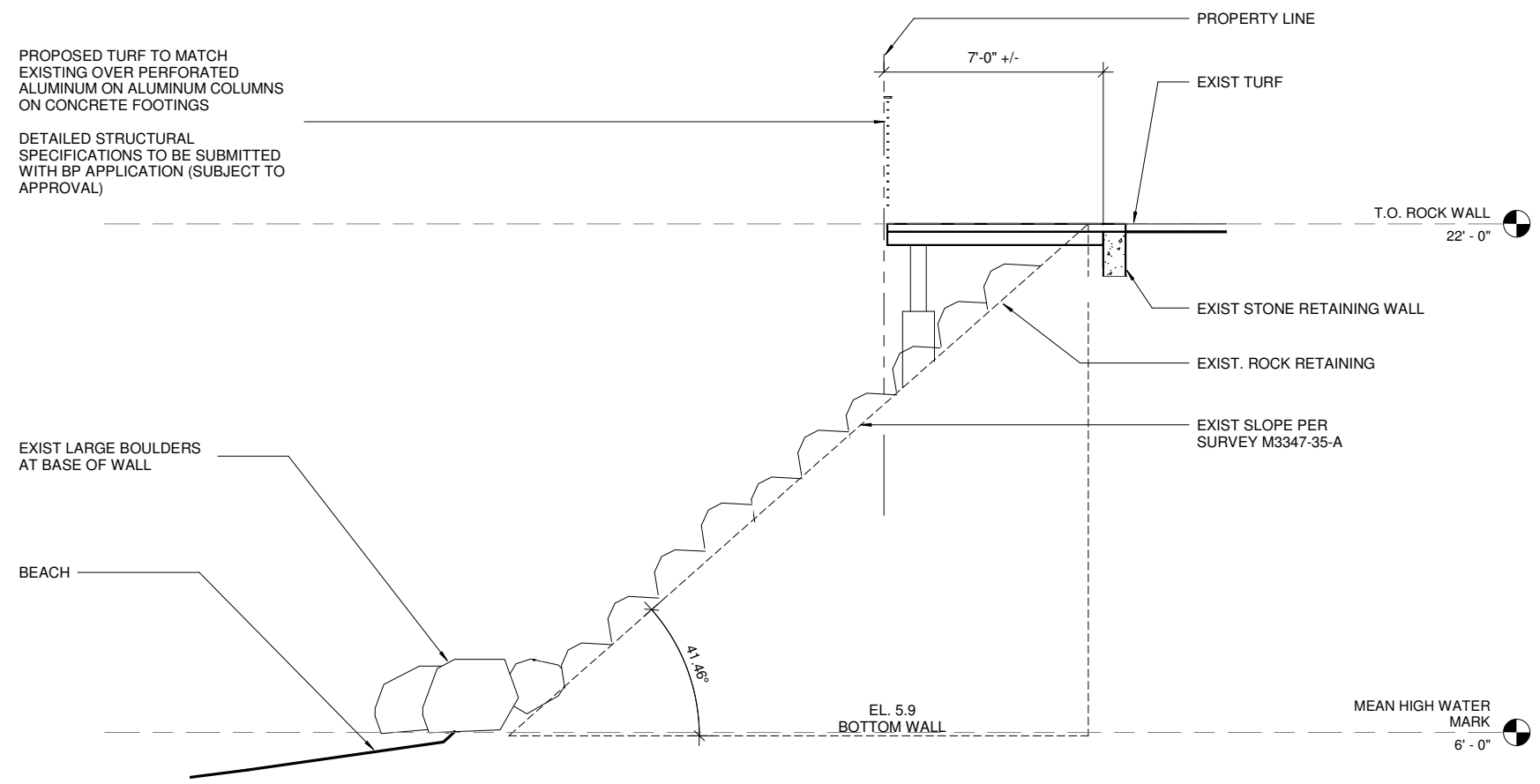
Sincerely

Russ Meiklejohn architect AIBC

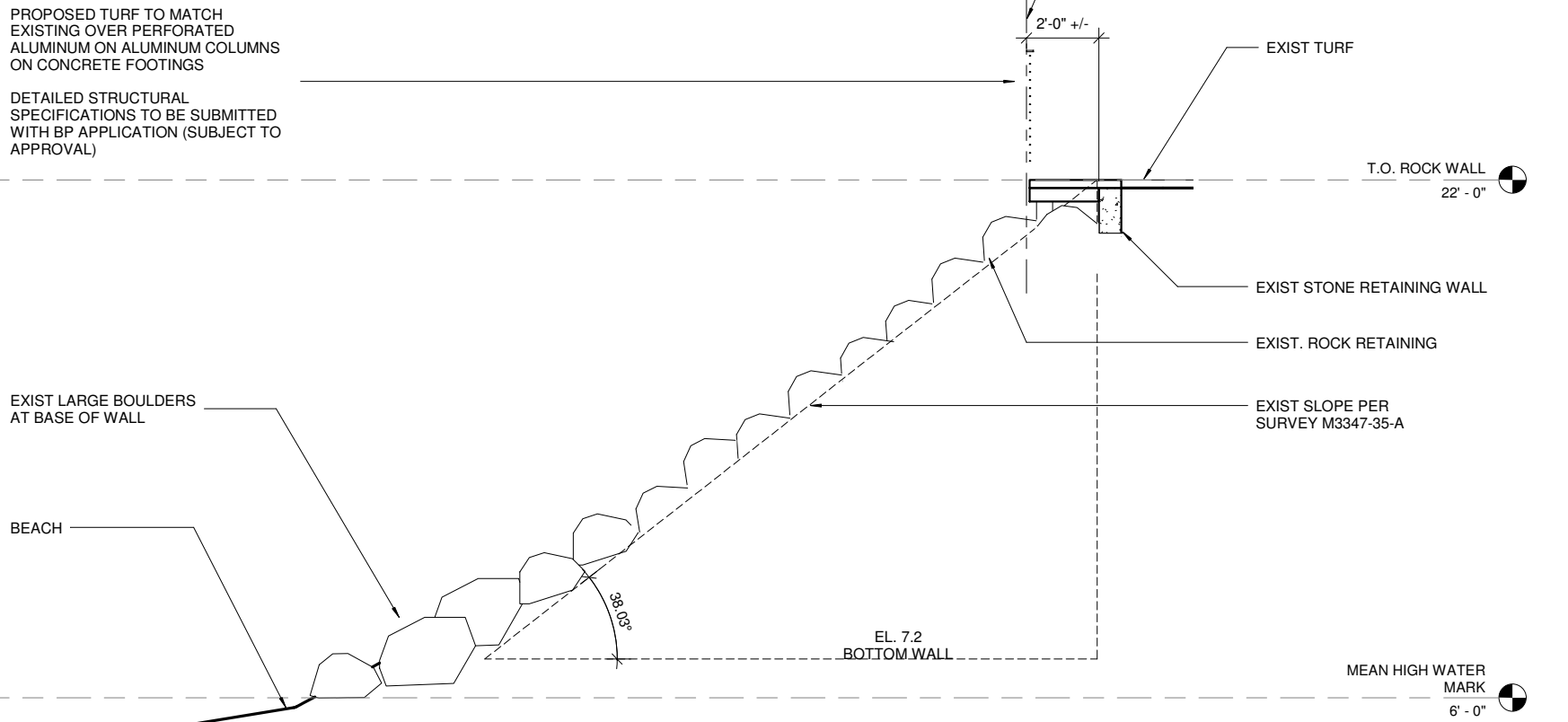


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 The Contractor shall verify actual site conditions and dimensions and shall be responsible for notifying the architect of any discrepancies.
 All work shall be carried out in strict accordance with current applicable building code and municipal by-laws.

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1 SECTION A
 A1.02 3/8" = 1'-0"



3 SECTION B
 A1.02 3/8" = 1'-0"

No.	Date	Description
2	10/20/21	BOV APPLICATION

issue
 project
 52 BRUNSWICK BEACH RD
 LIONS BAY, BC
 REAR YARD
 EXTENSION

title
 PROPOSED SECTIONS

project no. 2021-01
 scale 3/8" = 1'-0"
 drawn PM
 reviewed RM
 date



THE VLB TREES NOT ONLY DROP BRANCHES, SAP AND PINECONES, BUT BIRDS PERCH ON THE OVERHANGING BRANCHES LEAVING THEIR UNSANITARY MARK ON ANYTHING DIRECTLY BELOW. EXTENDING OUR PROPERTY AWAY FROM THE TREES OVERHANGING BRANCHES WILL GIVE US A PLACE TO ENJOY OUR YARD AWAY FROM THE MESSY CROWS AND NUISANCE TREES.



PHOTOS OF THE MASSIVE SCAFFOLD BRANCHES THAT FELL ONTO OUR UPPER DECK AND LOWER YARD LAST WINTER. IT TOOK A CREW OF MEN TO REMOVE THE BRANCHES AS THEY AS THEY WERE EXTREMELY HEAVY. EXTENDING OUR PROPERTY AWAY FROM THESE FAILING VLB TREES WILL GIVE US A SMALL AREA WITHIN OUR BACKYARD TO DEVELOP AND PLACE FURNITURE SO IT IS AT LESS RISK OF BEING DAMAGED BY THESE FAILING TREES.



EXCESSIVE SAP FROM THE VLB TREES IS DAMAGING OUR TURF, GEOBAG RETAINING WALL, FURNITURE ETC. THE NORTH WEST CORNER OF OUR PROPERTY IS THE FURTHEST POINT AWAY FROM THESE TREES AND WILL BE BETTER SUITED TO PLACE FURNITURE AWAY FROM THE NUISANCE SAP AND FALLING PINECONES.



MILLENNIA
architecture corp

#2-1456 Marine Drive
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NO.	Date	Description
2	22/10/21	BOV APPLICATION
1	12/08/21	BOV APPLICATION

project
52 BRUNSWICK BEACH RD
LIONS BAY, BC
REAR YARD EXTENSION

title
EXISTING CONDITIONS

project no. 2021-01
scale NA
drawn PM / JAL
reviewed RM
date

drawing no. of
A1.06



MILLENNIA
architecture corp

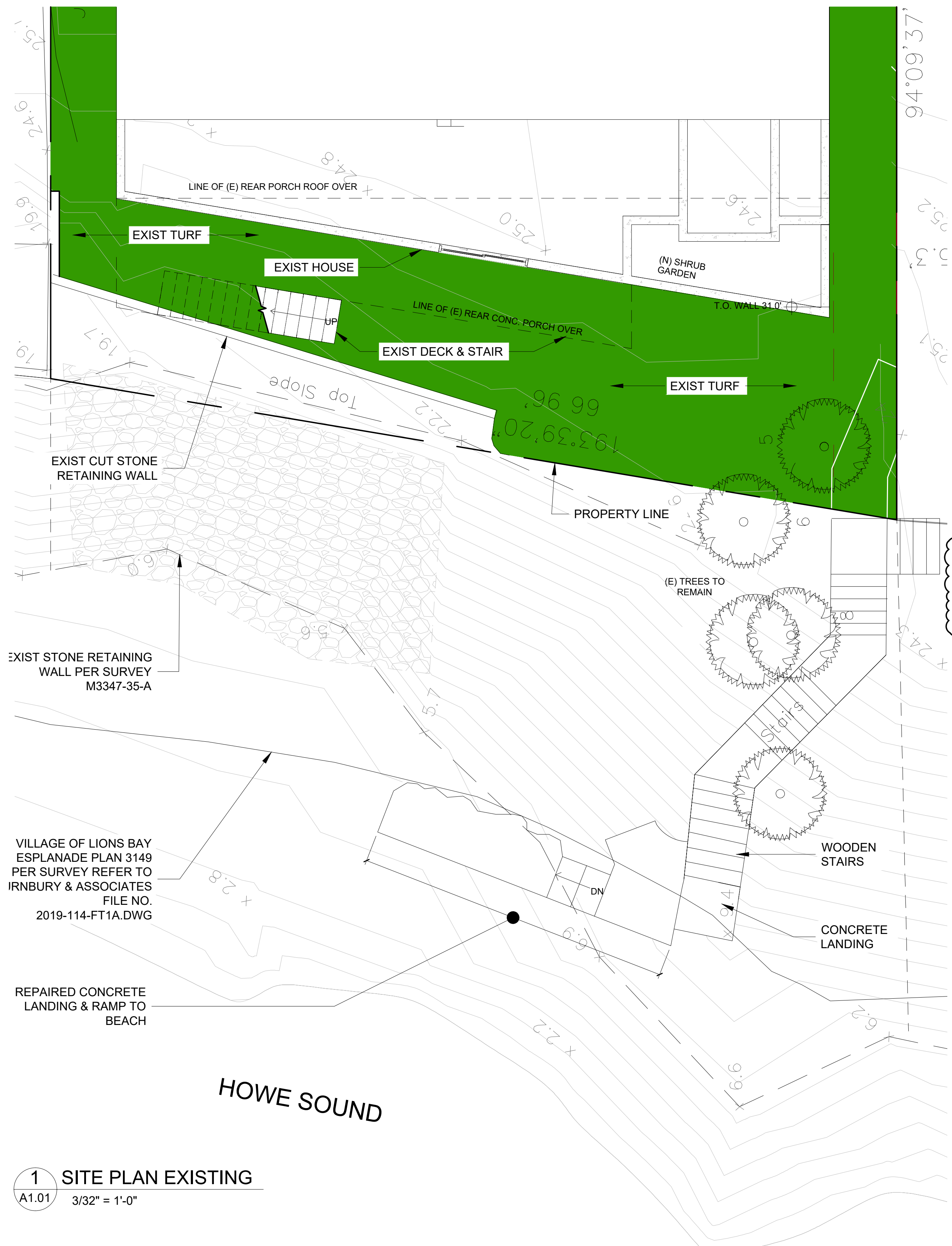
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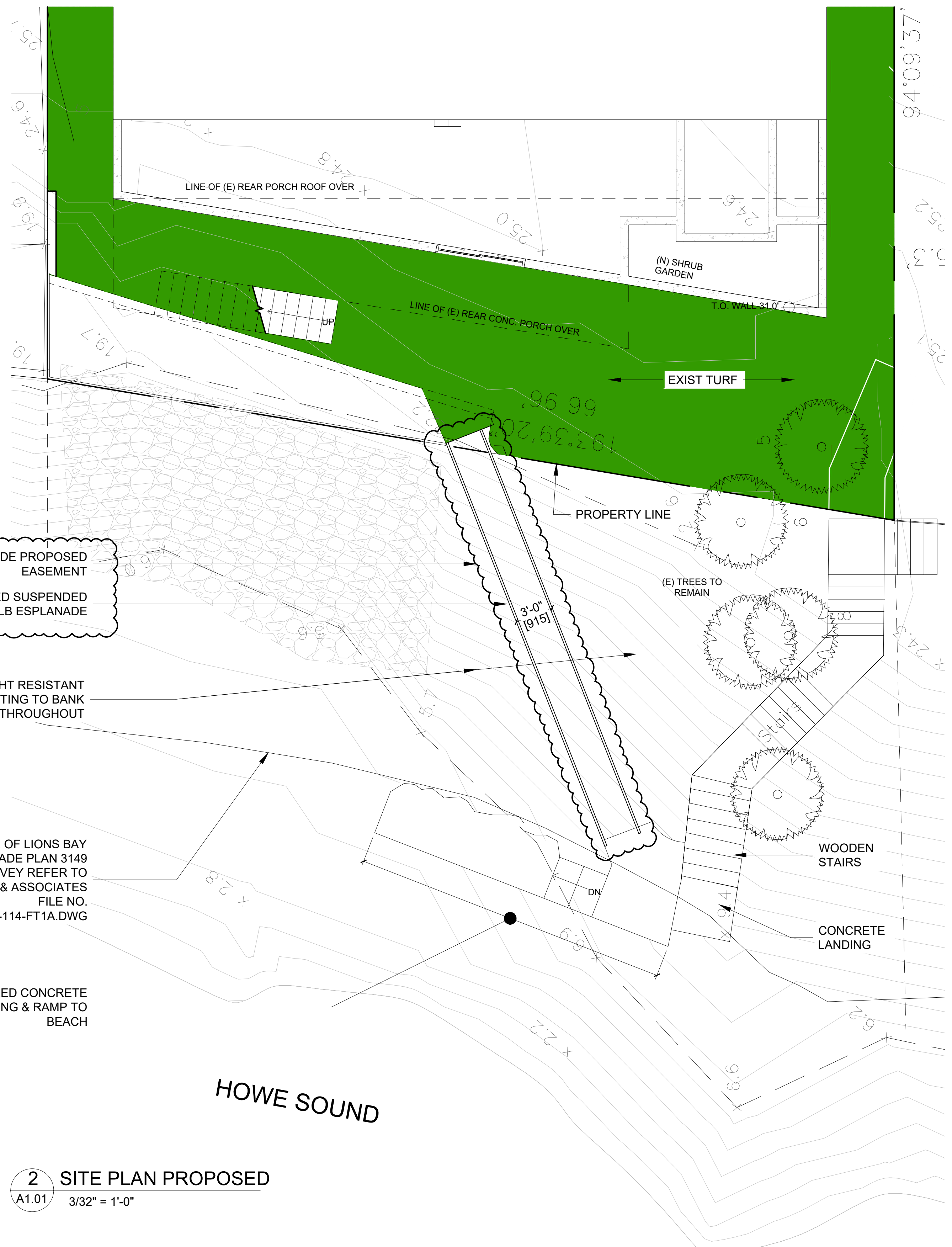
The Contractor shall verify actual site conditions and dimensions and shall be responsible for notifying the architect of any discrepancies.

