

LAND TITLE ACT
FORM C

RECEIVED VICTORIA
LAND TITLE OFFICE
Copy

Province of
British Columbia

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

1. Application: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

WILLIAM C. TURNER (250) 479-8053
5793 OLD WEST SAANICH RD
VICTORIA BC V8X 3X3

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

006-311-725

Lot PT 22, Plan 2657, DL 87, Comox Land District,
except Plan DD18916N PCL A lying N of PL 5689

3. Nature of Interest:*

| DESCRIPTION | DOCUMENT REFERENCE (page and paragraph) | PERSON ENTITLED TO INTEREST |
|------------------------------------|--|-----------------------------|
| Section 219 Covenant | Entire Instrument | Transferees |
| Rent Charge and | Section 11 | Transferees |
| Section 218 Statutory Right of Way | Section 9 | Transferees |

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

- (a) Filed Standard Charge Terms D.F. No.
- (b) Express Charge Terms Annexed as Part 2
- (c) Release There is no Part 2 of this instrument

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

5. Transferor(s):*

FRANCES M. JOHNSON (Librarian, retired)
139 Isabel Rd, Comox, BC V9N 7Z8

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

TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, a society registered in British Columbia (Registration No. S-36826), with its registered office at 5793 Old West Saanich Road, Victoria, B.C. V8X 3X3

COMOX VALLEY PROJECT WATERSHED SOCIETY, a society registered in British Columbia (Registration No. S-30104), with its registered office at 156 Manor Dr., Comox BC, V9N 5N3

7. Additional or Modified Terms:*

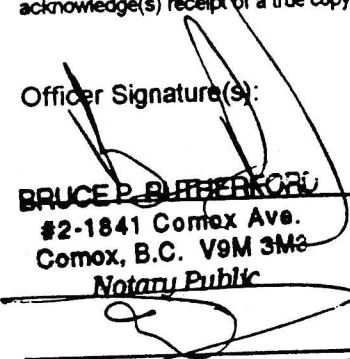
N/A

LAND TITLE ACT
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British Columbia
GENERAL INSTRUMENT - PART I

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

Officer Signature(s):


BRUCE P. RUTHERFORD
#2-1841 Comox Ave.
Comox, B.C. V9M 3M3
Notary Public

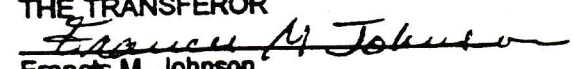
EXECUTION DATE

Y M D

Party(ies) Signature(s)

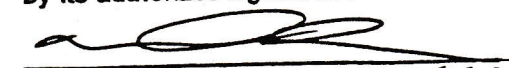
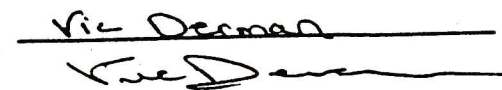
99 6 21

THE TRANSFEROR


Francis M. Johnson

99 5 19

TLC THE LAND CONSERVANCY
OF BRITISH COLUMBIA
by its authorized signatories

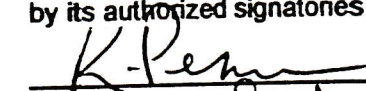
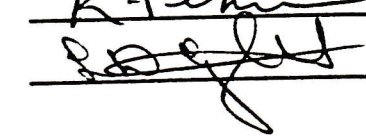

WILLIAM C. TURNER
Vic Deeman


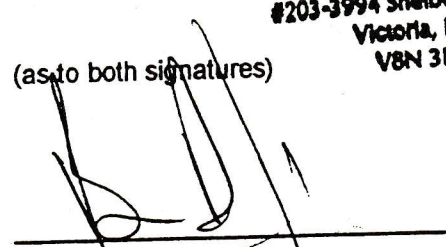
DEREK E. ASHURST
Barrister and Solicitor
#203-3994 Shelbourne Street
Victoria, B.C.
V8N 3E2

(as to both signatures)

99 06 11

COMOX VALLEY PROJECT
WATERSHED SOCIETY
STEWARDS SOCIETY
by its authorized signatories


Kathy Penner

L.A.S. CARTWRIGHT


BRUCE P. RUTHERFORD
#2-1841 Comox Ave.
Comox, B.C. V9M 3M3
Notary Public

(as to both signatures)

**WITNESSED UNDER THE
LAND TITLE ACT ONLY.**

OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, c. 116 to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

- * If space is insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
- ** If space is insufficient, continue executions on additional pages in Form D

TERMS OF INSTRUMENT - PART 2

**Section 219 Conservation Covenant and
Section 218 Statutory Right of Way**

The Agreement is dated for reference May 21, 1999 is

AMONG:

FRANCES M. JOHNSON,
139 Isabel Road,
Comox, B.C. V9N 7Z8

AND:

TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, a
society registered in British Columbia (Registration No. S-36826),
with its registered office at 5793 Old West Saanich Road, Victoria,
B.C. V8X 3X3

AND

COMOX VALLEY PROJECT WATERSHED SOCIETY, a society
registered in British Columbia (Registration No. S-30104), with its
registered office at 156 Manor Road, Comox, BC, V9N 5N3

