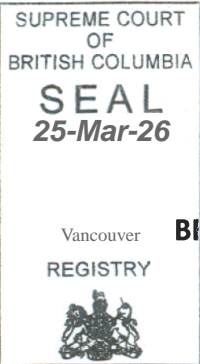


Amended the 25th day of March, 2026
Pursuant to Rule 6-1(1)(a)
Original filed April 14, 2022



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

COMOX VALLEY REGIONAL DISTRICT

PLAINTIFF

AND

UNION BAY INDUSTRIES LTD. and DEEP WATER RECOVERY LTD.

DEFENDANTS

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Claim of the Plaintiff**Part 1: STATEMENT OF FACTS**

1. The Plaintiff Comox Valley Regional District (the "CVRD") is a regional district incorporated and continued pursuant to the *Local Government Act*, R.S.B.C. 2015, c.1, and has a business address at 770 Harmston Avenue, Courtenay, British Columbia, V9N 0G8.
2. The Defendant Union Bay Industries Ltd. ("Union Bay") is a business corporation incorporated pursuant to the laws of British Columbia, with registered and records offices at 1500 – 570 Granville Street, Vancouver, British Columbia, V6C 3P1.
3. The Defendant Deep Water Recovery Ltd. ("Deep Water") is a business corporation incorporated pursuant to the laws of British Columbia, with registered and records offices at 1500 – 570 Granville Street, Vancouver, British Columbia, V6C 3P1.

Violation of the Zoning Bylaw

4. On or about October 29, 2019, the CVRD adopted the Rural Comox Valley Zoning Bylaw, No. 520, 2019 (the "Zoning Bylaw"), which bylaw regulates land use within the CVRD's territorial jurisdiction in Electoral Areas A (except Denman and Hornby Islands), B, and C.
5. The real property (the "Property") having a civic address of 5084 Island Highway South, Union Bay, British Columbia, and legal described as PID: 004-758-901, Parcel A (D.D. 27784N) of Lot 11, Nelson District, Except Parts Outlined in Red on Plans 397 R.W. and 1414R, and Except those Parts in Plans 7190, 8906, 21511, 22414, 28338, 29341, and 29342, is located within the CVRD's territorial jurisdiction, in Electoral Area A (but not on either Denman or Hornby Island), and is subject to the land use regulations in the Zoning Bylaw.

6. Pursuant to the Zoning Bylaw, the Property is split-zoned, with the shoreline portion of the Property being zoned Industrial Marine (IM) Zone, a portion of the remainder of the Property being zoned Rural Twenty (RU-20), and the other portion of the remainder of the Property being zoned Country Residential One (CR-1).
7. Pursuant to the Zoning Bylaw, the permitted uses on land zoned IM Zone are:
- (a) Boat building and repairs and service and sales;
 - (b) Seafood processing and sales;
 - (c) Marina;
 - (d) Barge facility;
 - (e) Waterfront freight handling facility;
 - (f) Log handling and storage facility;
 - (g) Storage and works yard and warehousing; and,
 - (h) Offices.
8. Pursuant to the Zoning Bylaw, a condition of use in the IM Zone is that all properties be screened from any abutting properties by screening not less than 2.0 m in height.
- 8.9. Pursuant to the Zoning Bylaw, the permitted uses on land zoned RU-20 Zone are:
- (a) Single detached dwelling;
 - (b) Agricultural use;
 - (c) Veterinary establishment;
 - (d) Plant nursery and greenhouse;
 - (e) Silviculture;
 - (f) Fish hatchery (including community based);
 - (g) Animal kennel (on any lot greater than 2.0 hectares in area);
 - (h) Riding academy (on any lot greater than 2.0 hectares in area);
 - (i) Wood processing (on any lot greater than 4.0 hectares in area);
 - (j) Sawmill including portable sawmill (on any lot greater than 4.0 hectares in area);
 - (k) Gravel, mineral or peat extraction; gravel crushing and screening, excluding manufacturing or sales of concrete or concrete products (on any lot greater than 4.0 hectares in area); and,

- (l) Research and testing facility (on any lot greater than 4.0 hectares in area and classified as private managed forest land or farm (under the *Assessment Act*) or within a license area under the *Forest Act*).

