

ITEM 8  
MANAGER'S REPORT NO. 42  
COUNCIL MEETING 1980 06 16

RE: BARNET MARINE PARK  
RECLAMATION AGREEMENT BETWEEN THE CORPORATION AND C P RAIL, STAGE III  
(ITEM 2, REPORT NO. 34, 1979 APRIL 30)

---

Following is a report from the Director of Planning on a reclamation agreement.

RECOMMENDATION:

1. THAT the recommendation of the Director of Planning be adopted.

\* \* \* \* \*

TO: MUNICIPAL MANAGER PLANNING DEPARTMENT  
FROM: DIRECTOR OF PLANNING Our File: 15.003.4  
1980 JUNE 10  
SUBJECT: BARNET MARINE PARK - RECLAMATION AGREEMENT BETWEEN  
THE CORPORATION AND C.P.RAIL, STAGE III

---

RECOMMENDATION:

1. THAT Council authorize the execution of the Reclamation Agreement for Stage III of the Barnet Marine Park reclamation works as more particularly described in the following report.

REPORT

BACKGROUND:

The Corporation has been engaged over the last several years in the phased development of the Barnet Marine Park. This park development has required the reclamation of portions of the foreshore area as illustrated on the attached Figure 1.

In order for the Corporation to obtain a reclamation permit from the Vancouver Port Engineer, letters of approval were required from various agencies including C.P. Rail. As a condition of their approval, C.P. Rail required the Corporation to enter into a formal agreement outlining the conditions under which the reclamation works would be constructed, the materials employed, fencing requirements and provision for a liability clause.

PLANNING DEPARTMENT  
BARNET MARINE PARK - RECLAMATION AGREEMENT BETWEEN  
THE CORPORATION AND C.P. RAIL, STAGE III  
1980 JUNE 10 - PAGE TWO

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

128

Protracted negotiations were undertaken which resulted in the preparation of a mutually satisfactory agreement. Council, on 1979 April 30, authorized the execution of this agreement.

EXISTING SITUATION:

At the time the initial agreement was negotiated, the terms and conditions for the entire reclamation west of the Texaco Tank Farm were established and outlined in the agreement. The Corporation was not able, however, to formally include Stage III which is shown on the attached Figure 2 as we did not, at that time, have the area proposed for reclamation under lease.

We have since leased this area from the National Harbours Board and, therefore, it is now appropriate to enter into a second agreement for the Stage III reclamation.

Accordingly, we have revised the initial agreement (copy attached) in draft form. C.P. Rail has reviewed this draft stating that it appears satisfactory. The draft agreement has been revised to specifically refer to the Stage III reclamation, otherwise it is the same as the agreement authorized by Council on 1979 April 30.

Therefore, it is recommended that Council authorize the execution of the Stage III Reclamation Agreement as attached.



A. L. Parr  
Director of Planning

PB:lf

Attachments

cc: Municipal Solicitor  
Municipal Engineer  
Parks and Recreation Administrator

Reclamation Area Approved Pursuant  
to N.W.P.A. on June 16, 1977

**Stage 1**

Reclamation Area Approved Pursua  
to N.W.P.A. on January 24, 1979

**Stage 2**

Lot 7754

Refer to Dwg. 15-2-3  
for Detail 7

TEXACO

C.P.R.

**LEGEND**

-  PEDESTRIAN PATH
-  BICYCLE PATH
-  PICNIC CIRCLE
-  TETHERBALL
-  LAWN
-  PLANTING

**FIGURE 1**

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

1" = 400' PB  
1980 JUNE 09

NORTH

ATION PROJECT  
AND 7754,  
ND DISTRICT,

129

**SUBJECT AREA**

Reclamation Area Approved Pursuant  
to N.W.P.A. on June 16, 1977

**Stage 1**







Reclamation Area Currently  
Under Application

**Stage 3**

Lot 7754

Lot 7580

**LEGEND**

-  PEDESTRIAN PATH
-  BICYCLE PATH
-  PICNIC CIRCLE
-  TETHERBALL
-  LAWN
-  PLANTING

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

**Location of Proposed Reclamation  
and Park Development.**

APPLICATION FOR APPROVAL OF A PROPOSED RECLAMATION PROJECT  
(FILL & RIP-RAP), IN BURRARD INLET, ON LOTS 7580 AND 7754,  
FRONTING DISTRICT LOT 215, NEW WESTMINSTER LAND DISTRICT,  
MUNICIPALITY OF BURNABY, BRITISH COLUMBIA.

