

LAND TITLE ACT

FORM C

(Section 219.81)

Province of British Columbia

GENERAL INSTRUMENT - PART I (This area for Land Title Office Use)

Page 1 of 26 pages

1. Application: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
 Underhill, Faulkner, Boies Parker
 100-1124 Fort St.
 Victoria, BC V8V 3K8
 Phone: (250) 380-2788
 c/o Burns & Taylor Registry Services

Authorized Agent

2. Parcel Identifier(s) and Legal Description(s) of Land

(PID) (Legal Description)

006-662-307

Section 31 and part of Section 32, Denman Island, Nanaimo District, the whole of the said land being the area outlined in red on Plan 1656-R, except that part of Section 32 included in Plan 16663 and except that part in Plan VIP61295

026-826-445

Lot 3 Sections 25 and 30 Denman Island, Nanaimo District VIP 81780

006-660-614

Fractional Section 29 Denman Island, Nanaimo District

3. Nature of Interest:*

DESCRIPTION

DOCUMENT
REFERENCE

PERSON ENTITLED TO
INTEREST

Section 219 Covenant and

Entire Instrument

Rent Charge

Paragraph [13]

Section 218 Statutory Right Way

Paragraph [11]

DENMAN CONSERVANCY ASSOCIATION

4. Terms: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms D.F. No.
 (b) Express Charge Terms ☒ Annexed as Part 2
 (c) Release

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): See schedule

6. Transferee(s): (Including occupation(s), postal address(es) and postal code(s))*

DENMAN CONSERVANCY ASSOCIATION, (Incorporation No. S27585) of Post Office Box 60,
 Denman Island, British Columbia V0R 1T0.

7. Additional or Modified Terms:*

N/A

8. Execution(s): **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 agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s):

EXECUTION DATE

Party(ies) Signature(s)

Y / M / D

THE TRANSFEROR, 0736800 B.C. LTD.
 by its authorized signatory

ALLAN E. LESTER

print name and address

900 - 4720 Kingsway
 Burnaby, B.C. V5H 4N2
 (604) 454-6216

06/ 09 /29

print name

BENTE PILGAARD

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. 1979, c. 116 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.

* If space is insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space is insufficient, continue executions on additional pages in Form D

LAND TITLE ACT
FORM D

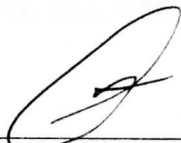
EXECUTIONS CONTINUED

Page 2

Officer Signature(s)

EXECUTION DATE
Y/M/D

Party(ies) Signature(s)



print name and address

ALLAN E. LESTER
Barrister & Solicitor
900 - 4720 Kingsway
Burnaby, B.C. V5H 4N2
(604) 454-6216

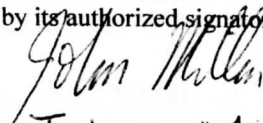
06/ 09 / 29

THE TRANSFEROR, SBJ PROPERTIES
INC.
by its authorized signatory

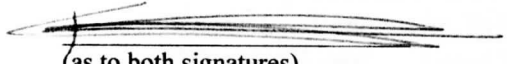


print name
BENTE PILGAARD

THE TRANSFEREE,
DENMAN CONSERVANCY
ASSOCIATION
by its authorized signatories



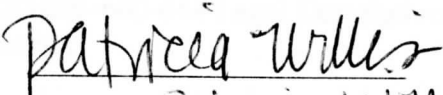
print name
John Miller



(as to both signatures)
print name and address

KATHRYN J. GREENING
NOTARY PUBLIC
320 - 10th ST
COURTENAY, B.C. V9N 1P5

06/ 8 29



print name Patricia Willis

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. 1979, c. 116 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.

* If space is insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space is insufficient, continue executions on additional pages in Form D

LAND TITLE ACT
FORM E
SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

5. TRANSFERORS

a) SBJ PROPERTIES INC. (Incorporation No. BC0749180) of 3222 Lacon Road, Denman Island, British Columbia V0R 1T0 is the Transferor regarding PID 006-660-307 Legal Description: Section 31 and part of Section 32, Denman Island, Nanaimo District, the whole of the said land being the area outlined in red on Plan 1656-R, except that part of Section 32 included in Plan 16663 and except that part in Plan VIP61295

(b) 0736800 B.C. LTD. (Incorporation No. BC0736800) of 901 - 1788 West Broadway, Vancouver, British Columbia V6J 1Y1 is the Transferor regarding PID ~~026-826-445~~ Legal Description: Lot 3 Sections 25 and 30 Denman Island Nanaimo District VIP 81730 and PID 006-660-614 Legal Description: Fractional Section 29 Denman Island, Nanaimo District

TERMS OF INSTRUMENT - PART 2

Section 219 Conservation Covenant

And

Section 218 Statutory Right of Way

The Agreement is dated for reference July 7, 2006

BETWEEN:

0736800 B.C. LTD., a corporation having its registered office at 901 - 1788 West Broadway, Vancouver, British Columbia V6J 1Y1 and **SBJ PROPERTIES INC.** (Incorporation No. BC0749180) of 3222 Lacon Road, Denman Island, British Columbia V0R 1T0

(Together, the "Transferor")

AND: **Denman Conservancy Association**, (Registration No. S27585), a society registered in British Columbia of P.O. Box 60, Denman Island, British Columbia V0R 1T0

(the "Transferee")

(collectively, the "Parties")

RECITALS:

- A. The Transferor is hereinafter referred to as the "Owner;"
- B. The Transferee is hereinafter referred to as the "Covenant Holder;"
- C. The Owner is the registered owner in fee simple of the Land as defined in section 1 below;
- D. The Covenant Area as defined in section 1 below contains significant Amenities including flora, fauna and natural features of great importance to the Owner, the Covenant Holder and the public;
- E. The Owner wishes and has agreed to grant to the Covenant Holder a covenant pursuant to section 219 of the *Land Title Act* to restrict the use of the Covenant Area;

- F. A statutory right of way under section 218 of the *Land Title Act* in favour of the Covenant Holders is necessary for the operation and maintenance of the undertakings of the Covenant Holder; and
- G. The Denman Conservancy Association has been designated by the British Columbia Minister of Sustainable Resource Management as a person authorized to accept covenants and as a person authorized to accept statutory right of ways, pursuant to sections 218 and 219 of the *Land Title Act*.

NOW THEREFORE in consideration of the payment of \$2.00 by the Covenant Holder to the Owner, the receipt and sufficiency of which is acknowledged by the Owner, and in consideration of the promises exchanged below, the parties agree as follows, in accordance with sections 218 and 219 of the *Land Title Act* (British Columbia):

1. INTERPRETATION

1.1 In this Agreement:

- (a) "Amenity" includes any natural, scientific, environmental, wildlife, plant, and cultural value relating to the Covenant Area;
- (b) "Biodiversity" means the diversity of life, including genetic diversity within species, diversity of species, and diversity of ecological communities, ecosystems and ecological processes (functions);
- (c) "Business Day" means any day on which the Land Title Office in Victoria, BC is open for business;
- (d) "Connectivity" means the extent to which areas of habitat are linked or accessible so that organisms can move freely between them. Connectivity depends on the degree of proximity between habitat areas, and the extent to which intervening areas are hospitable to dispersing organisms;
- (e) "Covenant Area" means that part of the Land as shown in the Plan attached as Schedule A to this Agreement;
- (f) "Covenant Holder" means, unless the context otherwise requires, Denman Conservancy Association;
- (g) "CPI" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, British Columbia, where the year 2005 equals 100;
- (h) "Denman Conservancy Association" means The Denman Conservancy Association, a society registered in British Columbia (Registration No. S27585, May 8, 1991) and includes its permitted successors and assignees;
- (i) "Detail Plan" means a report, which may include illustrations, maps and photos, which sets out the existing nature, including the Amenities of the Covenant Area, and illustrates the proposed alterations (including but not limited to the legal designation of public roads and the siting of buildings, fences, gates, driveways, pathways) of the Covenant Area by the Owner, and which takes into consideration the impact that the proposed alterations may have on the vegetation, soils, drainage, wildlife and other Amenities, and identifies all remedial actions that the Owner will take to lessen or eliminate any impacts identified;

- (j) "Ecological Integrity" means the soundness or wholeness of the ecosystem in terms of its structure, function and composition, recognizing that the ecosystem of the Covenant Area will evolve through natural succession over time;
- (k) "Forest Composition" means the diversity and abundance of the living and non-living components of the forest, especially the diversity and abundance of all species, recognizing that the Forest Composition of the Covenant Area will evolve through natural succession over time;
- (l) "Forest Function" means the various processes that take place in the forest, including ecological functions such as photosynthesis and the flow of energy through the food web; soil processes, including decomposition; the capture, cycling, and release of nutrients and water; activities of living organisms, such as feeding, migration, reproduction, growth, and death; and, genetic change in populations, recognizing that the Forest Function of the Covenant Area will evolve through natural succession over time;
- (m) "Forest Structure" means the spatial arrangement of the living and non-living components of the forest (such as the crowns and stems of live trees of all sizes), dead trees, down logs, understory plants, and soil structure, recognizing that the Forest Structure of the Covenant Area will evolve through natural succession over time;
- (n) "Group" means the three (3) professional consultants selected to resolve the Detail Plan process pursuant to section 7.9;
- (o) "Land" means the land legally described as Section 31 and part of Section 32, Denman Island, Nanaimo District, the whole of said land being the area shown outlined in red on Plan 1656-R, except that part of Section 32 included in Plan 16663 and except that part in Plan VIP61295 (PID: 006-662-307); Lot 3 Sections 25 and 30 Denman Island Nanaimo District VIP 81130 (PID: 826-826-445) and Fractional Section 29 Denman Island, Nanaimo District (PID 006-660-614);
- (p) "Management Plan" means the management plan for the Covenant Area created in accordance with section 5;
- (q) "Natural State" means the state of the Covenant Area as described in the Report, recognizing that the Natural State will evolve through natural succession over time;
- (r) "Owner" means 736800 B.C. LTD. (Incorporation No. 0736800), a corporation having its registered office at 901 - 1788 West Broadway, Vancouver, British Columbia V6J 1Y1 and 0738123 B.C. LTD. (Incorporation No. BC0738123) of 3222 Lacon Road, Denman Island, British Columbia V0R 1T0 and includes any successors of the Owner;
- (s) "Permitted Accessory Building" means a fully enclosed building separate from the dwelling and used primarily as either an office, studio or workshop;
- (t) "Plan" means Reference Plan of Covenant over Part of, Section 31 & 32, Plan _____, Denman Island, NANAIMO District certified correct by S.R. HOERBURGER BCLS, and dated 17 JULY 86, and deposited in the Victoria Land Title Office under number VIP 82065, a reduced copy of which forms Schedule A to this Agreement.
- (u) "Rent Charge" means the rent charge granted by the Owner under section 13;
- (v) "Rent Charge Amount" means the amount set out in section 13, the payment of which is secured by the Rent Charge;
- (w) "Report" means the baseline documentation report that describes the Covenant Area and the Amenities in the form of text, maps, photographs, and other records of the Covenant Area and the Amenities as of January 20, 2006, a copy of which is on file with each of the

parties at the addresses set out in section 16 and an overview of which is attached as Schedule B;

- (x) "Residential Use" means the occupation of the Land and the Covenant Area by individuals in a manner consistent with accepted norms and activities or residential life and as allowed by and in accordance with applicable statutes, regulations, plans and by-laws and this agreement, and the use and enjoyment of the Amenities; and
- (y) "Sight Lines" means openings in the forest through which views towards the horizon can be seen from a dwelling or a Permitted Accessory Building legally entitled to be built on the Land, or from a View Point.
- (z) "View Point" means a site, reasonably small in area, in a specified location on the top of the bluff, as referred to in the Report, with Sight Lines over the bluff towards the horizon.