~~9.10.~~ Pursuant to the Zoning Bylaw, the permitted uses on land zoned CR-1 Zone are:

- (a) Single detached dwelling; and,
 (b) Agricultural use (on lots over 4000 square metres in area).

~~10.11.~~ Union Bay is the registered owner in fee simple of the Property, and has been so at all times material to this claim.

~~11.12.~~ Deep Water occupies the Property, and has done so at all times material to this claim.

~~12.13.~~ In early March 2020, the CVRD received an enquiry from the public regarding the then use of the Property.

~~13.14.~~ At that time, the CVRD opened a file on the matter and undertook a site visit at the Property to determine compliance with the Zoning Bylaw.

~~14.15.~~ During the CVRD's site visit, the CVRD determined that the Property was being used for industrial purposes; it was not apparent to the CVRD at that time that the Property was being used for the dismantling and recycling of marine vessels.

~~15.16.~~ Over the next several months, the CVRD sought additional information from Deep Water as to its use of the Property.

~~16.17.~~ During that time, the Property continued to be used for industrial purposes, but it was not apparent to the CVRD that the Property was being used for the dismantling and recycling of marine vessels.

~~17.18.~~ It is now apparent that the Property is being used for:

- (a) Transferring marine vessels (e.g., barges) from the ocean to the Property;
 (b) Dismantling the marine vessels on the Property; and,
 (c) Shipping materials from the dismantled marine vessels offsite for recycling and repurposing,

(the "Ship Breaking Use").

~~18.19.~~ It is also now apparent that the Ship Breaking Use is being undertaken on the portion of the Property that is zoned IM Zone as well as portions of the Property that are zoned RU-20 Zone and CR-1 Zone.

19-20. The Ship Breaking Use is not a permitted use of the Property under the Zoning Bylaw, and is prohibited by the Zoning Bylaw.

20-21. It is now apparent that the portion of the Property ~~that is zoned IM Zone~~ is being used to house individuals in recreational vehicles (the "Housing Use").

22. The Housing Use is not a permitted use of the Property under the Zoning Bylaw, and is prohibited by, *inter alia*, s. 302(2)(ii) of the Zoning Bylaw.

21-23. In or about September 2024, Union Bay and Deep Water themselves or by their agents removed screening between a portion of the Property zoned IM and the abutting properties to the north, contrary to the Zoning Bylaw.

Violation of the Development Permit Requirement: Glover Community Nature Park

22-24. On or about November 13, 2014, the CVRD adopted the Rural Comox Valley Official Community Plan Bylaw, No. 337, 2014 (the "OCP"), which among other things established, pursuant to section 488 of the *Local Government Act*, development permit areas within the CVRD's territorial jurisdiction in Electoral Areas A (except Denman and Hornby Islands), B, and C.

23-25. The real property known as Glover Community Nature Park (~~the "Glover Nature Park"~~), and legally described as PID: 005-481-252, Lot 9, District Lot 11, Nelson District, Plan 8906, which is owned by the CVRD, is included within the Aquatic and Riparian Habitat Freshwater Development Permit Area (~~the "DPA Area 1"~~) established by the OCP.

24-26. Union Bay and Deep Water have themselves or by their agents entered ~~trespassed~~ upon ~~the Glover Nature Park~~ and have altered lands (the "Park Land Alteration") within the ~~nature park area~~ located within the DPA 1 Area.

25-27. Union Bay and Deep Water undertook the Park Land Alteration without first obtaining a development permit from the CVRD authorizing it.

26-28. Union Bay and Deep Water have neither applied to the CVRD for a development permit authorizing the Park Land Alteration nor received from the CVRD a development permit authorizing the Park Land Alteration.

29. The Park Land Alteration was undertaken by Union Bay and Deep Water contrary to section 489 of the *Local Government Act*.

