

REGIONAL DISTRICT BOARD

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Minutes of the meeting of the Board of Directors of the Strathcona Regional District held on Wednesday, January 9, 2013 at the Strathcona Regional District offices located at #301-990 Cedar Street, Campbell River, B.C.

A quorum having been confirmed, the Chair called the meeting to order at 12:31 pm with the following directors in attendance:

Chair:	T. Lewis	Village of Zeballos
Vice-Chair:	J. Abram	Discovery Islands-Mainland Inlets (Electoral Area C)
Directors:	C. Anderson	Village of Gold River
	N. Anderson	Cortes Island (Electoral Area B)
	W. Jakeway	City of Campbell River
	R. Kerr	City of Campbell River
	B. Leigh	Oyster Bay-Buttle Lake (Electoral Area D)
	J. MacDonald	Village of Sayward
	C. Moglove	City of Campbell River
	L. Samson	City of Campbell River
	J. Schooner	Village of Tahsis
	G. Whalley	Kyuquot/Nootka-Sayward (Electoral Area A)
Alt. Director:	R. Mennie	City of Campbell River
	for L. Samson	

ADOPTION OF PUBLIC AGENDA

C. Anderson/Whalley: SRD 1/13

THAT the agenda for the January 9, 2013 regular meeting of the Board be adopted with the following additions:

Director Leigh -New Business - Oyster Bay Park
Director Abram - Economic Development

CARRIED

Alternate Director Adams arrived at 12:40 p.m. in place of Director Storry (Campbell River).

PETITIONS AND DELEGATIONS

Tourism & Sustainable Rural Development

Julie Keenan, Director of Advancement & Alumni Relations and Dr. Nicole Vaugeois, Regional Innovation Chair in Tourism & Sustainable Rural Development gave a presentation on the activities of Vancouver Island University's Regional Innovation Chair in Tourism & Sustainable Rural Development. [\[Item\]](#)

MacDonald/Kerr: SRD 2/13

THAT the presentation from Julie Keenan and Dr. Nicole Vaugeois be received.

CARRIED

ADOPTION OF MINUTES

Abram/MacDonald: SRD 3/13

THAT the minutes of the December 13, 2012 inaugural meeting be adopted.

[\[Item\]](#)

CARRIED

CHAIR'S REPORT

Standing Committee Appointments

Moglove/MacDonald: SRD 4/13

THAT the report from the Chair be received. [[Item](#)]

CARRIED

Abram/Leigh: SRD 5/13

THAT the Terms of Reference for the Electoral Areas Services Committee be approved.

CARRIED

C. Anderson/Schooner: SRD 6/13

THAT the Terms of Reference for the Municipal Services Committee be approved.

CARRIED

Appointments to External Agencies

Whalley/MacDonald: SRD 7/13

THAT the report from the Chair be received. [[Item](#)]

CARRIED

Moglove/Schooner: SRD 8/13

THAT Director MacDonald be appointed to the Board of the Municipal Finance Authority to represent the interests of the Regional District for 2013, and

THAT Chair Lewis be appointed as the alternate representative.

CARRIED

Moglove/C. Anderson: SRD 9/13

THAT Director C. Anderson be appointed to the Board of the Municipal Insurance Association to represent the interests of the Regional District for 2013, and

THAT the Chief Administrative Officer be appointed as the alternate representative.

CARRIED

C. Anderson/Abram: SRD 10/13

THAT Director Samson be appointed to the Board of the North Island 911 Corporation to represent the interests of the Regional District for 2013, and

THAT Director N. Anderson be appointed as the alternate representative.

CARRIED

Moglove/C. Anderson: SRD 11/13

THAT Vice Chair Abram be appointed to the Coastal Regional District Chair Group to represent the interests of the Regional District for 2013 with respect to the coastal ferry service, and

THAT Chair Lewis be appointed as the alternate representative.

CARRIED

MacDonald/Whalley: SRD 12/13

THAT Director N. Anderson be appointed to the Comox Strathcona Regional Steering Committee of the Coast Sustainability Trust to represent the interests of the Regional District for 2013.

CARRIED

Jakeway/C. Anderson: SRD 13/13

THAT Director Abram be appointed to the Integrated Oceans Advisory Committee (IOAC) of the Pacific North Coast Integrated Management Area

(PNCIMA) initiative steering committee to represent the interests of the Regional District for 2013, and

THAT Director MacDonald be appointed as the alternate representative.
CARRIED

Kerr/Whalley: SRD 14/13

THAT Director Whalley be appointed to the Mid-Island Forest Lands Advisory Group to represent the interests of the Regional District for 2013.
CARRIED

Moglove/Whalley: SRD 15/13

THAT Director MacDonald be appointed to the Tlowitsis Treaty Advisory Committee to represent the interests of the Regional District for 2013.
CARRIED

C. Anderson/Leigh: SRD 16/13

THAT Director Abram be appointed to the Klinaklini Environmental Assessment Working Group to represent the interests of the Regional District for 2013.
CARRIED

MacDonald/Abram: SRD 17/13

THAT Director Abram be appointed to the Homalco Treaty Advisory Committee to represent the interests of the Regional District for 2013, and
THAT Director Kerr be appointed as the alternate representative.
CARRIED

Moglove/Kerr: SRD 18/13

THAT Director Leigh be appointed to the Oyster River Water Management Committee to represent the interests of the Regional District for 2013.
CARRIED

Whalley/Moglove: SRD 19/13

THAT Director Abram be appointed to the UBCM Offshore Oil and Gas Working Group to represent the interests of the Regional District for 2013.
CARRIED

C. Anderson/Whalley: SRD 20/13

THAT the Board authorize the payment of meeting remuneration and travel expenses for the external organization appointments where not otherwise provided by the external organization.
CARRIED

STAFF REPORTS

Regional Board Voting Thresholds

Whalley/C. Anderson: SRD 21/13

THAT the report from the Chief Administrative Officer be received. [\[Item\]](#)
CARRIED

Parcel Tax Roll Review Panel

Leigh/Schooner: SRD 22/13

THAT the report from the Chief Administrative Officer be received. [\[Item\]](#)
CARRIED

Schooner/Whalley: SRD 23/13

THAT Director Abram, Director Leigh and Director Whalley be appointed as the members of the Parcel Tax Roll Review Panel for 2013.

CARRIED

Liquid Waste Management Service - Proposed Amendments

Whalley/N. Anderson: SRD 24/13

THAT the report from the Chief Administrative Officer be received. [\[Item\]](#)
CARRIED

Leigh/Kerr: SRD 25/13

THAT separate funding streams for revenue and expenditures be created for each electoral area.

Leigh/Kerr: SRD 26/13

THAT the matter be deferred for further discussion with the Electoral Area B and Electoral Area D Directors.

CARRIED

*Directors
Jakeway,
Moglove,
Mennie, N.
Anderson,
Whalley and
Adams
opposed.*

Coastal Community Network Funding Request

Whalley/MacDonald: SRD 27/13

THAT the report from the Chief Administrative Officer be received. [\[Item\]](#)
CARRIED

Schooner/Moglove: SRD 28/13

THAT the Coastal Community funding request be considered.

Jakeway/Moglove: SRD 29/13

THAT the 2013 invoice from the Coastal Community Network be paid.

CARRIED

*Directors
Adams, C.
Anderson,
Whalley and
MacDonald
opposed*

Moglove/Adams: SRD 30/13

THAT the 2012 invoice from the Coastal Community Network be paid

CARRIED

*Director
Whalley
opposed*

N. Anderson/Adams: SRD 31/13

THAT the Chair of the Coastal Community Network be invited to present the organization's 2013 workplan.

CARRIED

The Chair ruled that the motion made by Director Schooner to consider the Coastal Community Network funding request had been withdrawn.

Strathcona Gardens Commission - City Council Representatives

Adams/Leigh: SRD 32/13

THAT the report from the Chief Administrative Officer be received. [\[Item\]](#)
CARRIED

Leigh/Schooner: SRD 33/13

THAT Councillors Adams and Samson be appointed to the Strathcona Gardens Commission effective immediately.

Adams/C. Anderson: SRD 34/13

THAT the motion be amended by appointing Mayor Jakeway, Councillor Moglove and Councillor Storry as the Strathcona Gardens Commission alternates.

CARRIED

A vote was held on the amended motion and it was ...

CARRIED

RECESS

The Chair recessed the meeting at 2:25 p.m.

RECONVENE

The meeting reconvened at 2:36 p.m. with all participants in attendance except Alternate Director Mennie.

Community Representative - Strathcona Gardens Commission

Leigh/Kerr: SRD 35/13

THAT the report from the Chief Administrative Officer be received. [\[Item\]](#)

CARRIED

Leigh/Adams: SRD 36/13

THAT a policy incorporating the principles of openness and transparency in the selection of the 'community at large' representative for the Strathcona Gardens Commission be prepared for further consideration.

CARRIED

Electoral Area D Water Service Rates

Leigh/Kerr: SRD 37/13

THAT the report from the Chief Administrative Officer be received. [\[Item\]](#)

CARRIED

Leigh/Abram: SRD 38/13

THAT the letter regarding Electoral Area D water service rates from Ms. Taylor be received.

CARRIED

Moglove/Leigh: SRD 39/13

THAT a report and amendment bylaw be prepared to clarify the conditions under which properties connected to the Area D water system would be subject to multiple rates.

CARRIED

Grant Application - Quadra Island Seniors

Abram/C. Anderson: SRD 40/13

THAT the report from the Chief Administrative Officer be received. [\[Item\]](#)

CARRIED

Schooner/Moglove: SRD 41/13

THAT the Board approve a grant in aid of \$3,500 for the Quadra Island Seniors Group to assist with the Quadra Island Tourism and Visitors Booth to be paid from the Area C Economic Development Area C function.

CARRIED

BYLAWS

Bylaw No. 144 - Emergency Rescue Supplies Grants-in-Aid Service Conversion Bylaw 2012

MacDonald/Whalley: SRD 42/13

THAT the report from the Chief Administrative Officer be received. [\[Item\]](#)
CARRIED

Leigh/Schooner: SRD 43/13

THAT Bylaw No. 144, being Emergency Rescue Supplies Grants-in-Aid Service Conversion Bylaw 2012, be reconsidered, finally passed and adopted.
CARRIED

CORRESPONDENCE

Adams/C. Anderson: SRD 44/13

THAT the Board receive the correspondence items, being:

(a) the November 24, 2012 Vancouver Island Regional Library newsletter entitled "From the Board Table"; [\[Item\]](#)

(b) the December 17, 2012 Canada's Economic Action Plan news release regarding Ehattesaht/Chinehkin's Community Infrastructure Improvements; [\[Item\]](#)

(c) the annual update brochure entitled "Geoscience: BC's Competitive Economic Advantage"; [\[Item\]](#)

(d) the December 20, 2012 Island Trust News Release regarding B.C. Ferries Investment request; and [\[Item\]](#)

(e) the January 3, 2013 BC Assessment News Release regarding 2013 assessment notices. [\[Item\]](#)

CARRIED

DIRECTORS' REPORTS

Andre Audet - Mayfly Creek Issue/Modification of Covenant

Director Leigh declared a conflict of interest due to a family member residing adjacent to the property in question and left the meeting chambers.

Kerr/Whalley: SRD 45/13

THAT the report from Director C. Anderson be received. [\[Item\]](#)
CARRIED

Director Leigh returned to the meeting chambers.

NEW BUSINESS

Oyster Bay Park Update

Director Leigh advised that the Province had renewed the Oyster Bay Shoreline Protection Park license for a further 30 years.

Adams/MacDonald: SRD 46/13

THAT the verbal report from Director Leigh regarding the Oyster Bay Shoreline Protection Park be received.

CARRIED

Economic Development Function

Director Abram advised that he had received a letter of thanks from the Discovery Islands Chamber of Commerce for the awarding of an economic development grant.

Schooner/MacDonald: SRD 47/13

THAT the verbal report from Director Abram regarding the Quadra Island Chamber of Commerce letter be received.

CARRIED

Vancouver Island University

Kerr/Schooner: SRD 48/13

THAT the request for funding from Julie Keenan and Dr. Nicole Vaugeois of Vancouver Island University be referred to budget discussions.

CARRIED

Strathcona Gardens Alternate Members

Moglove/Kerr: SRD 49/13

THAT a subsequent report regarding the appointment of alternate members to the Strathcona Gardens Commission be prepared.

CARRIED

Kerr/Moglove: SRD 50/13

THAT the January 9, 2013 meeting of the Regional Board be terminated.

CARRIED

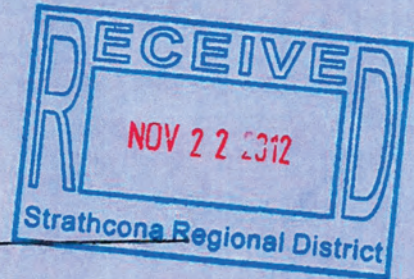
Time: 2:58 p.m.

Certified Correct:

Chair

Corporate Officer

Cadillac Mining



confidential
fax

To: **Craig Anderson**
Fax Number: 1 250 830 6710

From: **Andre Audet**
Fax Number: none
Business Phone:
Home Phone: 2503388809

Pages: 5
Date/Time: 11/16/2012 12:56:00 PM
Subject: Corrected date for Mayfly Creek Memo

The Memo sent late yesterday contains an erroneous date and should be destroyed and replaced with the version attached hereto

Andre J. Audet P.Eng
2580 Crystal Drive
Courtenay, BC
Canada, V9N 9K1

Email: andre@audet.ws
Tel: 1 250 338 8809

November 16, 2012

Memo To: Stacey Larsen, DFO

Cc Margret Henigman, Ministry of Forests, Lands and Natural Resource; Craig Anderson,
Regional District; Mike Stalberg, BC Fish and Wildlife Branch

From: A. Audet

Subject: Mayfly Creek Issue/Modification of Covenant

Reasons for Initiative

Water, from a property owned by Andre and Karen Audet (Audet), which is escaping along a constructed corridor, is the subject of concern to an adjacent land owner, and possibly to certain unspecified special interest groups.

The contents of an email received from Stacy Larsen, consultant to the DFO and dated November 13, 2012, are attached hereto.

Historical Context and Background

Mayfly Creek, a seasonal stream draining a large undeveloped region of low, undulating terrain formed primarily by out-wash from retreating glaciation, currently follows a 'man-made' course across the NW corner of the subject holding. This stream presents on early topographic maps as terminating at Oyster Bay with a poorly defined dendritic delta, of which none of the members follow a well defined course. In the early 20th Century, logging interests established a booming ground in the sheltered waters of Oyster Bay to accommodate logging operations inland. Specialized steam locomotives used in transporting logs needed a reliable source of fresh water, which prompted operators to excavate a shallow 'mill-pond' enhanced by a small dyke on the east flank and a wood dam to the north (personal communication). Outflow was directed northward via an artificial channel, and then onto low-ground that drained to the ocean. Over time, sedimentation all but completely filled the impoundment, and though the dam eventually deteriorated, several generations of beaver have maintained dams at that and various nearby locations that continued to retain water for seven to eight months of the year. The impoundment was usually dry from late June to early November in a typical year.

In recent years, special interest groups, dedication to fish habitat enhancement, focused on the drainage system and undertook to improve spawning conditions down-stream by increasing water retention through the construction of a permanent earth-fill dam designed to maximize the height to which the artificial impoundment would allow. A diversion 'ditch' was constructed below the east bank to capture and redirect overflow expected during periods of high water and to accommodate any additional diversion caused by natural forces such as beaver activity. It appears as though Provincial and Federal Fisheries and Environmental agencies supported the initiative and may have funded the project to some degree.

Subsequently, cooperation between various ministries and the Regional District of Strathcona (Regional District) established a Covenant designed to protect the resulting wet-lands and the earth-fill dam. This Covenant is written in favour of the 'Regional District' and imposes certain conditions on the land-owner (Audet) and states in part that the dam "will remain natural or as is" and that the lands within the covenant

will remain "natural and untouched by the hand of man". It is further stipulated that Audet is charged with insuring that the above stated conditions will be respected and upheld.

As things stand, the subject lands remain as natural as the man-made supporting infrastructures permit. The diversion channel, discussed above, captures over-flow waters escaping the impoundment as foreseen and appears to function as designed.

Current Situation

The impoundment is not retaining water as long as had been hoped and consequently is not contributing to improved fish-habitat downstream during summer and early fall. Moreover, hydraulic 'piping' through ad hoc dykes built nearly 100 years ago is promoting the erosion of cavities below vegetation, which in places creates a thin-crust that collapses underfoot. The risk of serious injury is high and the overall potential for life-threatening consequences is not negligible.

If left to 'natural' processes, as conditions of the Covenant demand, Mayfly Creek will likely carve-out a new channel, diverting waters eastward from the current dam to an interception by the diversion channel and hence to an alternate channel that will cross the private lands currently being flooded. Beaver activity, which by definition is natural and fully protected under terms of the Covenant, will continue to influence water-levels within the system.

Suggested Intervention

Casual telephone discussions with Ms. Larsen have centered on intervening by either lowering or completely removing the man-made dam. While acting on either of these suggestions would lower water levels in the short term, and would redirect waters to the intended channel, neither provides a 'sustainable' natural solution since beaver are certain to reconstruct the dam as they have recently done a short distance up stream. Moreover, unless the dam were to be removed completely, piping and consequential deterioration of retaining dykes will continue. Accordingly, a proposal for removing the dam completely, or altering it somewhat, without provision for an ongoing management plan, does not present a sustainable solution going forward. Audet has not been formally consulted regarding benefits, consequences or sustainability of the proposals, which appear to be attempts at a 'band-aid' solution dealing with immediate needs without concern for longer term objectives. None of the above mentioned activities are permitted under the terms of the Covenant now in force.

