

Boundary Bay Conservation Committee

Box 1251, Delta, B.C. V4M 3T3

Corporation of Delta
4500 Clarence Taylor Crescent
Delta, B.C. V4K 3E2

October 7, 2008

Re: Action needed on Burns Bog Covenant in response to approval of the South Fraser Perimeter Road Project

Dear Mayor and Council,

Request For Action

The Boundary Bay Conservation Committee supports the initiative of the Burns Bog Conservation Society in urgently requesting that the Corporation of Delta take immediate action to initiate the dispute resolution process under Section 5 of the **Conservation Covenant** on Burns Bog:

5.0 Dispute Resolution

- 5.1 *If there is a disagreement regarding a contravention of this Agreement the Province, Delta the GVRD (Metro Vancouver) may give notice to the other party requiring a meeting of all parties within 10 Business Days of receipt of the notice.*
- 5.2 *The parties must attempt to resolve the disagreement, acting reasonably and in good faith, within 20 Business Days of receipt of the notice.*
- 5.3 *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 30 Business Days after the mediator is appointed.*

**(Registered Covenant BW113705 - see Attachment A)*

Reasons for Action

The BBCC requests action as the federal and provincial Harmonized Environmental Assessment failed to deal appropriately with the impact of the South Fraser Perimeter Road Project on the Burns Bog Covenant Lands. The assessment failed to properly consider submissions by government and independent scientists who raised major concerns about the Project. Some of these concerns are documented in Attachment B.

There was no opportunity for the public and scientists to have input to the positioning of the freeway along the edge of Burns Bog. (See Map, Attachment C) The Terms of Reference for the Environmental Assessment incorrectly state:

“The proposed SFPR has long been part of provincial, regional and municipal transportation plans, and is specifically included in the Greater Vancouver’s Liveable Region Strategic Plan, the growth management strategy for the region adopted in 1996. The project has also generated broad-based community support.”

The Boundary Bay Conservation Committee wrote a letter in January, 1994, pointing out that the Transport 2021 document was inserted into the Liveable Region Strategic Plan at the end of the process without public input. (See Attachment D) The Transport 2021 Report, 1993, admitted that the identified transportation corridors contradicted the goals of the Liveable Region Strategic Plan:

“The Steering Committee does not recommend the construction of facilities in the above corridors within the 30-year planning horizon because:

- *Under the assumptions of the long-range plan, they are not required to serve demand before the horizon year; and*
- *“all corridors, if put into operation, work against the proposed land-use objectives and the pro-transit orientation of the GVRD Liveable Region Strategy which the transport plan is intended to reinforce.” (Transport 2021- A Long-Range Transportation Plan for Greater Vancouver, 1993, page 57)*

The route of the South Fraser Perimeter Road along the edge of Burns Bog has NEVER had broad-based community support as stated in the Terms of Reference. The route just appeared in 2004 without pre-design public consultation. This concern was expressed in public submissions. It was also raised in a letter written in consultation with the members of the Burns Bog Scientific Advisory Panel (SAP):

“...Public hearings have been conducted, but for smaller sections of the highway, and with no opportunity to address the overall positioning of the highway. This was also the case for Burns Bog portion – the SAP was only asked to comment on the impacts of the highway as it was laid out by Gateway, and not to discuss the whole routing. This was frustrating because the given positioning of the highway along the Bog is the basic impact influencing all the specific environmental impacts on the Bog. In our view the current proposed location of the highway along the Bog will likely be harmful to the Bog and its adjacent forested lands. Society has invested heavily in Burns Bog because it believes this is the right thing to do. That investment must be honored. Furthermore the Conservation Covenant commits four levels of government to the conservation and maintenance of its ecological values. All developments including transportation developments must honor this.” (Letter of Concern for the Conservation of Burns Bog, Dr John Jeglum, Emeritus Professor, In Consultation with Members of Burns Bog Scientific Advisory Panel.)

The documents of the environmental assessment clearly show that there will be adverse environmental impacts to endangered flora and fauna, bog ecosystems, and bog hydrology. Habitats and wildlife corridors will be destroyed and fragmented.

The South Fraser Perimeter Road Project was approved by both the Canadian and British Columbian Governments stating the intent to monitor and address environmental damage in the future. The lists of commitments and assurances cannot be met because they are not based on credible science. Both Environment Canada and the Burns Bog Scientific Advisory Panel referred to the inability of the Project to meet requirements of the Conservation Covenant on Burns Bog.

