

2004 JANUARY 15

TO: CITY MANAGER

FROM: DIRECTOR PARKS, RECREATION AND CULTURAL SERVICES

**SUBJECT: GVRD OUTSTANDING STATUTORY RIGHT OF WAY PROGRAM -
REQUEST FOR RIGHTS OF WAY OVER VARIOUS CITY PARK LANDS**

PURPOSE: To request authorization for the granting and execution of three Statutory Rights of Way over portions of various park lands in favour of the Greater Vancouver Regional District for regional drainage and access purposes.

RECOMMENDATION:

1. THAT authorization be given for the granting and execution of three Statutory Rights of Way over portions of various park lands in favour of the Greater Vancouver Regional District for regional drainage and access purposes under the terms outlined in the attached report.

REPORT

At its meeting of 2004 January 14, the Parks, Recreation and Culture Commission received the above noted report and adopted the recommendation contained therein.



Kate Friars
DIRECTOR PARKS, RECREATION
AND CULTURAL SERVICES

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Attachment

P:\DATA\COUNCIL\PK-GVRD OUTSTANDING STATUTORY RIGHT OF WAY PROGRAM

cc: City Solicitor
Director Engineering

**SUBJECT: GVRD OUTSTANDING STATUTORY RIGHT OF WAY PROGRAM -
REQUEST FOR RIGHTS OF WAY OVER VARIOUS CITY PARK LANDS**

RECOMMENDATION:

1. THAT Council be requested to authorize the granting and execution of three Statutory Rights of Way over portions of various park lands in favour of the Greater Vancouver Regional District for regional drainage and access purposes under the terms outlined in this report.

REPORT

INTRODUCTION

At their respective meetings of 2003 November 19th and 24th, the Parks, Recreation and Culture Commission and Council approved, in principle, the granting of a number of statutory rights of way in favour of the Greater Vancouver Regional District (GVRD) over city lands in various parks for drainage and access purposes and authorized the City Solicitor to negotiate the terms of the statutory right of way agreements. The City Solicitor advises that negotiations for three of the four requested statutory rights of way have now been concluded and Council authorization to grant and execute the statutory rights of way is now being sought.

The three requested rights of way were identified by the Greater Vancouver Regional District (GVRD) through a recently completed inventory of outstanding property interests for the drainage facilities that are under the responsibility of the Greater Vancouver Sewage and Drainage District (GVS & DD). The requested statutory rights of way are for the open drainage corridors at Burnaby Lake Park, Still Creek Trail System and Conservation Lands, and Warner Loat Park where there is no statutory right of way or deficient statutory right of way (see Attachment #1). A summary of the specifics of each proposed right of way is presented below by park site.

Burnaby Lake Park

The GVS & DD is responsible for operating and maintaining the Still Creek/Brunette Drainage System, and as part of that responsibility maintains a sediment basin and gravel access road on the north east corner of Lot 5 (see Attachment #2) within Burnaby Lake Park. The GVRD has determined that it does not have a statutory right of way interest on Lot 5, for maintaining this section of Still Creek.

Parks staff have reviewed this request and agree that it is in the City's best interest to grant this statutory right of way to ensure continuity and the continued maintenance of this drainage corridor by the GVS & DD. However, the requested statutory right of way area will be minimized to follow the original statutory right of way alignment for the creek and include as additional statutory right of way area, only that portion of the property encumbered by the existing gravel access road.

The GVRD has agreed to the reduced easement area and the City Solicitor has negotiated terms acceptable to the City.

Still Creek Trail and Conservation Lands

The GVS & DD is responsible for operating and maintaining the Still Creek / Brunette River drainage system. The GVRD has determined that its statutory right of way interest in the City owned Lot Q, located west of Willingdon Avenue, is deficient. During its evolution to the present configuration, two statutory rights of way have been registered for drainage purposes over Lot Q. However, no statutory right of way is registered for the portion of an old road allowance that was consolidated with the adjacent property to form the present Lot Q (see Attachment #3). The GVRD has requested a statutory right of way to cover the area of the former road allowance. Parks staff have reviewed the request and agree that it is in the best interest of both the GVS & DD and the City to grant the requested statutory right of way.