WHEREAS:

- A. The Owner is the registered owner of the Land;
- B. The Land contains significant amenities, including flora, fauna and natural features, of great importance to the Owner, to the Covenant Holders, and to the public;
- C. A statutory right of way pursuant to s. 218 of the Land Title Act in favour of the Covenant Holders is necessary for the operation and maintenance of the undertakings of the Covenant Holders;
- D. The Comox Valley Project Watershed Society has been designated by the Minister of Environment, Lands and Parks as a person authorized to accept covenants under s 219 and as a person authorized to accept statutory rights of way pursuant to s. 218 of the *Land Title Act*, and

E. TLC The Land Conservancy of British Columbia has been designated by the Minister of Environment, Lands and Parks as a person authorized to accept covenants under s 219 and as a person authorized to accept statutory rights of way pursuant to s. 218 of the *Land Title Act*,

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

1. Definitions and Interpretation

1.1 In this Agreement:

- (a) "Amenity" includes any natural, scientific, environmental, wildlife, plant life or cultural value relating to the Land;
- (b) "Business Day" means, a day on which the Land Title Office in Victoria BC is open.
- (c) "Comox Valley Project Watershed Society" means the Comox Valley Project Watershed Society a society registered in British Columbia (Registration No.S-30104) and includes its permitted successors and assignees as provided in section 13
- (d) "Covenant Holder" means, unless the context otherwise requires, the Comox Valley Project Watershed Society or TLC The Land Conservancy of British Columbia, singularly;
- (e) "Covenant Holders" means, unless the context otherwise requires, the Comox Valley Project Watershed Society and TLC The Land Conservancy of British Columbia, collectively;
- (f) "CPI" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, British Columbia, where 1999 equals 100;
- (g) "Land" means the parcel of land legally described as: PID:006-311-725, Lot PT 22, Plan 2657, DL 87, Comox Land District, Except Plan DD 18916N PCL A, lying N of Plan 5689;
- (h) "Notice of Enforcement" means a notice of enforcement given under section 10.1;
- (i) "Owner" means Frances M. Johnson and, includes a Successor of the Owner;
- (j) "Rent Charge" means the rent charge granted by the Owner under section 11.1;
- (k) "Rent Charge Amount" means the amount set out in section 11.2, the payment of which is secured by the Rent Charge;

- (l) "Report" means the baseline documentation report that describes the Land and the Amenities in the form of text, maps, photographs and other records of the Land and the Amenities as of the date of registration of this agreement;
- (m) "Successor" means a person who, at any time after registration of this Agreement, becomes the registered owner of the Land or any part thereof by any means, including a beneficial owner; and
- (n) "The Land Conservancy" means TLC The Land Conservancy of British Columbia a society registered in British Columbia (Registration No.S-36826) and includes its permitted successors and assignees as provided in section 13;

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

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

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

1.5 In this Agreement:

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

- (g) reference to a "party" or the "parties" is a reference to a party, or the parties, to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and
- (h) reference to a "day", "month" or "year" is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.

2. Representations and Warranties

2.1 The Comox Valley Project Watershed Society represents and warrants that the facts set out in Recital D are true as of the date of this Agreement.

2.2 TLC The Land Conservancy of British Columbia represents and warrants that the facts set out in Recital E are true as of the date of this Agreement.

2.3 The parties each agree that Recitals B and C are true as of the date of this Agreement.

3. Intent of Agreement

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

- (a) to protect, preserve, conserve, and maintain the Land and the Amenities, in a natural state;
- (b) to prevent any occupation, or use of the Land that will significantly impair or interfere with the natural state of the Land or the Amenities;

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

3.2 This Agreement shall be perpetual to reflect the public interest in the protection, preservation, conservation, and maintenance of the natural state of the Land and the Amenities for ecological and environmental reasons.

4. Baseline Documentation Report

4.1 The parties agree that the Land and the Amenities are described in the Report, a copy of which is on file with each of the parties at the addresses set out in section 14.4, an overview of which is attached as Schedule A to this Agreement.

4.2 The parties agree that the Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement and the parties each agree that the Report and Schedule A provide an accurate description of the Land and the Amenities at the date of this Agreement.

4.3 The parties each acknowledge that the flora and fauna on the Land will evolve through natural succession over time and, unless otherwise expressly stated, references to the Report in this Agreement are intended to take into account the natural succession of the flora and fauna over time, without human intervention other than as expressly permitted by this Agreement.

5. Restrictions on Land Use

5.1 Except as expressly permitted in this Agreement, the Owner shall not do anything, omit to do anything, allow anything to be done, or allow the omission of anything, that does or could reasonably be expected to destroy, impair, diminish, negatively affect, or alter the Land or the Amenities from the condition described in the Report.

5.2 Without restricting the generality of section 5.1,

the Owner shall not, except with the prior written approval of both Covenant Holders, in the sole discretion of each of them, perform or allow the performance of any of the restricted activities or uses of the Land set out in Schedule B to this Agreement.

