

CITY OF NANAIMO

BYLAW NO. 7146

A BYLAW TO AUTHORIZE THE AMENDMENT OF A LAND USE CONTRACT

WHEREAS the City of Nanaimo entered into a Land Use Contract with GREGORY CLARKE FOX, for the purpose of determining the terms and conditions under which P.I.D. 003-783-898, LOT 3, SECTION 10, RANGE 6, MOUNTAIN DISTRICT, PLAN 18793 (the "Lands" should be developed;

AND WHEREAS the said Land Use Contract was registered in the Land Title Office under F25903 on April 1st, 1977;

AND WHEREAS the said Land Use Contract was amended and the amendment registered in the Land Title Office under G36688 on April 17th, 1978;

AND WHEREAS the City of Nanaimo has agreed to further amend said Land Use Contract.

NOW THEREFORE the Council of the City of Nanaimo, in open meeting assembled, HEREBY ENACTS AS FOLLOWS:

Title

1. This Bylaw may be cited for all purposes as the City of Nanaimo "LAND USE CONTRACT AMENDMENT BYLAW 2012 NO. 7146".

Amendment

2. The City of Nanaimo does hereby amend the Land Use Contract registered against the Lands in the Victoria Land Title Office on April 1st, 1977 under number F25903, as amended under G36688.
3. The amendment will be in the form of Schedule A, attached hereto.

Execution of Documents

4. The Mayor and Director of Legislative Services are hereby authorized to execute all documents necessary for the amendment of the Land Use Contract.

PASSED FIRST READING 2012-APR-16
PASSED SECOND READING 2012-APR-16
PUBLIC HEARING HELD 2012-MAY-03
PASSED THIRD READING 2012-MAY-14
ADOPTED 2012-MAY-14

J. R. RUTTAN
MAYOR

J. E. HARRISON
MANAGER
LEGISLATIVE SERVICES

SCHEDULE A

**CITY OF NANAIMO
AMENDMENT OF LAND USE CONTRACT
LUC NO. 1638**

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, British Columbia, V9R 5J6

(hereinafter called the "**Municipality**")

AND:

CHERYL JEAN MILLER
2637 Arbot Road
Nanaimo, British Columbia, V9R 6J1

and

OVERHEAD MANAGEMENT LTD.
(Inc. No. BC0893386)
4590 Bonnieview Place
Victoria, British Columbia, V8n 3v6

(hereinafter collectively called the "**Developer**")

WHEREAS

- A. The Municipality entered into a land use contract with Gregory Clarke Fox in respect of Lands legally described as:

PID: 003-783-898 Lot 3, Section 10, Range 6, Mountain District, Plan 18793

(the "Lands")

which land use contract was registered in the Victoria Land Title Office under number F25903 and an amendment thereof was registered under number G36688. The said land use contract as amended is herein called the "Land Use Contract".

- B. The Developer is presently the owner of the Lands.
- C. The Developer and the Municipality have agreed to amend the Land Use Contract in the manner hereinafter set forth.

NOW THEREFORE that in consideration of the premises and the mutual agreements hereinafter set forth the Municipality and the Developer agree to amend the Land Use Contract in the manner hereinafter set forth:

- 1) Schedule "C" of the Land Use Contract (Permitted Uses) is replaced with Schedule "C" attached hereto.

- 2) Paragraph 3 of the Land Use Contract is deleted and the following is substituted therefore:

"The Municipality will permit the Developer to carry out and perform all work contemplated by this Agreement on the condition that all terms and conditions of this Agreement including all of the applicable by-laws and regulations of the Municipality in force from time to time during the currency of this Agreement are complied with by the Developer. Without limitation, the Development Cost Charge Bylaws of the Municipality in effect from time to time shall apply to new construction on the Lands after February 15, 2012 except as specifically set out herein. To the extent that a permanent structure contemplated in paragraph 8A(b) of the Agreement covers the tennis courts covered by the existing Tennis Bubble shown on Schedule "B", Development Cost Charges shall not be chargeable on the floor area of the existing tennis courts."