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1 SITE PLAN EXISTING
A1.01 3/32" = 1'-0"



2 SITE PLAN PROPOSED
A1.01 3/32" = 1'-0"

NO.	Date	Description
3	20/12/21	ESPLANADE EASEMENT
2	12/08/21	ESPLANADE EASEMENT
1	09/08/21	VARIANCE PERMIT

project
52 BRUNSWICK BEACH RD
LIONS BAY, BC
PROPOSED BEACH
ACCESS ACROSS
ESPLANADE

title
EXISTING & PROPOSED
SITE PLAN

project no. 2021-01
scale 3/16" = 1'
drawn PM / JAL
reviewed RM
date

drawing no. of




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All work shall be carried out in strict accordance with current applicable building code and municipal by-laws.

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3	20/12/21	ESPLANADE EASEMENT
2	12/08/21	ESPLANADE EASEMENT
1	09/08/21	VARIANCE PERMIT

NO.	Date	Description

project
 52 BRUNSWICK BEACH RD
 LIONS BAY, BC
 PROPOSED BEACH
 ACCESS ACROSS
 ESPLANADE

title
 RENDERING

project no.	2021-01
scale	NA
drawn	PM / JAL
reviewed	RM
date	



INFORMATION AND PROCESSES REQUIRED FOR APPLICATIONS

1. Given that a DVP is required in any event for the top of the ramp structure within the setback area, will the DVP application be:
 - (a) In respect of both the ramp structure and a deck extension structure as originally proposed; or
 - (b) Only in respect of the ramp structure?

Millenia and Lunds: Application for (b) ramp structure only.

2. If in respect of both ramp and deck, the following questions arise:
 - (a) Ocean Tech referenced anchoring the deck extension to the rock wall but we question whether that rock wall was built to a standard capable of carrying a deck extension. Has a geotechnical and/or structural engineer reviewed the capacity of the rock wall? If so, please provide a copy of such review.

Staff: Contractor has submitted materials indicating an intention to anchor the post for the top of the ramp structure to the existing retaining wall – this will require approval by a qualified professional engineer.

- (b) Footings were said to have been poured “on top of a solid rock base or gravel”. Which is it? Solid rock or gravel? What is below either? Was a geotechnical engineer consulted prior to forming and pouring these footings?

Lunds: Solid rock. More rock and hardpan are below either. Yes.

Staff: This will require approval by a geotechnical engineer.

- (c) The flat section at the top of the slope on which the footings were poured was only recently created (it was not there at the end of April). This means that the armoured slope signed off on by your geotechnical engineer was disturbed – was he consulted for this process? If so, please provide any reports or correspondence with him. If not, please provide the original design he created for the armoured slope.

Lunds: The flat section was in fact there in April. It was created at the time the bank was armored with stack rocks. The existing flat section was used by masons as a walkway to construct the rock wall prior to receiving our occupancy permit in March. The existing flat section provided inspiration for the rampway design (and deck extension) as it offered a natural flat area to pour forms and a natural walkway for ease of installation.

The armored slope and existing flat section was signed off by a Geotech and by the Building Inspector prior to occupancy - Report on file with the Village.

The same Geotech, Ward Phillips, met with us and our Mason on-site in May to assess the bank stability, rock wall, footings, and proposed aluminum structures and found no issues - see attached Invoice for his recent consultation

Staff: Per comments above, approvals required from one or more qualified professionals.

- (d) Proposal shows extensive planting of drought resistant plants on the armoured slope – please provide P.Eng. sign-off on this amendment to slope design.

Lunds: Omit extensive planting of drought-resistant plants on the armored slope.

- (e) Ocean Tech to provide structural (and geotechnical) specifications for aluminum deck supported by 3 aluminum 3”x 3” posts, including the point load on the deck structure at the top of the walkway.

Staff: Question not applicable in respect of deck, but still need engineering approval re. post works supporting and anchoring the ramp structure. This *may* be achieved through detailed drawings of the structure and connection points stamped by a qualified professional engineer for Ocean Tech, coordinated with a geotechnical engineer in respect of the site conditions. It would be beneficial to have a Coordinating Professional (i.e. the Lunds’ retained architect, Millenia), to provide a coordinating Schedule A in respect of this project, if it is approved.)

- (f) Ocean Tech to provide detailed design drawing of deck structure and walkway, including attachment points at top and, if applicable at bottom – is there any attachment of the ramp structure at the bottom?

Lunds: Please see submitted plans and most recent correspondence from Millenia Architecture for rampway design.

Staff: Ocean Tech's notated photo of top of ramp post and bracket works and how they are intended to secure the rampway requires engineering approval per the above comments.

- (g) Applicant to provide detailed topographical survey drawing showing ramp structure in place and specifically, the landing area and any attachments at or near the landing area. Will the ramp structure terminate on the Esplanade or the Foreshore?

Lunds: Topographical survey will be submitted upon Council approval. Termination at Esplanade.

- (h) Ocean Tech to provide the maximum slope at which the structure can properly function for pedestrian use.

Lunds: Slope is approx 25 degrees. A typical gangway on low tide can be as much as 30 degrees. The rampway will safely function for pedestrian use.

- (i) What would stop a person from going over the edge of the concrete landing area at the bottom if they slipped and fell down the rampway, especially near the bottom?

Lunds: The rampway railing is there to provide assistance with trip and falls at the bottom of the rampway. The newly poured concrete landing is wide and provides sufficient room to land on should a trip and fall occur at the base of the rampway. The rampway surface is made of a slip-proof rubber walkway (typically used in marine environments). Proposed fall restraints - railings or long/tall large metal planters.

Staff: Applicant's agent, Russ Meiklejohn, confirmed at the time his clients were intending to pour the new concrete pad on the foreshore in July 2021 that the proposed improvements to the existing concrete pad at the bottom of the staircase access below 51 and 52 Brunswick Beach Road, intended to accommodate a proposed single span structure from the property at 52 Brunswick to the foreshore, was completely on the foreshore and would not inhibit access to the foreshore from the existing staircase and on that basis the Stop Work Order issued on July 19th in respect of the formed up concrete pad at the bottom of the staircase access below 51 and 52 Brunswick Beach Road was vacated. It was further noted that the Municipality's acquiescence in respect of improvements to the concrete pad does not constitute approval in

principal nor any other form of consent or condoning of any future application that may be made by the Lunds for a single span or other structure.

3. Given that Council is obliged to consider comments from your neighbours in respect of potential impacts of your proposal on the use and enjoyment of their own properties, please explain:

- (a) What consideration has been given to reducing the height of the deck extension and the rampway structure to mitigate sightlines? If none, please explain why?
eg: Could you not create a landscaped ramp descending from the south end of your property toward the middle where the ramp could attach to a footing designed to receive it? i.e. in this scenario, there would be no deck extension.

Millenia: proposed ramp structure is in the middle section of the property /Esplanade, away from adjacent properties. Landscape ramp from the south end would be in the root protection zone, and under the trees that are oozing sap.

Lunds: Rampway structure height is designed based on building codes for safe slope and railing heights. The Rampway is located in the middle of our property and fronts only our property, therefore reducing sightline impact for adjacent properties respectfully. In comparison - the adjacent properties have their access ways within our direct sightlines - 51 Brunswicks staircase access fronts our property entirely with views into every room of our home including all of our bedrooms. 53 Brunswicks staircase access is located directly adjacent to our property line with a direct view into our master bedroom. Our Rampway design does not negatively impact neighboring properties privacy, views, or use and enjoyment of their own properties.

- (b) What consideration has been given to noise dampening options in respect of
- (i) the aluminum deck extension; and
 - (ii) the aluminum rampway?

Millenia: A typical ramp to floating dock has a sliding connection to the float and a hinge connection to land. Both connections allow for movement so are less rigid and prone to some "rattling " kind of sound when walked on. The proposed fixed bolted connections don't have that movement so will be inherently quieter than a floating dock installation. The rubber walkway pad will dampen any footfall sounds.

Lunds: Considerations for noise dampening in respect of rampway include a rubber surface walkway. The rampway itself does not create any noise.

- (c) What considerations mitigate against proceeding with the alternative and seemingly less obtrusive April 2021 rampway design by Millenia Architecture that received positive feedback from the Municipality?

Millenia: Our proposal for a ground ramp originated in the RPZ and sap area, and was very expensive due to a high volume of material needing to be moved down the side of the house.

Lunds:

Cost:

April Design:

Numerous quotes came in at over \$110,000.00 for the materials and labour with no warranty.

Current Design:

The rampway is a quarter of the price with extended warranty.

Installation:

April Design:

It would take up to two months for such an installation, causing disturbances (noise/large truck deliveries blocking the road while unloading/high demand for parking numerous work vehicles/portapotty onsite).

An extensive amount of materials would need to be trucked in and stored making our driveway and yard unusable for a long period of time and causing neighborhood disturbance.

Covid and Winter weather pose issues with delays, material and labour shortages, and increased costs.

Quotes voided warranty for installing geobags seaside. Issues with king tides, salt exposure, etc. could not guarantee the longevity of the materials or structural integrity.

The gravel base zigzag pathways could become loose over time and therefore slippery to walk on and unsuitable for wheelchair and adaptive carriers. The gravel would require constant maintenance and regular replacement.

Would be located directly under failing Village fir trees (large branches recently fell causing damage to an existing staircase encroachment) and impacted/damaged by the trees oozing sap.

Current Design:

Installation will take approximately 4 hours and 4 installers, with minimal noise and no disruption to the neighborhood.

10-year warranty on all parts.

Minimal to no maintenance necessary.

Material readily available, off-site fabrication and installation can be completed within a week, even during winter months.

Replacement is unlikely necessary as the structure is made to last a lifetime and is made to withstand coastal elements.

Located further away from Village trees so falling limbs and sap should be less of an issue.

Further Considerations:

Aluminum rampways are the most commonly used access ways for residential, commercial, industrial, and recreational seaside applications because they are lightweight, straightforward and quick to install, with a long lifespan guaranteed to withstand oceanfront elements. They are safe for on-foot and barrier-free passage and have an esthetically pleasing nautical westcoast look.