6. Dispute Resolution

6.1 If there is a disagreement regarding a breach of this Agreement which has occurred or is threatened, or if there is disagreement as to the meaning of this Agreement, the Owner or either of the Covenant Holders may give notice to the other parties requiring a meeting of all parties within 4 Business Days of receipt of the notice.

6.2 The parties must attempt to resolve the disagreement, acting reasonably and in good faith, within 10 Business Days of receipt of the notice.

6.3 If the parties are not able to resolve the disagreement within that time, the parties may appoint a mutually acceptable person to mediate the matter and the parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 20 Business Days after the mediator is appointed.

7. Owner's Reserved Rights

7.1 Subject to sections 5.1 and 5.2, the Owner reserves all of its rights as owner of the Land, including the right to use, occupy and maintain the Land and improvements in any way that is not expressly restricted or prohibited by this Agreement, so long as the use, occupation or maintenance are consistent with the intent of this Agreement.

7.2 Without limiting the generality of section 7.1, the Owner expressly reserves the right to maintain, repair or replace the residence and other improvements on the Land in their locations at the date of this Agreement provided that the area of the Land occupied by these improvements is not increased or moved from that at the date of this Agreement.

7.3 Subject to section 7.5, nothing in this Agreement restricts or affects the right of the Owner or any other party to do anything reasonably necessary to:

- (a) prevent, abate or mitigate any damage or loss to any real or personal property; or
- (b) prevent potential injury or death to any individual.

7.4 Despite the rest of this Agreement,

- (a) if any living or dead tree on the Land poses a reasonable threat to the safety of those on or immediately adjacent to the Land by falling or the risk of fire, that tree may be cut down or trimmed with the prior written consent of the Covenant Holders so as to remove the risk; and
- (b) in an emergency situation, such as fire or threat to human safety, a living or dead tree on the Land may be cut down or trimmed without the consent of the Covenant Holders, but the Owner shall notify the Covenant Holders of the circumstances of such action within 30 days, including the actual or likely effect on the Land or the Amenities.

7.5 If the Owner or any other party intends to do anything described in section 7.3, the Owner shall give at least 30 days' prior written notice to each Covenant Holder, describing in reasonable detail the intended action, the reason for it, and its likely effect on the Land or the Amenities. Despite the rest of this Agreement, the Owner shall permit each Covenant Holder to enter upon and inspect the Land if any action is proposed under section 7.3. A Covenant Holder may comment on the proposed action and the Owner and any other party must take those comments into consideration before doing anything under that section.

8. Owner's Obligations As To Taxes and Other Matters

8.1 The Owner retains all responsibilities and bears all costs and liabilities related to the ownership, use, occupation and maintenance of the Land, including any improvements expressly authorized by this Agreement.

8.2 The Owner shall indemnify the Covenant Holders, their directors, officers, employees, agents and contractors, from and against any and all liabilities, damages, losses, personal injury or death, causes of action, actions, claims, and demands by or on behalf of any person, arising out of any act or omission, negligent or otherwise, in the use, occupation and maintenance of the Land or the Amenities by the Owner.

8.3 The Owner is liable for any and all breaches of this Agreement, but the Owner is not liable for:

- (a) breaches of this Agreement which occur while the Owner is not the registered owner of any interest in the Land;
- (b) injury or alteration to the Land or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including accidental fire, flood, storm, vandalism, trespass and earth movement, but excluding injury or alteration resulting from actions of the Owner or any other person acting with the actual or constructive knowledge of the Owner, or
- (c) any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Land or the Amenities resulting from natural causes, including accidental fire, flood, storm and earth movement.

8.4 Without limiting the generality of sections 8.1, 8.2 and 8.3, the Owner:

- (a) is solely responsible and liable for any loss or damage, or liability of any kind (whether civil, criminal or regulatory), in any way connected with the existence in, on, from, to or under the Land (whether through spill, emission, migration, deposit, storage or otherwise) of any pollutant, contaminant, waste, special waste, or any matter that impairs the environment ("Contaminant"); and
- (b) shall indemnify each Covenant Holder from and against any loss, damage, liability, cause of action, action, penal proceeding, regulatory action, order, directive, notice or requirement, including those of any government agency, incurred, suffered, brought against or instituted against the Covenant Holders, jointly or severally, in any way associated with anything described in section 8.4(a).

8.5 Where, as provided under section 8.3(b), the Owner is not responsible for damage or theft due to trespass or vandalism, the Owner will take all reasonable steps to identify and prosecute the person responsible and to seek financial restitution for the damage or theft.

8.6 The Owner shall pay when due all taxes, assessments, levies, fees and charges of whatever description which may be levied on or assessed against the Land and shall pay any arrears, penalties and interest in respect thereof.

8.7 The Owner shall indemnify each Covenant Holder from and against any fee, tax, or other charge which may be assessed or levied against the Owner or a Covenant Holder pursuant to any enactment, including the *Income Tax Act* (Canada) with respect to the Land or with respect to this Agreement, including any fee, tax or other charge which may be assessed or levied against the Owner or a Covenant Holder as a result of the amendment or termination of this Agreement.