- 3) Paragraph 5.02 of the Land Use Contract is deleted.
- 4) Section 7 of the Land Use Contract shall be amended to add the following at its end:

"No less than 56 parking spaces shall be maintained based on the existing Facilities and other improvements on the Lands shown on Schedule "B". If additional Facilities or other improvements are constructed on the Lands then additional parking shall be provided and maintained by the Developer at its sole cost if and to the extent that the City

of Nanaimo Development Parking Regulations Bylaw 2005 No. 7013 in effect from time to time would if applicable require such parking”

- 5) The parties acknowledge that the actual layout of the improvements on the Lands are not exactly as set out in Schedule “B-1” originally attached to the Land Use Contract and the parties agree that the as-built configuration of improvements on the Lands shown on Schedule “B” are permitted under this Land Use Contract. With that intent the following is added to the Land Use Contract as paragraph 8A thereof:

“8A.(a) Despite anything else contained in this Land Use Contract Further, the parties acknowledge and agree that the Facilities (as defined in Schedule “C” hereto) and other improvements on the Lands may be modernized or replaced, and the Lands may be built upon within the areas shown on Schedule B as improved or as Future Expansion area or Future Residence area

(b) Without limitation of paragraph 8A(a), one or more tennis courts in the area shown as “Tennis Bubble” on Schedule B may be covered by a permanent structure not to exceed a height of 11 metres. The exterior of such permanent structure must be of metal construction in compliance with the building code applicable at the time of construction and must be insulated. Squash and/or Racquetball Courts maybe included within such permanent structure within the area shown as “Tennis Bubble” on Schedule “B” and/or in the area immediately south of said Tennis Bubble area. The setbacks from property lines for any permanent structure contemplated by this section shall be equal to the actual setback of the temporary bubble covering the existing 4 indoor courts as shown on Schedule B.

(c) The Developer shall at its expense pave or otherwise hard surface a parking area of not less than 56 parking spaces and the access driveway to the Facilities within one year of the sooner of:

- i. Substantial completion of the permanent structure described in paragraph 8A(b); or
- ii. Substantial completion of any other Major Addition.

“Major Addition” means any new building or buildings constructed on the Lands and any addition or additions to the buildings on the Lands if the aggregate floor area of all such new buildings or additions or both exceeds 1,000 square feet but in calculating such area there shall be excluded from such calculation:

- i. the floor area of any residence constructed within the area shown as “future residence” on Schedule “B”; and
- ii. the floor area of any building constructed to replace any or all of the buildings shown on Schedule “B” as “Shed”, “Dwelling and Clubhouse” and “New Addition” to the extent that the floor area of such replacement construction does not exceed the floor area of the building so replaced.

(d) Except as provided in paragraph 8A(b) and paragraph 8A(e), the height of buildings constructed after February 15, 2012 shall not exceed a height of 9 metres.

(e) Any residence constructed in the area shown on Schedule “B” for Future Residence shall not exceed the maximum height restrictions for a single family residence of the City of Nanaimo Zoning Bylaw as amended from time to time.”

6) Schedule “B-1” of the Land Use Contract is deleted and is replaced by Schedule B attached hereto. References in the Land Use Contract to Schedule B-1 are replaced with references to Schedule B.

7) The following is added to the Land Use Contract as paragraph 8B thereof:

“The Developer shall at its expense construct and maintain a sound attenuation fence as contemplated in the report of Lewkowich Engineering Associates Ltd. dated January 17, 2012, a copy of which is attached as Schedule “E”. Said fence shall be constructed with reasonable dispatch and, in any event, shall be completed not later than September 30, 2012. Upon completion of said fence the Developer shall retain Lewkowich Engineering Associates Ltd. to inspect the as-built fence and certify that it has been constructed as contemplated in the report attached as Schedule “E””

- 8) The following is added to the Land Use Contract as paragraph 8C thereof:
"The outdoor tennis courts shall not be artificially lit for use at night."
- 9) Schedule "E" attached hereto is added to the Land Use Contract as Schedule "E" thereto.
- 10) Paragraph 12 of the Land Use Contract is deleted.
- 11) Section 14 of the Land Use Contract is deleted and replaced with the following:
"The Schedules to this Agreement referred to herein are hereby incorporated into and made part of this Agreement."
- 12) Schedule "D-1" of the Land Use Contract is deleted.