Violation of the Development Permit Requirements on the Property

30. The Property is included within DPA 1 established by the OCP.

27-31. The Property is included within the Coastal Development Permit Area ("DPA 2") established by the OCP.

32. Section 1202 (1) and 1201(1) of the Zoning Bylaw requires a development permit prior to removing, altering, disrupting, or destroying vegetation, and scraping or removing

topsoil within DPA 2 and DPA 1.

33. The Property is included within the Commercial and Industrial Development Permit Area (form and character) ("CIDPA ") established by the OCP.
34. Union Bay and Deep Water have themselves or by their agents altered lands and cut trees (the "Property Land Alteration") on the Property within DPA 1 and DPA 2 without first obtaining a development permit from the CVRD authorizing the Property Land Alteration.
35. Union Bay and Deep Water have neither applied to the CVRD for a development permit authorizing the Property Land Alteration nor received from the CVRD a development permit authorizing the Property Land Alteration.
36. The Property Land Alteration was undertaken by Union Bay and Deep Water contrary to section 489 of the *Local Government Act*.
37. Union Bay and Deep Water have themselves or by their agents constructed a building (the "Building Construction") on the Property within the CIDPA Area without first obtaining a development permit from the CVRD authorizing the Building Construction.
38. Union Bay and Deep Water have neither applied to the CVRD for a development permit authorizing the Building Construction nor received from the CVRD a development permit authorizing the Building Construction.
39. The Building Construction was undertaken by Union Bay and Deep Water contrary to section 489 of the *Local Government Act* and sections 1202(1) and 1201(1) of the Zoning Bylaw.

Violation of the Building Bylaw

40. On or about March 12, 2024, the CVRD adopted the Comox Valley Regional District Building Bylaw No. 681, 2024 (the "Building Bylaw"), which among other things requires a building permit to be issued prior to the construction of a building or structure.
41. Union Bay and Deep Water have themselves or by their agents constructed a building (the "Building Construction") on the Property without first obtaining a building permit from the CVRD authorizing the Building Construction.
42. On or about March 26, 2025 a CVRD Building Inspector directed Union Bay and Deep Water to obtain a building permit for the Building Construction.
43. Union Bay and Deep Water have neither applied to the CVRD for a building permit authorizing the Building Construction nor received from the CVRD a building permit authorizing the Building Construction.

Violation of the Parks Bylaw

44. On or about April 27, 2010 the CVRD adopted the Electoral Areas Parks Regulations Bylaw No. 103, 2010 (the "Parks Bylaw"), which among other things prohibits removing,

destroying, or cutting any natural features in a park.

45. The Parks Bylaw applies to Glover Nature Park.
46. Union Bay and Deep Water have themselves or by their agents trespassed upon Glover Nature Park and have cut trees (the "Tree Cutting").
47. Union Bay and Deep Water undertook Tree Cutting without first obtaining written permission from the CVRD authorizing the Tree Cutting.
48. Union Bay and Deep Water have neither applied to the CVRD for written permission authorizing the Tree Cutting nor received from the CVRD written permission authorizing the Tree Cutting.

Part 2: RELIEF SOUGHT

1. A declaration that the use of the Property for the Ship Breaking Use is in contravention of the Zoning Bylaw;
2. An order that Union Bay, Deep Water, and all persons having notice of this order, immediately cease and desist the Ship Breaking Use of the Property;
3. An order restraining Union Bay, Deep Water, and all persons having notice of this order, from using the Property for the Ship Breaking Use;
4. A declaration that the use of the Property for the Housing Use is in contravention of the Zoning Bylaw;
5. An order that Union Bay, Deep Water, and all persons having notice of this order, immediately cease and desist the Housing Use of the Property;
6. An order restraining Union Bay, Deep Water, and all persons having notice of this order, from using the Property for the Housing Use;
7. A declaration that the Park Land Alteration undertaken by Union Bay and Deep Water contravened section 489 of the *Local Government Act*;
8. A declaration that the removal of screening between the portion of the Property zoned IM and the abutting properties to the north contravened the Zoning Bylaw
9. A declaration that the Property Land Alteration undertaken by Union Bay and Deep Water contravened section 489 of the *Local Government Act*;
10. A declaration that the Building Construction undertaken by Union Bay and Deep Water contravened section 489 of the *Local Government Act*;
11. A declaration that the Building Construction undertaken by Union Bay and Deep Water contravened the Building Bylaw;
12. A declaration that the Tree Cutting undertaken by Union Bay and Deep Water contravened the Parks Bylaw;

