

**PART 2 - TERMS OF INSTRUMENT**

**SECTION 219 COVENANT**

This Agreement dated for reference \_\_\_\_\_ is between:

**SEAN MCHUGH**, of 375 Village Bay Road, Mayne Island, V0N 2J2

(the "**Owner**")

AND:

**MAYNE ISLAND LOCAL TRUST COMMITTEE**, a corporation under the *Island Trust Act*, R.S.B.C. 1996, c. 239, having an office at Suite 200, 1627 Fort Street, Victoria, British Columbia, V8R 1H8

(the "**Local Trust Committee**")

GIVEN THAT:

- A. The Owner is the registered owner of land on Mayne Island, British Columbia, more particularly described as:
- PID: 002-552-256
- Lot B Plan VIP 27091 Section 7, Land District 16, Portion Mayne Island
- (the "**Land**");
- B. The Owner proposes to subdivide and develop the Land for residential use.
- C. The Owner wishes to grant the Local Trust Committee and the Capital Regional District a covenant under s. 219 of the *Land Title Act* (British Columbia) to regulate the use of the Land.

NOW THEREFORE, in consideration of the payment of \$2.00 by the Local Trust Committee to the Owner (the receipt and sufficiency of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Owner covenants and agrees with the Local Trust Committee in accordance with s. 219 of the *Land Title Act* (British Columbia) as follows:

Definitions

1. In this Agreement:
  - (a) "**Ecological Assessment Report**" means the report prepared by Keith Erickson and dated September 21, 2020, a copy of which is held on file at the offices of the Local Trust Committee;
  - (b) "**Land**" has the meaning ascribed in Recital A and, for clarity, includes the parcels for Lots 2 and 3 into which it is subdivided by any means and any parcel into which the Land is consolidated;
  - (c) "**potable**" means water that is safe to drink and suitable for domestic purposes and,

without limiting the foregoing, meets a standard for potability no less than that specified in both the Mayne Island Land Use Bylaw and the Guidelines for Canadian Drinking Water Quality, as those may be revised from time to time;

- (d) "**Septic Specialist**" means an authorized person as defined in the Sewerage System Regulation, BC Reg 326/2004, as amended or replaced from time to time;
- (e) "**Subdivision Plan**" means the proposed plan for the subdivision of the Land, a copy of which is attached to this Agreement as Schedule "A";
- (f) "**Water Specialist**" means a certified water treatment specialist having professional qualifications acceptable to the Local Trust Committee, acting reasonably;
- (g) "**Wetland Restoration Report**" means the report prepared by Robin Annschild and dated March 8 2021, as amended by the letter by Robin Annschild dated April 16, 2021, copies of which are held on file at the offices of the Local Trust Committee.

### Approvals

- 2. Where this Agreement requires the approval of the Local Trust Committee, approval may be given by the Islands Trust's Regional Planning Manager, Southern Team and must, if given, be in writing.

### Restriction on Use and Subdivision

- 3. The Owner shall not use or occupy the Land or any area into which the Land may be subdivided for any residential or domestic purpose, unless the Owner is in full compliance with the terms of this Agreement.
- 4. The Land shall not be subdivided except to create lots having boundaries generally in accordance with the Subdivision Plan.
- 5. In this Agreement a reference to a numbered "Lot" is a reference to that Lot or area of the Land as shown on the Subdivision Plan, whether or not the Land has been subdivided.

### Lot 3 Water Supply

- 6. No building or structure shall be constructed or developed on Lot 3 until the Owner of Lot 3 has submitted to the Local Trust Committee and received the Local Trust Committee's approval of, a design for a water treatment system (the "**Water Treatment System Design**") for Lot 3, such approval not to be unreasonably withheld.
- 7. The Water Treatment System Design shall be prepared by a Water Specialist and shall include recommendations for ongoing maintenance to ensure the system continues to function as designed and recommendations to ensure domestic water is potable and sufficient for residential uses on Lot 3.
- 8. Lot 3 shall not be used or occupied for residential purposes, nor shall the Owner of Lot 3 request an occupancy permit for any building on Lot 3, until the Owner of Lot 3 has installed a water treatment system in accordance with the Water Treatment System Design and provided to the Local Trust Committee written confirmation from a Water Specialist that the water treatment system is operating as designed, and in particular, is capable of delivering sufficient potable water for residential uses on Lot 3.

9. The Owner of Lot 3 shall maintain a water treatment system in accordance with the Water Treatment System Design and any manufacturer's instructions, as may be amended from time to time, and when the water treatment system reaches the end of its life, the Owner of Lot 3 shall replace the water treatment system in accordance with the recommendations of a Water Specialist.
10. The Owner of Lot 3 shall ensure that any replacement water treatment system is capable of delivering sufficient potable water for residential uses on Lot 3 and shall maintain any replacement water treatment system in accordance with the recommendations of a Water Specialist, at the time of replacement, and any manufacturer's instructions, as may be amended from time to time.
11. The Owner of Lot 3 shall, within 30 days of receiving a written request from the Local Trust Committee, provide written confirmation from a Water Specialist that the water treatment system has been properly maintained and is functioning as designed and intended. The Local Trust Committee may make a written request under this section not more than once every calendar year.

#### Lot 3 Septic

12. No building or structure shall be constructed on Lot 3 until the Owner of Lot 3 has had a design for a septic system prepared by a Septic Specialist that shall include recommendations for ongoing maintenance to ensure the system continues to function and to ensure the system is sufficient for residential uses on Lot 3 (the "Septic System Design").
13. The Owner of Lot 3 shall maintain a septic system in accordance with the Septic System Design and any manufacturer's instructions, as may be amended from time to time and when the septic system reaches the end of its life, the Owner of Lot 3 shall replace the septic system in accordance with the recommendations of a Septic Specialist.
14. The Owner of Lot 3 shall ensure that any replacement septic system is sufficient for residential uses on Lot 3 and shall maintain any replacement septic system in accordance with the recommendations of a Septic Specialist, at the time of replacement, and any manufacturer's instructions, as may be amended from time to time.
15. The Owner of Lot 3 shall, within 30 days of receiving a written request from the Local Trust Committee, provide written confirmation from a Septic Specialist that the septic system has been properly maintained and is functioning as designed and intended. The Local Trust Committee may make a written request under this section not more than once every calendar year.

#### Lot 2 – Remediation, Preservation & Construction:

16. No building, land alteration, construction or development is permitted on Lot 2 except in accordance with the recommendations contained in the Ecological Assessment Report and the Wetland Restoration Report as applicable and set out in Schedule B.
17. No building or structure shall be constructed, placed, or located on Lot 2 except within the area of Lot 2 shown as "Building Zone" on the Subdivision Plan.
18. The Owner of Lot 2 shall not start the construction of any building or structure on Lot 2 until the Owner of Lot 3 has completed the construction of, and received any occupancy permit required by the Capital Regional District for, at least 5 units of affordable housing, on Lot 3. This restriction shall

expire five (5) years after the date when the Land is subdivided in accordance with the Subdivision Plan.

19. Lot 2 shall not be used or occupied for residential purposes until the Local Trust Committee has received written confirmation from a suitably qualified professional that the recommendations from the Ecological Assessment Report and the Wetland Restoration Report have been adhered to and implemented where applicable to Lot 2.

#### Lot 2 – Access

20. No part of Lot 2 shall be developed or used for direct vehicle access to any adjacent road. Vehicle access for Lot 2 may only be provided by way of the same driveway that provides vehicle access for Lot 1. For certainty, it is the sole responsibility of the Lot 2 Owner to negotiate any agreement that may be required with the Owner of Lot 1 and the Owner of Lot 2 acknowledges the Local Trust Committee has no duty to secure the required access or assist in securing access.

