



The Village of
PORT CLEMENTS
"Gateway to the Wilderness"

36 Cedar Avenue West
PO Box 198
Port Clements, BC
V0T1R0
OFFICE: 250-557-4295
Public Works: 250-557-4295
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Email: office@portclements.ca
Web: www.portclements.ca

2:30 PM, Special Meeting of Council, Tuesday, September 16th, 2025

AGENDA

This meeting of the Council of the Village of Port Clements being held on the traditional territory of the Haida People.

- 1. ADOPT THE AGENDA**
- 2. GOVERNMENT**
G-1—Development Variance Application - #2 Tingley Street
- 3. ADJOURNMENT**



The Village of
PORT CLEMENTS
"Gateway to the Wilderness"

36 Cedar Avenue West
PO Box 198
Port Clements, BC
V0T1R0

REPORT TO COUNCIL

Author: Marjorie Dobson CAO
Date: September 16, 2025

RE: Development Variance Application

BACKGROUND

On January 25, 2025, the home of Sarah Hunt and Brandon Barton was destroyed by fire. The property has changed hand over time. The house was built in 1968, before the Village was incorporated in December 1975. The lot on which the building was constructed was subsequently subdivided on February 1, 1982, resulting in a change in street orientation of the lot. Both the construction of the building and the subdivision pre-dates Zoning Bylaw #184-1990, making the structure pre-existing, non-conforming.

Recently, Sarah and Brandon contracted with Haida Gwaii Builders to build a new home. Both the property owners and the contractor were in touch with the Village and were referred to the current Zoning Bylaw #184-1990. However, they did not provide any building plans at that time and there was no discussion of pre-existing, non-conforming structures.

Visible construction of a new house on the site began around June/July 2025, which triggered concerns about the rebuild encroaching on the Village Sewer infrastructure. The CAO conducted a site visit on July 17, 2025, and noticed that the location and size would not be following the current zoning bylaw setback requirements.

A meeting with property owners and building contractor was convened on July 22, 2025, where the Village voiced their concerns, and the property owners team indicated that the new foundation is using the same footprint as the old house, and as such, the rebuild qualifies for pre-existing status, and therefore was not subject to current bylaw regulations.

DISCUSSIONS

When the use of land or a building predates land development bylaw, it becomes legally non-conforming or grandfathered property. At the time a new land use regulation bylaw is adopted, if an existing use of land or a building is lawfully used and it does not conform to the bylaw, then it may be continued as a legal non-conforming use unless:

- The use is discontinued for a period of six months (subject to normal seasonal and agricultural practices)
- More than 75% of the value of the building or structure above its foundation is damaged or destroyed.

This non-conforming status allows the existing structure to remain, even if its use or features no longer comply with the new bylaw. Note that this right is tied to the land and building and not the

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owner and therefore remains when the property is sold.

In the case of 2 Tingley street, more than 75 % of the building structure above the foundation was destroyed, therefore, any rebuild is subject to current zoning bylaw #184 – 1990 regulations.

The Village determined that since the foundation was already laid, an application for a permanent Development Variance Permit would be the best approach and started working with the property owner and building contractor to follow the process.

The property is designated Residential Urban zone (R-1) and the applicant has not met the requirement of the front setback of bylaw #184-1990.

The setback requirements for R-1 Residential Urban under the current bylaw are:

R-1 Residential Urban	Zoning Bylaw #184-1990	Subject Property
Site Area and Parcel Size for Subdivision	At least 558 sq m	562.25sq m
Frontage	15 m	30 m
Site Coverage	50%	32.09%
Minimum Setbacks	Front: 6 m Rear: 6 m	1.22 m 7.16 m
Principal Buildings	Side: 1.5 m, corner lot 3 m	5.48 m

The Village has a sewer line running through the property along the foreshore. Access to service this infrastructure must be maintained. The Title Certificate for the property does not list an easement for this purpose.

Property Constraints:

In reviewing the application, the Village has identified the following constraints related to the subject property that Council will need to consider before issuing a permit.

Subdivision of DL 746:

On February 1, 1982, DL 746 QCDP 10361 was subdivided to form 2 LOTS: A and B. The subject property is LOT B. This changed the shape and street orientation of LOT B to face onto Tingley instead of Bayview, making what was the side lot lines the front and rear. (See Plan 10361 attached) When the Zoning Bylaw was adopted in 1990, the existing house became pre-existing, non-conforming until more than 75% of the structure above the foundation it was destroyed by fire on January 25, 2025.

Village Infrastructure:

The Village has a sewer line running through the property along the foreshore shown on the Right of Way Plan no. 9398, deposited in the Prince Rupert Land Registry Office in January of

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1980. (See Village Plan 9398 attached). The State of Title Certificate for the property does not list an easement for this purpose. It is estimated that the sewer line is approximately 2 feet or 0.6 m away from the rebuilt foundation. The Village cannot determine if the same distance existed for pre-existing building. There is concern of this proximity if the Village has to perform maintenance work. Access to service this infrastructure must be maintained.

Flood Damage Protection:

Both the current and new Zoning Bylaws contain provisions related to Flood Damage. Based on provincial regulations which takes precedence over municipal bylaws protection with the following provisions are applicable to this property:

- No building or any part thereof, (except small outbuildings) shall be constructed, reconstructed, moved, or extended within 30 metres of the natural boundary of the sea.
- The required elevation may be achieved through compacted landfill on which any building is to be constructed or located or a combination of structural elevation and landfill.

The Haida Gwaii Coastal Flood and Erosion Study completed in 2022 identified the area as being exposed to waves from the Masset Inlet and therefore classified as highly susceptible to erosion. (See map below)



Figure 3-3. Map of erosion susceptibility for the study area.