“EC advises that the effects associated with building a road adjacent to Burns Bog will result in certain, permanent, irreversible impacts of a high magnitude that EC considers to be significant.”(EC Technical Appendix, November 19, 2007, page 27)

“ Environment Canada concludes that the management objectives for restoration of Burns Bog, to which the Province of BC, GVRD and Corporation of Delta committed to Canada in the Conservation Covenant, and further articulated in the Burns Bog Management Plan, are likely not attainable should the project proceed as proposed.” (EC Technical Appendix, November 19, 2007, page 33)

“... if the highway is placed through the western edge of the Bog, the ability to apply the guidelines for Bog protection and restoration recommended by the SAP will be compromised...” (SAP Opinions to EC, page 13)

Conservation Covenant on Burns Bog

The governments of Canada and British Columbia, along with Metro Vancouver and Delta, purchased a large part of Burns Bog in 2004 and placed a Conservation Covenant on the purchased lands. The Intent of the Covenant states:

- (a) maintain in perpetuity a large contiguous undeveloped natural area for the purpose of protecting the flora and fauna that depend on the Bog;*
- (b) manage the Bog as a functional raised bog ecosystem as understood by the best science of the time;*
- (c) maintain the extent and integrity of the water mound and the peat that encloses it, and in particular the upper porous acrotelm upon which the persistence of the bog ecosystem depends; and*
- (d) prevent any occupation or use of the Bog that will impair or interfere with the current state of the Bog or the Amenities, except with respect to that area of the Bog, and those Amenities in respect of such area, over which a statutory right of way may be granted under section 6.1 (e)*
(Registered Covenant BW113705 Section 2.0 – see Attachment A)
Note: Section 6.1(e) refers to rights of way through Burns Bog for maintenance purposes)

The Conservation Covenant included Restrictions on Land Use:

4.1. Except as expressly permitted in Section 6 of this agreement, the Province, Delta and GVRD (Metro Vancouver) shall not do anything, or allow anything to be done, that does or could reasonably be expected to destroy, impair, diminish, negatively affect, or alter the Bog or the Amenities from the condition thereof described....

An important section in the covenant has not been considered in the Harmonized Environmental Assessment of the South Fraser Perimeter Road Project.

The Conservation Covenant Agreement also required signatories to acknowledge and use information from Chapters 4 and 7 of the *Burns Bog Ecosystem Review* as a baseline:

“3.1...from which any change in the physical character of the Bog, and the performance of any covenant in this Agreement in relation to the Bog, may be measured or assessed...”

*3.3...for monitoring compliance with the terms of this Agreement”
(Registered Covenant BW113705, Section 3.0 – see Attachment A)*

In the Harmonized Environmental Assessment of the SFPR Project, no reference was made to the use of Chapters 4 and 7 of the *Burns Bog Ecosystem Review* as a baseline. This is a major oversight. It is interesting that the *Burns Bog Ecosystem Review* was included in the Burns Bog Conservation Covenant because the referenced chapters refer to protected and unprotected lands of Burns Bog. The document was published prior to the purchase of some of the Burns Bog lands, yet the signatories legally agreed to use this document to ensure protection and viability of Burns Bog. This “baseline” document stresses the ecological importance of the Bog margins:

“The combined habitat suitability mapping results for the three confirmed rare and endangered or vulnerable mammal species for Burns Bog (i.e. Pacific Water Shrew, Southern Red-backed Vole, and Trowbridge’s Shrew) highlight the importance of forested habitats near, and at the Bog’s margins... (Burns Bog Ecosystem Review, Chapter 4, page 129)

“The water mound and its peripheral lagg are required for ecological viability.” (Ch.7. pg. 243)

The signatories of the Covenant are required to use this information as a means of meeting the intent of the covenant. Attachment E quotes some of the information from Chapters 4 and 7 of the *Burns Bog Ecosystem Review, Synthesis Report*. The South Fraser Perimeter Road is planned directly through several areas identified as vital to bog hydrology and endangered mammals and will change the physical character of the Bog.