1.2 Where this Agreement says something is in the "sole discretion" of a party, that thing is within the sole, absolute and unfettered discretion of that party;

1.3 This Agreement must be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia;

1.4 This Agreement is comprised of the recitation of the Parties, the recitals to the Agreement, the Schedules to the Agreement and Part 1 of the Land Title Act Form C to which this Agreement is attached.

1.5 In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context otherwise requires;
- (b) where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (e) the word "enactment" has the meaning given to it in the Interpretation Act (BC) on the reference date of this Agreement;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended or re-enacted or replaced, unless otherwise expressly provided;
- (g) reference to a "party" or the "parties" is a reference to a party or the parties to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and

- (h) reference to a “day”, “month”, or “year” is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.

2. REPRESENTATIONS AND WARRANTIES

- 2.1 The Owner warrants that the facts set out in Recitals C and E are true as of the date of this Agreement.
- 2.2 The Covenant Holder warrants that the facts set out in Recital G are true as of the date of this Agreement.
- 2.3 The Parties warrant that the facts set out in Recitals A, B, D and F are true as of the date of this Agreement.

3. INTENT OF AGREEMENT

- 3.1 The parties each agree that the general intent of this Agreement is:

- (a) to protect, preserve, conserve, maintain, enhance or restore the Covenant Area, and the Amenities, in as reasonably close to their Natural State as possible;
- (b) to limit the impact of any occupation or use of the Covenant Area that will impair or interfere with the Natural State of the Covenant Area or the Amenities;

while recognizing at the same time the need

- (c) to accommodate a limited, but reasonable, level of Residential Use in the Covenant Area, which enables the Owner to enjoy the Land and the Amenities of the Covenant Area, subject to Detail Plan(s) approved by the Covenant Holder being provided as set out in section 7 of this Agreement;

and the parties agree that this Agreement is to be interpreted, performed and applied accordingly.

4. RESTRICTIONS ON THE OWNER'S USE OF THE COVENANT AREA

- 4.1 Except as expressly permitted in this Agreement or as caused by the forces of Nature, the Owner must not do anything, omit to do anything, allow anything to be done, or allow the omission of anything, that does or could reasonably be expected to destroy, impair, diminish, negatively affect or alter the Covenant Area or the Amenities from the condition described in the Report.
- 4.2 Without restricting the generality of section 4.1, the Owner must not, except where it has received written approval in a Detail Plan as set out in section 7 below:

- (a) Use or permit the use of the Land for an activity or use which:
 - (i) causes or allow silts, leachates, fills or other deleterious substances to be released into any water body on or adjacent to the Covenant Area;
 - (ii) causes the erosion of the Covenant Area to occur;
 - (iii) causes or facilitates the loss of soil on the Covenant Area;
 - (iv) alters or interferes with the hydrology of the Covenant Area including by the diversion of natural drainage or flow of water in, on or through the Covenant Area in a manner which may impact the Covenant Area;
 - (v) causes or allows fill, rubbish, ashes, garbage, waste or other material foreign to the Covenant Area to be deposited in or on the Covenant Area;
 - (vi) causes or allows any component of the Covenant Area, including flora, soil, gravel or rock, to be disturbed, moved, removed from or deposited in or on the Covenant Area other than for
 - (a) the prevention of injury to person or damage to property, as set out in section 9.4 below;
 - (b) the moving of inorganic and organic debris so as to keep pathways clear;
 - (c) the removal of standing dead trees within 50' of a dwelling or accessory building if deemed, by the Owner, acting reasonably, to pose a fire or other safety hazard; and
 - (d) the removal of organic debris that has fallen on the Covenant Area within 25' of a dwelling or any accessory building subject to the requirements of any applicable law under which the clearing of a greater distance must be maintained;
 - (vii) causes or allows pesticides, including but not limited to herbicides, insecticides or fungicides, to be applied to or introduced onto the Covenant Area;
- (b) use or permit the use of the Covenant Area for hunting, fishing, gathering or grazing of domestic animals;
- (c) introduce non-native species of plants or animals onto the Covenant Area;
- (d) permit the constructing, building, affixing or placing on the Covenant Area any buildings, structures, fixtures or improvements of any kind except for the prevention of injury to person or damage to property as set out in section 9.4 below;
- (e) lay out or construct any new roads on the Covenant Area;

- (f) permit vehicular access of any kind on the Covenant Area;
 - (g) carry out any use or take any steps (other than pursuant to an approved Detail Plan) which prevent the existing road on the Covenant Area described in the Report from renaturalizing;
 - (h) lease or license the Covenant Area or any part thereof unless the lease or license is expressly made subject to the provisions of this Agreement and expressly entitles the Owner to terminate the lease and license if the lessee or licensee breaches any of the provisions of this Agreement;
 - (i) place any new financial encumbrances on the Land having priority over this Agreement;
 - (j) carry out any other acts on or in respect of the Covenant Area which, in the opinion of the Covenant Holder, acting reasonably, may have detrimental impact on the Covenant Area other than as specifically permitted in this Agreement.
- 4.3 On any lot legally existing on the Land, the Owner's right to create or improve Sight Lines shall be limited to doing so from the location of one legally entitled dwelling, one legally entitled Permitted Accessory Building, and one View Point. And provided, however, that such right is subject to the Owner complying with the Detail Plan process set out in section 7.1. below.

5. MANAGEMENT PLAN

- 5.1 The Covenant Holder may, at its sole discretion, create, review and revise at such times and intervals as it determines, a Management Plan for the Covenant Area and submit the Management Plan to the Owner for approval. The Owner must, within 25 Business Days of receipt of the proposed Management Plan, notify the Covenant Holder in writing whether or not the Owner, acting reasonably, approves the proposed Management Plan.
- 5.2 If the Owner does not approve the proposed Management Plan, the Owner will, in its notification to the Covenant Holder, provide written reasons for not approving the Management Plan and a description of changes to the Management Plan that are necessary for the Owner to approve the Management Plan.
- 5.3 If the Covenant Holder does not approve the requested changes, the Owner and the Covenant Holder shall jointly select a single person who shall act as an arbitrator under the *Commercial Arbitration Act* to resolve the matter. If the parties cannot agree on a single arbitrator, then the Owner and the Covenant Holder will request the British Columbia International Commercial Arbitration Centre, or, if that Centre is not then in existence or operation, its successor, to appoint the arbitrator. The decision of the arbitrator is final and binding and his/her costs shall be borne equally between the Owner and the Covenant Holder.

- 5.4 Provided however only the Owners of legally described lots which are affected directly by the creation, revision, or review of a Management Plan shall be involved in the aforementioned process set out in this section 5. Owners of non-affected lots shall not be notified or involved in any way in this process.
- 5.5 Once a Management Plan is created for the Covenant Area, the Covenant Holder or its assignee shall be the manager and shall manage the Covenant Area according to the Management Plan.

6. BASELINE DOCUMENTATION REPORT

- 6.1 The parties agree that the Covenant Area and the Amenities are described in the Report.
- 6.2 The parties agree that the Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement and the parties each agree that the Report provides an accurate description of the Covenant Area and the Amenities as of the date of this Agreement.
- 6.3 The parties each acknowledge that the flora and fauna on the Covenant Area will evolve through natural succession over time and, unless otherwise expressly stated, references to the Report in this Agreement are intended to take into account the natural succession of the flora and fauna over time, without human intervention other than as expressly permitted by this Agreement.
- 6.4 After subdivision of the Land occurs, if the Owner(s) of the resulting parcels propose any alterations to the Covenant Area, the Owner of each parcel, in consultation with the Covenant Holder, will obtain and register, at the Owner's cost, a parcel specific ecological inventory as an amendment to the Report.

7. DETAIL PLANS

- 7.1 Where the Owner proposes any alterations to the Covenant Area, other than those allowed in section 4.2(a)(vi), by cutting, moving, harvesting, removing, thinning, topping, trimming or pruning of vegetation for the purpose of creating or improving Sight Lines, the Owner must obtain the written approval of the Covenant Holder to undertake such alterations by providing a written request and a Detail Plan to the Covenant Holder. Any such alterations proposed by the Owner for the purpose of creating or improving Sight Lines shall be conservative and ensure that the overall Ecological Integrity of the Covenant Area and the Amenities is not lost. Consideration by the Covenant Holder of those alterations shall take into account the individual layout and characteristics of any lot created as a result of the subdivision of the Land.

The Owner shall make reasonable effort to site these improvements to take maximum advantage of already existing Sight Lines so as to minimize the disturbance to the Environment.

It is agreed that this section will preclude a panoramic (unbroken or unimpeded) view towards the horizon being created.

- 7.2 Where the Owner proposes any alterations to the Covenant Area by the construction of a fence, a gate, a driveway, a pathway or any other alterations (other than as dealt with in sections 7.1, 7.3 and 7.4) on the Covenant Area, the Owner must obtain the approval of the Covenant Holder to undertake such alterations by providing a written request and a Detail Plan to the Covenant Holder.
- 7.3 Where the Owner proposes any encroachment of buildings into the Covenant Area, the Owner must obtain the approval of the Covenant Holder to carry out such building encroachment (as hereinafter defined) by providing a written request and a Detail Plan to the Covenant Holder. For the purpose of such proposed encroachments:
- (a) "building" includes a building's decks and its attached carport, if any;
 - (b) "building encroachment" into the Covenant Area is deemed to comprise all of the Covenant Area occupied by the building and the buffer area extending around the building, 10' immediately outside the building.
 - (c) "lot" means (i) any legally described lot currently existing, unless subdivided after the date of this Agreement and (ii) any lot created by subdivision after the date of this Agreement;
 - (d) building encroachments into the Covenant Area including all accessory buildings shall be confined to a maximum of two (2) building sites for each lot;
 - (e) the total length of the building encroachments (measured along the westerly boundary of the Covenant Area) for any lot shall be the lesser of:
 - (i) 150' and
 - (ii) 50% of the width of the westerly dimension of the Covenant Area;
 - (f) building siting that results in encroachment into the Covenant Area must have been approved by the Development Permit process of the Islands Trust or any successor government body before requesting approval of the Detail Plan;
 - (g) the Detail Plan shall include a proposal for a new amount of land adjoining the Covenant Area and acceptable to the Covenant Holder, acting, reasonably, to be included in the Covenant Area in exchange for the area which shall be deleted from the Covenant Area in the location of the building encroachments. The Owner, at its sole expense, shall survey the reconfigured Covenant Area and be responsible for the survey plan's registration at the Land Title Office prior to the commencement of any alterations proposed in the Detail Plan.
- 7.4 The Covenant Holder acknowledges that the Owner intends to subdivide the Land, including the Covenant Area, in conformity with all governmental requirements and allowances. Because of the sensitivity of the Covenant Area as described in the Report, any dedicated public road required by government agencies through the Covenant Area to or toward the easterly boundary of the Land should be discouraged and all alternatives to such access should be sought. However, should no alternatives acceptable to the

governmental authorities exist and should such a road dedication be required as a condition of subdivision, the Covenant Holder will agree to remove the portion of the Land from the Covenant Area required for such access on the condition that:

- (a) the Owner must provide a Detail Plan including all relevant governmental requirements and a description of the efforts made by the Owner to seek alternative access to the Covenant Holder;
- (b) the Owner has made reasonable efforts to have Ministry of Transportation allow as few such dedicated roads as possible within the subdivision by:
 - (i) initially applying for only one (1) such road dedication and only increasing that number upon the insistence of the Ministry of Transportation;
 - (ii) applying under section 76 of the *Land Title Act* for relief from normal requirements for provision of such dedicated roads, the basis for such request including, but not being limited to the facts that road access to the foreshore is impractical and much of the terrain near the easterly boundary of the Land is unstable and is in a Development Permit Area
 - (iii) negotiating with the Ministry of Transportation for the provision of reasonable amounts of pathway, parkland or other amenities in return for an appropriate reduction in the number of such road dedications required.
- (c) no road dedication shall be made in any part of the Covenant Area which the Covenant Holder reasonably believes to be of particularly high ecological significance or sensitivity; and
- (d) the Detail Plan includes a proposal for newly covenanted land acceptable to the Covenant Holder, acting reasonably, in exchange for the area which shall be deleted from the Covenant Area in the location of the dedicated road. The Owner shall assume all costs associated with this exchange including but not limited to the costs of providing a registrable survey plan and baseline report of the new area and a new or modified Agreement (as appropriate) and the cost of their registration at the Victoria Land Title Office.

