

From: Keith Erickson <[REDACTED]>
Sent: Tuesday, February 21, 2023 9:31 AM
To: Lisa Gauvreau <lgauvreau@islandstrust.bc.ca>; bmabberlay@islandstrust.bc.ca; Brad Smith <bsmith@islandstrust.bc.ca>; Timothy Peterson <tpeterson@islandstrust.bc.ca>
Cc: Morning Beach <[REDACTED]>; Janice Oakley [REDACTED]
[REDACTED] Leslie Cain [REDACTED]
Subject: Re: Emergency Access

Hello Lisa, Ben, Tim, and Brad,

In response to the request from the February LTC meeting, Crystal Mountain Society (rezoning committee cc'd) has compiled a summary of their work towards establishing an emergency access route along with related supporting information (letter attached). Please let us know if you have any questions or require additional information.

Thanks,
Keith



Crystal Mountain – A Society for
Eastern and Western Studies
c/o 300B - 2555 Cook Rd,
Galiano Island, BC V0N 1P0

February 20th, 2023

Galiano Island Local Trust Committee
c/o Brad Smith
Island Planner, Southern Team
200 – 1627 Fort Street, Victoria, BC, V8R 1H8

Re: Emergency Access Route Statutory Right of Way
Crystal Mountain Society Rezoning Application (GL-RZ-2014.1)

Dear Trustees,

Please accept this letter and attachments in response to the request made at the February 7th, 2023, Local Trust Committee meeting, for information regarding the establishment of the Emergency Access Route spanning the Crystal Mountain Society's (CMS) Lot A and neighbouring Lot B to connect Devina Drive to Porlier Pass Road.

The CMS rezoning application directly contributes to Galiano Island OCP Land Transportation objectives in accordance with the Road Network Plan set out in Schedule C and complies with related policy. It is worth noting that most of the "proposed emergency access" routes designated on OCP Schedule C span multiple lots and would require iterative rezonings, subdivisions, or voluntary registrations to complete.

CMS has successfully negotiated a Statutory Right of Way (SRoW) agreement with the Capital Regional District to be registered on the CMS parcel Lot A prior to subdivision. The SRoW allows the CRD and the public to use the lands for the purpose of enabling emergency access and egress to, from, and across the Lands. This secures 75% of the Emergency Access Route identified in Schedule C.

Completion of the emergency access route through neighbouring Lot B, where the remaining 25% is located, has also been discussed as a desired outcome. While CMS is not the owner of Lot B and cannot grant an SRoW to the CRD, it does hold an Easement registered on the title of Lot B.

This Easement grants the Grantee (Lot A, dominant land) the right to use the easement area over Lot B (Grantor, servient land) for access to and egress from Lot A, specifically along the Emergency Access Route. The Easement language states that these rights are extended to the owner(s) of Lot

A as the dominant lands, and “its servants, agents, and those authorized by it”, at all times. It also grants the Grantee (Lot A) the right to repair and improve the existing road in the easement area.

CMS has sought legal advice as to whether the Easement could be used for the specific emergency and road maintenance purposes laid out in the SRow. The legal memorandum^[1] conclusion, after examining the specific wording of the easement and relevant case law, is that the language of the Easement:

- is very broad in scope and that the plain words of the easement are determinative;
- cannot be read to include an unlimited class of users (or otherwise it would have said so), but should be read in conjunction with “its servants, agents and those authorized by it” and is therefore limited to the Grantee and persons specifically hired or authorized by the Grantee (Lot A) to have access to and from the dominant land; and
- is interpreted to allow access to and egress from Lot A over Lot B for the specific “authorized” emergency access and maintenance purposes, as is set out formally in the SRow.

The legal memorandum was shared with the CRD and the CRD is satisfied.

The legal memorandum also speaks to liability issues related to the Grantor (CMS is the ‘Grantor’ in the SRow) being responsible for maintenance of the route. The CRD has agreed that the Grantor will not be legally responsible for road maintenance.

Please note that CMS has formally agreed to complete the necessary works to bring the entire Emergency Access route, including the easement section across Lot B, up to a standard deemed adequate by the North Galiano Fire Chief, prior to the completion of rezoning / subdivision.

Please also note that CMS will actively use and regularly maintain the portion of the route on their retained land (~400m or 57% of the route). Further CMS are committed to working with the CRD and local emergency response groups to help with the clearing of debris on the portion of the SRow that will transfer to ITC (~122m, 18% of the route) and the Easement portion over Lot B (~173m, 25% of the route).

For your reference we have included the draft SRow agreement, the registered Easement (across lot B) and an explanatory map for the easement as appendices to this letter.

Please let us know if you need any additional information or if you would like to discuss this aspect of the rezoning further.