8.8 Any debts or other amounts due from the Owner to the Covenant Holders under this Agreement, if not paid within 30 days after notice, shall bear interest at the annual interest rate that is 1 percent greater than the prime rate of interest. For the purposes of this section, the "prime rate of interest" is the annual rate of interest charged from time to time by the Bank of Montreal, at its main branch in Vancouver, British Columbia, for demand Canadian dollar commercial loans made to its most creditworthy commercial customers and designated from time to time by the Bank of Montreal as its prime rate.

8.9 For clarity, the indemnities granted by the Owner to the Covenant Holders under sections 8.2, 8.4 and 8.6 are indemnities granted as an integral part of the section 219 covenant created by this Agreement.

8.10 The Owner must work diligently to remove and prevent introduction or growth of invasive alien plants such as Scotch Broom (*Cytisus scoparius*), English holly and English Ivy (*Hedera helix*)

9. Statutory Right of Way For Monitoring and Enforcement

9.1 The Owner grants to each of the Covenant Holders a license, and a statutory right of way pursuant to s. 218 of the *Land Title Act*, permitting each of the Covenant Holders to do the following:

- (a) to enter upon and inspect the Land:
 - (i) at least once each calendar year, with the date for each inspection to be agreed upon by the parties before August 31 each year, but if the parties cannot agree on those days by August 31 in any year, the Covenant Holders are entitled to enter upon and inspect the Land in accordance with section 9.1(a)(ii); and
 - (ii) at all reasonable times upon prior notice by a Covenant Holder to the Owner of at least twenty-four (24) hours, unless, in the opinion of a Covenant Holder, there is an emergency or other circumstance which does not make giving such notice practicable, in the sole discretion of the Covenant Holder;
- (b) as part of inspection of the Land, to take samples, photographs and video recordings as may be necessary to monitor compliance and enforce the terms of this Agreement;

- (c) to enter upon and protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in a Covenant Holder's sole discretion and at that Covenant Holder's expense, the Land or the Amenities 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 9.1(d), destroys, negatively affects or alters the Land or the Amenities from the condition described in the Report;
- (d) in accordance with section 10.1, to enter upon and protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in a Covenant Holder's sole discretion and at the Owner's expense, the Land or the Amenities to as near the condition described in the Report as is practicable, if an action of the Owner or any other person acting with the actual or constructive knowledge of the Owner.
 - (i) destroys, negatively affects or alters the Land or the Amenities from the condition described in the Report; or
 - (ii) contravenes any term of this Agreement;
- (e) to carry out or evaluate, or both, any program agreed upon among the parties for the protection, preservation, conservation, maintenance, enhancement, restoration or rehabilitation of all or any portion of the Land or the Amenities; and

9.2 The Covenant Holders may bring vehicles, equipment and personal property onto the Land when exercising their rights under this Agreement.

9.3 For the purposes of sections 9.1(c) and (d), each of the Covenant Holders has the sole discretion to protect, preserve, conserve, maintain, enhance, restore or rehabilitate the Land or the Amenities.

10. Enforcement Remedy of the Covenant Holders

10.1 If either Covenant Holder, in its sole discretion, believes that the Owner has neglected or refused to perform any of the obligations set out in this Agreement or is in breach of any term of this Agreement, that Covenant Holder may serve on the Owner and the other Covenant Holder a notice setting out particulars of the breach and of the Covenant Holder's estimated maximum costs of remedying the breach. The Owner has 60 days from receipt of the notice to remedy the breach or make arrangements satisfactory to the Covenant Holder for remedying the breach, including with respect to the time within which the breach shall be remedied.

10.2 If the Owner does not remedy a breach described in section 10.1 within the time acceptable to the Covenant Holder under section 10.1, either Covenant Holder is entitled to enter the Land and remedy the breach or carry out the arrangements referred to in section 10.1 and the Owner shall reimburse that Covenant Holder for any expenses incurred in doing so, up to the estimated maximum costs of remedying the breach as set out in the notice under section 10.1. Expenses incurred by the Covenant Holder under this section are a debt owed by the Owner to that Covenant Holder. By this section, each Covenant Holder appoints the other its agent for the purpose of recovering any debt owed by the Owner to the Covenant Holder who incurred expenses under this section, including through legal proceedings, and the Covenant Holder who recovers the debt holds it, less reasonable legal fees and disbursements and other reasonable expenses of recovery, as agent for the Covenant Holder that incurred the expenses.

11. Rent Charge and Its Enforcement

11.1 As security for the performance of the Owner's obligations under this Agreement, the Owner grants to the Covenant Holders a perpetual rent charge against the Land, ranking prior to all other financial charges and encumbrances registered against the Land, including options to purchase and rights of first refusal. The Rent Charge is granted both under s. 219 of the *Land Title Act* (British Columbia) as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law.

11.2 The Rent Charge secures payment to the Covenant Holders by the Owner of the sum of \$1,000.00 per year, subject to adjustment under section 11.3. For clarity, only one Rent Charge Amount is payable by the Owner for each violation, and not one to each Covenant Holder.

