



STAFF REPORT

DATE: October 2, 2020

FILE: 0550-04 Board

TO: Chair and Directors
Regional Board

FROM: Dave Leitch
Chief Administrative Officer

RE: **BYLAW NO. 407 – OYSTER RIVER NATURE PARK RIGHT OF WAY AGREEMENT**

PURPOSE/PROBLEM

To consider first 3 readings of Bylaw No. 407 which would authorize the Strathcona Regional District to enter into a right of way agreement to allow the Comox Valley Regional District (CVRD) to develop, operate and maintain water system infrastructure within the boundaries of the Oyster River Nature Park located in Electoral Area D.

EXECUTIVE SUMMARY

The proposal by the CVRD to develop additional water system infrastructure within the Oyster River Nature Park was reviewed by the Board on June 24, 2020 at which time the following resolution was passed:

Leigh/Unger: SRD 513/20

THAT the CVRD be advised that the SRD is prepared to allow the development of an additional water supply well upon the execution by both parties of a right of way agreement for the Oyster River Nature Park.

Since that time the parties have been negotiating the terms of a right of way agreement that would recognize the rights and responsibilities of the CVRD with respect to managing water system infrastructure while recognizing and protecting the values and amenities of the Oyster River Nature Park which is the responsibility of the Strathcona Regional District. In particular, the following provisions are noted:

- the term of the agreement is limited to 35 years (w/provision for renewal);
- aesthetic values of the park are recognized and protected;
- advance notice is required for any construction in order to minimize public inconvenience and ensure public safety;
- proper maintenance of water system infrastructure is required and any unsightly conditions must be remedied; and
- the parties will consult on a regular basis and address any issues that may arise.

A bylaw has been prepared to authorize the Strathcona Regional District (as the owner of the parkland) to grant a right of way for the water system infrastructure. Since the granting of a right of way would be considered a disposition of public property the Regional District is required to publicly advertise its intention to do so before it executes the agreement. It is recommended that such public notification take place following third reading in accordance with the attached schedule.

RECOMMENDATIONS

1. THAT the report from the Chief Administrative Officer be received.
2. THAT Bylaw No. 407, being a bylaw to authorize entering into a right of way agreement for a portion of the Oyster River Nature Park, be now introduced and read a first time.
3. THAT the rules be suspended and Bylaw No. 407 be given second and third readings.
4. THAT Bylaw No. 407 be returned to the Board for consideration of adoption following the public notification process.

Respectfully:


Dave Leitch
Chief Administrative Officer

Schedule	Action
November 4, 2020	Regional Board gives first 3 readings to Bylaw No. 407, being Oyster River Nature Park Right of Way Agreement Authorization Bylaw 2020.
November 11, 2020	First publication of property disposition notice for Bylaw No. 407.
November 18, 2020	Second publication of property disposition notice for Bylaw No. 407.
November 28, 2020	Deadline for filing responses regarding Bylaw No. 407 with Regional District.
December 4, 2020	If no major issues Regional Board reconsiders and adopts Bylaw No. 407.
December 7, 2020	Right of Way agreement executed by Comox Valley Regional District.
December 9, 2020	Right of Way agreement executed by Strathcona Regional District.
December 31, 2020	Right of Way agreement registered in Land Titles Office.

Prepared by: Tom Yates, Corporate Services Manager

Attachments: Bylaw No. 407



BYLAW NO. 407

A BYLAW TO AUTHORIZE ENTERING INTO A RIGHT OF WAY AGREEMENT FOR A PORTION OF THE OYSTER RIVER NATURE PARK

WHEREAS the land known as the Oyster River Nature Park was Crown granted to the former Comox-Strathcona Regional District as for use as a public park and wellsite;

AND WHEREAS upon dissolution of the said Comox-Strathcona Regional District the ownership of the Oyster River Nature Park was vested in the Strathcona Regional District while the ownership of the water system infrastructure was vested in the Comox Valley Regional District;