7.5 Any Detail Plan provided by the Owner to the Covenant Holder shall be based upon the information set out in the Report, or, where there has been a subdivision (since the date of this Agreement) creating the legally described lot upon which the alterations are to be carried out, upon the information set out in the amended Report (required by section 6.4 above).

7.6 The Covenant Holder will review the Detail Plan, with reference to the intent of this Agreement examining factors over and above those of the Islands Trust Development Permit process. Such factors may include, but not be limited to, the effect on: Biodiversity; Connectivity; wildlife and veteran trees; plant communities; wildlife habitat; Ecological Integrity; Forest Composition, Forest Function, Forest Structure and general landscape; adequacy of mitigation/restoration measures, standards for tree alteration of, for example, the American National Standards Institute (ANSI) and the Pacific Northwest Chapter of the International Society of Arboriculture (PNWISA), acceptability of any substituted Covenant Area as per section 7.3(g); and, such review shall be carried out with

acknowledgment of the Owner's expectations of limited, but reasonable Residential Use, and enjoyment of the Land and the Covenant Area.

- 7.7 Within 15 business days of receipt of the Detail Plan, the Covenant Holder will initiate a process of consultation with the Owner. The process of consultation will include discussion of the proposed alterations described in the Detail Plan and suggestions by the Covenant Holder of alternatives should they be deemed warranted. The Detail Plan may be amended by the Owner as part of this consultation process.
- 7.8 Within 30 business days of conclusion of the consultation process with the Owner, the Covenant Holder will provide a written response to the Owner, rendering its decision and the reasons for the decision.
- 7.9 If the Covenant Holder refuses to approve the Detail Plan, the Owner and Covenant Holder agree to submit such disagreement to a Group of three (3) professional consultants with expertise pertinent to the particulars of the disagreement (e.g. biology, ecology, slope stability, etc.). Members of the Group shall be selected in the following manner: one member to be chosen by the Owner; a second to be chosen by the Covenant Holder; and, the third to be selected by the first two members of the Group.
- 7.10 The Group shall be provided with materials including this Agreement, full Report, Management Plan (should one have been created), Islands Trust Development Permit, governmental requirements (where applicable) and Detail Plan. The Group will view the affected Covenant Area and receive written and oral submissions from the Owner and Covenant Holder. The Group shall render its acceptance or non-acceptance of the Detail Plan or amended Detail Plan, where applicable, by majority opinion. The written decision of the Group will be final. The Covenant Holder and the Owner agree to share equally the reasonable costs and expenses of the Group.

8. DISPUTE RESOLUTION

- 8.1 If a breach of this Agreement occurs or is threatened, or if there is disagreement as to the meaning of this Agreement, the Covenant Holder or the Owner may give notice to the other party requiring a meeting of both parties within 10 Business days of receipt of the notice. For the sake of clarity, this section 8 does not apply where there is a failure to approve a) a Detail Plan or amended Detail Plan, which failure shall be governed and resolved by the process set out in section 7 above or b) a Management Plan, which failure shall be governed and resolved by the process set out in section 5 above.
- 8.2 All activities giving rise to a breach or threatening a breach of this Agreement, or giving rise to a disagreement as to the meaning of this Agreement must immediately cease upon receipt of notice.
- 8.3 The parties must attempt to resolve the matter, acting reasonably and in good faith, within 20 Business days of receipt of the notice.

- 8.4 If the parties are not able to resolve the matter within that time, the parties may appoint a mutually acceptable person to mediate the matter, with the costs to be borne equally between the Owner and the Covenant Holder, and the parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 30 days after the mediator is appointed.
- 8.5 If the parties are not able to resolve the matter within that time with the assistance of a mediator or if no mediator is appointed, the parties agree to submit the matter to a single arbitrator under the *Commercial Arbitration Act* (British Columbia) appointed jointly by the Owner and the Covenant Holder.
- 8.6 If the parties cannot agree on a single arbitrator, then the Owner and the Covenant Holder will request the British Columbia International Commercial Arbitration Centre, or, if that Centre is not then in existence or operation, its successor, to appoint the arbitrator.
- 8.7 The decision of the arbitrator is final and binding.
- 8.8 The costs of the arbitration will be borne equally between the Owner and the Covenant Holder.
- 8.9 This section 8 does not affect the right of the Covenant Holder to pursue injunction proceedings through the Supreme Court of B.C. in relation to a breach or a threatened breach of this Agreement.
- 8.10 Provided, however, only the Owners of legally described lots which are directly involved in any breach or question of interpretation of this Agreement shall take part in this section 8 Dispute Resolution process. Owners of non-involved legally described lots shall not be notified or take part in any way in this process.

9. OWNER'S RESERVED RIGHTS

- 9.1 The Owner reserves all of its rights as owner of the Land, including the right to use, occupy and maintain the Land, including the Covenant Area in any way that is not expressly restricted or prohibited by this Agreement, so long as the use, occupation or maintenance are consistent with the intent of this Agreement.
- 9.2 Without limiting the generality of section 9.1., the following rights are expressly reserved to the Owner:
- (a) to subdivide the Land in accordance with applicable statutes, regulations, plans and by-laws;
 - (b) to exchange density of subdivision for increased or decreased density in other lands owned by the Owner;
 - (c) to occupy the Land in accordance with applicable statutes, regulations, plans and by-laws;
 - (d) to farm the Land, excluding the Covenant Area;

- (e) to build, maintain, restore or replace existing and future buildings and other improvements on the Land, excluding the Covenant Area, in accordance with applicable statutes, regulations, plans and by-laws;
 - (f) to build, maintain, replace and restore wells, waste disposal and water supply systems on the Land, excluding the Covenant Area, in accordance with applicable statutes, regulations, plans and by-laws;
 - (g) to create or improve Sight Lines in accordance with section 4.3 and the Detail Plan process set out in section 7.1
 - (h) to remove organic debris that has fallen on the Covenant Area within 25' of a dwelling or any accessory building subject to the requirements of any applicable law under which the clearing of a greater distance must be maintained;
 - (i) to allow or deny access to the Land, excluding the Covenant Area, by the general public;
 - (j) to allow or deny access to the Covenant Area by its guests, personal visitors and family members; and
 - (k) to deny access to the Covenant Area by the general public.
- 9.3 The Owner acknowledges and agrees that the Covenant Holder has not endorsed or agreed to endorse any general or specific exercise of the Owner's rights as the owner of the Land.
- 9.4 Subject to section 9.5, nothing in this Agreement restricts or affects the right of the Owner or any other party to do anything reasonably to:
- (a) prevent potential injury or death to any individual; or
 - (b) prevent, abate or mitigate any damage or loss to any real or personal property.
- 9.5 If the Owner or any other party intends to do anything described in section 9.4 in the Covenant Area or which would affect the Amenities, the Owner must give at least 30 days' prior written notice to the Covenant Holder, describing in reasonable detail the intended action, the reason for it, and its likely effect on the Covenant Area or the Amenities. The Owner must allow the Covenant Holder to enter upon and inspect the Covenant Area if any action is proposed under section 9.4. The Covenant Holder may comment on the proposed action and the Owner and any other party must take those comments into consideration before doing anything under that section.
- 9.6 Despite section 9.5, in an emergency situation, such as fire or threat to human safety which occurs in or adjacent to the Covenant Area, the Owner may do anything reasonably necessary to prevent potential injury or death without the consent of the Covenant Holder, but the Owner must notify the Covenant Holder of the circumstances of such action within 10 days, including the Owner's reasonable expectation of the actual or likely effect on the Covenant Area or the Amenities.
- 9.7 No right of access by the general public to any portion of the Land is conveyed or granted by this Agreement.

10. OWNER'S OBLIGATIONS

- 10.1 The Owner retains all responsibility and bears all liability related to the ownership, use, occupation and maintenance of the Covenant Area, other than for alterations and improvements negligently carried out by the Covenant Holder. Notwithstanding the foregoing, both the Owner and the Covenant Holder will take out and obtain policies of public liability insurance in an amount and with terms advised by the respective insurance agents, acting reasonably. Each of the Owner and Covenant Holder waive their rights of recourse against the other arising out of claims by other parties under the kinds of liability covered by each's public liability insurance. Each of the Owner and the Covenant Holder will provide copies of all such policies of insurance to the requesting party within 30 days after receiving written request for them.
- 10.2 The Owner hereby indemnifies the Covenant Holder, its directors, officers, employees, agents and contractors, from and against any and all liabilities, damages, losses, personal injury or death, causes of action, actions, claims, and demands by or on behalf of any person, arising out of any act or omission, negligent, or otherwise, in the use, occupation and maintenance of the Covenant Area or the Amenities by the Owner. The Covenant Holder hereby indemnifies the Owner, its directors, officers, employees, agents and contractors, from and against any and all liabilities, damages, losses, personal injury or death, causes of action, actions, claims, and demands by or on behalf of any person, arising out of any negligent act or omission in the use and maintenance of the Covenant Area or the Amenities by the Covenant Holder.
- 10.3 The Owner is liable for any and all breaches by it of this Agreement, but the Owner is not liable for
- (a) breaches of this Agreement which occur while the Owner is not the registered owner of any interest in that legally described lot on the Land upon which the breach has occurred;
 - (b) injury or alteration to the Covenant Area or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including accidental fire, flood, storm, vandalism, trespass and earth movement, but excluding injury or alteration resulting from actions of the Owner or any third party acting with the actual or constructive knowledge of the Owner;
 - (c) any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Covenant Area or the Amenities resulting from natural causes, including accidental fire, flood, storm and earth movement; or
 - (d) injury or alteration to the Covenant Area caused by the Covenant Holder while exercising its rights under this Agreement.
- 10.4 Without limiting the generality of sections 10.1, 10.2 and 10.3, the Owner:

- (a) is solely responsible and liable for any loss or damage, or liability of any kind (whether civil, criminal or regulatory), in any way connected with the existence in, on, from, to or under the Covenant Area (whether through spill, emission, migration, deposit, storage or otherwise) of any pollutant, contaminant, waste, special waste, or any other matter that impairs the environment unless caused by the Covenant Holder while exercising its rights under this Agreement or by any third party acting without the actual or constructive knowledge of the Owner; and
 - (b) hereby indemnifies the Covenant Holder from and against any loss, damage, liability, cause of action, action, penal proceeding, regulatory action, order, directive, notice or requirement, including those of any government agency, incurred, suffered, brought against or instituted against the Covenant Holder in any way associated with anything described in section 10.4(a) for which the Owner is liable under section 10.4(a).
- 10.5 Where, as provided under section 10.3(b), the Owner is not responsible for damage or theft due to trespass or vandalism, the Owner will take all reasonable steps to identify and prosecute the person responsible and to seek financial restitution for the damage or theft.
- 10.6 The Owner must pay when due all taxes, assessments, levies, fees and charges of whatever description which may be levied on or assessed against the Land and must pay any arrears, penalties and interest in respect thereof.
- 10.7 The Owner hereby indemnifies the Covenant Holder from and against any fee, tax, or other charge which may be assessed or levied against the Owner or the Covenant Holder pursuant to any enactment, including the *Income Tax Act* (Canada) with respect to the Land or with respect to this Agreement, including any fee, tax or other charge which may be assessed or levied against the Owner or Covenant Holder as a result of the amendment or termination of this Agreement provided that the Owner does not indemnify the Covenant Holder from and against a tax assessed against the Covenant Holder under the *Income Tax Act* (Canada) as a result of the Covenant Holder's non-compliance with the provisions of the *Income Tax Act* (Canada), the revocation of the Covenant Holder's registration as a charity or of the Covenant Holder's disposing or changing the use, without authorization or permission, of the interest in the Land granted to the Covenant Holder under this Agreement.
- 10.8 Any debts or other amounts due from the Owner to the Covenant Holders under this Agreement, if not paid within 30 days after notice, will bear interest at the annual interest rate that is 1 percent greater than the prime rate of interest. For the purposes of this section, the "prime rate of interest" is the annual rate of interest charged from time to time by the Bank of Montreal, at its main branch in Vancouver, BC, for demand Canadian dollar commercial loans and designated from time to time by the Bank of Montreal as its prime rate.
- 10.9 For clarity, the indemnities granted under sections 10.2, 10.4(b) and 10.7 are indemnities granted as an integral part of the section 219 covenant granted by this Agreement.