11.3 The Rent Charge Amount is to be adjusted on January 1 of each year by increasing or decreasing, as the case may be, the Rent Charge Amount by the amount determined by multiplying the Rent Charge Amount on December 31 immediately preceding by the percentage increase or decrease, as the case may be, in the CPI between the previous January 1 and that December 31 and adding the amount so determined to the Rent Charge Amount as it stands on that December 31. If Statistics Canada, or its successor in function, ceases to publish a CPI or comparable indicator as determined by the Covenant Holder in its sole discretion, the parties agree that the factor to be used in determining the Rent Charge Amount for each year shall be 2%.

11.4 The Rent Charge Amount shall be increased by a sum equal to 110% of the market value at the date of any breach of this Agreement of any flora or fauna, soil, rock, gravel or minerals, which has been altered, damaged, destroyed, moved, harvested or removed.

11.5 A Covenant Holder shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.

11.6 The Rent Charge is suspended unless and until the Owner is in breach of any provision of this Agreement and has not cured the breach, or is not diligently proceeding to cure the breach in accordance with section 10 of this Agreement.

11.7 A Covenant Holder may enforce the Rent Charge by any combination, or all, of:

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

11.8 If either of the Covenant Holders wishes to enforce the Rent Charge, it shall provide notice to that effect to the Owner and to the other Covenant Holder. The Notice of Enforcement may be given at any time after notice is given under section 10.1.

11.9 The Covenant Holder receiving the Notice of Enforcement has 30 days from receipt to send notice to the notifying Covenant Holder that it wishes to enforce the Rent Charge jointly and if it does not do so it is deemed to have elected not to enforce the Rent Charge.

11.10 If the Rent Charge is enforced jointly:

- (a) reasonable expenses incurred as a result of the enforcement of the Rent Charge shall be shared equally between the Covenant Holders; and
- (b) the net proceeds obtained as a result of the enforcement of the Rent Charge shall be shared equally between the Covenant Holders,

unless otherwise agreed in writing between the Covenant Holders.

11.11 If the Covenant Holder receiving the notice of enforcement does not wish to enforce the Rent Charge jointly, that Covenant Holder shall have no entitlement to the Rent Charge unless otherwise agreed in writing between the Covenant Holders.

11.12 A Covenant Holder who declines to enforce the Rent Charge jointly shall execute all documents which may be necessary for the enforcement and collection of the Rent Charge by the notifying Covenant Holder.

12. **Successor of the Owner**

12.1 This Agreement shall enure to the benefit of and be binding upon the Owner and the Owner's Successor.

12.2 The Owner shall not lease or license the Land or any part thereof unless the lease or license is expressly made subject to the provisions of this Agreement and unless the lease or licence expressly entitles the Owner to terminate the lease or licence and re-enter the land if the tenant or licensee breaches any of the provisions of this Agreement.

12.3 Failure by the Owner to comply with the provisions of this section shall not affect the enforceability of this Agreement against the Owner or any Successor.

13. Assignment of Agreement or Dissolution of a Covenant Holder

13.1 This Agreement shall be transferable by a Covenant Holder, but the Covenant Holder may assign its rights and obligations under this Agreement only to an entity or person qualified at the time of transfer to hold covenants under s. 219 of the *Land Title Act* and any applicable regulation under it. The Covenant Holders agree that before either of them it assigns its rights and obligations under this section, it shall consult with the Owner, and consider the Owner's comments, with respect to the proposed assignee. The Covenant Holder must give notice to the Owner of the proposed assignment, setting out in reasonable detail the identity of the proposed assignee and the qualifications and experience of the proposed assignee relevant to performance by the assignee of the rights and obligations of the Covenant Holder under this Agreement. If the Owner does not provide comments to the Covenant Holder regarding the proposed assignee within 10 days after the Covenant Holder to the Owner under this section, the Owner is conclusively deemed to have declined to comment on the proposed assignee and to have consented to the assignment. For clarity, the Owner agrees that the Covenant Holder is only required to consult the Owner and that the Covenant Holder is entitled to assign its rights and obligations so long as it has consulted the Owner.

13.2 In the event of the winding-up or dissolution of a Covenant Holder, the Covenant Holder shall use its best efforts to assign and transfer all of its interest under this Agreement to a person or entity authorized to accept covenants under section 219 of the *Land Title Act*. If the Covenant Holder does not assign and transfer all of its interests under this Agreement as set out in this section, it shall be deemed to have assigned and transferred all of its interest under this Agreement to the other Covenant Holder, to hold temporarily until another Covenant Holder can be found, or if the other Covenant Holder is not available, to Her Majesty the Queen in Right of the Province of British Columbia. For clarity, the consultation process set out in section 13.1 does not apply to this section.

14. Notice

14.1 Any notice or other communication (collectively "notice") required or permitted under this Agreement shall be:

- (a) delivered in person; or
- (b) sent by pre-paid registered mail to the address of the parties at their respective addresses as set out in section 14.4.

14.2 If notice is delivered in person, the party receiving the notice shall forthwith acknowledge receipt of same in writing, and the notice shall be deemed to have been received on the earlier of the date of such acknowledgment and the date that is 5 days after the notice is sent.

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

14.4 The addresses of the parties' representatives for notice are as follows:

The Owner.

Frances M. Johnson,

P.O. Box 1334, Comox B.C., V9N 7Z8, provided that if the ownership of the Land has changed, to the registered owner in fee simple as indicated on title to the Land at the time of notice.

COMOX VALLEY PROJECT WATERSHED SOCIETY

Comox Valley Project Watershed Society

Box 3007,

Courtenay, B.C. V9N 5N3

THE LAND CONSERVANCY:

TLC The Land Conservancy of British Columbia

5793 Old West Saanich Road

Victoria, BC V8X 3X3

14.5 Each party agrees to immediately give written notice to the others of any change in its address from that set out in section 14.4.

14.6 If a party refuses to sign an acknowledgment of receipt of notice, the person delivering the notice may swear an affidavit of service and the notice shall be deemed to have been received on the date of service set out in the affidavit.

15. Mortgages

15.1 If the Owner charges the Land with a mortgage and wishes the mortgage to be granted priority over the Rent Charge, the mortgage shall include provisions obliging the mortgage lender to notify both Covenant Holders in the event of any default in compliance with any of the terms of the mortgage and each Covenant Holder shall be entitled to status as a party in any legal proceedings as a consequence of any default under the terms of the mortgage and shall have the right to redeem the mortgage in any such proceedings.

15.2 In this section, "approve" and "approval" mean approval by the Covenant Holders of a first mortgage intended to be registered against the Land or any portion of the Land.

15.3 If the Owner is not in breach of this Agreement, the Covenant Holders shall approve a first mortgage if:

- (a) the mortgage does not exceed 75% of the fair market value of the Land at the date of the approval, as determined by a qualified appraiser; and
- (b) the mortgage is an arms-length transaction with a bona fide mortgage lender.

15.4 Upon approval of a first mortgage, the Covenant Holders shall consent to execute a priority agreement granting priority to the first mortgage over the Rent Charge to a maximum of the outstanding balance of the said first mortgage plus penalties.

15.5 Either Covenant Holder may, in its sole discretion, inspect the Land to determine if the Owner is in breach of any of the terms of this Agreement before granting approval and may withhold approval if there is any breach.

15.6 The Owner shall reimburse and indemnify each Covenant Holder for all reasonable expenses incurred by it as a result of a site visit to inspect the Land pursuant to this section.

16. Access

16.1 No right of access by the general public to any portion of the Land is conveyed or created by this Agreement.

17. Notice of Covenant

17.1 The Owner agrees to allow the Covenant Holders to publicize the existence of this Agreement in a tasteful manner.

17.2 Without restricting the generality of the foregoing, the Owner agrees to allow the Covenant Holders to erect a plaque or other signage on the Land, in a tasteful manner and at the Covenant Holders' expense, indicating that the Covenant Holders hold a covenant on the Land.

18. No Liability in Tort

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

19. Waiver

19.1 An alleged waiver of any breach of this Agreement is effective only if it is an express written waiver signed by each of the Covenant Holders, and is only effective to the extent of that express waiver and does not operate as a waiver of any other breach.

20. Joint and Several Obligations

20.1 The obligations of the parties referred to in this Agreement as the Owner are joint and several.

21. Remedies not exhaustive

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

22. Covenant runs with the Land

22.1 Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and also a covenant granted under s. 219 of the *Land Title Act* (British Columbia) and a statutory right of way granted under s. 218 of the *Land Title Act* in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

23. Registration

23.1 The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement, and the interests it creates, is registered against title to the Land, with, priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Agreement, including options to purchase and rights of first refusal.

24. Severance

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

25. No other agreements

25.1 This Agreement is the entire agreement between the parties and it terminates and supersedes all other agreements and arrangements regarding its subject. This Agreement may only be changed by a written instrument signed by all the parties.

26. Binding on successors

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

27. Independent Advice

27.1 The Owner acknowledges and agrees that the Owner has sought and obtained to the Owner's satisfaction independent advice from an accountant or other income tax expert with respect to the income tax implications of this Agreement and acknowledges that it does not and has not relied on either Covenant Holder for advice in this regard and that they have given no representation or warranty in that regard.

27.2 The Owner acknowledges and agrees that the Owner has been advised by the Covenant Holders that the Owner should seek legal advice as to the meaning and effect of this Agreement, and the Owner further acknowledges and agrees that no legal advisor of either of the Covenant Holders has advised the Owner on the meaning or effect of this Agreement or in connection with this Agreement.

28. Deed and contract

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

29. Rights of Covenant Holders

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

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

SCHEDULE 'A'

Attached to and forming part of the Covenant Agreement between FRANCES M. JOHNSON, Owner, and the COMOX VALLEY PROJECT WATERSHED SOCIETY, Covenant Holder and the TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, Covenant Holder, dated May 21, 1999.

BASELINE DOCUMENTATION REPORT**1.0 Acknowledgment**

1.1 The Owner hereby acknowledges and agrees that the following is an accurate description of the Property, as of the reference date of this agreement.

2.0 Property Location and description

2.1 The property is located at on Vancouver Island, British Columbia, Canada. Legally described as PID: 006-311-725, Lot pt 22 Plan 2657, DL 87, Comox Land District, except Plan DD 18916 N PCL A, lying N of PL 5689.