AND WHEREAS the Strathcona Regional District and the Comox Valley Regional District wish to make an agreement that respects each party's obligations for managing their respective assets and providing services to the public;

AND WHEREAS the requirements of the *Local Government Act* with respect to the disposition of Regional District property have been met;

NOW THEREFORE the Board of Directors of the Strathcona Regional District, in open meeting assembled, enacts as follows:

Agreement Authorized

1. The Strathcona Regional District is hereby authorized to enter into a right of way agreement with the Comox Valley Regional District for the development, operation and maintenance of water system infrastructure on property legally described as Lot 1 of District Lot 221, Comox District, Plan 44496 and known as the Oyster River Nature Park.

Form and Substance

2. The agreement referenced in Section 1 shall substantially comply in form and substance with that shown in Schedule 'A', attached to and forming part of this bylaw.

Authority to Execute

3. The Chair and Corporate Officer shall have full authority to execute the agreement following the coming into effect of this bylaw.

Effective Date

4. This bylaw shall take effect on the date of adoption.

Citation

5. This bylaw may be cited for all purposes as Bylaw No. 407, being Oyster River Nature Park Right of Way Agreement Authorization Bylaw 2020.

READ A FIRST TIME ON THE DAY OF , 2020

READ A SECOND TIME ON THE DAY OF , 2020

READ A THIRD TIME ON THE DAY OF , 2020

NOTICE OF DISPOSITION PUBLISHED ON THE AND DAYS OF , 2020

RECONSIDERED, FINALLY PASSED AND ADOPTED ON THE DAY OF , 2020

Chair

Corporate Officer

Schedule 'A'

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TERMS OF INSTRUMENT - PART 2

W H E R E A S:

- A. The Transferor is the registered owner in fee simple of the following land in the Province of British Columbia:

PID: 005-665-515

Lot 1, District Lot 221, Comox District, Plan 44496
(the "**Lands**")
- B. The Transferee is the Comox Valley Regional District;
- C. Under the terms of Crown Grant No. 784/1278 dated April 27, 1992, the Lands were granted to the Regional District of Comox-Strathcona for the purposes of a public park and wellsite;
- D. Under the Letters Patent issued by the Province of British Columbia pursuant to Order In Council No. 059, 2008, effective February 15, 2008 (the "**Letters Patent**"), the Transferor continues to hold and operate the Lands as a public park (the "**Park Service**") known as the Oyster River Nature Park (the "**Park**");
- E. Under the Letters Patent the Transferee continues to operate the Black Creek/Oyster Bay Water Service (the "**Water Service**"), and continues to hold all assets related thereto, some of which are located on or under the Lands;
- F. It is necessary to separate and divide the assets of the Water Service from the assets of the Park Service, in accordance with subsection 17(2)(a)(ii) of the Letters Patent;
- G. The Lands provide a natural park system that includes habitat for native plants and wildlife, as well as trails and other passive recreation opportunities for the public;
- H. The Lands are also situated over aquifers that provide a significant source of drinking water for residents of the Black Creek/Oyster Bay Water Service Area, which is within portions of the Comox Valley Regional District and the Strathcona Regional District;
- I. This Right of Way is necessary for the operation and maintenance of the Transferee's undertaking as described in Recital H;
- J. To facilitate the installation, use and maintenance of a system of waterworks including all related wells, infiltration galleries, pipes, valves, fittings, facilities, equipment, pumps, signage, and appurtenances (the "**Works**"), the Transferor has agreed to permit the construction by the Transferee of the Works on the Lands and to grant for that purpose the Right of Way in Section 2.1; and

- K. The terms of this Agreement are intended to provide for the Transferee's ongoing requirements for access to the Lands for the purpose of the Water Service, while also protecting the Transferor's use of the Lands for the Park Service.