An additional concern that requires consideration is that removal of the dam will negatively affect Audet. The dam provides foot access to the western end of the property (as permitted under terms of the Covenant), and that access would be lost should the dam, or parts of it, be removed.

Legal Considerations

The Covenant is a legally binding contract to which Audet is a signatory. As such, there is no provision whereby any government agency or official may grant exception and nothing short of a court order would relieve Audet of the obligations therein. While the attached email states that 'Mike Stalberg, the Fish and Wildlife Section Head, has agreed to sign-off' on the matter, that decision does not alter or abrogate any of the responsibility owed by Audet.

Further, Audet may *not* grant others the right to undertake activities that Audet is not permitted to undertake and for which Audet would risk severe financial consequences, that at a minimum would include restoration of the site to existing conditions, but which might also result in litigation and the need to defend against third-party civil action.

Ms. Larsen states that the covenant transferee is listed as the Ministry of Water land and Air Protection, but my read of the Covenant document clearly shows that conditions of it are in favour of the Regional District.

Considering that environmental issues are exceedingly sensitive, that government departments often conflict in their interpretations and application of statute, that numerous NGOs and First Nations groups have a stake in natural habitats in this region and that the matter impinges on both Provincial and Federal jurisdictions, Audet believe they are obligated to refrain from engaging in or appearing to sanction any activity that might be seen as contrary to the terms of the Covenant and will therefore aggressively oppose any initiative that does not meet conditions stipulated in it.

Conclusions

- The portion of Mayfly Creek crossing the Audet property, and the dam located thereon, is causing flooding problems on an adjacent property and the owners of that property seek a resolution.
- Current conditions are consistent with objectives of long-standing and established infrastructure now in place, and as such do not present an 'emergency' situation.
- Audet is bound by severely restrictive conditions of an overriding covenant that specifically forbids any alteration within the Covenant area.
- Informal discussions imply that various government agencies are in favour of either modifying or removing a dam protected by an overriding covenant.
- Access between portions of the Audet 'property' will be curtailed if the existing dam is altered or removed.
- The Covenant is drawn in favour of the Regional District, which is itself bound by the terms of it.
- Terms of a covenant may be altered only with the formal agreement of all signatories to it.
- Since the Covenant forbids all activity within its boundaries, changes in its terms are necessary if any physical change to conditions are to be effected.
- Audet has not been formally consulted with regards to the proposed intervention.
- Audet will support an initiative to alter the terms of the Covenant provide that it incorporates negotiated changes that reflect the need for long-term sustainable management, make allowances for such, and that Audet's objectives for the 'Quiet Enjoyment' of its holdings be considered and respected.
- Audet will not agree to support any costs, direct or indirect, relating to this initiative.

Recommendations

It is recommended that parties desiring a change in conditions in the Mayfly drainage system should petition the Regional District to re-open negotiations on the terms of the Covenant, since it is to the Regional District that obligations depend.

Andre J. Audet P.Eng



November 14, 2012

Hello Andre,

Good to talk with you just now.

Here is the information that is the background to the recommended actions for the excess water flooding situation on Mayfly Creek.

The issue was brought to my attention by a landowner in the area with a different plan of action (trenching and installing a pipe to drain the overflow from the trench out of the wetland on your property).

A different solution was recommended once the full scope of the water runoff and beaver dam on the weir was observed, and after talking with the Oyster Bay Streamkeepers. The DFO (Fisheries & Oceans Canada), the stream keeper group & the provincial government (Ministry of Forests, Lands & Natural Resource Operations & Ministry of Transportation) agreed that this was the best course of action.

This plan was reviewed and discussed with Maggie Henigman, MA, CCEP (Ecosystems Biologist of Ministry of Forests, Lands and Natural Resource Operations) who is the Habitat Officer that reviewed the Section 9 submitted by the property owner whose land is being flooded. Maggie & I have discussed the matter and have agreed on a plan of action which will lower the level of the beaver dam significantly which will then lower the level of water in the wetland which will in turn both reduce or end the flooding to the other property owners land and also keep the water in Mayfly Creek itself.

After discussing the plan with you I then talked to Maggie about the covenant. I found out that the covenant transferee is listed as the Ministry of Water land and Air Protection, which is basically FI.NRO (Ministry

HP LaserJet M1522nf MFP

Fax Error Report

HP LASERJET FAX

16-Nov-2012 1:56PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
1900	16/11/2012	1:53:34PM	Receive	Fax	2:47	5	Comm Error 244

11/16/2012 03:56 PM FROM: Fax Cadillac Mining To: 1 250 830 6710 PAGE: 001 OF 005

Cadillac Mining

confidential
fax

To: Craig Anderson
Fax Number: 1 250 830 6710

From: Andre Audet
Fax Number: none
Business Phone:
Home Phone: 2503388809

Pages: 5
Date/Time: 11/16/2012 12:56:00 PM
Subject: Corrected date for Mayfly Creek Memo

The Memo sent late yesterday contains an erroneous date and should be destroyed and replaced with the version attached hereto

Aniko Nelson

From: Morgan, Scott FLNR:EX <Scott.Morgan@gov.bc.ca>
Sent: March 1, 2019 1:59 PM
To: Baldwin, John FLNR:EX
Cc: White, Ted T FLNR:EX
Subject: FW: Mayfly Creek and Wetands hazard
Attachments: Cover letter March 1 2019.pdf; Mayfly Creek Hazard (Audet) Mar 1, 2019.pdf

Hi John, do you have any knowledge about this concern brought up by Mr. Audet in the attached letter?

Thanks,
Scott-

-----Original Message-----

From: andre@audet.ws <andre@audet.ws>
Sent: March 1, 2019 11:49 AM
To: Minister, AG AG:EX <AG.Minister@gov.bc.ca>; Donaldson.MLA, Doug LASS:EX <Doug.Donaldson.MLA@leg.bc.ca>;
claire.trevena.mla@leg.bv.ca; OfficeofthePremier, Office PREM:EX <Premier@gov.bc.ca>;
jonathan.wilkinson@parl.gc.ca; rachel.blaney@parl.gc.ca; Morgan, Scott FLNR:EX <Scott.Morgan@gov.bc.ca>
Subject: Mayfly Creek and Wetands hazard

To All:

Please find attached, two pdf files relating to a serious concern with a potential for life threatening consequences. Your immediate attention is strongly recommended. Should you encounter problems opening the files, or if they arrive corrupted in any way, please contact me at your earliest convenience.

Andre J. Audet P. Eng

This email has been checked for viruses by AVG.
<https://www.avg.com>

Andre J. Audet P.Eng
2580 Crystal Drive
Courtenay, B.C.
V9N9K1

Tel:250-338-8809
Email: andre@audet.ws
February 27, 2019

To:

Via Courier and E-mail
The Honourable David Eby
Attorney General of B.C.
Room 232 Parliament Buildings
Victoria, B.C. V8V 1X4
Canada,

Via Email: The Honourable Doug Donaldson
Doug.donaldson.MLA@leg.bc.ca,

Via Email: The Honourable Claire Trevena
Claire.trevena.MLA@leg.bc.ca,

Via Email: The Honourable John Horgan
John.horgan.MLA@leg.bc.ca,

Via Email: The Honourable Jonathan Wilkinson
Minister of Fisheries, Oceans, and the Canadian Coast Guard
Jonathan.wilkinson@parl.gc.ca,

Via Email: The Honourable Rachel Blaney
Rachel.blaney@parl.gc.ca,

Via Email: Complete Board of Strathcona Regional District
administration@srd.ca

Via Email: Mr. Scott Morgan
Scott.Morgan@gov.bc.ca

Dear Addressees

The attached report (Report) addresses concerns regarding a man-made water impoundment located in the Oyster Bay area, Vancouver Island, and which the writer believes to be an imminent threat to life and property. The objective of the safety-screening investigation conducted by the writer was to determine if there was prima facie evidence of dangerous conditions on the private lands in question. The exercise was not a detailed investigation designed to confirm that hazardous conditions exist as such a study would be beyond the expertise of the investigation, however it appears certain that the dam system is in a state of progressive failure and that the said dam qualifies as a '**Regulated Dam**' under the '**Water Sustainability Act**', and will rank as being of '**Very High Risk**' by criteria stipulated therein.

Given that the Dam System is restricted by covenant in favour of the Crown and that ownership of the Dam System must therefore fall to the Crown by way of several possible Crown Ministries, departments or agencies, this advisory is addressed to ALL such entities as might share responsibility

or benefits related to the Dams, the wetlands related to it, and whatever consequences are likely to result from a catastrophic failure of the system.

It should be noted that the writer presented a brief report advising of concerns relating to this issue on November of 2012. That report (Appendix 2) was submitted to four senior government entities believed to have responsibility thereto. It appears as though none of those addressees felt that the courtesy of acknowledgment, or any other response, was worthy of their attention. Accordingly, the writer explicitly '*requests*' that all of the above listed recipients acknowledge reception of the attached Report, on stationery bearing their respective letterheads, and forward to the writer by Canada Post at their earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "A. J. Audet". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andre J. Audet P.Eng
February 27, 2019

Aniko Nelson

From: John Neill
Sent: March 19, 2019 11:12 AM
To: Aniko Nelson
Cc: Jordan Hargrave; Mary Jo Van Order
Subject: FW: Mayfly Creek Wetlands Response Letter
Attachments: Mayfly Creek February 27 2019 complaint - Andre Audet.pdf

Update on 2713 Iron River Road

From: Campbell, Alicia D FLNR:EX <Alicia.D.Campbell@gov.bc.ca>
Sent: Tuesday, March 19, 2019 10:40
To: John Neill <JNeill@srd.ca>; 'stacey.larsen@dfo-mpo.gc.ca' <stacey.larsen@dfo-mpo.gc.ca>; Traas, Alycia M TRAN:EX <Alycia.Traas@gov.bc.ca>; Cragg, Jenna FLNR:EX <Jenna.Cragg@gov.bc.ca>; Morgan, Scott FLNR:EX <Scott.Morgan@gov.bc.ca>; Meret, Livia AG:EX <Livia.Meret@gov.bc.ca>
Cc: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Subject: Mayfly Creek Wetlands Response Letter

On behalf of John Baldwin, Dam Safety Officer with the British Columbia Ministry of Forests, Lands, Natural Resource Operations and Rural Development, please see attached letter for your information and records.

Kind regards,

Alicia Campbell

Program Assistant
Ministry of Forests, Lands, Natural Resource Operations and Rural Development
2080 Labieux Rd., Nanaimo, BC V9T 6J9
250 751-7102





File: 76800-30/22-100

March 18, 2019

Andre Audet
2580 Crystal Drive
Courtenay, British Columbia
V9N 9K1

Dear Andre Audet:

(Re: Mayfly Creek Wetlands)

I refer to your letter of February 27, 2019 and your Report on Mayfly Creek Wetlands. I have been asked to acknowledge receipt of your letter on behalf of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

We are gathering information regarding the history of the restrictive covenants and works (rock spillway and berm) located on your property (Lot 1, Section 26, Township 4, Comox District, Plan VIP87399), which works are the subject of your report. The presence of the works appear to pre-date your acquisition of the property in 2009.

If we have any questions regarding that report, we may follow up with you in due course. Also, we hope you grant access to your property to an independent professional engineer with qualifications in dam safety analysis.

Yours truly,

John Baldwin
Dam Safety Officer

pc: John Neill – Strathcona Regional District, Campbell River
Stacey Larsen – Fisheries and Oceans Canada, Community Advisor, Campbell River
Alycia Traas – BC Ministry of Transportation and Infrastructure, District Manager,
Campbell River
Jenna Cragg - Ministry of Forests, Lands, Natural Resource Operations and Rural
Development, Regional Operations Division, Ecosystems Biologist, Nanaimo

Page 1 of 1

Aniko Nelson

From: Morgan, Scott FLNR:EX <Scott.Morgan@gov.bc.ca>
Sent: March 1, 2019 1:59 PM
To: Baldwin, John FLNR:EX
Cc: White, Ted T FLNR:EX
Subject: FW: Mayfly Creek and Wetands hazard
Attachments: Cover letter March 1 2019.pdf; Mayfly Creek Hazard (Audet) Mar 1, 2019.pdf

Hi John, do you have any knowledge about this concern brought up by Mr. Audet in the attached letter?
Thanks,
Scott-

-----Original Message-----

From: andre@audet.ws <andre@audet.ws>
Sent: March 1, 2019 11:49 AM
To: Minister, AG AG:EX <AG.Minister@gov.bc.ca>; Donaldson.MLA, Doug LASS:EX <Doug.Donaldson.MLA@leg.bc.ca>;
claire.trevena.mla@leg.bv.ca; OfficeofthePremier, Office PREM:EX <Premier@gov.bc.ca>;
jonathan.wilkinson@parl.gc.ca; rachel.blaney@parl.gc.ca; Morgan, Scott FLNR:EX <Scott.Morgan@gov.bc.ca>
Subject: Mayfly Creek and Wetands hazard

To All:

Please find attached, two pdf files relating to a serious concern with a potential for life threatening consequences. Your immediate attention is strongly recommended. Should you encounter problems opening the files, or if they arrive corrupted in any way, please contact me at your earliest convenience.

Andre J. Audet P. Eng

This email has been checked for viruses by AVG.
<https://www.avg.com>

Andre J. Audet P.Eng
2580 Crystal Drive
Courtenay, B.C.
V9N9K1

Tel:250-338-8809
Email: andre@audet.ws
February 27, 2019

To:

Via Courier and E-mail
The Honourable David Eby
Attorney General of B.C.
Room 232 Parliament Buildings
Victoria, B.C. V8V 1X4
Canada,

Via Email: The Honourable Doug Donaldson
Doug.donaldson.MLA@leg.bc.ca,

Via Email: The Honourable Claire Trevena
Claire.trevena.MLA@leg.bc.ca,

Via Email: The Honourable John Horgan
John.horgan.MLA@leg.bc.ca,

Via Email: The Honourable Jonathan Wilkinson
Minister of Fisheries, Oceans, and the Canadian Coast Guard
Jonathan.wilkinson@parl.gc.ca,

Via Email: The Honourable Rachel Blaney
Rachel.blaney@parl.gc.ca,

Via Email: Complete Board of Strathcona Regional District
administration@srd.ca

Via Email: Mr. Scott Morgan
Scott.Morgan@gov.bc.ca

Dear Addressees

The attached report (Report) addresses concerns regarding a man-made water impoundment located in the Oyster Bay area, Vancouver Island, and which the writer believes to be an imminent threat to life and property. The objective of the safety-screening investigation conducted by the writer was to determine if there was prima facie evidence of dangerous conditions on the private lands in question. The exercise was not a detailed investigation designed to confirm that hazardous conditions exist as such a study would be beyond the expertise of the investigation, however it appears certain that the dam system is in a state of progressive failure and that the said dam qualifies as a '**Regulated Dam**' under the '**Water Sustainability Act**', and will rank as being of '**Very High Risk**' by criteria stipulated therein.

Given that the Dam System is restricted by covenant in favour of the Crown and that ownership of the Dam System must therefore fall to the Crown by way of several possible Crown Ministries, departments or agencies, this advisory is addressed to ALL such entities as might share responsibility

or benefits related to the Dams, the wetlands related to it, and whatever consequences are likely to result from a catastrophic failure of the system.

It should be noted that the writer presented a brief report advising of concerns relating to this issue on November of 2012. That report (Appendix 2) was submitted to four senior government entities believed to have responsibility thereto. It appears as though none of those addressees felt that the courtesy of acknowledgment, or any other response, was worthy of their attention. Accordingly, the writer explicitly *requests* that all of the above listed recipients acknowledge reception of the attached Report, on stationery bearing their respective letterheads, and forward to the writer by Canada Post at their earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Audet". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andre J. Audet P.Eng
February 27, 2019

Aniko Nelson

From: John Neill
Sent: April 17, 2019 3:34 PM
To: Aniko Nelson
Subject: FW: Mayfly Creek and Wetands hazard
Attachments: Cover letter March 1 2019.pdf; Mayfly Creek Hazard (Audet) Mar 1, 2019.pdf

Hi Aniko - would you like to be a part of this? Our boardroom appears to be available on both these days for such a meeting. Perhaps 9 -12 noon?

Regards,

John

-----Original Message-----

From: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Sent: Wednesday, April 17, 2019 15:17
To: John Neill <JNeill@srd.ca>
Subject: FW: Mayfly Creek and Wetands hazard

John - further to our telephone call today regarding Mr Audet's concerns with a artificial beaver dam on Mayfly Creek, please note:

1. attachment with Mr Audet's package - this letter was sent to a number of agencies including SRD, and 2. I'm organizing a meeting of the agencies (DFO, SRD and FLNRORD) involved in the Mayfly Creek issues for either May 15 or 16th 2019 to review options. As one of the covenant holders on Mr Audet's property, can a SRD staff make either of these days for this three hour meeting? Meeting in Campbell River at SRD Office is suggested - does SRD have a meeting room?

Give me a call at 250-751-3179 if you require more info.