Sincerely,

Libby McClelland, Janice Oakley, Leslie Cain
Crystal Mountain Rezoning Committee

TERMS OF INSTRUMENT - PART 2

W H E R E A S:

- A. The Grantor is the registered owner of the land set out in item 2, Part 1 of this Instrument (the "**Grantor's Lands**").
- B. The Grantee is the Capital Regional District.
- C. The Grantor has applied to the Galiano Island Local Trust Committee (the "**Trust Committee**") to rezone the Lands from <Zone> to <Zone> under Galiano Island Land Use Bylaw, <Bylaw #>, and the Trust Committee has approved in principle Proposed Galiano Island Local Trust Committee Bylaws <Bylaw #> to effect this rezoning.
- D. The Grantee seeks the right to access, for itself and all members of the public, emergency access and egress routes (collectively, the "**Emergency Access Route**") that will provide emergency connections over the Grantor's Lands.
- E. It is necessary for the operation and maintenance of the Grantee's undertaking of the provision of the Emergency Access Route for the safety of the public that a right of way be established in accordance with this Agreement.
- F. Notwithstanding that this Agreement will be registered as a charge against the entirety of the Grantor's Lands, the Grantee has agreed that it will limit its use of the Grantor's Lands to that portion of the Grantor's Lands on which the existing utility road running from North commencing at Devina Road south towards Porlier Pass Road across the Lands (the "**North/South Utility Road**") has been constructed is located, the current location of which are shown on the sketch plan attached hereto as Schedule "A".
- G. The Grantor has agreed that it is in the public interest for it to grant a statutory right of way in accordance with this Agreement and has freely agreed to do so.

NOW THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars of lawful money of Canada, now paid by the Grantee to the Grantor (the receipt and sufficiency of which is hereby acknowledged by the Grantor), and in consideration of the covenants and conditions agreed to be observed and performed by the parties and for other valuable consideration:

1. INTERPRETATION

1.1. In this Agreement:

"**Emergency**" means a present or imminent event or circumstance that:

- (a) is caused by accident, fire, explosion, technical failure or the forces of nature, and;
- (b) requires prompt coordination of action or special regulation of persons or property to protect the health, safety or welfare of a person or to limit damage to property.

An Emergency does not require a declaration of a state of emergency to be considered an Emergency.

2. THE GRANTOR HEREBY:

- 2.1. Grants, conveys, confirms and transfers, in perpetuity, to the Grantee for itself, its successors, and all of its employees, agents, servants, licensees and all members of the public at all times by day or night, but only in the case of Emergency, the full, free and uninterrupted right, license, liberty, privilege, permission and right of way to enter, use, go, return, pass over and across the Grantor's Lands (the "**Right of Way**"), by any means necessary, for the purpose of enabling emergency access and egress to, from, and across the Lands.
- 2.2. Grants, conveys, confirms and transfers, in perpetuity, to the Grantee the full, free and uninterrupted right, license, liberty, privilege, easement, permission and right of way to lay down, install, erect, construct, entrench, operate, maintain, repair, inspect, alter, remove, replace, bury, cleanse, string, and otherwise establish Emergency Access Route on the Grantor's Lands, including directional and informational signs, and any improvements necessary to facilitate access across the Emergency Access Route, including surface or subsurface works, culverts to enclose drainage ditches, and similar improvements.
- 2.3. Covenants and agrees to and with the Grantee that the Grantee shall:
 - (a) for itself and its servants, agents, workers, contractors and all other licensees of the Grantee;
 - (b) together with machinery, vehicles, equipment, and materials;
 - (c) upon, over, under and across the Grantor's Lands;
 - (d) as may be considered necessary, useful, or convenient by the Grantee for the purposes in sections 2.1 and 2.2; and in connection with the operations of the Grantee in relation to the Emergency Access Route,

be entitled to enter, use, pass and repass, inspect, maintain, labour, construct, erect, install, dig, and carry away soil or other surface or subsurface materials, and remove any growth, seedlings, trees, brush, buildings or obstructions now or hereafter in existence.

3. THE GRANTOR COVENANTS:

- 3.1. That the Grantor will not and will not permit any other person to erect, place, install or maintain any building, structure, addition to a building or structure, mobile home, concrete driveway or patio, pipe, wire or other conduit, or other obstacle on, over or under any portion of the Grantor's Lands upon which the Emergency Access Route has been established so that it in any way interferes with or damages or prevents access along or over the Emergency Access Route. Notwithstanding the foregoing, the Grantor may place lockable gates at the ends of the Emergency Access Route, provided that the Grantor provides to the Grantee keys for any such gates.
- 3.2. That the Grantor will not do anything that in any way interferes with or damages or prevents access to, over or across the any portion of the Grantor's Lands upon which the Emergency Access Route has been established, other than the placing of the gates referred to in section 3.1.

- 3.3. That the Grantor will not do or knowingly permit to be done any act or thing that will interfere with or injure the Emergency Access Route and in particular will not carry out any blasting on or adjacent to the Emergency Access Route\ without the consent in writing of the Grantee, and consent shall not be unreasonably withheld.
- 3.4. That the Grantor will, from time to time and at all times at the reasonable request and at the cost of the Grantee to do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the Grantee of its rights under this Agreement.