NOW THEREFORE, in consideration of the sum of One (\$1.00) Dollar of lawful money of Canada, now paid by the Transferee to the Transferor (the receipt and sufficiency of which is now acknowledged by the Transferor), and in consideration of the covenants and conditions agreed to be observed and performed by the parties and for other valuable consideration:

1.0 IN THIS AGREEMENT:

- 1.1 **"park amenities"** includes any natural, scientific, environmental, wildlife, plant life, and any park improvements, paved surfaces, trails, walkways, fences, lawns, flower beds, trees, or other surface growth present on or related to the Lands,
- 1.2 **"park protection and mitigation plan"** means the plan submitted by the Transferee to the Transferor for its approval in accordance with section 4.9(b) of this Agreement; and
- 1.3 **"Qualified Environmental Professional"** (abbreviated as **"QEP"** in this Agreement) has the same meaning as under the Riparian Areas Regulation, B.C. Reg. 376/2004.

2.0 THE TRANSFEROR:

- 2.1 grants, conveys, confirms and transfers, in perpetuity to the Transferee, but subject always to the Transferee's compliance with the terms and conditions of this Agreement, the full, free and uninterrupted right, license, liberty, privilege, easement, permission and right of way to lay down, install, erect, construct, entrench, operate, maintain, repair, inspect, alter, remove, replace, bury, cleanse, string, drill and otherwise establish one or more systems of Works upon, over, under and across that part of the Lands shown outlined on Plan EPP_____, a reduced copy of which is attached to this Agreement as Schedule "A" (the **"Right of Way Area"**);
- 2.2 covenants and agrees to and with the Transferee that the Transferee shall:
- (a) for itself and its agents, workers, contractors and all other licensees of the Transferee;
 - (b) together with machinery, vehicles, equipment, and materials;
 - (c) upon, over, under and across the Right of Way Area;
 - (d) as may be necessary, or useful for the purposes in section 2.1; and
 - (e) in connection with the operations of the Transferee in relation to the Works;
 - (f) but subject always to the terms and conditions of this Agreement, including but not limited to sections 3.4, 4.7 and 4.10 of this Agreement;

be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other surface or subsurface materials, clear trees, growth, and remove buildings or obstructions now or hereafter in existence upon, over, under and across the Right of Way Area; and

- 2.3** transfers, assigns and conveys to the Transferee all right, title and interest in and to any Works of the Water Service that the Transferee, or the Transferor have, prior to this Agreement, established or constructed or maintained or operated within the Right of Way or in relation to any similar Works previously constructed by any party whatsoever within the Right of Way Area.

3.0 THE TRANSFEROR COVENANTS:

- 3.1** not, and not to permit any other person, to erect, place, install or maintain any building, structure, addition to a building or structure, or paved driveway or patio, over or under any portion of the Right of Way Area within 3 meters of the Works;
- 3.2** not to do anything that in any way interferes with or damages or prevents access to or is likely to cause harm to the Works installed in or upon the Right of Way Area;
- 3.3** not to do or knowingly permit to be done any act or thing which will interfere with or injure the Works and in particular, without limitation, will not carry out any blasting within 3 meters of the Right of Way Area without the consent in writing of the Transferee, and consent shall not be unreasonably withheld;
- 3.4** not to substantially add to or diminish the soil cover over any of the Works installed in the Right of Way Area and in particular, without limitation, will not construct open drains or ditches along or across any of the Works installed in the Right of Way Area without the consent of the Transferee, and consent shall not be unreasonably withheld;
- 3.5** from time to time and at all times at the reasonable request and at the cost of the Transferee to do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the Transferee of its rights under this Agreement.