John B

-----Original Message-----

From: Morgan, Scott FLNR:EX
Sent: Friday, March 1, 2019 1:59 PM
To: Baldwin, John FLNR:EX
Cc: White, Ted T FLNR:EX
Subject: FW: Mayfly Creek and Wetands hazard

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Andre J. Audet P.Eng
2580 Crystal Drive
Courtenay, B.C.
V9N9K1

Tel:250-338-8809
Email: andre@audet.ws
February 27, 2019

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Scott.Morgan@gov.bc.ca

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Andre J. Audet P.Eng
February 27, 2019

Aniko Nelson

From: John Neill
Sent: May 14, 2019 2:52 PM
To: Aniko Nelson
Subject: FW: May 16th 2019 Mayfly Creek meeting

From: Larsen, Stacey <Stacey.Larsen@dfo-mpo.gc.ca>
Sent: Tuesday, May 14, 2019 14:40
To: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>; John Neill <JNeill@srd.ca>
Subject: RE: May 16th 2019 Mayfly Creek meeting

Thank you John.

Shannon Anderson (Resource Restoration Unit biologist), Dale Desrochers (SEP-CIP South Coast Area Section Head) and I will be there.

Stacey

Stacey Larsen
Community Advisor
Campbell River & North Vancouver Island Areas
Fisheries & Oceans Canada
Office: (250) 286-5883
Cell: (250) 902-9484

From: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Sent: May-14-19 2:31 PM
To: Larsen, Stacey <Stacey.Larsen@dfo-mpo.gc.ca>; John Neill (jneill@srd.ca) <jneill@srd.ca>
Subject: May 16th 2019 Mayfly Creek meeting

John and Stacey – this is to confirm that the Thursday May 16th meeting in Campbell River is still scheduled.

Attached are:

1. draft meeting agenda,
2. draft time line of activities associated with Mr Audet's property,
4. sketch of Mr Audet's property
5. copy of 1938 air photo

Aniko Nelson

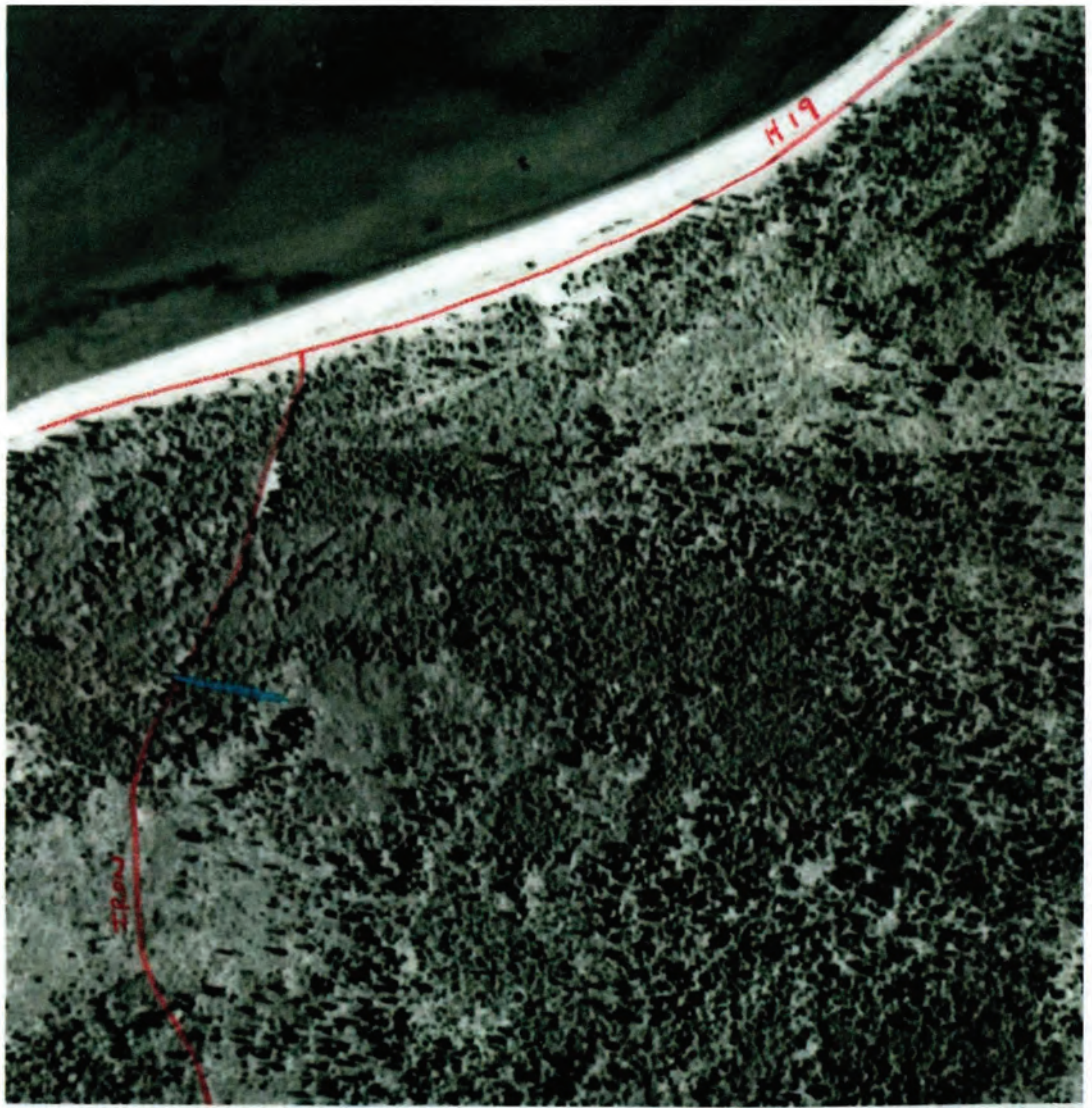
From: John Neill
Sent: May 14, 2019 2:51 PM
To: Aniko Nelson
Subject: FW: May 16th 2019 Mayfly Creek meeting
Attachments: 2019-05-14 1938 air photo.pdf; 2019-04-29 updated Audet plan and cross section.pdf; 2019-05-14 time line Mayfly Creek.docx; 2019-05-16 MAYFLY CREEK agency meeting agenda.docx

From: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Sent: Tuesday, May 14, 2019 14:31
To: Stacey Larsen (Stacey.Larsen@dfo-mpo.gc.ca) <Stacey.Larsen@dfo-mpo.gc.ca>; John Neill <JNeill@srd.ca>
Subject: May 16th 2019 Mayfly Creek meeting

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MAYFLY CREEK.



Mayfly Dam and Area
 Oyster Bay, B.C.
 Prepared By: A.J Audet P.Eng April 2018
 UPDATED BY
 FLNRORD(2019)

DITCH WORK (2012)
 Extensive Unconstrained Flows

Legend Fig 1

- 0 Water Table
- Ditch
- Lateral Dam
- Flooded Reservoir

Rock Spillway
 ARTIFICIAL
 BEAVER DAM (1997)

Lateral Dam or Berm
 NO EVIDENCE
 MAN MADE

Thin Crust

Well Site

Children's Play Area

Flooded Area
 (Approx)

0

Dwelling #2

Area of Thin Crust and Surface Collapse

Point of Water Influx

Property Line (Approx)

Drainage Ditch

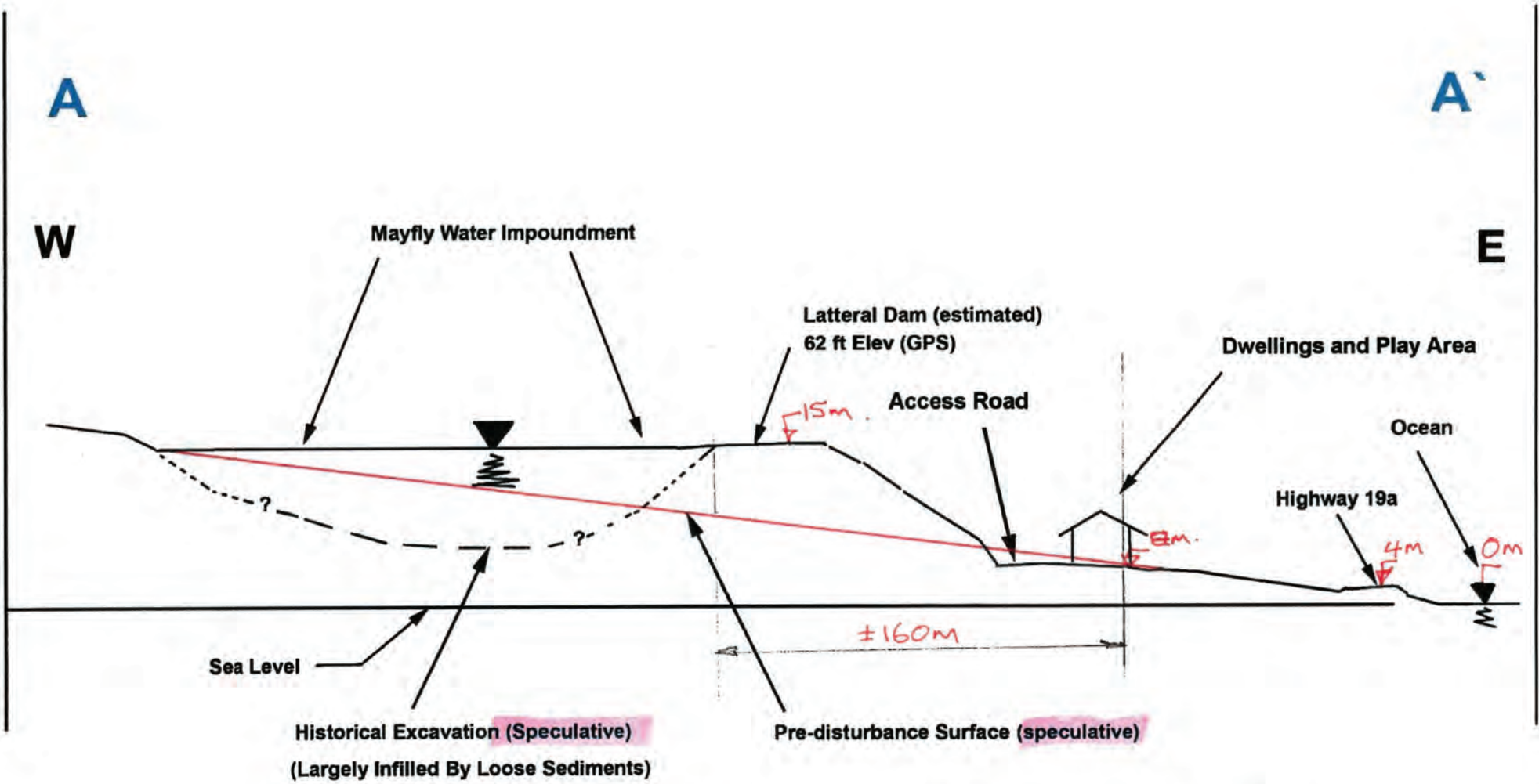
Google Earth

SCALE: NTS

- - - - - DITCH
- AUDET PROPERTY (LOT 1, SECTION 26)
- COVENANT

24 APRIL 2019

MJB



Mayfly Creek Lower Drainage and Area, Oyster Bay

Cross-Section Sketch Showing Relative Positions of Retention Pond, Roads and Dwellings

Note: Vertical Scale is Exaggerated

April 2018 A.J. Audet P.Eng

UPDATED PLANRD.

0 200m
Horizontal Scale

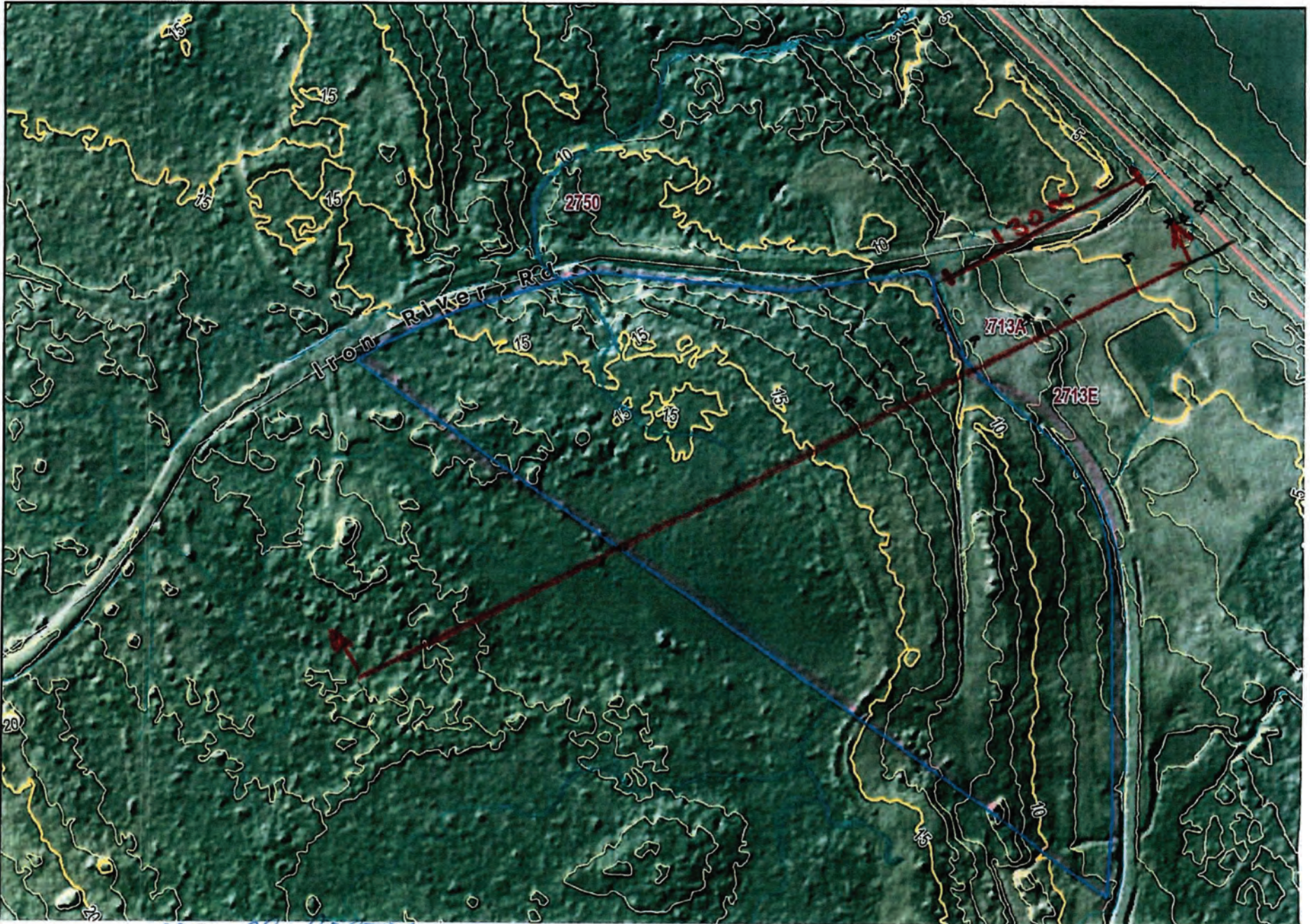
SECTION A-A

ELEVATIONS FROM REGIONAL DISTRICT MAPPING.

MJB

supplied by
SRA
18 MARCH 2019.

Lot 1, Plan VIP87399, Section 26, Township 4



AUGET PRO PACT

1 M contour

Mayfly Creek/ Audet Property (LOT 1 SECTION 26 TOWNSHIP 4 COMOX DISTRICT PLAN VIP87399) time line

Draft

May 2019

Time Line:

1. Late 1800s land (part of North East ¼ of Section 26 plan 552C) granted to Esquimalt and Nanaimo Railway Company
2. Early 20th century up to 1940s a logging company (owner of land) created a *water retention structure* (dugout and lateral dam/berm) – this is claimed by Audet **but not confirmed**. Logging of watershed undertaken by landowner with the creation of Iron River Road.
3. 1997 – Comox-Strathcona Regional District completed sensitive habitat atlas
4. 1998 – habitat and riparian assessments of stream completed by Oyster Bay Streamkeepers
5. 1999 – in stream fish habitat construction including **artificial beaver dam** by Oyster Bay Streamkeepers
6. 2000 (?) – land (Part of the North East ¼ of Section 26 plan 552C) purchased by Oyster Bay Investments Ltd
7. 2000 (?) – logging of land and construction of gravel pit by Oyster Bay Investments Ltd
8. 2005 – stream/wetland covenant signed by Oyster Bay Investments Ltd
9. 2006 – gravel pit filled
10. 2008 – restoration plan undertaken to address leaks from wetland by Oyster Bay Investments Ltd
11. 2008 – subdivision approved – Lot 1 Section 26 created
12. 2009 – Mr Audet purchased property
13. 2012 – downstream neighbour (Edge/Osler) makes changes to drainage within Iron River Road right of way to address flooding on their property. No work on artificial beaver dam.

14. 2013 – Mr Audet refuses access to his property to remove **artificial beaver dam**.
15. 2019 – Mr Audet submits his letter to government regarding public safety related to his concerns associated with failure of the *lateral dam/berm* caused by the *modern rock spillway* (artificial beaver dam) holding water to the top of the *lateral berm*.