13. An order that, within 60 days of the date of this order, Union Bay and Deep Water submit a complete application for a development permit in respect of the Property Land Alteration and the Building Construction on the Property;
14. An order that Union Bay and Deep Water are required to comply with the terms and conditions of an issued development permit, including by completing remedial measures recommended by a qualified environmental professional;
15. An order that, within 60 days of the date of this order, Union Bay and Deep Water restore the area of the Glover Nature Park that was subject to the Land Alteration and the Tree Cutting to its previous unaltered condition, in accordance with the recommendations of a qualified professional acceptable to the CVRD;
16. An order that, within 60 days of issuance of a development permit in respect of the Property Land Alteration, Union Bay and Deep Water restore the screening between that portion of the Property zoned IM and the abutting properties to the north;
17. An order that, within 70 days of the date of this order, Union Bay and Deep Water submit a complete application for a building permit for the Building Construction or for a demolition permit to demolish the Building Construction;
18. An order that if Union Bay or Deep Water fail to comply with any Order granted in this proceeding or with any issued development permit, the CVRD is authorized by its employees or contractors, to fulfill the requirement at the expense of Union Bay and Deep Water, including by:
- a. impounding recreational vehicles used for Housing Use;
 - b. demolishing the Building Construction on the Property;
 - c. restoring screening between that portion of the Property zoned IM and the abutting properties to the north; and
 - d. completing remedial measures recommended by a qualified environmental professional

8-19. Costs; and,

9-20. Such further and other relief as to this Honourable Court seems just.

Part 3: LEGAL BASIS

Union Bay and Deep Water are in Breach of the Zoning Bylaw

1. The interpretation of local government zoning bylaws was considered by the Court of Appeal in *Neilson v. Langley (Township)* (1982), 134 D.L.R. (3d) 550. In that case, the Court stated as follows:

... it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the Municipal Council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.

2. Section 102.1 of the Zoning Bylaw provides that:

No land, surface of water, building, or structure in any zone shall be used for any purpose other than those specified for the zone in which it is located. Uses not expressly listed as a principal or accessory use within a zone are prohibited.

3. In addition, section 302.1 of the Zoning Bylaw provides that:

Any use not expressly permitted in this bylaw is prohibited in every zone
....

4. For the use of the Property for the Ship Breaking Use and Housing Use to be permitted, the uses must fall within the scope of the principal and accessory uses expressly permitted on the Property under the Zoning Bylaw.

5. The Ship Breaking Use is not an expressly permitted accessory use of the Property. Under the Zoning Bylaw, “accessory” means “customarily incidental and subordinate to a principal use of land, building or structure permitted on the same lot ...”. By definition, to be a permitted accessory use, there must be a permitted principal use of the Property. As there is no other current use of the Property, the operation cannot be a permitted accessory use.

6. The Ship Breaking Use is not an expressly permitted principal use under the Zoning Bylaw. It clearly does not fall within any of the permitted principal uses in the RU-20 Zone or the CR-1 Zone. Moreover, it clearly does not fall within any of the permitted principal uses in the IM Zone.

7. Moreover, section 302.1 of the Zoning Bylaw, provides that:

... where particular use is expressly permitted in one zone, such a use is prohibited in every zone where it is not also expressly permitted.

8. If the Ship Breaking Use is an expressly permitted use under the Zoning Bylaw at all, it would be permitted in the Industrial Heavy (IH) Zone as being within the scope of the permitted principal use of “heavy industrial use”, which by definition includes “scrap salvage”. As such, pursuant to section 302.1 of the Zoning Bylaw, the Ship Breaking Use is prohibited in the IM Zone.