IN WITNESS WHEREOF, the parties have executed this agreement this ____ day of _____, 2012.

Officer Signature(s)

Execution Date

| Y | M | D |
|---|---|---|
| | | |

Parties Signature(s)

CITY OF NANAIMO
by its authorized signatory(ies):

(please print name, address and occupation)

Officer Signature(s)

Execution Date

Parties Signature(s)

(please print name, address and
occupation)

| Y | M | D |
|---|---|---|
| | | |

CHERYL JEAN MILLER

Officer Signature(s)

Execution Date

Parties Signature(s)

(please print name, address and
occupation)

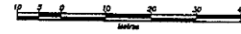
| Y | M | D |
|---|---|---|
| | | |

OVERHEAD MANAGEMENT LTD.
by its authorized signatory(ies):

SCHEDULE "B"

SITE PLAN OF LOT 3,
SECTION 10, RANGE 6,
MOUNTAIN DISTRICT, PLAN 18793.

Scale = 1:500

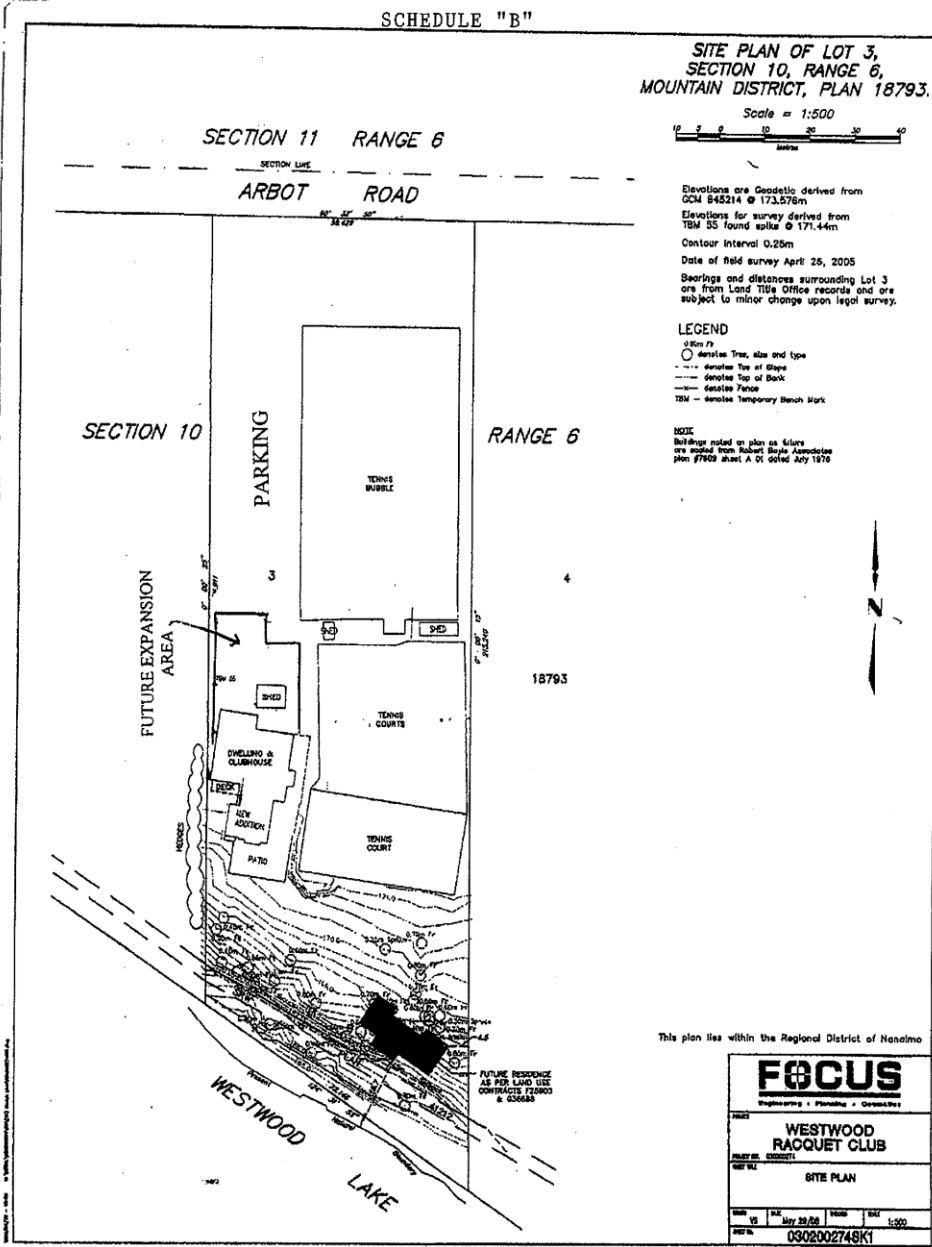


Elevations are Geodetic derived from GCM 848214 @ 173.576m
Elevations for survey derived from TBM 53 found spike @ 171.44m
Contour Interval 0.25m
Date of field survey April 26, 2005
Bearings and distances surrounding Lot 3 are from Land Title Office records and are subject to minor change upon legal survey.

LEGEND

- - denotes Tree, size and type
- - - - denotes Top of Slope
- - - - denotes Top of Bank
- - - - denotes Fence
- TBM - denotes Temporary Bench Mark

NOTE
Bridges noted on plan as future are noted from Robert Sipe Associates plan #7809 sheet A 01 dated July 1970



This plan lies within the Regional District of Nanaimo

| | | | |
|---|--|--|--|
| FOCUS Engineering • Planning • Construction | | | |
| PROJECT: WESTWOOD RACQUET CLUB | | | |
| JOB NO.: 0302002745K1 | | | |
| DATE: July 29, 2005 | | | |
| SCALE: 1:500 | | | |
| SHEET: 0302002745K1 | | | |

SCHEDULE "C"
PERMITTED USES

The permitted uses of the Land and the buildings and structures thereon are:

- A. The operation of a tennis or racquet club (the "Club");