MAYFLY CREEK – ANDRE AUDET'S CONCERNS

MEETING AGENDA

Location: Strathcona Regional District Office in Campbell River

Date: May 16th 2019

Time: 10:30 am start (2 hours)

Attendees: Strathcona Regional District – John Neill (Planner)

Federal Department of Fisheries and Oceans – Stacey Larsen (Community Advisor)

Provincial Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Mike Stalberg (Manager Resource Stewardship)

John Baldwin (Assistant Water Manager)

Agenda items:

1. Introductions – chaired by John Baldwin
2. Mr Audet's February 2019 letter
3. FLNRORD findings related to activity in and about Mayfly Creek on Mr Audet's property
4. DFO's position
5. SRD's position
6. FLNRORD's position
7. Next steps/actions

Aniko Nelson

From: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Sent: May 28, 2019 3:24 PM
To: Aniko Nelson
Subject: FW: May 16th 2019 Mayfly Creek meeting follow up
Attachments: 2019-05-14 time line Mayfly Creek.docx

Aniko – can we discuss SRD’s covenant on Mr Ardet’s property? I can phone you during the morning of Thursday May 30 – are you available at this time? – John B

From: Baldwin, John FLNR:EX
Sent: Monday, May 27, 2019 4:25 PM
To: 'Stacey Larsen (Stacey.Larsen@dfo-mpo.gc.ca)'; 'John Neill (jneill@srd.ca)'; Stalberg, Mike X FLNR:EX
Cc: Lapcevic, Pat FLNR:EX
Subject: RE: May 16th 2019 Mayfly Creek meeting follow up

This is a follow up to our meeting held May 16 2019 regarding Mr Audet’s concern associated with Mayfly Creek.

We reviewed Mr Audet’s package dated Feb 2019, and the documents related to this issue that I e-mailed on May 14th 2019.

I have attached an updated time line.

Preliminary assessment by provincial staff indicates that there is no evidence of the construction of the “lateral dam or berm ” in the early 20th century by the then landowner, a one metre high rock dam (artificial beaver dam) was constructed in Mayfly Creek in 1999 to replace an old beaver dam, there is an old beaver dam on top of the rock dam (approx. 0.5 m high – total high of 1.5 metres) at this time, water is stored (estimated 14 500 cubic metres) in the wetland behind the rock dam during the winter causing a high water table on Mr Audet’s property, the wetland water level drops rapidly during the spring period and that the physical evidence indicates failure of the dam would not result in a catastrophic event.

Oyster Bay Streamkeepers constructed the rock dam (artificial beaver dam)with support from both BC Province (Fisheries Renewal BC) and Federal DFO with landowner agreement. There is no evidence that the rock dam was authorized under the then BC Water Act or the 2016 Water Sustainability Act (WSA). This water storage structure is a dam as defined under the WSA and will be required to be removed or authorized (licenced under WSA). The WSA Dam Safety Regulation does apply to this rock dam and the current consequence classification is significant.

Action Item 1: All agencies are to confirm if removal of the artificial beaver dam is supported.

The conservation covenants held by BC Province and Strathcona Regional District (SRD) associated with the wetland on Mr Audet’s property are current. The new BC WSA now identifies a wetland as a stream and offers protection of the wetland under this Act.

Action item 2: Both covenant holders are to confirm if abandoning of the covenants is supported.

Options were reviewed, and the following were identified:

1. Request that landowner (Mr Audet) obtain a water licence under WSA. Covenants remain but permission will be given to maintain and operate the dam within the covenant area. No govt. financial support
2. Give permission (work in and about stream under WSA and work in covenant area) to landowner (Mr Audet) to remove artificial beaver dam. The Covenants will not be abandoned/removed/reduced. No govt. financial support.
3. As per option 2 with covenants abandoned.
4. As per option 2 with govt. financial support. Source of any funds is unknown.
5. Govt. removes artificial beaver dam. Access permission to Mr Audet's property will be required. Source of any funds is unknown.

A **without prejudice basis meeting** with Mr Audet and the three agencies may be a first step to obtaining a complete understanding of Mr Audet's concerns, understanding of facts and Mr Audet's objectives for the quiet enjoyment of his property.

Action item 3: All agencies to confirm possible financial support

The province will be responding to Mr Audet's Feb 2019 letter, and a firm understanding (note action items) with the agencies is requested to enable a response to be completed. **A response to this e-mail by June 28th 2019 would be appreciated.**

Give me a call here in Nanaimo at 250-751-3179 if you require clarification.

John Baldwin
Assistant Water Manager

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Draft

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17. 2016 - New Water Sustainability Act (WSA) proclaimed that adds WETLAND in the definition of a stream.
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Hi Aniko – an item we should discuss before the end of June.

John

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17. 2016 - New Water Sustainability Act (WSA) proclaimed that adds WETLAND in the definition of a stream.
18. 2019 – Mr Audet submits his letter to government regarding public safety related to his concerns associated with failure of the *lateral dam/berm* caused by the *modern rock spillway* (artificial beaver dam) holding water to the top of the *lateral berm*.

Audet
V9N9K1



Attenti Michele Babchuk - Chair
S.R.D. Corporate Office
990 Cedar St. - 301
Campbell River, B.C.
V9W-7Z8



FYI

AT

Andre J. Audet P. Eng
2580 Crystal Drive
Courtenay, B.C.
V9N9K1

Tel: 250-338-8809
Email: andre@audet

Memo To: Property Assessment Appeal Board
From: Andre J. Audet
Subject: Additional documentation regarding Appeal No. 2019-06-00023
Date: May 28, 2019

Regarding the principal issue negatively affecting property value, being that of a water storage dam on the property, I attach correspondence with the Attorney General of British Columbia and John Baldwin, Dam Safety Officer with the Provincial Ministry of Forests, Lands, Natural Resources Operations and Rural Development.

The writer, and landowner of the subject property, has attempted to attract attention to what he, as a Professional Engineer, considers to be a significant risk to life and property created by a water retention pond, through repeated correspondence over a period of seven years with the three levels of senior government involved in creating the hazard. It is to be noted here that none acknowledged reception of written advisories without repeated and insistent demands for it.

Note that Mr. Baldwin, letter attached, responded on behalf of the Ministry only after persistent demands for it, and nothing was received from the responsible Minister in spite of repeated requests specifically directed to him. Moreover, the Regional District, which had lobbied strongly for the creation of the wetland, the dam system and the covenant that protects it, and to which it is a specified beneficiary, has never acknowledged reception of the numerous letters and reports sent to it by the writer. Further, the Federal Ministry of Fisheries and Oceans has ignored direct requests for confirmation of reception of both reports sent to it by the writer.

Accordingly, the writer considers the disrespectful manner in which Government has dealt with this issue to be something of an enigma. The appearance of 'stone-walling' involving three levels of government suggests a troubling complexity of hidden agendas catering to special interest groups at the expense of landowners.

For the purpose of this appeal, the property value (free market) is impacted by the following:

- The property includes a dam that the writer holds to be of such significance as to qualify as a "Regulated Dam" under recently enacted laws and regulations dealing with such.
- Responsibility for compliance with regulations governing such dams falls on the dam owner.
- Currently, the dam owner is not identified, and could be deemed to be the property owner under statute.
- The dam is currently showing signs of failure, and no responsible entity is identified.

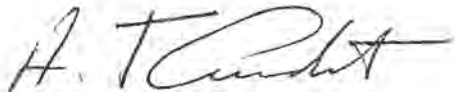
-Should the dam, its buttressed earthen supports, and its infilled saturated sediments liquify due to a seismic shock, up to one million tonnes of flowing debris would threaten roads, the traveling public, homes and other infrastructure.

-Insurance covering the consequences of dam failure is not available to the 'owner' at any price.

-As of this date, Federal, Provincial, and Municipal Authorities, though aware of the issue, have taken no action regarding it's resolution.

As things stand, because of uncertainties relating to issues associated with dam management, consequences of dam failure, and liabilities relating thereto, it is clear that the financial burden of such would eclipse any value the property might otherwise have on the real estate market. Accordingly, assessment for taxation purposes should reflect the fact that this property is effectively worthless until and unless the stated issues are resolved.

Regards,



Andre J. Audet P. Eng

cc.

The Honourable Doug Donaldson
The Honourable Jonathan Wilkinson
Mr. John Baldwin
BC Assessment

Andre J. Audet P Eng
2580 Crystal Drive
Courtenay B.C
V9N9K1

April 12th 2019

The Honourable David Eby
Attorney General of B.C.
Room 232 Parliament Buildings
Victoria, B.C. V8V 1X4
Canada,

Sir,

I refer to the attached note, sent by e-mail, in which you dismiss concerns addressed to you in my letter and attached report of February 27, 2019, as being limited to the sole privity of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development. They are not! Concerns indicated in that reports are largely predicated on liability resulting from the dam referred to in your note. As the Province's ranking lawyer, you will no doubt be reasonably aware that a potential for dam failure, where lives are at stake, carries significant liability. It is for that reason that I have advised you, and now emphasize, that the stated hazards carry elevated liability where failure to act in a timely manner results in catastrophe. Clearly, my warnings with respect to these things have been ignored since first raised in 2012. You will appreciate that, while I maintain that no liability is incumbent on the land owner for reasons outlined in my report, it remains the land owner's responsibility to ensure that those risks be mitigated by reporting them to those responsible, and who may be unaware of the situation, or who may deliberately avoid knowing. My report to you, which partially satisfies those obligations, requires that there be formal acknowledgment of awareness and reception in order that my legal status be fully protected.

Note that I received no acknowledgment from any government official copied in my letter report dated November 16, 2017 other than an undated email from Ms. Larsen in which potential hazards and associated issues of liability are neither stated nor addressed. That notwithstanding, since Larsen has no official capacity in government, any initiative she might have taken would have had little value. Moreover, it is significant that none of the Government officials addressed by me, and those who would have been copied in Ms. Larsen's correspondence, saw fit to respond.

The said report and covering letter, addressed to you, Mr. Donaldson, and several others, specifically requests an official response on government letterhead. However, I've not received that from you, or any of the others. Further, I consider the casual email received from you, on my second request for a response, to be a disrespectful snub. Therefore, I again request that you formally acknowledge reception of my report, which addresses concerns relating to stability, ownership and liability associated with the dam in question.

Aside from motivation due to personal integrity, and concerns due to liability as the registered land owner, I also owe a fiduciary responsibility as a professional engineer under the Code of Ethics.

section of the Engineering Act with respect to public hazards wherever they may be recognized. In compliance with this, I need to know that you have received, and have *taken notice* of the concerns I've expressed by a formal acknowledgment thereof. A casual email drafted by a low ranking filing clerk is not acceptable.

In anticipation that you (collectively) will again refuse such acknowledgment, this letter has been witnessed and the posting of it will have been attested to, and duly notarized by the time you receive it. None the less, be advised that obtaining official acknowledgement from your offices, and those of Mr. Donaldson, remains a priority to be pursued with whatever creative doggedness it may demand.

Yours truly

Andre J. Auster P. Eng.

cc: The Honourable Doug Donaldson

Witnessed By

C. Dawson

Name



Signature

16/04/19

Date

R. Christensen

Name



Signature

16/04/19

Date



MAY 01 2019

Mr. Andre J. Audet P.Eng
2580 Crystal Drive
Courtenay BC V9N 9K1

Dear Mr. Audet:

Thank you for your letter of April 17, 2019. Your recent letter as well as your March 1, 2019 letter with enclosed "Report on Mayfly Creek Wetlands" relate to a dam on your property near Oyster Bay.

As noted in my March 28, 2019 email to you, the issues you have raised relate to matters under the administration of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRO). In his March 18, 2019 correspondence to you, Mr. John Baldwin, Dam Safety Officer, indicated that the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRO) is looking into the matter described in your correspondence. In view of this, any additional correspondence regarding this matter should be sent to FLNRO.

As FLNRO is looking into this matter, there will be no further response from my office.

Yours truly,

David Eby, QC
Attorney General

cc: The Honourable Doug Donaldson

Subject: Re: Mayfly Creek

From: andre@audet.ws

Date: 2019-03-13, 1:35 p.m.

To: "Baldwin, John FLNR:EX" <John.Baldwin@gov.bc.ca>

CC: doug.donaldson.MLA@leg.bc.ca, "Eby.MLA, David LASS:EX" <david.eby.MLA@leg.bc.ca>, scott.morgan@gov.bc.ca

BCC: Martin Reynolds <mjr1001@gmail.com>

Dear Mr. Baldwin,

As per your earlier telephone message, I repeatedly tried to reach you late last week at the number provided but you would not pickup, and the message I left was ignored.

After seeking legal advice on what might be the best way forward on this matter, I am advised that, given the apparent belligerence displayed by all three levels of government (I've not received confirmation of reception from ANY of the addressees), there should be no verbal communication between myself and government personnel at any level. Consequently, I invite you to present any question you may have, with respect to this issue, in writing, by mail, and to the address shown on my cover letter. I'll do my best to respond as quickly as possible, but, due to liability considerations, nothing beyond the scope of my submitted report will be entertained. In this regard, I'm advised that I may not engage in discussion relating to any matter that might be construed as being, or leading to, advise on the resolution of any problem, or aspect relating thereto, nor am I allowed to contribute, make statements, or act in any way that might be interpreted by the courts as an 'act of ownership' in any element of the issues at play.

Regrettably, it seems that I face troubling legal consequences if prudent defensive measures are not taken proactively in what I'm told amounts to a mine-field of problems that some would like raised as a Supreme Court Challenge. I therefore choose to act with an abundance of caution. Accordingly, I ask that you refrain from further email or telephone communication, and restrict all inquiries to written correspondence through the post. I regret that these measures are necessary and the inconvenience they may cause you. Unfortunately, a past history of heavy-handed *predatory* behaviour by governments and their agencies makes this a necessity I would much rather have avoided.

Regards,

André J. Audet P.Eng

-03-13 9:05 a.m., Baldwin, John FLNR:EX wrote:

Andre – can you give me a call on Friday March 15th here in Nanaimo at 250-751-3179 regarding your concerns related to Mayfly Creek.

Thanks John Baldwin,

FLNRORD Dam Safety Officer

File: 76800-30/22-160

March 18, 2019

Andre Audet
2580 Crystal Drive
Courtenay, British Columbia
V9N 9K1

Dear Andre Audet,

(Re: **Mayfly Creek Wetlands**)

I refer to your letter of February 27, 2019 and your Report on Mayfly Creek Wetlands. I have been asked to acknowledge receipt of your letter on behalf of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

We are gathering information regarding the history of the restrictive covenants and works (rock spillway and berm) located on your property (Lot 1, Section 26, Township 4, Comox District, Plan V1P87399), which works are the subject of your report. The presence of the works appear to pre-date your acquisition of the property in 2009.

If we have any questions regarding that report, we may follow up with you in due course. Also, we hope you grant access to your property to an independent professional engineer with qualifications in dam safety analysis.

Yours truly,



John Baldwin
Dam Safety Officer

pc: John Neill - Strathcona Regional District, Campbell River
Stacey Larsen - Fisheries and Oceans Canada, Community Advisor, Campbell River
Alycia Traas - BC Ministry of Transportation and Infrastructure, District Manager,
Campbell River
Jenna Cragg - Ministry of Forests, Lands, Natural Resource Operations and Rural
Development, Regional Operations Division, Ecosystems Biologist, Nanaimo

Page 1 of 1

Edith Watson

From: Tom Yates
Sent: January 22, 2021 11:31 AM
To: Edith Watson
Subject: FW: Correspondence re Mayfly Creek
Attachments: 20190605 Audet to Chair re_Mayfly Creek Wetlands.pdf

From: Tom Yates
Sent: June 7, 2019 9:02 AM
To: SRD Board Chair <schair@strathconard.ca>
Cc: David Leitch <DLeitch@srd.ca>
Subject: Correspondence re Mayfly Creek

Good morning, Michele.

Attached correspondence received for your attention.

Regards,



Tom Yates
Corporate Services Manager
Tel: 250.830.6704
Toll free: 1.877.830.2990

Audet
V9N9K1



Attenti Michele Babchuk - Chair
S.R.D. Corporate Office
990 Cedar St. - 301
Campbell River, B.C.
V9W-7Z8



FYI

AT

Andre J. Audet P. Eng
2580 Crystal Drive
Courtenay, B.C.
V9N9K1

Tel:250-338-8809
Email: andre@audet

Memo To: Property Assessment Appeal Board
From: Andre J. Audet
Subject: Additional documentation regarding Appeal No. 2019-06-00023
Date: May 28, 2019

Regarding the principal issue negatively affecting property value, being that of a water storage dam on the property, I attach correspondence with the Attorney General of British Columbia and John Baldwin, Dam Safety Officer with the Provincial Ministry of Forests, Lands, Natural Resources Operations and Rural Development.

The writer, and landowner of the subject property, has attempted to attract attention to what he, as a Professional Engineer, considers to be a significant risk to life and property created by a water retention pond, through repeated correspondence over a period of seven years with the three levels of senior government involved in creating the hazard. It is to be noted here that none acknowledged reception of written advisories without repeated and insistent demands for it.

Note that Mr. Baldwin, letter attached, responded on behalf of the Ministry only after persistent demands for it, and nothing was received from the responsible Minister in spite of repeated requests specifically directed to him. Moreover, the Regional District, which had lobbied strongly for the creation of the wetland, the dam system and the covenant that protects it, and to which it is a specified beneficiary, has never acknowledged reception of the numerous letters and reports sent to it by the writer. Further, the Federal Ministry of Fisheries and Oceans has ignored direct requests for confirmation of reception of both reports sent to it by the writer.

Accordingly, the writer considers the disrespectful manner in which Government has dealt with this issue to be something of an enigma. The appearance of 'stone-walling' involving three levels of government suggests a troubling complexity of hidden agendas catering to special interest groups at the expense of landowners.