#### Lot 3 – Remediation, Preservation & Construction:

21. No building, land alteration, construction or development is permitted on Lot 3 except in accordance with the recommendations contained in the Ecological Assessment Report and the Wetland Restoration Report as applicable and set out in Schedule B.
22. No building or structure shall be constructed, placed, or located on Lot 3 except in areas of Lot 3 outside of the wetland remediation zone on the Subdivision Plan in Schedule A.
23. Lot 3 may not be used or occupied for residential purposes until the Local Trust Committee has received written confirmation from a suitably qualified professional that the recommendations from the Ecological Assessment Report and the Wetland Restoration Report, as set out in section 20, have been adhered to and implemented where applicable to Lot 3.

#### No Effect on Laws or Powers

24. This Agreement does not
  - (a) affect or limit the discretion, rights, duties or powers of the Local Trust Committee under any enactment or at common law, including in relation to the use or subdivision of the Land except as expressly set out herein;
  - (b) impose on the Local Trust Committee any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement except as expressly set out herein;
  - (c) affect or limit any enactment relating to the use or subdivision of the Land;
  - (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

#### Limitation on Obligations

25. The Owner is only liable for breaches of this Agreement caused or contributed to by the Owner or which the Owner permits or allows. The Owner is not liable for the consequences of the

requirements of any enactments or law or any order, directive, ruling or government action thereunder. The Owner is liable only for breaches of this Agreement which occur while the Owner is the registered owner of any interest in the Land and then only to the extent of that interest.

#### No Liability in Tort

26. The parties agree that this Agreement creates only contractual obligations. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

#### Covenant Runs With the Land

27. Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and also a covenant granted under s. 219 of the Land Title Act (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and the parcels for Lots 2 and 3 into which it is subdivided by any means and any parcel into which the Land is consolidated.

#### Registration

28. The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Agreement.

#### Waiver

29. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

#### Severance

30. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

#### No Other Agreements

31. This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

#### Binding of Successors

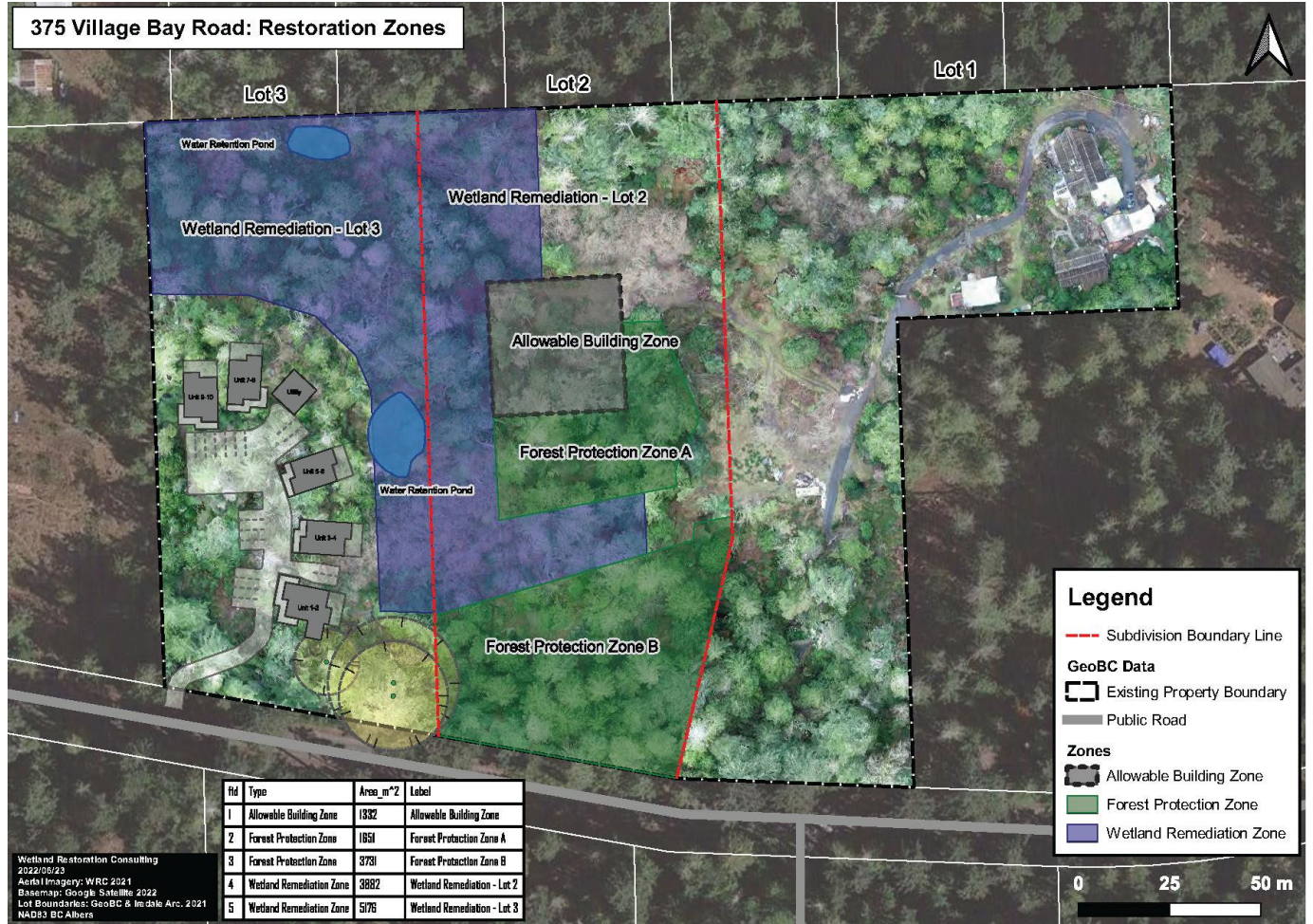
32. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