- B. The provision of facilities for one or more of the following:
 - (i) tennis, badminton, squash, racquetball, table tennis, and other court sports;
 - (ii) health spa and sauna; and
 - (iii) exercise and body building equipment;(the "Facilities")

and the operation and use of such Facilities for the sports, activities, and purposes for which they are designed. The Developer may permit the use of said Facilities by members of the public generally irrespective of whether they are members of the Club.

- C. The following uses are permitted as uses ancillary to the operation of the Club, the Facilities, or both:
 - (i) Licensed Lounge with a "Liquor Primary" type of liquor license and subject to the requirements of paragraph (D) of this Schedule "C";
 - (ii) Facilities within the clubhouse for the residential accommodation of Owners, Members, employees or caretakers and residential accommodation of Owners or Members within the "future residence" site shown on Schedule "B" subject to the requirements of paragraph (D) of this Schedule C;
 - (iii) Locker rooms and shower facilities;
 - (iv) sale of sporting goods and equipment related to such of the Facilities as are operated on the Land.
 - (v) Restaurant with a "Food Primary" type of liquor license and subject to the requirement of paragraph D of this Schedule "C";

- D. (i) For the purposes of this Schedule of Permitted Uses, the operation of a restaurant or a licensed lounge shall be considered to be a use ancillary to the operation of the Club or Facilities if operated:
- (a) in the case of a restaurant, with a capacity no greater than the capacity of the dining room and patio existing as at February 15, 2012;
 - (b) in the case of a licensed lounge with a capacity no greater than the capacity of the licensed lounge existing at February 15, 2012.