For the purpose of this appeal, the property value (free market) is impacted by the following:

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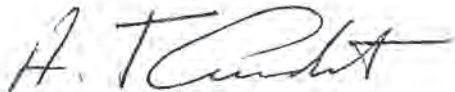
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As things stand, because of uncertainties relating to issues associated with dam management, consequences of dam failure, and liabilities relating thereto, it is clear that the financial burden of such would eclipse any value the property might otherwise have on the real estate market. Accordingly, assessment for taxation purposes should reflect the fact that this property is effectively worthless until and unless the stated issues are resolved.

Regards,



Andre J. Audet P. Eng

cc.

The Honourable Doug Donaldson
The Honourable Jonathan Wilkinson
Mr. John Baldwin
BC Assessment

Andre J. Audet P Eng
2580 Crystal Drive
Courtenay B.C
V9N9K1

April 12th 2019

The Honourable David Eby
Attorney General of B.C.
Room 232 Parliament Buildings
Victoria, B.C. V8V 1X4
Canada,

Sir,

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Yours truly

Andre J. Auster P. Eng.

cc: The Honourable Doug Donaldson

Witnessed By

C. Dawson

Name



Signature

16/04/19

Date

R. Christensen

Name



Signature

16/04/19

Date



MAY 01 2019

Mr. Andre J. Audet P.Eng
2580 Crystal Drive
Courtenay BC V9N 9K1

Dear Mr. Audet:

Thank you for your letter of April 17, 2019. Your recent letter as well as your March 1, 2019 letter with enclosed "Report on Mayfly Creek Wetlands" relate to a dam on your property near Oyster Bay.

As noted in my March 28, 2019 email to you, the issues you have raised relate to matters under the administration of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRO). In his March 18, 2019 correspondence to you, Mr. John Baldwin, Dam Safety Officer, indicated that the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRO) is looking into the matter described in your correspondence. In view of this, any additional correspondence regarding this matter should be sent to FLNRO.

As FLNRO is looking into this matter, there will be no further response from my office.

Yours truly,

David Eby, QC
Attorney General

cc: The Honourable Doug Donaldson

Subject: Re: Mayfly Creek

From: andre@audet.ws

Date: 2019-03-13, 1:35 p.m.

To: "Baldwin, John FLNR:EX" <John.Baldwin@gov.bc.ca>

CC: doug.donaldson.MLA@leg.bc.ca, "Eby.MLA, David LASS:EX" <david.eby.MLA@leg.bc.ca>, scott.morgan@gov.bc.ca

BCC: Martin Reynolds <mjr1001@gmail.com>

Dear Mr. Baldwin,

As per your earlier telephone message, I repeatedly tried to reach you late last week at the number provided but you would not pickup, and the message I left was ignored.

After seeking legal advice on what might be the best way forward on this matter, I am advised that, given the apparent belligerence displayed by all three levels of government (I've not received confirmation of reception from ANY of the addressees), there should be no verbal communication between myself and government personnel at any level. Consequently, I invite you to present any question you may have, with respect to this issue, in writing, by mail, and to the address shown on my cover letter. I'll do my best to respond as quickly as possible, but, due to liability considerations, nothing beyond the scope of my submitted report will be entertained. In this regard, I'm advised that I may not engage in discussion relating to any matter that might be construed as being, or leading to, advise on the resolution of any problem, or aspect relating thereto, nor am I allowed to contribute, make statements, or act in any way that might be interpreted by the courts as an 'act of ownership' in any element of the issues at play.

Regrettably, it seems that I face troubling legal consequences if prudent defensive measures are not taken proactively in what I'm told amounts to a mine-field of problems that some would like raised as a Supreme Court Challenge. I therefore choose to act with an abundance of caution. Accordingly, I ask that you refrain from further email or telephone communication, and restrict all inquiries to written correspondence through the post. I regret that these measures are necessary and the inconvenience they may cause you. Unfortunately, a past history of heavy-handed *predatory* behaviour by governments and their agencies makes this a necessity I would much rather have avoided.

Regards,

André J. Audet P.Eng

-03-13 9:05 a.m., Baldwin, John FLNR:EX wrote:

Andre – can you give me a call on Friday March 15th here in Nanaimo at 250-751-3179 regarding your concerns related to Mayfly Creek.

Thanks John Baldwin,

FLNRORD Dam Safety Officer

File: 76800-30/22-160

March 18, 2019

Andre Audet
2580 Crystal Drive
Courtenay, British Columbia
V9N 9K1

Dear Andre Audet,

(Re: **Mayfly Creek Wetlands**)

I refer to your letter of February 27, 2019 and your Report on Mayfly Creek Wetlands. I have been asked to acknowledge receipt of your letter on behalf of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

We are gathering information regarding the history of the restrictive covenants and works (rock spillway and berm) located on your property (Lot 1, Section 26, Township 4, Comox District, Plan V1P87399), which works are the subject of your report. The presence of the works appear to pre-date your acquisition of the property in 2009.

If we have any questions regarding that report, we may follow up with you in due course. Also, we hope you grant access to your property to an independent professional engineer with qualifications in dam safety analysis.

Yours truly,



John Baldwin
Dam Safety Officer

pc: John Neill - Strathcona Regional District, Campbell River
Stacey Larsen - Fisheries and Oceans Canada, Community Advisor, Campbell River
Alycia Traas - BC Ministry of Transportation and Infrastructure, District Manager,
Campbell River
Jenna Cragg - Ministry of Forests, Lands, Natural Resource Operations and Rural
Development, Regional Operations Division, Ecosystems Biologist, Nanaimo

Aniko Nelson

From: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Sent: July 4, 2019 9:17 AM
To: Aniko Nelson
Cc: Lapcevic, Pat FLNR:EX
Subject: RE: May 16th 2019 Mayfly Creek meeting follow up

Aniko – this is a follow up to my May 28th 2019 e-mail regarding Mr Audet’s property on Mayfly Creek.

I have not received a reply from you regarding SRD’s position on the SRD covenant on Mr Audet’s property.

I will be proposing that ALL parties (SRD, DFO and FLNRORD) meet with Mr Audet and his legal council **without prejudice** to review Mr Audet’s concerns regarding high water and covenants.

Is the SRD prepared to meet with Mr Audet about this matter?

John Baldwin
Assistant Water Manager

From: Baldwin, John FLNR:EX
Sent: Tuesday, May 28, 2019 3:24 PM
To: Aniko Nelson (anelson@srd.ca)
Subject: FW: May 16th 2019 Mayfly Creek meeting follow up

Aniko – can we discuss SRD’s covenant on Mr Ardet’s property? I can phone you during the morning of Thursday May 30 – are you available at this time? – John B

From: Baldwin, John FLNR:EX
Sent: Monday, May 27, 2019 4:25 PM
To: 'Stacey Larsen (Stacey.Larsen@dfo-mpo.gc.ca)'; 'John Neill (jneill@srd.ca)'; Stalberg, Mike X FLNR:EX
Cc: Lapcevic, Pat FLNR:EX
Subject: RE: May 16th 2019 Mayfly Creek meeting follow up

This is a follow up to our meeting held May 16 2019 regarding Mr Audet’s concern associated with Mayfly Creek.

We reviewed Mr Audet’s package dated Feb 2019, and the documents related to this issue that I e-mailed on May 14th 2019.

I have attached an updated time line.

Preliminary assessment by provincial staff indicates that there is no evidence of the construction of the “lateral dam or berm ” in the early 20th century by the then landowner, a one metre high rock dam (artificial beaver dam) was constructed in Mayfly Creek in 1999 to replace an old beaver dam, there is an old beaver dam on top of the rock dam (approx. 0.5 m high – total high of 1.5 metres) at this time, water is stored (estimated 14 500 cubic metres) in the wetland behind the rock dam during the winter causing a high water table on Mr Audet’s property, the wetland water level drops rapidly during the spring period and that the physical evidence indicates failure of the dam would not result in a catastrophic event.

Oyster Bay Streamkeepers constructed the rock dam (artificial beaver dam) with support from both BC Province (Fisheries Renewal BC) and Federal DFO with landowner agreement. There is no evidence that the rock dam was authorized under the then BC Water Act or the 2016 Water Sustainability Act (WSA). This water storage structure is a dam as defined under the WSA and will be required to be removed or authorized (licensed under WSA). The WSA Dam Safety Regulation does apply to this rock dam and the current consequence classification is significant.

Action Item 1: All agencies are to confirm if removal of the artificial beaver dam is supported.

The conservation covenants held by BC Province and Strathcona Regional District (SRD) associated with the wetland on Mr Audet's property are current. The new BC WSA now identifies a wetland as a stream and offers protection of the wetland under this Act.

Action item 2: Both covenant holders are to confirm if abandoning of the covenants is supported.

Options were reviewed, and the following were identified:

1. Request that landowner (Mr Audet) obtain a water licence under WSA. Covenants remain but permission will be given to maintain and operate the dam within the covenant area. No govt. financial support
2. Give permission (work in and about stream under WSA and work in covenant area) to landowner (Mr Audet) to remove artificial beaver dam. The Covenants will not be abandoned/removed/reduced. No govt. financial support.
3. As per option 2 with covenants abandoned.
4. As per option 2 with govt. financial support. Source of any funds is unknown.
5. Govt. removes artificial beaver dam. Access permission to Mr Audet's property will be required. Source of any funds is unknown.

A **without prejudice basis meeting** with Mr Audet and the three agencies may be a first step to obtaining a complete understanding of Mr Audet's concerns, understanding of facts and Mr Audet's objectives for the quiet enjoyment of his property.

Action item 3: All agencies to confirm possible financial support

The province will be responding to Mr Audet's Feb 2019 letter, and a firm understanding (note action items) with the agencies is requested to enable a response to be completed. **A response to this e-mail by June 28th 2019 would be appreciated.**

Give me a call here in Nanaimo at 250-751-3179 if you require clarification.

John Baldwin
Assistant Water Manager

From: Baldwin, John FLNR:EX
Sent: Tuesday, May 14, 2019 2:31 PM
To: Stacey Larsen (Stacey.Larsen@dfo-mpo.gc.ca); John Neill (jneill@srd.ca)
Subject: May 16th 2019 Mayfly Creek meeting

John and Stacey – this is to confirm that the Thursday May 16th meeting in Campbell River is still scheduled.

Attached are:

- 1.draft meeting agenda,
2. draft time line of activities associated with Mr Audet's property,
4. sketch of Mr Audet's property
5. copy of 1938 air photo

Aniko Nelson

From: John Neill
Sent: July 22, 2019 2:38 PM
To: Aniko Nelson
Subject: FW: LiDAR data request for Mayfly dam assessment

Hi Aniko – are you able to access the LiDAR layer for John Baldwin? I don't have access to Douglas' directories.

Thanks!

John

From: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Sent: Monday, July 22, 2019 14:00
To: John Neill <JNeill@srd.ca>
Cc: Bartle, Hardy T FLNR:EX <Hardy.Bartle@gov.bc.ca>; Lapcevic, Pat FLNR:EX <Pat.Lapcevic@gov.bc.ca>
Subject: RE: LiDAR data request for Mayfly dam assessment

John – I was hoping to access the LiDAR data not just a one off picture – is this possible? We are looking for indications of major man related land changes (ie construction of the wetland and berm on his property) as claimed by Mr Audet-John

From: John Neill [<mailto:JNeill@srd.ca>]
Sent: Monday, July 22, 2019 12:53 PM
To: Baldwin, John FLNR:EX
Subject: RE: LiDAR data request for Mayfly dam assessment

Hi John,

Will this suit the purpose?

Regards,

John

From: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Sent: Thursday, July 18, 2019 08:44
To: John Neill <JNeill@srd.ca>
Cc: Lapcevic, Pat FLNR:EX <Pat.Lapcevic@gov.bc.ca>; Bartle, Hardy T FLNR:EX <Hardy.Bartle@gov.bc.ca>
Subject: FW: LiDAR data request for Mayfly dam assessment

John – This office is still working on the Mayfly Creek/Audet file, and would like to have access to SRD's LiDAR information for the Mayfly Creek area- is this possible?

Give me a call at 250-756-3179 here in Nanaimo if you require more info.

Thanks John B

From: Bartle, Hardy T FLNR:EX
Sent: Wednesday, July 17, 2019 11:13 AM
To: Baldwin, John FLNR:EX
Cc: Simpson, Forrest FLNR:EX
Subject: LiDAR data request for Mayfly dam assessment

Hello John. As discussed yesterday please request las files from your contacts within local government.

I suggest we ask for a large area of interest as illustrated within:

We will use the data to create a georeferenced map to support field work, interrelate historical air photographs to field work and search:

1. The area for paleo streams that may have once flowed towards the wetland. Such streams, if discernable within the LiDAR, may explain the fan like shape of the terrain the wetland sits upon.
2. For evidence of paleo terraces and beach ridges that should be within the area. Paleo terraces and beach fronts have been documented at similar elevations upon Quadra Island via LiDAR, trenching, radio carbon dating, etc.
3. For evidence of modern anthropogenic (human) disturbances within and around the wetlands. The screen shot you left with me is strongly suggestive of modern gravel pits, drainage ditches, etc. Manipulating the raw data in Global Mapper may reveal finer details of human disturbance in the area.

Forrest- if the local government agrees to share their LiDAR data with us and FLNRORD continues to pursue this project we have another LiDAR/Global Mapper/AutoCAD/EXCEL project for you to work on.

Aniko Nelson

From: John Neill
Sent: August 1, 2019 2:31 PM
To: Bartle, Hardy T FLNR:EX
Subject: RE: LiDAR data request for Mayfly dam assessment

Hardy – the LiDAR was captured during the summers of 2014 and 2015.

Regards,

John

From: Bartle, Hardy T FLNR:EX <Hardy.Bartle@gov.bc.ca>
Sent: Thursday, August 1, 2019 13:25
To: John Neill <JNeill@srd.ca>
Cc: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Subject: FW: LiDAR data request for Mayfly dam assessment

Thank you that does help. Can you tell us when (what date) the LiDAR was flown?

It would good to get the raw data from you but I gather that both of our LiDAR specialists are not available for work at this time!

From: Baldwin, John FLNR:EX
Sent: Thursday, August 1, 2019 12:50 PM
To: Bartle, Hardy T FLNR:EX
Subject: FW: LiDAR data request for Mayfly dam assessment

Hardy – latest LiDAR map from SRD – John B

From: John Neill <JNeill@srd.ca>
Sent: August 1, 2019 12:41 PM
To: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Subject: RE: LiDAR data request for Mayfly dam assessment

Hi John,

I'm afraid no luck so far! Will the attached help? I had to zoom in a little to get the contour layer to activate.

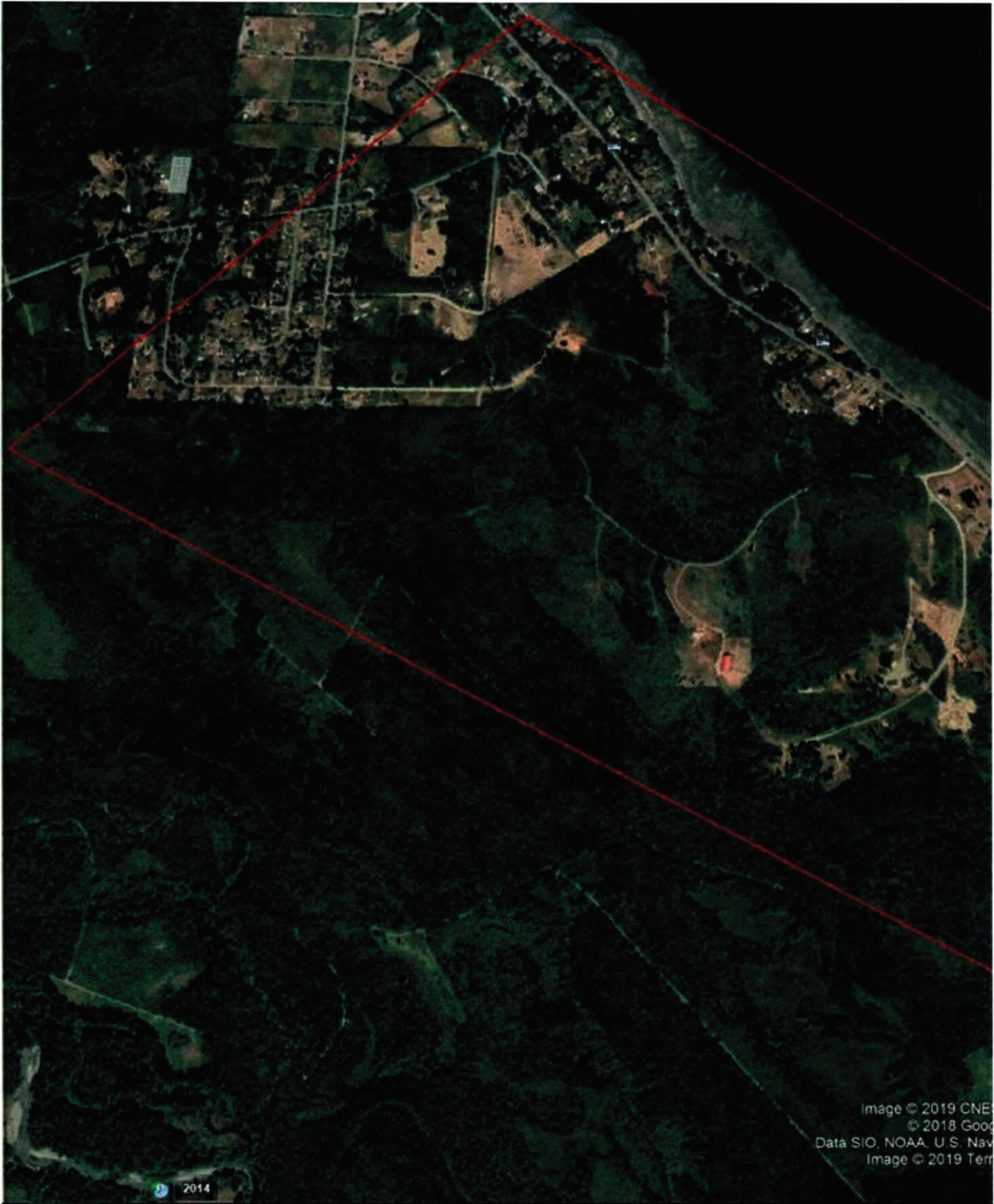
Regards,

John

From: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Sent: Wednesday, July 31, 2019 11:12
To: John Neill <JNeill@srd.ca>
Cc: Bartle, Hardy T FLNR:EX <Hardy.Bartle@gov.bc.ca>
Subject: RE: LiDAR data request for Mayfly dam assessment

John – any luck with accessing the Mayfly LiDAR data?