- 10.10 The rights given to the Covenant Holder by this Agreement are permissive only and nothing imposes any obligation on the Covenant Holder to anyone, or obliges the Covenant Holder to perform any act or incur any expense for any purpose in respect of this Agreement except as expressly set out in this Agreement. Neither does the mere signing of this Agreement render the Covenant Holder an occupier of the Covenant Area.

11. STATUTORY RIGHT OF WAY

- 11.1 The Owner grants to the Covenant Holder a license, and statutory right of way over the Land pursuant to section 218 of the Land Title Act, permitting the Covenant Holder to do the following:

- (a) To enter upon and inspect the Covenant Area
 - (i) at least once each calendar year, with the date for each inspection to be agreed upon by the parties before August 31 each year, but if the parties cannot agree on those days by August 31 each year, the Covenant Holder is entitled to enter upon and inspect the Covenant Area in accordance with section 11.1(a)(ii); and
 - (ii) at all reasonable times upon prior written notice by the Covenant Holder to the Owner of the legally described lots to be entered upon of at least 7 days, unless, in the opinion of the Covenant Holder, there is an emergency or other circumstance which does not make giving such notice practicable, in the sole discretion of the Covenant Holder; and
- (b) as part of inspection of the Covenant Area, to take soil, water or other samples, photographs and video and sound recordings as may be necessary to monitor compliance with and enforce the terms of this Agreement;
- (c) to enter upon and protect, preserve, conserve, maintain, enhance, rehabilitate or restore, in the Covenant Holder's sole discretion and at the Covenant Holder's expense, the Natural State of the Covenant Area or the Amenities to as near the condition described in the Report as is practicable, if an act of nature or of any person other than described in section 11.1(d) destroys, impairs, diminishes or negatively affects or alters the Covenant Area or the Amenities from the condition described in the Report;
- (d) in accordance with section 12, to enter upon and protect, preserve, conserve, maintain, enhance, rehabilitate or restore, in the Covenant Holder's sole discretion and at the Owner's expense, the Covenant Area or the Amenities to as near the condition described in the Report as is practicable, if an action of the Owner or any third party acting with the actual or constructive knowledge of the Owner contravenes any term of this Agreement;

- (e) to construct, reconstruct and maintain, at its expense, reasonable improvements for purposes of protection of the Amenities, provided such improvements are agreed to by the Owner, acting reasonably, and, except to the level agreed to by the Owner, do not interfere with the Owner's expectations of limited, but reasonable Residential Use and enjoyment of the Land and Covenant Area;
- (f) to construct, reconstruct and maintain, at its expense, signs informing the public of the existence of the Covenant Area in the manner set out in section 17;
- (g) to carry out or evaluate, or both, any program agreed upon between the parties for the protection, preservation, conservation, maintenance, restoration or enhancement of all or any portion of the Covenant Area or the Amenities;
- (h) to place survey pegs or other markings on the Covenant Area; and
- (i) for any other purpose reasonably necessary to monitor, implement or enforce this Agreement.

11.2 The Covenant Holder may bring workers, equipment and materials on the Covenant Area when exercising its rights under this Agreement. If the exercise of its rights under this Agreement causes harm or damage to the Land or the personal property of the Owner, the Covenant Holder will repair or remedy the harm or damage at its own cost and expense. The Covenant Holder will remove its equipment and excess materials from the land when it has finished the task for which they were brought onto the Covenant Area.

12. ENFORCEMENT REMEDIES OF THE COVENANT HOLDER

- 12.1 If the Covenant Holder, acting reasonably, believes that the Owner has neglected or refused to perform any of the obligations set out in this Agreement or is in breach of any term of this Agreement, the Covenant Holder may serve on the Owner a notice setting out particulars of the breach and of the Covenant Holder's estimated maximum costs of remedying the breach.
- 12.2 The Owner has 30 days from receipt of a notice under section 12.1, or from the conclusion of the dispute resolution process under section 8 if it is invoked, and the arbitrator finds a breach, to remedy the breach or make arrangements satisfactory to the Covenant Holder for remedying the breach.
- 12.3 If the Owner does not remedy the breach described in section 12.1 or any breach confirmed in the section 8 dispute resolution process, as applicable, within the time acceptable to the Covenant Holder under section 12.2, the Covenant Holder may enter upon the Covenant Area and remedy the breach or carry out the arrangements referred to in section 12.2 and the Owner must reimburse that Covenant Holder for any expenses incurred in doing so, up to the estimated maximum costs of remedying the breach set out in the notice given under section 12.1.

- 12.4 Expenses incurred by a Covenant Holder under this section, until paid, are a debt owed by the Owner to the Covenant Holder and the Covenant Holder may take action to secure judgment and payment of that debt through the Courts.
- 12.5 Provided, however, only the Owners of legally described lots which are directly involved in any alleged breach of this Agreement shall take part in this section 12 process. Owners of non-involved lots shall not be notified or take part in any way in this process.

13. RENT CHARGE AND ITS ENFORCEMENT

- 13.1 As security for the performance of the Owner's obligations under this Agreement, the Owner grants to the Covenant Holder a perpetual Rent Charge against the Land, ranking prior to all other financial charges and encumbrances registered against the Land. The Rent Charge is granted both under section 219 of the *Land Title Act* (British Columbia) as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law.
- 13.2 The Rent Charge secures payment to the Covenant Holders by the Owner of the sum of \$25,000.00 (the "Rent Charge Amount") in the course of any calendar year, subject to adjustment under section 13.3 and 13.4, for each breach of the Owner's obligations under this Agreement occurring within that year.
- 13.3 The Rent Charge Amount is to be adjusted on January 1 of each year by increasing or decreasing, as the case may be, the Rent Charge Amount by the amount determined by multiplying the Rent Charge Amount on December 31 immediately preceding by the percentage increase or decrease, as the case may be, in the CPI between the previous January 1 and that December 31 and adding the amount so determined to the Rent Charge Amount as it stands on that December 31. If Statistics Canada, or its successor in function, ceases to publish a CPI or comparable indicator as determined by the Covenant Holder in its sole discretion, the parties agree that the factor to be used in determining the Rent Charge Amount for each year shall be of 3%.
- 13.4 Provided however, notwithstanding anything to the contrary set out above but subject to section 13.8, the Rent Charge Amount shall be the greater of a) \$25,000 plus the increases set out in section 13.3 above and b) 110% of the market value, at the date of any breach of this Agreement, of any flora or fauna, soil, rock, gravel or minerals, which have been altered, damaged, destroyed, moved, harvested or removed.
- 13.5 The Covenant Holder shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.
- 13.6 The Rent Charge is suspended unless and until the Owner is in breach of any provision of this Agreement and has not cured the breach, or is not diligently proceeding to cure the breach in accordance with section 12 of this Agreement.
- 13.7 A Covenant Holder may enforce the Rent Charge by any of the following:

- (a) an action against the Owner for the Rent Charge Amount;
- (b) an action for appointment of a receiver in respect of the Land
- (c) distraint against the Land to the extent of the Rent Charge Amount; or
- (d) an order for the sale of the Land.

13.8 Notwithstanding anything to the contrary, if in any one year period there are breaches by an Owner of its obligations under the Agreement, where a) the cost of repair or cure (calculated at normal market rates for labour and materials) plus b) the market value, at the date of the breaches, of any flora, fauna, rock, soil, gravel or minerals which have been altered, damaged, destroyed, moved, harvested, or removed, total less than 5% of the current Rent Charge Amount calculated under section 13.3 (but not under section 13.4), the Rent Charge Amount shall be equal to 150% of that total rather than any of the other amounts set out above.

14. SUCESSORS OF THE OWNER

- 14.1 This Agreement shall enure to the benefit of and be binding on the Owner and the Owner's successors.
- 14.2 Where ownership of any of the Land, or legally described lots within the Land, has changed, it shall be the responsibility of the new owner(s) to notify the Covenant Holder in writing of the change of ownership and to provide a copy of their state of title certificate as verification to the Covenant Holder.

15. ASSIGNMENT OF AGREEMENT OR DISSOLUTION OF THE COVENANT HOLDER

- 15.1 This Agreement shall be transferable by the Covenant Holder, but the Covenant Holder may assign its rights and obligations under this Agreement only to a person or entity qualified by law at the time of transfer to hold covenants under section 219 of the *Land Title Act* and statutory rights of way under section 218 of the *Land Title Act* (or any successor provision then applicable) and any applicable regulations.
- 15.2 The Covenant Holder agrees that before assigning its rights and obligations under this section, it must consult with the Owner, and consider the Owner's comments, with respect to the proposed assignee. The Covenant Holder must give notice to the Owner of the proposed assignment, setting out in reasonable detail the identity of the proposed assignee and the qualifications and experience of the proposed assignee. If the Owner does not provide comments to the Covenant Holders regarding the proposed assignee within 10 Business days after the Covenant Holder gave notice to the Owner under this section, the Owner is conclusively deemed to have declined to comment on the proposed assignee and to have consented to the assignment. For clarity, the Covenant Holder is entitled to assign its rights and obligations so long as it has consulted the Owner.

15.3 In the event of the winding-up or dissolution of a Covenant Holder, the Covenant Holder must use its best efforts to assign and transfer all of its interest under this Agreement to a person or entity authorized to accept covenants under section 219 of the *Land Title Act* and statutory rights of way under section 218 of the *Land Title Act*. If the Covenant Holder does not assign and transfer all of its interest under this Agreement as set out in this section, it shall be deemed to have assigned and transferred all of its interest under this Agreement to Her Majesty the Queen in Right of the Province of British Columbia. For clarity, the consultation process set out in section 15.2 does not apply to this section.

16. NOTICE

16.1 Any notice or other communication required or permitted under this Agreement must be in writing and must be:

- (a) delivered in person;
- (b) sent by facsimile to the parties at their respective facsimile numbers set out in section 16.5, followed by a copy sent by ordinary mail; or pre-paid registered mail; or
- (c) sent by pre-paid registered mail addressed to the parties at their respective addresses set out in section 16.5.

16.2 If a notice is delivered in person, the party receiving the notice must forthwith acknowledge in writing receipt of the notice, and the notice shall be deemed to have been received on the earlier of the date of the acknowledgment and the date that is 5 days after the notice is delivered or, failing an acknowledgment, 5 days after the date of delivery attested to in an affidavit by the delivering person.

16.3 If a notice sent by facsimile, it shall be deemed to have been received on the date of the transmission of the notice.

16.4 If a notice is sent by pre-paid registered mail, it shall be deemed to have been received on the fourth Business Day following the day on which the notice was sent.

16.5 The addresses of the parties for notice are as follows

Owner:

0736800 B.C. LTD.

3222 Lacon Road, Denman Island, British Columbia V0R 1T0

Facsimile No: (250) 335-3256

SBJ PROPERTIES INC.

3222 Lacon Road, Denman Island, British Columbia V0R 1T0

Facsimile No: (250) 335-3256

Covenant Holder:

Denman Conservancy Association,
Box 60, Denman Island, British Columbia V0R 1T0
Facsimile No: (250) 335-0351

- 16.6 Each party agrees to give notice immediately to the other parties of any change in its address or facsimile number from those set out in section 16.5.