4.0 THE TRANSFEE COVENANTS:

- 4.1** without limiting anything else in this Agreement, to exercise its rights of entry onto, and its use of, the Right of Way Area in a manner that minimizes any impact on the Lands and the park amenities, and so as to minimize any interruption in the public's access to and use of the Oyster River Nature Park and the park amenities, all in accordance with the provisions of Schedule "B" to this Agreement;
- 4.2** to limit vehicle access to the Right of Way Area to those instances where the use of a vehicle is required to assist in routine maintenance and major repairs, and where maintaining the Works does not require the use of a vehicle, to access the Works on foot;
- 4.3** not to bury any debris or rubbish of any kind in excavations or backfill on the Right of Way Area, and to remove shoring and similar temporary structures as backfilling proceeds;
- 4.4** to thoroughly clean all lands to which it has had access under this Agreement of all rubbish and construction debris created or placed on the Right of Way Area by the Transferee and to leave such lands in a neat and clean condition;
- 4.5** not to clear any trees or growth from the Right of Way Area without approval from the Transferor, which is not to be unreasonably withheld;

- 4.6 to maintain the aesthetics of the Transferee's above ground structures by keeping them in good repair, including but not limited to the removal of any graffiti from those structures;
- 4.7 to make good at its own expense any damage or disturbance which may be caused to the Lands and the park amenities in the exercise by the Transferee of its rights under this Agreement, and without limitation, and as soon as weather and soil conditions permit, and as often as it may exercise its right of entry to the Right of Way Area, to replace the surface soil as nearly as may be reasonably possible to the same condition as it was prior to the entry, in order to restore the natural drainage to the Lands, and to restore any park amenities that are damaged by the Transferee or its employees, agents or contractors, at the Transferee's sole cost, as nearly as is reasonably possible to the same condition that the park amenities were in prior to the entry by the Transferee upon the Right of Way Area, and in compliance with the park protection and mitigation plan provided to the Transferor under section 4.10(b);
- 4.8 to carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands and the park amenities as possible, and so as to minimize any interference with the use of the Lands as a park;
- 4.9 from time to time to decommission any test wells that are no longer required for the Water Service including by reducing their unsightliness to park visitors by cutting the test well pipe low to the ground so it is not visible from a trail;
- 4.10 in advance of carrying out any construction or vegetation management within the Right of Way Area that requires the use of heavy equipment, excavation or drilling, or, in the case of vegetation management, the use of axes, saws or chainsaws, to provide the Transferor with the following, for the transferors approval not to be unreasonably withheld, at least one month prior to such work commencing:
 - (a) a general description and schedule for the proposed work, that the Transferor may refer to in any communications or public announcements that the Transferor considers advisable;
 - (b) a detailed plan for:
 - (i) the protection of the park amenities during the work;
 - (ii) providing public notice prior to and during the work;
 - (iii) ensuring the safety of park visitors during the work;
 - (iv) for the mitigation of any damage, injury or disturbance to the Lands and park amenities that may result from such work; and
 - (v) for the restoration of the Right of Way Area and park amenities following completion of such work; and
 - (c) if requested by the Transferor, the opportunity for a joint site visit to review what is planned prior to start of the work;