2.2 The 1.2 hectare (2.9 acre) property is located at 139 Isabel Road, Comox, B.C.

3. Significance of the Land and Amenities

3.1 The Land is in the Nanaimo Lowlands Ecosection and is transitory between the very dry Coastal Western Hemlock (CWHxm1) and moist maritime Coastal Douglas-fir (CDFmm) biogeoclimatic variant in Comox Peninsula. There are many mature trees, and wetlands on the property.

4. The Management Vision

4.1 This is a wooded residential property with special values. The Land is 630 feet from Comox Bay and 310 feet from Macdonald Wood Park. This is a mixed Douglas-fir forest sloping south toward Comox Bay. The northern boundary and panhandle contains a spring and swamp area. Buildings and human activity will remain at their present level, maintenance and replacement of structures to be carried out in a responsible manner. The management vision is to see the property essentially un-change, except by natural processes.

5. Site History

5.1 This undeveloped land was purchased in 1979 by Frances M. Johnson from Ronald George Wentz. The land was logged in the early years of this century.

6. List of buildings, structures and other improvements

6.1 There is a small 1,110 square foot single residence which includes carport and attached greenhouse with a small fenced area on the south side of the house and septic field: small woodshed and playhouse (playhouse to be removed in near future): cover for the well is located north of the house; piped to

house; a fenced garden area is on the southern border of the property. These are documented in photographs and the sketch map.

7. Inventory of Species.

Douglas-fir
Big Leaf Maple
Western Red Cedar
Bitter Cherry
Red Alder
Willow, Pacific
Grand Fir
Cascara
Pacific Crab Apple
Black Hawthorn
Black Cottonwood
Gary Oak

Red Osier Dogwood
Red Elderberry
Red Flowering Currant
Salmonberry
Salal
Common Snowberry
Red Huckleberry
Western Trumpet Honeysuckle
Common Wild Rose (*Rosa Nutkana*)
Baldhip Rose (*Rosa Gymnocarpa*)
Common Gooseberry
Blackcap Raspberry
Trailing Blackberry
Oregon Grape
Thimbleberry
Ocean Spray
Serviceberry
Pacific Ninebark

Introduced species

English Holly
European Mountain Ash
Himalayan Blackberry
Firbert
Daphne Laureola
English Ivy

Flowers and Herbs

Siberian Miners Lettuce
Trillium
Toothwort, slender
Clasping Twistedstalk
Hooker's Fairybells
Wild Ginger
Western Red Columbine
Skunk Cabbage
Sweet-Scented Bedstraw
Self-heal
Common Vetch
Pacific Bleeding Heart
False Lily-of-the-Valley
Yarrow
Broad-leafed Starflower
Western Buttercup
Creeping Buttercup
Burdock
Vanilla-leaf
Pathfinder
Pink Fawn Lily
False Solomon's Seal
Yellow Monkey Flower
Pearly Everlasting
Mountain Sweet-cicely
Herb Robert
Wall Lettuce
American Brookline (Speedwell)
Queen Anne's Lace
Pacific Waterparsley
Lyll's Anemone
Youth-on-age
Alumroot

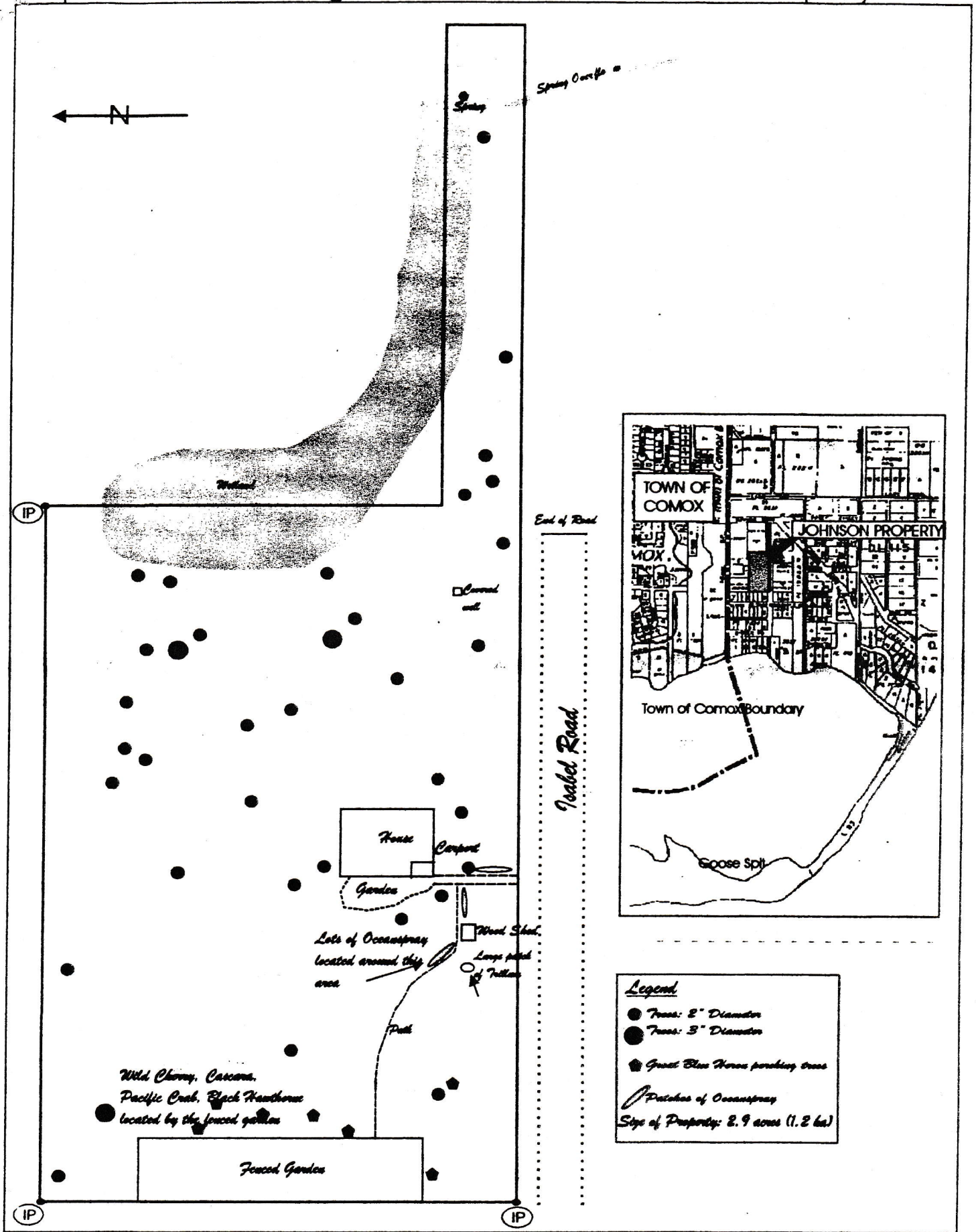
Ferns

Sword Fern
Bracken
Lady Fern
Deer Fern

8. Maps and sketches attached

- Location Map - BC Coast

Map 1: Features and Significant Values on the Johnson Property



Spring Overflow

Spring

Wetland

IP

Covered well

End of Road

Isabel Road

House

Compost

Garden

Lots of Occaspray located around this area

Wood Shed

Large patch of Tallow

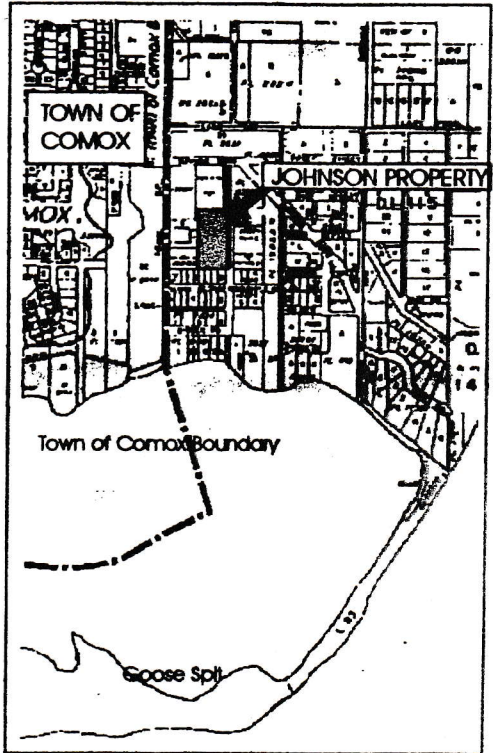
Pool

Wild Cherry, Carsons, Pacific Crab, Black Hawthorn located by the fenced garden

Fenced Garden

IP

IP



Legend

- Trees: 2" Diameter
- Trees: 3" Diameter
- ★ Great Blue Heron perching trees
- Patches of Occaspray

Size of Property: 2.9 acres (1.2 ha)

SCHEDULE B

Attached to and forming part of the Covenant Agreement between FRANCES M. JOHNSON, Owner, and the COMOX VALLEY PROJECT WATERSHED SOCIETY, Covenant Holder and TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, Covenant Holder, dated May 21, 1999.

1. Except with consent of both Covenant Holders at their sole discretion, the following restrictions apply to the Land;
 - 1.1 no Native Plants, including trees, may be trimmed, pruned, cut down, damaged, destroyed, moved, harvested or removed from any part of the Land;
 - 1.2 no soil, gravel or rock, may be disturbed, explored for minerals, moved, removed from or deposited in or on the Land;
 - 1.3 no fill, rock, garbage or other material foreign to the Land may be deposited in or on the Land;
 - 1.4 there may be no alteration or interference with the hydrology of the Land, including diversion of natural drainage and flow of water in or around the Land which may impact the Land;
 - 1.5 the Land must not be knowingly polluted or contaminated by matter;
 - 1.6 no new fixtures or improvements, including building, or other structures, may be built, affixed or placed on the Land.
 - 1.7 no new roads may be laid out or constructed on the Land; and
 - 1.8 no hunting, fishing, or grazing of domestic animals may be carried out on the Land;

END OF DOCUMENT