17. NOTICE OF COVENANT

- 17.1 The Owner agrees to allow the Covenant Holder to publicize the existence of this Agreement in a tasteful manner and as it will do in relation to similar covenants in its favour.
- 17.2 Without restricting the generality of the foregoing, the Owner agrees to allow the Covenant Holder to erect a plaque or other sign on the Covenant Area, in locations where the Covenant Area abuts public land or a dedicated road, said sign to be erected in a tasteful manner and at the expense of the Covenant Holder, indicating that it holds a covenant on the Covenant Area. The size, style and location of plaque must be approved by the Owner prior to its placement, such approval not to be unreasonably withheld.

18. NO LIABILITY IN TORT

- 18.1 The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. Without limiting the generality of the foregoing, the parties agree that no tort or fiduciary obligations or liabilities of any kind are created or exist between the parties in respect of this Agreement, and nothing in this Agreement creates any duty of care or other duty on any of the parties to anyone else. For clarity, the intent of this section is to, among other things, exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and the law pertaining to covenants under seal.

19. WAIVER

- 19.1 An alleged waiver of any breach of this Agreement is effective only if it is an express written waiver signed by the Covenant Holder or the Owner, as applicable, and is only effective to the extent of that express waiver and does not operate as a waiver of any other breach.
- 19.2 The failure of the Covenant Holder to require performance by the Owner at any time of any obligation under this Agreement does not affect the Covenant Holder's right to subsequently enforce that obligation. The failure of the Owner to require performance by the Covenant Holder at any time of any obligation under this Agreement does not affect the Owner's right to subsequently enforce that obligation.

20. JOINT AND SEVERAL OBLIGATIONS

- 20.1 Where two parties comprise the Owner, unless excluded by specific provisions of this Agreement, a) the rights and obligations of those parties are joint and several and b) the written agreement of both such parties is required to bind the Owner to any agreement required to be in writing herein.

21. REMEDIES NOT EXHAUSTIVE

- 21.1 Exercise or enforcement by a party of any remedy or right under or in respect of this Agreement does not limit or affect any other remedy or right that party may have against the other parties in respect of or under this Agreement or its performance or breach.

22. COVENANT RUNS WITH THE LAND

- 22.1 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 section 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 any parcel into which it is subdivided by any means and any parcel into which it is consolidated.

23. REGISTRATION

- 23.1 The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement, and the interests it creates, are registered against the title to the Land, provided that the Agreement has been drafted and executed in registrable form.
- 23.2 The Owner agrees to do everything necessary and possible, at the Owner's expense, to ensure that this Agreement, and the interests it creates, are registered 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, excepting only reservations in favour of the Crown.
- 23.3 The Covenant Holder agrees that, if the Land is subdivided, it will discharge this Agreement, at the Owner's expense, from the title to all lots into which it has been subdivided which lie wholly outside of the Plan.

24. SEVERANCE

- 24.1 If any part of this Agreement is held by a court or arbitrator to be invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement is to remain in force unaffected by that holding or by severance of that part as if the part was never part of this Agreement.

25. NO OTHER AGREEMENTS

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

26. INDEPENDENT ADVICE

- 26.1 The parties constituting the Owner acknowledge and agree that each has sought and obtained, to their satisfaction, independent advice from an accountant or other income tax expert with respect to the income tax implications of this Agreement and acknowledge that they do not rely and have not relied on the Covenant Holder for advice in this regard and that the Covenant Holder has given no representation or warranty in that regard.
- 26.2 The parties constituting the Owner acknowledge and agree that they have been advised by the Covenant Holder that the Owner should seek independent legal advice as to the meaning and effect of this Agreement, and they further acknowledge and agree that no legal advisor of the Covenant Holder, has advised them on the meaning or effect of this Agreement or in connection with this Agreement.

27. AMENDMENTS

- 27.1 This Agreement is intended to be perpetual and may only be changed by a written instrument signed by all the parties.

28. DEED AND CONTRACT

- 28.1 By executing and delivering this Agreement, each of the parties intends to create both a contract and a deed and covenant executed and delivered under seal.

29. RIGHTS OF THE COVENANT HOLDER

- 29.1 The Covenant Holder may exercise its rights under this Agreement through its directors, officers, employees, agents or contractors.

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

PURSUANT TO SECTION 99(1) (e) OF THE LAND TITLE ACT.
B.C.G.S. 92F.056

SCALE: 1: 7500 (METRIC)

0 50 100 200 300 400 500

ALL DISTANCES ARE IN METRES

DETAIL A
NOT TO SCALE

STRAIT OF

PLAN VIF

DEPOSITED IN THE LAND TITLE OFFICE
AT VICTORIA, B.C., THIS
DAY OF _____, 20____

REF: REGISTRAR

SCHEDULE A Page 1 of 1

TIES TO NATURAL BOUNDARY		DISTANCE	
COURSE	MEASUREMENT	TO	FROM
140 to 145	108° 21' 84"	23.62	
140 to 146	104° 52' 52"	23.62	
140 to 147	148° 18' 15"	31.37	
140 to 148	103° 34' 34"	27.41	
140 to 149	102° 18' 18"	29.24	
140 to 150	102° 18' 18"	34.91	
140 to 151	100° 37' 34"	20.48	
140 to 152	100° 22' 22"	20.48	
140 to 153	100° 14' 14"	26.83	
140 to 154	100° 45' 45"	29.58	
140 to 155	159° 21' 21"	66.11	
140 to 157	158° 27' 21"	65.90	
205 to 158	305° 40' 40"	33.17	
205 to 161	304° 37' 37"	21.80	
205 to 162	302° 51' 51"	22.82	
205 to 163	301° 18' 18"	26.86	
205 to 164	300° 52' 48"	33.28	
205 to 165	299° 57' 15"	32.23	
205 to 166	299° 57' 15"	39.84	
205 to 167	294° 50' 15"	27.41	
205 to 168	290° 09' 11"	40.72	
205 to 208	281° 31' 30"	34.41	
205 to 209	284° 47' 47"	24.18	
205 to 210	281° 31' 31"	33.88	
205 to 262	289° 03' 35"	32.25	
205 to 263	290° 24' 50"	53.56	
205 to 264	290° 24' 50"	53.56	
205 to 265	290° 07' 07"	31.81	
205 to 268	276° 23' 51"	55.11	
205 to 269	276° 23' 51"	44.70	
205 to 270	181° 57' 48"	39.84	
205 to 271	181° 57' 48"	40.72	
205 to 272	153° 30' 30"	18.48	
205 to 280	152° 19' 17"	30.46	
205 to 282	152° 19' 17"	30.46	
205 to 283	150° 58' 58"	36.81	
205 to 284	149° 12' 54"	33.93	
205 to 285	149° 12' 54"	40.27	
205 to 286	149° 07' 21"	40.27	
205 to 287	149° 07' 21"	40.08	
205 to 289	149° 07' 21"	75.72	
205 to 290	134° 24' 34"	18.36	
205 to 292	134° 24' 34"	22.82	
205 to 293	134° 24' 34"	33.94	
205 to 296	133° 38' 15"	36.72	
205 to 297	133° 19' 11"	36.08	
312 to 298	267° 41' 41"	33.27	
312 to 300	267° 41' 41"	36.72	
312 to 305	261° 51' 54"	26.86	
312 to 306	261° 51' 54"	31.80	
312 to 307	267° 26' 26"	51.61	
312 to 308	264° 83' 13"	11.72	
312 to 309	261° 26' 26"	29.63	
312 to 310	279° 08' 08"	35.42	
312 to 311	279° 08' 08"	35.42	
312 to 312	278° 06' 07"	36.44	
312 to 351	136° 21' 21"	26.86	
312 to 352	136° 21' 21"	26.86	
312 to 354	153° 25' 25"	36.08	
312 to 355	136° 37' 37"	34.24	
312 to 356	136° 37' 37"	34.24	
312 to 358	139° 15' 84"	50.03	
312 to 351	141° 35' 25"	31.38	
312 to 352	142° 14' 29"	24.63	
312 to 353	141° 35' 25"	24.63	
312 to 354	141° 37' 24"	31.92	
312 to 356	138° 46' 10"	53.81	
312 to 357	138° 24' 24"	30.34	
312 to 358	137° 15' 15"	34.24	
312 to 359	137° 17' 07"	36.44	

GEORGIA

UTM ZONE 10 NAD83 (CSRS)	
NORTHING	5493385 990
EASTING	267511 852
THE ESTIMATED HORIZONTAL	
NETWORK ACCURACY IS 0.05 METRES	

FRACTIONAL

SECTION 29

NE 1/4
SECTION 27

NORTH 1/2 SECTION 26

PLAN VIP_

PLAN VIP_____

NW 1/4
SEC.
24

PLAN / VIP53299 1

LEGEND:

BEARINGS ARE MADE BY "COSMIC" GRID BEARINGS DERIVED FROM DIFFERENTIAL CARRIER PHASE GPS OBSERVATIONS AND ARE REFERRED TO THE CENTRAL MERIDIAN OF UTM ZONE 18 TO OBTAIN LOCAL ASTRONOMIC BEARINGS REFERRED TO THE MERIDIAN THROUGH THE NORTHEAST CORNER OF LOT 3. PLAN 30053. SUBTRACT 1° 23' 44" FROM GRID BEARINGS.

THIS PLAN SHOWS HORIZONTAL GROUND LEVEL DISTANCES BASED ON A MEAN ELEVATION OF 50.00 METRES. TO COMPUTE GRID DISTANCES, MULTIPLY GROUND LEVEL DISTANCES BY THE MEAN CORRECTION FACTOR OF 0.99999302.

THE UTM COORDINATES AND ESTIMATED NETWORK HORIZONTAL ACCURACY ARE DERIVED FROM GPS DUAL FREQUENCY STATIC OBSERVATIONS POST PROCESSED USING GEODETIC SURVEY OF CANADA'S PRECISE POINT POSITIONING (PPP) SERVICE.

- STANDARD CAPPED POST FOUND
- STANDARD CAPPED POST SET
- STANDARD IRON POST FOUND
- STANDARD IRON POST SET
- ▲ TRAVERSE STATION
- x TIES TO NATURAL BOUNDARY

ALL DISTANCES ARE IN METRES AND DECIMALS
THEREOF UNLESS OTHERWISE NOTED.
BEARINGS TO BT'S ARE MAGNETIC.

DETAIL B
NOT TO SCALE

FOUND UNREGISTERED POST SET
BY NETER MASON, BCL.S. IN 2000

SE 1/4
SEC. 26
SITING PLAN 2821

WEST 1/2
SW 1/4

PLAN VIP

BOOK OF REFERENCE	
LOT	AREA
	2 9 HA

SCHEDULE B

Attached to and forming part of the Covenant Agreement between the Denman Island Conservancy Association, Covenant Holder, and the Owner, _____, dated as of the ____ day of _____ 2006.

1.0 Acknowledgment

The Owner and Ryan Durand (Biologist, Taara Environmental – 46054 King Avenue, Chilliwack BC 604-795-4969 rdurand@taara.ca) hereby acknowledge and agree that the following is an accurate description of the Komas Bluff, as of the reference date of this Agreement.

The Owner and Covenant Holder acknowledge that this document is a summary of the 115 page baseline documentation report that contains additional information, maps, and 237 photographs. Copies of the full report and all photographs are held by each party.

2.0 Property Location and Description

The Covenant Area is located on the north end of Denman Island. It is located within a multi parcel property locally known as the 4064 Lands. The Covenant Area encompasses about 3.5 kilometres of the Komas Bluffs. Access is possible from private roads that lead from Northwest Road and Lake Road.

3.0 Significance of the Land and Amenities

The Covenant Area is located in the Strait of Georgia Ecoregion of the Georgia-Puget Basin Ecoregion of the Georgia Depression Ecoprovince. The property lies within one of BC's rarest forest types; the Coastal Douglas-fir moist maritime (CDFmm) biogeoclimatic ecosystem.

