



The Village of  
**PORT CLEMENTS**  
*"Gateway to the Wilderness"*

36 Cedar Avenue West  
PO Box 198  
Port Clements, BC  
V0T1R0  
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Public Works: 250-557-4295  
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Web: [www.portclements.ca](http://www.portclements.ca)

**3:30 PM, Special Meeting of Council, Monday, November 10<sup>th</sup>, 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—PUBLIC INPUT—Development Variance Application - #103 Bayview Drive
- 3. ADJOURNMENT**



## REPORT TO COUNCIL

Approved: Marjorie Dobson, Chief Administrative Officer  
Author: Lori Wiedeman, Morale Consulting, Statutory Approving Officer  
Date: November 10, 2025  
RE: Development Variance Permit for 103 Bayview Drive

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### **RECOMMENDATION(s):**

That Council, after giving notice and allowing an opportunity for public comment at a meeting of Council, consider the following motion:

“That Council authorize the issuance of Development Variance Permit No.2025-11-10 for 103 Bayview Avenue, Village of Port Clements, subject to confirmation of registration of legal agreements, in accordance with:

1. Plans date stamped October 23, 2025
2. Development meeting all Zoning Bylaw requirements, except for the following variances:
  - a. Minimum Floor Area: reduce the minimum floor area from 83.6 m<sup>2</sup> (900 sq ft) to 80.26 m<sup>2</sup> (864 sq ft).
  - b. Off Street Parking: allow for the 2 parking spaces to be provided in the front setback.
3. Property owners entering into a Section 219 Covenant with the Village to indemnify and release 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.”

### **BACKGROUND:**

Lorette and Donald Smillie, through their Agent Alana Dickson of Reddog Logging, have applied for a Development Variance Permit (DVP) to vary the minimum floor area required in the R-1 Residential Urban Zone from 83.6 m<sup>2</sup> (900 sq ft) to 80.26 m<sup>2</sup> (864 sq ft), a reduction of 3.34 m<sup>2</sup> (36 sq ft).

As part of the review of the file, it was identified that the plans require an additional variance to the Off Street Parking requirements of 2 spaces of 18.5 m<sup>2</sup> per dwelling unit for a single family home, with the parking spaces to be provided wholly on the subject property, and not within the front setback.

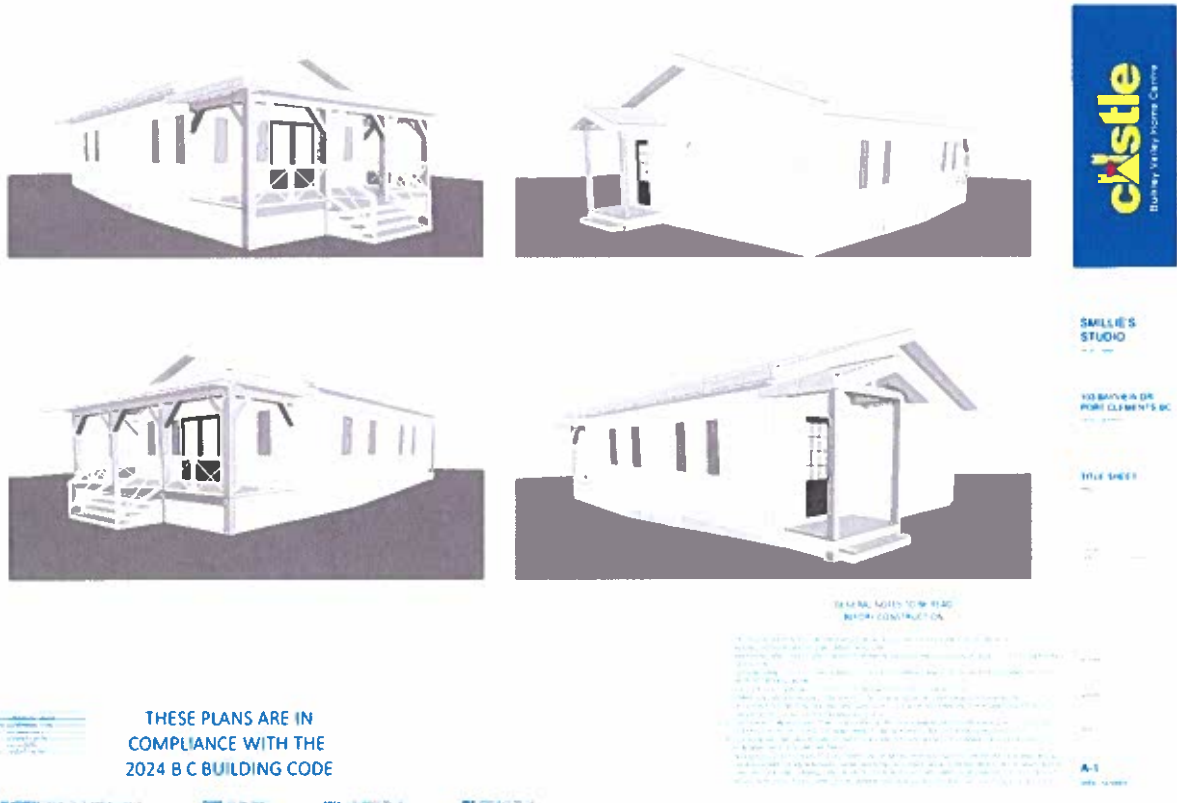
**Village of Port Clements - Report To Council – DVP 103 Bayview Drive**

The requirement for a Section 219 Covenant arises as a result of the requirements in Zoning Bylaw #184/1990, Part 4: General Provisions, Section 4.2: Flood Damage Prevention.

**PROPERTY INFORMATION:**

Applicant:	Alana Dickson, Reddog Logging (AGENT)
Owner:	Donald and Lorette Smillie
Civic Address:	103 Bayview Drive, Port Clements BC V0T 1R0
Legal Description:	Roll: 25-566-20045.070 LOT 7, BLOCK 45, PLAN PRP1079, DISTRICT LOT 746, QUEEN CHARLOTTE LAND DISTRICT
Size of Property:	431.7 m <sup>2</sup> (4,646.78 sq ft)
Zoning Designation:	Bylaw #184/1990, M-1 Marine Commercial Zone NOTE: Uses permit one single family home according to the requirements of the R-1 Residential Urban Zone per Bylaw #271/1995
OCP Designation:	Marine Commercial
Off Street Parking Requirements:	2 per dwelling unit, min 18.5 m <sup>2</sup> for each off street parking space, not to be provided in the front setback

The Owner proposes to build a 80.26 m<sup>2</sup> (864 sq ft) 7.3 m (24 ft) x 10.9 m (36 ft) residential building with timber frame accents. The perimeter footing will be a ICF block foundation. A 2.4 m (8 ft) x 7.3 m (24 ft) porch will be constructed on the ocean side, and a covered 2.1 m (7 ft) x 1.5 m (5 ft) entry will face the road.



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## Village of Port Clements - Report To Council – DVP 103 Bayview Drive

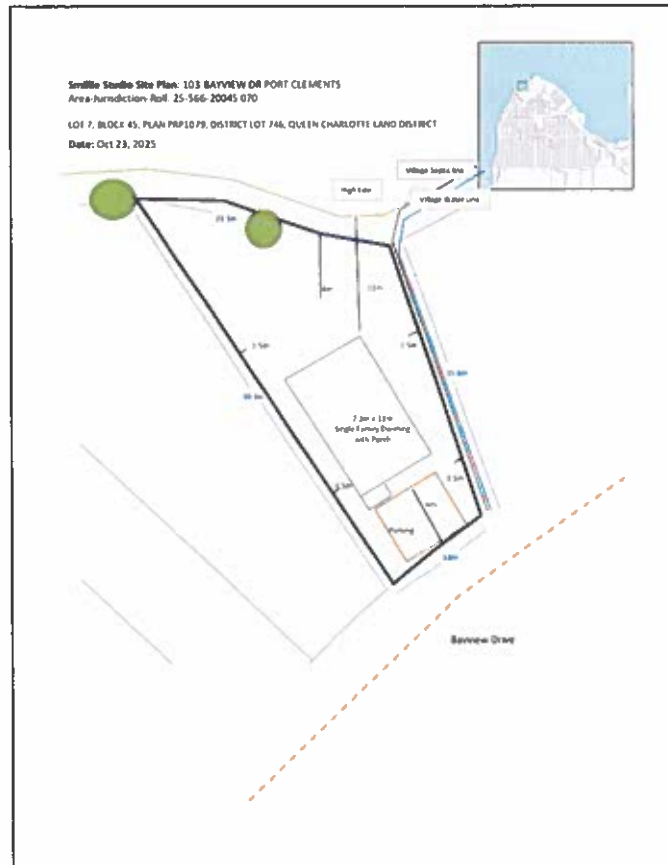
### SITE AND SURROUNDING AREA:

The subject property is located on Bayview Drive, with the back of the property bordering on the natural boundary of the ocean. The property is currently undeveloped.

In the past there was a tiny home on the property that has since been removed. Water and sewer services are available for connection.

The site is fairly flat and open with a gentle slope towards the ocean side and some mature trees. The site has an irregular quadrilateral area which is narrow along the road and wider along the ocean.

The surrounding area consists mainly of other residential parcels and commercial areas, the majority of which are pre-existing and some may be non-conforming with Zoning Bylaw #184/1990.



### MINIMUM FLOOR AREA:

Zoning Bylaw #184/1990, Part 7: Zone Requirements, Section 7.1.1 Residential Urban Zone (R-1), requires a minimum floor area of 83.6 m<sup>2</sup> (900 sq ft). The proposed development is approximately 3.34 m<sup>2</sup> (36 sq ft) smaller than the minimum floor area required by the bylaw. A Development Variance to reduce the minimum floor area to 80.26 m<sup>2</sup> (864 sq ft) has been requested.

This variance would allow the property owners to construct the proposed residence in accordance with the minimum setbacks and site coverage provisions for the R-1 Residential Urban Zone in the Zoning Bylaw, as provided under the M-1 Marine Commercial Zone as per Zoning Amendment Bylaw #271/1995.

### OFF STREET PARKING

Zoning Bylaw #184/1990, Part 6: Off Street Parking and Off Street Loading, Section 6.4: Required Off Street Parking Spaces, Section 6.6: Location and Siting of Parking Facilities, and Section 6.7: Development and Maintenance Standards, specify the following:

- Required Spaces: Residential, single and two family = 2 per dwelling unit

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- Location and Siting: All off street parking for residential uses shall be wholly provided on the same lot as the building required to be served.
- D&M Standards: minimum 18.5 m<sup>2</sup> (199 sq ft) in area, not less than 5.5 m (18 ft) length x 2.75 m (9 ft) width.

As the frontage of the subject property is only 12 m (39.3 ft), the front setback is 6 m (19.6 ft), the side setbacks are 1.5 m (4.9 ft), and the new building would be 7.3 m (23.9 ft), there is no room for a vehicle to park beside or in the back of the property. This is a specific physical characteristic of the property that would cause undue hardship in complying with the Zoning.

A variance to allow for up to 2 parking spaces in the front setback would still allow for 6 m (19.6 ft) of frontage for emergency access to the property.

### **FLOOD DAMAGE PROTECTION:**

Zoning Bylaw #184/1990, Part 4: General Provisions, Section 4.2 Flood Damage Protection, specifies that no building shall be located within 7.5 m (25 ft) of the natural boundary of the sea. However, as the Village has not designated this area as being in a flood plain through a bylaw pursuant to Section 524 of the Local Government Act (LGA) this restriction can be varied.

The Village of Port Clements 2022 Coastal Erosion Report identifies this property as having a Flood Construction Level (FCL) of 5.5 m (18 ft) as well as a high erosion susceptibility. It is reasonable that the FCLs in this report should be taken into consideration when assessing this application.

As there are a number of residential properties in the surrounding area, Council can consider the history of flooding when assessing reasonableness of granting the variance (i.e. during the decades in which non-conforming residences existed on properties in this area, did they ever experience flooding or other natural risks due to their proximity to the sea). As no such flooding events are documented, there is little by way of technical information that would suggest that construction on this lot poses risks.

Additionally, given that the proposed construction meets the required 7.5 m (25 ft) setback from the natural boundary of the ocean, the Village could mitigate against the risk of authorizing the development by requiring the property owner to enter a Section 219 Covenant with the Village as a condition for the approval of the variances requested.

Local governments frequently choose to require Section 219 covenants as a condition of the issuance of a Development Variance Permit. The British Columbia courts have confirmed that local governments have broad discretion to require conditions, such as the granting of a Section 219 covenant in relation to a variance.

Through the Section 219 Covenant the Village can impose obligations on how construction can proceed on the subject property and can incorporate in indemnity and release provisions to the covenant that would have 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

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causes. This Section 219 Covenant would then be registered on title to the property similar to a statutory right of way so that it will run with the lands and both inform and bind future owners.

**IMPLICATIONS:**

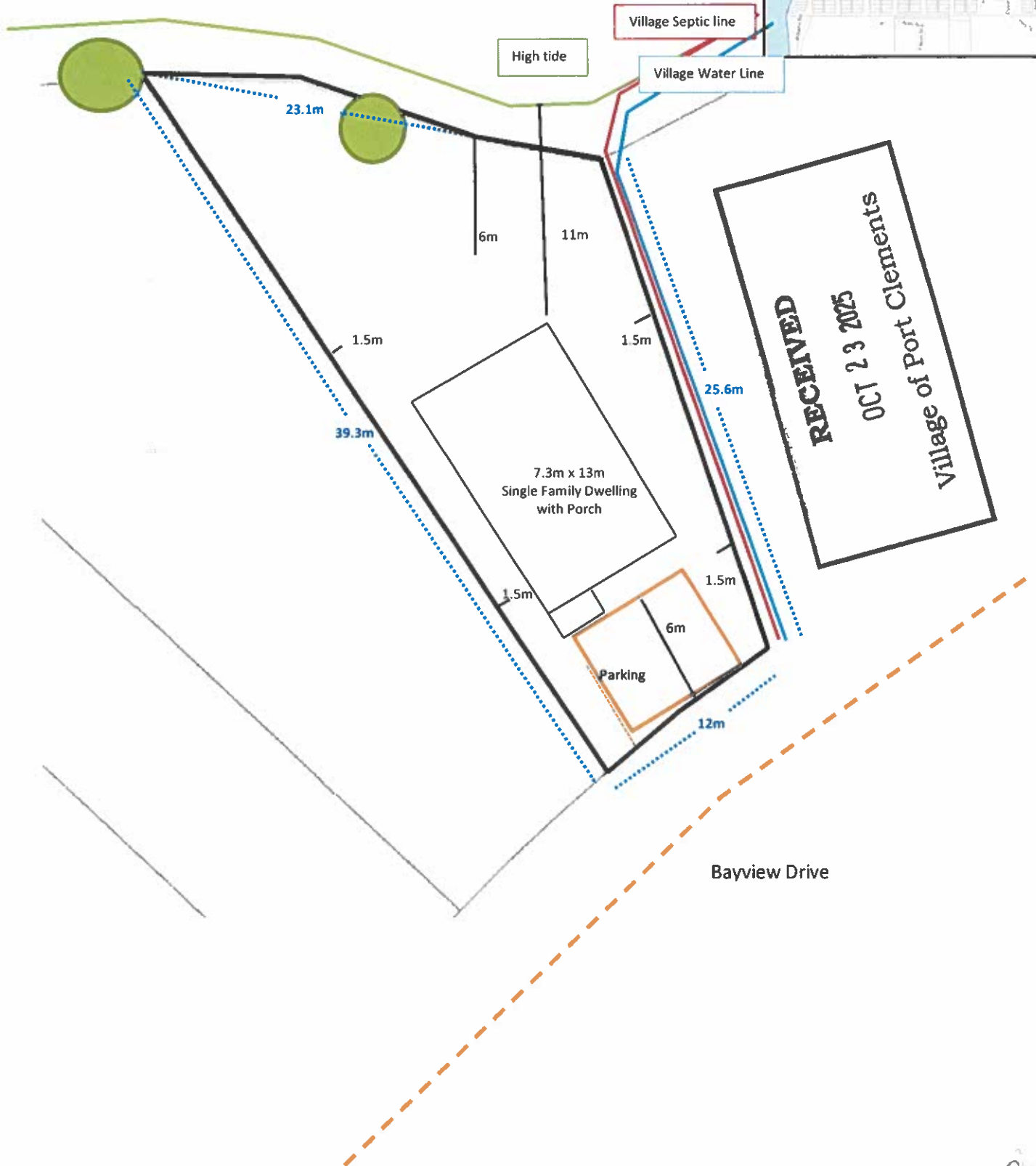
- STRATEGIC:** Council identified ‘Encouraging and Supporting Land Development’ as one of their key Strategic Priorities in their 2021-2026 Strategic Plan.
- FINANCIAL:** A Section 219 Covenant, registered on title, that indemnifies the Village should the building be later damaged as a result of flood, erosion, tsunami or other environmental causes is consistent with best practices of other municipalities.
- ADMINISTRATIVE:** This property is currently undeveloped and has physical site characteristics that restrict the owner’s ability to comply with the Zoning Bylaw #184/1990. The requested variances for minimum floor area and off street parking are minor and within Council’s authority.

Respectfully submitted  
Marjorie Dobson, Chief Administrative Officer

**Smillie Studio Site Plan: 103 BAYVIEW DR PORT CLEMENTS**  
Area-Jurisdiction-Roll: 25-566-20045.070

LOT 7, BLOCK 45, PLAN PRP1079, DISTRICT LOT 746, QUEEN CHARLOTTE LAND DISTRICT

Date: Oct 23, 2025



G-21



1. Application

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

File No. 298-102  
 S.219 Covenant - Floodplain

2. Description of Land

PID/Plan Number	Legal Description
<b>013-207-440</b>	<b>LOT 7 BLOCK 45 DISTRICT LOT 746 QUEEN CHARLOTTE DISTRICT PLAN 1079</b>

3. Nature of Interest

Type	Number	Additional Information
<b>COVENANT</b>		<b>S.219</b>

4. Terms

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

5. Transferor(s)

**LORETTE JEAN SMILLIE**  
**DONALD MENNO JOSEPH SMILLIE**

6. Transferee(s)

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

7. Additional or Modified Terms

CS-1



**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: 100%; height: 100%; display: flex; align-items: center; justify-content: center;">             YYYY-MM-DD           </div>	Transferor / Transferee / Party Signature(s)  _____ <b>LORETTE JEAN SMILLIE</b>
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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: 100%; height: 100%; display: flex; align-items: center; justify-content: center;">             YYYY-MM-DD           </div>	Transferor / Transferee / Party Signature(s)  _____ <b>DONALD MENNO JOSEPH SMILLIE</b>
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**Officer Certification**

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Witnessing Officer Signature  _____	Execution Date <div style="border: 1px solid black; width: 100%; height: 100%; display: flex; align-items: center; justify-content: center;">             YYYY-MM-DD           </div>	Transferor / Transferee / Party Signature(s)  <b>THE VILLAGE OF PORT CLEMENTS</b> By their Authorized Signatory  _____ <b>NAME:</b>
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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.

14-1

**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 October 2025.

BETWEEN:

DONALD MENNO JOSEPH SMILLIE & LORETTE JEAN SMILLIE  
109 Bayview Drive  
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;

- (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) 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:

- (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 10 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:
    - (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 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.