A larger LiDAR map covering more of the area round Mayfly Creek and Mr. Audet's property would be good. Is this possible?



Is SRD prepared to meet with Mr Audet to review his concerns?

John B

From: John Neill <JNeill@srd.ca>
Sent: July 24, 2019 9:16 AM
To: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Subject: RE: LiDAR data request for Mayfly dam assessment

Hi John – I'm attempting to get the LiDAR layer for you. Our GIS Analyst is on sabbatical so I've asked our manager if she can access his files.

Regards,

John

From: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Sent: Thursday, July 18, 2019 08:44
To: John Neill <JNeill@srd.ca>
Cc: Lapcevic, Pat FLNR:EX <Pat.Lapcevic@gov.bc.ca>; Bartle, Hardy T FLNR:EX <Hardy.Bartle@gov.bc.ca>
Subject: FW: LiDAR data request for Mayfly dam assessment

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Sent: Wednesday, July 17, 2019 11:13 AM
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Cc: Simpson, Forrest FLNR:EX
Subject: LiDAR data request for Mayfly dam assessment

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I suggest we ask for a large area of interest as illustrated within:

We will use the data to create a georeferenced map to support field work, interrelate historical air photographs to field work and search:

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Forrest- if the local government agrees to share their LiDAR data with us and FLNRORD continues to pursue this project we have another LiDAR/Global Mapper/AutoCAD/EXCEL project for you to work on.

Aniko Nelson

From: Ralda Hansen
Sent: August 26, 2019 4:22 PM
To: John.Baldwin@gov.bc.ca
Cc: John Neill
Subject: Beaver dams and LiDAR data for Mayfly Creek and for PID 028-078-161

Good afternoon John Baldwin.

I am responding to your enquiries to John Neill.

LiDAR imagery

SRD is certainly willing to make that imagery available. In the absence of the SRD GIS Analyst (who is on sabbatical leave), we have a consultant attending to GIS enquiries. I shall request the consultant to prepare a map with LiDAR data for the Mayfly Creek area, highlight the subject property (PID 028-078-161) and if possible, have that available by the end of next week – by September 6th

Meeting with Mr. Audet

Please wait until September 9 and further into September, to hear from Senior Manager, Community Services, Aniko Nelson – if Community Services staff can accommodate another follow-up meeting in this regard. When Ms. Nelson returns to the office on September 9, she will have a lot of emails to attend to and may not readily be able to respond to your enquiry on the same day as her return.

For your convenience, you can reach Ms. Nelson at anelson@srd.ca or 250.380 6708, with email being the preferred communication method for this particular enquiry.

If you have the covenant(s) readily available that pertains to Mr. Audet's property, please include that when you reach out to Ms. Nelson. In doing so, it can be reviewed and if she can accommodate another meeting, SRD will not be stepping into the meeting without knowledge of the contents of the covenants.

In 2005 when the covenants were established, SRD formed part of the previous Comox-Strathcona Regional District. We have dealt with previous beaver dam enquiries in this area and could not find justification for the covenants being established.

Legislative considerations

On staff level, SRD does not have the authority to waive covenant requirements. That will need to be considered by SRD Board.

As you are aware, the removal of beavers and their dams is governed under provincial legislation. Under Section 9 of the *Wildlife Act*, it is an offence to disturb, molest or destroy a beaver house, den or dam unless you are a licensed trapper under the *Act* and operating within the specified trapping season (October 15 – April 30). In addition, works in and about a stream, such as the removal or modification of a beaver dam, would require consideration of the *Water Act*. Depending on the situation, a permit under either the *Wildlife Act* or a Notification under the Water Regulations or both would be required. For permits and further information, please contact Front Counter BC: <http://www.frontcounterbc.gov.bc.ca/> Toll free phone: 1-877-855-3222 and e-mail at: FrontCounterBC@gov.bc.ca.

Kind regards,

Ralda



Ralda Hansen

Senior Manager, Community Services

301-990 Cedar Street, Campbell River, BC V9W 7Z8

e. rhansen@srd.ca | t. 250.830.6709 | f. 250.830.6710

Aniko Nelson

From: Ralda Hansen
Sent: August 26, 2019 4:38 PM
To: Mike Morellato
Cc: Aniko Nelson
Subject: Beaver dam and LiDAR data for Mayfly Creek and for PID 028-078-161
Attachments: Audet property.JPG

Good afternoon Mike

When time allows, will you please prepare:

- Shape files that SRD staff can forward to the inspector of dikes, with LiDAR data for the Mayfly Creek area?
- One smaller map, showing a zoomed in area of the above-mentioned LiDAR map, highlighting the subject property (PID 028-078-161) attached and the property adjacent to and south of it that accommodates a beaver dam?

The purpose of the last mentioned smaller map is to print it out to facilitate a potential meeting to discuss the impact the beaver dam has on the subject property (PID 028-078-161).

If this can be done by the end of September 6, 2019, that will work well.

Thank you,

Ralda Hansen

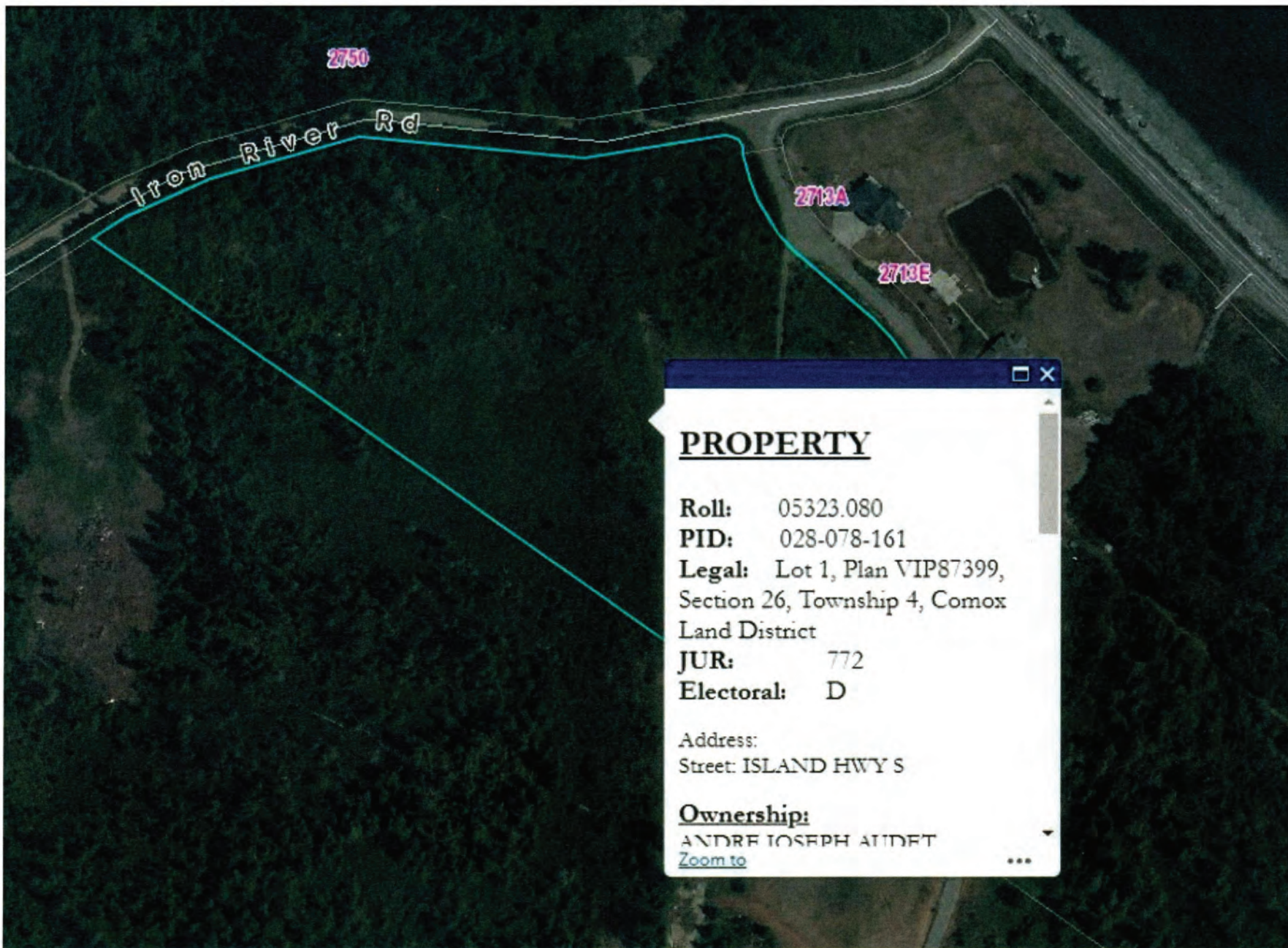


Ralda Hansen

Senior Manager, Community Services

301-990 Cedar Street, Campbell River, BC V9W 7Z8

e. rhansen@srd.ca | t. 250.830.6709 | f. 250.830.6710



PROPERTY

Roll: 05323.080
 PID: 028-078-161
 Legal: Lot 1, Plan VIP87399,
 Section 26, Township 4, Comox
 Land District
 JUR: 772
 Electoral: D

Address:
 Street: ISLAND HWY S

Ownership:
 ANDRE JOSEPH AUIDET
[Zoom to](#)

Aniko Nelson

From: Ralda Hansen
Sent: August 27, 2019 11:01 AM
To: Baldwin, John FLNR:EX
Cc: Aniko Nelson
Subject: RE: Beaver dams and LiDAR data for Mayfly Creek

Good morning John

Thank you for your prompt response to a matter that clearly needs action.

LiDAR imagery

I understood the situation correctly and yesterday requested LiDAR information for the Mayfly Creek area to be prepared for you. I shall make it available when SRD receives it.

Meeting with Audet

Thank you for explaining what information you have provided to SRD in the past. I was unaware of that and strived to be pro-active in getting everything together to facilitate discussion for a potential next meeting. I was also not aware that the 1999-beaver dam was man-made and not a product of beavers. It certainly complicates matters now to have a natural beaver dam constructed on top of the man-made one.

I understand your position and do not require any further clarification. I am not available when you are proposing to meet with SRD staff and therefore have to wait until Aniko Nelson is back – to determine her availability in mid-September.

Wishing you the very best for a successful outcome,

Ralda



Ralda Hansen
Senior Manager, Community Services
301-990 Cedar Street, Campbell River, BC V9W 7Z8
e. rhansen@srd.ca | t. 250.830.6709 | f. 250.830.6710

From: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Sent: Tuesday, August 27, 2019 9:54 AM
To: Ralda Hansen <RHansen@srd.ca>
Cc: Aniko Nelson <ANelson@srd.ca>; Lapcevic, Pat FLNR:EX <Pat.Lapcevic@gov.bc.ca>
Subject: RE: Beaver dams and LiDAR data for Mayfly Creek and for PID 028-078-161

Ralda – thanks for responding to my e-mail to John Neill regarding Mr Audet’s concerns at Mayfly Creek located south of Campbell River.

LiDAR imagery – John N has already supplied a **map** of the Audet property using the LiDAR info. I was hoping to have access to the LiDAR **data** so that a more in depth analysis can be made of the property ie cross sections of the land, size of reservoir etc

Meeting with Mr Audet- I have tried to contact (by e-mail and phone) Ms Nelson several times over the last month or so (since May) to confirm if the SRD will meet with MR Audet and to confirm in writing the SRD's position on the SRD covenant on MR Audet's property. I have not received a reply from the SRD. The agencies (Provincial FLNRORD, Federal govt. (DFO) and local govt (SRD - Ms Nelson attended)) involved in this file did hold a meeting on **May 16 2019** at which options were discussed to address Mr Audet's concerns (note attached copy of May 27th 2019 e-mail following the May 16th meeting). **Note action items.**

SRD covenant details were included in Mr Audet's letter (copy attached) dated Feb 27th 2019 sent to the SRD.

Legislative considerations – the issue is that a **manmade** (artificial) "beaver dam" was constructed in Mayfly Creek on Mr Audet's property in 1999 that is related to Mr Audet's flooding concerns. This artificial beaver dam is within the SRD's covenant area and therefore any work on this water storage structure will require permission from the SRD to work in the covenant area. There is a natural beaver dam on top of the artificial dam at this time. The reservoir is dry at this time. Any working in and about a stream requirements under the BC Water Sustainability Act (old Water Act) and beaver dam removal requirements under the BC Wildlife Act will be addressed.

This is an urgent matter if Mr Audet's concerns are to be addressed before the start of the rainy season in October. I am proposing a without prejudice meeting with Mr Audet and the involved agencies in Mid September 2019 to obtain a clear understanding of the facts and Mr Audet's water concern related to his property and Mayfly Creek.

Give me a call here in Nanaimo at 250-751-3179 if you require clarification.

John Baldwin
Dam Safety Officer

From: Ralda Hansen <RHansen@srd.ca>
Sent: August 26, 2019 4:22 PM
To: Baldwin, John FLNR:EX <John.Baldwin@gov.bc.ca>
Cc: John Neill <JNeill@srd.ca>
Subject: Beaver dams and LiDAR data for Mayfly Creek and for PID 028-078-161

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Meeting with Mr. Audet

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Legislative considerations

On staff level, SRD does not have the authority to waive covenant requirements. That will need to be considered by SRD Board.

As you are aware, the removal of beavers and their dams is governed under provincial legislation. Under Section 9 of the *Wildlife Act*, it is an offence to disturb, molest or destroy a beaver house, den or dam unless you are a licensed trapper under the *Act* and operating within the specified trapping season (October 15 – April 30). In addition, works in and about a stream, such as the removal or modification of a beaver dam, would require consideration of the *Water Act*. Depending on the situation, a permit under either the *Wildlife Act* or a Notification under the *Water Regulations* or both would be required. For permits and further information, please contact Front Counter BC: <http://www.frontcounterbc.gov.bc.ca/> Toll free phone: 1-877-855-3222 and e-mail at: FrontCounterBC@gov.bc.ca.

Kind regards,

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e. rhansen@srd.ca | t. 250.830.6709 | f. 250.830.6710

REPORT ON MAYFLY CREEK WETLANDS

WITH RESPECT TO B.C. REG. 40/2016

Regarding

HYDROLOGICAL CONDITIONS

AND

POTENTIAL CATASTROPHIC DAM FAILURE

AND

DAM OWNERSHIP

**Legal Property Description:
Lot 1, Plan VIP87399, Section 26,
Township 4; 028-078-161**

Prepared by:

Andre J. Audet P.Eng



February, 2019

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1.0 Introduction

The subject property comprises 20 acres, of which about 6 acres, covering seasonally flooded wetlands and a supporting system of dams, is protected by Covenant. The dam system was probably built in the early 20th Century to create a water retention pond by excavation and terracing across a gently sloping hillside. Soil from the excavation was used in an improvised dyke-like structure on its eastern flank, with outflow directed off a spillway at its northern extremity. The structure served to retain and redirect waters of Mayfly Creek, a seasonal stream that, in nature, flowed along a poorly defined fan of random channels, discharging to the ocean some 400m to the east. The initial depth of the pond is not known, and neither is the height to which the 'dyke' was built above native ground levels. The initial purpose was the year-long retention of water to service logging and related interests episodically active in the area prior to the 1950's. There is no evidence that an impervious membrane, clay liner or other hydrological barrier was installed at the time of construction. The pond is likely to have been actively maintained into the 1940's but was abandoned when logging operations came to an end.

At the initiative of a local special interest group, and with the support of several levels of senior government, a collapsed wooden spillway located at the north end of the system was replaced in 2007 by a rock-fill dam. Water levels due to this intervention are now significantly higher than they had been in the past, and the pond fills to within a few inches of the dyke crest. This has resulted in significant localized over-flows that, in places, mix with seeping and strong springs.

The escape of water from seeps, springs and possibly by piping, suggests that the structural integrity of the retaining dams/dyke has been compromised over time, and that the combination of this, and the raised water levels due to the current height of the spillway, increases the likelihood of a catastrophic dam failure. Should this happen, a mud and debris flow, possibly in excess of 1,000,000 metric tonnes, would threaten and endanger life and property down-slope. The threatened area includes homes located to the north and east, as well as traffic on Iron River Road, and the Island Highway beyond it.

The newly enacted *BC Reg. 40/2016*, the 'Water Sustainability Act' and 'Dam Safety Regulation' (Appendix 6) imposed by it, requires that the owner of a dam meeting criteria specified under 'Part 3, Division 1', is subject to obligations and responsibilities. The writer believes that the dam located on the drainage of Mayfly Creek immediately south of Iron River Road qualifies as being of 'HIGH RISK' under schedule 1 of the said act.