Execution Using Form C

33. As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part 1 of the Land Title Act Form C to which this Agreement is attached and which forms part of this Agreement.

# SCHEDULE A SUBDIVISION PLAN

[NTD - this schedule to be finalized prior to execution]



**375 Village Bay Road: Restoration Zones**

Lot 3

Lot 2

Lot 1

Water Retention Pond  
Wetland Remediation - Lot 3

Wetland Remediation - Lot 2

Allowable Building Zone

Forest Protection Zone A

Forest Protection Zone B

UAB 9-10  
UAB 7-8  
UAB 6  
UAB 5-6  
UAB 3-4  
UAB 1-2

Water Retention Pond

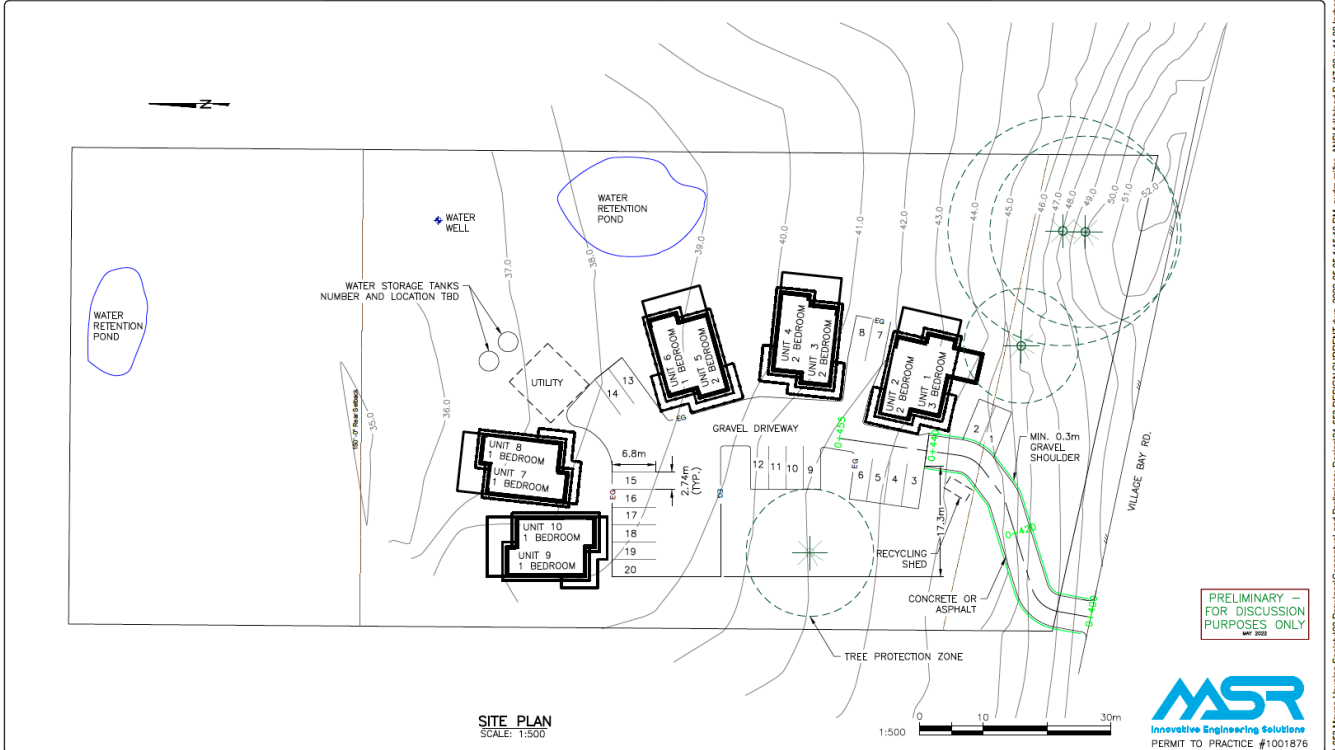
**Legend**

- Subdivision Boundary Line
- GeoBC Data**
- Existing Property Boundary
- Public Road
- Zones**
- Allowable Building Zone
- Forest Protection Zone
- Wetland Remediation Zone

fid	Type	Area_m <sup>2</sup>	Label
1	Allowable Building Zone	1332	Allowable Building Zone
2	Forest Protection Zone	1651	Forest Protection Zone A
3	Forest Protection Zone	3731	Forest Protection Zone B
4	Wetland Remediation Zone	3882	Wetland Remediation - Lot 2