**FIGURE 2**

1" = 400' PB

1980 JUNE 09

130

NORON

1980 JAN. 28

DRAFT

THIS AGREEMENT made this  
19 . .

day of ,

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

BETWEEN:

CANADIAN PACIFIC LIMITED

(hereinafter called the "Railway Company")

OF THE FIRST PART

AND:

THE CORPORATION OF THE DISTRICT OF BURNABY

(hereinafter called the "Applicant")

OF THE SECOND PART

WHEREAS the Applicant has acquired an interest in a parcel or tract of land which is situate to the north of the Railway Company's right-of-way at approximately mileage 120.44 of the Cascade Subdivision, more particularly shown outlined in red on plan numbered D-80 dated the 28<sup>TH</sup> day of JANUARY , 1980 attached hereto and marked Schedule "A" (hereinafter called the "Land").

AND WHEREAS the Applicant has conducted certain surveys, engineering and cost studies in connection with filling of the Land and building thereon of certain facilities to be known as the Barnet Marine Park (collectively hereinafter called the "Development");

AND WHEREAS in the construction of the Development it is necessary to fill a portion of the land which forms part of the Railway Company's aforesaid right-of-way, to extend or reconstruct existing culverts and to construct drainage works (all hereinafter called the "Works");

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One (\$1.00) Dollar paid by the

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

1980 JAN. 28

DRAFT

132

Applicant to the Railway Company and other good and valuable considerations the parties hereto covenant and agree each with the other as follows:-

1. The Railway Company, subject to the conditions and limitations hereinafter provided hereby, grants to the Applicant the right and authority to construct, maintain and repair the Works, upon, over and adjacent to the Railway Company's right-of-way lands as aforesaid subject to and in accordance with provisions of this agreement and with the applicable rules and regulations of the Canadian Transport Commission now made or which may hereafter be made in reference thereto. The Applicant shall not undertake or commence the construction of the Works unless the design, plans and specifications for the Works have been approved by the Railway Company. The Railway Company's approval of the design, plans and specifications for the Works is required hereunder solely for the protection of the Railway Company and its railway operations and neither it nor its officers, servants or agents, shall be liable to the Applicant for the safety, adequacy, soundness or sufficiency of the Works by reason of the giving of such approval nor shall the giving of such approval constitute a waiver by the Railway Company of any duty or liability owed by the Applicant to the Railway Company, its officers, servants or agents, by reason of this agreement or otherwise howsoever.

2. Any work of supporting the Railway Company's tracks or structures or of protecting the Railway Company's culverts or of protecting train movements made necessary by the construction, maintenance or repair of the Works may, at the option of the Railway Company, be performed by the Railway Company and in such event the Applicant shall pay to the

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16.

1980 JAN. 28

DRAFT

Railway Company the entire cost of all such work forthwith upon receipt of certified accounts therefor on the basis of cost plus labour overheads as may be currently applicable and as set by the Railway Association of Canada, and material handling cost as may be currently applicable on the Railway Company.

3. The Applicant with due diligence shall construct, at its expense, the Works, and the construction of the Works and the materials employed shall be subject to the provisions of paragraph 7 of this Agreement.

4. In constructing the Works, the Applicant will adhere to the Railway Company's current specifications, if any, and the procedures recommended by the Applicant's consulting engineers, Golder and Associates, in their letter to the Applicant dated June 10, 1977, for the construction thereof. If during the construction of the Works hereunder it shall appear that other works are necessary to give effect to the intent and purpose of this Agreement and if these have been omitted from the plans and specifications, they shall be added thereto and be regarded in all respects as if originally contained herein.

5. The work of construction shall be carried on in such a manner that there shall be no interruption of the Railway Company's railway services or telecommunication services from the construction of the Works by the Applicant.

6. The existing Railway Company culverts shall be extended through the said Works and the Lands to tidewater at the same diameter and gradient, said gradient in no case to be less than 0.5% with the culvert ends extending a minimum of two feet beyond the face of the fill and that the

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

1980 JAN. 28

DRAFT

said Railway Company culverts shall be extended in accordance with the Railway Company's current specifications.