Further, the owner of the land on which the subject wetlands and dam-system are mainly situated (land owner) derives no benefit from the above, has no direct interest, financial or otherwise, that would motivate its preservation, and is obligated only to 'passive' compliance (to do nothing) under well established Covenant Law.

2.0 Location, Ownership And Access

The Mayfly dam system and most of the associated wetlands are contained within a property identified as Lot 1 of part of the remaining portion of the North East 1/4 of Section 26. It is situated a few miles south of Campbell River City limits. The property, located about 150m west of the Island Highway, is accessed from Iron River Road, and is registered to Andre and Karen Audet, both of Courtenay B.C.

3.0 Current Status

3.1 Mayfly Creek, Pond And Dams

The Mayfly wetlands result from the diversion of Mayfly Creek to an artificial pondage (Figure 1), now largely filled with loose silts and organic particulate matter. The course of Mayfly Creek follows an easterly direction along a gentle easterly slope that originally extended to the shores of Oyster Bay. At a point located about 400m west of the ocean, that corresponds closely with the west boundary of the subject property, the course of natural drainage was altered and constrained by a simple run-of-the-pit style earthen dam extending northward across the natural fall-line for a distance of about 400m (Figure 1). This dyke-like construction follows a constant elevation, and serves to impound the seasonal discharge of Mayfly creek. A rock spillway recently built at the northern end of this structure replaced the original wooden dam. Outflow follows a man-made northerly course across the fall-line, and across Iron River Road, to a wetland that drains to the ocean a short distance east of it.

Anecdotal reports, all verbal, suggest that the original impoundment dates to the early 20th Century where it served the needs of small-scale rail-road logging activity. No record of the dam's construction is known to exist. Figure 1 shows the impoundment area, the approximate outline of the constructed dams, and the current drainage pattern of Mayfly Creek. Figure 2 shows the impoundment system in cross-section at the location indicated in Figure 1 (section A-A')

Dam construction will have predated regulations and codes related to water impoundment, and it is not likely that an investigation of underlying strata was ever conducted. Pre-disturbance topography is likely to have followed the gentle uniform slope common to the area, and is indicated by the red line in Figure 2. The writer speculates that soils excavated from the pond were used in constructing the lateral dam since excavation at the well-site (Figure 1) reveals a random mix of sands, gravels, clays and wood debris to a depth exceeding 4 metres. In accordance with this hypothesis, a depth estimate of the original pond is implied by the balance between volumes of soils contained in the dam and the most likely original surface profile (figure 2).

It is unlikely that an impervious clay liner or other membrane will have been installed, and the period of construction predates the science of designed grain-size filtering now standard in earth-fill dams. The probable absence of design considerations in dam construction is consistent with the extensive weeping seen at various points on its flanks, and that the observed water table in winter lies at or near surface along the entire length of its apron-like buttress.

Current peak water levels result from the height of the 'modern' rock spill way, that raises those levels to the top of the lateral dam at several locations, and that results in overflowing of unconstrained streams at its north limit. Estimated discharge of individual unconstrained flows ranges between 20 and 500 gallons per minute by visual estimate (Figure 1).

The perimeter of the impoundment does not appear to have been altered or disturbed in recent decades with the exception of the spillway as noted above. This spillway completes the dam system on Mayfly Creek, and was built to satisfy an agenda initiated and supported by a consortium of Ministries and Crown agencies.

3.2 Wetlands, Historical To Present

Following its abandonment by logging interests and the deterioration of the wooden spillway, a succession of beaver dams served to retain seasonal waters. These dams trapped sediments over the intervening decades, thus filling the original pond to within two metres of the spillway elevation with

the exception of relatively small local depressions. Subsequent to that, the area, now little more than a gentle depression, grew-in with sedges, grasses and scrub to form what are currently termed 'Mayfly Wetlands'. These are filled with water from early fall to late spring, but are completely drained during the months of July, August and September. Flooding begins with the start of rains, usually in mid to late October, bringing water levels to a depth of 1 to 2 meters, with local areas slightly in excess of it.

3.3 Soil Porosity, Permeability And Potential For Liquefaction

Native soils in the area are derived from glacial out-wash and consist largely of gravels and minor sands, both with a very high clay and silt content. These transmit water poorly and tend to remain fully saturated even when near a drainage ditch or in areas of significant vertical gradient. A cursory examination of soils used in constructing the lateral dam shows poor water transmissibility, and are, as a consequence, fully saturated to ground surface over much of the year. This is supported by pump tests of a domestic well (figure 1) wherein a static draw-down of 12 ft was achieved with a steady pump rate of 4gpm. Excavation in the well area uncovered randomly juxtaposed lenses of gravels, sands and clays, such as might be expected in an area filled with randomly selected materials.

Saturated gravels such as these can have a moderate-to-high liquefaction potential. (Appendixes 7; & Appendix 8 pages 1,2,3,4 and 5) As a consequence, the likelihood of shock generated liquefaction in the event of a strong seismic event can not be dismissed. In such an eventuality, there would also be potential for the simultaneous liquefaction of the underlying water-saturated native foundation soils, the disturbed material forming the lateral dam, and the semi-organic sediments impounded behind it. A catastrophically released debris flow, including contained water and all combined liquefied materials, would likely exceed 500,000 cubic metres (more than 1,000,000 metric tonnes).

3.4 General Observations Relating To Hydrological Stability

3.4.1 Lateral Dam And Sediment Infill

Water retention within the impoundment is poor, and the pond quickly dries in summer months. The rapid loss of retained waters is somewhat enigmatic since soil conductivity and permeability in both native soils and the lateral eastern dam appears to be low. However, minor springs and seeps are seen along the perimeter of impounding structure, and these likely account for most of the losses. The most prominent of these are seen along the lateral dam's north-east and southern segments. This notwithstanding, the volume of inflow is sufficient to overwhelm such losses during wet months, and maintain a near-surface water table along the dam's flanks for as much as 80 to 100m down slope. The source of very strong unconstrained out-flows at the north end of the system may be in part attributed to piping, but that possibility can not be easily distinguished from surface seepage and overflow escaping beaver constructions. Maximum water depths within the impoundment are at no point greater than 2meters except for a relatively small section located directly south of the 'rock spillway'. However, the writer suspects that overall thickness of underlying saturated silt and organic matter is likely to exceed 6m over much of the excavated basin (supported by personal communications).

3.4.2 South springs, Surface Collapse And Thin Crust

The area situated immediately south of the impoundment and east of the property line, shows strong evidence of piping, thin surface crust and extensive surface collapse (Figures 9 and 12). Additionally, prior to the recent digging of a capture ditch, ground waters flowed uncontrolled from small vents and sheet-weeps along the hillside. The 'ditch' now intercepts the bulk of these waters though the water table remains very near surface even below gradient from the ditch (figure 7), which is itself greater than four feet in depth (Figures 6 and 8). This suggests an artesian-like hydraulic over-pressure that is not easily explained on the basis of what is currently known. At maximum flows experienced at the height of winter, the discharge of captured waters in the ditch exceeds 200 gpm (measured by weir, Figures 3, 5 and 6).

3.5 Dam Standards And Classification; Water Sustainability Act:

The measured difference in elevation between the crest of the dam (spillway) and its discharge at the bridge on Iron River Road is slightly greater than 5 meters (Appendix 9). The actual toe of the dam is obscured by a recent beaver construction and can not be measured directly. However, natural topographic trends suggest that the elevation of native soils on which the dam rests is likely to be near the point measured at the bridge. Alternately, any native soils on which the dam may rest should be considered as an element of the dam footing that is itself likely to liquefy under seismic shock (as was recognized in a review of conditions contributing to the Mount Polly tailing-dam collapse).

Accordingly, the writer considers that the Mayfly Creek Dam exceeds requirements for regulation under the terms of the 'Water Sustainability Act' for the following reasons:

1/ The dam is greater than 2.5m in height

2/ When filled, the impoundment contains more than 30,000 cubic meters of water and retains an addition loading of readily fluidized water saturated organic-rich silt likely to be well in excess of 100,000 cubic metres in volume.

3/ The soils comprising the lateral retaining dam and the native underlying soils, when saturated, are suspected to be readily fluidizable in event of seismic shock, and should be considered as such until shown to be otherwise.

4/ Under Schedule 1 of the Water Sustainability Act; Dam Safety Regulations (Act); The Mayfly Dam qualifies for a Classification of **VERY HIGH RISK** as per Paragraph 2, Table, of page page 34/37 of the 'Act'. (See Appendix 6) Specifically:

a/ Public roads and permanent residences in the threatened area, less than 100 people.

b/ Significant potential for deterioration to fish spawning habitat in lower Mayfly Creek.

c/ Two new homes and a children's play area in the threatened area. (Figures 4,10 and 11)

The writer considers that the Mayfly Dam significantly exceeds criteria for the designation of **very high risk** under the 'Act'.

3.6 Restrictions Under Covenant

The subject area is restricted by two covenants registered against the land parcel, namely registered instrument 'FB0144410 and FR0144412' (Appendix 5) and registered instrument 'EX026254 & EX026255' (Appendix 4). The terms of the covenants require that the 'landowner' be responsible for allowing the area to 'remain natural' and to remain 'as is'. However, the covenants either fail to recognize or are silent on the obvious fact that the protected wetlands are dependant on dams situated in the protected area, which are man-made structures designed as a 'management of nature' and that are subject to degradation and failure if not maintained. Since the Covenants makes no allowances for human intervention, and, can by long-standing Common Law, only charge the 'landowner' with 'passive' restrictions or obligations, the 'land owner' can have no obligations with respect to maintaining the area in a 'natural state' as specified in Item 6, section a, page 5 of 9, 'there should be no changes by the hand of man', (General Instrument Covenant; Registration EX026254 & EX026255; Dated March 11, 2005 in favour of the Crown). The overriding intent is expressed in 'Registered General Instrument Covenants FB0144410 and FB0144412, Dated February 8th 2008, in favour of the Comox Strathcona Regional District; which, under Section 2, Subsection 2.1, stipulates that: 'The Transferor and Transferee agree that this Agreement is intended: to forever protect, preserve, conserve, and maintain the Covenant Area in a natural state as set out in this agreement;

Since the 'agreement' does not define the term 'natural state', and since the only environmental assessment made was somewhat superficial in that it did not include 'as-built' parameters for the newly refurbished spillway, failed to recognize or identify that the supposedly 'natural' environment being protected was dependent on a man-made structure, that nothing in the 'agreement' identifies what was intended by the term 'natural state' or what is 'set out in this agreement' with respect to it, and that legal wording in covenants have historically been interpreted according to 'common' usage, the obvious ambiguities and contradictions, regarding what is intended by the terms 'natural' and 'natural state', or regarding specific responsibilities accruing to its signatories, are troubling.

The above conditions and restrictions notwithstanding, FB0144410/FB0144412 accords the 'Regional District' certain rights under subsection 5.1, which includes the following under 5.1c:

to enter upon and protect, preserve, conserve, maintain, enhance, restore or rehabilitate in the Transferee's sole discretion the Covenant Area to as near the condition described in the Report as is practicable if an act of nature or human agency other than as described in Section 5.1d, destroys, impairs, diminishes or negatively affects or alters the Covenant Area from the condition described in the Report. ('Report' refers to Riparian Areas Regulation Assessment Report attached to the document)

Report attached to the document)

3.7 Liabilities And Legal Issues

An adjacent property owner recently sought to resolve a problem caused by high volumes of water, discharged from the north end of the dam, that were inundating his property. He sought to have the height of the spill-way lowered in 'hopes' of resolving his problem by having this done. His actions ranged from bullying tactics to legal threats (Appendix 11) and attempted 'back-room' dealings with government agencies (Appendix 3). Subsequent to that, a letter-report by the writer (Appendix 2), dated November 16, 2012, was addressed to Ms. Stacey Larsen, who at the time claimed to be some sort of agent for the DFO (unverified). Copies were sent to Margret Henigman, Ministry of Forests, Lands and Natural Resources and two other government agencies. The report identifying certain hazards and problems relating to the Wetlands and said 'dam', and was written in defence of the third-party initiatives and possible hidden agendas referenced in an E-mailed note received from Larsen (Appendix 3). No response, and no confirmation of reception, formal or otherwise, was received from any of the addressees. Further, no action was taken by the addressees on issues raised.

Liability with respect to escaping waters as implied by legal threats, and the possible liability for damages and loss of life that might result from a catastrophic dam failure, are a concern to the 'land owner'. Though the 'land owner' holds that, responsibility for the dam, including, but not limited to, damages caused by escaping waters or its catastrophic failure, and all responsibilities and/or liabilities relating to statutory compliance, rests entirely with the Crown, the Crown appears reluctant to accept such responsibility. Additionally, no insurance company contacted by the 'land owner' is prepared to underwrite risks resulting from escaping waters.

4.0 Riparian Area Regulation Assessment Report

Cynthia Hannah (Appendix 10)

A Riparian Area Regulation Assessment Report (Report) completed by Cynthia Hannah, dated September 2007, is attached to, and is incorporated in the registered instruments described and identified in Section 2.6 above. The document provides a detailed description of the Mayfly Wetlands area from an environmental perspective while identifying features believed to be of particular importance. In it, the author refers to the narrow rock-spillway, described in Section 3.1 above, as an 'Artificial 'Beaver Dam', suggesting that the spillway is somehow a substitute for a 'natural' feature, thereby fostering the illusion of a 'natural' feature instead of the replacement for historic wooden structure needed to complete the man-made impoundment complex retaining the waters of Mayfly Creek.

The Hannah Report:

-fails to recognize that the wetlands are a consequence of retaining dams that make them possible, and are in fact 'man-made' and that the wetlands are in no respect the artefact of nature as implied by the report.

-fails to identify or address any ongoing need for maintenance and repairs as natural processes degrade impounding structures.

-fails to recognize that waters retained by the impoundment structures present a hazard to life and property in the event of a catastrophic failure.

Further, the 'Report' recognizes the saturated soil conditions without formally addressing their extent, or consequential issues related to them (paragraph 3 pages 22/35). In stating that 'any excavation on this property has the potential to divert water from existing watercourses', the author indirectly alludes to unstable hydrological conditions, and the potential for 'piping', though such conditions are NOT clearly in evidence during summer months. In paragraph 4 of page 22/35 the author describes the area as a 'sensitive hydrological system', but does not explain the expression, what it's understood to mean in context, or it's significance with respect to lands beyond the limits of the covenant, other than the terse and obtuse statement: '*there is a potential to divert water from the existing water course*'.

Ms. Hannah's narrative, given on Page 3/35, indicates that the primary objective for up-grading the dam system on Mayfly Creek stemmed from a 'stream keepers' desire to improve water retention during summer months, and thereby secure benefits for a salmon spawning area downstream. A summary of the 'Dam's' effects on habitat in the same narrative concludes that benefits realized were 'inadequate', thereby implying that the initiative had been a failure.

5.0 Dam Ownership

Dam ownership is an issue arising from the 2016 'Water Sustainability Act'; B.C. Reg. 40/2016 (Act), and responsibilities it imposes on the 'Owner'. The 'Act', under provisions stipulated in Part One; Pages 4 and 5; states that the owner of a dam might be:

- (I) *an owner, as defined in the ACT, of the land on which the dam is located*
- (II) *a person who had the dam constructed*

The 'rock spillway' that completes the dam complex on Mayfly Creek was built to accommodate an initiative by a local stream-keepers society in an attempt to improve fish habitat and salmon spawning conditions down stream (Section 4.0 above). A subsequent Covenant confers to the Crown certain benefits created by the resulting impoundment.

The 'Act' is silent on circumstance wherein a third party for whom the dam provides a benefit protected by Covenant might be considered a 'beneficial owner'. However, in the present case, given that the 'land owner' is precluded, by terms of Covenant, from making changes to the restricted area, and because under common law, a Covenantor's obligations under a negative covenant are held to be 'passive', and because benefits accruing to the Crown are the sole reason for having completed the rock spillway, and thus securing the future of the wetlands, the writer holds that the Crown assumes full responsibility for any and all non-passive action related to features protected by the Covenants, including, but not restricted to, infrastructure, supporting amenities and all responsibilities and/or liabilities such as may stem from them, without limitation, in perpetuity. Further, the Comox Strathcona Regional District (or its successor) has retained, by virtue of Priority Agreement FB0144410/FB0144412, the 'Right of Access' to 'maintain' the 'Covenant Area'; as per Section 3.6 above. Since the subject dam system is expressly an element covered and controlled by covenant, the securing of the right of access for the purpose of maintaining, is, by extension, an overt expression of ownership.

6.0 Discussion, Summary

6.1 Dam, Pond And Entrapped Sediments

Mayfly wetlands result from the diversion of Mayfly Creek from its natural course to an artificial pondage. A rock spillway, recently constructed at the northern end of this system replaced a decrepit wooden spillway that had collapsed decades earlier. This structure is described as an 'artificial beaver dam' in the Hanna Report (section 4.0 above) but is in no respect similar to a beaver dam in its construction or in its intended function other than that it serves to retain water. Outflow from the dam follows a man-made channel that traces northward across Iron River Road.

Anecdotal reports (verbal) suggest that the original impoundment could date to the turn of the 20th Century where it would have served the needs of early logging activity. Original depth and limits of excavation are not known, though one elderly resident, with whom the 'land owner' briefly spoke, recalled the pond as have been "a favourite 'swimming hole' of considerable depth". An exhaustive internet search finds no documentation giving design parameters, plans or descriptions of the impoundment, however a materials balance between volumes excavated and volumes likely contained in the lateral dam (see sectional profile, Appendix 2) suggests an excavation extending several meters below original ground surface.