Three Biogeoclimatic Site Series were classified on the Covenant Area. They included:

- Polygons 1, 4, 5, 7, and 10 were classified as CDFmm01 Fd – Salal;
- the upper slopes of Polygons 3, 6, and 9 were classified as CDFmm04 FdBg – Oregon grape;
- the lower slopes of Polygons 3, 6, and 9 were classified as CDFmm06 CwBg – Foamflower;
- Polygons 2 and 8 were not classified due to lack of forest cover.

The ecological significance of the Covenant Area cannot be overstated. Its steep slopes, high groundwater table, and old forest and mature second growth forests make the area important and highly sensitive. The Ecosystem-Based Assessment performed by Silva Ecosystem Consultants in 1998 (Bradley, Hoffman, & Hammond) described that some of the main ecological features of Denman Island includes the bluff. The report describes that:

“Denman Island is...largely flat with subdued terrain. At the landscape scale, the main ecologically sensitive features identified were:

- steep terrain on Komas Bluffs;

- the coastal belt, which is a mixture of ecologically sensitive features: ocean shore riparian zones, intertidal flats, and rock and sediment cliffs.

In a landscape dominated by second growth forests, all old growth areas and trees are ecologically significant. Many species which can exist in second growth forests require large standing trees, snags, or fallen trees for seasonal or periodic habitat. As long as these features are available, they can exist in younger forest habitat.”

Jenny Balke of the Denman Conservancy Association (1998) describes how the Covenant Area has been identified and protected by various government agencies, the community, and scientific assessments:

“The Bluff has been identified by government agencies and the Denman community as a significant area for conservation for many years. In 1984, community intervention resulted in the cessation of logging on the Bluff. The following year, the Bluff was designated a Development Permit Area in the Denman Island Zoning Bylaw. In 1991, the Bluff was included in the Environmentally Sensitive Areas and Development Permit Areas designations in the Official Community Plan by the Islands Trust. The Bluff was one of the important areas identified in the submission to the Vancouver Island, Regional Protected Area Strategy, Goal 2 Initiative in 1993; it was also included in the Sensitive Ecosystem Inventory in 1994. The Bluff was included in the Denman Protected Area Network by the Denman Conservancy Association in 1996. In addition, the Bluff is designated as ecologically sensitive due to steep terrain and is included in both the Ecological Sensitivity and the Proposed Protected Area maps in the Ecosystem-based Assessment of Denman Island.”

Of particular importance are the old forest and older second growth stands that occur on the southeastern slopes of the Covenant Area. These forest stands are increasingly rare due to pressure from logging and development. The BC Ministry of Sustainable Resource Management (2005) describes the ecology of the general area as:

“The east coast of Vancouver Island and the adjacent Gulf Islands form a unique ecological region in Canada. The Mediterranean-type climate and long growing season support many rare species of plants and, animals, and plant communities. Unfortunately, it is also one of two areas in British Columbia where the greatest loss of natural systems occurs. Intense development pressures throughout this region have resulted in the fragmentation, degradation, and loss of these natural ecosystems.”

Between 1990 and 2002 a significant portion of old forest (over 100 years), woodland (open forests dominated by deciduous trees with canopy cover generally less than 50%) and older second growth (large forested stands 60 – 100 years old) that had been identified on Denman Island by the Sensitive Ecosystem Inventory has been lost to various forms of disturbance. In total, some 828 of 1682 hectares (49%) was disturbed or totally lost. A large amount of this loss can be directly attributed to the logging of the 4064 lands. (AXYS Environmental Consulting, 2005)

Therefore, the conservation of the old forest and older second growth forest on the Komos Bluff is of great ecological significance to the island and constitutes a sizeable portion of a diminishing forest type. In addition, the relatively large contiguous forest stand that will be protected within the Covenant Area is rare on the Gulf Islands and one of the largest on Denman Island. The bluff also contains at least one blue-listed species, the red-legged frog (*Rana aurora*), and several red and blue listed ecosystems.

In addition to the ecological significance of the bluff, the maintenance of the bluff ecosystem (therefore reducing the chance of mass movement and erosion) is an important component of the diverse and highly productive inter-tidal and sub-tidal regions adjacent to the bluff in the Strait of Georgia. Jenny Balke of the Denman Conservancy Association (1998) states that:

“The adjacent waters have significant eel grass beds and are an important area for spawning herring. This area, which is part of the Pacific Flyway migration route, is used for foraging and resting by shore birds as well as over-wintering and breeding waterfowl. The beach and rocks below are used as haulouts for Harbour seals as well as a travel corridor for mink, River otter, and Black-tailed deer. There is a need to conserve the Bluff to ensure the continuance of this habitat, and to minimize human activities to prevent disturbance to the wildlife, especially during migrating and breeding periods.”

A single occurrence of the rare red-legged frog (*Rana aurora*) was noted on the mid slopes of Polygon 6 to the northwest of Polygon 7 Site 3. The frog was observed near a permanent seepage area on an old slump that was dominated by red alder with a developing understory of conifers.

The red-legged frog is considered to be secure at the global level. Nationally and provincially it is listed as a “species of special concern because of characteristics that make them particularly sensitive to human activities or natural events” by the Committee on the Status of Endangered Wildlife in Canada. Provincially it has a designation as a blue-listed species. (Conservation Data Centre, 2005 and COSEWIC 2002)

Three rare ecosystems were identified in the Covenant Area, including:

- Polygons 1, 4, 5, 7, and 10 contained the red listed Douglas-fir / dull Oregon-grape (*Pseudotsuga menziesii* / *Mahonia nervosa*) plant association. However, due to the young age of these polygons, they are generally not considered to be rare ecosystems. As the forest stands mature they will likely be classified as a rare ecosystem.
- Polygons 3, 6, and 9 contained the red listed grand fir / dull Oregon-grape (*Abies grandis* / *Mahonia nervosa*). These polygons also potentially contained the red listed grand fir / three-leaved foamflower (*Abies grandis* / *Tiarella trifoliata*) ecosystem, but due to the time of year in which the survey was conducted, it could not be confirmed.
- Small portions of polygons 1 and 10 contained the red listed Douglas-fir - arbutus (*Pseudotsuga menziesii* - *Arbutus menziesii*) ecosystem. However, they did not contain a sufficient amount of arbutus to be considered a viable ecosystem type.

4.0 The Management Vision

The DCA (2005) describes the management goals for the Covenant Area as follows:

“The management vision for the Bluff extends 1,000 years into the future and involves the retention of the Bluff as a natural area undergoing natural evolutionary processes with minimal human intervention. In the next 250 years, the old-growth character of the Bluff forest will increase. Many of the coniferous trees will be more than 350 years of age. By 500 years, extremely old veteran Douglas-fir trees will tower above the main forest canopy; a thick herb layer of vegetation will carpet the crest and bluff face; the forest will consist of a multi-layered canopy of mixed-aged and mixed-species trees, with large dead snags; and significant large coarse woody debris throughout the forest will stabilize the Bluff face and provide wildlife habitat. Lands inland from the Bluff, adjacent to the covenant area, are expected to be developed for residential use. There is a need to protect

the Bluff in perpetuity from disturbance, and especially any damage that could lead to erosion or slumping of the face of the Bluff. "

5.0 Site History

The primary historical land use of the Covenant Area has been logging and development speculation. In 1998 Silva Ecosystem Consultants described that local Denman Island resident Mike Morrell stated:

"All of Denman has been intensively logged in several passes through this century. In addition, there is widespread evidence of fires over the same period and probably earlier. There are no old growth stands on the island, and not many older than 100 years. In the last 20 years residential development has had an increasing impact on the Denman Landscape. Most of the island that is not held in large parcels by forest companies consists of privately owned small-holdings, more than half of which already have residences on them. Crown land (parks and unoccupied) accounts for less than 5% of the Denman total."

The Komas Bluffs were no exception. Much if not all of the bluff were logged in the late 1800's to early 1900's. Evidence of the logging is still apparent on the bluff in the form of massive stumps with spring board notches. Based on the size and age of the dominant trees that currently exist on the bluff slopes, it is unlikely that they were logged subsequent to that.

The crest of the bluff was likely logged again, to some degree, in the early to mid 1900's. Evidence of both large stumps with spring board notches and much smaller ones are indication of this activity, with the smaller stumps indicating that a second pass of logging occurred. With the exception of the bluff and a narrow leave strip west of the bluff crest, the majority of the property west of the Covenant Area was extensively logged soon after 4064 Investments Ltd purchased the property in 1997.

Ownership of the Covenant Area has changed many times. The Covenant Area was owned in the 1980's by Weldwood Canada. In May of 1995 the Covenant Area was purchased by the John Hancock Timber Resources Group of Boston. In 1997 it was sold to 4064 Investments Ltd. of British Columbia. Since that time the majority of the land west of the Covenant Area has been logged. (John Millen, 2001)

6.0 Improvements and Disturbances

No improvements were located within the Covenant area. The entire Covenant Area has been disturbed at least once. As previously mentioned, logging occurred once and possibly twice in the late 1800's to early 1900's. Evidence from the logging included stumps in various states of decay (many with spring board notches), remnants of old skid roads, and rare occurrences of old logging equipment such as metal cable.

Evidence of fire was found on old stumps and veteran Douglas-fir on the slopes of the bluff. It is assumed that the fire was the result of logging activities.

Adjacent logging in the 1990's has resulted in many indirect disturbances to the Covenant Area. Disturbances included:

- Increased numbers of windthrown trees along the edge of the most recent logging due to edge effect. In some areas the number of windthrown pole/sapling sized trees was such that the forest was almost impassable. Sporadic older second growth trees along the edge

of the logged areas also succumbed to windthrow.

- Alterations in forest stand structure and composition. With the adjacent logging the exposure to sun and wind was significantly altered. As result, most of the bluff had a region of some 10 to 40 metres from the edge of the logging and into the Covenant Area where vegetation was unhealthy and often sparse. Pole sapling density was also higher in many areas then it would be expected to be under the canopy of young conifers that generally dominated the area.

The main natural disturbance within the Covenant Area was the previously mentioned slumping on the bluff slopes. Small slumps were also observed along the shoreline. Most of the slumps still contained live vegetation indicating that they were recent occurrences.

Undercutting of the toe of the bluff was observed to varying degrees along the length of the shoreline. As previously discussed, this is a natural process that results in common small slumps and likely contributes to the larger slumps.

Deer use on the bluff slopes was high, with extensive trails occurring throughout the area. Deer utilized the bluff to access fresh water seepages on the lower slopes and likely forage on grass and conifer seedlings and saplings. This extensive use was adding to the erosion of the slopes and retarding re-vegetation of recently eroded slopes.

Wind exposure along the crest of the bluff has resulted in stunted growth to a limited number of conifer trees. The trees have formed the typical Krumholtz shape, with windswept canopies and stunted growth. This is a minor disturbance and is generally limited to areas where large slumps have occurred thereby opening the understory to increased wind exposure.

7.0 Inventory

The following description of the property is from the baseline inventory survey conducted on September 16 to 19, 2005 by Ryan Durand.

7.1 Topography

The Covenant Area encompasses about 3.5 kilometres of the Komag Bluff. Komag Bluff runs northwest by southeast along the northeastern coast of Denman Island. The portion of the bluff encompassed by the Covenant Area ranges in elevation from less than 20 metres a.s.l. in the north, rises at a moderate slope to 100 metres a.s.l. near the middle, and then gently slopes down to about 60 metres a.s.l in the south. The eastern edge of the bluff ranges from vertical cliffs in the north to steep (and in confined areas vertical) slopes to the south. The western edge ranges from gentle to moderate slopes to the west.

7.2 Hydrology

The Covenant Area did not contain any water bodies, but does contain critically important hydrological features. The Quadra Sands that compose the parent material of the Covenant Area contain what hydrologists speculate is the largest groundwater aquifer on Denman Island (Nielson, 2005). This abundance of groundwater was readily apparent on the mid to lower slopes of the bluff in the form of seepages that run year round. The high water table was also expressed in water tolerant species of vegetation that occurred in areas that would otherwise be water shedding.

