



Spagnuolo & Company Real Estate Lawyers



Explanation of Exception & Reservation Registration Number M76300

Charge M76300 is an Exception & Reservation. This is a non-financial charge, meaning there is no money owing by the owner of the land to the charge holder. Also, this charge “runs with the land”, which means the charge will remain on title following registration of any transfer.

This charge filed in 1889 was part of the original transfer of the parcel from the Esquimalt and Nanaimo Railway Company (the “Railway Company”). The Railway Company excepted from the transfer and reserved to itself certain rights which continue to run with the lands. The charge affects lands adjacent to the “railway belt”; however, as the original parcel was subdivided over the years, the encumbrance continues to appear on the title to lots subdivided from the original parcel which may no longer be adjacent to the railway belt.

The Encumbrance reserves the following rights to the Railway Company:

1. The right to enter onto the lands to harvest timber from the lands for railway purposes without compensation,
2. The right to enter onto, take and use such parts of the lands for stations and workshops without compensation,
3. Assignment of all mineral rights and the right to enter onto the lands to mine such rights without compensation.

While the Encumbrance remains as a charge on the title to the lots, it is of minimal significance and will have little, if any, impact on areas which have been developed for residential use.

With 25 years experience, 18 locations in British Columbia and a relentless focus on customer service, Spagnuolo and Co. is trusted by more clients for assistance with their purchase, sale or refinance of real estate than any other firm in British Columbia. If you decide to go ahead with your transaction, please give us a call.

Spagnuolo & Company
“we deliver peace of mind”

310-HOME (4663)

realestate@spagslaw.ca

Copyright © Spagnuolo and Company. This document may not be reproduced, distributed or shared without the express permission of Spagnuolo and Company.

EXPLANATION OF CHARGES IN FAVOUR OF THE ESQUIMALT AND NANAIMO RAILWAY COMPANY

These charges appear on many Certificate of Title of land which are on Vancouver Island and registered in the Victoria Land Titles Office.

The charges generally affect lands adjacent to the "railway belt" although it is common to find these charges registered against lands situated several miles from the "railway belt".

The most common charge in favour of the Railway is noted as "Exceptions and Reservations" which always includes reservation of the undersurface rights in favour of the Railway.

The "Exceptions and Reservations" charge almost always includes a Right of Way in favour of the Railway, principally allowing for the construction or relocation of railway lines.

There have been no substantial changes in the location of the E & N Railway line on Vancouver Island since its construction in the 1800's.

A third charge, not often found in favour of the Railway, is the reservation of the timber rights.

This charge is seldom of importance for lands which have been developed for residential premises as most, if not all, of the merchantable timber has been removed from the lands.

In the majority of cases the charges in favour of the Railway are of little importance as it is extremely unlikely that the Railway will ever exercise any of the rights registered in its favour.

However, the existence of these charges in favour of the Railway should be duly noted.

Marathon Realty Company Limited of Vancouver, British Columbia, is the company which administers the affairs of the Esquimalt and Nanaimo Railway Company. Marathon Realty had advised that the Railway will consider releasing its charges against lands over which it has determined they are no longer of value to the railway.

All related costs and charges for the preparation and registration of the release of charges are the responsibility of the applicant.

VICTORIA LTO CHARGES
M76300, M76301, M76302, M76303, M76304 AND M76305

These are 'dummy' numbers that were created for LTO computerization purposes only.

- M76300 **Esquimalt and Nanaimo Railway.** This number refers to the original Crown Grants to the Esquimalt and Nanaimo Railway which are sometimes filed under original numbers and sometimes under individual numbers.
- It is excepting and reserving certain minerals, specifics of which are contained in the Crown Grants. This charge is on approximately 65% of the titles in the Victoria LTO.
- M76301 Her Majesty the Queen in the right of the Province of British Columbia (CROWN) See Section 172 (3) LTA
- M76302 Her majesty the Queen in Right of Canada Crown (Dominion) See Section 172 (3) LTA
- M76303 The Director of Soldier Settlement. See Section 172(3) LTA
- M76304 British Columbia Hydro and Power Authority Inter alia, transmission of H450001/2. See section 172(3) LTA
- M76305 The Governor and Company of Adventures of England Trading into Hudson's Bay. See Section 172(3) LTA

M 76300

162

M 76300

D.O. 9802

P. 11/12

This Indenture, made this fifteenth day of February A. D. one thousand eight hundred and ninety five between the ESQUIMALT AND NANAIMO RAILWAY COMPANY of the one part, and John C. Hughes of the other part

Witnesseth that in consideration of the sum of Five hundred and ninety four dollars paid by the said John C. Hughes

to the said Company, the receipt of which said sum of Five hundred and ninety four dollars the said Company do hereby acknowledge and of and from the same and every part thereof, do hereby acquit and release the said John C. Hughes

his heirs, executors and administrators John C. Hughes the said Company, do hereby grant and convey unto the said John C. Hughes his heirs and assigns All that piece or parcel of land situated in the District of Kauoose Vancouver Island, in the Province of British Columbia, and upon the Official map of the said District, known and numbered as Lot 108. Kauoose District aforesaid

and which said piece or parcel of land is said to contain One hundred and ninety eight acres, more or less, and is more particularly shown upon the plan or tracing herewith annexed and thereon colored red.

To Have and to Hold the said land unto and to the Use of the said John C. Hughes his heirs and assigns for ever, subject nevertheless to the reservations hereinafter mentioned, that is to say:

Saving and Reserving to the said Company, their successors and assigns, and their agents, servants, contractors and workmen, the right to enter into and upon the said land, and cut and carry away any timber therefrom for railway purposes, without paying compensation therefor.

And Saving and Reserving also to the said Company, their successors and assigns, rights of way for their Railway through the said land, and the right for themselves, their agents, servants, contractors and workmen to enter upon and take such parts of the said land as may be required for the stations and workshops of the said Company; without paying compensation therefor.

And Saving and Reserving to the said Company, their successors and assigns, all coal, coal oil, ores, mines ~~and~~ ^{and minerals} ~~minerals~~ whatsoever, in, on or under the land hereby granted or expressed so to be, with full liberty of ingress, egress and regress at all times for the said Company, their successors and assigns, and their servants, agents and workmen, in, to and upon the said land, and either with or without railways, horses or other cattle, carts and wagons and other carriages, for the purpose of searching for, working, getting and carrying away the said coal, coal oil, ores, mines ~~and~~ ^{and minerals} ~~minerals~~ and with full liberty, also, for the said Company, their successors and assigns, and their servants, agents and workmen, to sink, drive, make and use pits, shafts, drifts, adits, courses, and water courses, and to erect and set up fire and other engines, machinery and works, and to open roads in, upon, under and over the said land, or any part

P. 12/12

or parts thereof, for the purpose of more conveniently working and carrying away the said mines ~~and~~
minerals, ^{and also} and also to appropriate and use any part of the surface of the said land for depositing, placing
and heaping thereon the minerals, waste, rubbish and other substances which may be gotten from the said
mines ~~and~~ minerals, ^{and also} the Company, their successors or assigns, paying reasonable compensation for such of
the surface of the said land as may be taken, damaged or destroyed by such searching, working, getting
and carrying away.

And the said Company do hereby for themselves, their successors and assigns, covenant with the
said *John C. Hughes*

assigns, that they have power to grant and convey the said land in manner aforesaid, and that it shall be
lawful for the said *John C. Hughes* his

heirs and assigns, to enter upon and hold, occupy and enjoy the said lands for his or their
use and benefit, subject to the reservations aforesaid.

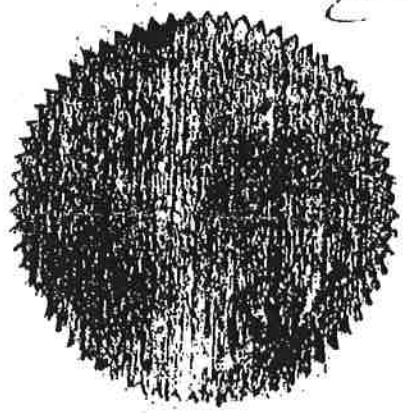
In Witness Whereof the Common Seal of the said Company has been hereunto affixed by
order of the Board of Directors.

Sealed by order of the Board of Directors, made
at a meeting held the *Nineteenth*
January 1889. day of

John C. Hughes
Secretary.

James P. Dunsen

Vice President.



1920⁰ ... day of February 1896

W. H. ...

*THIS PAGE IS NOT A LEGAL DOCUMENT. ONLY AN
EXPLANATION OF THIS COVENANT.*

The lands to be acquired are subject to (and will, after the conveyance of the property remain subject to) the following encumbrances and notations:

- (a) Exceptions and Reservations in favour of the Esquimalt and Nanaimo Railway Company:

This charge reserves to the E & N Railway Company (now C.P. Rail) the right to come onto the property to lay tracks, erect stations and other railway buildings, and, in addition, the right to mine base metals and coal. These rights can be exercised for the most part, without payment of compensation. This charge is quite old (most date from the last century), and it is the result of the grant of lands to the Railway Company as part of their compensation for building the railroad on Vancouver Island. In recent years, the Railway has been trying to reduce its operation on Vancouver Island and, consequently, the charge is generally considered to be of little significance for residential purchasers. The institutional lenders do not object to the charge, and it does not, in general, impair the marketability of the property.