4. THE GRANTEE COVENANTS:

- 4.1. That the Grantee will make all reasonable efforts to notify the Grantor when there is an Emergency that will necessitate use of the Right of Way by the public and when such use will occur, provided that the Grantor has provided the Grantee with updated contact information for this purpose.
- 4.2. That the Grantee will provide a minimum of 15 days' notice to the Grantor, provided that the Grantor has provided the Grantee with updated contact information for this purpose, of planned maintenance or other works not associated with an active emergency, and will make all reasonable efforts to minimize the disturbance from the works to the Grantor's activities.
- 4.3. That the Grantee will make all reasonable efforts to ensure that any use of the Grantor's Lands by members of the public occurs under the direction of the Grantee and within any established Emergency Access Route.
- 4.4. That the Grantee will thoroughly clean all portions of the Grantor's Lands to which it has had access hereunder of all slashings, rubbish and construction debris created or placed thereon by the Grantee.
- 4.5. That the Grantee will, insofar as it is practicable so to do, to exercise its rights hereunder in such a manner as to not to interfere unduly with the Grantor's use of the Grantor's Lands.
- 4.6. That the Grantee shall not cut or damage, or allow the cutting or damaging of, trees on the Grantor's Lands without the prior written consent of the Grantor, such consent not to be unreasonably withheld.
- 4.6 That the Grantee shall, in exercising its rights and obligations under this Agreement, comply with all enactments of a local, provincial, and federal nature, including but not limited to traffic regulations, environmental laws, and closure regulations related to forest fire hazards.

5. THE PARTIES COVENANT TO AND AGREE WITH EACH OTHER, as follows:

- 5.1. Notwithstanding that this Agreement is registered as a charge against the entirety of the Grantor's Lands, the Grantee agrees that it shall limit its use of the Grantor's Lands to that portion of the Grantor's Lands on which the North/South Utility Road and the existing utility road running from south to north-west from the North/South Utility Road, have been constructed and are located, as outlined on the sketch plan attached hereto as Schedule "A".
- 5.2. The Grantee agrees that it shall, at the request of the Grantor, discharge this Agreement

within six (6) months, in the event that the Trust Committee has not approved the Proposed Galiano Island Local Trust Committee Bylaws <Bylaw #>, or the Grantor re-tracks their rezoning application under Bylaws <Bylaw #>.

- 5.3. As soon as reasonably practical, the Grantor shall register a plan defining the portion of the Transferor's Lands required for the accommodation of the Works (the "**Right of Way Area**") and will register a modification or replacement of this Agreement limiting the rights herein to the Right of Way Area.
- 5.4. In spite of any rule of law or equity to the contrary, any improvements brought on to, set, constructed, laid, erected in, upon or under the Grantor's Lands by the Grantee shall at all times remain the property of the Grantee, even if the improvements are annexed or affixed to the freehold, and shall at any time and from time to time be removable in whole or in part by the Grantee.
- 5.5. In the event that this Agreement is terminated, or the Grantee abandons the Emergency Access Route or any part thereof, the Emergency Access Route, or part thereof, shall become the property of the Grantor.
- 5.6. No part of the title in fee simple to the Grantor's Lands shall pass to or be vested in the Grantee under or by virtue of this Agreement and the Grantor may fully use and enjoy all of the Grantor's Lands subject only to the rights and restrictions in this Agreement.
- 5.7. The Grantor acknowledges that (a) the covenants contained in this Agreement are enforceable against the Grantor and its successors in title, but (b) the Grantor is not personally liable for breach of these covenants after the Grantor has ceased to be the owner of the Grantor's Lands.
- 5.8. If at the date hereof the Grantor is not the sole registered owner of the Grantor's Lands, this Agreement shall nevertheless bind the Grantor to the full extent of its interest therein, and if it shall acquire a greater of the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests.
- 5.9. Where the expression "**Grantor**" includes more than one person, all covenants made by the Grantor shall be construed as being several as well as joint with respect to all persons constituting the Grantor.
- 5.10. If any part of this Agreement is found to be illegal or unenforceable because it creates a positive obligation for the Grantor or for any other reason, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
- 5.11. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors and assigns as the case may be and wherever the singular or masculine is used, it shall be construed as if the plural or the feminine or neuter, as the case may be, had been used, where the parties or the context hereto so require and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

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

SCHEDULE "A" SKETCH PLAN



LAND TITLE ACT

FORM C (Section 219.81)

Province of British Columbia

GENERAL INSTRUMENT - PART I

99 DEC 13

11:00

EN113401

RECEIVED - VICTORIA
LAND TITLE OFFICE

1 # 55 Chg

pages

1. APPLICATION:

WEBSTER HUDSON
1600-1075 W. GEORGIA ST.
VANCOUVER, B.C. V6E 3C9

Applicant/s Solicitor or agent

c/o West Coast Title Search Ltd.
10104

(682-3488)

36
✓

2. (a) PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

(PID)
024-351-067

(LEGAL DESCRIPTION)

Lot B, District Lots 88 and 89, Galiano Island, Cowichan District, Plan
VIP68079

3. NATURE OF INTEREST:

DESCRIPTION

DOCUMENT REFERENCE

PERSON ENTITLED TO INTEREST

EASEMENT OVER

Entire Instrument

Transferee

LOT A

EASEMENT AREA 445 ON PLAN VIP 69896

PLAN VIP 68079

4. TERMS:

Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms

(b) Express Charge Terms

(c) Release

D.F. Number 01. 99/12/13 11:09:30 01 VI
Annexed as Part 2209034
\$55.00

There is no Part 2 to this instrument.