It is unlikely that an impervious clay liner will have been installed in the pond and the period of construction predates designed grain-size filtering now standard in earth-fill dams. This is consistent with reports (Hanna 2008 etc.) that water levels were not sustained during summer months, that perennial seeps and springs are seen at various points along the base of the lateral dam, and with observations that, during winter months, the water table lies at or near surface along the latter and the buttressing in-fill adjacent to it, and that the water table drops quickly during seasonal dry periods.

The areal extent of pondage is estimated to exceed 40,000 square metres on the basis of ground features visible on Google Earth and a cursory examination of high-water limits with respect to them. Allowing a 1.5m average depth of retained water gives a total estimate of retained water as about 60,000 cubic metres, which is well beyond the threshold specified for a dam of its height. (page 9 of the 'Act'). Moreover, the writer considers that the undetermined volume of accumulated water-saturated sediments in retention must be considered as an additional liquefiable load, as it would likely behave in a way similar to those of the Mount Polly mine-tailings released catastrophically, and which triggered the enactment of Dam Safety Regulations addressed in this report.

Further, the potentially liquefiable and fully saturated lateral dam with its extensive buttressing, and the underlying fully saturated native soils, should be included when estimating the volume of fluidized debris that might be released in a catastrophic failure of this reservoir.

Finally, the writer believes that the large volumes of water escaping the impoundment as seeps, weeps and springs, along with surface collapse at the north and south limits of the system, are evidence of piping that demonstrates an advanced state of deterioration.

6.2 Soil Porosity, Permeability And Potential For Liquefaction

Soils in the area are derived from glacial out-wash and consist largely of gravels and minor sands, both with a very high clay/silt content. These transmit water poorly and tend to remain fully saturated even where exposed to significant vertical gradients. Locally, these soils form a relatively thin blanket overlying glacially polished limey shale that appear to carry hydraulically over-pressured waters, from depth, to the soil interface. Evidence of the later can be seen on the nearby beach at low tide, and by direct observation of a vertical drill hole on Iron River Road, which bubbles with artesian water in mid-winter. The saturation of soils used in the Mayfly Dam System, and the underlying native soils on

which they rest, results directly from waters of the Mayfly impoundment, and waters introduced along vertical fracturing from underlying strata.

The writer considers that the situation at the Mayfly Creek Dam Complex, supported by assessment of similar soils (Appendix 7, 8) presents a significant potential for the catastrophic release of a fluidized debris flow that would endanger life and property along its path

6.3 Restrictions Under The Covenants

The Mayfly wetlands and adjacent area are restricted by Covenant in favour of the Crown. In accordance with these restrictions, the 'land owner' is precluded from undertaking any initiative with respect to the subject lands other than ensuring that they remain 'natural or as is' (whatever that may be determined to mean). This can only be interpreted as an obligation to allow degradation to progress with no authority or obligation to intervene, and is consistent with 'passive' obligations conferred by a Restrictive Covenant under common law.

6.4 Dam Status Under The Water Sustainability Act

As argued above, the writer finds that Mayfly Creek Dam system qualifies as a regulated 'Dam' under the "Dam Safety Act", qualifies for a designation of 'Very High Risk' for the stated reasons, and is therefore subject to all regulation prescribed under regulations.

6.5 Dam Ownership

Given that, the 'land owner' is formally relieved of any right to make use of the restricted lands, is further precluded from making any physical changes to the dam system or the lands affected by them, and that the Regional District of Strathcona has contracted to, and has retained for itself, the sole right of access for purpose of maintaining the Covenant Area, the Crown, through its various agencies, jointly or severally, is the de facto beneficial owner of the Mayfly Creek Wetland, and is by default, the only reasonable candidate for "Dam owner" under the 'Act'.

6.6 Spillway Lowering Initiative

The spillway lowering initiative sponsored by Ms. Larsen (section 2.7) is not expected to relieve problems relating to high water-levels within wet-land area because past and present beaver activity retains increasingly high water levels and, as a consequence, sediments carried to it by strong seasonal flows. It must be emphasized that the Mayfly pond and dam system is not now, and never has been, a natural environment sustainable without ongoing intervention by man. For these reasons, no initiative that fails to assume the comprehensive management of this long-term, poorly understood project, will lead to a successful resolution of the hazards it presents.

7.0 Conclusions

-The Mayfly Wetlands are supported by an extensive dyke-dam complex that clearly exceeds criteria for regulation under BC Reg. 40/2016, the Water Sustainability 'Act'.

-There is evidence that portions of the retaining dams, and their buttressed supports are in a state of progressive failure.

-There is a reasonable possibility that the dam complex, its retained sediments and the underpinning native soils are, when fully water saturated, in danger of failure by liquefaction if subjected to a strong seismic shock.

-A catastrophic failure of the dam system and contained sediments would release a highly fluid debris flow of up to 500,000 cubic metres (+/-1,000,000 tonnes), thereby threatening life and property down-slope from the structure.

-The said 'Wetlands', and by extension, the dam system with its retained sediments, are protected by Covenants in which stated objectives, and restrictions, are in conflict with physical realities readily evident on examination.

-The Crown is the only involved entity permitted to make physical alterations to the Covenant area, and, retains for itself the sole right of access for the purpose of rectifying deficiencies in the dam system and the wetland made possible by it,

-The Crown, through its extensive network of government entities and subordinate agencies, has by default assumed full and complete responsible for the maintenance of the dam system, and therefore tacitly assumes full responsible for any failure of said dam, including, but not limited to, property damage, loss of life and the cost of any litigation that might be borne by the 'landowner' as a result of it.

-The 'land owner', as a passive player, should not be, and can not be, charged with responsibilities associated with the wetlands, the retaining dams, or consequences relating to them.

-Based on what is currently known, a lowering of the spillway, as has been proposed by Ms. Larsen, will not resolve or alleviate the concerns and issues raised herein.

-If an initiative to alter physical features within the 'Covenant' were to be entertained, that initiative must be proposed, sanctioned, and conducted by the covenantee, who would do so for reasons stemming from the needs and objectives of the covenantee, and who would accordingly assume complete responsibility for it's execution, any consequences resulting there-from, be they intended or otherwise, and would explicitly agree to indemnify, hold harmless and defend the 'land owner' from any action resulting from it.

-The writer holds that the **Crown is the de facto dam 'owner' under the 'ACT'**.

8.0 Recommendations

1/ It is recommended that the Crown complies fully with its obligations under BC Reg. 40/2016, the 'Water Sustainability Act'.

2/ It is recommended that the Crown engage a qualified geotechnical engineer to immediately investigate safety issues at the Mayfly Creek dam complex identified in this report.

9.0 Disclaimer

The writer is a professional engineer registered in British Columbia, and holds a degree in Geological Engineering granted by the University of British Columbia. Further, the writer is familiar with mine tailing ponds, and the hazards they present, as a consequence of nearly 5 decades of experience in the mining sector, and has experience in the design and construction of small water retention systems. However, the writer's experience in this area does not meet the standard of professional expertise required by the issues at play.

Consequently, nothing in this report should be relied upon for any reason other than that of providing information and motivation pursuant to further investigation and no action should be taken based on the merits of statements or conclusions contained herein without first consulting a qualified professional.

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Glossary

Grain Size Filtering: criteria for determining the grain-size distribution (gradation) of sand and gravel filters needed to prevent internal erosion or pipinq of soil in embankments or foundations of hydraulic structures.

Hydrologic system: A system of interrelated components, including the processes of precipitation, evaporation, transpiration, infiltration, groundwater flow, stream flow, etc., and include those structures and devices used to manage them. Hydrologic systems can be subject to different kinds of weather patterns, be spatial complexity, and randomly dynamic.

Liquefaction: is a phenomenon in which the strength and stiffness of a soil is reduced in its most general sense, by earthquake shaking or other rapid loading. Liquefaction and related phenomena *have been responsible for tremendous amounts of damage* in historical earthquakes around the world.

Mount Polley: An open pit copper and gold mine where a partial breach of its tailings pond dam released 10 million cubic metres of water and 4.5 million cubic metres of slurry into Polley Lake, located in the Cariboo region of British Columbia. The breach was widely described as a disaster by the media, though there was no loss of life, and no damage of consequence resulted. The event focused public attention on the dangers posed by small to medium size dams, and prompted government to enact regulations with respect to them.

Native Soil: Naturally occurring undisturbed deposit of unconsolidated soils of any composition.

Outwash: Deposit of sand and gravel carried by running water from the melting ice of a glacier and laid down in stratified deposits.

Piping: Piping is defined as the progressive development of internal erosion by seepage, appearing down-gradient as a hole discharging water. Piping is induced by regressive erosion of particles from downstream and along the upstream line towards an outside environment until a continuous pipe is formed.

Pond liner: An impermeable geomembrane used for retention of liquids, including the lining of reservoirs, retention basins, hazardous and nonhazardous surface impoundments.

Pump Test: is a field experiment in which a well is pumped at a controlled rate and water-level response (drawdown) is measured in one or more surrounding observation wells and optionally in the pumped well (control well) itself; response data from pumping tests are used to estimate the hydraulic properties of aquifers, evaluate well performance and identify aquifer boundaries. *Aquifer test* and *aquifer performance test* (APT) are alternate designations for a pumping test. In petroleum engineering, a pumping test is referred to as a **drawdown test**.

Seeping: (also sheet weep): Water percolating through porous soil, and released to surface over a broad area without major vents or springs.

Seismic Event: The word earthquake is used to describe any seismic event—whether natural or caused by humans

Spillway: A structure used to provide the controlled release of flows from a dam or levee into a downstream area,

Spring: Water overflowing onto the land surface as the result of an aquifer being filled to the point of saturation; from rock fissures, through highly permeable gravels, as a result of pipinq in soils, etc.

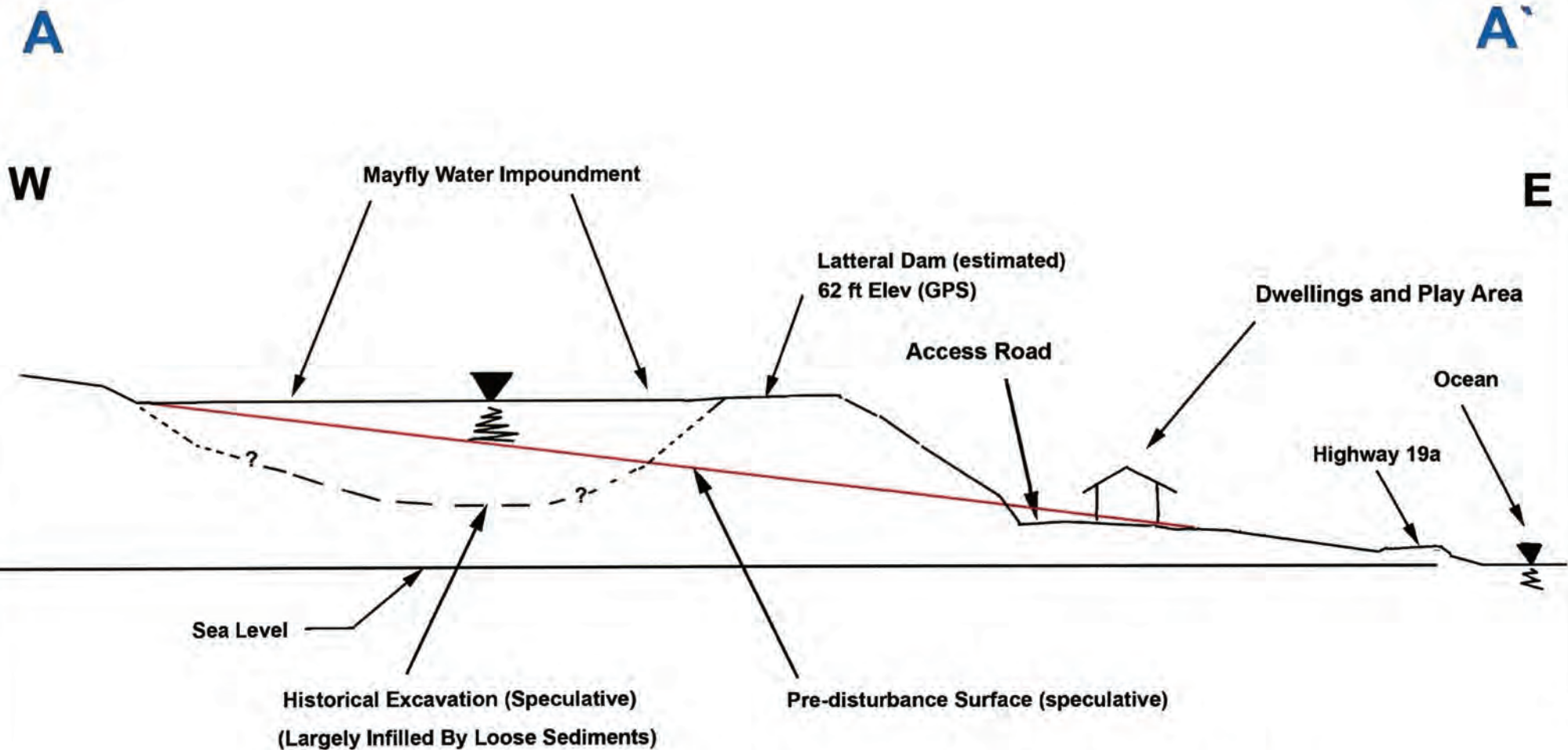
Static Draw-down: A measure of maximum well output while maintaining a constant maximum draw-down.

Streamkeeper: Generally, a lay person that takes an active interest in preserving and enhancing local waterways. Streamkeeper Programs generally respond to community concerns, typically promoted by special interest groups that rely on volunteer workers for stream enhancement projects.

Appendix 1

Figures 1 to 12





Mayfly Creek Lower Drainage and Area, Oyster Bay

Cross-Section Sketch Showing Relative Positions of Retention Pond, Roads and Dwellings

Note: Vertical Scale is Exaggerated

April 2018 A.J. Audet P.Eng

0 200m
Horizontal Scale

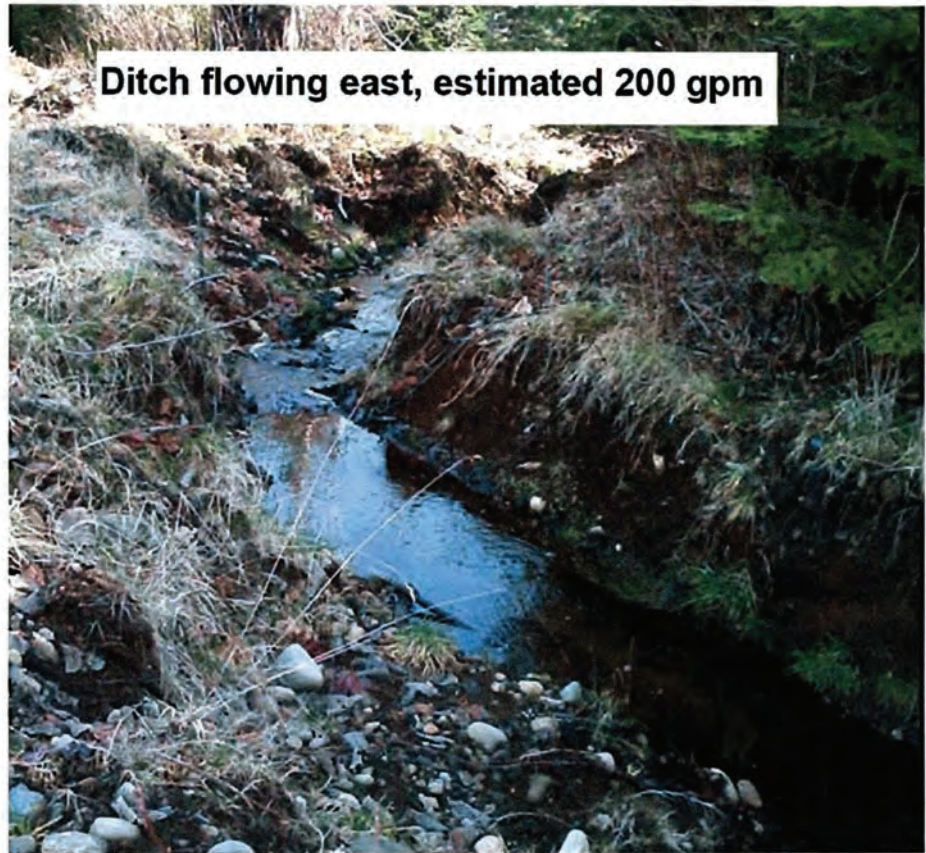


Figure 3 Ditch Draining Water Escaping by Piping at South End



Figure 4

FIGURE 4; Dwelling #2 Located to the East and Below Mayfly Pondage



Hole 40m Down-Slope From Ditch, Showing Water Table (Dec 2018)



Drainage Ditch Showing Main Water Influx March 2018



Figure 5

Wier on Drainage Ditch; Top of Brown stain Marks 6.125 inches



Figure 6

Wier Discharge of 190gpm; February 8, 2019



Detailed View of Surface Collapse Above Zone of Piping



Family Infrastructure Below Mayfly Dam System, and Highway in Background



Fig 11

Dwelling #1; Located East and Below the Mayfly Pondage



Fig 12

Large Area of Dangerously Thin Crust; South End of Mayfly System