



## BYLAW NO. 502

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### A BYLAW TO AUTHORIZE THE ACQUISITION OF LAND WITHIN ELECTORAL AREA B FOR COMMUNITY PARK PURPOSES

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**WHEREAS** the Regional District has designated land located on Cortes Island as community parkland under the name of Kw'as Park;

**AND WHEREAS** the Regional Board wishes to enter into an agreement for the acquisition of additional land to be incorporated into the said Kw'as Park;

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

#### **Acquisition of Parkland Authorized**

1. The Regional District is hereby authorized to enter into an agreement for the acquisition of real property described as part of Lot 5, Section 6, Cortes Island, Sayward Land District, Plan 11490 containing approximately 0.085 hectares.

#### **Form and Substance**

2. The agreement referred to in section 1 shall substantially comply in form and substance with the agreement set out in Appendix 'A', attached to and forming part of this bylaw.

#### **Addition to Kw'as Park**

3. The real property acquired under the authority of this bylaw shall be included into the boundaries of Kw'as Park, to be held and managed as an integral part of the said Kw'as Park.

#### **Authority to Execute Agreement**

4. The Chair and Corporate Officer shall have full authority to execute the agreement attached hereto, and such other documents as may be necessary to give effect to the objects of this bylaw following its adoption.

#### **Effective Date**

5. This bylaw shall come into effect on the day of its adoption.

**Citation**

6. This bylaw may be cited for all purpose as Bylaw No. 502, being Kw'as Parkland Acquisition Authorization Bylaw 2023.

**READ A FIRST TIME ON THE 14<sup>TH</sup> DAY OF JUNE, 2023**

**READ A SECOND TIME ON THE 14<sup>TH</sup> DAY OF JUNE, 2023**

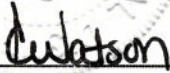
**READ A THIRD TIME ON THE 14<sup>TH</sup> DAY OF JUNE, 2023**

**RECONSIDERED, FINALLY PASSED AND ADOPTED ON THE 14<sup>TH</sup> DAY OF JUNE, 2023**



\_\_\_\_\_

Chair



\_\_\_\_\_

D | Corporate Officer

**APPENDIX 'A'**

**PURCHASE AND SALE AGREEMENT**

THIS AGREEMENT dated for reference \_\_\_\_\_, 2023 is

**BETWEEN:**

**ANDREW IAN FERGUSON  
KELLY-LYNN FERGUSON  
Box 246  
Manson's Landing, B.C. V0P 1K0  
(the "Vendor")**

**AND:**

**STRATHCONA REGIONAL DISTRICT  
990 Cedar Street,  
Campbell River BC V9W 7Z8  
(the "District")**

**WHEREAS:**

- A. The Vendor is the registered owner in fee simple of the Subject Lands;
- B. The District is the registered owner in fee simple of the Adjacent Lands; and
- C. The Vendor wishes to sell, and the District wishes to purchase, the Subject Lands subject to the terms and conditions in this Agreement.

THIS AGREEMENT IS EVIDENCE THAT in consideration of the promises exchanged below and other good and valuable consideration (the receipt and sufficiency of which each party acknowledges), the Vendor and the District agree with each other as follows:

**1. DEFINITIONS**

In this Agreement, in addition to the words defined above:

- (a) **"Adjacent Lands"** means the land owned by the District and located immediately adjacent to the Subject Lands and legal described as Kw'as South Access Trail.
- (b) **"Business Day"** means a day other than a Saturday, Sunday or statutory holiday in British Columbia.