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):

5647 LAND CORPORATION (Inc. No. 360404) (as to an undivided 22499/22500 interest) and KIM
ELIZABETH STOBART (as to an undivided 1/22500 interest)

6. TRANSFEREE(S):

CRYSTAL MOUNTAIN - A SOCIETY FOR EASTERN AND WESTERN STUDIES (Inc. No. S-
0012799), of 6370 Alma Street, Vancouver, B.C. V6N 1Y6

7. ADDITIONAL OR MODIFIED TERMS:

None

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

OFFICER CERTIFICATION

EXECUTION DATE

PARTY(IES) SIGNATURE(S)

TIMOTHY A.C. SCHOBERT
Barrister • Solicitor • Notary Public
760 Hillside Avenue
Victoria, B.C. Canada V8T 1Z4
Phone (250) 386-8707

Y	M	D
99	12	9

5647 Land Corporation

OFFICER CERTIFICATION: 1x PL

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT.
FORM D****EXECUTIONS CONTINUED**Page 2 of 10 pages

EXECUTIONS(S) (CONTINUED): By signing this document you are affecting the land in the manner described in Item 3.

OFFICER SIGNATURE(S)

EXECUTION DATE

BORROWER(S) SIGNATURE(S)



TIMOTHY A.C. SCHOBBER
Barrister • Solicitor • Notary Public
760 Hillside Avenue
Victoria, B.C. Canada V8T 1Z4
Phone (250) 386-8707

1 x pk

Y	M	D
99	12	9



KIM ELIZABETH STOBART

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Page 3 of ____ pages

.. EXECUTIONS(S) (CONTINUED): By signing this document you are affecting the land in the manner described in Item 3.

OFFICER SIGNATURE(S)



CAROLYN M. COLECLOUGH
Barrister and Solicitor
1600 - 1075 W. Georgia Street
Vancouver, B.C. V6E 3C9
(604) 443-3651

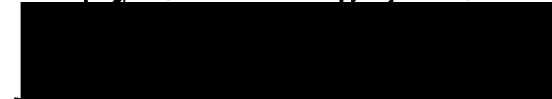
(as to signatories for CRYSTAL
MOUNTAIN - A SOCIETY FOR
EASTERN AND WESTERN STUDIES)

EXECUTION DATE

Y	M	D
99	12	9

PARTY(IES) SIGNATURE(S)

CRYSTAL MOUNTAIN - A SOCIETY
FOR EASTERN AND WESTERN
STUDIES by its authorized signatory(ies)



Name: STEPHEN FOSTER

Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

TERMS OF INSTRUMENT - PART 2**EASEMENT**

..
EFFECTIVE DATE: December 10, 1999
..

RECITALS

- A. The person(s) described as the "Transferor(s)" in Item 5 of Part 1 of this General Instrument (the "Grantor") is the registered owner of the lands and premises described in Item 2 of Part 1 of this General Instrument (the "Servient Land").
- B. The person(s) described as the "Transferee(s)" in Item 6 of Part 1 of this General Instrument (the "Grantee") is the registered owner in the fee simple of the certain parcel or tract of land and premises situate, lying and being in the Province of British Columbia, and more particularly known and described as:
- 024-351-041 Lot A, District Lots 88 and 89, Galiano Island, Cowichan District, Plan VIP68079 (the "Dominant Land").
- C. The Grantor has agreed to grant to the Grantee an easement over the Servient Land on the terms and conditions set out in this Agreement.

AGREEMENT

In consideration of the mutual promises contained in this Agreement and of the sum of ONE DOLLAR (\$1.00) of lawful money of Canada now paid by the Grantee to the Grantor (the receipt whereof, and sufficiency of which, is hereby acknowledged), THE PARTIES AGREE AS FOLLOWS:

1. **Grant of Easement**

The Grantor grants to the Grantee for the use and benefit of the Dominant Land the non-exclusive right and liberty at all times in common with the Grantor and all others having a like right, for the Grantee, its servants, agents and those authorized by it at all times with and without vehicles and equipment to:

- a. enter upon those parts of the Servient Land described as Easement Area 4 ("Easement Area 4") and Easement Area 5 ("Easement Area 5") on a Reference Plan of Easement certified by Glen Mitchell, B.C.L.S. on December 3, 1999, and filed in the Victoria Land Title Office under number VIP69896, a reduced copy of which is attached to this instrument, for the purposes of access to and egress from the Dominant Land; and
- b. enter upon any part of Easement Area 4 to repair and improve any existing roadway or trail (the "Roadway") situate on Easement Area 4, subject to paragraph 7.