The CAO indicated in writing and again in person (in front of our physically challenged son) that he considers an aluminum rampway to be "unsightly" (even before having seen any plans). The CAO also stated that adjacent neighbors had expressed concerns to the Village prior to any formal notification of the applications/plans being sent to them for review. The Municipality now indicates the April design (a long zig-zag gravel pathway with over 1000 geobags forming massive retaining walls) to be "seemingly less obtrusive" than

the current design (a thin aluminum rampway structure that floats over the Esplanade). All of this indicates the possibility of pre-determined opinions and bias, therefore we are understandably concerned that there could be negative feedback and influence occurring with respect to considerations and approvals for our applications. We are hopeful that the extensive amount of information provided will help the Municipality (and neighboring property owners) to see the many benefits of this aluminum rampway design.

Options to suit Alex's needs due to his physical disability, along with the environmental challenges that the Esplanade and Village trees pose are limited. Our finances are also limited. The architecturally designed rampway is the best option to suit all needs and we consider it to be less obtrusive, more esthetically pleasing, and safer than both adjacent property owners derelict wooden staircase encroachments.

4. You hired a Registered Professional Biologist from 'Balanced Environmental' to review your project, including the concrete pour on the foreshore and he commented as follows:

This report does not constitute approval under any municipal, provincial, or federal legislation and does not relieve anyone from any obligation to comply with relevant municipal, provincial, or federal legislation or requirements.

There remain outstanding issues related to land ownership, property/natural boundaries and legal responsibilities that require clarification in order to complete a more fulsome environmental effects determination and regulatory review. With respect to the Fisheries Act Balanced's QEPs do not see any significant or adverse effect to fish or fish habitat associated with the Project. (emphasis added)

What were the outstanding issues that Mr. Christie discussed with you?

Staff: These issues will need to be firmly addressed in the context of any encroachment agreement and section 219 covenant, in the event of approval.

5. DVP applications require signage to be posted at the front of your property in accordance with Bylaw No. 431. This must be done no later than December 31, 2021 in order for your applications to be heard by Council on January 11, 2021 at 6 pm per the Special Meeting set down by Council at their December 14, 2021 meeting. This is also our cut-off date for notice requirements so we need to know as much of the specifics above as possible in order to provide notice to adjacent property owners in order for them to provide comment on exactly what it is you are proposing to construct.

Lunds: Snowfall has affected our ability to get to the hardware store to purchase signage materials. We will do our best to use materials from home to construct and post signage by end of day Dec 31/21.

Staff: Discussed on site with Mr. Lund and agreed upon best efforts for home made signage with required information.

6. For the purposes of security deposits related to the works, in the event you receive approvals, we need to know in advance the quoted costs of the deck extension and the rampway structure, including footings already poured at the top of slope and the concrete poured at the bottom of the slope.

Lunds: Quoted costs to be submitted upon approval.

Staff: This will need to be provided in advance, in confidence.

Lunds - Hardships for DVP application:

- Our son Alex was born with Cerebral Palsy. Alex has had 18 surgeries to date, many of which require him to be in a wheelchair for months during his recovery. Three of the surgeries were for the reconstruction of Alex's foot and ankle including cadaver bone implants, screws, ligament lengthening, and tendon transfers - very difficult and painful surgeries to endure with year-long recovery times. Alex frequently undergoes painful procedures for his hand and arm to reduce spasticity and improve weakness, which require extensive physiotherapy as part of the treatment. To add to Alex's physical challenges, he suffered a ruptured appendix with sepsis complications resulting in his being hospitalized for 3 weeks and having to undergo numerous invasive surgeries. One of which was to remove his intestines in order to clean lesions and remove blockages. Alex lost 18 lbs in three weeks and all of his muscle tone. It took him over a year to recover from the painful near-death experience. Swimming is one of the best forms of physical therapy for Alex's cerebral palsy and for his core strength (which is extremely important after undergoing 5 abdominal surgeries), especially saltwater swimming as he is more buoyant. Alex's adaptive kayak also provides an excellent form of independent physical therapy. The rampway will enable Alex to access the beach safely and independently (whereas a staircase or gravel pathway do not). While all of Alex's friends are off skiing, downhill biking, playing hockey, etc Alex is very limited with recreational activity options that he can do independently and that he enjoys doing. Swimming, kayaking, boating, fishing, and hanging out on the beach are Alex's favorite pastimes. The beach provides Alex with a place to escape the many hardships he faces on a daily basis due to his physical disability. We purchased a property with direct beach access for this reason, to provide Alex with opportunities for

physical therapy and so he may enjoy doing his favorite activities independently. The aluminum rampway is the best design to suit Alex's needs.

- The public beach access ways along Brunswick Beach are not barrier-free and therefore Alex is unable to use them to transport his adaptive kayak, recreational gear, or wheelchair independently.
- Carl is scheduled for 2 hip surgeries. Similar to Alex, the rampway will provide Carl with the ability to access the beach safely and independently for physical and mental therapy.
- We plan to grow old in this home. The aluminum rampway will provide accessible beach access as we age, in comparison to stairs or long gravel pathways. It will even better suit our aging dog!
- The proposed aluminum rampway is easier and faster to install than a staircase or gravel pathway (as it is manufactured off-site) therefore causing little (if any) disturbance to neighboring properties. It will take approx 4 hours to install, whereas stairs and gravel pathways will take weeks, creating noise and neighborhood disruption.
- The proposed aluminum rampway can withstand the elements better and longer, and it is more cost-effective to manufacture and install than a wooden staircase or gravel pathway.
- Aluminum rampways are commonly used on the waterfront as they are slip-resistant, durable, withstand the elements, and have a long life-span, in comparison to wooden stairs or gravel pathways. They have a nautical appeal.
- Our Aluminum rampway design does not negatively impact adjacent properties views, privacy, or use and enjoyment of their own properties (unlike 51 Brunswicks staircase which directly negatively impacts our views, privacy, and use and enjoyment of our yard and frontage).
- Our aluminum rampway design is an environmentally friendly application, allowing light and rain through it to underlying vegetation. It does not negatively impact the Esplanade eco-system or Village fir trees.
- We purchased the property from the Village with the Municipiplites expectation that we would have shared access of the existing staircase with 51 Brunswick. Council refused our request for sole access of this staircase (even though it completely fronts our

property). Council refused our request for the staircase to be removed upon the sale of 51 Brunswick (as per Encroachment policy). Council recently granted sole access of the staircase to 51 Brunswick, therefore causing us to be without the direct beach access we were promised at the time of sale. We purchased the lot from the Village only because it offered direct beach access. Approval for the rampway would fulfill the Villages representation of the sale agreement and uphold the rights of persons with physical disabilities to have barrier-free access.

Staff: The Lunds continue to play both sides of this issue. On the one hand, they say they relied on the access provided by the staircase and they should've been granted exclusive use of it (rather than the expected shared use that was conveyed to them at the time they viewed the property). On the other hand, they say that the staircase is unsafe and unsuitable for the needs of their son so they were not interested in entering into any agreement for the use of the staircase and it should be removed.



5 Senator Road
North Vancouver, BC V7P 3H9
Phone 604.988.3944
Fax 604.983.3454
www.otech.ca

December 9th, 2021

Carl Lund
52 Brunswick Beach Road
Lions Bay, BC

Dear Carl:

Thanks for your phone call yesterday asking me to outline what we are proposing to build for you at 52 Brunswick Beach Road....

Deck Extension:

An Aluminum framed triangular shaped extension that is anchored to the existing rock wall that would extend out approx. 1' at the south end to approx. 6' at the north end. This shape keeps the deck inside the property line according to the property line stakes.

It is made using 3" x 3" marine grade Aluminum, and as well as bolted into the rock face, has 3 square 3" x 3" legs that sit on 3 concrete footings. It is fabricated the same way as a timber deck would be framed using headers and joists, except it is welded together not nailed or screwed. On top of this extension will be Aluminum Safety tread sheets welded to the frame to act as decking. It also will not deteriorate or rot as wood would over time. The approximate weight of this extension is 700 – 800 lbs..

Walkway:

The walkway is 36' long, connected to the south end of the deck extension, landing on the concrete pad down near the southwest corner of the property. The walkway is designed the same as we would make any gangway for use around the waterfront anywhere in BC. It's fabricated using 3" x 3" Aluminum chords and crossties, and the rail (cord) height is approx. 42" from the deck. Typically, these are designed to a minimum of 40 – 50 lbs per square foot, but this walkway will be stronger than typically made, as we will be using a heavier gauge top chord. We happen to have 2 40' lengths in the shop and thought a single piece would look nice. The weight of the walkway is approx. 1000 – 1200 lbs...

Hopefully this will help in your efforts to obtain a permit for us to fabricate and install these pieces along your waterfront. If you have any questions, please don't hesitate to contact me.

Regards
Randy Hoffman

Randy Hoffman
Project Manager



A Member of the BRIGGS Marine Group

Unit 1, 5 Senator Road, North Vancouver, BC V7P 3H9
Cell. 604.880.0115 Off. 604-988-3944 | www.otech.ca

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THIS FACE WILL ATTACH TO ROCK WALL

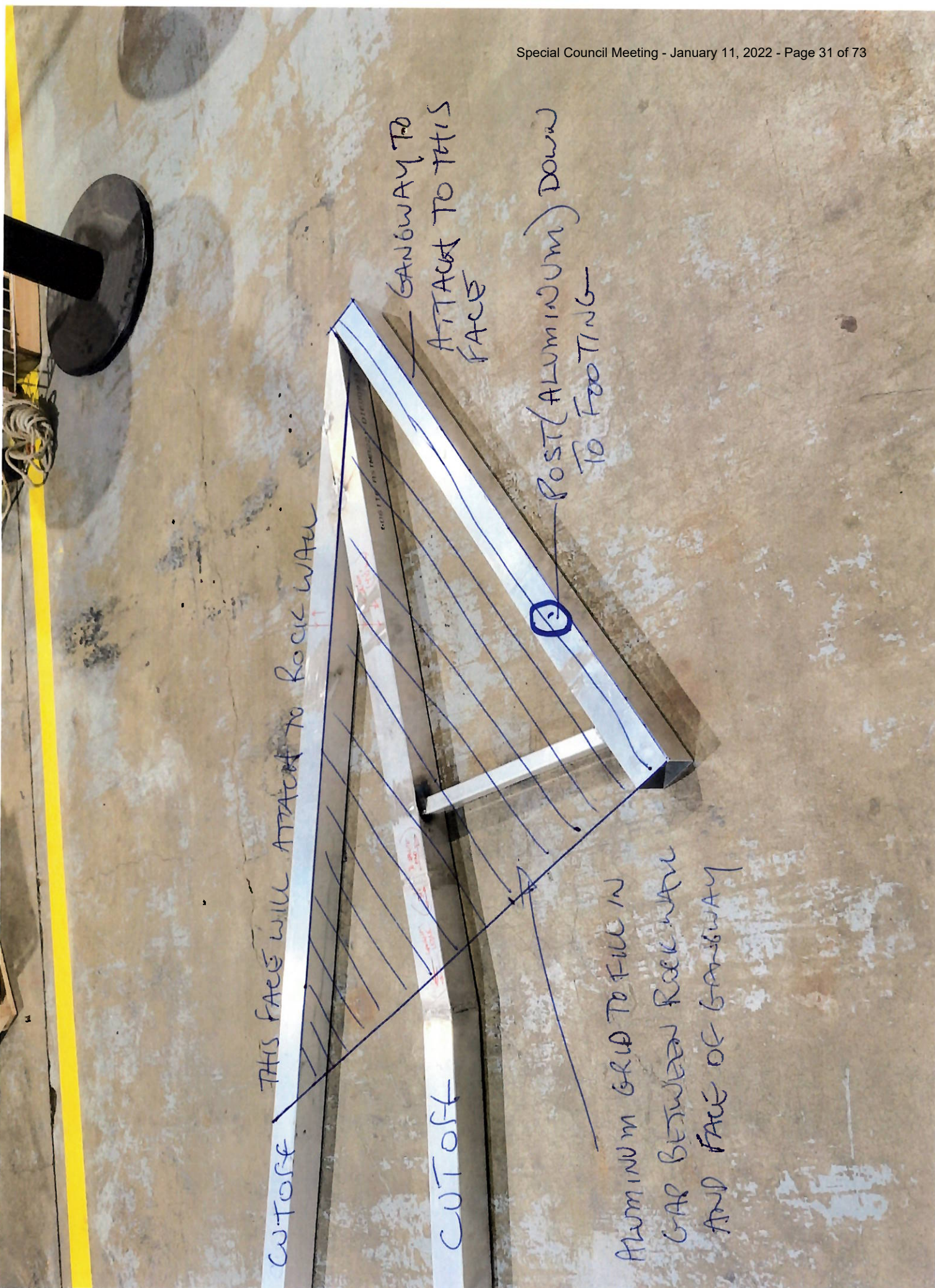
CUTOFF

CUTOFF

GANGWAY TO
ATTACH TO THIS
FACE

POST (ALUMINUM) DOWN
TO FOOTING

ALUMINUM GRID TO FILL IN
GAP BETWEEN ROCK WALL
AND FACE OF GANGWAY



Peter DeJong

From: RUSS AND DOROTHY MEIKLEJOHN <millenia@shaw.ca>
Sent: July 23, 2021 3:59 PM
To: Peter DeJong; Naizam Jaffer; Dave Butler; Inikki; carl
Subject: Fwd: Repairs to Existing Shoreline Infrastructure. 52 Brunswick Road, Village of Lions Bay

Good Afternoon

Please see report below fro the QEP engaged by the Lunds to review their concrete repair and proposed beach access. (which I will forward separately)

Best Regards
Russ Meiklejohn Architect AIBC

On Thu, Jul 22, 2021 at 7:21 PM Scott Christie <scott@balanced.ca> wrote:

Carl and Nikki Lund (Proponent),

Thank you for the opportunity to visit and discuss your project today in the Village of Lions Bay (VLB). The following comments represent Balanced's Qualified Environmental Professional's (QEP) preliminary review of your proposed works to repair an existing concrete stairway and install a sloped clear span walkway to provide safe wheelchair access to the beach (Project).

