

Matthew Nefstead
Barrister & Solicitor



July 12, 2018

City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6

Via Email

Attention: Mayor Lisa Helps

Dear Mayor Helps:

RE: Administration of the Beacon Hill Park Trust

I represent the Friends of Beacon Hill Park Society (the "Society"), a long-standing non-profit organization concerned with the protection and preservation of Victoria's largest natural area, Beacon Hill Park.

As you are likely aware, Beacon Hill Park is governed by a trust, for which the City of Victoria is the trustee. The City has an obligation under the terms of the trust to only permit activities in the Park that are consistent with those terms. As defined by past court decisions, certain requirements of the trust are quite restrictive.

The Society has become aware of plans to install a sewer line (a portion of the CRD's Clover Forcemain project) and a new bike lane in the Park, primarily between Dallas Road and the ocean shoreline. Although we have been unable to obtain the detailed plans, we understand that as part of this major construction project, a significant amount of natural vegetation (and the complex native ecosystem it supports) will likely be removed.

The society is deeply concerned about the potential impacts of this project on the natural value of the Park. In the Society's view, this construction plan is not in accordance with the City's obligations to preserve and maintain the natural environment of the Park pursuant to the terms of the trust. We urge you to carefully consider the City's duty as trustee, and to ensure that this and other development within the Park is either avoided or planned in such a way as to comply with the terms of the trust.

The basis for the Society's legal position is set out in detail below. In summary, the City is obligated to ensure that no activities for general purposes of profit or utility are carried out within the Park, and to administer the Park in such a way as to preserve and maintain its natural character. The proposed sewer line is a project of pure utility that is not ancillary to any recreational use of the Park, and is therefore not permitted under the terms of the trust. Additionally, both the proposed sewer line and bike lane have been planned for installation in a location inconsistent with the duty to preserve and maintain the natural character of the Park, by unnecessarily displacing a sensitive native ecosystem.

The Society calls upon the City of Victoria, in its role as trustee, to revoke any permissions granted for these construction projects, either permanently or until they can be redesigned to minimize impacts on the Park.

Additionally, we ask that the City provide detailed plans of the proposed developments to the Society and the public, to enable us to properly understand the potential impacts on the Park.

The Trust

The Park was transferred to Victoria in 1882 from the Province in trust, by Order in Council pursuant to the *Public Parks Act 1876*, as amended in 1881. As stated in both the statute and the Order in Council, the Park was to be held in trust for the recreation and enjoyment of the public, and Victoria was to maintain and preserve the Park for the use, recreation, and enjoyment of the public.

Since its creation, the Park has been developed in a number of ways ostensibly consistent with the stated purposes of the trust, including the establishment of sports playing fields and other recreational facilities. Twice in the Park's history, courts have clarified the limits of development that may be permitted under the trust.

In 1884 in *Anderson v. City of Victoria*,¹ just two years after the Park was transferred to Victoria, the court considered a proposed transfer of land out of the trust property for the purpose of constructing a hall to exhibit "articles of agricultural interest",² as well as a number of cattle lairs (fields where cattle are rested before being sold at market). Chief Justice Begbie held that the proposal was inconsistent with the trust, for the reason that any development in the Park must be for the purposes only of recreation and enjoyment by the public, and not for "general purposes of profit, or utility".³

The court emphasized that the degree of public benefit of a proposed development was of no consequence in determining whether it is consistent with the trust. For example, he said, a university or a cemetery would be of great public utility, and the Park would "afford an admirable site" for such developments, but they would nevertheless not be permissible under the terms of the trust as they are not "objects of pure recreation". Begbie CJ gave the following opinion of the restrictiveness of the trust:

All establishments addressing themselves to profit or utility are, I think, excluded by the terms of the trust, except the profit and utility to be derived (and it is great) from open air recreations, such as may be carried on in a public park or pleasure ground, and such buildings and erections as are ancillary to public recreations there.⁴

Anderson was a decision on an interlocutory injunction, to stop the development until a full hearing on the substance of the issues could be held. However, the matter did not proceed to a final hearing and the Chief Justice's interlocutory decision stood as the authority on the limits of the trust until it was considered again in 1998.

¹ 1 BCR (Pt 2) 107, [1884] BCJ No 17 (BCSC) [*Anderson*].

² *Anderson* at para 2.

³ *Anderson* at para 4.

⁴ *Anderson* at para 5.