The subject lot is approximately 18.29 m wide x 30.48 m long, the requirement for a 30 m setback from the natural boundary of the sea would effectively sterilize the lot. (i.e. the land development requirement prohibits improvement activity)

Property Owners Rationale

In the Description and Rationale for the Development Variance Permit, the property owners describe the hardship they face in meeting the setback requirements, as summarized below: The Village's assessment that the Flood Hazard Protection setback of 30 m would effectively sterilize the lot adds a significant constraint on the ability of the property to comply with the bylaw.

- A variance is needed due to unique circumstances that have caused undue hardship in complying with the setback regulations as they pose restrictions that would prevent reasonable development of the property.
- A reconstruction of the house on the same footprint would not comply with the setback requirements of the R-1 Residential Urban Zone.

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- The presence of Village sewer infrastructure on the property causes an additional site constraint.
- Alternative building plans have been explored, and if the setbacks are followed, the house would be too small to accommodate their family.
- The original house was built in 1969, before this bylaw was adopted.
- The lot size is 562.25 sq m (6,052 sq ft ~60.5' wide x 100' long) and the original house's first floor living area was 149.38 sq m (1,608 sq ft). The first floor living area of the proposed reconstruction is 150.22 sq m (1,617 sq ft).
- The proposed lot coverage percentage is 32.09 %. The maximum allowed under the Zoning is 50%.
- The proposed rebuilding of the house complies with the Village's 2012 Official Community Plan.
- The variation sought is a minor deviation from the Front Setback of the Zoning Bylaw. It does not substantially impact the neighboring properties or street, or the overall intent of the bylaw.

Given the size and shape of the lot, and the other circumstances mentioned, we hope that the Village would agree that reconstruction of the home over the original footprint is a reasonable request

CONCLUSION:

- Setback variances allow property owners to deviate from standard requirements to accommodate unique property conditions.
- The Village Sewerline is an essential infrastructure of the community and performs an important service. Therefore, its maintenance is crucial for the local government as well as residents. Granting a legal easement for the operations and maintenance of the sewer infrastructure allows Village access to private property to maintain this necessary infrastructure
- The Local Government Act requires local governments to consider the Flood Hazard Area Land Use Management Guidelines when considering approvals for land development. The act also requires that the local government adopt a bylaw which designates an area of land as being in a flood plain. The Village Zoning Bylaw Reference Flood Damage Protection but does not designate the area being in a flood plain through a bylaw. It follows therefore that the Village cannot legally grant a variance permit without a bylaw that designates an area of land as being in a flood plain. Although the Haida Gwaii Coastal Flood and Erosion Study is not integrated in the zoning bylaw, the results cannot be ignored, and therefore prudent that land development along the foreshores of Port Clements should consider the findings in the decision-making process.
Given the location of the construction and the variance sought to build in proximity to the seaside, the Village could choose to enter an agreement under the Land Titles Act (COVENANT) that has the effect of insulating the Village from claims that may arise should the building later be damaged as a result of a flood, erosion tsunami, or other environmental causes. (See copy of covenant)

RECOMMENDATION: That Council:

1. Approves the application for the permanent Development Variance permit given the circumstances outlined
2. As a condition for the permit, the property owners:
 - (a) Enter into a legal agreement to have the Sewer Right of Way easement registered with Land Titles
3. The applicants sign the Floodplain covenant which protects the Village from any flood, and environmental related liability and that this covenant be submitted for registration with Land Titles Office at the applicant expense.

STRATEGIC To mitigate the hardships of the property owners in the process of rebuilding their home, while securing a Statutory Right of Way for the sewer pipeline and protecting the Village from certain environmental liabilities.

FINANCIAL Unexpected cost associated with obtaining professional support

ADMINISTRATION: The work was lengthy and demanded a considerable duration to finish.

Respectfully submitted: Marjorie Dobson, CAO

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1. Application

DAVID GIRODAY YOUNG ANDERSON 1616 - 808 Nelson Street Vancouver BC V6Z 2H2 604.689.7400
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File No. 298-101

S.219 Covenant - Floodplain

2. Description of Land

PID/Plan Number	Legal Description
005-350-557	LOT B DISTRICT LOT 746 QUEEN CHARLOTTE DISTRICT PLAN 10361

3. Nature of Interest

Type	Number	Additional Information
COVENANT		S.219

4. Terms

Part 2 of this instrument consists of:
(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

BRANDON JAMES BARTON
SARAH MIDGE HUNT

6. Transferee(s)

THE VILLAGE OF PORT CLEMENTS 36 CEDAR AVENUE WEST PORT CLEMENTS BC V0T 1R0

7. Additional or Modified Terms

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8. Execution(s)

This instrument creates, assigns, modifies, enlarges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Witnessing Officer Signature _____	Execution Date <div style="border: 1px solid black; width: 150px; height: 100px; margin: 0 auto; text-align: center; padding: 5px;"> YYYY-MM-DD </div>	Transferor / Transferee / Party Signature(s) _____ BRANDON JAMES BARTON
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Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

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as to both signatures

NAME:

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

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Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

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TERMS OF INSTRUMENT - PART 2

FLOODPLAIN COVENANT - SECTION 219 OF THE LAND TITLE ACT (BRITISH COLUMBIA)

THIS AGREEMENT dated for reference the 1st day of September 2025.

BETWEEN:

BRANDON JAMES BARTON & SARAH MIDGE HUNT
2 Tingley Street
Port Clements, BC V0T 1R0

(the "**Grantor**")

AND:

THE VILLAGE OF PORT CLEMENTS, a Municipal Corporation
36 Cedar Avenue West
Port Clements, BC, V0T 1R0

(the "**Village**")

WHEREAS:

- A. The Grantor is the registered owner of the Lands;
- B. The Grantor has applied to the Village for a Development Variance Permit to authorize construction on the Lands in locations that are contrary to the Village of Port Clements *Zoning Bylaw* No. 184, 1990;
- C. The Lands are located on a water boundary and could reasonably be expected to be, subject to or are likely to be subject to certain risks associated with being in the vicinity of a body of water including, but not limited to, flooding, erosion, wave action or tsunami (the "**Hazards**");
- D. Section 219 of the *Land Title Act* (British Columbia) permits a land owner to grant a covenant, of a positive or negative nature in favour of a municipality with provisions in respect of the use of land, or the use of a building on or to be erected on land, or that land is not to be built on or is not to be subdivided except in accordance with the covenant; and
- E. The Grantor wishes to grant and the Village hereby accepts the section 219 covenant contained in this Agreement to be registered against the title to the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSETH that pursuant to section 219 of the *Land Title Act* (British Columbia), in consideration of ONE DOLLAR (\$1.00) the receipt and sufficiency of which is acknowledged, the Village and the Grantor covenant and agree as follows:

1. **Definitions.** In this Agreement:

- (a) "Agreement" means the attached General Instrument - Part 1, the Terms of Instrument - Part 2, and any schedules attached hereto;

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- (b) "Grantor" means the Transferor(s) as set out in Item 5 of the attached General Instrument – Part 1, other than any party(ies) identified therein as granting priority in relation to an existing charge;
 - (c) "Lands" means lands and premises located within the Village of Port Clements described in Item 2 of the attached General Instrument - Part 1;
 - (d) "Lot" means any lot into which the Lands may be subdivided from time to time;
 - (e) "Village" means the Village of Port Clements, a municipal corporation existing under the *Local Government Act* (British Columbia) and *Community Charter* (British Columbia).
2. **Limitations on Use of Lands.** The Grantor agrees that the Lands shall not be built on, used, or developed, and no buildings or structures shall be erected thereon, except in compliance with the conditions in this Agreement.
3. **Acknowledgment of Risks.** The Grantor, on behalf of himself or herself and his or her heirs, executors, administrators, successors and assigns, hereby acknowledges that:
- (a) the Lands are, or could reasonably be expected to be, subject to the Hazards and such Hazards may pose a significant danger to the use of the Lands, buildings and structures on the Lands and to persons on the Lands;
 - (b) neither the Village nor any of its officials, officers or employees have made any representations to the Grantor or any other person that any building, improvement or structure, including the contents of any of them, located, constructed, reconstructed, moved or extended on the Lands from time to time shall not be damaged by the Hazards, whether or not the provisions of this Agreement are complied with;
 - (c) the Village is under no obligation to issue any building permit in respect of any building to be constructed, built, placed or erected on the Lands, or any portion thereof, which fails to comply with this covenant or with the Province of British Columbia's floodplain or flood-proofing policies; and
 - (d) issuance of a development permit or granting the rezoning by the Village does not constitute a representation or warranty by the Village to the Grantor or any other person that the Lands, any building or structure placed on the Lands or any person on the Lands shall not be injured or damaged by any Hazards.
4. **Covenants of the Grantor.** The Grantor, on behalf of himself or herself and his or her heirs, executors, administrators, successors and assigns, hereby covenants and agrees with the Village, as a covenant in favour of the Village pursuant to section 219 of the *Land Title Act* (British Columbia), it being the intention and agreement of the Grantor that the provisions hereof be annexed to and run with and be a charge upon the Lands, that from and after the date hereof:

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- (a) no area used for habitation shall be located within any building or structure constructed or located on the Lands at an elevation such that the underside of the wooden floor system or top of concrete slab thereof is less than 3.1 meters Canadian Geodetic Vertical Datum 2013. The phrase "area used for habitation" means any room or space within a building or structure which is or may be used for human occupancy, business or storage of goods damageable by floodwaters and includes furnaces and hot water tanks; and
- (b) hereafter, no building or structure shall be located, constructed, reconstructed, moved or extended on the Lands or any lot into which they may be subdivided such that any part of the building or structure is located within 12 meters from the natural boundary of the sea.

5. **Indemnity & Release.** The Grantor, on behalf of himself or herself and his or her heirs, executors, administrators, successors and assigns, with full knowledge of the potential Hazards, hereby releases and forever discharges, and agrees to indemnify and save harmless, the Village and its elected and appointed officials, officers, employees, contractors, agents and other representatives from and against all damages, losses, costs (including actual legal costs on a solicitor/client basis and actual costs of professional advisors), actions, causes of action, claims, demands, judgements, builders liens, liabilities, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays), expenses and harm of any kind, whether known or unknown and whether brought by any person arising out of or in connection with or related to:

- (a) any breach of any covenants or agreements on the part of the Grantor contained in this Agreement;
- (b) any personal injury (including death) or any loss or damage to the Lands, any buildings, structures, or any chattel on the Lands, caused directly or indirectly by the Hazards or some such similar cause;
- (c) the Village issuing, granting or withholding the issuance of an approval of any construction covering the Lands;
- (d) the Grantor's use, development or occupation of the Lands, including construction, reconstruction, alteration or placement of any building or structure upon the Lands and, without limiting the generality of the foregoing, for any damages to the premises or their contents or any personal injury caused directly or indirectly by the Hazards or some such similar cause;
- (e) the Village permitting the construction of any buildings or structures on the Lands;
- (f) the Village permitting the occupation or use of any buildings or structures on the Lands;
- (g) this Agreement and the performance by the Grantor of its obligations hereunder; and

- (h) any act or omission carried out by or not carried out by the Village, its elected officials, officers, servants, agents, employees or other representatives in the exercise or purported exercise of any of the rights or compliance or attempted compliance with any obligations granted or imposed by this Agreement, or arising from the restrictions imposed on the use of the Lands or the construction of any buildings or structures thereon by this Agreement.
6. **No Claims.** In the event that any person is injured, or the Lands, or any building or structure of any part or contents thereof located on the Lands is damaged, by the Hazards or such similar cause, the Grantor shall not commence any legal proceedings or third-party proceedings against the Village or its elected or appointed officials, officers, servants, agents, employees or other representatives related to such injury or damage.
7. **Survival of Indemnity & Release.** The release and indemnity in this Agreement shall survive the termination or release of this Agreement and this indemnity forms an integral part of this Section 219 Covenant, pursuant to section 219(6) of the *Land Title Act* (British Columbia). For certainty Section 5 and Section 6 of this Agreement shall survive termination or release of this Agreement.
8. **Miscellaneous.** IT IS MUTUALLY UNDERSTOOD, agreed and declared by and between the parties hereto that:
- (a) the Village has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Grantor in connection with the subject matter hereof, except as expressly provided in this Agreement;
- (b) nothing contained or implied in this Agreement:
- (i) constitutes a permit or approval required by any bylaw or any public or private statute, order or regulation; or
- (ii) shall prejudice or affect the Village's rights and powers in the exercise of its functions under any public or private statutes, bylaws, orders or regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Grantor;
- (iii) exempt the Grantor from any duty to comply with any enactment of the federal, provincial, municipal or regional government or to obtain any approval or consent required by any of them or their respective agencies; or
- (iv) cancels or modifies the terms of any other covenant, right-of-way, permit, interest, charge, legal notation or agreement entered into between the parties or registered against the Lands or any Lot;
- (c) the covenants set forth herein shall charge the Lands and each Lot pursuant to Section 219 of the *Land Title Act* (British Columbia) and shall be covenants the burden of which shall run with the Lands and each Lot. It is further expressly agreed that:

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- (i) the benefit of all covenants made by the Grantor herein shall accrue solely to the Village;
 - (ii) the Grantor shall not, in respect of any portion of the Lands or any Lot transferred to a third party, be liable for any breach of any covenant imposed upon the Grantor herein occurring after the Grantor transferred that portion of the Lands or any Lot; and
 - (iii) all covenants and obligations imposed upon the Grantor herein, including but not limited to any release or indemnity provided herein, shall be binding on all future owners of the Lands or any Lot for so long as they are owners of the Lands or such Lot;
- (d) the rights given to the Village by this Agreement are permissible only and nothing in this Agreement imposes any legal duty of any kind on the Village to anyone, or obliges the Village to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement;
- (e) every obligation and covenant of the Grantor in this Agreement constitutes both a contractual obligation and a covenant granted under section 219 of the *Land Title Act* (British Columbia) in respect of the Lands and this Agreement burdens the Lands and runs with them and binds the successors in title to the Land. This Agreement burdens and charges all of the Lands and any parcel into which the Lands are subdivided by any means and any parcel into which the Lands are consolidated (including by removal of interior parcel boundaries) and shall be extended, at the Grantor's cost, to burden and charge any land consolidated with the Land;
- (f) no failure by the Village in exercising its rights hereunder or enforcing the Grantor's obligations hereunder and no waiver of any of the requirements in this Agreement shall in any way limit the Village in, or prevent the Village from, later exercising its rights or enforcing the Grantor's obligations in respect of any breaches of this Agreement which have occurred or which may occur, nor shall the Village be deemed to have waived or become estopped from thereafter exercising any of its rights or enforcing any of the Grantor's obligations under this Agreement;
- (g) the Grantor shall, after execution of this Agreement by it, at the expense of the Grantor, do or cause to be done all acts reasonably necessary to grant priority to this Agreement over all charges and encumbrances which may have been registered against the title to the Lands in the Land Title Office save and except those specifically approved in writing by the Village or in favour of the Village;
- (h) the Grantor shall comply with all requirements of this Agreement at its own cost and expense including the costs of the registration of this Agreement in the Land Title Office by the Village, which shall be promptly paid to the Village upon receipt of an invoice for the registration costs;
- (i) where the Village is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its

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consent, the Grantor agrees that the Village is under no public law duty of fairness or natural justice in that regard and agrees that the Village may do any of those things in the same manner as if it were a private party and not a public body;

- (j) if any provision of this instrument is determined by a court of competent jurisdiction to be illegal or unenforceable, then that provision shall be severed from this instrument and the remaining provisions shall continue in full force and effect;
- (k) wherever the singular is used in this Agreement, the same shall be construed as meaning the plural and vice versa where the context or the parties so require;
- (l) this Agreement is not intended to create a partnership, joint venture or agency between the Grantor and the Village;
- (m) The Grantor or any of his or her heirs, executors, administrators and assigns as the case may be, shall give written notice of this Agreement to any person he or she proposes to dispose of the Lands, which notice shall be received by that person prior to such disposition. For the purposes of this paragraph the word "dispose" shall have the meaning given to it under section 29 of the *Interpretation Act* (British Columbia);
- (n) this Agreement shall enure to the benefit of and be binding upon the Grantor and the Village and their respective heirs, executors, administrators, successors and assigns; and
- (o) the parties hereto shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement on Forms C and D to which this Agreement is attached and which form part of this Agreement.

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1. Application

**DAVID GIRODAY
 YOUNG ANDERSON
 1616 - 808 Nelson Street
 Vancouver BC V6Z 2H2
 604.689.7400**

File No. 298-101
 SRW/Cov - Sewer Works

2. Description of Land

PID/Plan Number	Legal Description
005-350-557	LOT B DISTRICT LOT 746 QUEEN CHARLOTTE DISTRICT PLAN 10361

3. Nature of Interest

Type	Number	Additional Information
STATUTORY RIGHT OF WAY		S.218 As to part on Plan 9398
COVENANT		S.219

4. Terms

Part 2 of this instrument consists of:
(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

BRANDON JAMES BARTON
SARAH MIDGE HUNT

6. Transferee(s)

**THE VILLAGE OF PORT CLEMENTS
 36 CEDAR AVENUE WEST
 PORT CLEMENTS BC V0T 1R0**

7. Additional or Modified Terms

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8. Execution(s)

This instrument creates, assigns, modifies, enlarges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Witnessing Officer Signature _____	Execution Date <div style="border: 1px solid black; width: 150px; height: 100px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> YYYY-MM-DD </div>	Transferor / Transferee / Party Signature(s) _____ BRANDON JAMES BARTON
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Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Witnessing Officer Signature _____	Execution Date <div style="border: 1px solid black; width: 150px; height: 100px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> YYYY-MM-DD </div>	Transferor / Transferee / Party Signature(s) _____ SARAH MIDGE HUNT
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as to both signatures

NAME:

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

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Electronic Signature

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TERMS OF INSTRUMENT - PART 2

STATUTORY RIGHT OF WAY & SECTION 219 COVENANT

THIS AGREEMENT dated for reference the 1st day of September, 2025.

BETWEEN:

BRANDON JAMES BARTON & SARAH MIDGE HUNT
2 Tingley Street
Port Clements, BC V0T 1R0

(the "Grantor")

AND:

THE VILLAGE OF PORT CLEMENTS, a Municipal Corporation
36 Cedar Avenue West
Port Clements, BC, V0T 1R0

(the "Village")

WHEREAS:

- A. The Grantor is the registered owners and beneficial owners of that parcel of land in the Village of Port Clements in the Province of British Columbia legally described in Item 2 of Part 1 of the *Land Title Act* (British Columbia) Form C to which this Agreement is attached and which forms part of this Agreement (the "Lands");
- B. For the purpose of municipal sewer service, the Grantor has agreed to permit the construction, maintenance and alteration of any certain works and appurtenances, generally described as pipes, valves, fittings, pumps, conduits, culverts, facilities and appurtenances necessary or convenient for the carrying of sanitary sewage as part of the Village's system of sewage works (collectively, the "Works") and to grant for that purpose the SRW hereinafter mentioned;
- C. Section 219 of the *Land Title Act* (British Columbia) permits registration of a Covenant in favour of a municipality in respect of the use of land or that land is or is not to be built on;
- D. Section 218 of the *Land Title Act* (British Columbia) enables the Owner to grant in favour of the City an easement without a dominant tenement to be known as a Statutory Right of Way; and
- E. This statutory right of way and section 219 covenant contained herein are necessary for the operation and maintenance of the Village's undertaking.

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NOW THEREFORE THIS AGREEMENT WITNESSES that, pursuant to sections 218 and 219 of the *Land Title Act* (British Columbia) and in consideration of ONE DOLLAR (\$1.00) paid by the Village to the Grantor and other valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

1. **Grant of Statutory Right of Way.** The Grantor, for itself, its successors and assigns, hereby gives and grants unto the Village, its successors and assigns, in perpetuity the full, free and unrestricted right, license, liberty, privilege, easement and statutory right of way (the "SRW") for the Village, its officers, employees, contractors and agents in common with the Grantor, at all times hereafter to enter, go, be on, pass and repass, with or without vehicles, personal property and equipment, upon, over, under and through that part of the Lands shown outlined in heavy pink on Survey Plan Right of Way Plan 9398 (the "Right of Way Area"), a reduced copy of which plan is attached to this Agreement as Schedule "A", to:
 - (a) construct and install the Works upon the Right of Way Area and to remove, replace, repair, alter, maintain, patrol and operate the Works, as well as the soil, bedrock, gravel and other materials of a similar nature within reasonable proximity to the Works from time to time in the Village's discretion as part of the Village's municipal sewer services;
 - (b) have unobstructed access over and across the Lands and the Right of Way Area at any and all times for the purposes outlined herein;
 - (c) establish grades and levels upon the Right of Way Area as reasonably necessary for the Works;
 - (d) excavate or otherwise alter the contours of the Right of Way Area and to backfill trenches on the Right of Way Area as reasonably necessary for the Works;
 - (e) make surveys and tests;
 - (f) remove from the Right of Way Area such structures, improvements, fixtures, fences, gates, trees, shrubs, plants, vehicles, mobile homes, storage facilities and other obstructions whatsoever as, in the Village's reasonable opinion, is necessary in order to construct, install, remove, repair, alter, operate, maintain, clean, inspect, patrol or replace the Works;
 - (g) temporarily store upon the Right of Way Area all vehicles, equipment, machinery, materials, or other movable property of any description reasonably necessary to construct, install, remove, repair, operate, alter, maintain, inspect, clean or replace the Works; and

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(h) do all other things on the Right of Way Area as may be reasonably necessary, desirable or incidental to the Works.

2. **Covenants of Grantor.** The Grantor covenants under section 219 of the *Land Title Act* (British Columbia) to:

(a) not do or permit to be done anything on the Lands which in the opinion of the Village, acting reasonably, may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of, the Right of Way Area, the Works or the rights granted under this SRW;

(b) trim or, if the Village requires, permit the Village to trim or cut down any tree or other growth on the Right of Way Area which in the opinion of the Village constitutes or may constitute a danger, impairment or obstruction to the Works or to those using the Right of Way Area in connection with the Works;

(c) permit the Village to peaceably hold and enjoy the rights hereby granted;

(d) permit the Village to maintain and clean the surface of the Right of Way Area and do all other things in the Right of Way Area which in the reasonable opinion of the Village are reasonably necessary for the safe use and preservation of the Right of Way Area for the purposes of the Works;

(e) at its own expense, do or cause to be done all acts necessary to grant priority to this SRW over all financial charges and encumbrances which are registered, or pending registration, against title to the Lands, in the Land Title Office, save and except those that have been approved in writing by the Village; and

(f) at its own expense, do or execute or cause to be done or executed all such further and other lawful acts, deeds, things, conveyances and assurances whatsoever for better assuring to the Village the rights, liberties and SRW hereby granted.

3. **Ancillary Rights.** Nothing in this Agreement shall be held to restrict the Grantor from using the Lands in any manner which does not interfere with the security, efficient functioning or unobstructed access to the Works and, in particular, the Grantor may use the surface of the Right of Way Area for normal garden purposes, and the lawful parking of vehicles and may erect and maintain fences thereon and may cover the Right of Way Area with gravel, asphalt or concrete of a depth reasonably sufficient for parking area or walk, but will not erect any building thereon or permit anything to be placed thereon or done to injure the Works, including the planting of large trees and shrubs, or to prevent reasonable access by the Village.

4. **Obligations of the Village:** The Village, must in the exercise of its powers hereunder,

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- (a) do all things hereby authorized to be done by it over, through, under and upon the Right of Way Area in a good and workmanlike manner so as to cause no unnecessary damage or disturbance to the Grantor, the Right of Way Area or the Lands or to any improvements thereon;
- (b) not bury, without the prior written consent of the Grantor, construction debris or rubbish in excavations or backfill; and
- (c) if the Village removes anything placed on the Right of Way Area and in particular shrubs, plants, fences, or breaks up any asphalt or cement, it will replace and repair the same as promptly as possible after completing the work in which it is engaged so as to restore the ground and the things located thereon to their original condition, and the work shall be carried out in such a manner as to cause the least damage and inconvenience to the Grantor and the Village.

5. Village's Right to Statutory Right of Way: The Village:

- (a) is entitled to peaceably hold and enjoy the rights, liberties and SRW hereby granted without hindrance, molestation or interruption by the Grantor or any person, firm or corporation claiming by, through, under or in trust for the Grantor;
- (b) in its sole discretion may at any time remove any or all of the Works installed by the Village in, upon or under the Right of Way Area, all of which remain chattels and the property of the Village, notwithstanding that they may be annexed or affixed to the freehold;
- (c) on default by the Grantor of any of its obligations under this Agreement, may, but is not obliged to, rectify the default, provided that, except in the case of an emergency, the Village must first give 20 days prior notice to the Grantor specifying the default and requiring it to be remedied. The Grantor shall reimburse the Village for its reasonable, out of pocket expenses incurred in remedying such a default; and
- (d) despite subsection (b) above, if the Village abandons, releases or discharges the SRW, the Village is not responsible or obligated in any way to remove or pay for the cost of removal of any Works from the Right of Way Area.

6. Runs with the Lands. Every obligation and covenant under section 219 of the *Land Title Act* (British Columbia) of the Grantor in this Agreement constitutes both a contractual obligation and a statutory right of way granted under section 218 of the *Land Title Act* (British Columbia) in respect of the Lands and this Agreement burdens the Lands and runs with them and binds the successors in title to the Lands until discharged by an instrument in writing duly executed by the Village and filed at the Land Title Office.

7. **No Limitation.** This Agreement does not:
- (a) affect or limit the discretion, rights, duties or powers of the Village under the common law or any statute, bylaw, or other enactment;
 - (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Lands; or
 - (c) relieve the Grantor from complying with the common law or any statute, bylaw or other enactment.
8. **Indemnity.** The Grantor covenants to and does hereby indemnify and save harmless the Village, its elected officials, officers and employees at all times from all losses, damages, actions, suits, claims, demands, costs, expenses, fees and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the Village is or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or economic loss arising directly or indirectly from a breach or non-performance by the Grantor of its covenants or obligations in this Agreement, or arising directly or indirectly from any wrongful act, omission or negligence of the Grantor in, on, around and about the Right of Way Area, the Lands, or in any way connected to or relating to the Works.
9. **Notice.** Any notice to be given pursuant to this Agreement must be in writing and may be delivered personally or sent by prepaid mail. The addresses of the Village for the purpose of notice is the address hereinbefore set out, and the address of the Grantor is the address on record for the owner of the Lands at the Land Title Office. If notice is delivered personally, it may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed given when delivered. If notice is mailed, it is to be deemed given 5 days after mailing by deposit at a Canada Post mailing point or office. In the case of any strike or other event causing disruption of ordinary Canada Post operations, a party giving notice must do so by personal delivery as provided in this section. Any party may at any time give notice in writing to the other of any change of address and from and after the receipt of notice the address therein specified is to be deemed to be the address of such party for the giving of notice.
10. **Opinion of the Village.** Any opinion which the Village is entitled by virtue of this Agreement to form may be formed on behalf of the Village by the Chief Administrative Officer of the Village or their Designate in which event the opinion of the Chief Administrative Officer of the Village or their Designate shall be deemed to be the opinion of the Village for the purposes of this Agreement.
11. **Enurement.** This Agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

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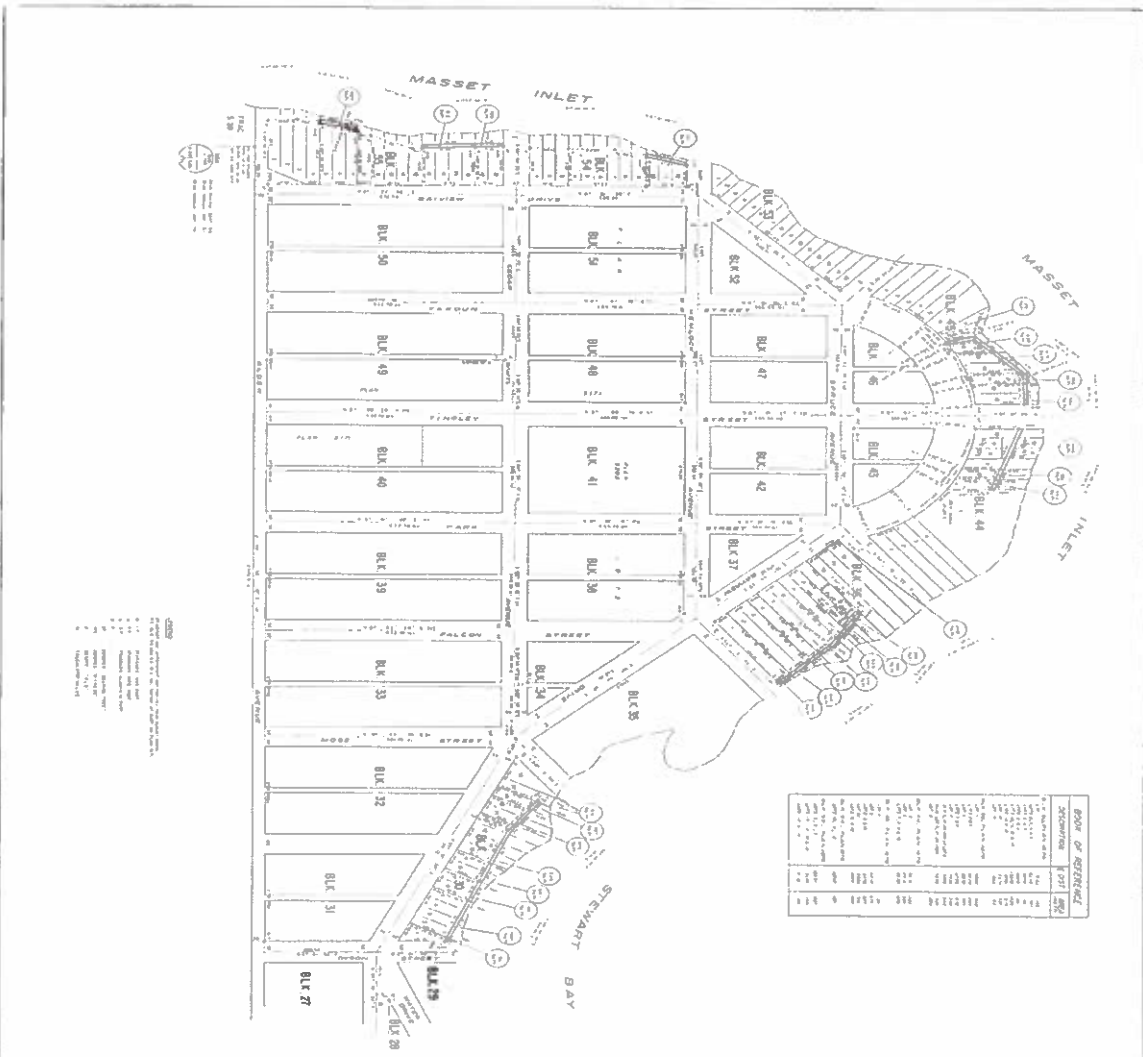
12. **Interpretation.** Wherever the singular or the masculine are used, the same shall be construed as meaning the plural or the feminine or the body politic or corporate where the context or the parties hereto so require.
13. **Right to Enter Agreement.** The Grantor undertakes that it has the right to enter into this Agreement and that the covenants contained herein shall run with the Lands and shall be perpetual and that the statutory right of way and section 219 covenant granted herein shall run with the Lands and shall be perpetual.
14. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties.
15. **Headings.** If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.
16. **Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of British Columbia.
17. **No Public Law Duty.** Wherever this Agreement creates a power or obligation of the Village to make a decision or to exercise any contractual right or remedy, the Village may do so in accordance with the provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, shall have any application.
18. **No Derogation.** Nothing contained in or implied by this Agreement shall in any way prejudice or affect the rights and powers of the Village, as a British Columbia local government, in the exercise of its functions under any public and private statutes, bylaws, orders and regulations including, the *Local Government Act* (British Columbia) and the *Community Charter* (British Columbia), all of which may as fully and effectively exercised in relation to the Works as if this Agreement had not been executed and delivered by the parties hereto.
19. **Amendments.** No amendment of this Agreement is valid or binding unless in writing and executed by the parties.
20. **Waiver.** Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.
21. **Severability.** If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.

22. **Further Assurances.** The parties will do all things and execute all documents that are reasonably necessary to give full effect to this Agreement, and to make this legally effective and enforceable.
23. **Schedules.** Schedule "A", being a reduced copy of the Plan delineating the Right of Way Area, forms part of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement on Forms C and D to which this Agreement is attached and which form part of this Agreement.