Background (Proponent/Balanced QEP Discussion)

The existing concrete stairway and associated timber staircase predate the Proponent purchase of the upland property from the VLB. The VLB maintains the position that the concrete stairway and timber staircase are VLB property. The VLB maintains that the slope fronting the Proponent's property on which the stairway and staircase are located remains in VLB possession despite having sold the Proponent a "Waterfront Lot". The VLB is refusing to maintain the concrete stairway, timber staircase or associated VLB stated property that fronts the Proponent's "Waterfront Property" (waterfront rights and boundaries are being clarified).

The VLB believes the upland slope fronting the Proponent property is owned by the VLB. Depending on tenure agreements and the location of the legal natural boundary the existing concrete stairway and/or portions of the upland slope may be located on Provincial Crown land and not under the jurisdiction of the VLB.

The upland slope fronting the Proponent property includes unstable exposed substrates and large (tall) trees at risk from sediment erosion by rains and marine waters. The trees have been inspected by licenced arborists and found to qualify as hazard trees. The VLB refuses to accept the expert advice provided by the arborists and will not address the hazards posed to adjacent private residences by VLB trees on VLB property.

Site Visit Observations

Balanced's QEP is an expert in the decay of marine structures including structures made of concrete, steel, timber, plastic and rock. Balanced's QEP is an expert in shoreline rehabilitation and environments. Balanced performed a preliminary inspection of the concrete stairway and timber staircase and determined that:

- a. damage to the concrete stairway has been caused by chloride attack from seawater, mechanical abrasion/impact from floating debris, and spalling resulting from corrosion of reinforcing steel. This damage has resulted in the deposit of reinforcing steel and deteriorated concrete on the adjacent upper foreshore. The concrete stairway is significantly damaged and unsafe. The concrete and steel debris deposited on the beach from the decay of the concrete stairway has been voluntarily recovered by the Proponent in order to maintain the beach in a clean and safe state for the benefit of the environment and the public. The existing concrete stairway is unsafe.
- b. damage to the timber staircase has been caused by fungal decay resulting in greater than 50% section loss to a number of components including stair treads, handrails/posts, and stringers. The timber staircase is unsafe.

During the site visit Balanced's QEP observed a variety of habitat conditions including::

- no substantive habitat or biota present within or adjacent to the footprint of the existing concrete stairway;
- no substantive Marine Riparian Area (MRA) vegetation;
- the presence of hazard trees;
- unstable upper beach and riparian substrates; and,
- historical anthropogenic changes to the foreshore including redistribution of intertidal shoreline substrates.

Project Description

1. Repair of an existing concrete stairway located at the base of an existing timber staircase and installation of a clear span aluminum walkway to provide wheel chair access to the beach from the upland private deck down to the existing concrete stairway location;
2. Concrete stairway repairs including the in-place pouring of concrete within a sealed timber form above the highwater line;
3. The concrete contractor is aware of and will institute all Best Management Practices (BMPs) with respect to the use of concrete in and around marine waters;
4. The concrete pour will be completed during periods of lower tide and accomplished within a single tide cycle. No uncured concrete will come in contact with marine waters;
5. All formwork and debris associated with the concrete stairway works will be removed after the concrete has cured; and,
6. The aluminum walkway will be constructed in a manner to allow light penetration to underlying vegetation.

Qualified Environmental Professional Opinion

The concrete stairway repairs will:

- occupy the same footprint as the original concrete stairway;
- not result in the release of any deleterious substances into marine waters;

- stabilize existing shoreline substrates and reduce erosion of riparian slopes and habitat; and,
- follow policies and guidelines associated with works on or adjacent to marine waters.

The aluminum walkway will be:

- of clear span design; and,
- allow light and rainfall penetration to underlying vegetation.

Based on the foregoing information Balanced QEPs determination is that with effectively and adaptively applied mitigation measures the Project is unlikely to cause:

- significant adverse environmental effect; or,
- serious temporary or permanent harm to fish and/or fish habitat that contribute substantially to commercial, recreational, or Aboriginal fisheries.

The Qualified Environment Professional (QEP) advice is:

The Project will not cause serious or permanent harm to fish and/or fish habitat and need not be submitted for Fisheries and Oceans review in relation to the Fisheries Act..

This report does not constitute approval under any municipal, provincial, or federal legislation and does not relieve anyone from any obligation to comply with relevant municipal, provincial, or federal legislation or requirements.

There remain outstanding issues related to land ownership, property/natural boundaries and legal responsibilities that require clarification in order to complete a more fulsome environmental effects determination and regulatory review. With respect to the *Fisheries Act* Balanced's QEPs do not see any significant or adverse effect to fish or fish habitat associated with the Project.

Thank you for the opportunity to be of service and if you have any questions, please contact me.

Regards

Scott

Scott Christie, R.P.Bio

President

BALANCED

ENVIRONMENTAL

Unit 1, 5 Senator Road, North Vancouver, B.C. V7P 3H9

Tel. 604.988.3033 | Fax. 604.983.3454 | www.balanced.ca



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**Photo of Pre-existing Concrete Landing & Concrete Stairs to Beach
From Pre-existing Wooden Staircase**





This drawing is the property of Millenia Architecture Corp. and shall not be reproduced without written permission.

The Contractor shall verify actual site conditions and dimensions and shall be responsible for notifying the architect of any discrepancies.

All work shall be carried out in strict accordance with current applicable building code and municipal by-laws.

consultants



No.	Date	Description
1	04/26/2021	VLB REVIEW

issue

project

52 BRUNSWICK BEACH RD
LIONS BAY BC
PROPOSED ACCESSIBLE
BEACH ACCESS, SLOPE
STABILIZATION / PLANTING TO
ESPLANADE

title

PROPOSED SKETCH &
EXIST PHOTOS

project no. 2021-01

scale

drawn PM

reviewed RM

date

drawing no.

A1.1

1 SKETCH - PROPOSED (GENERAL CONCEPT - SEE SITE PLAN AND SECTION FOR DETAILS)
A1.1

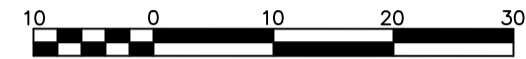
2 EXISTING PHOTOS
A1.1

BC LAND SURVEYOR'S SITE PLAN

OF THAT PART OF DISTRICT LOT 1815 GROUP 1
NWD SHOWN ON PLAN EPP69335

52 Brunswick Beach Road
The Municipality of the Village of Lions Bay, BC

(PID 030-190-011)



The intended plot size is 22" in width
by 17" in height (C Size) when plotted
at a scale of 1"=1/16"

All distances are horizontal ground-level
distances in feet and decimals thereof,
unless otherwise noted.

Elevations on CVD Datum and relate
to GCM 340521 via GNSS Observations.
Elevation Used = 923.745m

#	Tree	Ø (m)
1	Cedar	0.9
2	Cedar	1.1
3	Holly	0.2
4	Cedar	1.0
5	Arbutus	0.3
6	Fir	1.3
7	Fir	1.2
8	Fir	1.2
9	Cedar (x3)	0.6

Zoned: RS-1 B.B.O.

Lot Area = 6128 square feet (569.3m²)

x 98.8 Denotes Existing Ground Elevation

Property line dimensions are derived
from Plan EPP69335

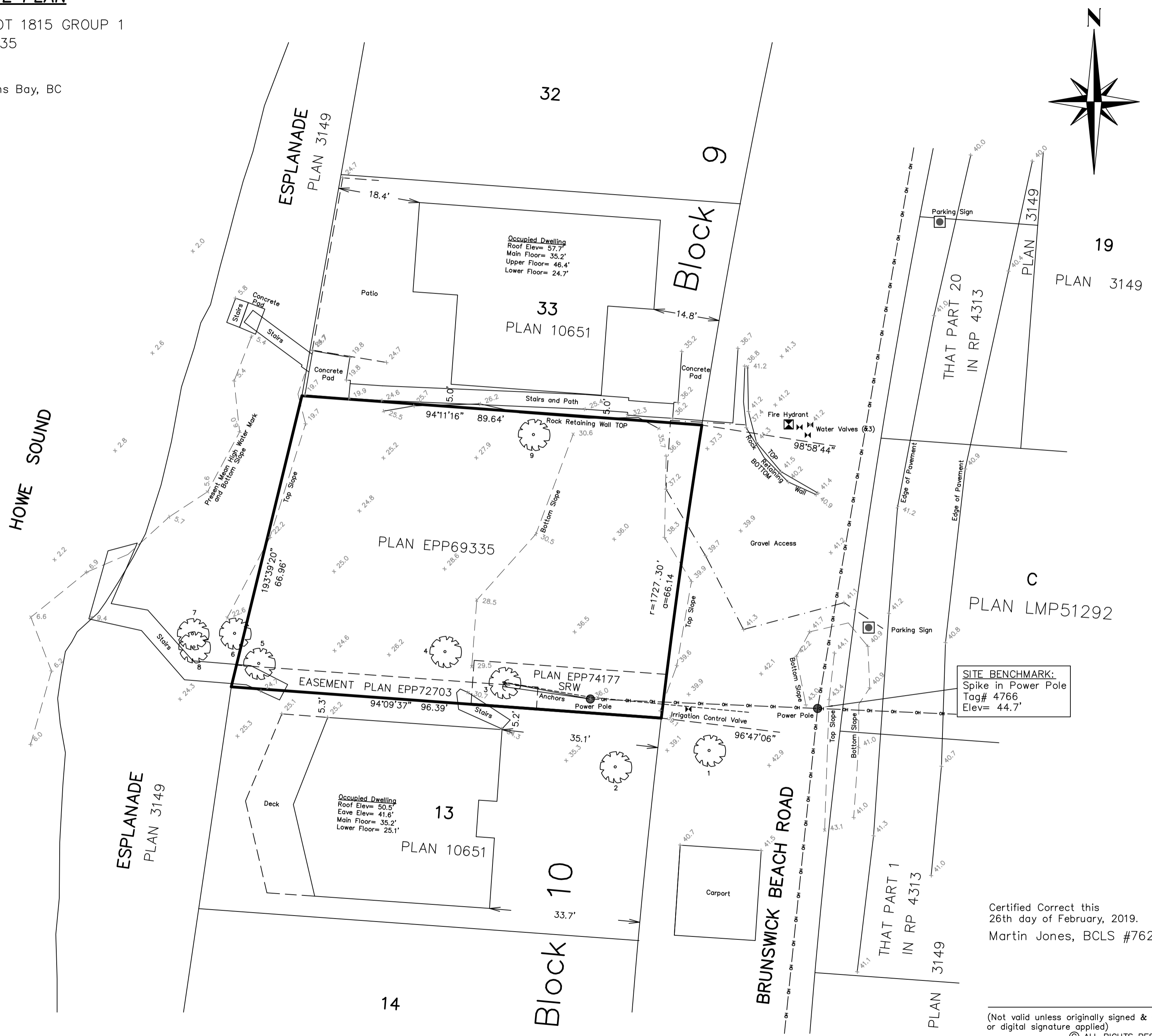
This document was prepared for mortgage
and municipal/regional district purposes
and is for the exclusive use of our client,
Carl Lund.

The signatory accepts no responsibility or
liability for any damages that may be
suffered by a third party as a result
of any decisions made, or actions taken
based on this document.

This document shows the relative location of
the surveyed structures and features with
respect to the boundaries of the parcel
described above. This document shall not
be used to define property lines or
property corners.

The subject property is affected by the
following non-financial charges and interests
which may affect the positioning of structures
on the property:
SRW: CA6172928, CA6172929
EASEMENT: CA6194295

BUNBURY & ASSOCIATES
BC LAND SURVEYORS
SQUAMISH 604-892-3090 WHISTLER 604-932-3770
File No. 2019-114-FT1A.dwg
FB 2189 Pg. 54-63



SITE BENCHMARK:
Spike in Power Pole
Tag# 4766
Elev= 44.7'

Certified Correct this
26th day of February, 2019.
Martin Jones, BCLS #762

(Not valid unless originally signed & sealed
or digital signature applied)
© ALL RIGHTS RESERVED

Good day Mr. DeJong, Honorable Mayor and Councilors,

6 Jan 22

Introduction

From day one, I asked the Lunds for a mutually respectful relationship. My early efforts were not welcomed. For the record, the Lunds have never stated a desire, made any formal request, or behaved in any fashion whatsoever that would foster a relationship that would allow a shared beach stair access. Instead their actions and behaviors have been to emotionally bully me, attempt to extinguish my beach access rights, and now they are attempting to force a shared access onto the terminal portions of my beach access stairs with this proposal that breaches my EA with the Municipality of the Village of Lions Bay (VoLB) (see below).

Having a sister in a wheelchair, who I would also like to provide beach access for, and as a physician, I know full well the needs of those who are physically challenged. That said, solutions for such persons in the Lund family, should not come at the expense of infringements on my beach access stair agreement, or to ignore VoLB administrative procedures.

I support the Lund's having their own distinct physically separated beach access stairs. This is especially so after they/their contractors vandalized, obstructed, and abused my beach access stairs, "The Works", to undermine it, before their shared use expired on Sept. 30th, 2021.

I urge those adjudicating this application to view it as if it is at the design state, the stage it should have been reviewed. Assessors should not be pressured to accept it at a stage of virtual completion, when the applicants are deliberately trying to push this through with emails of legal threats, forced deadlines, and trying to appeal to one's emotion. Failure to present this to the administration at the design stage, at a time when adjustments could be made, is the responsibility of the applicant. Ask yourself why they didn't? It was to push through an application that infringes on the rights of others in my opinion.

Primary Comments:

- a. a variance of the rear yard setback from 4.5 m to 0 m for the ramp:
 - i. The Lunds can minimize the need for relief of the minimum setback distance by using the unused several meters of their lot at the NW corner, to establish a take-off point for the ramp down to a landing on the Esplanade due west of the middle of their lot. This will minimize the setback relief being requested. Their BOV application could be amended to do this. Doing so would put the landing point several meters to the north of the unauthorized cement landing point they poured. If an EA is signed by the Village with the Lunds to use the new unauthorized landing pad that is connected to and poured in part over the terminal portions of my beach access stairs, it would breach my EA agreement with the VoLB (see Figure #1 below).