- c. enter upon any part of Easement Area 5 to construct, at its expense, or repair and improve (the expenses of repairs or improvements are dealt with below), any existing roadway or trail (the "Driveway") situate on Easement Area 5, subject to paragraph 7;
- d. enter upon any part of Easement Area 4 and use any part of Easement Area 4 as is necessary for the purposes of providing, installing, maintaining and repairing BC Hydro utilities and services to or for the benefit of the Dominant Land, provided always that such use does not impede the use of the Roadway by vehicles, machinery and pedestrians authorized by the Grantee.

2. Agency

The Grantor irrevocably appoints the Grantee its agent for the purpose of exercising the rights of the Grantee under this Agreement.

3. Term of Easement

Subject to the terms of this Agreement, the Grantee is entitled to the benefit of this easement in perpetuity.

4. Use of Servient Lands by Grantee

The Grantee agrees that its servants, agents and those authorized by it will:

- a. save as expressly provided in this instrument, not make use of any portion of any of Easement Area 4 or Easement Area 5 other than the portion thereof comprising the Driveway or the Roadway;
- b. not use any part of the Driveway or the Roadway for any purpose other than as set out in this Agreement.

Without restricting the generality of the foregoing, the Grantee and its servants, agents and those authorized by it will not obstruct or interfere or permit any person claiming under it to obstruct or interfere unnecessarily with the use of any part of the Servient Land by the Grantor, its servants, agents, tenants, invitees and licensees and others having like rights over any part of the Servient Land except as may reasonably be required to exercise the rights granted to the Grantee under this Agreement.

5. Grantor's Agreements

The Grantor agrees that, with respect to the Roadway, the Grantor will not disturb, damage, discontinue or remove the same or otherwise so conduct itself as to disrupt or interfere with the use of the Roadway without first giving notice of its intentions in that behalf to the Grantee and if the Grantor considers it necessary to relocate the Roadway, the Grantor will at its expense and so as to continue the Grantee's use of the Roadway, relocate the Roadway to the reasonable satisfaction of the Grantee.

The Grantor agrees that, with respect to the Driveway, the Grantor will not disturb, damage, discontinue or remove the same or otherwise so conduct itself as to disrupt or interfere with the use of the Driveway, without first giving notice of its intentions in that behalf to the Grantee and if the Grantor considers it necessary to relocate the Driveway, the Grantor will at its expense and so as to continue the Grantee's use of the Driveway, relocate the Driveway to the reasonable satisfaction of the Grantee.

The Grantor further agrees to not disrupt access to both the Driveway and the Roadway at the same time for any period greater than 24 hours, without providing reasonable alternate access for the period of disruption.

The Grantor further agrees with the Grantee that the Grantor will grant in favour of BC Hydro a registrable easement for the benefit of the Dominant Land over a portion of the Servient Land in approximately the same location as either Easement Area 4 or Easement Area 5 for the purposes of providing, installing, maintaining and repairing BC Hydro utilities and services, provided that such instrument shall be prepared in a manner which requires:

- a. all improvements of any nature installed by BC Hydro to be located wholly within Easement Area 4 or Easement Area 5, unless that is not reasonably feasible and if that is not feasible, then the instrument should provide for such works to be located within Easement Area 4 or Easement Area 5 to the extent reasonably feasible with the remainder of such works being located as near Easement Area 4 or Easement Area 5 as reasonably feasible (with all determinations of what is reasonably feasible to be the sole prerogative of BC Hydro); and
- b. the location of any working strip to be wholly within Easement Area 4 or Easement Area 5 if reasonably feasible and if that is not feasible, then the instrument should provide for such working strip to be located within Easement Area 4 or Easement Area 5 to the extent reasonably feasible with the remainder of such working strip being located as near Easement Area 4 or Easement Area 5 as reasonably feasible (with all determinations of what is reasonably feasible to be the sole prerogative of BC Hydro).

Notwithstanding the foregoing, the Grantor shall not be required to grant the easement contemplated above if such works or working strips are located in a manner which unreasonably interferes with the Grantor's use of the Servient Land.

It is understood that such easement area will be further defined by a reference plan to be prepared at the cost of Grantee once BC Hydro has located the positions for its poles. All reasonable costs of the Grantor in connection with the granting of the easement to BC Hydro shall be reimbursed promptly by the Grantee.

6. Grantee's Agreements

The Grantee agrees:

- a. not to do or knowingly permit to be done any act or thing which may, in the reasonable opinion of the Grantor, in any way whatsoever interfere with the use of or injure any part of the Servient Land or any improvements existing thereon, or impair the operating efficiency thereof except in pursuance of its use of the Driveway and Roadway; and
- b. to observe, perform and comply with all of the terms, covenants and conditions of this Agreement.

7. Maintenance

The expenses of repairing and maintaining the Roadway and the Driveway to a reasonable standard of repair shall be borne by the owners from time to time of the Dominant Land and the Servient Land equally, provided that:

- a. repair and maintenance work shall be undertaken by any party only after reasonable consultation with any other parties liable to pay for such work; and

- b. in the event that such parties are not able to agree on what repair work is required at any time or the making of arrangements for carrying out such work, then any party may submit the issue for final determination by arbitration as provided in this instrument.

Notwithstanding the foregoing, the expenses of improving either the Driveway or the Roadway shall be for the account of the party desiring such improvements unless they otherwise agree.

For purposes of clarification, the term "repairing" means repairing damage to the Roadway or the Driveway, necessary to restore them to a standard suitable for ordinary use by passenger vehicles on gravel roads of the nature commonly found on Galiano Island, or to a higher standard, in the event that it is improved to a higher standard in future.

For purposes of clarification, the term "maintaining" means repairing culverts under or adjacent to the Roadway or the Driveway, grading either of them, or adding fill to either of them, but only as necessary to keep them to the standard of an average active logging road on Galiano Island, or to a higher standard, in the event that they are improved to a higher standard in future.

8. Arbitration

The parties agree that any disputes arising under this instrument shall be finally determined by arbitration under the rules of the British Columbia International Commercial Arbitration Centre, and in connection with that:

- a. failing agreement by the parties, the appointing authority shall be the British Columbia International Commercial Arbitration Centre;
- b. the arbitration will be conducted by a single arbitrator unless the parties agree otherwise;
- c. the case shall be administered by the appointed arbitrator in accordance with the "Procedures for Cases under the BCICAC Rules";
- d. the place of arbitration shall be Victoria, British Columbia, Canada;
- e. the language of the arbitration will be in English;
- f. the arbitrator shall have the power to proceed with the arbitration and to deliver his award notwithstanding the failure of a party to comply with a procedural order made by the arbitrator.
- g. the decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom; and
- h. judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

9. Subdivision

If the Dominant Land and Servient Land, or either of them, are subdivided, either wholly or in part, at any time either under the provisions of the Land Title Act or the Condominium Act as amended from time to time,

or of other similar legislation enacted from time to time, on the deposit of a plan of subdivision, strata plan or similar plan, as the case may be:

- a. the benefit of the easement granted in this Agreement will be annexed to each of the new parcels, lots, strata lots or other subdivided parcels shown on such plan and will continue to be annexed to the remainder, if any, of the lands subdivided;
- b. if the subdivision is by strata plan the benefit or burden may be annexed to the common property of the strata corporation; and
- c. the burden of the easement granted in this Agreement will continue to be attached to and charge each of the new parcels, lots, strata lots or other subdivided parcels shown on such plan and the remainder, if any, of the lands subdivided;

and no consent of the Grantor or the Grantee or the owner or owners for the time being of the Dominant Land and Servient Land, or either of them, to any such subdivision will be required but, nevertheless, without restricting the generality of the foregoing, the Grantor and the Grantee agree each with the other that each will execute and deliver in registrable form any and all documents and plans, and that it will do all things reasonably necessary in order to give effect to this clause or to expedite or facilitate any subdivision or subdivisions from time to time of the Dominant Land and Servient Land, or either of them, in whole or part.

10. Discharge

The Grantee may at its option, at any time hereafter and without consent or approval of the Grantor, terminate this easement by filing in the Victoria Land Title Office a release or discharge and upon such filing this easement and all rights granted hereunder will terminate.

11. Arbitration

If there is any dispute between the parties relating to this Agreement, the same will be determined by a single arbitrator pursuant to the provisions of the Commercial Arbitration Act R.S.B.C. 1996 c. 55.

12. Notices

Any notice, invoice, demand or other communication required to be given hereunder will be in writing and will be delivered by the party giving the same to the party receiving the same at the address of the party to whom such notice, invoice, demand or other communication is to be given appearing in the records of the Victoria Land Title Office and will be deemed to have been given and received when so delivered.

13. Severability

If any term or provision hereof is judicially declared to be invalid, illegal or unenforceable, that term or provision will be severed from this Agreement and will not affect the validity, legality or enforceability of any of the remaining terms and provisions hereof.

14. Mutual Covenants

It is mutually understood, agreed and declared by and between the parties hereto:

- a. that this Agreement shall take effect from the Effective Date stated above;
- b. that each of the parties will from time to time and at all times upon every reasonable request and at the cost and charge of the party so requesting same, do and execute or cause to be made, done or executed, all such further and lawful acts, deeds, things, devises, conveyances and assurances in law whatsoever as may be reasonably required effectually to carry out the intent of this Agreement;
- c. that the covenants in this Agreement will be construed as running with the Servient Land and annexed to and benefitting the Dominant Land and that no part of the fee of the soil of any of the Servient Land will pass to or be vested in the Grantee under or by virtue of this Agreement;
- d. that the expressions "Grantor" and "Grantee" include the heirs, executors, administrators, successors and assigns of the parties wherever the context so admits and "Grantor" includes any owner from time to time of any part of the Servient Land and "Grantee" includes any owner from time to time of the Dominant Land; and
- e. that words importing the singular number only will include the plural and vice versa and words importing any gender will include all genders and words importing individuals will include firms and corporations and vice versa.

PLAN VIP

REFERENCE PLAN TO ACCOMPANY EASEMENTS OVER LOT B AND LOT C.
DISTRICT LOTS 88 AND 89, GALIANO ISLAND, COMICHAN
DISTRICT, PLAN VIP68079

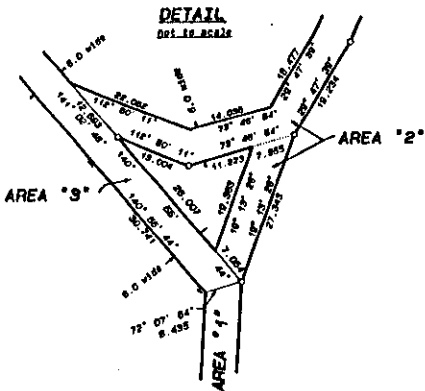
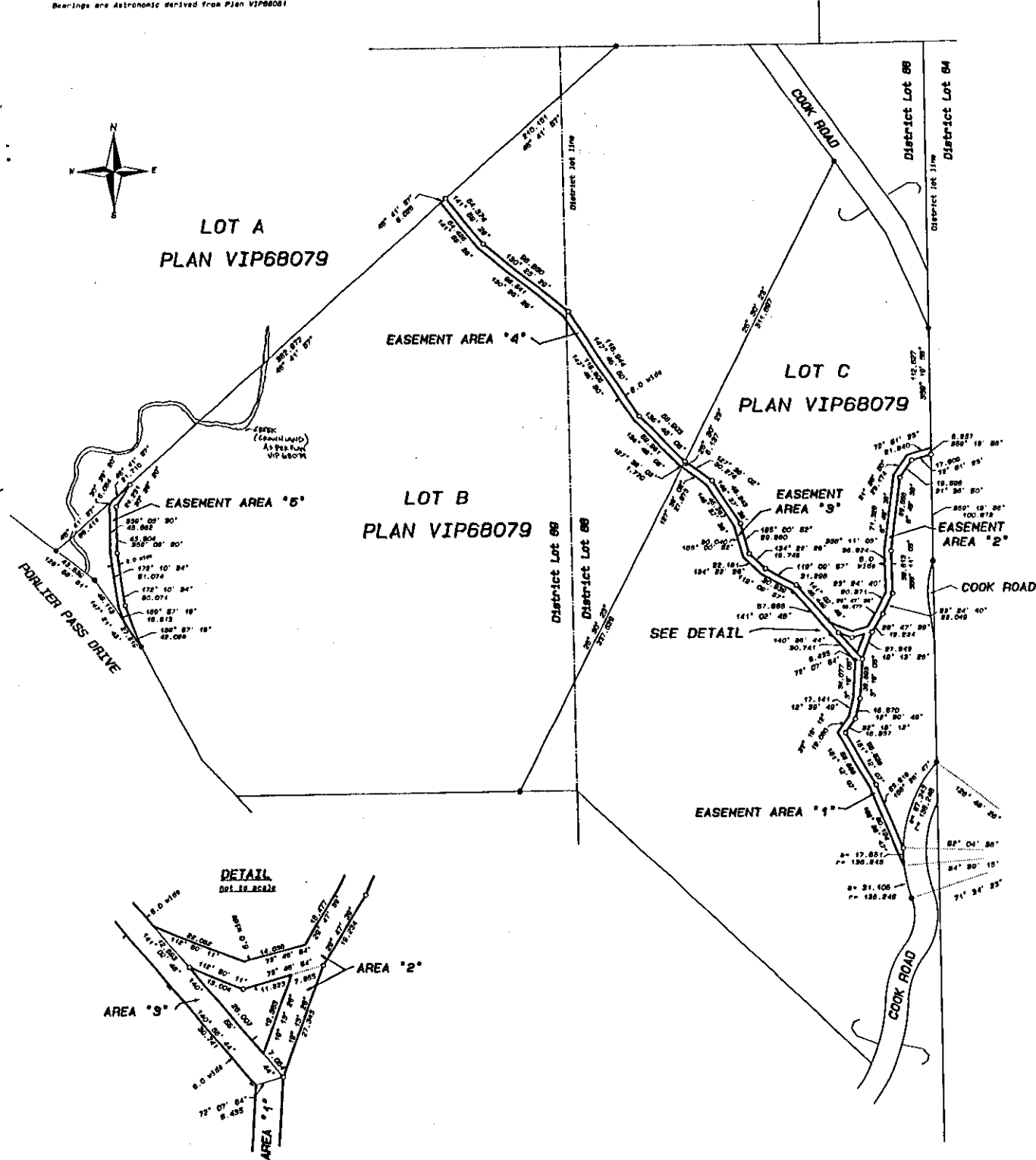
PURSUANT TO SECTION 89 (1) (e) OF THE LAND TITLE ACT.

