

January 24, 2018

Ministry of Environment and Climate Change Strategy,
BC Parks West Coast
2080-A Labieux Road
Nanaimo, BC V9T 6J9

Dear Ministry of Environment and Climate Change Strategy,

Re: Submission to the Ministry of Environment and Climate Change Strategy: Cowichan River Provincial Park, Park Management Plan

Prepared by the University of Victoria Environmental Law Clinic on behalf of the Cowichan River Neighbourhood Association

The purpose of this submission is to provide the Ministry of Environment and Climate Change Strategy with recommendations from the Cowichan River Neighbourhood Association¹ (the “Association”) regarding the development of a Park Management Plan for the Cowichan River Provincial Park (“the Park”). In particular, the Association makes submissions to challenge the legitimacy of BC Parks’ decision to issue a long term park permit (PUP) to the Cowichan Fish and Game Association (“the Gun Club”) – the only gun range in operation in British Columbia in a provincial park.

This submission is divided into four parts. Following an introduction to the issues, Part I deals with how the Ministry of Environment is permitting activities that contravene section 8(2) of the *Park Act*, are inconsistent with the purpose of the *Park Act*, and conflict with the role of the Park as set out in the Park’s purpose statement and zoning plan. This part also highlights the fact that the Gun Club’s continued operation, and its PUPs, are inconsistent with provincial legal precedents on Gun Clubs and on permissible activities in parks. This part concludes with recommendations.

Part II sets out how BC Parks determined that the Gun Club had violated the *Closed Areas Regulation*, BC Reg 76/84 (the “*Closed Areas Regulation*”), then the Ministry of Forests, Lands and Natural Resource Operations granted the Gun Club an exemption to continue the violating activity, which appears to contravene the same regulation the exemption was issued under. In addition, Part II details how BC Parks has failed to proactively enforce certain conditions in the Gun Club’s PUP. This part concludes with recommendations.

Part III outlines health and environmental concerns regarding the operation of a gun range in a provincial park, with a focus on the impacts of lead pollution on the environment and human health. This part concludes with recommendations. Part IV contains a conclusion and final recommendations.

In summary, this submission concludes that the gun range, an anomaly in the British Columbia parks system, should be phased out as soon as possible and under no circumstances beyond 2022. The PUPs the Gun Club is operating pursuant to, issued by the Ministry of Environment, contravene section 8(2) of the *Park Act*, are inconsistent with the purpose of the *Park Act*, and conflict with the role of the Park. In addition, the Gun Club’s continued operation in the park, and its PUPs, are inconsistent with provincial legal precedents on Gun Clubs and permissible activities in parks. Furthermore, government has exempted the Gun Club from compliance with provincial law, after it violated that law, and failed to proactively enforce certain conditions in the Gun Club’s PUP. Finally, potential lead pollution from the range may be posing a danger to human health and the environment both on the gun range, and in the surrounding Park area.

Concluding recommendations are as follows:

¹ The Association is a registered non-profit society that advocates for residents who live near the Cowichan River and the Cowichan River Provincial Park. The Association’s members reside in three rural neighbourhoods: Glenora, Sahtlam, and North Cowichan. The purpose of the Association is to provide opportunity for local residents to maintain and advocate for improvements in the quality of life in the rural neighborhoods along the river corridor.

Recommendations respecting the problematic original and replacement park use permits:

- Given that the Ministry permits gun range activities contrary to the purpose of the *Park Act*, and taking into consideration the case law about gun clubs and park activities in British Columbia, identify permitted park activities in the Park Management Plan that uphold the purpose of the *Park Act*;
- Include explicit policies for the phase out of the Gun Club in the Park as soon as possible and under no circumstances beyond 2022;
- Include policies for the operation of the Gun Club until its operations cease that help preserve or maintain the recreational values of the Park – for example by requiring significantly decreased operating hours and remediation of the site.

Recommendations respecting the contraventions of the *Closed Areas Regulation* and its PUPs:

- Enforce the PUP conditions issued under, and regulations relating to, provincial laws in the Park.

Recommendations respecting health and environmental concerns:

- Prohibit the use of lead ammunition in the Park;
- Require and enforce the use of nontoxic ammunition until the Gun Club ceases operation in the Park;
- Ensure that an assessment of current lead contamination in the Gun Club area and surrounding area is carried out, and ensure that the site is remediated.

The factual information relied upon in this submission is provided by members of the Association. Other information may change our submission and the Association welcomes clarification on a number of facts that are not clear from information provided by the Ministry.

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Introduction to the issues

In 1991, BC Parks established the inter-agency Cowichan River Recreation Management Steering Committee (“the Committee”), headed by Dave Chater of BC Parks.² During 1992, the Committee initiated and led a public consultation process about creating a park in the Cowichan River area.³ As a result of this consultation process, the Committee decided that creating a “Provincial Park corridor” was the best option for establishing a protected area in the Cowichan River area.⁴ They wrote a management plan, titled “Cowichan River Recreation Management Plan,” which includes their recommendation to create a Provincial Park along Cowichan River.⁵ The management plan states “BC Parks will acquire undeveloped private properties and assemble parcels of Crown Land for park designation, which are important for recreation and conservation. Land tenures such as Regional District parks, Indian Reserves, and small lots of developed private property will not be included.”⁶

As a result of this planning process, the Province of British Columbia established the Park on July 12, 1995.⁷ It is a Class A park, established pursuant to Schedule D of the *Protected Areas of British Columbia Act*, SBC 2000, c 17 (“PABCA”).⁸

In 1995, when the Park was established, the Gun Club was operating a sixty-year old gun range within what are now Park borders.⁹ It was operating under a 20-year lease, which began on November 20, 1981.¹⁰ In 1995, BC Parks announced its intention to take over the shooting range facility and incorporate it into the Park.¹¹ In 2001, Dave Chater met with the President of the Gun Club at least twice, and proposed that “the current lease the club has with British Columbia Assets and Land Corporation (BCALC) be transferred to the administration of BC Parks and placed under a long term park use permit.”¹² In a February, 2001 letter to the Gun Club, Chater stated that the Crown land that the club currently leased would be converted to provincial park status and included in Cowichan River Provincial Park.¹³

In 2001, BCALC offered to grant the Gun Club a two-year lease extension to give BC Parks and the Gun Club more time to negotiate before the Gun Club’s lease expired on November 20, 2001.¹⁴

In July, 2002, the Gun Club’s President James Thibideau agreed to relinquish their lease in return for a “Twenty (20) year renewable lease, with a land use permit, for a gun range,” and permission to issue a sub-lease to their

² Cowichan River Recreation Management Steering Committee, *Cowichan River Recreation Management Plan* (December 1992) at page iii and 1, on file with the University of Victoria Environmental Law Centre [CRRMSC].

³ CRRMSC, *supra* note 2 at 1.

⁴ *Ibid* at 2.

⁵ *Ibid* at 2.

⁶ *Ibid* at 2.

⁷ BC Parks, “Cowichan River Provincial Park”, online: BC Parks

<http://www.env.gov.bc.ca/bcparks/explore/parkpags/cowichan_rv/>.

⁸ Section 5(3) of the *Park Act*, RSBC 1996, c 344 dedicates Class A parks named in schedules C and D of the PABCA to the preservation of their natural environments for the inspiration, use and enjoyment of the public.

⁹ Email from Don Closson, Area Supervisor (Cowichan), Protected Area Section (Goldstream), Ministry of Environment, to Kerri Skelly, Senior Contaminated Sites Officer (Surrey), Remediation Assurance & Brownfields Surrey, Ministry of Environment (24 November 2016), on file with the University of Victoria Environmental Law Centre [Closson]. For material confirming that the Gun Club has operated the gun range since the early 1930s, see Cowichan Fish and Game Association, *Land Use/Occupancy Park Use Permit Application*, Permit Number VI0510224 (30 September 2004), on file with the University of Victoria Environmental Law Centre [CFGGA]; Email from Sean Pendergast, Section Head, Recreational Fisheries and Wildlife Programs, Ministry of Forests, Lands and Natural Resource Operations, West Coast Region to Bob Kopp (12 July 2016) on file with the University of Victoria Environmental Law Centre [Pendergast].

¹⁰ Letter from Dick Heath, Regional Environmental Stewardship Manager, Vancouver Island Region, Ministry of Water, Land, and Air Protection to Neil Banera, Regional Manager, Land and Water British Columbia (1 November 2002), on file with the University of Victoria Environmental Law Centre [Heath].

¹¹ Jim O’Donnell, “History of Cowichan Fish and Game Club and Resident Opposition” (18 February 2016), on file with University of Victoria Environmental Law Centre [O’Donnell].

¹² Letter from Dave Chater, District Manager, BC Parks to Jack Bone, President, Cowichan Fish and Game Club (6 February 2001) on file with the University of Victoria Environmental Law Centre [Chater I]. See also letter from Dave Chater, District Manager, BC Parks to Jack Bone, President, Cowichan Fish and Game Club (19 October 2001) on file with the University of Victoria Environmental Law Centre [Chater II].

¹³ Chater I, *supra* note 12.

¹⁴ Chater II, *supra* note 12.

resident caretaker for his house. Thibideau stated “If we can negotiate these items, we will turn our lease over to your ministry.”¹⁵

On November 1, 2002, Dick Heath, Regional Environmental Stewardship Manager, Vancouver Island Region, wrote a letter to Neil Banera, Regional Manager of Land and Water British Columbia, about the Gun Club’s lease parcels.¹⁶ In this letter, Heath stated that the Environmental Stewardship Division would like to “initiate the process to see the status of these lease parcels become additions to the Cowichan River Provincial Park.” He stated that the rationale for this course of action is found in the 1992 Cowichan River Recreation Management Plan, which identified the ongoing acquisition of River corridor and associated strategic properties as a priority. A few weeks later, Neil Banera replied, stating that Land and Water British Columbia had “no objection to this leased land becoming part of Cowichan River Provincial Park,” as long as the arrangement satisfied the conditions in James Thibideau’s letter.¹⁷

Although the Zoning Map in the 2003 Cowichan River Provincial Park Purpose Statement and Zoning Plan, which the Environmental Stewardship Division prepared, shows the Gun Club area as “natural environment” that is within Park boundaries, BC Crown land registry records show that the Gun Club’s lease area only became part of the Park on October 6, 2004.¹⁸

On September 30, 2004, the Gun Club signed a park use permit application.¹⁹ The Ministry of Water, Land and Air Protection marked this application as received on October 25, 2004.²⁰ The application is largely incomplete. For example, the application requires a detailed proposal description that addresses certain issues, such as “impacts on the protected area(s) (environmental, social, economic changes including, but not limited to, vegetation, wildlife, access, aesthetics, effect on other users, etc) and actions that will be taken to mitigate these impacts on the protected area(s).”²¹ The Gun Club’s application provides the following information regarding this element: “[i]mpacts on the environment have already taken place over the past half century.”²² This likely relates to its statement, in the same application, that “[p]rior to the Association occupying the area the area was used as an informal shooting area...”²³

Despite the application’s incomplete nature, the Ministry appears to have accepted it. On March 23, 2007, the British Columbia Ministry of Environment granted the Gun Club Park Use Permit No. VI0510224 (the “Original PUP”) for their gun range operation under the authority of the *Park Act*, for 31 years commencing May 1, 2005.²⁴ The Original PUP states, “This Permit is issued for the purpose of Land Use/Occupancy to operate the Cowichan Fish and Game Association as described in the application dated September 30th, 2004.”²⁵ By granting this park use permit, the Ministry authorized the Gun Club to operate the only gun range located in

¹⁵ Letter from James Thibideau, President, Cowichan Fish and Game Association to Dick Heath, Regional Environmental Stewardship Manager, Vancouver Island Region, Ministry Water, Land, and Air Protection (2 July 2002) on file with the University of Victoria Environmental Law Centre [Thibideau].

¹⁶ Heath, *supra* note 10.

¹⁷ Letter from Neil Banera, Regional Manager, Land and Water British Columbia to Dick Heath, Regional Environmental Stewardship Manager, Vancouver Island Region, Ministry of Water, Land, and Air Protection (27 November 2002) on file with the University of Victoria Environmental Law Centre.

¹⁸ British Columbia Ministry of Environment, Environmental Stewardship Division, “Cowichan River Provincial Park – Purpose Statement and Zoning Plan,” March 2003, online: <http://www.env.gov.bc.ca/bcparks/planning/mgmtplns/cowich/cowich_ps.pdf?v=1499904000059> [Park Plan]; BC GATOR database, *GATOR Interest Details*, Lot 1 19268 and Lot 1 23914 of Section 6, Range 10, Sahtlam District, on file with the University of Victoria Environmental Law Centre [BC GATOR database].

¹⁹ CFGA, *supra* note 9.

²⁰ *Ibid* at 1.

²¹ *Ibid* at 2.

²² *Ibid* at 4.

²³ *Ibid*.

²⁴ March 23, 2007 is the date that Dick Heath signed the Original PUP on behalf of the Province; the Ministry of Environment sent the validated permit to the Gun Club via email on March 26, 2007. See British Columbia Ministry of Environment, Environmental Stewardship Division, *Park Use Permit No. VI0510224*, issued to Cowichan Fish and Game Association on March 9, 2007 [*Park Use Permit No. VI0510224*]; see also Email from Kelsey Selbee, Permit Officer, Park Use Permits, Ministry of Environment to Mike Flatt, Cowichan Fish and Game Association (26 March 2007), on file with the University of Victoria Environmental Law Centre.

²⁵ *Park Use Permit No. VI0510224*, *supra* note 24 at 4. See Part I, Section A for more information.

a provincial park in British Columbia.²⁶ In June 2013, the Ministry of Environment granted the Gun Club Park Use Permit No. 10213 (the “Replacement PUP”), which replaced the original permit.²⁷ The Replacement PUP, which has similar terms to the Original PUP, is also valid for a term of 31 years commencing on May 1, 2005 and ending on April 30, 2036.²⁸ Both the Original and Replacement PUPs grant the Gun Club the right to use a certain area of Park land described in the Management Plan Schedule of the permit. Under the current, replacement permit the Gun Club pays \$950.00 (plus applicable taxes) per year to use 7.41 hectares of Park land.²⁹

The Gun Club has had an impact on the area surrounding the Club since as early as 1980, and the scope of the disturbance continues to escalate.³⁰ The Gun Club has grown continuously throughout its operation, from approximately 80 members in 1974 to about 180 in 2009, and to almost 500 members (more than 700 people – as the 500 figure includes 150 families) by 2015.³¹ It operates 11 hours a day, 7 days a week.³² The concussive noise from its operations impacts the Park, the adjacent regional district parks, and three residential neighbourhoods.³³ This has been a problem for a long time: in 1980, there was a petition with more than a hundred signatures objecting to noise from the Gun Club and protesting its recent lease renewal and proposed rezoning and expansion; in 1984 then Area E Director W. Taylor called for the Gun Club to move the shooting range, stating that “I think for the benefit of all concerned, it would be best if an alternate location for the club was found. The problem of noise from the shooting range has been a long one.”³⁴ Although the Association has made a proposal that the Gun Club reduce its hours to 25 hours a week, with limits on the days/times when the loudest shooting can take place, the Gun Club has indicated that it is not interested in meaningfully reducing shooting hours or days.³⁵ The Gun Club has only made minor adjustments to its hours of operation, and it has been undergoing a “noise/sound reading exercise.”³⁶

In addition, government has exempted the Gun Club from compliance with the *Closed Areas Regulation*, after it violated that regulation, and failed to enforce the Gun Club’s violation of certain conditions in its PUP.³⁷ Furthermore, the operation of a gun range in a provincial park raises health and environmental concerns, as the Gun Club’s use of lead ammunition may be leading to pollution that endangers people’s health and the ecosystem in the Park.³⁸

Having provided an introduction to the issues, the following Part I outlines issues with the Original and Replacement PUPs.

Part I – The problematic original and replacement park use permits

There are several issues with the Original and Replacement PUPs:

- The nature of the PUPs conflicts with section 8(2) of the *Park Act*, the purpose of the *Park Act*, and the stated role of the Park; and,
- The Gun Club’s activities and its PUPs are inconsistent with provincial legal precedents on gun clubs and on permissible activities in parks.

²⁶ Email from Jim Standen, Assistant Deputy Minister, BC Parks and Conservation Officer Service Division, to Bob Kopp (22 March 2016) on file with the University of Victoria Environmental Law Centre.

²⁷ British Columbia Ministry of Environment, BC Parks West Coast Region Haida Gwaii/South Island, *Park Use Permit No. 102138*, issued to Cowichan Fish and Game Association on June 10, 2013 [*Park Use Permit No. 102138*]; O’Donnell, *supra* note 11.

²⁸ *Park Use Permit No. 102138*, *supra* note 27.

²⁹ *Ibid* at Article III. Under the Original PUP the fee was slightly different, at \$1016.50 (GST included if applicable) per year. In addition, the Original PUP is the document that states the property is 7.41 hectares. See *Park Use Permit No. V10510224*, *supra* note 24, at Article III and Management Plan Schedule, page 10.

³⁰ For more information, see O’Donnell, *supra* note 11.

³¹ O’Donnell, *supra* note 11.

³² Cowichan Fish and Game Association, “Gun Ranges / Rules,” online: Cowichan Fish and Game Association <<http://cowichanfishandgame.com/gun-ranges-rules/>>; see also O’Donnell, *supra* note 11.

³³ The Association maintains that the shooting noise is causing significant nuisance.

³⁴ O’Donnell, *supra* note 11.

³⁵ Personal communication with Bob Kopp, Cowichan River Neighbourhood Association (7 March 2017).

³⁶ Closson, *supra* note 9.

³⁷ See Part II for more information.

³⁸ See Part III for more information.

These issues are discussed in order in the sections that follow.

A. The Minister’s decision to issue the park use permits conflicts with section 8(2) of the *Park Act*, the purpose of the *Park Act*, and the stated role of the Park

The Minister of Environment (the “Minister”)’s decision to issue the Original and Replacement PUPs conflicts with section 8(2) of the *Park Act* and the purpose of the *Park Act*, as well as the stated role of the Park.

Sections 8(1) and (2) of the *Park Act* state:

8 (1) An interest in land in a Class A or Class C park must not be granted, sold, leased, pre-empted or otherwise alienated or obtained or made the subject of a license except as authorized by a valid and subsisting park use permit.

(2) A park use permit referred to in subsection (1) must not be issued unless, in the opinion of the minister, to do so is necessary to preserve or maintain the recreational values of the park involved.

Section 5(3) of the *Park Act* is also relevant, as courts have considered it in the context of interpreting the purpose of the *Park Act* and other permitting provisions in the *Park Act*, discussed further below. Section 5(3) states:

5 (3) The Class A parks named and described in Schedules C and D of the *Protected Areas of British Columbia Act* are dedicated to the preservation of their natural environments for the inspiration, use and enjoyment of the public.

The British Columbia Supreme Court has considered these sections of the *Park Act*, along with the overall purpose of the *Park Act*, in several cases.

In *Society of the Friends of Strathcona Park v British Columbia (Minister of Environment, Lands & Parks)*, 1999 CarswellBC 2228 (“*Strathcona I*”) the Society of the Friends of Strathcona Park applied for judicial review of the Minister of Environment, Lands and Parks’s decision to grant a park use permit to a forestry company to build a logging road through a portion of Strathcona Park, a Schedule D, Class A park. In this case, the court states that section 5(3) of the *Park Act* “states the purpose for which public lands are set aside as parks.”³⁹ The court goes on to state that section 20 of the *Park Act* gives the Minister the power to issue permits with regard to the use of the park, and section 8(2) provides a limitation on those permits, as a permit may not be issued unless, in the opinion of the Minister, “to do so is necessary to preserve or maintain the recreational values of the park.”⁴⁰ The court summarizes the relationship between the two provisions as follows: “s. 20 permits the Minister to issue permits provided the issuing of those permits was in the best interests of the Park as described in s. 8(2).”⁴¹ The court ultimately found that the park manager who concluded that the decision to issue the permit was in the best interests of the park (and who made the decision to issue the permit on behalf of the Minister) had not made a patently unreasonable decision.⁴² The court did not provide detailed reasons for this conclusion. However, the court does set out the facts in its decision in such a way that the Minister’s decision to grant the park use permit is cast as a balancing of interests between the government and the timber company. The alternative to building a road through the park was to build one adjacent to the park, which would be visible from the park and unsightly. In addition, the government and timber company agreed that they would

³⁹ *Society of the Friends of Strathcona Park v British Columbia (Minister of Environment, Lands & Parks)*, 1999 CarswellBC 2228 [“*Strathcona I*”] at para 29. Notably, in this case the court considered an earlier version of section 5(3), which read, “The parks named and described in Schedules A, B, C and D are continued as Class A parks, and are dedicated to the preservation of their natural environments for the inspiration, use and enjoyment of the public.”

⁴⁰ *Ibid* at para 33.

⁴¹ *Ibid* at para 36.

⁴² *Ibid* at para 36.

trade land parcels, and the timber company would give the government some of the land that the company owned within the park.⁴³

In *Friends of Cypress Provincial Park Society v British Columbia (Minister of Environment, Lands & Parks)*, 2000 BCSC 466 (“*Friends of Cypress*”), the Friends of Cypress Provincial Park Society applied for judicial review of the Minister of Environment, Lands and Parks’ decision to issue an amendment to a park use permit. The amendment allowed a company to expand its ski resort facilities within Cypress Provincial Park.⁴⁴ The Friends of Cypress Provincial Park Society also sought a declaration that the dominant purpose and object of the *Park Act* is the preservation and protection of the natural environment of parks established under the *Park Act*.⁴⁵ In this case, the court did not consider section 5(3), because the government created Cypress Provincial Park, a Class A, category 6 park, by order-in-council, which means it is not a scheduled park. The court mentioned but did not consider section 8. However, the court did address the purpose of the *Park Act*. The court refused to declare that the dominant purpose and object of the *Park Act* was “the preservation and protection of the natural environment of parks.”⁴⁶ The court stated that the purpose and object of the *Park Act* is that “the Act provides the framework for the creation and preservation of parkland for a variety of purposes to serve a broad cross-section of the citizens of British Columbia whose interests are as diverse as its landscape.”⁴⁷

In *West Kootenay Community EcoSociety v. British Columbia (Ministry of Water, Land, & Air Protection)*, 2005 BCSC 784 (“*West Kootenay*”), the West Kootenay Community EcoSociety applied for judicial review of the Minister of Water, Land and Air Protection’s decision to move the entrance of the Grohman Narrows Provincial Park.⁴⁸ Relocating the entrance would require the construction of a new road inside the Park to connect the new entrance to the existing parking lot.⁴⁹ This would have an adverse ecological impact on the park and in particular, on a population of provincially blue-listed (i.e. at risk) painted turtles.⁵⁰ The main provisions at issue in this case were section 9(5), 9(7), 5(3), and 12(3) of the *Park Act*.⁵¹ At the time, section 9(5) precluded anyone (including the Minister) from disturbing, destroying or damaging land in a park.⁵² Section 9(7) provided an exemption:

“A natural resource [which includes land and the flora and fauna in and on it] in any park of any class must not be ...destroyed, disturbed, damaged ... unless in the opinion of the minister, the development, improvement and use of the park in accordance with section 12(3) will not be hindered by it.”⁵³

Section 12(3) states that “A person must not carry on, in any park, any activity that will restrict, prevent or inhibit the use of the park for its designated purpose.”⁵⁴

The court read these provisions, along with section 5(3), together, and concluded that “in the course of making decisions pertaining to the improvement, development and use of the park, the Minister may permit land (and the flora and fauna on and in it) in the park to be destroyed, disturbed damaged etc. if, in his/her opinion, that destruction, disturbance, damage etc. does not restrict, prevent or inhibit the preservation of the natural environment for inspiration, use and enjoyment of the public.”⁵⁵ The court also states that the Minister plays a stewardship role with respect to the exercise of his or her jurisdiction to regulate and control the use of Class A parks.⁵⁶

⁴³ *Ibid* at para 34.

⁴⁴ *Friends of Cypress Provincial Park Society v British Columbia (Minister of Environment, Lands & Parks)*, 2000 BCSC 466 [“*Friends of Cypress*”] at para 1.

⁴⁵ *Ibid*.

⁴⁶ *Ibid* at para 86.

⁴⁷ *Ibid* at para 58.

⁴⁸ *West Kootenay Community EcoSociety v. British Columbia (Ministry of Water, Land, & Air Protection)*, 2005 BCSC 784 at paras 1-2 [“*West Kootenay*”].

⁴⁹ *Ibid* at para 2.

⁵⁰ *Ibid* at para 2.

⁵¹ *Ibid* at paras 33-37.

⁵² *Ibid* at para 33.

⁵³ *Ibid* at para 34.

⁵⁴ *Ibid* at paras 35-36.

⁵⁵ *Ibid* at para 38.

⁵⁶ *Ibid* at para 64.

In the most recent case, *Society of the Friends of Strathcona Park v. British Columbia (Minister of Environment)*, 2013 BCSC 1105 (“*Strathcona II*”), the Society of the Friends of Strathcona Park applied for judicial review of the Minister of Environment’s decision to issue a park use permit that would allow a company to conduct guided horse tours in Strathcona Park and make trail upgrades on an abandoned road.⁵⁷ In this case, the court first reviewed and summarized the other three cases (outlined above) that have discussed the purpose of the *Park Act*.⁵⁸ The court concluded that “the object or overall goal of the *Park Act* is the management of parks in the public interest.”⁵⁹ The court further stated that the object of the *Park Act* “has public values in mind,” and, as the court in *Strathcona I* stated, the issuing of permits should be in the best interests of the Park as described in section 8(2).⁶⁰ The court stated that whether the permit is issued under section 8 or section 9, “If the Minister reasonably holds the view that the permit is necessary for the preservation or maintenance of the recreational values, or is consistent with or complementary to the recreational values of the park involved, he or she may issue the permit.”⁶¹

In summary, according to *Strathcona I*, the Minister must not issue a park use permit under section 8 of the *Park Act* unless, in the opinion of the Minister, to do so is necessary to preserve or maintain the recreational values of the park. According to *West Kootenay*, the Minister plays a stewardship role with respect to the exercise of their jurisdiction to regulate and control the use of Class A parks. According to *Friends of Cypress*, the purpose and object of the *Park Act* is that the “Act provides the framework for the creation and preservation of parkland for a variety of purposes to serve a broad cross-section of the citizens of British Columbia whose interests are as diverse as its landscape.” Finally, according to *Strathcona II*, a more recent case that summarizes the above three cases, the object or overall goal of the *Park Act* is the management of parks in the public interest, and if the Minister reasonably holds the view that a park use permit is necessary for the preservation or maintenance of recreational values, or is consistent with or complementary to the recreational values of the park involved, they may issue the permit.

Applying the law to the facts, the Ministry is permitting activities that appear to contravene section 8(2) of the *Park Act* and are inconsistent with the purpose of the *Park Act*, which is the management of parks in the public interest (*Strathcona II*). With respect to section 8(2), while the Gun Club’s activities are recreational in nature, the Gun Club does not engage in a form of recreation that preserves or maintains the recreational values of the Park (*Strathcona I*). It disturbs the environment and may be causing environmental contamination due to the use of lead ammunition.⁶² In addition, the Minister’s decision to grant the Gun Club a park use permit is not consistent with the Minister’s stewardship role with respect to Class A parks (*West Kootenay*), and is not consistent with the management of parks in the public interest (*Strathcona II*).

Notably, the Park’s website – which provides a list of appropriate recreational activities available at the Park – does not mention the gun range.⁶³ This is another discrepancy that demonstrates the conflict between the operation of a private Gun Club within the Park and the public recreational values of the Park.

Overall, these contradictions raise the inference that the Minister issued both PUPs without complying with section 8(2) of the *Park Act*. Furthermore, the PUPs are inconsistent with the purpose of the *Park Act*.

The operation of a gun range is also contrary to and in conflict with the stated purpose of the Park set out in the Cowichan River Provincial Park – Purpose Statement and Zoning Plan (the “Plan”), which members of the Ministry of Environment, Environmental Stewardship Division created in 2003.⁶⁴ The document sets out the following three roles for the Park:

⁵⁷ *Society of the Friends of Strathcona Park v. British Columbia (Minister of Environment)*, 2013 BCSC 1105 [“*Strathcona II*”] at para 1.

⁵⁸ *Ibid* at paras 86-88.

⁵⁹ *Ibid* at para 89.

⁶⁰ *Ibid* at para 92.

⁶¹ *Ibid* at para 92.

⁶² See Part III of this submission for more information.

⁶³ BC Parks, “Cowichan River Provincial Park –About This Park,” online: BC Parks <http://www.env.gov.bc.ca/bcparks/explore/parkpgs/cowichan_rv/>.

⁶⁴ Park Plan, *supra* note 18.

COWICHAN RIVER PROVINCIAL PARK **Purpose Statement and Zoning Plan**

Primary Role

The **primary** role of Cowichan River Provincial Park is to protect the natural values associated with a scenic and world-renowned salmon-bearing river...

Secondary Role

The **secondary** role of this park is to provide a wide variety of land and water based recreation opportunities in a popular destination area of southern Vancouver Island...

Tertiary Role

The **tertiary** role of the park is to protect and present significant cultural and historic values...

The operation of a gun range in the Park conflicts with the stated roles of the Park. First, it contravenes the primary purpose of preserving natural values, because of its potential to cause pollution.⁶⁵ Second, even if the Gun Club does provide a recreational opportunity as contemplated under the secondary role of the Park, this is a private recreational opportunity that may detract from other recreational activities in the Park due to its potential to cause physical and noise pollution. The Gun Club is also not mentioned in the list of recreation activities that follow the “Secondary Role” heading in the Plan, such as swimming, kayaking, hiking, and nature appreciation.⁶⁶ Third, the Gun Club does not meet the tertiary role of protecting and presenting significant cultural and historic values similar to those listed under this heading in the Plan – such as Cowichan Tribes archaeological sites and remnants of a former transportation corridor to Lake Cowichan.⁶⁷ Finally, the Plan does not recognize the Gun Club’s presence in the zoning map that forms part of the Plan. The zoning map depicts the area where the Gun Club currently operates as “Natural Environment” and “Protected Area Boundary.”⁶⁸

In summary, the Minister’s decision to issue the park use permits conflicts with section 8(2) of the Park Act, the purpose of the Park Act, and the stated role of the Park. The next section considers how the PUPs are inconsistent with provincial legal precedents.

B. The park use permits are inconsistent with provincial legal precedents

The purpose of this section is to outline why the Gun Club’s continued operation, and the Original and Replacement PUPs, appear to be inconsistent with British Columbia legal precedents. This section addresses a case where a court contended with a Gun Club causing nuisance in the surrounding community, and then moves on to address *Strathcona I*, *Strathcona II*, *Friends of Cypress*, and *West Kootenay* in further detail.⁶⁹

In *Milne v Saltspring Island Rod and Gun Club*, 2014 BCSC 1088 (“*Milne*”), the plaintiffs complained about noise and alleged lead contamination from a gun range adjacent to their property. The gun range had existed on Salt Spring Island since 1959; the plaintiffs moved into the neighbourhood adjacent to the gun range in 2006.⁷⁰ The court decided the case based on the noise complaint and did not address the complaints about lead.

The central issue in this case was whether the noise from the gun range, which could be heard on the plaintiffs’ property, was unreasonable. In its decision, the court emphasized the importance of the character of the locality, quoting a passage from Lewis N. Klar et al., *Remedies in Tort*, that states, in part, “...where personal discomfort is at issue, the character of the locality is of importance in determining the standard of comfort that an occupier may reasonably claim.”⁷¹ The court found that the neighbourhood, while not wilderness, was not high-density urban, and that it was a place people moved to for the peace and quiet offered by the neighbourhood when

⁶⁵ See Part III of this submission for more information.

⁶⁶ Park Plan, *supra* note 18 at 2.

⁶⁷ *Ibid* at 2.

⁶⁸ *Ibid* at 7.

⁶⁹ See *Strathcona I*, *supra* note 39; *Strathcona II*, *supra* note 57; *Friends of Cypress*, *supra* note 44, and *West Kootenay*, *supra* note 48.

⁷⁰ *Milne v Saltspring Island Rod and Gun Club*, 2014 BCSC 1088 at para 3 [*Milne*].

⁷¹ Lewis N Klar et al., *Remedies in Tort*, loose-leaf (Toronto: Thomson Reuters Canada, 1987) in chapter 17 at §32, as cited in *Ibid* at para 45.

compared to an urban environment.⁷² The court accepted the plaintiff's evidence that the noise "...is disturbing... is percussive... can be frightening," and stated that "A landowner does not retain vested rights when a neighbourhood changes — he must comport himself in accordance with the character of the neighbourhood as it evolves."⁷³ The court went on to find that the shooting constituted a nuisance, and imposed a limited injunction that required the Gun Club to develop an arrangement with the plaintiffs that included modifying some practices (i.e. reduce shooting hours, soundproof the indoor range, collect spent lead from the ground).⁷⁴ The court stated that the matter could be brought back before the court after a trial period if the arrangement was not satisfactory.⁷⁵

Although the court in *Milne* did not deal with the complaints related to lead, the Ministry of Environment subsequently ordered the Salt Spring Island Rod and Gun Club to carry out a site investigation, following a complaint by a neighbour who alleged that lead pollution was leaching onto his property.⁷⁶

There are similarities between the Cowichan Gun Club and the Salt Spring Island Rod and Gun Club. Both gun clubs disturb the surrounding neighbourhood, and have led to complaints regarding noise. In addition, both gun clubs have neighbours that are concerned about the gun clubs' potential contribution to lead pollution. Overall, *Milne* stands for the principal that gun clubs that are disturbing their neighbours may not conform to the character of their locality, and may need to have their operations limited or changed.

Several other cases provide a court's view on which activities related to parks are valid, and which are not. These cases are *Strathcona I*, *Strathcona II*, *Friends of Cypress*, and *West Kootenay*. All of these cases except *West Kootenay*, involve a court judicially reviewing a ministerial decision to issue a park use permit.⁷⁷

In *West Kootenay*, the court held that the Minister can only permit land in a park to be disturbed, destroyed, or damaged if, in the Minister's opinion, it is required for the improvement, development, and use of the park, and, even then, only if in their opinion that disturbance, destruction, or damage is not contrary to the designated purpose of the park.⁷⁸ The court found that the Minister's decision to move the entrance of the park at issue was not for the improvement, development or use of the park.⁷⁹ It was a decision to accommodate a certain commercial developer.⁸⁰ The court overturned the Minister's decision because it would result in destruction and damage to the park.

In contrast, in *Friends of Cypress*, the court held that the Minister's decision to issue an amendment to a park use permit that would allow a ski company to expand its operations in Cypress Provincial Park was not patently unreasonable.⁸¹ The government had conducted an exhaustive public consultation process and commissioned several reports and investigations, and ultimately the Minister's discretionary decision balanced the competing interests in Cypress Provincial Park in an open democratic manner.⁸² In *Strathcona I*, the court upheld a park use permit for a timber company to build a logging road through Strathcona Park. The court determined that the park manager's decision that granting the permit was in the best interest of the park (with respect to preserving or maintaining the recreational values of the park) was not patently unreasonable.⁸³ The park manager reached his conclusion based on the fact that the government and timber company's agreement regarding the logging road had benefits for Strathcona Park: it would ensure that a visually unappealing road was not built adjacent to the Park (and in an area visible from the Park), and the timber company would give the government land it owned within Strathcona Park in return for the portion of land that would be cut off by the new road.⁸⁴ In

⁷² *Milne*, *supra* note 70 at paras 49-50.

⁷³ *Ibid* at para 53.

⁷⁴ *Ibid* at paras 54, 57-58.

⁷⁵ *Ibid* at paras 57-58.

⁷⁶ Sam Batson, Gustavson School of Business, *BC Wildlife Federation: Standards and Best Practices for Lead Management - an assessment of approaches to lead management for outdoor shooting ranges*, (28 April 2016), online: <http://www.bwff.net/files/ImplementationManual1_1.pdf> at page 9.

⁷⁷ *West Kootenay* was a case about the Minister's decision to move the entrance of Grohman Narrows Provincial Park.

⁷⁸ *West Kootenay*, *supra* note 48 at para 63.

⁷⁹ *Ibid* at para 65.

⁸⁰ *Ibid*.

⁸¹ *Friends of Cypress*, *supra* note 44 at 82.

⁸² *Ibid* at 81.

⁸³ *Strathcona I*, *supra* note 39 at para 36.

⁸⁴ *Ibid* at para 34.

Strathcona II, the court upheld a park use permit to use an abandoned trail for guided horse tours because the horse tours were a recreational activity permitted in the park by the *Park Act*, and the permit imposed strict conditions on the way the business conducted their tours.⁸⁵

These cases are instructive when considering the Gun Club's PUPs. Like in *West Kootenay*, the operation of a gun range is contrary to the designated purpose of the Park. Contrary to *Friends of Cypress*, the government did not conduct an extensive public consultation process regarding either of the PUPs, and the Minister's decision to issue the Original and Replacement PUPs did not balance competing interests regarding the Park in an open, democratic manner. Contrary to *Strathcona I*, the government and the Gun Club's agreement to include the Gun Club lease area within the Park is not clearly in the "best interests" of the Park (with respect to preserving or maintaining the recreational values of the park), given the potential for the Gun Club to contaminate the range area and surrounding area with lead from lead ammunition.⁸⁶ Contrary to *Strathcona II*, a gun range, unlike guided horse tours, is not a Class A park recreational activity congruent with the *Park Act*. If a court is asked to review the Minister's decision to issue the Gun Club's Replacement PUP, these cases would support the proposition that the Minister's decision was not reasonable.

C. Recommendations

- Given that the Ministry permits gun range activities that are likely contrary to the purpose of the *Park Act*, and taking into consideration the case law about gun clubs and park activities in British Columbia, identify permitted park activities in the Park Management Plan that uphold the purpose of the *Park Act*;
- Include explicit policies for the phase out of the Gun Club in the Park as soon as possible and under no circumstances beyond 2022;
- Include policies for the operation of the Gun Club until its operations cease that help preserve or maintain the recreational values of the Park – for example by requiring significantly decreased operating hours and remediation of the site.

Part II – Contraventions of the Closed Areas Regulation and the PUPs

The Ministry of Forests, Lands, and Natural Resource Operations has exempted the Gun Club from compliance with provincial law, after it violated that law, and BC Parks has failed to proactively enforce certain conditions in the Gun Club's PUP.

A. Contraventions of the Closed Areas Regulation

The *Closed Areas Regulation* is a regulation made under the *Wildlife Act*, RSBC 1996, c 488 ("*Wildlife Act*"). In March 2016, the Association asked Regional Director Don Cadden to investigate whether the Gun Club's trap range, situated within 100 metres of Glenora Trails Head Park, was contravening Schedule 3, section 19(d) of the *Closed Areas Regulation*, which establishes "No Shooting or Hunting Areas" within 100 m of a regional district park in Management Units 1-1 to 1-15 and 2-1 to 2-19.⁸⁷ Section 19(d), which is in Schedule 3 "No Shooting or Hunting Areas," of the *Closed Areas Regulation*, reads:

- 19 That portion of British Columbia within 100 m of
- (a) a church, school building, school yard and playground,
 - (b) a dwelling house,
 - (c) a farm or ranch building that is occupied by persons or domestic animals, and
 - (d) a regional district park in Management Units 1-1 to 1-15 and 2-1 to 2-19.

According to the "Maps" section of the *Management Unit Regulation*, BC Reg 64/96, the Glenora Trails Head Park (a regional district park adjacent to both the Park and the Gun Club) falls within Management Unit 1-4 and thus within the purview of this provision.

⁸⁵ *Strathcona II*, *supra* note 57 at paras 1, 78, 108, 117.

⁸⁶ See Part III for more detail.

⁸⁷ Email from Anne Blaney to Don Cadden, Regional Director, BC Parks, West Coast, Ministry of the Environment (18 March 2016) on file with the University of Victoria Environmental Law Centre.

Section 32 of the *Wildlife Act* states that “A person who discharges a firearm in a no shooting area commits an offence.” This means that the Gun Club was committing an ongoing offence by operating the trap range within 100 m of Glenora Trails Head Park.

In April 2016, Regional Director Don Cadden confirmed his finding that the Gun Club had contravened the *Closed Areas Regulation*, Schedule 3 – No Shooting or No Hunting Areas; Section 19(d).⁸⁸ The email communicating this finding also foreshadows that the Gun Club has the option of applying to the Ministry of Forests, Lands and Natural Resource Operations for a permit for an exemption to the *Closed Areas Regulation*.⁸⁹ Soon after, the Ministry of Forests, Lands and Natural Resource Operations granted the Gun Club an exemption despite their continuous breach of the regulation.⁹⁰

The Association recognizes that the power to grant an exemption is valid – the *Wildlife Act*, section 19 gives the regional manager of the recreational fisheries and wildlife programs the statutory authority to issue a permit authorizing a person to do something that the person is prohibited from doing by the *Wildlife Act* or its regulations.⁹¹ Section 108 of the *Wildlife Act* gives the Lieutenant Governor in Council the statutory power to make various regulations exempting persons from complying with *Wildlife Act* provisions or regulations under the *Wildlife Act*, and pursuant to section 108(2)(k), government has established the Permit Regulation, BC Reg 253/2000 (the “*Permit Regulation*”) to allow people to exercise special privileges under the *Wildlife Act*.⁹²

Section 2(i) of the *Permit Regulation* states that:

- 2 A regional manager may issue a permit in accordance with this regulation on the terms and for the period he or she specifies
- (i) authorizing a person to discharge a firearm in a no shooting area,

However, the *Permit Regulation* also states that:

Restrictions on issuing permits generally

- 5(1) Before issuing a permit under section 2, 3 or 4 the regional manager or the director, as applicable, must be satisfied
- (a) that the applicant meets the specific requirements, if any, for the permit as set out in this regulation, and
- (b) that issuing the permit is not contrary to the proper management of wildlife resources in British Columbia.

Finally, there is a time limit of five years on permits:

- 22(1) Except as otherwise set out in this regulation, a permit issued under section 2, 3 or 4 must not be issued for a period of time greater than 5 years from the date of issue.

The Section Head of Recreational Fisheries & Wildlife Programs for the Ministry of Forests, Lands and Natural Resource Operations cited the *Wildlife Act* section 19 and 32, the *Closed Areas Regulation*, Schedule 3, section 19, and the *Permit Regulation* section 5 and section 22 in his July 2016 email notifying the Association that the Gun Club’s exemption permit had been granted in June, 2016 for a five year term. The Gun Club likely obtained an exemption permit by making an application under section 2(i) of the *Permit Regulation* in order to operate their trap range within 100 metres of the regional district park contrary to Schedule 3, section 19(d) of the *Wildlife Act*.

To summarize, the Gun Club committed an offence by contravening the *Closed Areas Regulation*. Then the government granted them a five year permit to continue doing the same activity that constituted the offence – operating the trap range within 100 metres of Glenora Trails Head Regional Park. The government granted this

⁸⁸ Email from Don Cadden, Regional Director, BC Parks, West Coast, Ministry of the Environment, to Bob Kopp (28 April 2016) on file with the University of Victoria Environmental Law Centre.

⁸⁹ *Ibid.*

⁹⁰ Pendergast, *supra* note 9.

⁹¹ *Wildlife Act*, RSBC 1996, c 488, s 19(1)(a).

⁹² Under the *Permit Regulation*, two basic types of permits may be granted by the Minister. One type of permit authorizes people to conduct specific activities, and the other type exempts people from having to comply with certain regulations.

permit despite the fact that the *Permit Regulation* states that issuing a permit should not be contrary to the proper management of wildlife resources in British Columbia.

The Association seeks a clear explanation of why the Ministry of Forests, Lands and Natural Resource Operations granted this permit exempting the Gun Club from the *Closed Areas Regulation*. As part of this explanation, the Association would like clarification about A) the rationale for why granting this permit is not contrary to the proper management of wildlife resources in British Columbia, given the shooting ranges' proximity to the regional park, and B) why it was deemed appropriate to permit this activity in a no shooting area. With regards to B), we can assume that Glenora Trails Head Park was designated a no shooting area for a reason. Therefore, there should also be a rationale why it is appropriate to grant an exemption to the Gun Club that removes that protection from this regional park.

B. Contraventions of several PUP conditions

BC Parks has failed to proactively enforce certain conditions set out in the Gun Club's current, Replacement PUP (notably, the conditions in both the Original and Replacement PUPs are exactly the same).

ARTICLE VI – COVENANTS OF THE PERMITTEE

6.01 The Permittee must:

...

(c) comply with all laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Permit Area, the Park, its use and occupation or the Permittee's operations under this Permit;

...

(h) not construct, erect, place, repair, maintain or alter any building, fixture, equipment, structure or improvement in the Permit Area except as may be permitted by this Permit or with the prior written consent of the Province;

...

(n) not commit or allow any wilful or voluntary waste, damage or destruction in or upon the Permit Area;

...

With respect to condition 6.01(c), the Gun Club clearly has not complied with all government laws and regulations relevant to its operations under the permit, because it contravened the *Closed Areas Regulation* by operating its shooting range too close to the regional district park. As set out in the section above, after the Association raised this issue with BC Parks, BC Parks appears to have taken action to investigate.

There is also evidence that both the Gun Club and BC Parks have not been adhering to permit condition 6.01(h). The Association has been documenting improvements that the Gun Club carried out beginning in 2014, which are corroborated by the Gun Club's own reports to BC Parks. These improvements include: installed a new security fence and locking system at two of the outdoor ranges and the indoor ranges in 2014; made improvements to two of the outdoor ranges by adding a sand base to the range floors in 2014; replaced a wood stove in the indoor range with a heat pump; installed a new trap machine in 2015.⁹³

The Association asked Don Cadden, Regional Director, BC Parks, West Coast, for documentation that prior approval was given for the listed improvements.⁹⁴ Don Cadden referred this request to Don Closson, Cowichan Area Supervisor, BC Parks, West Coast Region, who replied via email to the Association confirming that "no formal approval was given to the improvements at the "trap range" such as trap house dispenser, concrete

⁹³ Email from Richard Buck, President Cowichan Fish & Game Association, to Don Closson, Cowichan Area Supervisor, BC Parks, West Coast Region (24 November 2014), "2014 Yearend Report," on file with University of Victoria Environmental Law Centre; see also Cowichan Fish and Game Range Report for 2015 (17 Feb 2016), contained in email exchange from Don Closson, Cowichan Area Supervisor, BC Parks, West Coast Region, to Bob Kopp (14 April 2016) on file with University of Victoria Environmental Law Centre.

⁹⁴ Email from Bob Kopp to Don Cadden, Regional Director, BC Parks, West Coast (14 April 2016), on file with University of Victoria Environmental Law Centre.

alleyways. Improvements for safety purposes such as fencing are considered a good thing and approval was verbal.⁹⁵

Both the Original PUP and the Replacement PUP state that the Gun Club must not construct, erect, place, repair, maintain or alter any building, fixture, equipment, structure or improvement in the Permit Area unless it is permitted by the Permit or with the prior *written consent* of the Province.⁹⁶ Therefore, BC Parks Cowichan Area Supervisor Don Closson's admission that there was a lack of formal approval for certain improvements at the trap range and only verbal approval of the construction of "good things" such as fencing is not appropriate given the specific permit conditions. The Replacement PUP does not allow for verbal approval in lieu of written approval. BC Parks has the duty to uphold the conditions in the Replacement PUP to maintain its integrity and public confidence.

Finally, with respect to condition 6.01(n), the Gun Club may have violated this permit condition due to the significant body of lead ammunition that is likely entering the environment at the Gun Club site in the Park, and which may also be migrating into other parts of the Park, into Glenora Trails Head Park, and/or into the Cowichan River. This issue is discussed further below, in Part III.

C. Recommendations

- Enforce the PUP conditions issued under, and regulations relating to, provincial laws in the Park;

Part III – Health and environmental concerns

The Association is concerned that the Gun Club permits its members to use lead ammunition, which can cause significant environmental and health concerns. The four types of shooting that take place at the Gun Club—rifle shooting, handgun shooting, and trap shooting (all outdoor), and indoor shooting—typically involve the use of varying types of lead ammunition.⁹⁷ This means that a great deal of lead is likely entering the environment. In a 2016 Resident's Bulletin, the Association estimated the amount of lead that use of the trap range alone deposits into the environment: 31.8 kilograms of lead per week, 1590 kilograms of lead per year, and 7955 kilograms of lead over five years.⁹⁸ The yearly amount, 1590 kilograms of lead, is equivalent in weight to an entire Subaru Outback (a midsize car).⁹⁹

This is an estimate, because it appears that no one has carried out an investigation or study examining lead contamination of the Gun Club's operating area or the surrounding Park. The following government email exchange makes this clear. On November 21, 2016, Kerri Skelly, a Senior Contaminated Sites Officer with the Land Remediation Section, Ministry of Environment, wrote to Don Closson, the BC Parks Cowichan Area Supervisor, with some questions about the Gun Club's operations in the Park.¹⁰⁰ Her inquiry was spurred by a complaint from a member of the Association. Kerri Skelly wrote that "we do have concerns with potential contamination issues related to the operation of a Gun Club in a potentially sensitive area (a provincial park) and would like to refer the complaint we received regarding this site to you with the possibility of including best

⁹⁵ Email from Don Closson, Cowichan Area Supervisor, BC Parks, West Coast Region to Bob Kopp (14 April 2016), on file with University of Victoria Environmental Law Centre.

⁹⁶ *Park Use Permit No. VI0510224*, *supra* note 24 at Article VI, 6.01(h); *Park Use Permit No. 102138*, *supra* note 27 at Article VI, 6.01(h).

⁹⁷ Cowichan Fish and Game Association, "Gun Ranges / Rules," online: Cowichan Fish and Game Association <<http://cowichanfishandgame.com/gun-ranges-rules/>>; personal communication with staff member at Island Outfitters (6 September 2017).

⁹⁸ The following calculation was used to arrive at these figures: If 20 members/guests each shoot two rounds of trap each week: 20x2x25 shots = 1000 shots per week. 1000 shots fired each week for 50 weeks = 50,000 shots per year and 250,000 in a five year period. One shot contains 1.12 ounces of lead shot size 7 ½, therefore, the quantities of lead accumulations are: one week = 1000 shots = 1120 oz./70 lbs/31.8 kgs; one year = 50,000 shots = 56,000 oz./3500 lbs./1590 kgs; five years = 250,000 shots = 280,000 oz./17,500 lbs/7955 kgs. See The Cowichan River Neighbourhood Association, *What we know about the Trap Range in the Glenora section of Cowichan River Provincial Park*, Resident's Bulletin #3 – last revised 11-2016, on file with University of Victoria Environmental Law Centre [Resident's Bulletin #3].

⁹⁹ Car and Driver, *Subaru Outback – Specifications*, online: <<http://www.caranddriver.com/subaru/outback/specs#specifications>>.

¹⁰⁰ Email from Kerri Skelly, Senior Contaminated Sites Officer (Surrey), Remediation Assurance & Brownfields Surrey, Ministry of Environment to Don Closson, Area Supervisor (Cowichan), Protected Area Section (Goldstream), Ministry of Environment (21 November 2016), on file with the University of Victoria Environmental Law Centre.

management practices for outdoor shooting ranges in the parks permit.” On November 24, 2016, Don Closson responded, “Obviously this site which has operated as a “gun range [sic] since the 1930’s and will host considerable lead and other contaminants. Currently the gun range operators are using several methods to capture dispersed, casings, lead and lead shot. Whether these would be considered best practices is debatable.”¹⁰¹

In her November 21 email, Kerri Skelly also wrote that “As this site has operated for some time now, it would also be helpful to understand the current environmental conditions in that area which would involve an environmental site investigation conducted by a contaminated sites qualified professional. Perhaps a requirement for this investigation could also potentially be included in the permit.” On November 24, 2016, Don Closson responded, stating:

“I would agree that an environmental site investigation conducted by a contaminated sites qualified professional would be a good idea. I doubt that the range operators would be willing to fund and conduct such an investigation as it could be construed as only bringing forward negative news, due to **the certainty that contaminants exist within the range boundaries**. I would think that the government would need to fund the investigation. It could be made a condition of the permit but with considerable angst... and require an amendment, they could be asked to fund and conduct but I suspect that they would bock at such a request.” [Emphasis added].

As a result of this exchange, Kerri Skelly wrote a letter to Don Closson in January 2017. In her letter, she thanks him for his “November 24, 2016 email response to my questions,” regarding the Gun Club’s operation within the Park.¹⁰² She remarks that “the information you provided was helpful to determine the current operating status of the site.” She then states that “based on the information we have received to date, there is currently a lack of scientific evidence confirming migration of contamination from the permitted CFGA [Gun Club] operating area or high-risk conditions as classified under Section 64(2)(i) of the *Environmental Management Act*. Therefore, we won’t be pursuing this issue further at this time.” Her letter indicates that her decision to not take further action is based on two things: Don Closson’s November 24, 2016 email and a lack of scientific evidence that contamination is migrating off the site or that the site is high-risk. However, while there may be a lack of scientific evidence, Closson’s November 24, 2016 email makes it clear that there is contamination within the range boundaries because the area has been a gun range since the 1930s.

In May 2017, BC Parks indicated that it was considering conducting a scientific assessment of contamination at the Gun Club site. In a May 2017, email to the Chair of the Cowichan River Stewardship Roundtable, Don Cadden stated that “BC Parks has confirmed with the Cowichan River Neighbourhood Association that we are considering an assessment of the contamination levels within the park boundary that will include both the terrestrial aspects and potential ground and surface water contamination. That will identify if there are significant risks that BC Parks needs to take action on.”¹⁰³

On November 21, 2017, the Association sent an email to Don Cadden, asking for an update about lead contamination at the gun range and reiterating the Association’s specific questions about what steps have been completed to investigate the gun range area as a contaminated site.¹⁰⁴ Don Cadden’s November 24, 2017

¹⁰¹ Closson, *supra* note 9.

¹⁰² Letter from Kerri Skelly, Senior Contaminated Sites Officer (Surrey), Remediation Assurance & Brownfields Surrey, Ministry of Environment to Don Closson, Area Supervisor (Cowichan), Protected Area Section (Goldstream), Ministry of Environment (9 January 2017), on file with the University of Victoria Environmental Law Centre [Skelly].

¹⁰³ Email from Don Cadden, Regional Director, BC Parks, West Coast to Genevieve Singleton, Chair of the Cowichan River Stewardship Roundtable (26 May 2017), on file with the University of Victoria Environmental Law Centre.

¹⁰⁴ In April 2017, the Association emailed Kerri Skelly and Don Closson to ask for more information about site contamination – for example, whether any preliminary or detailed site investigations, or any science based tests like soil testing are planned, and what has been done so far with respect to best practices at the gun range. See Email from Bob Kopp to Kerri Skelly, Senior Contaminated Sites Officer (Surrey), Remediation Assurance & Brownfields Surrey, Ministry of Environment and Don Closson, Area Supervisor (Cowichan), Protected Area Section (Goldstream), Ministry of Environment (13 April 2017), on file with the University of Victoria Environmental Law Centre. In early May, the Association received a letter from Don Cadden, Regional Director, BC Parks, West Coast, stating that “BC Parks is currently considering options for investigating some of the concerns you raised in your email,” but giving no further specific details in response to the questions, other than the fact that BC Parks contacted the Gun Club about best practices, and Don Cadden believes they are working towards implementing the US Environmental Protection Agency’s best management practices.

response stated that the provincial government is developing an Invitation to Quote for a site assessment as per the *Contaminated Sites Regulations*, BC Reg 375/96.¹⁰⁵ Cadden is likely referring to a site investigation, which is “the primary method used for gathering detailed information about potentially contaminated sites,” in order to determine if a site is contaminated.¹⁰⁶ Cadden stated that he anticipated that the assessment will start early in 2018 and “all results of the assessment will be provided to Cowichan Tribes, the CFGA [Gun Club], local residents and all other interested parties.”¹⁰⁷

In the meantime, the provincial government has suggested that the Gun Club manage ongoing contamination by applying best practices. Kerri Skelly suggested this in her January letter, which states that:

“Our past experience with outdoor shooting ranges shows a need for the implementation of best management practices for operating facilities to reduce contamination. In addition, it is beneficial to minimize any adverse effects on the environment by determining current environmental conditions at the site, specifically, identifying the potential for the spread of contaminants into other areas of the CRPP.”¹⁰⁸

She further recommended that Don Closson refer to the US Environmental Protection Agency document, “Best Management Practices for Lead at Outdoor Shooting Ranges,” for guidance in developing an operational plan for the Gun Club, and recommended that measures be put in place to ensure that any contamination at the Gun Club site does not migrate to other parts of the park or neighbouring properties.

Subsequent email correspondence between Don Closson and Geoff Maxwell, president of the Gun Club, indicates that Don Closson followed up with Geoff Maxwell about “best practices” by sending him the US Environmental Protection Agency report and a BC Wildlife Federation report as resources. In Don Closson’s email to Geoff Maxwell he also mentioned that he would like to have a discussion with Geoff Maxwell during his 2017 site inspection about efforts that have been undertaken to ensure these best practices have been implemented.¹⁰⁹ In Don Cadden’s November 24, 2017 email to the Association, mentioned above, he stated that he “will check with the CFGA [Gun Club] on their progress to incorporate the best management practices for lead into their operation.”

Together, these emails and letters suggest that studies have not yet been done to determine current environmental conditions at the site or the potential for the spread of contaminants into the Park. However, Don Closson has stated that there is contamination within the range boundaries because the area has been a gun range since the 1930s. Don Cadden has informed the Association that the government has initiated the process for a site investigation, which will take place early in 2018. This site investigation should produce more information about the existence and extent of contamination in the gun range area, and help BC Parks identify if there are significant risks that BC Parks needs to take action on. In the meantime, BC Parks has asked the Gun Club to follow US Environmental Protection Agency and BC Wildlife Federation best practices for the management of lead at gun ranges.

Having outlined the current state of knowledge about lead contamination in the Park, the following sections discuss the implications that lead contamination has for the environment and human health.

Letter from Don Cadden, Regional Director, BC Parks, West Coast to Bob Kopp, Cowichan River Neighborhood Association (2 May 2017), on file with the University of Victoria Environmental Law Centre.

¹⁰⁵ Email from Don Cadden, Regional Director, BC Parks, West Coast to Bob Kopp, Cowichan River Neighborhood Association (24 November 2017), on file with the University of Victoria Environmental Law Centre [Cadden].

¹⁰⁶ Government of British Columbia, *Determine if a Site is Contaminated*, online:

<<https://www2.gov.bc.ca/gov/content/environment/air-land-water/site-remediation/contaminated-sites/the-remediation-process/determine-if-a-site-is-contaminated>>.

¹⁰⁷ Cadden, *supra* note 105.

¹⁰⁸ Skelly, *supra* note 102.

¹⁰⁹ Email from Geoff Maxwell, President of the Cowichan Fish and Game Association, to Don Closson, Area Supervisor (Cowichan), Protected Area Section (Goldstream), Ministry of Environment (17 January 2017), on file with the University of Victoria Environmental Law Centre.

A. Potential environmental contamination due to the use of lead ammunition

Government reports and recent scientific literature make it clear that the use of lead ammunition at firing ranges adversely impacts the environment.

In 2011, in response to a request from Dr. Charmaine Enns, Medical Health Officer for the Vancouver Island Health Authority, regarding concerns that lead from the Courtney and District Fish and Game Protective Association's firing range could be contaminating drinking water, the BC Centre for Disease Control (BCCDC) published a report reviewing current scientific knowledge about lead from firing ranges and its potential to contaminate drinking water supplies ("the BCCDC report").¹¹⁰

The report states that the use of lead ammunition at firing ranges poses a problem because lead bullets, fragments, and airborne micro particles can cause lead levels in and around a firing range that are several orders of magnitude higher than normal.¹¹¹ Shot fall zones from skeet and trap ranges can cover 10-50 acres, or more, depending on range layout.¹¹² This can lead to the accumulation of lead in soil, and to lead leaching offsite into water and sediment.

Soil lead concentrations greater than 10,000 mg lead/kg soil have been found globally at shooting ranges in New Zealand, the United States, England, Germany, and Scandinavia.¹¹³ For reference, Canadian guidelines for soil lead levels in residential/parkland are 140 mg/kg for human health and 300 mg/kg for environmental health.¹¹⁴

There is also potential for lead pollution to migrate to areas outside of the firing range. For example, one study of a small arms firing and skeet range in New York conducted by Lebare et al. in 2004 found elevated lead concentrations in soil, and found that the lead was leaching into nearby streams and sediment.¹¹⁵ The existence and extent of lead pollution surrounding the firing range depends on site-specific environmental conditions, such as rainfall intensity, ground slope, and soil type.¹¹⁶ For this reason, most scientific studies look at individual ranges.¹¹⁷ This is also why the BCCDC report states that current research suggests that firing range management should include assessment of contamination patterns and specific characteristics of the range, and, if there is potential for contaminants to migrate offsite, that soil, groundwater, and surface water sampling at the range and adjacent areas take place.¹¹⁸ Researchers have also recommended that periodic remediation of active ranges take place to reduce risk to local fauna.¹¹⁹

Lead pollution of gun ranges and the surrounding areas has serious implications. The BCCDC report states that lead can be toxic for soil fauna, vascular plants, and small mammals, and that it poses the highest risk for small mammals and birds that may ingest lead shot while feeding.¹²⁰ Scientific studies from around the world also point out the danger shooting ranges can pose to the environment. Researchers Mariussen et al. (2017) found that adult brown trout in a small lake within an abandoned shooting range in southern Norway were subject to increased stress due to chronic exposure to lead. The total water concentration of lead was elevated in the lake; the trout had high levels of lead in bone, kidney, and gills; lead accumulated in the shells of the trout's eggs; and there were elevated levels of lead in the upper layer of lake sediments.¹²¹ Researchers Perroy et al. (2014)

¹¹⁰ Sylvia Struck, BC Centre for Disease Control, *Lead from Firing Range and the potential to contaminate drinking water supply*, online: <http://www.nccch.ca/sites/default/files/BCCDC-Lead_Shot_Drinking_Water_Nov_2011.pdf> [BCCDC Report].

¹¹¹ *Ibid* at 2. One of the factors that makes the use of lead at firing ranges so problematic is that lead ammunition does not remain whole when shot. Shooting lead ammunition from a firearm can create airborne lead micro particles, and the ammunition may also "splatter," or fragment when it hits backstops, floors, walls, baffles (barriers that contain bullets), and other surfaces; see National Shooting Sports Foundation, *Lead Management & OSHA Compliance for Indoor Shooting Ranges*, online:

<https://www.usashooting.org/library/Youth_Development/HS_and_College_Programs/Lead_Management_-_NSSF.pdf>.

¹¹² BCCDC Report, *supra* note 110 at 2.

¹¹³ *Ibid* at 3.

¹¹⁴ *Ibid* at 4.

¹¹⁵ *Ibid* at 5.

¹¹⁶ *Ibid* at 5.

¹¹⁷ *Ibid* at 5.

¹¹⁸ *Ibid* at 6.

¹¹⁹ *Ibid* at 6.

¹²⁰ *Ibid* at 2.

¹²¹ Mariussen et al., "Accumulation of lead (Pb) in brown trout (*Salmo trutta*) from a lake downstream a

examined sediment samples from an urban wetland that was the site of a former trap shooting range in southwestern Wisconsin, United States. They found that over 31,000 m³ of sediment surpassed the United States Environmental Protection Agency's contamination threshold of 400 mg/kg lead, with a maximum value of 26,700 mg/kg lead occurring near the center of the expected shot fallout zone from the range. Shot densities of more than 50,000 pellets/m² were found in the shot fallout zone.¹²² De Francisco et al. (2003) estimate that lead shot can take between 100 and 300 years to completely degrade and disappear from an ecosystem.¹²³

The local example of the Burnaby Gun Club illustrates some of the above concerns. The Burnaby Gun Club operated a target and skeet range on the north side of Burnaby Mountain from 1954 to 1996.¹²⁴ In 1996, the City of Burnaby decided to end the lease of the Burnaby Gun Club and convert the ranges to park use.¹²⁵ The City decided to close the gun range because lead from its operations had leached and polluted the surrounding water system, and because the Burnaby Council and Parks, Recreation and Culture Commission also decided that a gun club was not a suitable use of the park and not congruent with the peace and quietness of the park.¹²⁶ After the gun range closed, the area was so polluted that extensive remediation was necessary. The BC Ministry of Environment "Profiles on Remediation Projects," background on the Burnaby Gun Club states that "After half a century of target practice, it was no surprise that the ground contained lead, copper, and coal tar pitch containing polycyclic aromatic hydrocarbons (PAHs) used to bind skeet birds," and went on to state that "Site investigations showed that a 1.8 hectare area contained lead, zinc, copper, and antimony, with concentrations high enough to be designated hazardous waste under British Columbia's Hazardous Waste Regulation."¹²⁷ The City of Burnaby retained Keystone Environmental to remediate the site.¹²⁸ Keystone completed the project at a cost of \$1.85 million dollars.¹²⁹

There are other international examples that also point to the dangers posed by lead pollution from firing ranges. In Sacramento, California, a media investigation by a local paper spurred the City to conduct soil lead testing near a recently closed indoor gun range located within a park in a residential neighbourhood. The testing revealed that the ground around the gun range building was highly contaminated, with lead levels that were as high as 762 times above what California's Department of Toxic Substances Control considers toxic.¹³⁰

As the Ministry staff themselves noted, it is certain that the Gun Club's continuous use of lead ammunition has already contributed to lead pollution in the gun range area and the Park. The size of the Gun Club has grown over time, and it now operates with almost 500 members.¹³¹ If it continues to grow, so will the amount of lead ammunition deposited in the environment. Continuous, unregulated lead deposition could further endanger the many plants and animals in the Park ecosystem.

B. Potential health risks due to the use of lead ammunition

The use of lead ammunition at firing ranges can also harm peoples' health.

former shooting range" (2017) 135 *Ecotoxicol Environ Saf* 327.

¹²² RL Perroy, CS Belby & CJ Mertens, "Mapping and modeling three dimensional lead contamination in the wetland sediments of a former trap-shooting range" (2014) 487 *Sci Total Environ* 72.

¹²³ N De Francisco, JD Ruiz Troya & EI Agüera, "Lead and lead toxicity in domestic and free living Birds" (2003) 32:1 *Avian Pathology* 3.

¹²⁴ British Columbia Ministry of Environment, *Burnaby Gun Club, Burnaby, BC*, Profiles on Remediation Projects – 3, January 2009, online: <<http://www2.gov.bc.ca/assets/gov/environment/air-land-water/site-remediation/docs/remediation-project-profiles/burnabygunclub.pdf>> [BC MoE]; Jennifer Thuncher, "Encroachment on Squamish Rod and Gun Club", *The Squamish Chief* (15 December 2016), online: <http://www.squamishchief.com/news/local-news/encroachment-on-squamish-rod-and-gun-club-1.4623003> [Thuncher].

¹²⁵ Thuncher, *supra* note 124.

¹²⁶ City of Burnaby, *Parks, Recreation and Culture Commission Minutes*, Wednesday, 2017 May 17, online: <<https://eagenda.burnaby.ca/sirepub/cache/2/rvbc2qdoowy2bucjsa1bu5kz/85910252017025641862.pdf>> at 7-8.

¹²⁷ BC MoE, *supra* note 124 at 1.

¹²⁸ *Ibid* at 2.

¹²⁹ Cement Association of Canada, *Keystone Environmental Ltd. Selects Cement-based Solidification/Stabilization*, online: <https://ceaa.gc.ca/050/documents_staticpost/cearef_8989/STP-0193.pdf>.

¹³⁰ Joe Rubin, "A Neighborhood Gun Range's Legacy: Lead Contamination," *Huffington Post* (12 August 2016), online: <http://www.huffingtonpost.com/entry/sacramento-lead_us_58499df4e4b0905b344235a6>.

¹³¹ Resident's Bulletin #3, *supra* note 98.

The BCCDC report states that “[i]n humans, lead exposure can affect the functioning of kidney, bone, the central nervous system, and have other health impacts. In children, lead exposure has been associated with developmental delays and reduced IQ.”¹³²

Several provincial government factsheets and reports confirm the danger that use of lead ammunition can pose to peoples’ health, including the Manitoba government’s 2015 Environmental Health Factsheet about Lead Exposure at Manitoba Firing Ranges.¹³³ The Manitoba government released this Factsheet after high levels of lead in blood were identified in several people working or shooting at firing ranges in Manitoba.¹³⁴ The factsheet states that significant lead exposure can lead to serious health effects such as heart disease, depression, fatigue, and memory loss, and can impact kidney function, digestive function, concentration, and sleep.¹³⁵ Very high levels can be fatal.¹³⁶ Children and unborn children are more sensitive to lead exposure, and low levels of lead exposure can cause developmental delays, affect language skills, and cause intellectual disability.¹³⁷ The Factsheet recommends that firing ranges replace lead ammunition with lead-free ammunition and take other measures to limit lead exposure.¹³⁸

Similarly, Public Health Ontario released a report about lead exposure among recreational shooters in 2014 after a health care practitioner reported seeing a patient, who shoots twice weekly at an indoor firing range, with a blood lead level that exceeded the level at which Health Canada recommends public health action be taken to limit exposure.¹³⁹ The report cites a number of recent studies regarding shooting ranges and blood lead concentration, including a 2012 study by Grandahl et al. that studied Danish recreational shooters at two ranges, and found that 60% of the shooters had potentially harmful blood lead concentrations.¹⁴⁰ The report states that “The most effective method for reducing lead exposure during shooting is to encourage the use of lead free ammunition.”¹⁴¹

Visitors to the Park and members of the Gun Club itself may already be vulnerable to lead exposure due to the Gun Club’s use of lead ammunition and prolonged deposition of lead in the soil.

C. Recommendations

- Prohibit the use of lead ammunition in the Park;
- Require and enforce the use of nontoxic ammunition until the Gun Club ceases operation in the Park;
- Ensure that an assessment of current lead contamination in the Gun Club area and surrounding area is carried out, and ensure that the site is remediated.

Part IV – Conclusion and recommendations

On behalf of the Association, the Environmental Law Clinic submits that the Cowichan River Provincial Park Management Plan must identify permitted park activities that uphold the purpose of the *Park Act*, being the management of parks in the public interest. The Gun Club must be closed, with its operations phased out as soon as possible and under no circumstances beyond 2022, in order to ensure that the Minister does not continue to permit activities that contravene section 8(2) of the *Park Act*, the purpose of the *Park Act*, and the stated role of the Park. Until the Gun Club closes, BC Parks should ensure that the operation of the Gun Club is restricted to significantly reduce operating hours. BC Parks should also enforce the Gun Club’s PUP conditions and provincial laws that apply to the Gun Club’s operations in the Park. In addition, BC Parks should prohibit the use of lead ammunition in the Park, and require the Gun Club to use nontoxic ammunition until it ceases

¹³² BCCDC Report, *supra* note 110 at 2.

¹³³ Manitoba, *Lead Exposure at Manitoba Firing Ranges*, Environmental Health – Factsheet, December 2015, online: <<https://www.gov.mb.ca/health/publichealth/factsheets/leadfiringranges.pdf>> [Manitoba].

¹³⁴ College of Physicians & Surgeons of Manitoba, *From the College – Newsletter*, Volume 52, Number 1, May 2016, online: <<http://cpsm.mb.ca/cjj39alckF30a/wp-content/uploads/newsletter/May2016nsl.pdf>> at 15.

¹³⁵ Manitoba, *supra* note 133 at 1.

¹³⁶ *Ibid* at 1.

¹³⁷ *Ibid* at 1.

¹³⁸ *Ibid* at 1.

¹³⁹ Public Health Ontario, *Lead Exposures Among Recreational Shooters*, Rapid evidence review, October 2014, online: <<https://www.publichealthontario.ca/en/BrowseByTopic/EnvironmentalandOccupationalHealth/Pages/Lead-Exposures-Among-Recreational-Shooters.aspx>> at 1.

¹⁴⁰ *Ibid* at 4.

¹⁴¹ *Ibid*.

operation. Finally, BC Parks must follow through with the assessment of current lead contamination in the Gun Club area and surrounding Park area, and ensure that the site is remediated.

Taking action through this planning process is imperative. The gun range is not an appropriate activity for a Class A park, and lead pollution from the Gun Club has the potential to compromise peoples' use and enjoyment of the Park, and the integrity of its ecosystem.