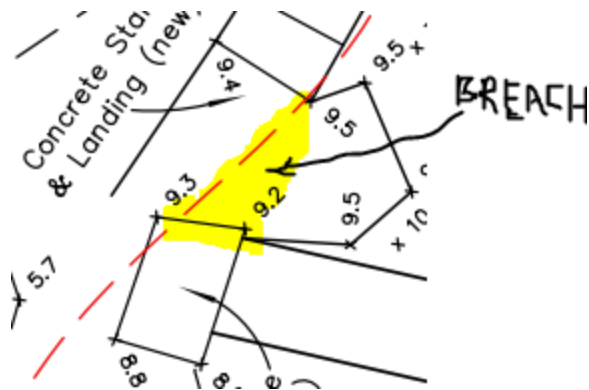


Figure #1: Breach (yellow indicates VoLB land where unauthorized connection to my Concrete Pad has been poured in breach of my EA).

- ii. At the early planning stage of their lot, the Lunds ought to have had an engineer establish a take off point for their ramp that respected VoLB bylaws. Failure to do so at that stage should not result in the infringement of 51’s rights to its beach access stairs by forcing a shared arrangement for the terminal portions of my stairs now.

b. Encroachment Agreement (EA) in respect to the ramp over/on the Esplanade:

- i. The Lund’s unauthorized poured concrete landing pad/concrete stairs interfere with 51 Brunswick’s exclusive use beach access stair encroachment agreement (EA) clause 1a. The concrete landing pad and stairs they poured that extend to the foreshore violate the exclusive use provision, as effectively they have high-jacked/forced a shared use of the terminal portions of my beach access stairs, “The Works” that is on the Esplanade. The EA specifies beach access stairs and not material and the concrete stairs that go down to the foreshore form part of my EA. Portions of their cement are encompassed within the area specified in Schedule A of my EA legal document (see figure #2). This is also shown in their Architects drawings. This cannot be allowed on a legal basis.

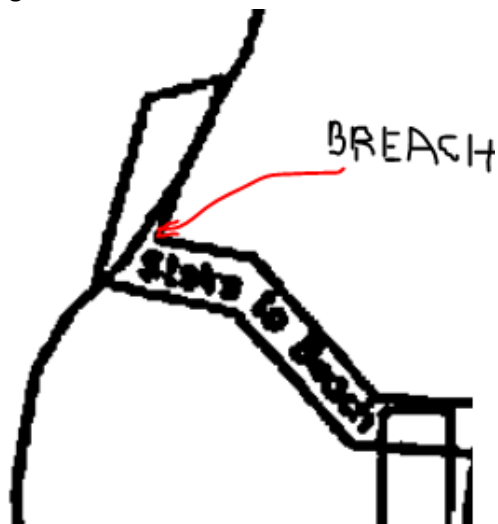


Figure #1: Area of VoLB Land Encompassed in 51 Brunswick Beach Road Beach Access Encroachment Agreement

- ii. I, as the holder of my EA, have the sole responsibility for any work on the beach stairway (clause 7) and their unauthorized concrete work infringes on that right. Further the work they did was done without the prior written consent of the Municipality as is stipulated in my EA if I had wanted to do the same work. There is no provision for a third party to do construction on it, let alone the Lunds. The VoLB should order the unauthorized cement work on VoLB land removed.
- iii. The Lunds' cement pour of the landing pad and stairs interferes with liability, indemnity, and potentially the insurance I am required to have for the licensed area as is stipulated in my EA (clauses 13-15). Should someone injure themselves on the terminal portions of "The Works", it will cloud these legal considerations and cannot be allowed.
- iv. The Lunds have interfered with "The Works" with the pouring of unauthorized cement stairs over the existing terminal portions of my beach access stairs. In so doing, they have obstructed the use of the Licence area (clause 5a) egress off of my landing pad by creating an irregular rise new cement stair that now is a tripping hazard that I will have to correct (see Figure #3). Further to achieve this, the Lunds/their contractors have vandalized the works by cutting off a 12x12x18 inch corner-post receiving footing (witnessed by Kevin from Bylaws) (Figure #4).

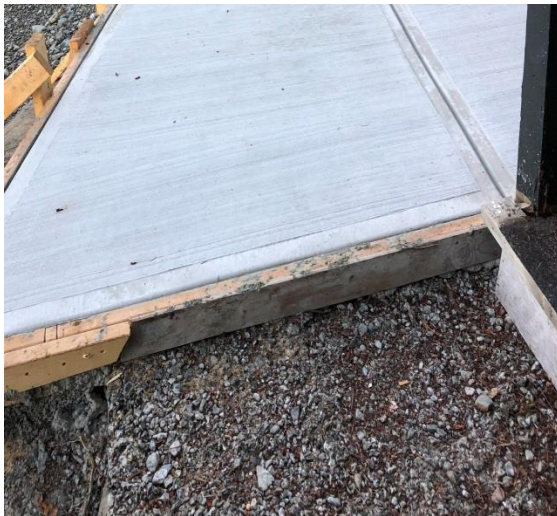


Figure #3: Obstructing Irregular Rise on Lower Landing



Figure #4: Vandalized/Cut off Corner Pillar on Lower Landing

They should be made to remove the unauthorized structures that have been placed and to make a distinctly separate structure that is not connected to "The Works" as clearly they cannot respect the property of others or the VoLB administrative procedures.

- v. My EA stipulates under clause 10 that I cannot do anything that may become an annoyance to other occupiers of the Esplanade or adjoining lands. They have obstructed my access to the beach in front of my lot by piling a lot of rock along the beach against the footing of the landing pad (Figure #5). Some were pre-existing but a lot is newly added. Other neighbours noticed this antagonistic behavior and commented to me about this. They must have an entirely separate landing pad, so as to not interfere with the lands adjacent to my beach access stairs egress point.



Figure #5: Beach Obstruction with Boulders/Rock

- vi. During the period of their shared access of “The Works”, the Lunds attached objects to the stairs. The landing pad/cement stairs that they poured will allow the placement of objects, such as shrubbery, etc. that would obstruct my egress off of my cement landing pad onto the terminal portion of “The Works”. They have even stated in Reference 1, item 2(i), that they intend to put “long/tall large metal planters” on the landing pad. The height/weight of the plants in their planters may also be such that it will obstruct my carrying a boat/Kayak/SUP down my stairs or to move them out of the way. They should be required to have a distinctly separate landing pad, so as to not allow such obstruction to be possible (simply putting a clause in their EA stating they can’t store objects will not prevent them from doing so, if the penalty is insignificant). This will prevent conflict, conflict that will cause further disruption to the neighbourhood.
- vii. The unauthorized construction of the long cement stairs/ramp to the beach from the landing pad they made, that spans almost half of the width of their lot, was done as I know it, without the approval of the authority having jurisdiction, the Province of B.C. In Reference 1, item 4, even their own Biologist states *“There remain outstanding issues related to land ownership, property/natural boundaries and legal responsibilities that require clarification in order to complete a more fulsome....regulatory review”*. If the VoLB signs an EA with the Lunds, this will need to be carefully scrutinized. Otherwise it may give the Province the message that the VoLB has waived the rights for the control of the Esplanade waterfront. Such an action sets a precedence that the VoLB ought to consider closely as this a substantial part of the VoLB frontage. If the Province were to require removal of the structure upon review, the VoLB would potentially have additional involvement with costs/time incurred administratively.

Use and Enjoyment of the Land

I concur with others that the use of marine ramp for beach access over land as opposed to over water, where it is not typical in this neighbourhood, is obtrusive. All of the other properties have structures that blend in to the flora and fauna (the Lund’s Zig-Zag proposal of April 2021 would blend in better). The use of a ramp is more appropriate for waterfront properties with deep water moorage, such as in

Port Moody or Belcara where it is required to have an articulating structure. I do appreciate the potential need for wheelchair access, if the VoLB feels it is safe.

If approved, the effective shared access at the terminal portion of my beach access stairs will significantly take away from the use and enjoyment of the lands and has the possibility that the Lunds will completely obstruct my egress off of my landing pad. If the Lunds place the large/tall planter that they refer to, below the HWM, then it is on Crown Land and the Lunds will say that the VoLB has no jurisdiction. Effectively it will cut off my access to the beach and force me to go over slippery boulders to reach the beach (see Figure #5 and Figure #6). This is a serious concern to me as the only recourse I may have is very expensive legal civil litigation and I do not think that it is fair that the VoLB put me in this position. This is a real possibility and something that all of the administration should closely consider.

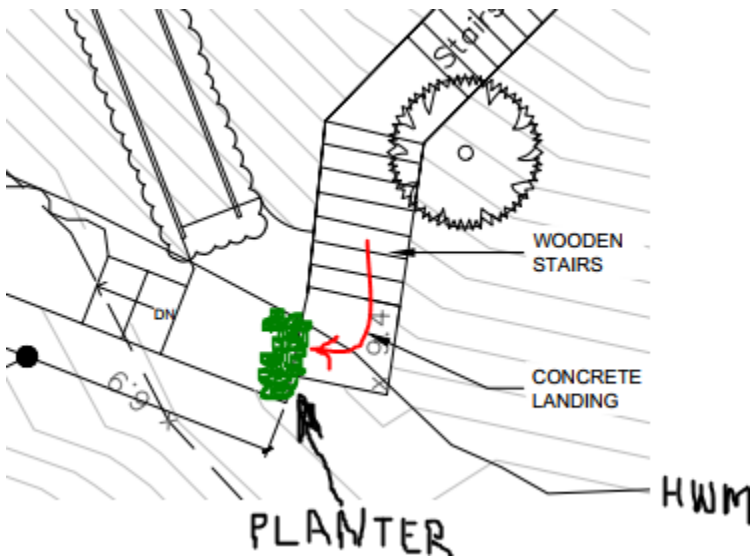


Figure #6: Potential for Obstruction of Egress off of 51’s Beach Access Stair Landing with Planter

This may force me into perpetual conflict that could escalate. It may result in the need/cost for expensive civil legal action against them. This would be unfair when my EA is exclusive use. Further, whereas I used to be able to go down a couple of short stairs to be on the beach, there is now a long ramp that extends way past where my cement foreshore stairs ended at a height that necessitates further travel in front of the Lund’s frontage. This will put me on a location on the beach where they commonly gather, creating more conflict. Their intention with all of this construction is to try to force me to go some other way off of my platform, which means making my way over large boulders that flank the cement pad/cement run-out and would be unsafe. In effect their actions have made the problem of my being in view of their lot, worse.

The forced shared access of the lower portions of my beach access, if approved, will likely be perceived negatively should I ever have to sell, especially with neighbours who have not behaved respectfully.

Secondary Comments:

I do object to the fact that the Lunds have completed all of the work on this project (except installation) without the approval of the authorities having jurisdiction and without penalty. This is a perfect example of their stated philosophy of “they do what they want and deal with the VoLB later”. It is making a mockery of your administration.

They have done their cement work without prior approval and poured a concrete landing/cement foreshore stairs on the esplanade as well as on Crown Land that was a subject to a STOP WORK ORDER. I still fail to understand why that order was vacated, for the construction work on VoLB land. There was no oversight in terms of the safety or engineering of this heavy construction. They now seek retroactively to have all of what they have done approved! This sequence sets a dangerous precedence as it sends a message to residents that they can perform unauthorized work on the esplanade and seek forgiveness later. This undermines the authority of the VoLB administrative processes that exist to protect the Village from liability and to protect public safety. Approving an EA for this unauthorized work is not fair to others who do follow VoLB administrative procedures.

Did the Lunds have any regard for any of Village bylaws in terms of permits for contractor parking, noise bylaws with the use of hammer drills, etc., during construction?

The Lunds have created a large number of hours of work for the VoLB administration, including forcing this application through by using the holidays in an attempt to limit resident input, in my opinion. There have been cat and mouse episodes of unauthorized construction requiring the CAO and Inspector to be involved on short notice multiple times, all at taxpayer expense. This has put undue workload on key people in the administration on staff.

The Police have already been called twice on conflict that has arisen at these addresses. Approval of this application will increase the likelihood of an escalation of conflict and the potential for more call-outs. The Administration of the VoLB has a duty (civic, ethical, etc.) to separate the parties physically (separate landing pads/EA structures) and not to allow a forced shared use EA, as a means to prevent future conflict. Failure to do so will also increase the risk of further psychological harms from their behavior to the respondent and his family. This should be taken seriously.

Further conflict will also cause me to incur tens of thousands of dollars more in civil legal remedies and I appeal to the Administration of the VoLB to please not put me in that position.

The ongoing conflict in the neighbourhood has a cost to the other residents also and this is something that the VoLB administration should take seriously and do what they can to prevent it.

Those assessing this application can easily require the Lunds to move their landing point several meters to the North. The Lunds have engaged their consultants and it would not be hard for them to pivot their project north several meters to physically distance it from my beach access stairs/runout onto the beach. In my opinion their pad should not intercept the cement ramp on the foreshore until I can step off of the ramp safely.

Gregory Banta

51 Brunswick Beach Road, Lions Bay, B.C., V0N 2E0

6 Jan 22 Addendum:

On 6 Jan 22 the home made signage that I had on my beach access stairs top and bottom, stating in black felt "Stairs Closed, Under Repair" were taken. There were foot prints from the Lund's lot down to and onto the stairs. The signs were there 5 Jan 22 in the afternoon. This shows the disregard for indemnification and safety. Further, even during the temporary shared access over the summer of 2021, despite a request to Mr. Lund, he never provided proof of indemnification for the Lund family's use of the stairs. I asked Mr. DeJong if he had received same but he did not provide me a copy. I concluded that no indemnification was in place during the time they used the stairs as they were required to provide under the terms of the agreement. This put me at liability for the time they used the stairs. This is why any shared use will not work, and distinctly separate structures are necessary.

References

Village of Lions Bay, Information and Process Required for Applications, sent to Residents 4 Jan 22 from Mr. Peter DeJong, nine pages. Includes questions from Staff with responses from the Applicant.