In that year, the City of Victoria referred two questions of law to the court in order to determine whether a proposed development was within its legal power to authorize.⁵ The first question concerned a specific proposal to permit a non-profit society to hold an annual music festival in the park, with ancillary concessions, advertisements, and enclosures. The second question asked whether other similar “short term festival type events” offered by non-profit societies could be approved within the park.⁶ The court concluded that neither the proposed festival nor other similar events were consistent with the terms of the trust.

In coming to this decision, Justice Wilson held that the remarks by Begbie CJ in *Anderson* were “persuasive, and determinative of the questions asked” in the *Festival Society* case. He went on to consider the proposition that “the City has only such ability to utilize the park as may be found in the terms of the trust” – as opposed to, for example, the ability to utilize the park in any way not directly inconsistent with the object of the trust. He agreed with this proposition, and determined the applicable test to be whether the proposed development is necessarily incidental to the object of the trust.

In interpreting this test in the context of the Park, Wilson J found it necessary to more precisely define the “asset” that was subject to the trust:

The most apt descriptive adjective which comes to my mind, in this case, is the word “nature”. That was the emphasis urged by the opponents. It is also consistent with the park objectives defined by the City. From the festival society’s perspective, important characteristics are - “...natural shade, grass and spectacular beauty...”.

I define the park therefore, as a nature park and ornamental pleasure ground, with playing fields. The enjoyment and recreation contemplated by the trust terms is the enjoyment and recreation of the trust asset in its physical state as a nature park and ornamental pleasure ground, with playing fields. To achieve the trust objects, the trustee is under a duty to maintain and preserve that “physical state as such”.⁷

In summary, in other words, the trustee is under a duty to maintain and preserve the physical state of the Park as a nature park and ornamental pleasure ground, with playing fields.

The court also clarified that the public’s right to enjoyment of the Park must, above all else, be governed by this duty to maintain and preserve:

There is no independent duty on the trustee, nor a correlative right in the beneficiary, in connection with the notions of enjoyment and recreation. To put it another way, there is no duty on the trustee to provide recreation or enjoyment. Any rights or privileges attaching to the beneficiary, in connection with the notions of enjoyment and recreation, must be informed by the duty to maintain and preserve.⁸

Wilson J also considered whether the profit-related aspects of the proposed festival (the operation of concessions and the display of commercial advertising) were “*de minimis*”; i.e. that they were too insignificant to warrant the court’s attention in the context of the festival as a whole. He referred to Begbie CJ’s statement that “all establishments addressing themselves to

⁵ *City of Victoria v. Capital Region Festival Society*, 1998 CanLII 6836 (BC SC) [*Festival Society*]

⁶ *Festival Society* at para 16.

⁷ *Festival Society* at paras 32-33 (footnote omitted).

⁸ *Festival Society* at para 26.

profit or utility are, I think, excluded by the terms of the trust” (emphasis added), and determined that the Chief Justice had indeed meant that all pecuniary profit was excluded, no matter how minimal.

Application

The Natural Environment

We understand that portions of the proposed developments are planned to cross through treed areas between Dallas Road and the cliffs to the south.

These wet deciduous groves are some of the last remnants of how the early Victoria landscape was formed after the last ice age. Glacial till and marine deposits created, with year-round water retention, a unique habitat for native willows and aspens to thrive. Around the borders and along the recently-created cross-path are a rich assortment of indigenous shrubs and herbaceous plants.

The interior willows display a unique configuration - horizontal to the ground, with vertical branches reaching skywards. We are aware that this configuration is sometimes man-made by Indigenous peoples as a memorial practice at grave sites; It has not been established whether these particular examples are the result of such practices or of a natural process.

The Bike Path

Wilson J emphasized the importance of maintaining and preserving the natural character of the Park, or as he put it, its “physical state as such”. All exercises of the trustee’s discretion must be considered through this lens. The trustee does not have a duty to provide recreation and enjoyment to the public; rather, the duty is to maintain and preserve the Park to allow the public to enjoy it in its natural state.

As previously noted, the proposed bike path is proposed to displace a substantial area of a wild natural wooded ecosystem. The Society submits that it is not the City’s role to actively develop the Park.

The Sewer Line

The court in *Festival Society* held that any profit-driven activity, even if it is ancillary to an activity for the enjoyment and recreation of the public, is not permitted under the terms of the trust. In contrast, activities of public utility are permitted so long as they are in support of the public’s enjoyment and recreation. The access roads and washrooms constructed in the Park, for example, are not intended to be used for recreation directly, but they serve to enhance the public’s ability to use and enjoy the park for recreational purposes. They are, therefore, “necessarily incidental” to the recreational use of the park.

The proposed sewer line, however, has no connection to the public’s use and enjoyment of the park. Its sole purpose is one of general public utility. Regardless of the degree of utility a proposed activity would provide, Victoria has no legal authority to authorize it if it is not in support of the recreation and enjoyment of the Park by the public.

The court’s decisions in *Anderson* and *Festival Society* have established that no impermissible uses may be allowed, no matter how minimal the impact. However, it is worth noting that as with

the proposed bike lane, the proposed sewer line as designed will have a significant effect on the natural environment of the Park. Instead of running the line solely beneath the existing disturbance of Dallas Road or the cleared area to the north of the road, the line is proposed to cut through the wild natural ecosystem to the south of the road. The proposal is therefore also inconsistent with the obligation to preserve and maintain the park in its natural state.

Conclusion

The Society is hopeful that the City will take action on its own initiative to resolve this apparent breach of its duties as trustee. We would be pleased to participate in discussions regarding potential alternatives.

Additionally, as noted above, we request that you provide us with detailed plans for the proposed developments.

As these projects are scheduled to commence in the near future, a response is requested at your earliest convenience.

Yours truly,

A handwritten signature in black ink, appearing to read 'Matthew Nefstead', written in a cursive style.

Matthew Nefstead
Barrister & Solicitor



Office of the City
Solicitor

August 2, 2018

OUR FILE: 18-0109

Matthew Nefstead
Barrister & Solicitor

via email to: [REDACTED]

1 Centennial Square
Victoria
British Columbia
V8W 1P6

Tel: 250-361-0547
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www.victoria.ca

Dear Sir:

Re: Beacon Hill Park

I write further to your letter dated July 12, 2018 and our meeting at Beacon Hill Park on July 27, 2018.

First, I would like to thank you and your clients for meeting with City and CRD staff at the park to discuss your specific concerns about the planned work at the park as part of the CRD sewage treatment project. We appreciate your clients' openness and willingness to share their concerns. We understand these concerns relate primarily to two wooded areas on the south side of Dallas Road: one near the foot of Douglas Street, the other across from Camas Circle.

Secondly, I would like to reiterate comments made by Thomas Soulliere, Director of Parks, Recreation and Facilities, that the City shares your clients' concerns and desire to preserve Beacon Hill Park and to improve its use and enjoyment by all users. Any work undertaken in the park will be done with utmost regard to preserve its natural character and to enhance access to the park for current and future residents and visitors to Victoria. With that in mind, and specifically in view of the concerns expressed by your clients during our on-site visit, the City had requested the CRD to re-examine the plans for the alignment of the Cycle Track and construction activity.

As a result, the CRD staff have informed us that a number of modifications to the project are possible to minimize its impact on the wooded areas of the park. These modifications are listed below (*italicized text indicates information provided by the CRD*).

A. Wooded Area across from Camas Circle:

Existing Storm Sewer Realignment: The CRD engaged Kerr Wood Leidal (KWL), the design engineer for the Clover Forcemain and Cycle Track, to re-assess the need to

relocate the existing storm sewer. The relocation of the existing storm sewer, as contemplated in the current design, was required to address a conflict with the vertical alignment of the proposed Clover Forcemain. As part of this re-assessment, the CRD and KWL also consulted the City of Victoria regarding the original construction of the existing storm sewer.

The existing storm sewer was constructed in 1995, and it ranges between three and four meters deep within the area in question. To facilitate the original construction, all of the trees and vegetation were cleared within a six meter wide swath through the wooded area at the foot of Camas Circle. A trench box was used to install the storm sewer, to minimize the width of the excavation, and the remainder of the six meter wide clearing was used to construct a temporary access road for construction vehicles and facilitate construction activities, such as stringing out pipe prior to installation.

To re-assess the Clover Forcemain alignment, KWL took field measurements to verify the vertical alignment of the existing storm sewer, including the actual depth (elevation) of the pipe. Based on these field measurements, KWL determined that a portion of the Clover Forcemain could be constructed at a shallower depth to avoid the conflict with the existing storm sewer – thereby eliminating the need to relocate the existing storm sewer, and eliminating the corresponding impacts to the trees and vegetation associated with this component of the Project.

Width of Clover Forcemain Construction Footprint: The CRD engaged KWL to re-assess the construction means and methods for the Clover Forcemain through this area in an effort to reduce the construction footprint. The current installation approach is based on a standard practice of utilizing an open cut construction method, which would result in a disturbed area approximately 10 meters wide.

In re-assessing the construction means and methods, KWL has confirmed that modifications can be incorporated to significantly reduce the construction footprint. Based on this review, the installation of both the Clover Forcemain and Cycle Track through this area of the Beacon Hill Park can be completed utilizing a total width of less than five and a half meters. The reduced width could be achieved by instructing the contractor to use a trench box or temporary shoring to minimize the trench width and using a conveyor system to remove the excavated material, thereby eliminating the need for tandems (dump trucks) to drive beside the trench. The width of the reduced footprint for the forcemain is the same construction area that would be required to install the Cycle Track.

As noted in the previous section, the original construction footprint for the existing storm sewer disturbed an area approximately six meters wide. The current alignment of the Clover Forcemain and Cycle Track is located generally within that area and with a reduced construction footprint, the Project would have limited impact on the native species in this undistributed area of the Beacon Hill Park.

B. Wooded area at the foot of Douglas Street:

Rare Plant Species (*Carex tumulicola*): The CRD consulted with KWL to investigate the possibility that the rare plant species, *Carex tumulicola*, may be present in the wooded area at the foot of Douglas Street. To aid in the investigation, KWL discussed the

species in question with Mr. Matt Fairbarns of Aruncus Consulting (a member of the KWL team).

In addition to his role on the KWL team, Mr. Fairbarns wrote the Government of Canada's Committee on the Status of Endangered Wildlife in Canada (COSEWIC) status report and drafted the recovery strategy for this plant species.

To Mr. Fairbarns' knowledge, *Carex tumulicola* was not known in Canada until about seven to eight years ago. The nearest known population is located in Uplands Park. Additionally, Mr. Fairbarns conducted the rare plant survey for the environmental management plan that was prepared by KWL for the Clover Forcemain and Cycle Track alignment. *Carex tumulicola* was on his rare plant species target list, and was not detected during the survey.

The CRD and KWL have conducted a comprehensive assessment of environmental resources as part of the planning and design for the Project, including preparation of an Environmental Impact Assessment and Environmental Management Plan. Additionally, the CRD and KWL have prepared detailed environmental requirements that will be implemented during construction to reduce potential for impacts to vegetation and wildlife, including rare species. These requirements include development of an Environmental Protection Plan that will identify specific construction impacts and mitigation measures, employment of an environmental monitor throughout construction, and salvage of rare plant species prior to construction. Additionally, management of invasive species is a priority for the Project. The CRD and KWL will oversee the contractor's activities for compliance with the environmental requirements.

Cycle Track Alignment: The CRD engaged KWL to re-assess the alignment of the Cycle Track through the wooded area at the foot of Douglas Street. The current design is based on an alignment that runs through the existing wooded area, up to approximately 20 meters south of Dallas Road.

In re-assessing the alignment, KWL has confirmed that the Cycle Track can be constructed within the boulevard of Dallas Road, between the existing elm trees (immediately adjacent to the south curb of Dallas Road) and the wooded area to the south. The Cycle Track would be slightly elevated to avoid the tree roots, thereby mitigating impacts to the existing trees. The attached figure illustrates the current Cycle Track alignment, and a potentially revised Cycle Track alignment.

The City of Victoria is supportive of all these changes and has requested CRD staff to develop more detailed designs for implementing them as part of the construction of the Cycle Track and the Clover Forcemain to minimize impact on the two wooded areas in question. We expect those designs to be completed within a few weeks at which time we should be able to confirm these changes.

C. Other issues raised during the on-site meeting:

Two other issues were raised by your clients during our meeting: the possible presence of culturally modified trees (the bending of tree limbs) and lighting. With respect to these issues, CRD has advised us as follows:

Bending of Tree Limbs: The CRD consulted with Millennia Research Limited (Millennia), the archaeologist for the Project, to investigate the possibility that a bent tree observed in a copse south of Dallas Road near the eastern side of Camas Circle was culturally modified to serve as a marker for a First Nation grave site.

In completing the investigation, Millennia conducted a site visit, consulted ethnographic sources for the local area, contacted the Provincial Archaeological Branch to determine if any similar sites were recorded in the wider study area, and contacted the Curator of Archaeology at the Royal British Columbia (BC) Museum.

Based on the investigation, it is the opinion of Millennia that the bent tree is a natural feature, and that there is no evidence to suggest the presence of any culturally modified trees in the area. The following is a summary of key findings from Millennia's investigation:

- *Local ethnographic data found no evidence for the bending, twisting or splitting of trees associated with either burial sites, mourning practice, or ceremonial training of adolescents as part of maturation events;*
- *the Curator of Archaeology at the Royal BC Museum stated he has visited the area in the past years and, in his opinion, the fallen leaning trees are completely natural, and are "most certainly not" the result of any cultural practice;*
- *a search of archaeological sites in the provincial registry maintained by the BC Archaeology Branch revealed few knotted or bent tree sites in the province as a whole, and none in the immediate area in question; and*
- *cultural advisors from local First Nation communities, who are working with the CRD and Millennia, have not identified culturally modified trees in the area in question.*

The CRD and Millennia have conducted a comprehensive assessment of archaeological resources as part of the planning and design for the Project, including field studies and the preparation of an Archaeological Overview Assessment and Archaeological Impact Assessment. It is also noted that the CRD and Millennia have prepared a detailed Archaeological Management Plan that will be implemented during construction to mitigate potential impacts to archaeological resources. Mitigation measures include pre-construction excavations in known archaeological areas and areas with high archaeological potential, regular archaeological monitoring of construction activities, archaeological awareness training of construction workers, and implementation of a chance finds procedure. The CRD and Millennia will oversee the contractor's activities for compliance with the Archaeological Management Plan.

...

Lighting: *The Cycle Track lighting was designed in accordance with City of Victoria standards, including the need to incorporate Crime Prevention Through Environmental Design (CPTED) principles to mitigate public safety concerns. If the City wishes to re-evaluate the lighting design the Project Team are committed to working cooperatively with City of Victoria staff to identify modification which will address any identified impacts or concerns.*

In the limited time available, we have not been able to explore the issue of lighting fully. However, the City is open to further discussion with your clients to better understand their concerns about proposed lighting. As lighting will be one of the last elements to be constructed,

there is still time to develop changes or other mitigation measures to avoid any unintended effects on fauna in the park.

We hope that these changes to the project address your clients' concerns, however, we are open to further discussions.

Finally, I would like to address the question of the statutory trust that applies to Beacon Hill Park and the suggestion that construction of the Cycle Track or the installation of the Clover Forcemain under the park is inconsistent with the terms of that trust. We must respectfully disagree with that as in our view the proposed construction is consistent with the City's obligations under the trust.

The City takes its obligations as a trustee of the park seriously and has carefully considered this matter before entering into the agreement with the CRD for the construction through the park. Under the *Public Parks Act 1876* and the terms of the 1882 Crown Grant, the park is to be used as a "public park or pleasure ground for the recreation and enjoyment of the public". Construction of the Cycle Track, a dedicated bike pathway through part of the park, is entirely consistent with those objectives. That is clear not only from the plain language of the grant and the Act but also from the previous court decisions that have interpreted the trust. Specifically, in the *Anderson* decision, Begbie C.J. commented:

I am asked what purposes or what buildings the Corporation may lawfully encourage or erect. It is not necessary to decide this; and so I cannot give any binding opinion. But I should say all open air sports might be encouraged as there is room enough and to spare, beyond mere ornamental pleasure grounds; and all proper erections and buildings ancillary to such sports. For instance, a public gymnasium, either in the open air or covered in. Football, cricket, base ball [sic], might have their separately prepared scenes of action, where it was found convenient to separate them, with such accessories as the Corporation might sanction. In affording reasonable encouragement to all such sports and pastimes, and even in raising money by rates for that purpose, the Corporation would be acting clearly according to the express letter of their trust.

While these comments are not binding, they make it very clear that it is within the power of the City, as the trustee, to authorize a wide range of activities, and erect structures and buildings ancillary to such activities, in the park. Construction of the Cycle Track is clearly consistent with Beacon Hill Park's character as a park or pleasure ground. Although it is not critical to the legal analysis here, it is worth repeating that the Cycle Track is not meant as a commuter route (it does not connect to any existing or planned bicycle routes) but rather as a recreational bike trail.

As for the construction of the Clover Forcemain under part of the park, its presence will not in any way detract from the nature or character of the Beacon Hill Park as the "nature park and ornamental pleasure ground, with playing fields" as defined in the *Festival Society* decision. Once the work is completed and affected areas restored, the park will continue to function as it does today, except that parts of it will be more accessible due to the presence of the Cycle Track that will be largely constructed over the underground pipe. There are already a number of underground utilities in the park, all existing without any detrimental effect on the use or enjoyment of it by the public.

In conclusion, the CRD project is being adjusted as described above to address concerns that have been brought to the City's attention by your clients. The planned work will be carried in a

manner that is respectful of the nature of the park and will contribute to the park's use, enjoyment and recreation by the public.

Please do not hesitate to contact me if you or your clients have any further questions or concerns.

Sincerely yours,

CITY OF VICTORIA

Per:



Tom Zworski
City Solicitor

cc: Thomas Soulliere, Director of Parks, Recreation and Facilities
Fraser Work, Director of Engineering and Public Works
Dave Clancy, Project Director, CRD Core Area Wastewater Treatment Project



NO.	DATE	DESCRIPTION
1	11/11/11	DESIGN DEVELOPMENT
2	11/11/11	DESIGN DEVELOPMENT
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Client Request/Status	Project No.	Project Name
Request of service	11-11-11	DALLAS ROAD CYCLE TRACK ALIGNMENT
Contract	11-11-11	DALLAS ROAD CYCLE TRACK ALIGNMENT
Construction	11-11-11	DALLAS ROAD CYCLE TRACK ALIGNMENT
As-built	11-11-11	DALLAS ROAD CYCLE TRACK ALIGNMENT
Final	11-11-11	DALLAS ROAD CYCLE TRACK ALIGNMENT

Matthew Nefstead
Barrister & Solicitor



August 7, 2018

City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6

Via Email

Attention: Tom Zworski

Dear Mr. Zworski:

RE: Beacon Hill Park and the Clover Forcemain Project

Thank you for your letter of August 2, 2018, outlining proposals by the City and the CRD to mitigate impacts of the Clover Forcemain Project on ecological values in Beacon Hill Park. The Friends of Beacon Hill Park Society appreciates the efforts you have made to accommodate their concerns. However, my clients believe that greater efforts can and should be made to maintain and preserve the unique character of the Park.

First, I would like to address your legal position as outlined on page 5 of your letter. You advise that there are already a number of underground utilities in the park; to the extent that these fixtures are for the general utility of the City of Victoria rather than servicing the Park, we maintain that such utilities are not permitted by the terms of the trust and should not have been approved. As noted by Justice Wilson in the *Festival Society* decision, the magnitude of interference caused by an activity is not relevant where that activity is not permitted by the terms of the trust. The City as trustee is not merely limited by the terms of the trust; it is empowered to act only as specifically authorized by those terms. The fact that utilities may already exist without substantially detracting from the enjoyment of the park by the public does not mean that the City had the legal authority to approve them, nor that it has the authority to approve the Clover Forcemain. As I set out in my letter of July 12, 2018, projects of general public utility are not within the authority of the City as trustee to approve for construction within the Park.

Regardless of our differing legal positions, my clients recognize that the City shares their interest in preserving and maintaining the Park. To this end, although we disagree that this Project is a permitted use of the trust asset, we wish to provide feedback on the mitigation measures proposed in your letter.

My clients are encouraged by the CRD's proposal to narrow the construction footprint, eliminate the need to relocate the existing storm sewer, and adjust the proposed route for the cycle path near Mile Zero. However, it remains our position that any disruption of the wooded areas to the south of Dallas Road is unnecessary. If a bike path is to be installed along Dallas Road, we would prefer that it be located on the north side of the road to avoid conflict with the wooded areas. While we recognize the City's interest in minimizing road crossings for cyclists, we

consider that this concern is balanced by improved nighttime safety due to increased visibility and by the preservation of the natural wooded areas.

Finally, at our on-site meeting on July 27, 2018, the issue of impacts to the rare plant species *Carex tumulicola* was discussed. I can advise that since that time, Friends of Beacon Hill Park Society member Roy Fletcher has located specimens of this species near the proposed route at Mile Zero. He would be pleased to point out these specimens to City and CRD staff.

As we discussed, my clients will attend the Council meeting on Thursday, August 9 to present their position. Regardless of the outcome of that presentation, we wish to remain in dialogue with you to ensure the best possible protection for Beacon Hill Park through this process.

Thank you for your consideration. Should you have any questions, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read 'Matthew Nefstead', written in a cursive style.

Matthew Nefstead
Barrister & Solicitor