7. The fill placed on the Railway Company's right-of-way and between the said right-of-way and Burrard Inlet shall be of free draining granular material or glacial till spoil and the Applicant shall control the reclamation procedure to prevent the indiscriminate dumping of organic or clay materials or mineral waste spoils. In the areas where seepage below the rail embankment upon the said right-of-way does occur at the proposed beach areas (all as shown on the plan attached hereto and marked Schedule "A") two twenty foot wide granular windrows consisting of beach sand shall be placed to the full depth of the fill extending northwards towards the future shoreline from the said railway rail embankment.

8. As directed by the Railway Company, the Applicant at its own expense shall install and thereafter maintain in good condition and repair, signs marking the location and the distance underground of the Railway Company's culverts and a six foot high vinyl covered chain link fence with strands of barbed wire along the top of the said fence along the north and south boundary of the Railway Company's right-of-way at the locations shown on the plan attached hereto and marked Schedule "A". The chain link fence referred to herein shall be installed as follows:

Note: INCLUDED  
IN ORIGINAL  
AGREEMENT.  
REVISED FOR CLARITY  
IN THIS AGREEMENT  
ONLY - IT IS RECOGNIZED  
THAT THERE WILL BE  
DUPLICATION.

- (a) that portion which is to be located on the north side of the Railway Company's right-of-way between Mile 120.44 and Mile 120.81 of the Cascade Subdivision shall be



1980 JAN. 28

DRAFT

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

installed and thereafter maintained in good condition and repair by the Applicant as directed by the Railway Company upon completion of the Works and before the adjacent portion of the Development is declared open to the public.

(b) ~~that portion which is to be located on the south side of the Railway Company's right-of-way between Mile 120.29 and Mile 120.44 of the Cascade Subdivision shall be installed and thereafter maintained in good condition and repair by the Applicant as directed by the Railway Company upon completion of the Works and before the adjacent portion of the Development is declared open to the public.~~

OMIT

- IN 1<sup>ST</sup> AGREEMENT,  
OUTSIDE OF  
CURRENT AREA.

(c) ~~that portion which is to be located on the south side of the Railway Company's right-of-way between Mile 120.00 and Mile 120.29 of the Cascade Subdivision shall be installed and thereafter maintained in good condition and repair by the Applicant upon the earlier of the date of issuance of an Order by the Canadian Transport Commission for the construction of a pedestrian overpass at Mile 120.15 or the date of completion of construction of the parking facility as shown on the plan attached hereto and marked Schedule "A".~~

OMIT

- AS ABOVE.

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

1980 JAN. 28

DRAFT

136

9. (A) The Applicant covenants and agrees with the Railway Company to indemnify and save harmless the Railway Company from and against any and all claims, including claims under Workers' Compensation legislation, demands, awards, judgments, actions and proceedings by whomsoever made, brought or prosecuted in respect of loss of or damage to or destruction of property or personal injuries, including death, and from and against any and all loss of, damage to or destruction of property and expenses and costs suffered or incurred by the Railway Company by reason of the negligence of or any wilful act or omission of the Applicant, its successors, assigns, servants, agents, contractors and subcontractors or any of them while in the course of exercising any right, licence or privilege or doing any thing which is required or permitted by reason of this Agreement; PROVIDED this covenant to indemnify and save harmless shall not apply to the extent any claim, demand, award, judgment, action or proceeding or any loss of, damage to or destruction of property or expenses or costs suffered or incurred by the Railway Company is caused or contributed to by the negligence, wilful act or omission of the Railway Company, its servants or agents.

9.(B) Notwithstanding the provisions of Paragraph 9 (A) the Applicant shall indemnify and save harmless the Railway Company from and against all claims, including claims under Workers' Compensation legislation, demands, awards, judgments, actions and proceedings by whomsoever made, brought or prosecuted in respect of loss of or damage to or destruction of property or personal injuries, including death, and from and against any and all loss of, damage to or destruction of property or expenses and costs suffered or incurred by the Railway Company within the period of ten (10) years after the date upon which the Applicant completes construction of the Works and which arise directly or indirectly out of defective or improper construction by the Applicant, its successors,

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

1980 JAN. 28

DRAFT

assigns, servants, agents, contractors and subcontractors, or any of them, other than where the Railway Company is acting as the agent of the Applicant as provided for in this Agreement.