For certainty, in no circumstance shall the liquor license applicable to the dining room and patio permit more than 54 seats and in no circumstance shall the liquor license applicable to the licensed lounge permit more than 30 seats. For further certainty, there is no requirement that the use of the dining room, the patio, or the licensed lounge be restricted to members of the Club or users of the Facilities, it being intended that they may be used by the public generally.

- (ii) The use of the restaurant shall be subject to the following further restrictions:
- (a) dining room patrons shall not be served unless they have been seated before 8:30 p.m. on the date of service;
 - (b) the patio shall be closed for the day no later than 10:00 p.m. on each day.
- (iii) No more than 3 weddings or receptions shall be held on the Lands between April 15th and September 15th in any one year. A wedding ceremony and the reception following shall be considered one event. No outdoor hospitality services shall be provided after 10:00 p.m. on the day of said event.
- (iv) For the purposes of this Schedule of Permitted Uses, residential use of the Lands limited to no more than 3 dwelling units within the clubhouse for the use of owners, members, employees or staff shall be considered a use ancillary to the Club or the Facilities. For certainty, in no circumstances will more than 3 dwelling units be permitted in the Clubhouse.

- (v) For the purposes of this Schedule of Permitted Uses, residential use of the Lands within the area shown as "future residence" on Schedule "B" shall be considered a use ancillary to the Club or Facilities but only if the residence therein is limited to one single family dwelling unit and only if such single family dwelling is used by Owners or Members of the Club. For certainty, such dwelling unit shall not be used as staff quarters for employees of the Club or the restaurant on the Lands who are not Owners.

"Owners" means one or more owner of the Lands and/or principal of a corporate owner of the Lands.

"Members" means one or more member of the Club.

SCHEDULE "E"



Lewkowich Engineering Associates Ltd.
 geotechnical • health, safety & environmental • materials testing

Westwood Tennis Club
 2367 Arbot Road
 Nanaimo, B. C.
 V9R 6S9

File Number: G9678
 Date: January 17, 2012

Attention: Ms. Cheryl Miller

PROJECT: 2367 Arbot Road, Nanaimo, B. C.

SUBJECT: Environmental Noise Assessment

Dear Madam:

As instructed by you, we attended the foregoing property on December 12th, 2011 and conducted an inspection of environmental noise sources and receptors at the site. The purpose of the site inspection was to estimate or otherwise determine the current sound levels at the site for noise propagation modeling and comparison to accepted Guidelines for environmental noise in residential neighbourhoods. The concern regarding noise propagation is due to seasonal patio use of a bar and restaurant service by the Westwood Tennis Club, and the potential for nuisance noise levels at adjacent property boundaries.

- (1) Site Conditions: The subject site is comprised of three lots of 3.57± hectares in total area. The site is essentially smooth and sloping gently down from north to south and south-southeast; total relief is in the order of 5 meters. The south perimeter (bordering Westwood Lake) is vegetated with shrubs and small trees, with interspersed mature trees.
- (2) Noise Sources: One potential nuisance noise source was identified for the site. This is the outdoor patio used seasonally for bar and restaurant service, located immediately south of the restaurant building occupying the southwest extent of the Tennis Club property. Two noise receptors, located one each on adjoining property east and west, lie 88 and 26± meters distant respectively. (These are identified on the attached site drawings).
- (3) Scope of Work: On-site sampling was not possible since the outside patio area was closed for the winter. However, measurements made by the property owner indicated that source noise levels (SPL) were in the order of 55 – 60 dB, and levels at the east property line were <45 dB. Noise prediction modeling was limited to the south extent of the 3 lots comprising the site:

Table 1: Study Area:

| Civic Address | Legal Description |
|----------------------------------|---|
| 2367 Arbot Road (subject site) | Lot 3, Section 10, Range 6 Mountain district Plan VIP 18793 |
| 2343 Arbot Road (adjoining east) | Lot 4, Section 10, Range 6 Mountain district Plan VIP 18793 |
| 2371 Arbot Road (adjoining west) | Lot 2, Section 10, Range 6 Mountain district Plan VIP 18793 |
| North shore of Westwood Lake | N/A - Urban Park |

- (4) Regulatory Framework: No specific Standards exist within the prevailing municipal or provincial jurisdictions for regulation of environmental noise control.

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Project: G9678



However the Canada Mortgage and Housing Corporation (CMHC) has published guidelines for nuisance noise ('Road and Rail Noise: Effect on Housing') which suggests 55 dBA as a maximum daytime equivalent noise level (Leq) at the outside walls of a residential structure. The Guideline further states that "if the noise level outside the windows is less than 55 dBA, the indoor criterion should be satisfied even with open windows, except that bedrooms may be marginally noisier than is desirable."

Therefore, daytime indoor noise levels should be within acceptable limits assuming that noise levels at the building facades are 55 dBA or lower. However, most European Guidelines suggest that night-time levels (typically defined as between the hours of 2300 to 0700), should be 45 dBA or lower in order to meet the desirable bedroom noise levels.

The CMHC recommended Guidelines are summarized in the following table:

Table 2: CMHC Recommended Noise Levels for Dwellings

| | Maximum Acceptable Noise Levels (Leq dBA) |
|--|---|
| Bedrooms | 35 (indoors) |
| Living, dining & recreational areas | 40 (indoors) |
| Kitchen, bathroom, hallway & utility areas | 45 (indoors) |
| Outdoor recreation areas | 55 (outdoors) |

(5) Methodology: Following the recommended procedures described in Standard ISO-1996, 'Description and Measurement of Environmental Noise', existing source noise levels (Leq dBA) were estimated for the subject site. These data were then used to estimate noise levels under current conditions, and under two possible mitigated conditions using a PC-based noise propagation modeler (SoundPlan Essential™). A source noise sound pressure level (SPL) of 75 dB was used, to simulate worst case conditions. Actual source SPL's would, in fact, be lower.

The data were modeled under three conditions: (1) present (baseline) 'as-found' conditions; and (2), conditions with two variations of mitigation controls in place. Total SPL under the modeled conditions are summarized below:

Table 3: Modeled Maximum (L_{Max}) Noise Levels – Conditions as Found

| Sample No. | Location | Source SPL | SPL (dBA Slow) |
|------------|----------------------------------|------------|----------------|
| AF-1 | 2367 Arbot - East property line | 75 dB | 32 |
| AF-2 | 2367 Arbot - West property line | 75 dB | 40 |
| AF-3 | 2343 Arbot West building facade | 75 dB | 28 |
| AF-4 | 2371 Arbot South building facade | 75 dB | 24 |
| AF-5 | North shore of lake | 75 dB | 32 |

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Project: G9678



Table 4: Modeled Maximum (L_{Max}) Noise Levels – East Fence Installed

| Sample No. | Location | Source SPL | SPL (dBA Slow) |
|------------|----------------------------------|------------|----------------|
| EM-1 | 2367 Arbot - East property line | 75 dB | 32 |
| EM-2 | 2367 Arbot - West property line | 75 dB | 44 |
| EM-3 | 2343 Arbot West building facade | 75 dB | 24 |
| EM-4 | 2371 Arbot South building facade | 75 dB | 24 |
| EM-5 | North shore of lake | 75 dB | 32 |