- (c) **"Closing Date"** means the day that is 30 Business Days after the removal of the Conditions Precedent or such other date as the parties may agree in writing.
- (d) **"Conditions Precedent"** means the conditions precedent set out in section 3 of this Agreement.
- (e) **"Contaminants"** means
  - i. as defined in the *Environmental Management Act* (British Columbia), any biomedical waste, contamination, contaminant, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
  - ii. matter of any kind which is or may be harmful to human safety or health or to the environment; or
  - iii. matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Laws.
- (f) **"Vendor Lands"** means the lands legally described as PID: 005-086-990, Lot 5, Section 6, Cortes Island, Sayward District, Plan 11490.
- (g) **"Vendor's Solicitors"** means \_\_\_\_\_.
- (h) **"Environmental Law"** means any past, present or future common law or principle, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution or public or occupational safety or health.
- (i) **"GST"** means any tax levied under Part IX of the *Excise Tax Act* (Canada) as the same may be amended or replaced from time to time, including for certainty, goods and services tax.
- (j) **"LTO"** means the applicable Land Title Office.
- (k) **"Permitted Encumbrances"** means "nil".
- (l) **"Purchase Price"** means \$5,000.00, which amount does not include GST.
- (m) **"District's Solicitors"** means CR Lawyers LLP at Campbell River, 906 Island Highway, Campbell River, B.C, V9W 2C3.



- (n) **"Reference Plan"** means a Reference Plan prepared by a BC Land Surveyor that will, upon deposit with the LTO, subdivide the Vendor Lands to create the Subject Lands as a separate fee simple parcel.
- (o) **"Subject Lands"** means that portion of the Vendor Lands measuring 850 m<sup>3</sup> and immediately adjacent to the Adjacent Lands, as shown in the sketch plan attached to this Agreement as Schedule A.
- (p) **"Transfer"** means a transfer or transfers in registerable form transferring the estate in fee simple of the Subject Lands to the District.

## 2. PURCHASE AND SALE OF SUBJECT LANDS

- (a) The District will purchase from the Vendor, and the Vendor will sell to the District, the Subject Lands, free and clear of all registered liens, charges and encumbrances, except for the Permitted Encumbrances, for the Purchase Price, on the terms and conditions of this Agreement.
- (b) The District will pay the Purchase Price, adjusted in accordance with this Agreement, to the Vendor on the Closing Date, less the Deposit when applicable.
- (c) There will be no adjustments with respect to the Subject Lands.

## 3. CONDITIONS PRECEDENT

- (a) The transaction contemplated by this Agreement is conditional upon the following conditions precedent:
  - i. On or before \_\_\_\_\_, 2023, the District will have satisfied itself as to the environmental condition, title and suitability of the Subject Lands in their absolute discretion.
  - ii. On or before \_\_\_\_\_ 2023, the District will have caused a BC Land Surveyor to prepare the Reference Plan and the Vendor will have approved the Reference Plan.
  - iii. On or before \_\_\_\_\_ 2023, the Reference Plan will have been approved by the approving officer and any other governmental authority whose approval of that plan is required to enable its registration in the LTO.
  - iv. On or before \_\_\_\_\_ 2023, the Reference Plan will have been executed by all required signatories.

The Vendor and the District agree that the condition precedent in subsection (i) is for the benefit of the District and may be waived by the District at the District's sole discretion.

The Vendor and the District agree that the conditions precedent in subsections (ii) through (iv) are for the benefit of both parties and may not be waived. If these conditions precedents are not satisfied within the time provided herein, this Agreement will automatically terminate and the parties will have no further obligations to or rights against each other.

In consideration of \$1.00, which sum is non-refundable, now paid by the District to the Vendor, the receipt and sufficiency of which is hereby acknowledged by the Vendor, the Vendor agrees not to revoke or rescind its acceptance of this Agreement while it remains subject to the condition precedent set out in subsection (i), above.

The parties agree that the satisfaction of the conditions precedent set out in subsection (ii) and (iii), above, are within the sole discretion of the approving officer of the Vendor of Strathcona Regional District, exercised in accordance with applicable enactments, and is not in any way affected by the terms of this Agreement.

#### 4. TRANSFER

(a) **Title and Possession** – On the Closing Date, the Vendor will:

- i. convey the estate in fee simple of the Subject Lands to the District free and clear of all liens, charges and encumbrances except for the Permitted Encumbrances; and
- ii. give vacant possession of the Subject Lands to the District, subject only to the Permitted Encumbrances.