- (d) to accommodate any reasonable changes to the plan provided under section 4.10(b) as requested by the Transferor to ensure the protection of the park amenities and public safety.
 - 4.11 notwithstanding section 4.10, in the event of an emergency or other unforeseen circumstance which damages or has the potential to cause damage to the Works, or which causes or may result in contamination of the Water Service, or creates a risk to public health and safety of users of the Water Service, the Transferee may take any action within the Right of Way Area that is necessary to address the emergency, provided that:
 - (a) the Transferee shall contact the Transferor within twenty-four hours of taking such action to report the circumstances and advise of the action taken; and
 - (b) the Transferee shall consult with the Transferor as to any further or additional action that shall be taken within the Right of Way Area in order to address the emergency;
 - 4.12 to comply with all statutes and regulations governing the construction, operation and maintenance of the Works, including but not limited to the *Water Sustainability Act* (British Columbia) and the *Drinking Water Protection Act* (British Columbia); and
 - 4.13 to indemnify and save harmless the Transferor against any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which the Transferor may sustain or suffer as a result of the negligent acts or omissions of the Transferee in exercising its rights under this Agreement, or as a result of the Transferee's breach of the terms and conditions of this Agreement.
- 5.0 THE PARTIES COVENANT TO AND AGREE WITH EACH OTHER, as follows:**
- 5.1 That this Agreement and the Right of Way granted hereunder shall be for an initial term of thirty-five (35) years from the date of registration in the Land Title Office (the "Term"). Unless terminated in accordance with section 5.3, this Agreement and the Right of Way granted hereunder shall be deemed to automatically renew for an additional 35 years (a "Renewal Term") at the end of the Term, and at the end of each Renewal Term, upon the same terms and conditions, including this provision for automatic renewal, and no further agreement or instrument shall be required to give effect to such renewal;
 - 5.2 That the parties shall meet together periodically throughout the Term, and any Renewal Term, at such intervals and times as the parties mutually agree to, to review and discuss the terms of this Agreement. In addition, the Transferor may by written notice to the Transferee, provided no later than 24 months prior to the end of the Term or a Renewal Term, require the Transferee to enter into discussions with the Transferor as to whether this Agreement and the Right of Way granted hereunder continues to be required for the Water Service, or should otherwise be amended or modified;
 - 5.3 That notwithstanding section 5.1, this Agreement and the Right of Way granted hereunder shall terminate in the event that the Works are no longer required for the Water Service, as determined by the Transferee, acting reasonably;
 - 5.4 That any dispute between the parties arising under section 5.2 or 5.3 shall be settled in accordance with the dispute resolution provisions of section 6 of this Agreement;

- 5.5 To provide advance notice to the other party of any work that is planned to be carried out within the Right of Way Area or the Park that may interfere with the operations of that other party;
- 5.6 In spite of any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Right of Way by the Transferee shall at all times remain the property of the Transferee, even if the Works are annexed or affixed to the freehold, and the Works shall at any time and from time to time be removable in whole or in part by the Transferee;
- 5.7 In the event that the Transferee wishes to abandon the Works or any part of them, the Transferee shall consult with the Transferor as to whether the Works should be left in place or removed, having regard to the potential impact on the Oyster River Nature Park, and if the Works are left in place the Works, or part thereof, shall become the property of the Transferor;
- 5.8 In the event that the Transferor does not wish to take over any of the Works to be abandoned in accordance with section 5.7, the Transferee shall remove the Works in their entirety and restore the Right of Way to substantially the same condition as the surrounding natural lands, having regard to the fact that any replanted or revegetated areas will take time to grow to maturity;
- 5.9 No part of the title in fee simple to the Lands of the Transferor shall pass to or be vested in the Transferee under or by virtue of this Agreement, and the Transferor may fully use and enjoy all of the Lands of the Transferor subject only to the rights and restrictions in this Agreement;
- 5.10 That a party who becomes aware of a breach of a term or condition of this Agreement by the other party (the "**Party in Violation**") may provide written notice to the Party in Violation in accordance with section 5.11, and by that notice may require the Party in Violation to correct the breach within two months of the provision of notice, provided that:
- (a) if the breach is of a kind that requires more than two months to correct, the time for correction of the breach shall be extended to such period of time that the Party in Breach reasonably requires for correction of the breach; and
 - (b) if replanting of any vegetation is required to correct the breach, the Party in Breach will have until the start of the next growing season to commence the replanting; and
- 5.11 That any notice required to be given under this Agreement may be given:
- (a) by delivery or registered mail, to the address of the party set out in sub-section 5.11(c), or such other address that such party provides written notice of;
 - (b) by email, to the email address set out in sub-section 5.11(c), or such other email address that such party provides written notice of, provided the party receiving such notice provides an acknowledgement of receipt of delivery by email or other written means;

- (c) if to the Transferor:

Address: _____

Email: _____

If to the Transferee:

Address: _____

Email: _____

6.0 Dispute Resolution

- 6.1 Any dispute that arises between the parties under this Agreement will first be referred to the department heads for the parties who will meet together and attempt in good faith to resolve the dispute.
- 6.2 If a dispute cannot be resolved by the department heads for the parties, then the parties may by mutual agreement:
- (a) appoint a mediator to assist in resolving the dispute;
 - (b) if mediation fails to resolve the dispute, appoint a single arbitrator to resolve the dispute under the *Arbitration Act*; or
 - (c) at any time, refer the dispute to a dispute resolution officer under Division 3 of Part 9 of the *Community Charter*.

7.0 General Provisions

- 7.1 The Transferor acknowledges that (a) these Covenants are enforceable against the Transferor and his successors in title, but (b) the Transferor is not personally liable for breach of these Covenants after the Transferor has ceased to be the owner of the Lands.
- 7.2 If at the date hereof the Transferor is not the sole registered owner of the Lands of the Transferor, this Agreement shall nevertheless bind the Transferor to the full extent of his interest therein, and if he acquires a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests.
- 7.3 Where the expression "Transferor" includes more than one person, all covenants made by the Transferor shall be construed as being several as well as joint with respect to all persons constituting the Transferor.
- 7.4 This Agreement shall continue to benefit and be binding upon the Transferor and Transferee, and their respective heirs, administrators, executors, successors and permitted assigns, as the case may be.
- 7.5 Although the Right of Way under this Agreement is perpetual, the parties agree to meet

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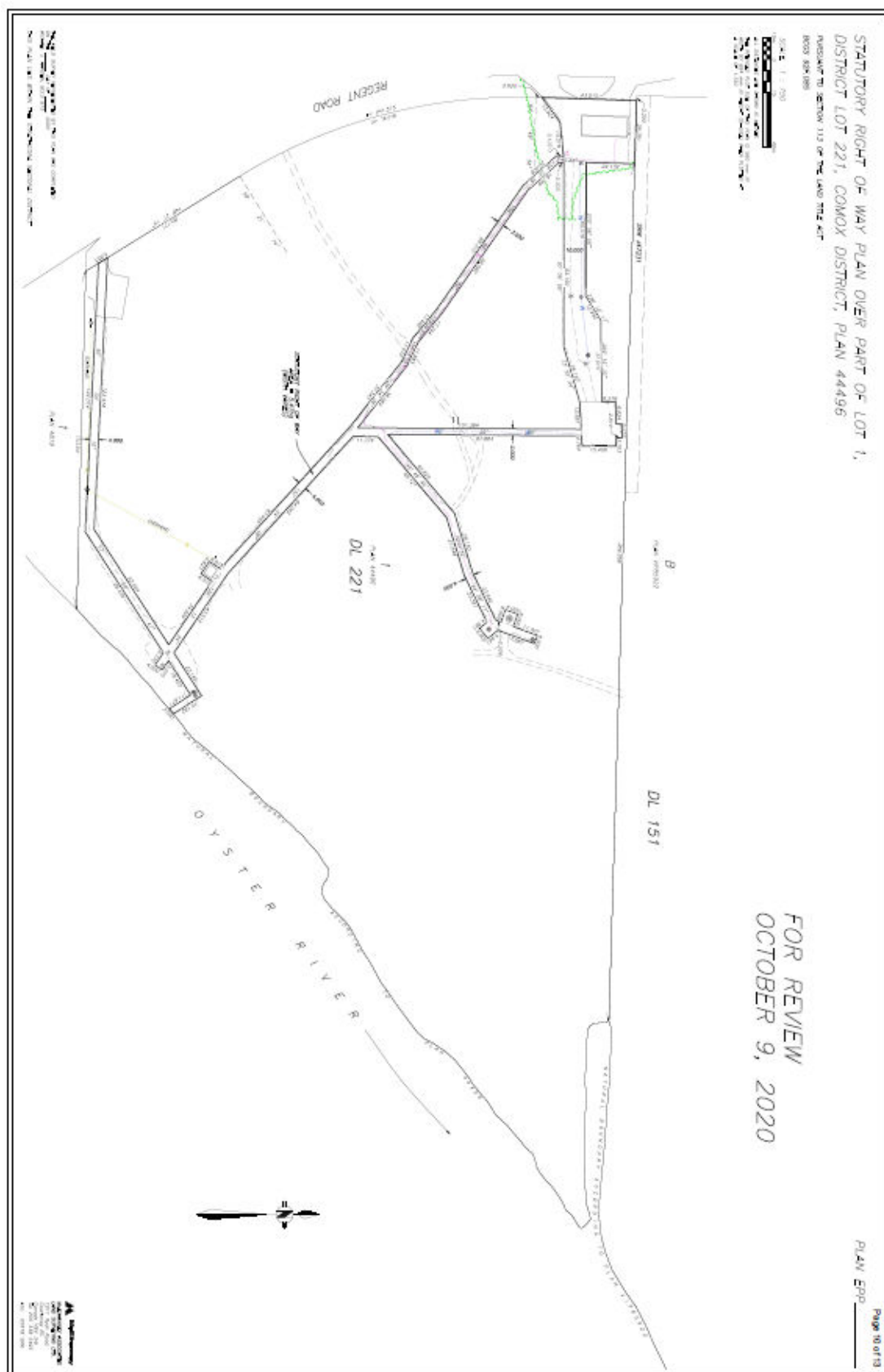
together and to review this Agreement every fifteen years following the date of registration of this Agreement in the Land Title Office, to discuss any amendments that may be necessary or desirable as a result of changing circumstances.

- 7.6** Gender specific terms include both genders and corporations, and the singular and plural forms are interchangeable, according to the context.

The Transferor and Transferee acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached hereto.

Schedule "A"

SRW Plan EPP 80734



Schedule "B"**Transferee's Commitments Re: Access to and Use of the Oyster River Nature Park**

The Transferee agrees to respect and adhere to the following commitments when accessing the Right of Way Area within the Oyster River Nature Park:

1. Any interruption in the public's ability to access and use the Oyster River Nature Park and the Park amenities during the construction and installation or maintenance of the Works shall be kept to a minimum.
2. Use of vehicles within the Right of Way Area shall be kept to a minimum and all reasonable efforts shall be used to minimize the size and environmental impact of the vehicles used.
3. Noise from the construction and installation or maintenance of the Works shall be kept to a minimum.
4. Impacts to birds, animals and their habitat shall be kept to a minimum, and in addition to the requirements of section 4.9(b), the Transferee shall consult with a Qualified Environmental Professional to develop a protocol for access to the Right of Way Area for the Transferee's routine maintenance, operation and inspection of the Works that ensures compliance with this commitment.
5. The public trails, walkways and other park improvements shall be protected from damage.
6. Damaged trails shall be repaired to their original condition in accordance with the Transferor's Type 1 Trail Standard, which is attached as Schedule "C" to this Agreement.
7. All construction and maintenance work within the Right of Way Area shall be planned and implemented in such a way that respects all of the above and the Park amenities.



Schedule "C"
Type 1 Trail Standard

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PARKS AND TRAILS STANDARDS
Design Guidelines and Construction Details

Type 1 Foot Trail Standard

- Plan as high standard, high use walking trail
- Design to accommodate anticipated number of users during peak periods of use
- Provide a base of coarse surface tread, approximately 2 meters (6.6 feet) wide
- Trail surface to be free of obstacles, with a smooth, surfaced tread (if necessary)
- Set maximum 8% grades, preferred average grade no more than 5 %
- Make accessible to wheelchairs
- Provide interpretive signs, benches, viewing, areas where appropriate
- Where applicable, trails may need engineered bridges