**HIGHWAY ENCROACHMENT AGREEMENT
(LICENSE TO OCCUPY)**

THIS AGREEMENT dated for reference the 20th day of October, 2020.

BETWEEN:

ESTATE OF ANNMARIE GATES, of 51 Brunswick Beach Road, PO Box 430, Lions Bay, BC,
VON 2E0

(hereinafter called the "Licensee")

AND:

VILLAGE OF LIONS BAY, a municipal corporation, having offices at 400 Centre Road, Lions
Bay BC, VON 2E0

(hereinafter called the "Municipality")

GIVEN THAT:

- A. The Municipality holds ownership and possession of highways lying and being in the Village of Lions Bay in the Province of British Columbia as per s. 35(1) of the *Community Charter*. The portion of highway known as "Esplanade" and subject to this agreement is identified and shown on the sketch plan in Schedule "A";
(the "Esplanade").
- B. The Licensee is the fee simple owner of those lands located at 51 Brunswick Beach Road, Lions Bay, BC, more particularly known and described as:

PID: 009-322-531
Lot 13, Block 10, District Lot 1815, Plan 10651
(the "Licensee's Property").
- C. The Licensee wishes to continue to encroach upon portions of the Esplanade as outlined on Schedule "A" to this agreement, described therein as Stairs to Beach (the "Licence Area"), as amended to include a portion of new, landscaped steps on the Esplanade adjacent to the west property line of the Licensee's Property, and excluding the portion shown within Easement Plan EPP 72703, as agreed between the Municipality and Annemarie Gates.
- D. The Municipality has agreed that the Licensee may occupy the Licence Area for the purposes and on the terms and conditions herein set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and covenants contained herein and sum of \$1.00 now paid by the Licensee to the Municipality and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Grant of License** – The Municipality, on the terms and conditions set forth herein, grants to the Licensee the right and license to access, use and occupy the stairway structure identified in Schedule “A”, as amended, photographs of which are attached in Schedule “B” (the “Beach Stairway”) for the:
 - (a) exclusive use of the Licensee and its permitted assigns and their servants, agents and invitees, subject to subsections 1(b) and 1(c);
 - (b) Municipality and its successors and assigns and their servants, agents and invitees; and
 - (c) registered owners of the adjacent property at 52 Brunswick Beach Road (the “Lunds”), and their servants, agents and invitees, provided that:
 - (i) the Lunds sign a waiver of liability and indemnification agreement holding the Licensee and the Municipality harmless, to be provided by Municipality, and
 - (ii) the shared right of use for the Lunds shall cease after September 30, 2021, or upon the earlier completion of the Lunds’ own, separate, beach access for 52 Brunswick Beach Road.
2. **Term and Renewal** – This License shall terminate upon the occurrence of any of the circumstances detailed in section 3, unless otherwise agreed in writing by the Municipality.
3. **Termination**
 - (a) This License does not create any interest in property and is exclusively for the benefit of the parties listed in section 1 and, in accordance with, the terms of this Agreement. The License will automatically terminate upon any of the following occurrences:
 - (i) the Licensee disposing of the Licensee’s Property by sale, agreement for sale or lease, unless it has been assigned in accordance with section 12 of

- this agreement, failing which the assignee may be required to remove the licensed encroachments set out in this agreement;
- (ii) the Beach Stairway being demolished, destroyed, removed by the Licensee, with the intention that it not be replaced in its current location;
 - (iii) at any time upon the Licensee providing written notice to the Municipality of intention to terminate, in which case the obligations specified in section 9 of this Agreement shall commence;
 - (iv) at any time upon the Municipality providing at least 6 months written notice of termination to the Licensee; or
 - (v) where the Council of the Municipality considers that, in its sole discretion, the interest of the public in the License Area makes it necessary or advisable, or in the case of an emergency, the Council may shorten the time limits in this section.
- (b) The License may be cancelled or terminated despite any rule of law or equity to the contrary in accordance with any of the following provisions:
- (i) if the Licensee defaults in the observance or performance of any of the terms and conditions contained in this License and the Licensee fails to cure such default(s) within 30 days after written notice from the Municipality then the Municipality will be entitled to terminate the License without limiting the Municipality's other remedies at law or at equity; and
 - (ii) if the default under subsection (i) reasonably requires more time to rectify or cure than 30 days, the Licensee will be deemed to have complied with the rectification or curing of it if the Licensee commences rectifying or curing the default within 30 days after notice from the Municipality and diligently completes same as soon thereafter as is reasonably practical.
- (c) All of the Licensee's obligations under this License that are outstanding on the date that this License is terminated will survive the termination of this Agreement. For certainty, the Licensee's obligations to release and indemnify the Municipality shall survive the termination of this Agreement, but only in respect of events occurring before termination of this Agreement.
4. **License Fee** - The Licensee shall pay to the Municipality in advance a license fee of one dollar (\$1.00) (the "License Fee").

5. **Powers** – For the purposes of the License herein, the Licensee and its servants, agents and invitees shall have the right to:
 - (a) use the License Area;
 - (b) have unobstructed access to and from the License Area at any and all times;
 - (c) clear the License Area and keep it clear of anything which might in the opinion of the Licensee, acting reasonably, constitute an obstruction to the use of the License Area by the Licensee; and
 - (d) do all other things on the License Area as may be reasonably necessary, desirable and incidental to the use of the License Area.

6. **Municipality May Access and May Undertake Work** – The Municipality shall have free access to all parts of the License Area. The Municipality is not required to give any notice to access or dig up the Esplanade or the License Area for any purpose, particularly where such access is considered urgent, but will use reasonable efforts to inform the Licensee as soon as practicable.

7. **Maintenance and Improvements** – The Licensee shall have the sole responsibility for, and cost of, maintaining, repairing or replacing the Beach Stairway and will provide notice to the Municipality of any work intended to maintain, repair or replace the Beach Stairway. The Licensee will not, without the prior written consent of the Municipality, replace the Beach Stairway, nor construct, install, affix, place or store or permit the construction, installation, affixing, placing or storage of any other buildings, structures, works, improvements, fencing, material or chattels or anything of any nature or kind other than the Beach Stairway identified in Schedule "A" and Schedule "B" on any part of the License Area.

8. **Use** – The Municipality will at all times have a priority right to use and occupy any portion or all of the License Area, without notice, in order to access other portions of the Esplanade, or the Licensee's Property, or to carry out any public service or responsibility that requires use of or access to the License Area.

The Licensee acknowledges and agrees that, by granting this Agreement, the Municipality is not accepting any responsibility for the Licensee's use of the License Area. The Municipality shall use best efforts to cause a minimum of obstruction and inconvenience in the License Area.

9. **Site Clean-up** – Upon termination of this License, the Licensee will leave the License Area in a tidy condition, and the Licensee, if required by the Municipality in its sole discretion, shall remove all structures and personal property belonging to the Licensee within 60 days after termination of this Agreement. Any structures or personal property not removed by the Licensee as aforesaid shall become the absolute property of the Municipality free of all encumbrances, without payment of any compensation to the Licensee or may, at the Municipality's option, be removed and the expense thereof shall constitute a debt due and owing to the Municipality by the Licensee.
10. **No Waste or Nuisance** – The Licensee will not commit or allow any willful or voluntary waste or destruction of the License Area, or do anything that may become an unreasonable nuisance or annoyance to other occupiers of the Esplanade or adjoining lands. The Licensee will not stockpile or burn any materials on the License Area.
11. **Compliance with Laws** – The Licensee will at all times during the currency of this License use the License Area in compliance with all statutes, laws, regulations and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or local government laws or statutes or bylaws relating to environmental matters, including all the rules, regulations, policies, guidelines, criteria or the like made under or pursuant to any such laws.
12. **Assignment** – The Licensee may only assign its interest under this License with the prior written consent of the Municipality, such consent not to be unreasonably withheld or delayed. Except as expressly set out herein, the rights granted to the Licensee under this Agreement may not be sublicensed, assigned, or otherwise transferred.

Upon transfer of ownership of the Licensee's Property, the Licensee must assign its interests and obligations under this License to the new property owner with the prior written consent of the Municipality, such consent not to be unreasonably withheld or delayed, and will provide the Municipality with evidence of such assignment to the Municipality's satisfaction. If the Licensee is unsuccessful in assigning its interest as set out herein within 30 days of the Licensee's Property being transferred, the Licensee agrees to immediately pay to the Municipality upon demand, up to \$2,000 in costs associated with and incurred by the Municipality in the negotiation and execution of a new licence agreement with the new owner, or termination of all rights hereunder, such costs being determined at the sole discretion of the Municipality.
13. **Risk** – The Licensee accepts the License Area on an as-is basis and agrees that it will use the License Area at its own risk, and that the Municipality will not be liable in respect of any loss of life, personal injury, damage to property or loss of property suffered by the

Licensee, its servants, agents, or invitees arising out of this Agreement or its or their use and occupation of the License Area.

14. **Indemnity** – The Licensee hereby indemnifies and saves harmless the Municipality, its officers, directors, elected officials, employees and agents from and against any and all losses, claims, costs, expenses, damages and liabilities, causes of action, suits and judgments including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor’s fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the Municipality, its officers, directors, elected officials, employees, agents and invitees arising, directly or indirectly, out of:
- (a) the uses of the Licensee, its servants, agents, or invitees, under this License;
 - (b) a breach by the Licensee, its servants, agents, or invitees, of any of the covenants contained in this License;
 - (c) any wrongful act or neglect of the Licensee, its servants, agents, or invitees, on or about the License Area;
 - (d) any damage to property related to the use and occupancy of the License Area by the Licensee, its servants, agents, or invitees;
 - (e) any damage to the Esplanade or to Municipal infrastructure;
 - (f) the death of or injury to any person arising out of or in any way connected with, directly or indirectly, the use and occupancy of the License Area by the Licensee, its servants, agents, or invitees.

This section does not apply to liabilities, damages, costs, claims, suits or actions arising out of the gross negligence or willful misconduct of the Municipality, its agents, servants, employees or contractors.

15. **Insurance** – The Licensee shall obtain and keep in force throughout the existence of the License insurance naming the Municipality as an additional insured and protecting the Municipality and the Licensee (without any rights of cross-claim or subrogation against the Municipality) against claims by any person, including any member of the public using the License Area, for personal injury, death, property loss or damage, and third party liability or public liability claims arising from any accident or occurrence in or on the License Area, or other loss relating to the Licensee’s use of the License Area to an amount

of not less than Two Million (\$2,000,000.00) Dollars per occurrence (the "Insurance Policy").

- (a) The Insurance Policy shall provide that it is not terminable or alterable without the giving of 30 days' written notice to the Municipality.
 - (b) At the time of execution of this Licence, the Licensee shall deliver to the Municipality a copy of the Insurance Policy or an insurance binder or note evidencing that the Licensee has obtained the Insurance Policy on the terms set out herein.
 - (c) At any time during the Term of this License the Municipality may require the Licensee to provide evidence to it that the Insurance Policy is valid and in full effect.
16. **Breach** – In the event that the Licensee breaches any term, condition, or provision of this Agreement, the Licensee shall remedy the breach within 30 days of receipt of a notice from the Municipality and if the breach is not remedied within that time period, all rights accruing to the Licensee under this Agreement shall cease without further notice to the Licensee, unless the Municipality, in its sole discretion, decides otherwise.
17. **Municipality May Take Action** – If the Licensee fails to do any matter required of them under this Agreement, the Municipality is entitled to take all such actions on the Licensee's behalf and at the Licensee's cost as are reasonably necessary to rectify the Licensee's failure, but the Municipality is in no circumstance liable for not taking such action or its manner of doing so, provided that the Municipality acts reasonably. The Licensee shall pay to the Municipality the costs the Municipality incurs pursuant to this provision forthwith upon receipt of an invoice.
18. **Alternative Beach Access** – The Licensee is hereby granted a provisional license to create an alternative beach access in front of 51 Brunswick Beach Road, subject to entering into a new Encroachment Agreement and section 219 covenant in respect of such new license area and upon terms and conditions to be determined by the Municipality.
19. **General**
- (a) The Licensee agrees to execute a section 219 covenant upon written request of the Municipality, to be prepared by the Municipality's solicitor, to be registered in the applicable Land Title Office incorporating the terms of this Agreement upon having the legal capacity:

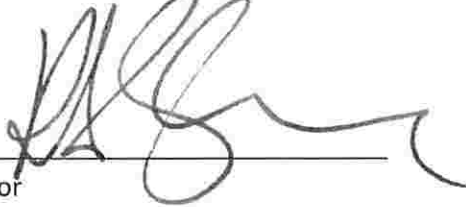
- (i) to bind the Estate of Annemarie Gates in respect of real property; and
 - (ii) to register or permit registration of such covenant in the applicable Land Title Office.
- (b) This Agreement will enure to the benefit of and be binding upon the Licensee and its successors, administrators and approved assigns and upon the Municipality and its successors, administrators and assigns.
- (c) Every reference to each party is deemed to include the heirs, executors, administrators, corporate successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or permits.
- (d) Wherever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties thereto so require.
- (e) The Schedule attached to this Agreement forms part of this Agreement.
- (f) This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement, and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- (g) Time is of the essence of this Agreement.
- (h) The section headings have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Agreement.
- (i) The Licensee's use of the Licence Area will under all circumstances be viewed as a license only and will not create nor be deemed to create any property interest in favour of the Licensee in the License Area.
- (j) This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.
- (k) Nothing contained or implied in this Agreement shall fetter in any way the discretion of the Municipality or the Council of the Municipality. Further, nothing contained or implied in this Agreement shall derogate from the obligation of the Licensee under any other agreement with the Municipality or, if the Municipality


so elects, prejudice or affect the Municipality's rights, powers, duties or obligation in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the Municipality's discretion, and the rights, powers, duties and obligations of the Municipality under all public and private statutes, bylaws, orders and regulations, which may be, if the Municipality so elects, as fully and effectively exercised in relation to the License Area as if this Agreement had not been executed and delivered by the Licensee and the Municipality.

END OF PAGE

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

Municipality of Lions Bay)
by its authorized signatories:)


_____)
Mayor)



_____)
Corporate Officer)

c/s

Signed by the ESTATE OF ANNMARIE)
GATES in the presence of:)


_____)
Witness Name)

ELYSSA L. LOCKHART
Barrister & Solicitor
_____)
Address **McQUARRIE HUNTER LLP**
Suite 1500, 13450 - 102 Avenue
Surrey, BC V3T 5X3
604-581-7001
_____)


_____)
Anne Gates, Executor of the
Estate of Annemarie Gates

Schedule "A"

Sketch Plan of License Area Amended by Text of Agreement

BC LAND SURVEYORS LOCATION CERTIFICATE
 ADJACENT TO LOT 13 BLOCK 10 DISTRICT LOT 1815
 NEW WESTMINSTER DISTRICT, PLAN 10651



The intended plot size is 432mm in width by 560mm in height (C Size) when plotted at a scale of 1:400.

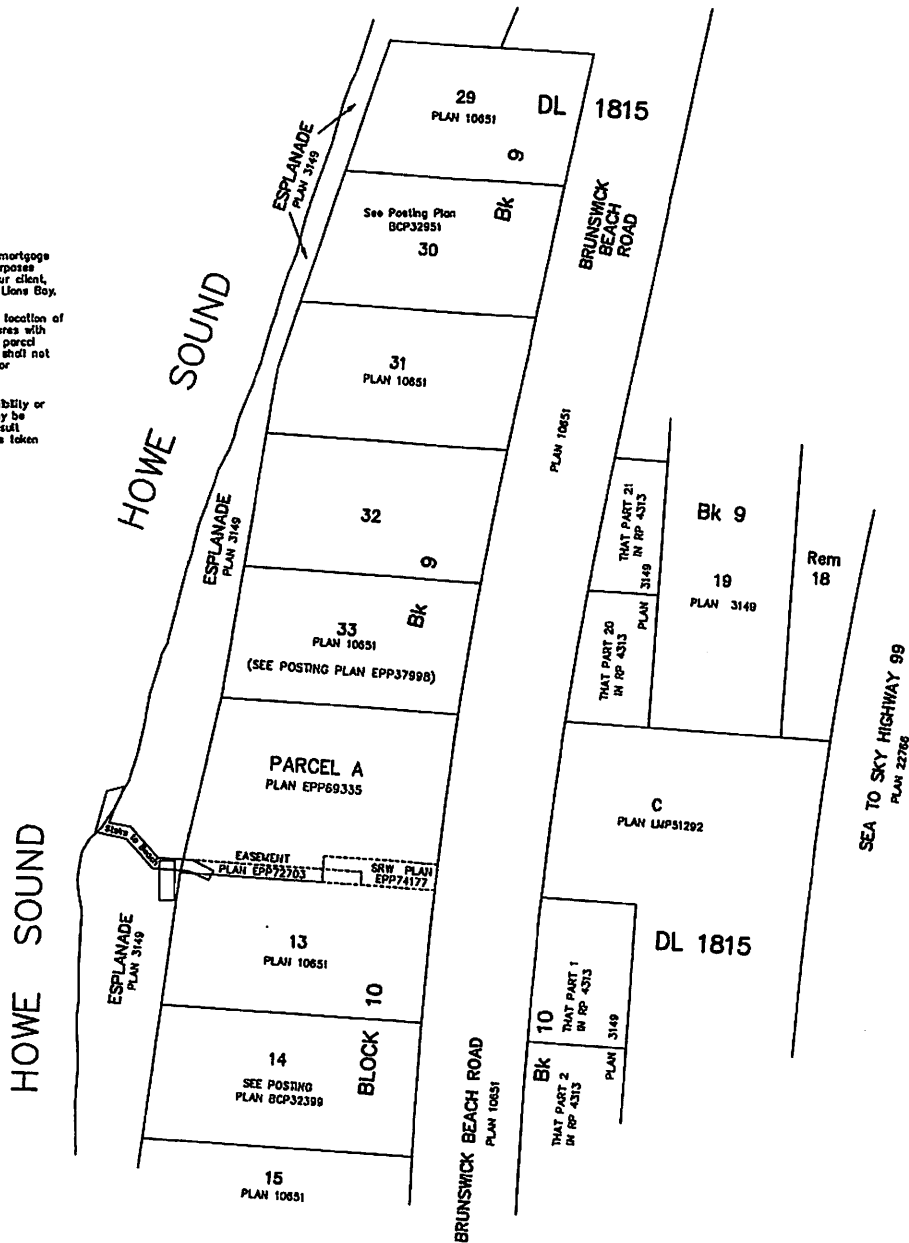
All distances are horizontal ground-level distances in metres and decimals thereof, unless otherwise noted.



This document was prepared for mortgage and municipal/regional district purposes and is for the exclusive use of our client, The Municipality of the Village of Lions Bay.

This document shows the relative location of the surveyed structures and features with respect to the boundaries of the parcel described above. This document shall not be used to define property lines or property corners.

The signatory accepts no responsibility or liability for any damages that may be suffered by a third party as a result of any decisions made, or actions taken based on this document.



Certified Correct :
 Martin R. Jones, BCLS #762

BUNBURY & ASSOCIATES
 LAND SURVEYING LTD.
 SQUAMISH 604-892-3090 WHISTLER 604-932-3770
 File No. 2017-107-M8.dwg
 FB 2113 Pg 18-19

(Not valid unless digital signature applied)

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SCHEDULE B
PHOTOGRAPHS OF BEACH STAIRWAY



TERMS OF INSTRUMENT – PART 2

ACCESS AGREEMENT AND COVENANT

BETWEEN:

VILLAGE OF LIONS BAY, a municipal corporation under the *Local Government Act* of British Columbia with offices at Box 141, Lions Bay, BC, V0N 2E0

(the “**Municipality**”)

AND:

(the “**Owner**”)

WHEREAS:

- A. The Owner is the registered owner of the lands and premises legally described in Item 2 of Part 1 of the attached Land Title Act Form C (the “**Land**”);
- B. The Land is adjacent to lands which are vested in the Municipality, more particularly known as: ***** (e.g. *Oceanview Road*) (the “**Municipal Land**”);
- C. There are works and improvements on the Land as described in Schedule A (the “**Works**”), parts of which encroach or will encroach on the Municipal Land as shown on the sketch plan prepared by _____, on _____, 20____ and attached as Schedule B (the “**Encroachment Area**”);
- D. The Municipality has authority to grant a licence of occupation or easement or permit an encroachment in respect of the Municipal Land;
- E. Section 218 of the *Land Title Act*, RSBC 1996, c. 250 enables the Owner to grant in favour of the Municipality an easement without a dominant tenement known as a statutory right of way;
- F. Section 219 of the *Land Title Act* permits the registration of a covenant of a positive or negative nature in favour of the Municipality with provisions in respect of the use of land or a building on or to be erected on land or that land is or is not to be built on except in accordance with the covenant.
- G. The Municipality has agreed to permit the Works to encroach on the Municipal Land and the Owner has agreed to grant the Municipality a statutory right of way and section 219 covenant, subject to the terms and conditions of this Agreement.
- H. The statutory right of way is necessary for the operation and maintenance of the Municipality’s undertaking in respect of the Municipal Land.

NOW THEREFORE, in consideration of the premises, covenants and agreements herein contained and the sum of \$10.00 now paid by the parties to each other and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties) the parties hereto hereby covenant and agree as follows:

1.0 SECTION 219 COVENANT

1.1 The Owner hereby covenants and agrees with the Municipality, as a covenant in favour of the Municipality pursuant to section 219 of the *Land Title Act*, R.S.B.C. 1996 c. 250 that the Owner:

- (a) will use the Land and the Works only in accordance with this Agreement;
- (b) indemnify the Municipality and its its elected and appointed officials, officers, employees and agents (the “**Municipal Parties**”) from all damages, losses, costs (including actual legal costs on a solicitor/client basis, actual costs of professional advisors and costs associated with remediation of contamination), actions, causes of action, claims, demands, liens, liabilities expenses and harm of any kind, whether known or unknown and whether related to death, bodily injury, property loss, property damage or consequential loss or damage (“**Claims**”) related to or resulting from one or more of the following:
 - (i) the Works and the use of the Encroachment Area by the Owner or any of their invitees, licensees, tenants, contractors, subcontractors, employees, agents and permittees (the “**Owner Parties**”) pursuant to this Agreement;
 - (ii) as a result of or in any way connected to the Municipality exercising any rights under the statutory right of way granted to the Municipality pursuant to this Agreement;
 - (iii) any negligent act, omission or wilful misconduct of the Owner Parties in connection with the exercise of the obligations of the Owner under this Agreement; or
 - (iv) any breach or default by the Owner under this Agreement; and
- (c) releases the Municipal Parties from any Claims that may result from the Municipal Parties performing any work, or exercising any rights, under this Agreement.

1.2 This section 219 covenant will run with the Land, enure to the benefit of the Municipality, and its successors and assigns and be binding upon the Owner and their successors and assigns.

2.0 STATUTORY RIGHT OF WAY

- 2.1 Pursuant to Section 218 of the *Land Title Act* the Owner hereby grants the Municipality, its contractors, subcontractors, employees, agents and officials the full, free and uninterrupted right, liberty and easement by way of a statutory right of way to enter the Land with or without personnel, vehicles and equipment for any purpose connected with this Agreement, including (without limitation) to inspect, repair, remove, and maintain the Works. The Municipality will only access such portions of the Land as reasonably necessary to exercise its rights under this Agreement.
- 2.2 Nothing will obligate the Municipality to inspect, repair, remove or maintain the Works or any portion thereof.
- 2.3 This statutory right of way will:
- (a) run with the Land;
 - (b) enure to the benefit of the Municipality, and its successors and assigns; and
 - (c) be binding upon the Owner and their successors and assigns.

3.0 ENCROACHMENT

- 3.1 Subject to the terms of this Agreement, the Municipality grants to the Owner and their employees, contractors, invitees and tenants and their tenants' employees, contractors and invitees, a non-exclusive licence, easement and permission to encroach upon, use and occupy the Encroachment Area for the following purposes:
- (a) constructing, inspecting, maintaining, repairing, replacing and removing the Works at the Owner's own cost;
 - (b) permitting the Works to remain on the Municipal Lands;
 - (c) making use of, enjoying and having the benefit of the Works;
 - (d) restoring the Municipal Lands before the expiration or on termination of this Agreement; and
 - (e) generally doing all acts, things and matters which are reasonably necessary or incidental to the exercise of the rights granted herein,
- (collectively, the "**Encroachment Rights**").
- 3.2 The term of this Agreement will commence on the date this Agreement is executed by both parties (the "**Commencement Date**") and will continue until the earlier of:
- (a) the date this Agreement is terminated in accordance with section 4.0; and

- (b) the Works are removed, demolished or significantly structurally altered such that the Encroachment Area is no longer required for the Encroachment Rights.
- 3.3 The Owner will at their own cost remove the Works from the Encroachment Area prior to the expiration of the term of this Agreement pursuant to section 3.2(b) and will restore the Encroachment Area to the satisfaction of the Municipality.
- 3.4 In consideration of the Encroachment Rights, the Owner will pay to the Municipality a license fee in the amount and at the time(s) set out in Schedule A plus applicable taxes.
- 3.5 The Encroachment Area is licensed to the Owner on an “as-is” basis and the Municipality makes no representations or warranties with respect to the condition of the Encroachment Area or its suitability for the construction, maintenance or enjoyment of the Works.
- 3.6 The Municipality will:
 - (a) permit the Owner for the period during which this Agreement is in force to enjoy the Encroachment Rights;
 - (b) not do or permit to be done any act or thing which may unreasonably interfere with the Encroachment Rights; and
 - (c) upon request of the Owner, provide such consents, authorizations and approvals as may be reasonably required from time to time to exercise the Encroachment Rights.
- 3.7 The Owner will:
 - (a) promptly pay, when due, the Licence Fee, together with applicable taxes (including GST), and any other amounts required to be paid by it under this Agreement;
 - (b) not construct, replace or substantially modify the Works without the prior written approval by the Municipality;
 - (c) maintain and keep the Works in good condition;
 - (d) promptly upon request by the Municipality, provide to the Municipality all “as built” drawings and such other information reasonably requested by the Municipality in connection with the construction and maintenance work performed by the Owner under this Agreement;
 - (e) not to do, suffer or permit anything within the Encroachment Area that may be or become a nuisance or annoyance to any person, including the accumulation of rubbish or unused personal property of any kind;
 - (f) not do, suffer or permit any act or neglect that may in any manner directly or indirectly cause injury to the Municipal Land;

- (g) not store anything within the Encroachment Area, leave any personal property within on the Encroachment Area, or otherwise obstruct or interfere with the use of the Encroachment Area by the Municipality, its employees, contractors, agents, licensees, invitees or members of the public;
 - (h) take all reasonable precautions to ensure the safety of all persons permitted by the Licensees to use the Encroachment Area;
 - (i) except as herein expressly provided, not obstruct access to the Municipal Land by the Municipality and the general public;
 - (j) take all reasonable steps not to disturb the safety, peace and enjoyment of the Municipal Land by the Municipality and the general public and, if the exercise of such rights causes any damage to the Municipal Land, forthwith restore such damage. Without limiting the foregoing, the Owner will install such structures and take all such other reasonable steps, as necessary to ensure that the Works do not cause any safety risk or disturbance to the general public;
 - (k) not create nor permit to remain and will remove and discharge or cause to be removed and discharged promptly, at the sole cost and expense of the Owner, any lien, encumbrance or charge or claim of lien upon the Municipal Land which arises out of the exercise or fulfilment of the rights of the Owner hereunder;
 - (l) permit the Municipality, at such reasonable times as the Municipality requires, to enter upon the Land to inspect the Works and the Owner's compliance with this Agreement, as the Municipality deems necessary, provided that the Municipality will not unreasonably interfere with the use of the Land;
 - (m) promptly discharge any builders lien which may be filed against the title to the Municipal Land or that might otherwise affect the Municipal Land, and to comply at all times with the *Builders Lien Act* (British Columbia), in respect of any improvements, work or other activities undertaken by or on behalf of the Owner in, on or to the Encroachment Area; and
 - (n) at their cost, observe, fulfil and comply with all enactments and legal requirements, and obtain all necessary approvals and permits, which may be applicable to, or required in connection with, the Works and the use of the Municipal Land.
- 3.8 The Encroachment Rights are exclusive to the Owner as the registered and beneficial owner of the Land. The Owner will not assign the Encroachment Rights to any person except a person who succeeds the Owner as the owner of the Land, or a portion thereof. Upon transfer of the registered or beneficial ownership of the Land, or a portion thereof, the Owner will:
- (a) assign the Encroachment Rights, in full or in part, to the new owner of the Land;

- (b) as a condition of transfer, require the purchaser to assume the obligations of the Owner under this Agreement including the obligation to obtain and maintain insurance in accordance with section 5.0; and
- (c) forthwith upon completing the transfer, advise the Municipality in writing of the assignment and assumption contemplated herein.

4.0 DEFAULT, TERMINATION AND DISCHARGE

4.1 If the Owner is in breach of any term of this Agreement, the Municipality will deliver to the Owner a written notice of such breach. From the date of such notice, the Owner will have 15 days to remedy the breach, or, if the breach cannot be remedied within 15 days, to commence remedying the breach and diligently and continuously remedy the breach to completion, all to the satisfaction of the Municipality. If the Owner does not remedy the breach as set out herein, the Municipality may either:

- (a) terminate this Agreement by providing the Owner with a 60 days' written notice of such termination. Within 60 days of receiving such notice, the Owner will, at their cost, remove the Works from the Encroachment Area and restore the Encroachment Area to the satisfaction of the Municipality; or
- (b) remedy the breach in the place of the Owner. The Owner will forthwith reimburse the Municipality for the cost incurred by the Municipality and an additional 30% administration fee.

4.2 The Municipality may terminate this Agreement at any time by providing the Owner with a 60 days' written notice of such termination. Within 60 days of receiving such notice, the Owner will, at their cost, remove the Works from the Encroachment Area and restore the Encroachment Area to the satisfaction of the Municipality.

4.3 Upon the expiration or the earlier termination of this Agreement and upon the satisfactory removal of the Works and restoration of the Encroachment Area in accordance with this Agreement, the Municipality will execute a discharge of the section 219 covenant and the statutory right of way contained in sections 1.0 and 2.0 subject to:

- (a) receipt of a written request from the Owner, which request will include the form of discharge in registrable in form; and
- (b) the Owner assuming the cost of preparing and registering such discharge in the Land Title Office.

5.0 INSURANCE

5.1 The Owner will obtain and maintain at all times during the term of this Agreement comprehensive general liability insurance for bodily injury, death and damage to property resulting in whole or in part from the Works and the exercise of the rights herein granted.

Such insurance will be in a form and substance satisfactory to the Municipality. Without limiting the foregoing, the insurance will:

- (a) be issued by one or more insurance companies registered and licensed to carry on business in the Province of British Columbia;
- (b) be in the amount reasonably required by the Municipality from time to time;
- (c) name the Municipality as an additional insured and will contain a cross-liability and severability of interest clause; and
- (c) provide that it will not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or material alteration is given by the insurers to the Municipality not less than 30 days before the effective date of same.

5.2 The Owner will, upon request by the Municipality from time to time, deliver to the Municipality evidence of the insurance coverage required pursuant to this section 5.0. The obligation to insure in this section 5.2 is separate from, and does not limit the release and indemnity provisions in this Agreement.

6.0 TRANSFER AND SUBDIVISION

6.1 If either the Municipal Land or the Land, or any portion thereof, respectively, is consolidated or subdivided at any time either under the provisions of the *Land Title Act* or the *Strata Property Act*, SBC 1998 c. 43, as amended from time to time, or under the provisions of any similar legislation enacted from time to time, the Municipality may require the Owner at the Owner's expense to enter into a new agreement with the Municipality to replace this Agreement and with an updated Schedule A and B as applicable.

7.0 GENERAL

7.1 Any waiver by the Municipality of default by the Owner must be in writing and will not be deemed to be a waiver by the Municipality of any subsequent default by the Owner.

7.2 Wherever the singular or masculine is used in this Agreement, it will be construed as being the plural or feminine or body corporate and vice versa, where the context or the parties hereto so require.

7.3 If any provision of this Agreement is held invalid or unenforceable by a decision of a Court of competent jurisdiction, such portion will be severed from this Agreement and the remainder of the Agreement will remain in full force and effect.

7.4 Wherever it is required or desired that any party will deliver or serve a notice on any of the other parties, the notice will be given or made in writing and delivery or service will be deemed to be satisfactory if, and deemed to have occurred when:

- (a) the party has been served personally, on the date of service;

- (b) mailed by prepaid registered mail on the date received or on the third business day following posting at any Canada Post office, whichever is the earlier (except that, in the event of interruption of mail service, notice will be deemed to be delivered only when actually received by the party to whom it is addressed), so long as the notice is mailed to the Owner at the most recent address shown on title to the Land in the records of the Land Title Office and to the Municipality at the Municipality's address first set out above; or
- (c) the party has acknowledged, in writing, receipt of the notice, whether served in accordance with section 7.4(a) or (b), or via email as follows:
 - (i) to the Municipality: admin@lionsbay.ca; and
 - (ii) to the Owner: _____.

7.5 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.6 This Agreement will be governed by and construed in accordance with the laws in force from time to time in British Columbia.

7.7 Nothing contained or implied in this Agreement will derogate from, prejudice or affect the Municipality's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* and *Local Government Act*, or any other Act of the Legislature of British Columbia, as amended from time to time.

IN WITNESS WHEREOF the parties have executed this Agreement in Item 8 of the attached General Instrument - Part 1 of Land Title Act Forms C and D which forms part of this Agreement.

Schedule A

Works Specifications

<p><u>Civic Address of Lands:</u></p>	<p><i>Enter civic address</i></p>
<p><u>Description of Works and any requirements pertaining to the Works:</u></p>	<p><i>Enter description and specifications/requirements</i></p>
<p><u>Supporting Documents re: Description of Works:</u></p>	<p><i>List any pictures/supporting sketches/engineer's schedules, etc.</i></p>
<p><u>License Fee:</u></p>	<p><i>Nil.</i></p>

Schedule B

Plan of Encroachment Area

CONSENT AND PRIORITY AGREEMENT

WHEREAS [REDACTED] (the “**Prior Charge Holder**”), is the registered owner of the following charges registered against title to the Land:

- (a) Mortgage CA***; and
 - (b) Assignment of Rents CA***
- (the “**Prior Charge**”).

NOW THEREFORE, in consideration of \$10.00 paid from the VILLAGE OF LIONS BAY to the Prior Charge Holder, the receipt and sufficiency of which is acknowledged, the Prior Charge Holder hereby:

1. consents to the granting of and registration of the section 219 covenant and statutory right of way set out in this Agreement (the “**Subsequent Charge**”) in favor of the VILLAGE OF LIONS BAY and hereby agrees that the Subsequent Charge will be binding upon its interest in and to the Land; and
2. grants priority to the Subsequent Charge over the Prior Charge as if the Subsequent Charge had been executed, delivered and registered prior to the execution, delivery and registration of the Prior Charge.

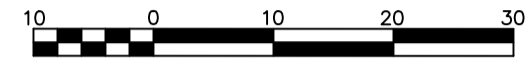
IN WITNESS WHEREOF the Prior Charge Holder has executed this Agreement in Item 8 of the attached General Instrument - Part 1 of the Land Title Act Form D which forms part of this Agreement.

BC LAND SURVEYOR'S SITE PLAN

OF THAT PART OF DISTRICT LOT 1815 GROUP 1
NWD SHOWN ON PLAN EPP69335

52 Brunswick Beach Road
The Municipality of the Village of Lions Bay, BC

(PID 030-190-011)



The intended plot size is 22" in width
by 17" in height (C Size) when plotted
at a scale of 1"=1/16"

All distances are horizontal ground-level
distances in feet and decimals thereof,
unless otherwise noted.

Elevations on CVD Datum and relate
to GCM 340521 via GNSS Observations.
Elevation Used = 923.745m

#	Tree	Ø (m)
1	Cedar	0.9
2	Cedar	1.1
3	Holly	0.2
4	Cedar	1.0
5	Arbutus	0.3
6	Fir	1.3
7	Fir	1.2
8	Fir	1.2
9	Cedar (x3)	0.6

Zoned: RS-1 B.B.O.

Lot Area = 6128 square feet (569.3m²)

x 98.8 Denotes Existing Ground Elevation

Property line dimensions are derived
from Plan EPP69335

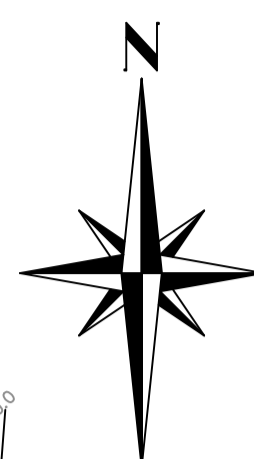
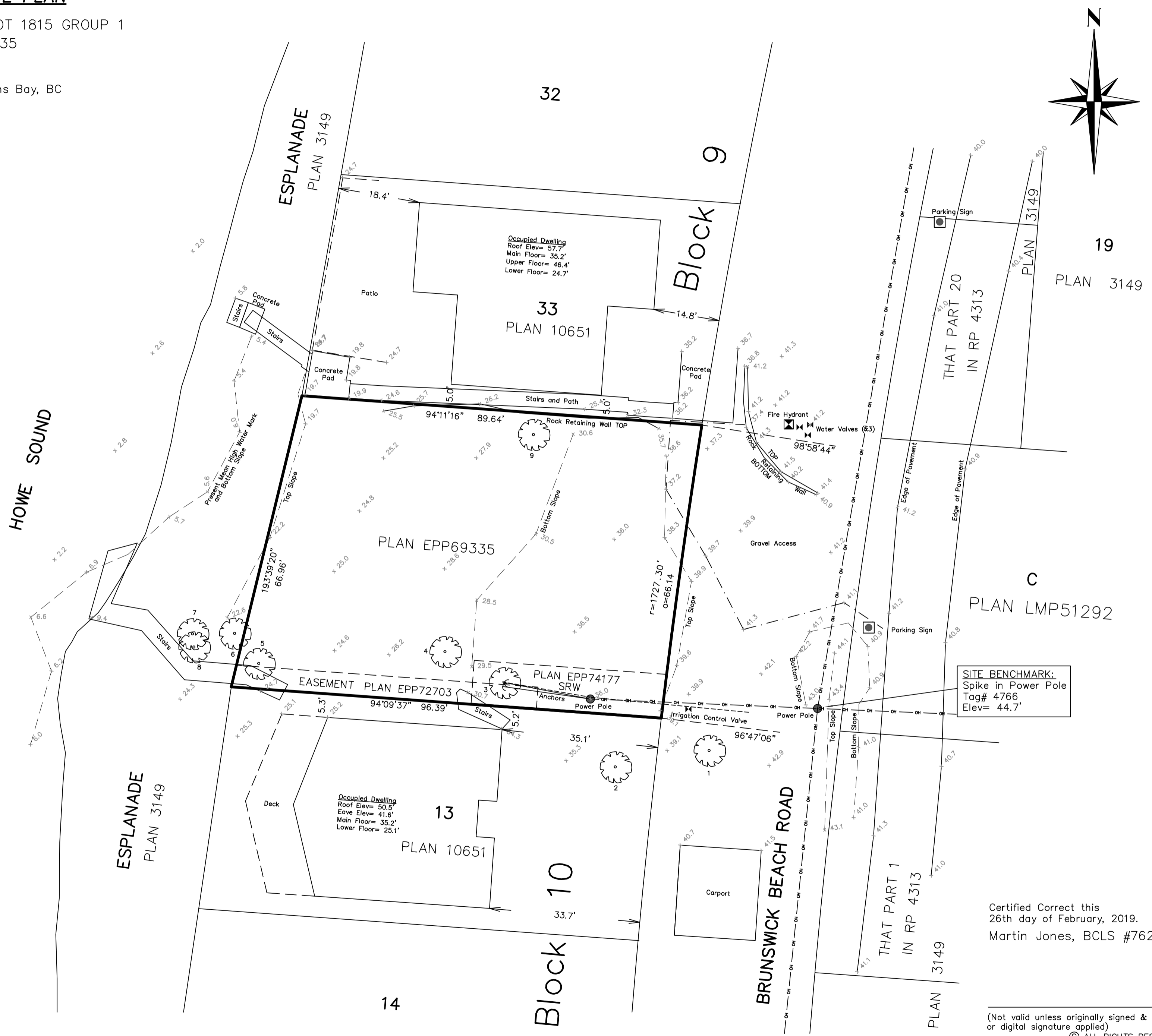
This document was prepared for mortgage
and municipal/regional district purposes
and is for the exclusive use of our client,
Carl Lund.

The signatory accepts no responsibility or
liability for any damages that may be
suffered by a third party as a result
of any decisions made, or actions taken
based on this document.

This document shows the relative location of
the surveyed structures and features with
respect to the boundaries of the parcel
described above. This document shall not
be used to define property lines or
property corners.

The subject property is affected by the
following non-financial charges and interests
which may affect the positioning of structures
on the property:
SRW: CA6172928, CA6172929
EASEMENT: CA6194295

BUNBURY & ASSOCIATES
BC LAND SURVEYORS
SQUAMISH 604-892-3090 WHISTLER 604-932-3770
File No. 2019-114-FT1A.dwg
FB 2189 Pg. 54-63



SITE BENCHMARK:
Spike in Power Pole
Tag# 4766
Elev= 44.7'

Certified Correct this
26th day of February, 2019.
Martin Jones, BCLS #762

(Not valid unless originally signed & sealed
or digital signature applied)
© ALL RIGHTS RESERVED

Additional Photo of Concrete Works and Potential Alternative Design