Table 5: Modeled Maximum (L_{Max}) Noise Levels – East & West Fences Installed

| Sample No. | Location | Source SPL | SPL (dBA Slow) |
|------------|----------------------------------|------------|----------------|
| EWM-1 | 2367 Arbot - East property line | 75 dB | 28 |
| EWM-2 | 2367 Arbot - West property line | 75 dB | 40 |
| EWM-3 | 2343 Arbot West building facade | 75 dB | 24 |
| EWM-4 | 2371 Arbot South building facade | 75 dB | 16 |
| EWM-5 | North shore of lake | 75 dB | 32 |

The most effective control was the insertion of a 10± meter long, 2 meter high solid panel fence oriented north and south from about 3 meters southeast of the patio; and a 10± meter long, 2 meter high solid panel at the west property line extending south about 10 meters from the southwest corner of the building. The modeled noise contours under the fenced conditions may be found in the appended drawings.

(6) Conclusions and Recommendations: As-found noise levels, as modeled, are well below the 45 dB European guideline, suggesting that while incremental attenuation would be achieved by installation of fences, the current SPL's are acceptable.

Assuming construction of the 2 meter high fences, and retention of the forested areas, modeled noise levels at building facades were in the order of 16 to 24 dBA. Noise levels were in the order of 4 to 8 dBA higher (or subjectively 1.5- to 3 times louder) without the proposed fences. Variations in actual and perceived noise levels and character should be expected under different meteorological conditions, particularly with south and southeast winds.

In summary, within the imposed constraints of the fence height, the limitations of the measured and modeled data, and different environmental conditions, the proposed fences should be effective in reducing nuisance noise to well below the CMHC daytime guideline of Leq 55 dBA, and the Leq 45 dBA night-time guideline at the closest approaches to the receptors on adjacent property.

Report use and limitations: In preparing this report Lewkowich Engineering Associates Ltd. (LEA Health, Safety & Environmental) reviewed historical records, conducted interviews with certain private and public officials, and conducted an on site visual inspection of the property. We examined and relied upon documents referenced in the report and have relied on oral statements made by certain individuals but we have not conducted an independent examination of the facts contained in referenced materials and statements. LEA Health, Safety & Environmental assumes the genuineness of the documents and that the information provided in documents or statements is true and accurate.

Lewkowich Engineering Associates Ltd.

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Project: G9678



LEA Health, Safety & Environmental has prepared this report in a professional manner, using that level of skill and care normally exercised for similar projects under similar conditions by reputable and competent consultants and in accordance with our normal terms and conditions. LEA Health, Safety & Environmental shall not be responsible for conditions or consequences arising from relevant facts that were concealed, withheld, or not fully disclosed at the time the report was prepared.

We also note that the facts and conditions referenced in this report may change over time and the conclusions and recommendations set forth herein are applicable only to the facts and conditions as described at the time of this report. Conclusions and recommendations were made within the operative constraints of the scope, budget, and schedule for this project. We believe the conclusions stated herein to be factual, but no guarantee is made or implied.

The methods employed for collection and analysis of samples are those of the American Conference of Governmental Industrial Hygienists (ACGIH), the National Institute for Occupational Safety and Health (NIOSH), provincial WCB, and/or other accepted scientific practices. The data and commentary presented herein reflects these standards, however no other warranty is offered or implied respecting the acceptance of this report by any Regulatory authority.

Yours truly,

LEA HEALTH SAFETY & ENVIRONMENTAL

Prepared by:



Paul Johnston, D. Tech, RIHT
Email: pjohnston@lewkowich.com

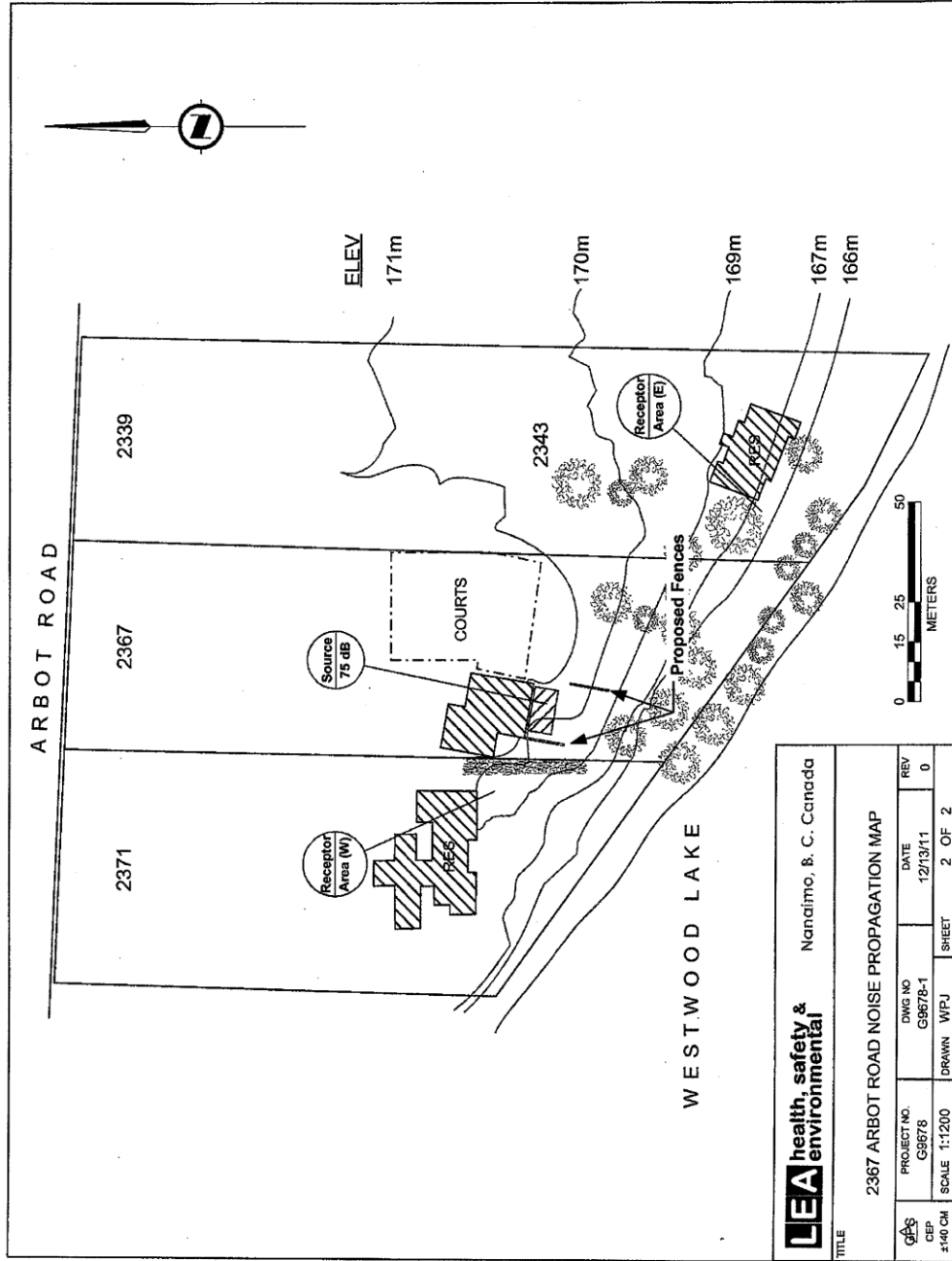
Reviewed by:



Chris Hudec, M.A.Sc., P. Eng.
Email: chudec@lewkowich.com

Lewkovich Engineering Associates Ltd.





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|---|--------------------|-----------------------|----------|
| LEA health, safety & environmental | | Nanaimo, B. C. Canada | |
| TITLE | | | |
| 2367 ARBOT ROAD NOISE PROPAGATION MAP | | | |
| PROJECT NO. G9878 | DWG NO. G9878-1 | DATE 12/13/11 | REV 0 |
| SCALE 1:1200 | DRAWN W/PJ | SHEET | 2 OF 2 |