(b) **Consolidation** – The District will cause the Adjacent Lands and the Subject Lands to be consolidated into a single parcel and will deposit the Reference Plan with the LTO on the Closing Date and will take such other steps as may be required to effect and complete such consolidation.

#### 5. DISTRICT'S REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) **District's Representations, Warranties and Covenants** – The District hereby represents and warrants to the Vendor that the following are true and covenants with the Vendor that the following will be true on the Closing Date:

- i. the District has taken all necessary or desirable actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement;
- ii. if the District is registered under the *Excise Tax Act* (Canada) for GST purposes its registration number is \_\_\_\_\_;

- iii. if the District is a corporation, the District is duly incorporated and validly existing under its jurisdiction of incorporation, is in good standing under the legislation governing it and has made all filings required under such legislation; and
- iv. the District has the power and capacity to enter into and carry out the transaction provided for in this Agreement.

**6. DISTRICT'S ACKNOWLEDGEMENTS AND AGREEMENTS**

- (a) **District's Acknowledgements and Agreements** – The District acknowledges and agrees that:
  - i. the Vendor sells and the District purchases the Subject Lands on an "as is" basis and condition;
  - ii. the Vendor has not made any representations, warranties or agreements as to the condition or quality of the Subject Lands, including as to:
    - A. the subsurface nature or condition of the Subject Lands (including soil type, hydrology and geotechnical quality or stability);
    - B. the environmental condition of the Subject Lands (including regarding Contaminants in, on, under or migrating to or from the Subject Lands) or regarding the compliance of the Subject Lands, or past or present activities on it, with any Environment Laws;
    - C. the suitability of the Subject Lands for any particular use or development of the Subject Lands; or
    - D. access to or from the Subject Lands;
  - iii. it is the sole responsibility of the District to satisfy itself with respect to the matters referred to in section 6(a)(ii), including by conducting any reports, tests, investigations, studies, audits and other enquiries that the District, in its sole discretion, considers prudent;
  - iv. the District has not relied, and will not rely, upon any documentation or information regarding the Subject Lands that may have been provided by or on behalf of the Vendor to the District prior to the District's execution of this Agreement or that may be provided following such execution and the District hereby releases the Vendor from any and all liability associated with its use or reliance upon any documentation or information provided at any time to the District by the Vendor or any of its elected and appointed officials, employees, contractors or agents;

- v. the Vendor has not made any representations, warranties or agreements with the District as to whether or not any GST is payable by the District in respect of the sale of Subject Lands to the District.
- (b) **Site Profile** – The District hereby waives delivery by the Vendor of a site disclosure statement under the *Environmental Management Act* (British Columbia).

## 7. CLOSING PROCEDURE

- (a) No later than 5 Business Days before the Closing Date, the District will cause the District's Solicitors to deliver to the Vendor's Solicitors, duly executed by the District as applicable:
- i. the Transfer, to be approved and executed by the Vendor;
  - ii. the Application to Deposit the Reference Plan;
  - iii. the Vendor's Statement of Adjustments, to be approved and executed by the Vendor;
  - iv. a statutory declaration of the Vendor certifying and declaring that the Vendor is not a 'non-resident' within the meaning under the *Income Tax Act* (Canada) and identifying, and consenting to the inclusion of, the Vendor's address and contact telephone number in the District's property transfer tax form for the purchase of the Subject Lands; and
  - v. such other documents and assurances as may be reasonably required by the District or the District's Solicitors, both acting reasonably, to give full effect to the intent and meaning of this Agreement.  
(together, the "**Vendor Documents**").
- (b) On or before the Closing Date, the Vendor will deliver to the District the Vendor Documents duly executed and in registerable form where applicable.
- (c) On or before the Closing Date, the District will pay to the District's Solicitors, in trust, the amount payable under section 2(b) plus, if section 7(g) applies, the amount of any GST payable.
- (d) On the Closing Date, forthwith after payment of the amount under section 7(c) and after receipt from the Vendor's Solicitors of the documents under section 7(b), the District will cause the District's Solicitors to submit the following documents for registration, in the order listed below, in the LTO on a concurrent basis and as an "all or nothing" package for registration:

- i. the Reference Plan and accompanying application to deposit the Reference Plan; and
  - ii. the Transfer.
- (e) Upon the District's Solicitors being satisfied after the deposit of the Subdivision Plan and the Transfer for registration in the LTO that in the normal course of land title office routine, the District will be the registered owner in fee simple of the Subject Lands, subject only to the Permitted Encumbrances, the District will cause the District's Solicitors to deliver to the Vendor's Solicitors by way of WIRE TRANSFER, in trust, the amount payable under section 2(b) plus, if section 7(g) applies, the amount of any GST payable.

The parties agree that all requirements under this section 7(e) are concurrent requirements and that nothing will be deemed complete on the Closing Day until everything required to be paid, executed, delivered and filed on the Closing Date has been paid, executed, delivered or filed and until the District's Solicitors have satisfied themselves as to the District's title under section 7(e).

- (f) Notwithstanding subsections 7(c), (d) and (e), if the District is relying on a new mortgage (the "Mortgage") to finance the Purchase Price, the District, while still required to pay the Purchase Price on the Closing Date, may wait to pay the Purchase Price to the Vendor until after the Transfer and Mortgage documents have been lodged for registration in the LTO, but only if, before such lodging, the District has:
- i. made available for tender to the Vendor that portion of the Purchase Price not secured by the Mortgage;
  - ii. fulfilled all of the Mortgage conditions for funding except lodging the Mortgage for registration; and
  - iii. made available to the Vendor's Solicitors an undertaking from the District's Solicitors to pay the Purchase Price to the Vendor's Solicitors upon the lodging of the Transfer and Mortgage documents and the advance by the mortgagee of the Mortgage proceeds in accordance with the Canadian Bar Association (BC Branch – Real Property Section) standard undertakings.
- (g) **GST (If Buyer Not Registered)** – If on the Closing Date, the District is not registered under the *Excise Tax Act (Canada)* for GST, the District will pay any GST payable under the *Excise Tax Act (Canada)* in respect of the sale of the Subject Lands to the Vendor on the Closing Date.

- (h) **GST (If Buyer Registered)** – If on the Closing Date, the District is registered under the *Excise Tax Act (Canada)* for GST purposes, the District's registration number is \_\_\_\_\_ and the District will pay and remit any GST payable under the *Excise Tax Act (Canada)* in respect of the sale of the Subject Lands under this Agreement, with the District and the Vendor agreeing that the Purchase Price does not include GST. On or before the Closing Date, the District will provide a GST declaration in the form attached as Schedule B to this Agreement.
- (i) **Risk** – The Subject Lands are at the Vendor's risk until 12:01 a.m. on the Closing Date and at the District's risk thereafter.

#### 8. MISCELLANEOUS

- (a) **Fees and Taxes** – The District will pay, as and when due and payable:
- i. any property transfer tax payable under the *Property Transfer Tax Act (British Columbia)* in connection with the sale of the Subject Lands to the District;
  - ii. LTO registration fees in connection with the registration of the Transfer, the Mortgage (if applicable) and the Reference Plan;
  - iii. its own legal fees and disbursements; and
  - iv. any GST payable under the *Excise Tax Act (Canada)* in respect of the sale of the Subject Lands to the Buyer, with the Buyer and the Vendor agreeing that the Purchase Price does not include GST.
- (b) **Preparation of Conveyancing Documents** – The District will, at its expense, prepare all necessary conveyancing documentation, including the Transfer and the application to deposit the Reference Plan.
- (c) **Real Estate Agent** – The District represents and warrants to the Vendor that no real estate agent, or other agents, has assisted the District, or in any way directly or indirectly participated in the making of this Agreement and that no real estate agent or other agent is entitled to any commission or other remuneration in any way in connection with this Agreement or the sale and purchase of the Subject Lands between the District and the Vendor and the District agrees to indemnify and hold the Vendor harmless from and against any such commission or remuneration, in any action, cause of action, or liability relating thereto.
- (d) **Access** – The District, its agents and employees have a licence, exercisable on 24 hours prior written notice to the Vendor, to enter upon the Subject Lands from time to time prior to the Closing Date, at the District's sole risk and expense, for

the purpose of making inspections, surveys, tests and studies of the Subject Lands.  
 The Purchase agrees to:

- i. release and indemnify, defend and hold harmless, the Vendor from and against any and all actions, causes of actions, liability, demands, losses, costs and expenses (including legal fees and disbursements) which the Vendor or any third party may suffer, incur, be subject to or liable for, arising out of or in any way related to or in connection with the exercise by the District of its rights under this section; and
  - ii. leave the Subject Lands in the same condition as that in which the District found the Subject Lands, including by removing any equipment, refuse or other matter brought onto the Subject Lands by the District or its agents or contractors.
- (e) **Time:** Time is of the essence of this Agreement and the transactions contemplated in this Agreement notwithstanding the extension of any of the dates under this Agreement
- (f) **Notice:** Any notice required or permitted to be given under this Agreement will be sufficiently given if delivered personally or if sent by electronic mail as follows:

<b>To the District</b>	<p><b>STRATHCONA REGIONAL DISTRICT</b>                  Campbell River, B.C.</p> <p>WITH COPY TO:</p> <p><b>CR LAWYERS AT Campbell River</b>                  906 Island Highway                  Campbell River, BC, V9W 2C3                  ATTN: Stewart Carstairs                  carstairs@crlawyers.ca</p>
<b>To the Vendor:</b>	<p><b>ANDREW IAN FERGUSON</b>  <b>KELLY-LYNN FERGUSON</b>                  Box 246                  Manson's Landing, B.C. V0P 1K0</p> <p>WITH COPY TO:</p>

- (g) **Further Assurances:** Each of the parties will, at the expense of the other party, execute and deliver all such further documents and do such further acts and things as the other party may reasonably request from time to time to give full effect to this Agreement
- (h) **Tender** – Any tender of documents or money to be made upon a party may be made upon their solicitor.
- (i) **Survival** – The representations, warranties and indemnities contained in sections 6 and 7(c) will survive the completion of the purchase and sale transaction under this Agreement.
- (j) **No Effect on Powers** – This Agreement does not, and nothing herein will:
  - i. affect or limit the discretion, rights, duties or powers of the Vendor or the approving officer for the Vendor under the common law or any statute, bylaw or other enactments;
  - ii. affect or limit the common law or any statute, bylaw or other enactment applying to the District or the Subject Lands; or
  - iii. relive the District from complying with any common law, statute, regulation, bylaw, or other enactments.

Without limiting the foregoing, the District acknowledges and agrees that where the fulfillment of a condition precedent under this Agreement requires that the Council of the Vendor of Tumbler Ridge adopt bylaws or pass resolutions, the adoption of such bylaws and passage of such resolutions is within the absolute and unfettered discretion of the Council and the provisions of this Agreement will not in any way obligate the Council to adopt such bylaws or pass such resolutions or affect Council's discretion with respect thereto.

- (k) **Assignment:** The District may not assign all or any part of this Agreement, or the benefit hereof, without the prior written consent of the Vendor, which may be withheld arbitrarily and without reason.
- (l) **Non-merger:** None of the provisions of this Agreement will merge in the transfer of the Subject Lands or any other document delivered on the Closing Date and the provisions of this Agreement will survive the Closing Date.
- (m) **Interpretation Interpretation** – In this Agreement:
  - i. all dollar amounts referred to in this Agreement are Canadian dollars;

- ii. reference to the singular includes a reference to the plural, and vice versa unless the context requires otherwise;
  - iii. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
  - iv. the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
  - v. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
  - vi. reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
  - vii. reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement and any Schedules to this Agreement form part of this Agreement; and
  - viii. where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".
- (n) **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of the Agreement and contains all of the representations, warranties, covenants and agreements of the respective parties. This Agreement supersedes all prior agreements, memoranda and negotiations between the parties.
- (o) **Benefit** – This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
- (p) **Acknowledgement** – The District acknowledges that having read and fully understood all the terms and conditions of this Agreement, it has had an opportunity to obtain independent legal advice in respect of the terms and conditions of this Agreement and the District confirms that it enters into this Agreement voluntarily.
- (q) **Modification** – This Agreement may not be modified except by an instrument signed in writing by the parties, except that the Closing Date be changed by their agreement through their respective solicitors upon instructions to their solicitors as evidenced promptly thereafter in writing by their solicitors.

- (r) **Governing Law** – This Agreement will be governed by and construed in accordance with the laws of British Columbia.
- (s) **Schedule** – The following are Schedules to this Agreement and form an integral part of this Agreement:
  - Schedule A – Sketch of Subject Lands
  - Schedule B – District’s GST Declaration
- (t) **Counterpart** - This Agreement may be executed in multiple counterparts, each of which is to be deemed an original and all of which together constitute one and the same agreement.

**IN WITNESS WHEREOF** the parties have executed this Agreement on the dates set out below.

**STRATHCONA REGIONAL DISTRICT**  
by its authorized signatories:

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
Date

<p>Signed, Sealed and Delivered in the presence of:</p> <p>_____</p> <p>Witness Signature:</p> <p>_____</p> <p>Print Name:</p> <p>_____</p> <p>Address:</p> <p>_____</p> <p>Occupation:</p> <p>_____</p>	<p>_____</p> <p>Name: <b>ANDREW IAN FERGUSON</b></p> <p>_____</p> <p>Name: <b>KELLY-LYNN FERGUSON</b></p>
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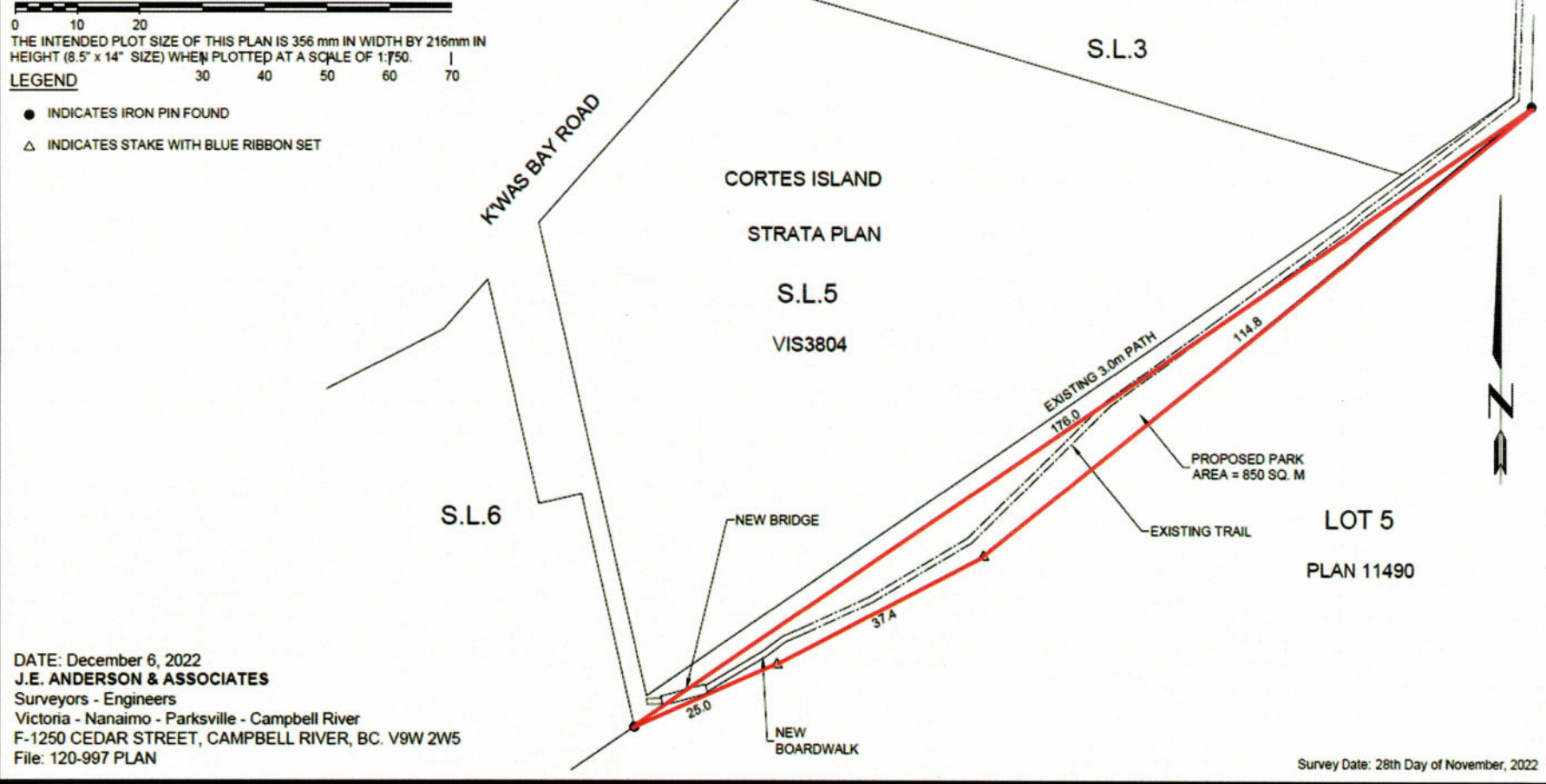
PLAN SHOWING PROPOSED PARK:  
K'WAS PARK TRAIL - PART OF LOT 5, PLAN 11490.

CIVIC ADDRESS: K'WAS BAY ROAD, CORTES ISLAND, BC  
SCALE 1:750 ALL DISTANCES ARE IN METERS AND DECIMALS THEREOF

0 10 20  
THE INTENDED PLOT SIZE OF THIS PLAN IS 356 mm IN WIDTH BY 216mm IN  
HEIGHT (8.5" x 14" SIZE) WHEN PLOTTED AT A SCALE OF 1:750.

LEGEND

- INDICATES IRON PIN FOUND
- △ INDICATES STAKE WITH BLUE RIBBON SET



DATE: December 6, 2022  
J.E. ANDERSON & ASSOCIATES  
Surveyors - Engineers  
Victoria - Nanaimo - Parksville - Campbell River  
F-1250 CEDAR STREET, CAMPBELL RIVER, BC. V9W 2W5  
File: 120-997 PLAN

Survey Date: 28th Day of November, 2022

SCHEDULE B

FORM 221(2)(b)/(c)  
CERTIFICATE AS TO GST REGISTERED STATUS OF PURCHASER  
Paragraphs 221(2) (b) and (c)

FROM: \_\_\_\_\_  
(the "Purchaser")

TO: \_\_\_\_\_  
(the "Seller")

RE: \_\_\_\_\_  
(the "Property").

THE PURCHASER HEREBY CERTIFIES TO THE SELLER PURSUANT TO PARAGRAPHS 221(2)(b) and (c) OF THE EXCISE TAX ACT (THE "ACT") THAT THE PURCHASER:

is registered for GST purposes, its registration number is \_\_\_\_\_  
and the Purchaser will account for the GST payable in respect of the purchase of  
the Property in accordance with the Act.

The Purchaser acknowledges that the Seller is relying on this Certificate in connection with the sale of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of the Act has the meaning assigned to it in Part IX of the Act.

Complete, if Buyer is a corporation:

<p>_____</p> <p>by its authorized signatories:</p> <p>_____</p> <p>Print Name:</p> <p>_____</p> <p>Print Name:</p> <p>_____</p> <p>Date</p>
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