10. Subject to and in conformity with any rules or regulations now or hereafter in force governing railway employees or the operation of railways, the Applicant and the agents and employees of the Applicant shall have the right to enter upon the lands of the Railway Company at such times as may be necessary for the purpose of the construction, maintenance, inspection, removal and repair of the Works herein contemplated; and that all persons so entering upon the lands of the Railway Company shall assume all risks of and the Railway Company shall not be liable for any injury (including injury resulting in death), loss, damage or expense to such person or his property while on the lands of the Railway Company, and the Applicant shall indemnify and save harmless the Railway Company against all claims and demands arising or resulting from any injury (including injury resulting in death), loss, damage or expense in connection therewith, PROVIDED this covenant to indemnify and save harmless shall not apply to the extent any claim or demand arising or resulting from any injury (including injury resulting in death), loss, damage or expense in connection therewith is caused or contributed to by the negligence, wilful act or omission of the Railway Company, its servants or agents.

11. If at any time the Applicant shall neglect to do such work of repair or maintenance as in the opinion of the Railway Company is necessary the Railway Company may carry out such work of repair or maintenance itself as agent of the Applicant and the Applicant shall pay to the Railway Company the entire cost of all such work forthwith upon receipt of

1980 Jan. 28

DRAFT

138

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

certified accounts therefor on the basis of cost plus labour overheads as may be currently applicable and as set by the Railway Association of Canada, and material handling costs as may be currently applicable on the Railway Company.

12. The Applicant shall indemnify the Railway Company from and against all taxes, rates, levies or assessments of any description whatsoever levied by any authority in respect of the said Works herein contemplated.

13. Should the Railway Company at any time be ordered by the Canadian Transport Commission or other authority having jurisdiction, to make such changes in the Railway Company's tracks, structures or facilities as would in the opinion of the Railway Company necessitate the moving or alteration of the Works herein contemplated, or should the Railway Company deem it necessary in order to protect its tracks, structures or property to make any change in the location or construction of the Works, the Applicant shall at its own expense and to the entire satisfaction of the Railway Company perform all such work of moving or altering or carrying out protective measures to safeguard the Works as may be necessary within three months after receipt of notice so to do, and should the Applicant fail to perform such work of moving or altering within the times specified the Railway Company shall have the right to do such work as agent of the Applicant and the Applicant shall pay to the Railway Company the entire cost of all such work forthwith upon receipt of certified accounts therefor on the basis of cost plus labour overheads as may be currently applicable and as set by the Railway Association of Canada, and material

1980 Jan 28

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

DRAFT

handling costs as may be currently applicable on the Railway Company, and all the provisions of this Agreement shall apply to the Works while being moved or altered and in their changed condition or location and to the parties hereto in respect thereof.

14. The Applicant shall not assign, transfer or dispose of this Agreement, or of the rights and privileges conferred thereby, without the consent in writing first obtained of the Railway Company.

15. This Agreement shall commence on the date hereof and shall terminate upon the date the Applicant removes the Works.

16. This Agreement shall, subject to Clause 14 hereof, enure to the benefit of and be binding upon the parties hereto, the successors and assigns of the Railway Company and the successors and assigns of the Applicant.

17. Upon the termination of this Agreement the Applicant shall remove at the expense of the Applicant the Works from the lands of the Railway Company, and restore the property of the Railway Company to its original state and condition; provided that the Railway Company may, at its option, perform such work as agent of and at the expense of the Applicant and in either case the conditions embodied in Clauses 9 and 10 hereof shall remain applicable and effective until such times as all work to be performed by the Applicant or by the Railway Company as agent of the Applicant as provided for in this clause shall have been carried out to the entire

1980 Jan. 28

140

DRAFT

- 10 -

satisfaction of the Railway Company.

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

IN WITNESS WHEREOF the parties hereto have  
executed these presents the day and year first above  
written.