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SCHEDULE "A"



Block	Area	Volume	Weight	Value
B.L.K. 30	1.2	1.2	1.2	1.2
B.L.K. 31	1.2	1.2	1.2	1.2
B.L.K. 32	1.2	1.2	1.2	1.2
B.L.K. 33	1.2	1.2	1.2	1.2
B.L.K. 34	1.2	1.2	1.2	1.2
B.L.K. 35	1.2	1.2	1.2	1.2
B.L.K. 36	1.2	1.2	1.2	1.2
B.L.K. 37	1.2	1.2	1.2	1.2
B.L.K. 38	1.2	1.2	1.2	1.2
B.L.K. 39	1.2	1.2	1.2	1.2
B.L.K. 40	1.2	1.2	1.2	1.2
B.L.K. 41	1.2	1.2	1.2	1.2
B.L.K. 42	1.2	1.2	1.2	1.2
B.L.K. 43	1.2	1.2	1.2	1.2
B.L.K. 44	1.2	1.2	1.2	1.2
B.L.K. 45	1.2	1.2	1.2	1.2
B.L.K. 46	1.2	1.2	1.2	1.2
B.L.K. 47	1.2	1.2	1.2	1.2
B.L.K. 48	1.2	1.2	1.2	1.2
B.L.K. 49	1.2	1.2	1.2	1.2
B.L.K. 50	1.2	1.2	1.2	1.2
B.L.K. 51	1.2	1.2	1.2	1.2
B.L.K. 52	1.2	1.2	1.2	1.2
B.L.K. 53	1.2	1.2	1.2	1.2
B.L.K. 54	1.2	1.2	1.2	1.2
B.L.K. 55	1.2	1.2	1.2	1.2
B.L.K. 56	1.2	1.2	1.2	1.2
B.L.K. 57	1.2	1.2	1.2	1.2
B.L.K. 58	1.2	1.2	1.2	1.2
B.L.K. 59	1.2	1.2	1.2	1.2
B.L.K. 60	1.2	1.2	1.2	1.2
B.L.K. 61	1.2	1.2	1.2	1.2
B.L.K. 62	1.2	1.2	1.2	1.2
B.L.K. 63	1.2	1.2	1.2	1.2
B.L.K. 64	1.2	1.2	1.2	1.2
B.L.K. 65	1.2	1.2	1.2	1.2
B.L.K. 66	1.2	1.2	1.2	1.2
B.L.K. 67	1.2	1.2	1.2	1.2
B.L.K. 68	1.2	1.2	1.2	1.2
B.L.K. 69	1.2	1.2	1.2	1.2
B.L.K. 70	1.2	1.2	1.2	1.2
B.L.K. 71	1.2	1.2	1.2	1.2
B.L.K. 72	1.2	1.2	1.2	1.2
B.L.K. 73	1.2	1.2	1.2	1.2
B.L.K. 74	1.2	1.2	1.2	1.2
B.L.K. 75	1.2	1.2	1.2	1.2
B.L.K. 76	1.2	1.2	1.2	1.2
B.L.K. 77	1.2	1.2	1.2	1.2
B.L.K. 78	1.2	1.2	1.2	1.2
B.L.K. 79	1.2	1.2	1.2	1.2
B.L.K. 80	1.2	1.2	1.2	1.2
B.L.K. 81	1.2	1.2	1.2	1.2
B.L.K. 82	1.2	1.2	1.2	1.2
B.L.K. 83	1.2	1.2	1.2	1.2
B.L.K. 84	1.2	1.2	1.2	1.2
B.L.K. 85	1.2	1.2	1.2	1.2
B.L.K. 86	1.2	1.2	1.2	1.2
B.L.K. 87	1.2	1.2	1.2	1.2
B.L.K. 88	1.2	1.2	1.2	1.2
B.L.K. 89	1.2	1.2	1.2	1.2
B.L.K. 90	1.2	1.2	1.2	1.2
B.L.K. 91	1.2	1.2	1.2	1.2
B.L.K. 92	1.2	1.2	1.2	1.2
B.L.K. 93	1.2	1.2	1.2	1.2
B.L.K. 94	1.2	1.2	1.2	1.2
B.L.K. 95	1.2	1.2	1.2	1.2
B.L.K. 96	1.2	1.2	1.2	1.2
B.L.K. 97	1.2	1.2	1.2	1.2
B.L.K. 98	1.2	1.2	1.2	1.2
B.L.K. 99	1.2	1.2	1.2	1.2
B.L.K. 100	1.2	1.2	1.2	1.2

1. All lots shown on this plan are subject to the provisions of the Queen Charlotte District Act, 1974, and the Queen Charlotte District Regulations, 1975.
 2. The area shown on this plan is subject to the provisions of the Queen Charlotte District Act, 1974, and the Queen Charlotte District Regulations, 1975.
 3. The area shown on this plan is subject to the provisions of the Queen Charlotte District Act, 1974, and the Queen Charlotte District Regulations, 1975.
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 8. The area shown on this plan is subject to the provisions of the Queen Charlotte District Act, 1974, and the Queen Charlotte District Regulations, 1975.
 9. The area shown on this plan is subject to the provisions of the Queen Charlotte District Act, 1974, and the Queen Charlotte District Regulations, 1975.
 10. The area shown on this plan is subject to the provisions of the Queen Charlotte District Act, 1974, and the Queen Charlotte District Regulations, 1975.



PLAN OF RIGHT OF WAY
 THROUGH BLOCKS 30, 36, 44, 46, 54 & 55,
 PLAN 1079, DISTRICT LOT 746,
 QUEEN CHARLOTTE DISTRICT
 SCALE: 1" = 100'
 THIS PLAN WAS PREPARED FOR THE DISTRICT OF QUEEN CHARLOTTE
 BY THE DISTRICT ENGINEER, QUEEN CHARLOTTE DISTRICT, 1974

PLAN NO. 9398
 DISTRICT OF QUEEN CHARLOTTE
 DISTRICT ENGINEER

DISTRICT OF QUEEN CHARLOTTE
 DISTRICT ENGINEER
 1974

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