The Corporation of Delta is Accountable to the Conservation Covenant

The Boundary Bay Conservation Committee refers to a letter from Mike Brotherston, Manager of Climate Action and Environment, Corporation of Delta, to the Burns Bog Conservation Society, August 28th, 2008:

"In this covenant, "Bog" is defined as those lands identified as the "Local Government" and "Provincial Lands". The Local Government and Provincial Lands are further defined in the covenant by their legal descriptions and PIDs. The South Fraser Perimeter Road does not directly impact the "Bog" as defined in the Conservation Covenant. The Conservation Covenant relates to the Province's use of the Provincial Land along with Metro Vancouver and Delta's use of the Local Government Land. Accordingly the intent of covenant does not address land use activities that are outside of the local Government and Provincial Lands such as the SFPR." (Letter from Corporation of Delta to Burns Bog Conservation Society, August 28, 2008, See Attachment F)

A dismissal of accountability is not in the spirit and intent of the Conservation Covenant. Signatories have a responsibility to heed the warnings of government and independent scientists. Four levels of government agreed to acknowledge Chapters 4 & 7 of the *Burns Bog Ecosystem Review* as a baseline to measure any change in the physical character of the Bog. The South Fraser Perimeter Road Project directly impacts the "Bog" as defined in the Conservation Covenant. This was recognized in the Harmonized Environmental Assessment. In the Wildlife and Vegetation Study:

"Burns Bog was specifically assessed and mapped because of its unique ecological value." (Technical Volume 12, page i)

Due to the potential of adverse environmental effects of the Project, it was legally necessary to include "Bog" lands in the Harmonized Environmental Assessment. This is referenced in Attachment G. The inclusion of the "Bog" lands in the assessment compels the signatories to be accountable to the outcome of the assessment.

Submissions by experts warn of major residual adverse environmental effects on "Bog" lands. These adverse effects contravene the intent of the Conservation Covenant. They also invalidate the intent of the Burns Bog Management Plan which is to maintain and restore healthy ecological processes which have been identified as fundamental to the ecological integrity of Burns Bog.

Signatories of the covenant are the proprietors and partners in the South Fraser Perimeter Road Project. Their participation in this project, which impacts protected and unprotected public lands of Burns Bog, reinforces the onus of responsibility. They will contravene the intent of the Covenant if they permit and participate in this predictable damage and alteration to the "Bog" and its amenities.

Public Ownership of Burns Bog Lands

The Corporation of Delta, on behalf of Delta citizens, owns eight properties along the route of the South Fraser Perimeter Road on the edge of the protected Burns Bog lands. Four of the properties still have bog habitat. It is on Delta-owned property at 80th Street, right on the path of the planned SFPR that the endangered *Southern Red-backed Vole* was found for the first time in B.C. since 1948. Chapter 4 of the *Burns Bog Ecosystem Review*, (pages 128 -130) describes this habitat as the “*highest given for this subspecies in the province.*” The Delta property at 80th Street is also identified as within the water mound with attributes required to preserve the viability of Burns Bog. Three of the Delta properties are identified as habitat for red-listed species.

The four Delta-owned properties that no longer have bog habitat could be restored or exchanged for other bog lands. All the Delta-owned lands along the margins of Burns Bog (about 163 acres) should be added to the public lands of the Burns Bog Ecological Conservancy Area and protected with the same conservation covenant.

Request For Action

The Boundary Bay Conservation Committee urges the Corporation of Delta to act on behalf of the people of Delta, Metro Vancouver, British Columbia and Canada by invoking Section 5 of the Conservation Covenant. It is clear that it is fundamentally wrong to proceed with the construction and development of the South Fraser Perimeter Road. By invoking the dispute resolution process, Delta has the opportunity and responsibility to ensure that the covenant commitments to Burns Bog are upheld.

Yours sincerely,



Susan Jones
Director: Boundary Bay Conservation Committee

CC: The Honourable Gordon Campbell, Premier of B.C.
Environmental Assessment Office, Government of B.C.
The Right Honourable Stephen Harper, Prime Minister of Canada
The Honourable John Baird, Minister of Environment, Government of Canada
Canadian Environmental Assessment Agency
Metro Vancouver Board of Directors
John Cummins, M.P. Delta-Richmond East
Sukh Dhaliwal, M.P. Newton-Delta North

CC: Val Roddick, M.L.A. Delta South
Guy Gentner, M.L.A. Delta North
Burns Bog Conservation Society
North American Wildlife Management Plan
Global Peatland Action Plan
Convention on Wetlands of International Importance

List of Attachments

Attachment A: Registered Conservation Covenant on Burns Bog
Attachment B: Quoted Concerns of EC and the SAP
Attachment C: Map of SFPR and Burns Bog
Attachment D: BBCC Letter re: Transport 2021, Jan. 1994
Attachment E: Quotes from Chapter 4 & 7 of Burns Bog Ecosystem Review
Attachment F: Letter from Delta to Burns Bog Conservation Society
Attachment G: Inclusion of Burns Bog Protected Lands in EA