As stated in the previous section, the groundwater is considered to be a contributing factor to the instability of the bluff which in turn may be compounded by land use activities on the crest of the bluff.

7.3 Vegetation Inventory

Due to the age of the cadastral map to which air photos, contours, and ecosystem mapping was aligned too, the legal survey map could not be accurately overlain. Therefore, the exact Covenant Area could not be perfectly depicted on the ecosystem and polygon maps. To ensure that the polygon descriptions given in this report remain accurate and encompass the entire Covenant Area, the polygons extend past the western Covenant Area boundary. Please refer to the legal survey map for the exact Covenant Area boundaries.

Eleven homogenous polygons were delineated in the Covenant Area (Figure 1) and inventoried prior to the completion of a legal survey that defined the Covenant Area boundaries. Polygon 11 (P11) was found to be outside of the Covenant Area after the completion of the legal survey. Therefore, P11 is not shown on Figure 1 but the description of the polygon and sample site has been kept. The site may be useful for future monitoring.

Most of Polygons 1, 4 and 5 also fell outside of the Covenant Area (with less than one hectare of each within the Covenant Area) after the completion of the legal survey. As a result, several sample sites and photostops from Polygons 1, 4 and 5, as well as Polygons 7 and 10 were close too or outside of the Covenant Area boundary. The sites and photostops that were close to the Covenant Area boundary were mostly within the 5-10 metre accuracy of the GPS used during the survey and therefore it could not be determined with any degree of certainty if they were in or out of the Covenant Area. All sites and photostops that fell outside of the Covenant Area were close enough that they will still be useful for monitoring change over time.

Each polygon contained distinct vegetation types and/or physical features. Polygons with similar characteristics, but were non-contiguous, were assigned different numbers. A summary of the polygons is given in Table 1 below.

Within the polygons a total of 22 polygon sample sites and 20 photostops were established during the survey (Figure 2). With exception of the vertical bluff (Polygon 2) and the beach (Polygon 8), all polygons had at least one sample site. All of the larger polygons also had one to several photostops to capture areas that were not significantly distinct from the rest of the polygon in terms of vegetation composition and structure, but required photographic coverage for future monitoring. In addition, a series of nine overlapping photostations were situated along the intertidal beach. These photostops (Photostops 2 to 10) captured the entire rocky beach and all of the bluff slopes.

Figure 2 shows the location of the sample sites and photostops. Note that on the maps the code P1S1 is used to mark polygon sample sites (where P1S1 stands for Polygon 1 Site 1) and PS1 is used to mark photostops (where PS1 is Photostop 1).

Table 1. Description of Vegetation Types by Polygon

Polygon	Description	BEC Site Series	Surface Area (ha (%))	# Sample Sites	Photostop Numbers
1	Young conifer forest	CDFmm01	0.6 (1.4)	4	PS1
2	Coastal bluff – terrestrial herbaceous	NA	1.1 (2.8)	0	PS3 & PS3
3	Pole sapling / Young mixed forest	CDFmm04 / CDFmm06	3.0 (7.4)	2	PS4 & PS5
4	Pole sapling – logged	CDFmm01	0.01 (0.04)	1	NA
5	Young conifer forest	CDFmm01	0.07 (0.18)	2	NA

6	Mature mixed forest	CDFmm04 / CDFmm06	12.4 (30.2)	2	PS6 & PS7
7	Young conifer forest	CDFmm01	1.9 (4.6)	4	PS11 to PS14
8	Rocky beach	NA	3.0 (7.3)	0	PS2 to PS10
9	Mature conifer forest	CDFmm04 / CDFmm06	17.1 (41.6)	2	PS8 to PS10
10	Pole sapling / Young conifer forest	CDFmm01	1.9 (4.6)	4	PS15 to PS20
11	Pole sapling / Young conifer forest - logged	CDFmm01	0.0 (0.0)	1	PS10

7.3.1 Polygon 1

Polygon 1 encompassed a narrow strip of young second or third growth conifer forest at the north end of the Covenant Area. The stand was primarily composed of a single storied canopy of well spaced Douglas-fir and shorepine with lesser components of western red cedar. Western hemlock comprised the main understory. It is likely that the hemlock and fir will shade out the shorepine and form the dominant canopy in the near future. The shrub layer was dominated by shorepine and western hemlock saplings and thick areas of salal. Herbaceous cover was largely absent mainly due to the time of year. Moss cover varied with thick clumps occurring on decaying woody debris and where salal was limited. Four sample sites and one photostop were established in Polygon 1.

There were no recent anthropogenic disturbances observed in the polygon. Historic disturbances included extensive logging in the polygon and adjacent logging in the 1990's. The surface area of the polygon is likely to shrink as the bluff in Polygon 2 continues to erode.

7.3.2 Polygon 2

Polygon 2 encompassed the sparsely vegetated sand bluff at the north end of the Covenant Area. The bluff had and continues to experience significant erosion. Vegetation was limited to dunegrass (*Elymus mollis*) and sporadic occurrences of other herbaceous vegetation near the toe of the slope and above the high water mark, occurrences of red alder near the edge of Polygon 3, and rare shorepine saplings on the upper slopes. It is expected that at some point in the future the bluff will stabilize at an angle of repose and vegetation will begin to re-establish. The bluff to the north and south of Polygon 2 showed signs of undergoing the same processes. The re-established areas were dominated by young red alder and in some areas had an understory of conifers.

Due to the lack of vegetation and the difficulty of access (and the erosion it would cause) the polygon was not entered to create a sample site. Two photostops were established along the beach at low tide. The photostops covered the entire length of the polygon and will be useful for monitoring the change in erosion of re-vegetation over time.

The bluff was frequently used by deer (mainly to access fresh water seepages near the base) and cliff swallow nests were observed on the upper vertical cliffs.

7.3.3 Polygon 3

Polygon 3 (PS3) encompassed the steep to vertical bluff slopes south of Polygon 2 and north of Polygon 6. P3 was highly variable with erosion of the lower bluff acting as the dominant force on the ecosystem structure. Much of the lower slopes had evidence of both recent and past erosion events. The north end of the polygon was dominated by red alder and big leaf maple with occurrences of conifers in the understory. The polygon ranged from a pole sapling to young

mixed forest of conifer and deciduous species to the north, to a young to mature forest to the south as the polygon began to exhibit characteristics of Polygon 6.

The upper slopes were classified as CDFmm04 FdBg – Oregon grape while the lower slopes were wetter, and assumedly had a richer soil nutrient level, and were therefore classified as CDFmm06 CwBg – Foamflower. In general, P3 had a high abundance of conifers on the upper slopes and a higher abundance of deciduous species on the lower slopes. Water seepages were common on the bottom 2/3 of the slopes.

As with the other bluff slopes, the entire area had been logged at least once in the past century and possibly twice. No recent anthropogenic disturbances were observed in the polygon.

In general, wildlife values were quite high due to the abundance of excellent and well used wildlife trees, abundance of fresh water seepages, and relatively intact forest stands. There were numerous seepages on the mid to lower slopes that contained similar habitat as that in which the rare red-legged frog was identified.

7.3.4 Polygon 4

Polygon 4 (P4) encompassed a narrow area along the crest of the bluff south of P1 and north of Polygon 5 (P5). P4 was highly disturbed during the 1990's logging. The polygon was dominated by an even aged stand of pole sapling western hemlock and shorepine with occasional Douglas-fir.

7.3.5 Polygon 5

Polygon 5 (P5) encompassed about 300 metres of a narrow forested strip along the crest of the bluff between P4 and Polygon 7, and upslope of Polygon 3. The polygon was a large transitional area between the lower elevation forests of Polygon 1 and the higher elevation Polygon 7. The entire polygon sloped to the north to northeast at 10 to 20%, rising more than 20 metres in elevation from the north end to the border of Polygon 7 in the south.

The polygon was dominated by a young second growth irregular conifer stand composed of Douglas-fir and shorepine with rare young to mature western red cedar. The stand had a mosaic of dense salal pockets intermixed with sparsely vegetated regions in the shrub layer, while the herb layer was largely absent. Due to photographic limitations, the two sample sites were more representative of the sparse areas than the salal dominated openings.

Wildlife trees were common throughout the polygon, many of which had signs of heavy woodpecker use. Deer trails and scat were abundant throughout the area. The polygon was logged at least once in the early 1900s and many large old decaying stumps were observed. No recent disturbances were observed.

7.3.6 Polygon 6

Polygon 6 (PS6) encompassed about one kilometre of steeply sloped bluff in the middle of the Covenant Area. The polygon was identified in the Sensitive Ecosystem Inventory (2005) as an old mixed forest dominated by Douglas-fir, bigleaf maple and red alder. Veteran western red cedars were also found in the polygon. Many of the veteran Douglas-fir and western red cedar were over 100 years of age, with typical diameters of up to 1.75 metres and 1.5 metres respectively. Many of the veteran trees had dead or broken tips and were likely well used by raptors and other birds.

The polygon was characterized by the steeply sloped bluff (to 90%) with frequent slumps of various sizes and stages of re-vegetation. As with other areas of the bluff, the upper slopes were dominated by conifers while deciduous trees were more abundant on the lower slopes. Seepage areas were common throughout the mid and lower slopes, with year round running streams and waterfalls at the toe of the bluff.

The single occurrence of the rare red-legged frog was found on the mid slope near the middle of P6. The frog was found in a red alder dominated seepage area that was common on the mid to lower slopes.

7.3.7 Polygon 7

Polygon 7 (P7) encompassed a narrow strip of young conifer forest along the crest of the bluff above P6. The polygon was highly irregular with stands ranging from pole sapling to young to sporadic mature trees. Much of the irregularity was likely due to the influence of the adjacent 1990's logged area which altered light levels and resulted in an increase in pole sapling stands along the edge. Many sites showed a clear transition from pole sapling dominated areas near the logging to young to mature stands towards the bluff edge. Self thinning of dense pole saplings were occurring in many areas and windthrow was abundant throughout the polygon.

The polygon was dominated by young western red cedar and western hemlock with lesser occurrences of Douglas-fir and shorepine. The majority of young shorepine occurred in the north end of the polygon and was reduced to a sporadic sub-canopy species throughout the rest of the area. Much of the younger shorepine was beginning to die out as shade tolerant species outgrew it. The abundant dead and dying trees were well used by bird species.

As with the rest of the Covenant Area, the entire polygon had been logged at least once. Stumps of all sizes were abundant throughout the polygon and the occasional old skid road and metal cable was observed.

7.3.8 Polygon 8

Polygon 8 (P8) encompassed the narrow strip of rocky beach along the length of the Covenant Area. P8 was characterized by a rocky beach with frequent large sandy areas. The high water mark in many areas was the toe of the bluff, with wave action and storm events frequently undercutting the bluff.

No sample sites were placed in P8 but Photostops 2 to 10 captured almost the entire polygon. Due to the nature and location of the polygon it is not expected that anthropogenic use will have significant direct disturbances to P8 and no anthropogenic disturbances were observed.

P8 contained high biodiversity values as would be expected with the interface of an inter-tidal area and a forested slope. Numerous shoreline birds and inter-tidal flora and fauna were observed throughout the polygon.

7.3.9 Polygon 9

Polygon 9 (P9) encompassed a steep area of the bluff along the southern portion of the Covenant Area. The polygon was dominated by a mature conifer forest. The main tree species were western red cedar and Douglas-fir. In many areas the main canopy contained a significant amount of western hemlock and minor occurrences of bigleaf maple and red alder. Although not found in the sample sites, mature grand fir was also observed in the polygon.

The upper slopes of P9 were dominated by conifer species, while deciduous trees were frequent along the toe of the bluff. The upper slopes were very steep (95% or more) and relatively dry, while the lower slopes contained numerous seepage sites. The canopy cover of P9 was generally 50% or more which has resulted in sparse ground cover in most areas.