9. The Housing Use, ~~which is occurring in the IM Zone,~~ is neither an expressly permitted accessory use of the Property nor an expressly permitted principal use of it.

Union Bay and Deep Water Breached section 489 of the *Local Government Act*.

10. Section 489 of the *Local Government Act* provides that:

489 If an official community plan designates areas under section 488 (1), the following prohibitions apply unless an exemption under section 488 (4) applies or the owner first obtains a development permit under this Division:

...

b) construction of, addition to or alteration of a building or other structure must not be started;

(c) land within an area designated under section 488 (1) (a) or (b) [natural environment, hazardous conditions] must not be altered;

....

11. ~~The Glover Nature Park is included within the DPA 1-Area.~~

12. Union Bay and Deep Water have themselves or by their agents entered upon the Glover Nature Park within the DPA 1 Area and undertook the Park Land Alteration without first obtaining a development permit from the CVRD authorizing it.

13. ~~The Park Land Alteration was undertaken by Union Bay and Deep Water contrary to section 489 of the Local Government Act.~~

~~13.14. The Property is included within DPA 1, DPA 2 and CIDPA . Union Bay and Deep Water themselves or by their agents undertook the Property Land Alteration and Building Construction without first obtaining a development permit from the CVRD.~~

Union Bay and Deep Water Breached the Building Bylaw

~~15. Union Bay and Deep Water have themselves or by their agents engaged in Building Construction on the Property without first obtaining a building permit from the CVRD authorizing the Building Construction and have not complied with the direction from a CVRD Building Inspector to obtain a building permit for the Building Construction.~~

Union Bay and Deep Water Breached the Parks Bylaw

~~16. Union Bay and Deep Water have themselves or by their agents engaged in Tree Cutting in Glover Nature Park without first obtaining written permission from the CVRD authorizing the Tree Cutting.~~

The CVRD is Entitled to a Statutory Injunction Enforcing the Zoning Bylaw, Building Bylaw, Parks Bylaw, and Section 489 of the Local Government Act

~~14.17. Section 274(1) of the Community Charter, 2003 S.B.C., c. 26, provides as follows:~~

274 (1) A municipality may, by a proceeding brought in Supreme Court, enforce, or prevent or restrain the contravention of,

(a) a bylaw or resolution of the council under this Act or any other Act, or

(b) a provision of this Act or the Local Government Act or a regulation under those Acts.

~~15.18. Section 274 of the Community Charter is made applicable to the CVRD by section 420 of the Local Government Act.~~

~~16.19. The CVRD may enforce its Land Use Bylaws by injunctive proceedings in this Honourable Court.~~

17.20. In cases of a breach of a bylaw or a statute, the courts will generally consider the public interest in enforcing the public law as paramount. The discretion of the court to decline an injunction to enforce a bylaw is very narrow and is reserved for rare cases with exceptional circumstances.

North Pender Island Local Trust Committee v. Conconi, 2010 BCCA 494, para. 38

18.21. There are no exceptional circumstances in this case for this Honourable Court to refuse to issue the injunctions sought by the CVRD.

Plaintiff's address for service:	c/o Sukhbir Manhas Young Anderson 1616-808 Nelson Street Box 12147, Nelson Square Vancouver, BC V6Z 2H2 Sara Dubinsky Lidstone & Company Law Corporation 1300-128 West Pender Street, Vancouver BC V6B1R8
Fax number address for service (if any):	604.689.3444
E-mail address for service (if any):	dubinsky@lidstone.ca Not applicable.
Place of trial:	Vancouver, B.C.
The address of the registry is:	800 Smithe Street Vancouver, BC V6Z 2E1

Date: ~~14/Apr/2022~~ 25/Mar/2026
[dd/mmm/yyyy]


Signature of _____
 Plaintiff lawyer for Plaintiff
~~Sukhbir Manhas~~ Sara Dubinsky

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Enforcement of Regional District Zoning Bylaw and Section 489 of the Local Government Act

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate

X a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws

X none of the above

do not know

Part 4: