

REQUEST FOR DECISION

Daw Holdings – McGillivray Falls Land Use Contract Bylaw No. 87, 1976 Amendment

Meeting Date: May 12/26, 2014

To: SLRD Electoral Area Directors Committee / SLRD Board

Applicant: Daw Holdings Ltd. (Applicant) & McGillivray Falls Recreation Retreat Ltd. (Owner)

Location: SLRD Electoral Area C – McGillivray Falls

Legal Descriptions:

DL 4363, LLD PID 013-302-361

OCP Designation: N/A Area C OCP Bylaw No. 689, 1999	Zoning: LUC Bylaw No. 87, 1976	ALR Status: N/A	Development Permit Areas: RAR
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RECOMMENDATION:

THAT the SLRD Board direct staff to develop an amendment bylaw to Land Use Contract Bylaw No. 87, 1976, and SLRD Zoning Bylaw No. 765, 2002, with respect to the DAW Holdings Ltd. and McGillivray Falls Recreation Retreat Ltd. application.

KEY ISSUES/CONCEPTS:

An application to amend Land Use Contract (LUC) Bylaw No. 87, 1976 (McGillivray Falls) in order to facilitate a subdivision of the property has been received. In order to subdivide the property it is necessary to remove that portion of DL 4363 (the proposed new lot) from the LUC and zone it under SLRD Zoning Bylaw No. 765, 2002. Please see the Appendix 2 for the proposed subdivision plan. The terms of the LUC and the designation of the bulk of the lot as greenbelt are inconsistent with the proposed subdivision unless the proposed parcel is removed from the LUC.

RELEVANT POLICIES:

Electoral Area C OCP Bylaw No. 689, 1999
Zoning Bylaw No. 765, 2002
Land Use Contract Bylaw No. 87, 1976

BACKGROUND:

Land Use Contract Bylaw No. 87, 1976 was created in 1976 on District Lot 4363 for the purposes of establishing a recreation retreat. McGillivray Falls Recreation Retreat Ltd. (MFRR) is the company listed on the title of the property. MFRR is a company controlled by 40 shareholders with a Board of Directors. The original proposal that was not reflected in the final LUC document was for a recreational area fronting the lake, and a future commercial area for the top plateau. The LUC was created and included provisions only for a recreational area by the lake including small summer cabins for the shareholders of MFRR. DAW Holdings Ltd. (DAW) is the agent authorized to submit the application by MFRR. According to DAW Holdings there is a complicated history going back before the LUC was created to 1973 between the two separate limited companies: MFRR & DAW. MFRR was established by DAW and initially DAW held all the shares in MFRR. New shareholders bought shares in MFRR from DAW though DAW is still the largest single shareholder in MFRR. The intent of DAW is to resolve those outstanding agreements and acquire title to the proposed lot and leave MFRR with the remainder of DL 4363. MFRR is holding the proposed Lot 1 in trust for DAW.

ANALYSIS:

Staff have not yet drafted any LUC bylaw or zoning amendments for this application. It is being brought to the Board for review to determine if there is support for the LUC and zoning amendments that will facilitate a future subdivision to create an additional lot away from the lake in a forested area of DL 4363.

SLRD staff have been in communication with Philip Lamb, the President of MFRR and he has indicated his support for the application moving forward.

Land Use Contract Issues

In relation to the authorization issue noted above, Section 930(2)(a) of the *Local Government Act*, requires an amendment to a land use contract by bylaw to have the agreement of the owner of any parcel that is described in the bylaw as being covered by the amendment. This means that the SLRD requires the Agent's Authorization (DAW is the agent acting on behalf of MFRR) or similar indication; as well, the adoption of the amendment bylaw will be subject to the agreement of the owner of DL 4363 (MFRR is the owner listed on the title).

Zoning Issues

The application that was submitted proposed forestry/logging use for the new lot. This would be a significant change from the current greenbelt use as part of the LUC, and represents a more active use of the property that could have potentially negative effects on the recreation retreat portion. Increased heavy vehicle traffic may also result from the proposed use

When the applicant was asked to elaborate on the intentions for the proposed use(s) of the future Lot 1 property, they indicated that the future uses of the property are unknown. The applicant has stated that they have no development plans for the property at this time other than acquiring title to the proposed lot and then selectively clearing of the site.

In light of this uncertainty the SLRD has suggested to the applicant that rather than rezoning the subject area to an existing zone, the SLRD could apply a new, limited use Open Space zone on the area. In this approach the proposed parcel area would be removed from the LUC and rezoned with the Open Space zone to act as a holding zone with allowance for some logging uses. The permitted uses in such a zone would be limited to open space uses with no building or structures allowed.

Bill 17 proposes to eliminate land use contracts in general. If Bill 17 is adopted as currently proposed, then zoning will need to be in place by June 30, 2022 before all Land Use Contracts in the province are terminated by June 30, 2024. This change to the LUC is a piece of the rezoning that will ultimately be required by Bill 17, if adopted.

Proposed uses for the new Open Space zone would include:

- *Open Space, Limited Use*
- Establishment, management, and harvesting of the forest cover for timber and other forest products, and values

Open Space, Limited Use would be defined as: that portion of a lot not occupied by parking areas, which may or may not be accessible by vehicle, and may only be suitable for limited recreational use. Open Space, Limited Use shall be free of any buildings or structures.

The minimum parcel size for that Open Space zone would be set at the size of the proposed parcel to facilitate the subdivision from DL 4363, with no further subdivision potential.

Once future uses have been determined for the property, a subsequent rezoning application could be submitted that would amend the zoning to allow a specific development to occur.

Legal Issues

There is a Certificate of Pending Litigation (Registration No. LB427820) on the current title of the property (checked March 5, 2014). The document is a Notice of Civil Claim filed in the Supreme Court of British Columbia that provides a Statement of Facts (from the perspective of DAW) and describes the relief being sought by DAW, including the legal title to Lot 2 and a request that MFRR take all reasonable measures to effect the subdivision, as well as costs. In response to SLRD staff raising concerns regarding a proposed LUC and Zoning amendment application where the applicant is currently engaged in legal action against the property owner, DAW has responded that the certificate could be removed from title. The intent was for DAW to protect its beneficial interest to a portion of DL 4363 pending its subdivision and registration in DAW's name. The SLRD is proceeding with the processing of the land use contract amendment

application because MFRR has provided authorization for DAW to act as an agent on its behalf. SLRD has confirmed this authorization by way of a phone call to the MFRR representative.

Geotechnical, Water and Access Issues

The SLRD Board has previously raised concerns regarding logging activities in several Electoral Areas where steep slopes and waterbodies are involved. There appear to be relatively steep slopes (>40%) on DL 4363, and over the proposed Lot 1. There are existing concerns from both the community and the SLRD regarding the water quality of Anderson Lake, as well as potential negative effects from logging activity on steeper lots near the water.

The Electoral Area C Official Community Plan Bylaw No. 689, 1999 has several policies regarding development on steep slopes of 40% or greater (Sections 17.7 – 17.9). Policy 17.9 states that “on slopes exceeding 40%, grading and tree harvesting should be minimized. The applicant has responded and indicated that there are several flat areas, and the steep rock slopes are primarily within the BC Hydro right-of-way through the property.

With respect to the Douglas Trail, which runs above the subject property to the west, it should be noted that Bill Pekonen, the President of DAW, was involved in providing research in support of getting the Douglas Trail recognized as a public road.

OPTIONS:

Option 1

Direct SLRD Staff to draft LUC and zoning amendment bylaws to bring back to the Board for first reading.

Option 2

Refer the application back to staff for more information, or revision.

Option 3

Reject the application.

PREFERRED OPTION: Option 1 - This will enable the application to be taken through the process and will allow for feedback to be collected from the McGillivray Falls owners by way of a public hearing process.

FOLLOW UP ACTION:

As per Board direction.

CONCLUSION:

SLRD staff have outlined a course of action for moving forward. Based on the provisions in the LUC, a subdivision cannot proceed as the area is designated greenbelt and no subdivisions are permitted. It is recommended that bylaws be developed to amend the LUC to remove the proposed Lot 1 from the LUC and rezone it to a new Open Space zone under SLRD Zoning Bylaw No. 765, 2002. A notification process and public hearing will be required.

ATTACHMENTS:

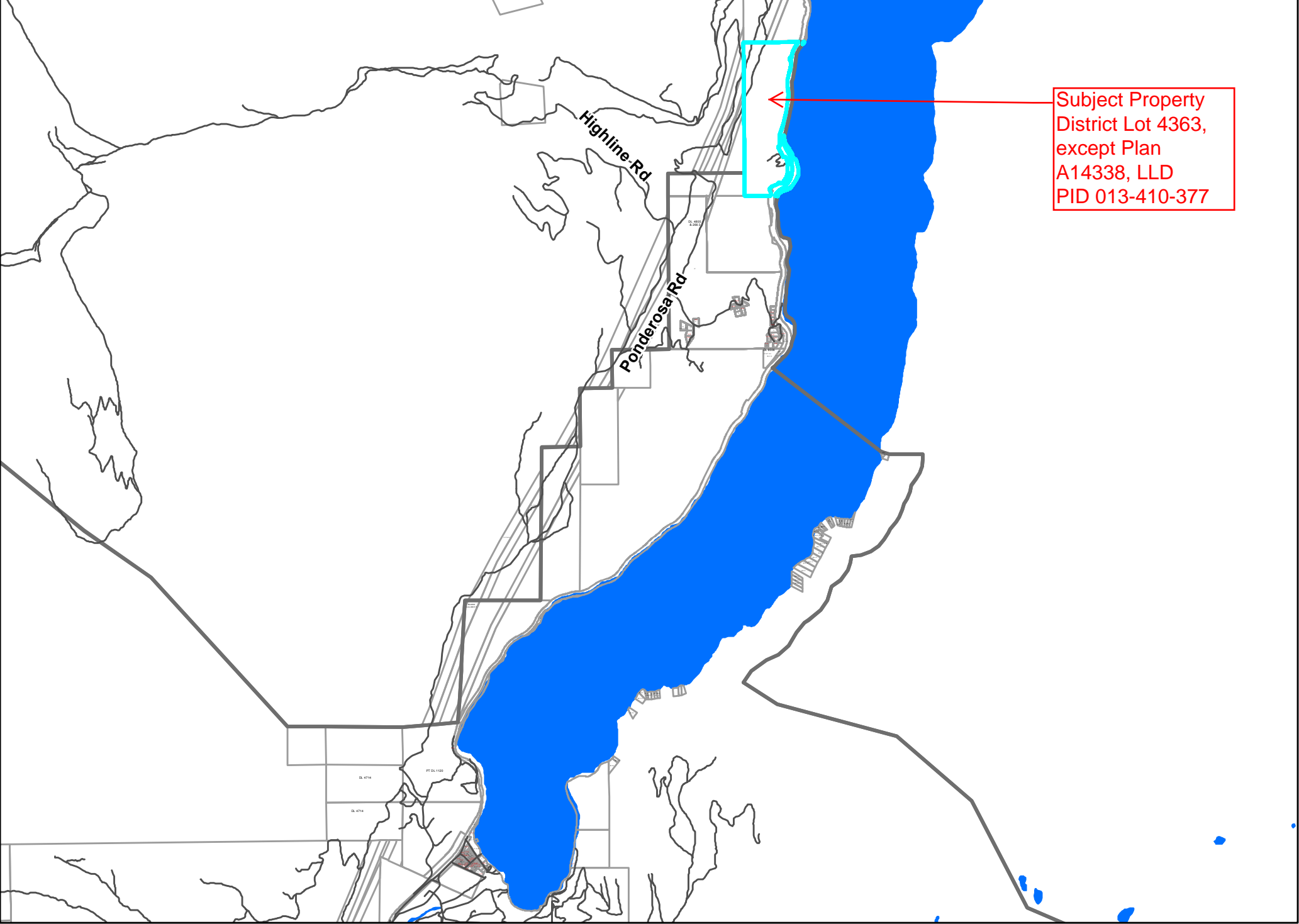
Appendix 1: Site location map

Appendix 2: Proposed subdivision plan

Prepared by: I. Holl, Planner

Reviewed by: K. Needham, Director of Planning and Development

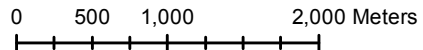
Approved by: L. Flynn, Chief Administrative Officer



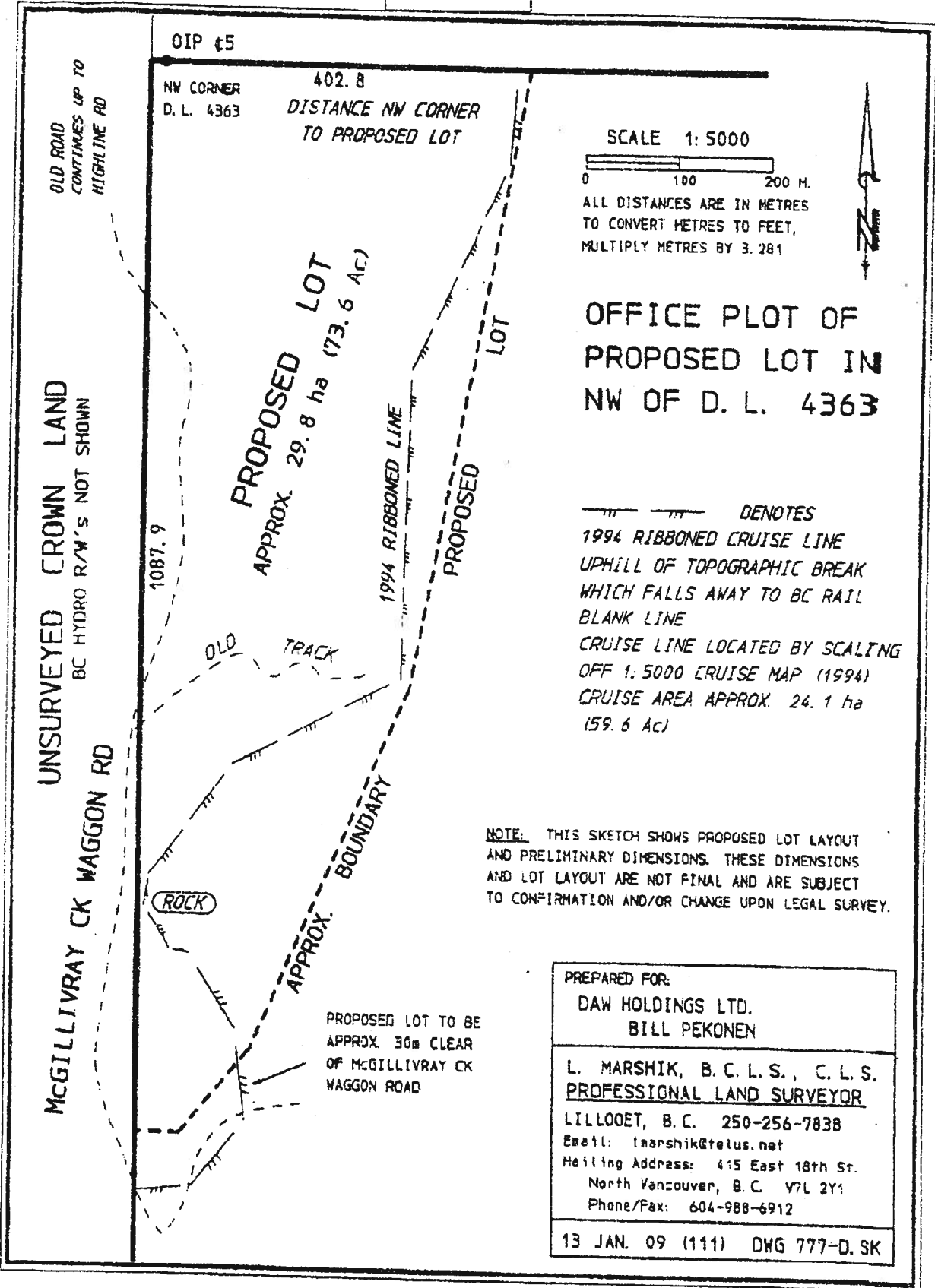
Subject Property
District Lot 4363,
except Plan
A14338, LLD
PID 013-410-377



APPENDIX 1: Site Location Map
McGillivray Falls - Land Use Contract Bylaw No. 87



This map is for convenience only. It is not a legal document.
Accuracy is not confirmed. All information should be verified
with the SLRD Planning Department.

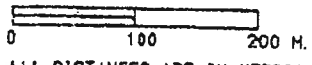


OIP #5

NW CORNER
D. L. 4363

402.8
DISTANCE NW CORNER
TO PROPOSED LOT

SCALE 1:5000



ALL DISTANCES ARE IN METRES
TO CONVERT METRES TO FEET,
MULTIPLY METRES BY 3.281



OFFICE PLOT OF
PROPOSED LOT IN
NW OF D. L. 4363

— — — — — DENOTES
 1994 RIBBONED CRUISE LINE
 UPHILL OF TOPOGRAPHIC BREAK
 WHICH FALLS AWAY TO BC RAIL
 BLANK LINE
 CRUISE LINE LOCATED BY SCALING
 OFF 1:5000 CRUISE MAP (1994)
 CRUISE AREA APPROX. 24.1 ha
 (59.6 Ac)

NOTE: THIS SKETCH SHOWS PROPOSED LOT LAYOUT
AND PRELIMINARY DIMENSIONS. THESE DIMENSIONS
AND LOT LAYOUT ARE NOT FINAL AND ARE SUBJECT
TO CONFIRMATION AND/OR CHANGE UPON LEGAL SURVEY.

PREPARED FOR:
 DAW HOLDINGS LTD.
 BILL PEKONEN

L. MARSHIK, B. C. L. S., C. L. S.
 PROFESSIONAL LAND SURVEYOR
 LILLOOET, B. C. 250-256-7838
 Email: lmarshik@telus.net
 Mailing Address: 415 East 18th St.
 North Vancouver, B. C. V7L 2Y1
 Phone/Fax: 604-988-6912

13 JAN. 09 (111) DWG 777-D.SK

Handwritten signatures and initials.