The City Solicitor advises that a new statutory right of way has been negotiated which covers all of Lot Q, including the former road allowance area, under terms acceptable to the City. The two older rights of way will be cancelled resulting in one clear statutory right of way charge for Lot Q.

Warner Loat Park

After necessary work to stabilize the course of Eagle Creek through the northwestern corner of Warner Loat Park, the City requested formalization of a statutory right of way over the City properties at Warner Loat Park for GVS & DD to effectively operate and maintain this drainage system, which is under GVS & DD responsibility. During the review of the request GVRD noted that the GVS & DD does not have a statutory right of way for the creek as it runs through the Southeastern corner of Warner Loat Park and therefore requested that the proposed statutory right of way area be extended to include these additional city properties. The proposed 0.462 hectare statutory right of way area includes the creek and minimal area at top of bank (see Attachment #4). No physical change to the existing park or park activities will result from the granting of this statutory right of way.

The City Solicitor advises that a statutory right of way has been negotiated under terms acceptable to the City.

TERMS & COMPENSATION

Each request has been reviewed in detail and negotiated in line with the Council adopted policy for negotiating and granting statutory rights of way over City owned land. The policy addresses the issues of compensation, term, purpose, use by third parties and effect on the City's use of the land. The adopted approach for each of these issues is summarized as follows:

- in most cases compensation at market value will be payable and will depend to some extent on how the right of way affects the City's use of the land
- where the term required for the right of way is not for a certain fixed period, rights of way should be granted in perpetuity but subject to the condition that if the works are abandoned or remain unused for a period of one year the right of way will terminate
- the agreement should limit the purpose for which the statutory right of way is granted as narrowly as possible, and preferably to the specific works to be installed initially
- the statutory right of way agreement should prevent the grantee from allowing third parties to install works in the right of way area, or "piggyback" on the grantee's rights under the statutory right of way agreement
- the agreement should minimize the interference with the City's right to use the land, both as to the present and the future.

As the granting of these rights of way is being proposed by the GVRD to rectify the current situation of existing regional utilities not contained within statutory rights of way, and as the rights of way allow for the GVS & DD to be responsible for and effectively operate and maintain these necessary open drainage systems, monetary compensation for these rights of way is not being sought.

The lands at Burnaby Lake, Warner Loat and Eagle Creek Ravine Parks have been included in past park land dedication bylaws. As the requested statutory rights of way are to access and maintain existing GVRD drainage facilities it is considered that there is no impediment to the granting of the requested statutory rights of way over the dedicated park lands.

CONCLUSION

Arising from its Drainage Outstanding Right-of-way Program, the Greater Vancouver Regional District has approached the City to request the granting of a number of outstanding statutory rights of way for drainage and maintenance access purposes over city lands within various Burnaby Parks. Staff have determined that there is no impediment to the granting of the rights of way in favour of the GVRD. It is therefore recommended that Council be requested to authorize the granting and execution of three Statutory Rights of Way over portions of various park lands in favour of the Greater Vancouver Regional District for regional drainage and access purposes under terms and conditions negotiated by the City Solicitor as outlined in this report.

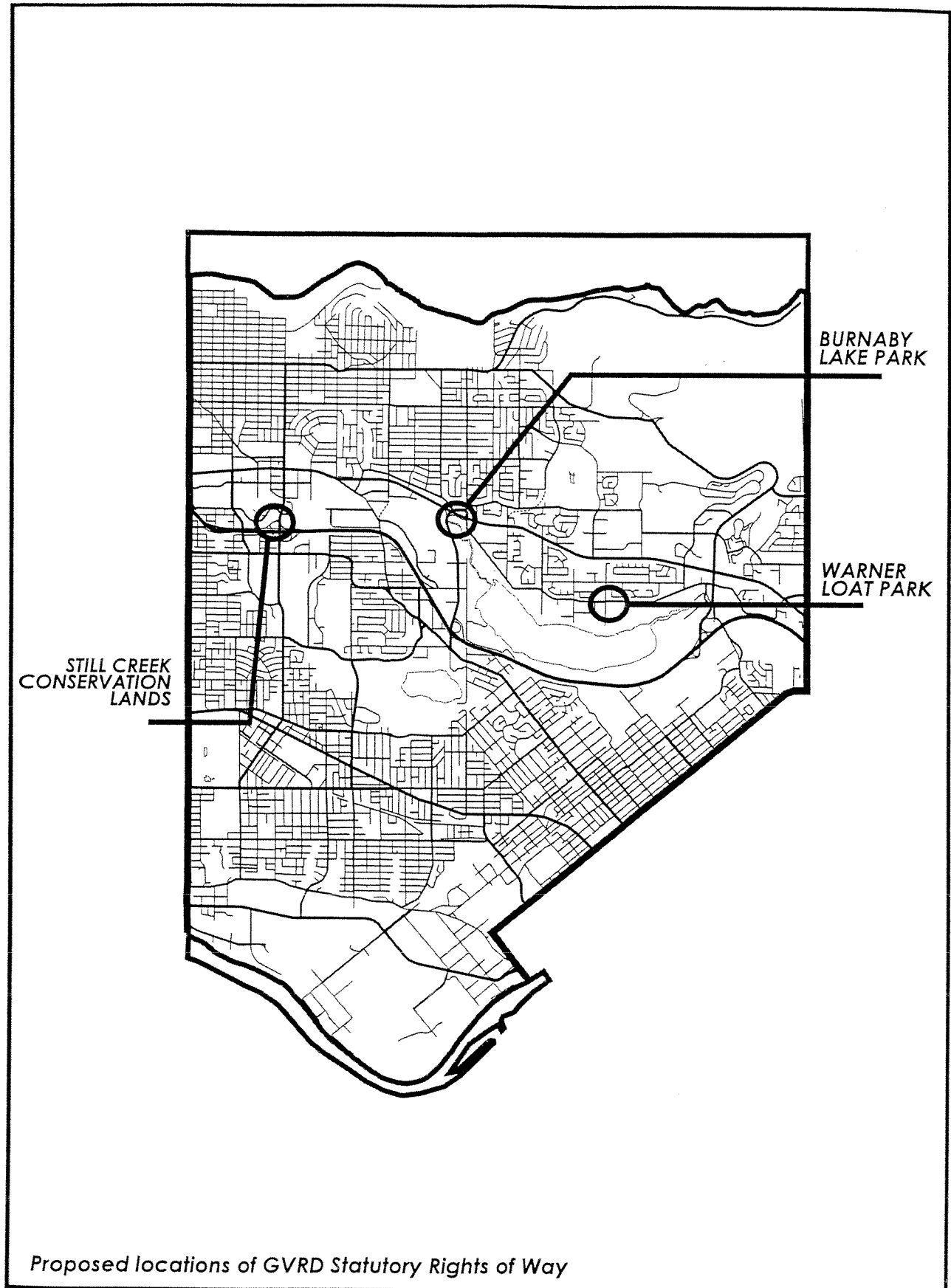
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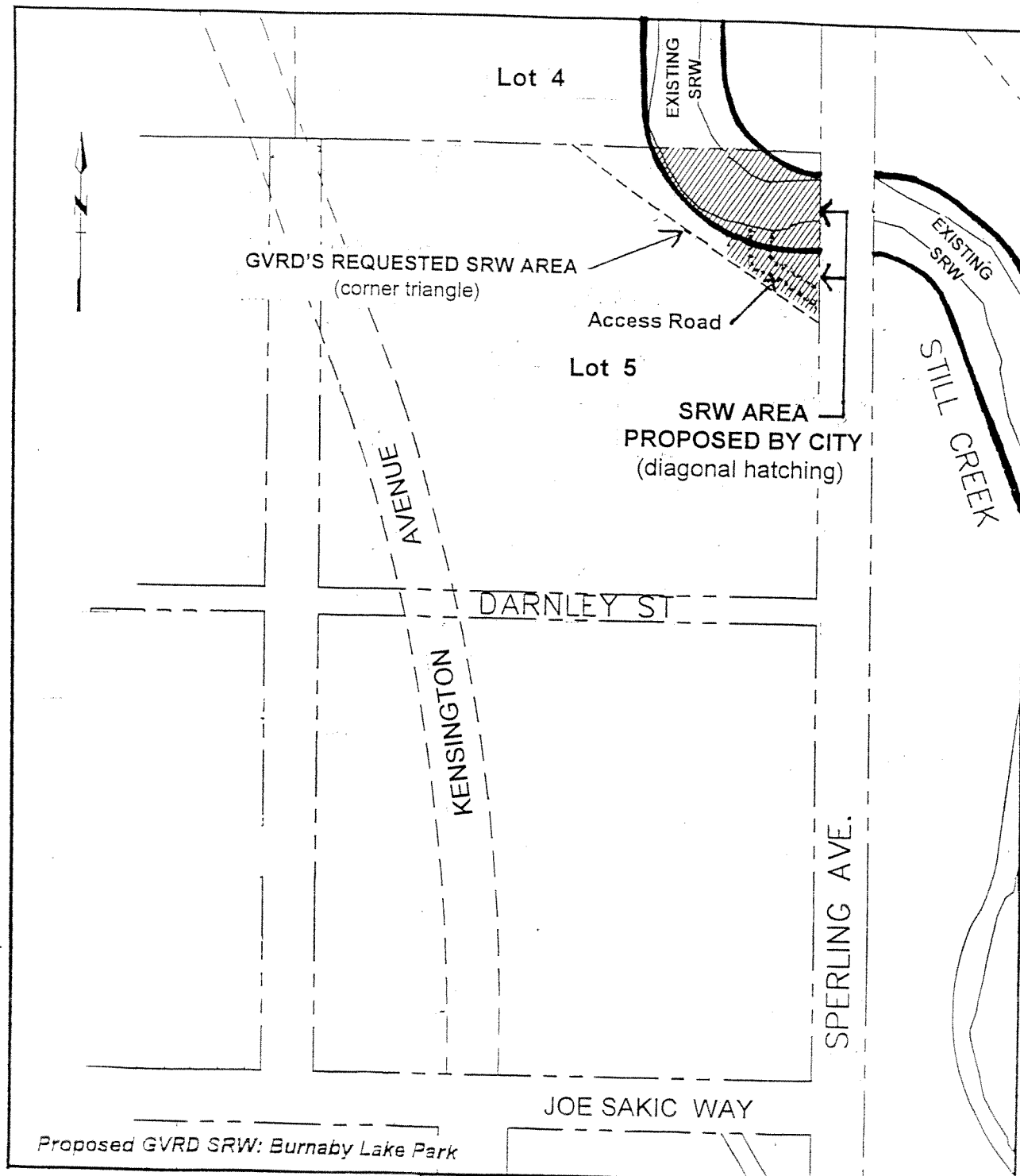
Attachments (4)

cc: City Solicitor
Director Engineering



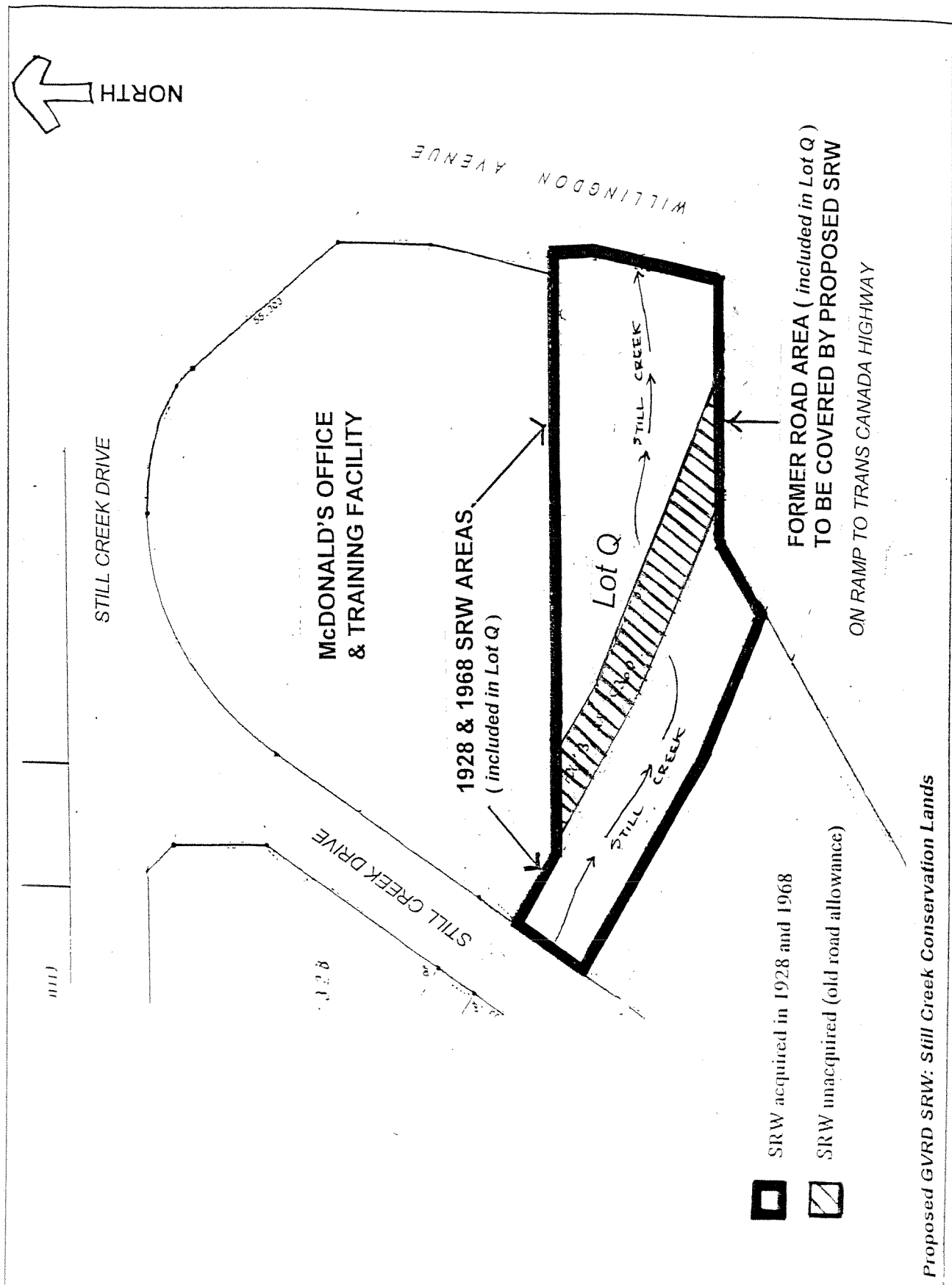
Proposed locations of GVRD Statutory Rights of Way

Attachment #1



Proposed GVRD SRW: Burnaby Lake Park

Attachment # 2



Proposed GVRD SRW: Still Creek Conservation Lands