Large recent and old slumps were common throughout the site. These areas were generally dominated by secondary successional species such as red alder, with an understory of young conifer saplings. Deer use was high to the point of causing extensive localized erosion. Many of the veteran cedar and fir had broken tips which likely provided excellent perching opportunities for raptors such as bald eagles.

The entire polygon was logged in the late 1800's to early 1990's. Due to the size and number of dominant conifer trees in the polygon, it is unlikely that it was logged more than once. No recent anthropogenic disturbances were observed in the polygon.

7.3.10 Polygon 10

Polygon 10 (P10) encompassed a long narrow strip along the southern end of the Covenant Area roughly equal to the length of P9. The polygon was an irregular mix of pole sapling to young conifer trees dominated by western red cedar, Douglas-fir, western hemlock, shorepine and lesser occurrences of western white pine, grand fir and rare red alder. *Arbutus* occurred in several spots near the logged areas and on the edge of the polygon.

The polygon has and continues to undergo significant disturbances from past and recent logging. Historic logging likely occurred twice with the polygon containing numerous old stumps of all sizes, and the occasional old skid road and logging debris. The influence of the adjacent 1990's logging was apparent in the thick pockets of windthrown trees that were common along the edge of the polygon. The logging has also dramatically affected light levels in the polygon, with the logged edge showing signs of stress and ingrown pole sapling conifers. As with the other polygons along the logged areas, the stand changed dramatically from the logged edge to the crest of the bluff, with the logged edge generally dominated by thick pole sapling stands and rare young conifers, while the areas closer to the bluff contained less pole sapling and more young to mature trees.

Wildlife values in P10 vary. Wildlife trees and feeding opportunities for woodpeckers were abundant, and many species may benefit for the forest grassland (logged area) interface. Deer usage was high with trails and scat occurring throughout the polygon.

7.3.11 Polygon 11

Polygon 11 (P11) encompassed a small area at the south end of the Covenant Area. After the legal survey was completed it was found that this area was not within the Covenant Area, however the photostop will still be useful for monitoring the Covenant Area. As P11 was not within the Covenant Area it is not shown as a polygon on the ecosystem and polygon maps.

The polygon was partially logged in the 1990's, including portions of the steep bluff. P11 was dominated by an irregular stand of pole sapling western hemlock with thick understory of what are likely third growth western hemlock, grand fir, Douglas-fir and shorepine.

The polygon was highly disturbed and a well established road ran through the middle of it. A single sample site was located in the polygon at the edge of the bluff. The bluff section of the polygon had similar characteristics to Polygon 9.

7.4 Wildlife

The Covenant Area had a high wildlife value. Wildlife surveys were not performed, but incidental sightings were recorded and the habitat assessed in general.

The older forest types that occurred on the bluff slopes were favourable for many species of wildlife. These stands contained veteran trees with well developed canopy structures including numerous old trees and snags with terminal and sub-terminal roosting. The forest floor contained abundant large woody debris in various stages of decomposition. Silva Ecosystem Consultants (1998) describe the role that the snags and rotting logs play in the forest ecosystem:

“Living or dead, the large diameter trees contribute a completely different structure to ecological processes than the small second growth fir. The large logs last much longer and...become immense piles of moist, rotten, red wood which support unique ecological functions.”

The Covenant Area contained a variety of ecotypes with important ecotones between the forest and ocean and the forest and logged areas. These areas have the potential to contain very high biodiversity, particularly as there were abundant supplies of fresh water on the lower bluff slopes.

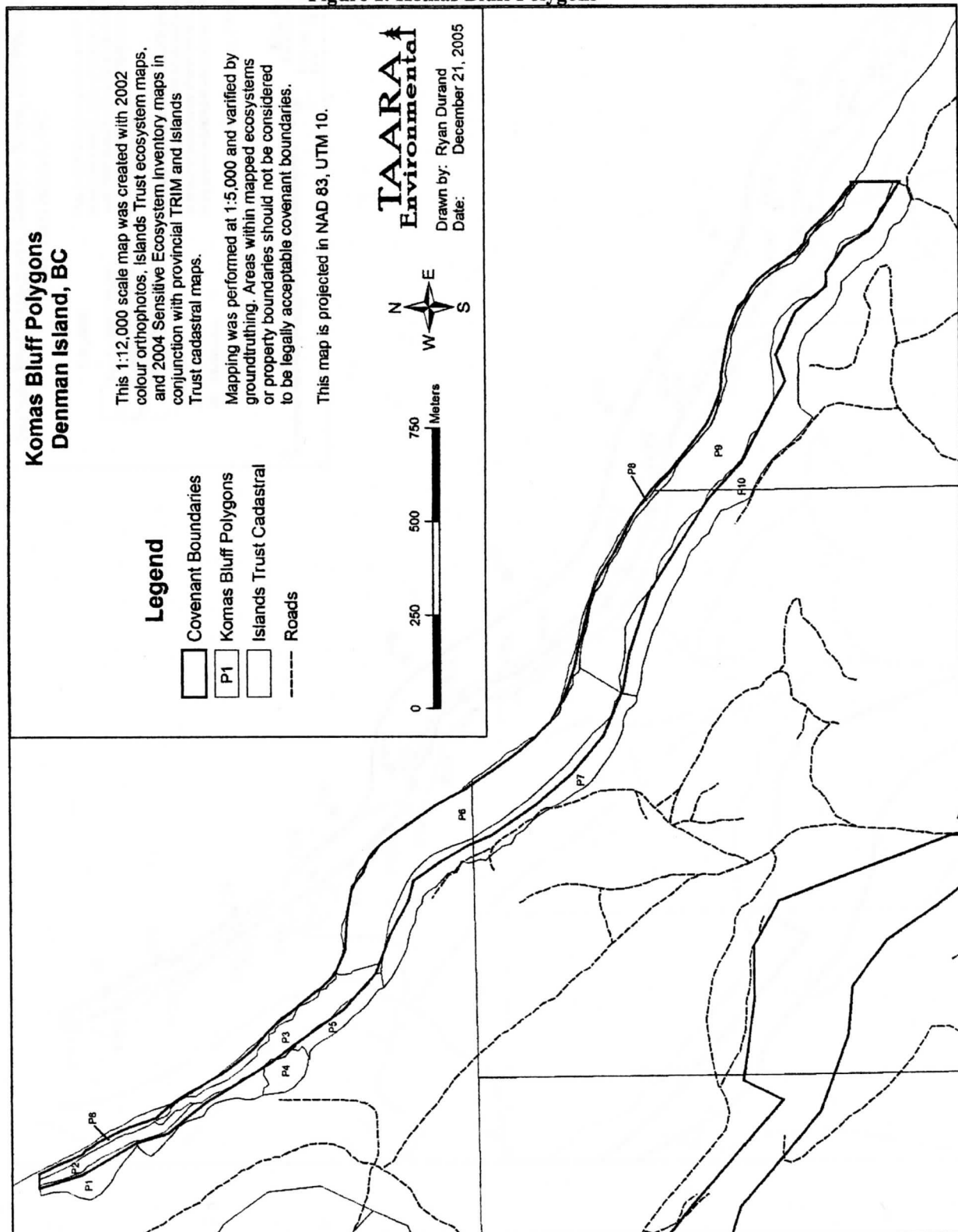
Avian species were well represented in the Covenant Area. Observed species included raptors such as bald eagles (*Haliaeetus leucocephalus*) and red-tailed hawks (*Buteo jamaicensis*), great blue herons (*Ardea herodias*) and innumerable shoreline species, sapsuckers and woodpeckers, owls, and other species. It is also likely that bats utilize the habitat provided by the many large snags in the area.

Black-tailed deer (*Odocoileus hemionus*) were found to be abundant to the point of over population throughout the Covenant Area and adjacent properties. Other small mammalian species are likely to occur, particularly on the lower slopes of the bluff.

A single red-legged frog was observed in a red alder dominated seepage area on the bluff slopes. Other amphibians may utilize the abundant woody debris and seepages along the lower bluff slopes. Pacific tree frogs (*Hyla regilla*) were abundant throughout the area.

8.0 Baseline Inventory Maps

Figure 1. Komasa Bluff Polygons



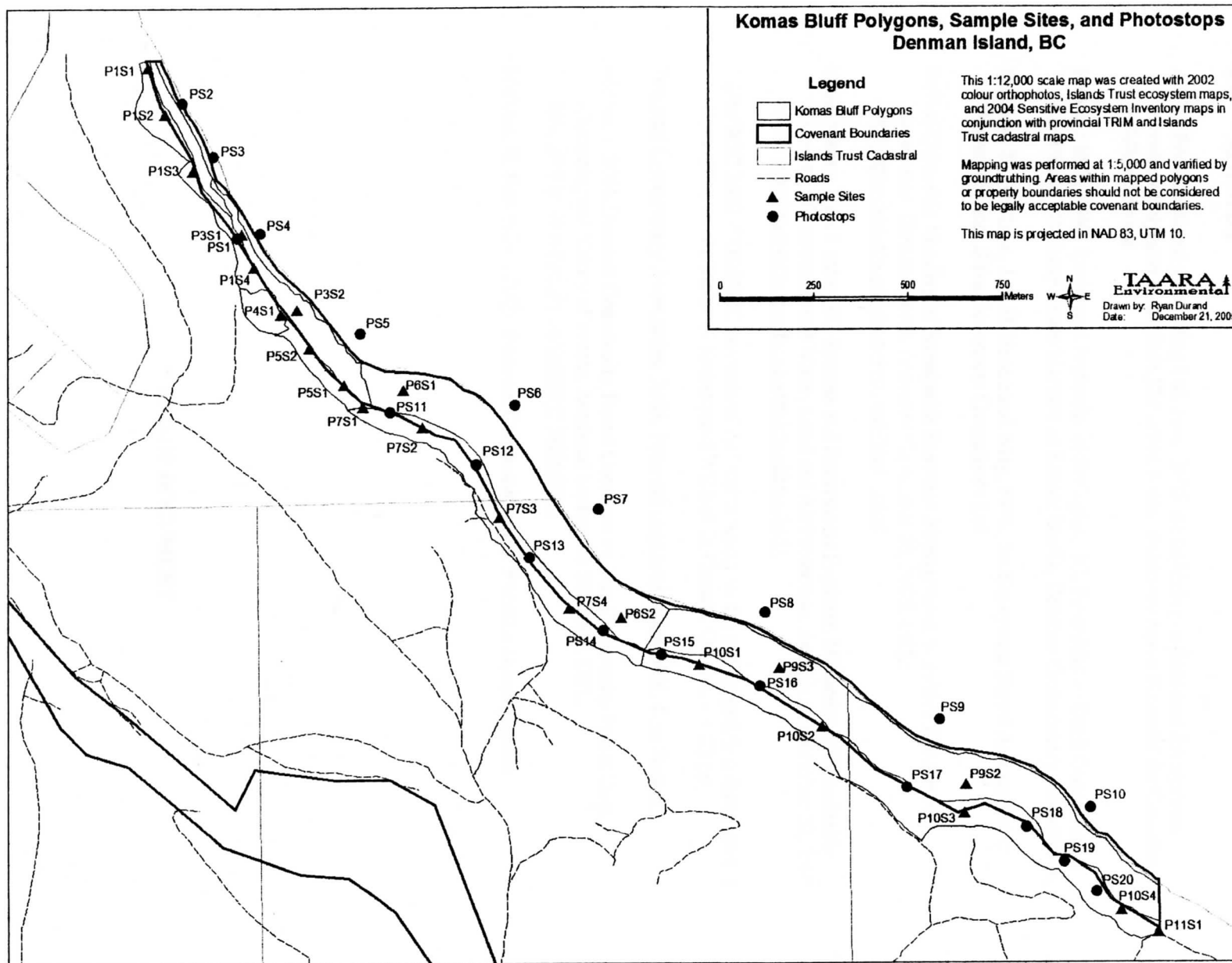


Figure 2. Komas Bluff Sample Sites and Photostops

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