5	Wetland Remediation Zone	5176	Wetland Remediation - Lot 3

Wetland Restoration Consulting  
2022/05/23  
Aerial Imagery: WRC 2021  
Basemap: Google Satellite 2022  
Lot Boundaries: GeoBC & Imdale Arc. 2021  
NAD83 BC Albers

0 25 50 m



**SITE PLAN**  
SCALE: 1:500

PRELIMINARY -  
FOR DISCUSSION  
PURPOSES ONLY  
MAY 2022



NO.	DATE	BY	REVISIONS	ENR

NO.	DATE	BY	REVISIONS	ENR
1	2022.05.05	JAW	ISSUED FOR DISCUSSION	JAW

PROJECT: MAYNE ISLAND HOUSING  
DESCRIPTION: SITE PLAN

MSR SOLUTIONS INC.  
INNOVATIVE ENGINEERING SOLUTIONS  
225 S. 8th STREET, SUITE 200, VICTORIA, B.C.  
PHONE: (250) 419-3184  
FAX: (250) 419-3185  
WWW.MSRGROUP.COM

DESIGN BY:	DATE:
JAW	2022.05.15
DRAWN BY:	DATE:
JAW	2022.05.15
CHECKED BY:	DATE:
JAW	2022.05.05
APPROVED BY:	DATE:
JAW	2022.05.05

SCALE:	DRAWING:
1:500	C01
SCALE:	NO.:
1:500	21-653
SHEET:	PERSON:
1 OF 2	1

M:\MSR Projects\21-653 Mayne Island Housing Society\03 Drawings\Conceptual and Preliminary Design\21-653 DESIGN CURRENT.dwg, 2022-05-05 1:15:10 PM, audra.miller, ANSI full bleed B (17.00 x 11.00 inches)