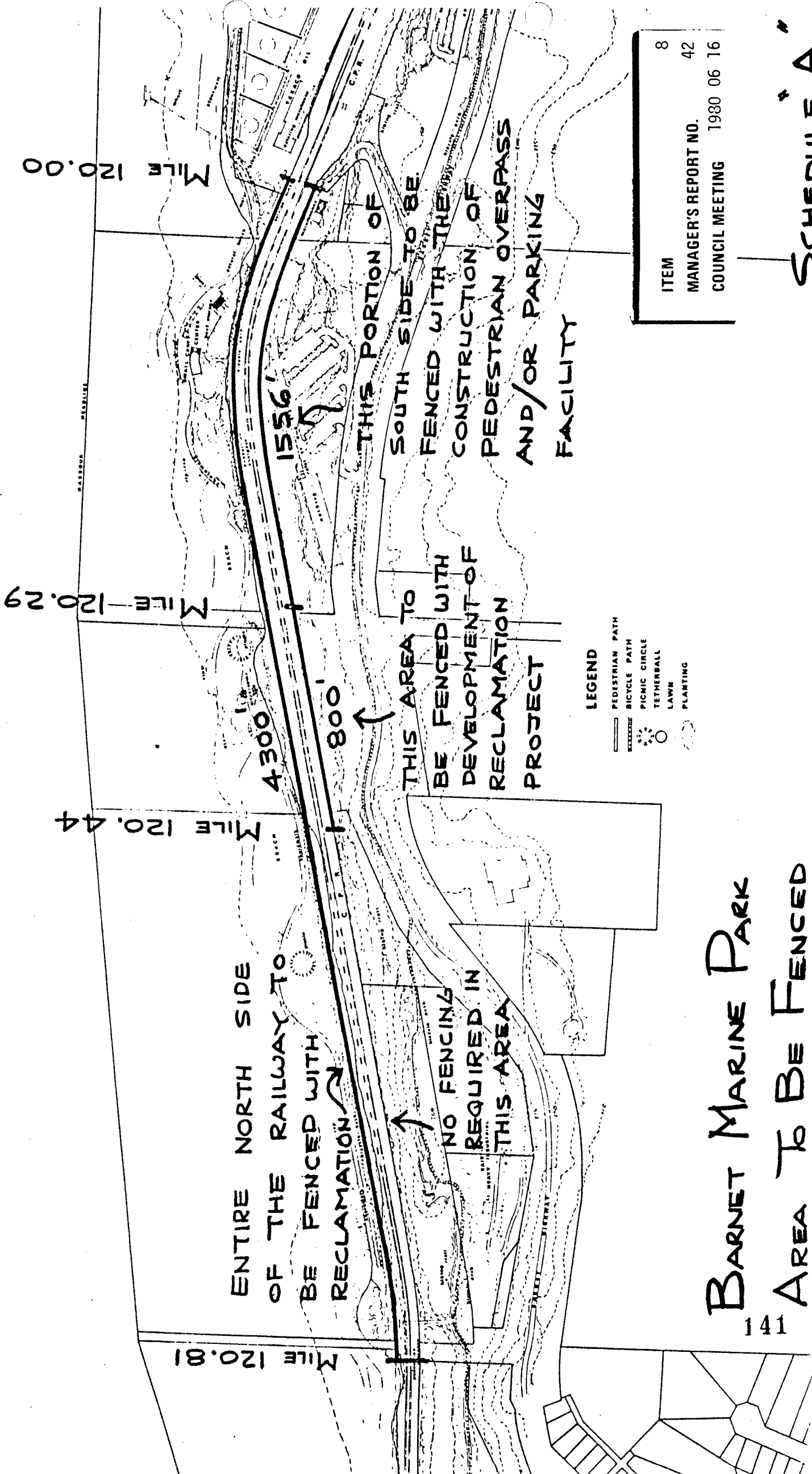
CANADIAN PACIFIC LIMITED

\_\_\_\_\_  
\_\_\_\_\_

THE CORPORATION OF THE DISTRICT  
OF BURNABY

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK



ENTIRE NORTH SIDE OF THE RAILWAY TO BE FENCED WITH RECLAMATION

NO FENCING REQUIRED IN THIS AREA

THIS AREA TO BE FENCED WITH DEVELOPMENT OF RECLAMATION PROJECT

THIS PORTION OF SOUTH SIDE TO BE FENCED WITH THE CONSTRUCTION OF PEDESTRIAN OVERPASS AND/OR PARKING FACILITY

LEGEND

- PEDESTRIAN PATH
- BICYCLE PATH
- PICNIC CIRCLE
- TETHERBALL
- LAWN
- PLANTING

ITEM	8
MANAGER'S REPORT NO.	42
COUNCIL MEETING	1980 06 16

BARNET MARINE PARK  
AREA TO BE FENCED

SCHEDULE "A"