Deposited in the Land Title Office at
Victoria, B.C.
this _____ day of _____, 1999

Registrar

This plan lies within the
Capitol Regional District

LEGEND
S.C.S.S. 829 083
Distances are in metres Scale 1: 8000
Denotes standard iron post
found placed
B O
Bearings are Astronomic derived from Plan VIP68081



BOOK OF REFERENCE		
Area	Legal description of Lot	area required for easement
Area '1'	Lot C, Plan VIP68079	0.120 ha
Area '2'	Lot C, Plan VIP68079	0.148 ha
Area '3'	Lot C, Plan VIP68079	0.148 ha
Area '4'	Lot B, Plan VIP68079	0.198 ha
Area '5'	Lot B, Plan VIP68079	894 m2

I, Glen Mitchell, a British Columbia Land Surveyor, of
Victoria, in British Columbia, certify that I was
present at and personally supervised the survey
represented by this plan, and that the survey and
plan are correct.
The survey was completed on the 31st day of DECEMBER, 1999

LAND TITLE ACT

EN113401

\$ 50 plan

Form II(a) (Section 99(1)(e), (j) and (k))

RECEIVED - VICTORIA
LAND TITLE OFFICE

APPLICATION FOR DEPOSIT OF REFERENCE OR EXPLANATORY PLAN (CHARGE)

I, Timothy Schober, of 760 Hillside Avenue, Victoria, British Columbia, Lawyer
(full name, address and occupation)

VIP69896

3a

agent of the owner of a registered charge, apply to deposit reference/ explanatory plan of

Lots B and C, District Lots 88 and 89, Galiano Island, Cowichan District, Plan VIP68079

KP 1334

CG DD 27817

G1 33

CG DD 36190 I

I enclose:

1. The reference/explanatory plan.
2. The reproductions of the plan required by Section 67(u).
3. Fees of \$

01 99/12/13 11:09:30 01 VI
PLANS209034
\$50.00

DATED the

10th

day of December, 1999.

c/o West Coast Title Search Ltd.
10104

Signature

VIP69896

46286

NOTE:

(i) The following reproductions of the plan must accompany this application:

- (a) one blue linen original (alternatively, white linen or original transparencies).
- (b) one duplicate transparency.
- (c) one white print is required as a worksheet for the land title office.

(ii) The following further requirements may be necessary:

- (a) If the parent property is in an Agricultural Land Reserve, a release is required unless the parent property is less than 2.0 acres (approx. .8094 ha.) or where, for permitted uses, an approving officer has signed the plan under Section 1(1) (a) and (b) of the Subdivision and Land Use Regulation (B.C. Reg. 7/81) under the Agricultural Land Commission Act.
- (b) Where a notice respecting a grant under the Home Purchase Assistance Act is endorsed on title, an extra white print must accompany the application, unless the Ministry of Lands, Parks and Housing agrees otherwise in writing. This extra print must contain the following endorsement:

"The eligible residence as defined by the Home Purchase Assistance Act is located on Lot created by this plan.

B.C.L.S. or Solicitor for Owner"

REFERENCE PLAN TO ACCOMPANY EASEMENTS OVER LOT B AND LOT C,
DISTRICT LOTS 88 AND 89, GALIANO ISLAND, CONWICHAN
DISTRICT, PLAN VIP68079

Pursuant to Section 88 (1) (a) of the Land Title Act.

Submitted to the Land Title Office at
VICTORIA, B.C.

DATE: MAY 27, 1999

Register

This plan (the "Plan") is the
Official Regional District

LEGEND

A.C.S.S. 500 000

Distances are in metres Scale 1:2000

Distances standard from point

Bearings are astronomical derived from Plan V1788081



LOT A
PLAN VIP68079

EASEMENT AREA *4*

LOT B
PLAN VIP68079

LOT C
PLAN VIP68079

EASEMENT AREA *3*

EASEMENT AREA *2*

EASEMENT AREA *1*

DETAIL
Not to scale



BOOK OF REFERENCE

"Area"	Legal description of Lot	Area required for easement
Area *1*	Lot C, Plan VIP68079	0.120 ha
Area *2*	Lot C, Plan VIP68079	0.148 ha
Area *3*	Lot C, Plan VIP68079	0.149 ha
Area *4*	Lot B, Plan VIP68079	0.108 ha
Area *5*	Lot B, Plan VIP68079	0.34 m2

I, Glen Mitchell, a British Columbia Land Surveyor, of
Victoria, in British Columbia, certify that I was
present at and personally supervised the survey
represented by this plan, and that the survey and
plan are correct.

The survey was completed on the 3rd day of MAY, 1999