**SCHEDULE B  
REQUIREMENTS FOR THE  
REMEDICATION AND PRESERVATION OF LOT 2 AND 3**

**1. Ecological Assessment Report**

- a) Reduce fragmentation of the forest by keeping the development compact and minimizing the footprint of structures and services. For example, bury power and communications lines under access driveway.
- b) Retain, and establish a Tree Protection Zone, around remaining old veteran trees on the property. To give a sense of a standard calculation of the Critical Rooting Zone or Tree Protection Zone, this report has created a Tree Protection Zone based on the trunk diameter method with every 1cm of tree diameter (at breast height) equaling 12cm of Protection Zone radius.
- c) Retain large diameter wildlife trees (dead standing trees).
- d) Consult with a certified arborist to:
  - (i) to determine the health the veteran trees, assess the impacts from the proposed development and provide recommendations for tree protection and establishing a critical rooting zone.
  - (ii) to determine safety considerations and setback requirements around these trees.
  - (iii) If necessary, top wildlife tree to reduce setback rather than remove completely.
- e) Minimize the encroachment of the development footprint into moist/wet ecosystems.
- f) Minimize disturbance to Douglas-fir / dull Oregon-grape Provincially red-listed ecological community within mapped Ecological Community 1-1. A large portion of this overlaps with recommended Tree Protection / Critical Rooting Zone in 2b).
- g) Focus development in and around areas where soils are already heavily disturbed and compacted as much as possible.
- h) Minimize area of impervious surfaces and area of soil compaction including during the construction phase and post-construction ongoing use.
- i) Consult with professional hydrologist or wetland specialist to determine direct impacts to hydrology from development and to prescribe measures required to mitigate on-site and downslope impacts. Potential measures might include:
  - (i) Installation of bioswales, creation of rainwater gardens, constructed wetlands or retention ponds to promote infiltration of surface water and any diverted water into the ground.
  - (ii) Installation of rainwater catchment and storage systems to reduce roof runoff and reduce pressure on groundwater resources.
  - (iii) Retaining as much forest structure and natural vegetation cover as possible.
  - (iv) Minimizing impacts to vegetation during the construction process, and immediately

- revegetate/restore any areas where temporary damage is necessary for construction purposes.
- (v) Retaining large diameter coarse woody debris within undeveloped areas of the property to provide critical wildlife habitat.
  - (vi) Restoring areas outside of the development footprint where soils have been previously compacted (skid roads, logging landing sites) through 'rough and loose' treatment.
  - (vii) Incorporating 'wildlife zones' into the design where no ongoing use occurs. Restoration and wildlife enhancement measures should be focused in these areas.
  - (viii) Monitoring, evaluating and if necessary employing further mitigation measures during all phases of the development and construction process.

## **2. Wetland Restoration Report**

- a) **Remove compaction & roads**  
Old logging roads that are no longer needed should be restored to a forested wetland which may include removing the compaction through a technique known as rough and loose or "fluffing up" the soil from the road surface. Removing compaction will allow moisture from rain and snowmelt to penetrate the soil, reducing the risk of erosion. Loosening the soil also makes it easier for tree and plant roots to penetrate, increasing the rate and size of vegetation that may grow on the site.
- b) **Restore micro-topography**  
The smooth surfaces of roads, former pasture, old landings and other disturbed areas have reduced the variety of microsites available for different species of vegetation. As compaction is removed, the soil will be left in naturally appearing, undulating mounds and ridges to restore habitat diversity.
- c) **Remove Ditches**  
Ditch removal requires cleaning vegetation, roots and organic matter from the ditch and packing it with soil of a similar texture and level of compaction. A large volume of soil is required to fill ditches. Combining ditch removal with wetland construction makes sense. The soil removed from the wetland basins can be used to fill the ditches.
- d) **Build Wetland Ponds**  
Two sites are identified on the Subdivision Plan where small open water ponds 23 m x 16 m (Pond #1) and 9m x 17m (Pond #2) could be built
- e) **Add Coarse Woody Debris**  
Wetland restoration is an opportunity to re-purpose woody debris from site clearing to a necessary material for site restoration. Larger pieces of wood and smaller branches may be used in pond construction to provide habitat and incorporated into the former road surfaces when compaction is removed.
- f) **Prioritize Forested Wetland Restoration**
- g) **The wetland restoration shall be supervised by a qualified professional.**