



TOWN OF COMOX

1809 Beaufort Avenue Ph: (250) 339-2202
Comox BC V9M 1R9 Fx: (250) 339-7110

SPECIAL MEETING OF COUNCIL **AGENDA FOR WEDNESDAY NOVEMBER 18, 2015**

We respectfully acknowledge that we live, work and play on the traditional lands of the K'ómoks First Nation ... Gila'kasla ... Hay ch q' a'

Meeting Location: Council Chambers, 1801B Beaufort Avenue, Comox

Call to Order: 6:30 p.m.

Adoption of the Agenda

PUBLIC HEARING TO CONSIDER THE FOLLOWING AGENDA ITEMS:

- 1. REZONING APPLICATION RZ 15-6 / DEVELOPMENT VARIANCE PERMIT APPLICATION DVP 15-6 (1918 HOLLY PLACE):**
 - a. Comox Zoning Amendment Bylaw No. 1814**
 - b. Comox Phased Development Agreement Authorization Bylaw No. 1818: Holly Place**
 - c. Development Variance Permit Application DVP 15-6 (1918 Holly Place)**

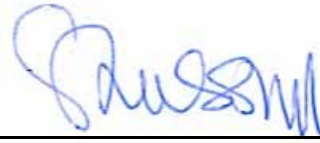
- 2. OTHER ITEMS:**
 - a. Comox Zoning Amendment Bylaw No. 1814**
 - 1. That Comox Zoning Amendment Bylaw No. 1814 be given Third Reading.*
 - 2. That Comox Zoning Amendment Bylaw No. 1814 be Adopted.*
 - b. Comox Phased Development Agreement Authorization Bylaw No. 1818: Holly Place**
 - 1. That Comox Phased Development Agreement Authorization Bylaw No. 1818: Holly Place be given Third Reading.*
 - 2. That Comox Phased Development Agreement Authorization Bylaw No. 1818: Holly Place be Adopted.*
 - c. Development Variance Permit Application DVP 15-6 (1918 Holly Place)**

That Development Variance Permit DVP 15-6 be issued.

TOWN OF COMOX

SPECIAL COUNCIL MEETING (PUBLIC HEARING) AGENDA OF WEDNESDAY NOVEMBER 18,

Adjournment



Deputy Corporate Administrator

1. PUBLIC HEARING – Opening Statement

This Public Hearing is hereby convened pursuant to Section 890 of the Local Government Act for the purpose of hearing representations from those persons who believe that their interest is affected by the proposed Comox Zoning Amendment Bylaw No. 1814, Comox Phased Development Agreement Authorization Bylaw No. 1818 and Development Variance Permit DVP 15-6. The proposed bylaws have received first and second readings, but have not passed third reading or been adopted by Council.

Notices of this Public Hearing have been published in accordance with the requirements of the Local Government Act. Also, a copy of the proposed bylaws and development variance permit application, supporting documentation and any submissions to Council received from the public have been available for inspection at Comox Town Hall as required by the Local Government Act.

To maintain order and to ensure everyone a reasonable opportunity to be heard, I ask that each person wishing to speak first sign the Speaker's List, located at the desk of the Clerk. Once called by the Chair, please begin your presentation to Council by clearly stating your name and address. Please make your presentation as brief as possible. After all have had an opportunity to be heard, anyone wishing to have further input may once again sign the Speaker's List.

Council will not debate with each other or members of the public. Council will not answer questions; we are here to hear from you. Technical questions may be directed by the Chair to the staff.

Everyone will be given a reasonable opportunity to be heard at this meeting. No one will be, or should feel, discouraged or prevented from making his or her views heard. Please refrain from any conduct that would intimidate others or discourage them from speaking.

a. Application Summary

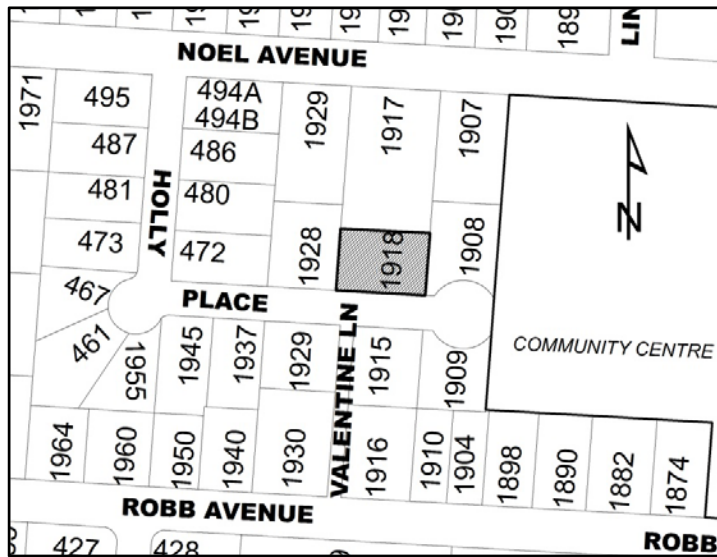
1. Rezoning Application RZ 15-6 (1918 Holly Place)

a) Comox Zoning Amendment Bylaw No. 1814

In general terms, the purpose of Comox Zoning Amendment Bylaw No. 1814 is to amend the zoning of 1918 Holly Place from R1.1 Single-family to R3.2 Single-Family/Secondary Suite – 450m² Parcel.

b) Comox Phased Development Agreement Authorization Bylaw No. 1818:
Holly Place

In general terms, the purpose of Comox Phased Development Agreement Authorization Bylaw No. 1818: Holly Place is to establish a Phased Development Agreement between the developer and the Town of Comox for the provision of amenities (Sustainable construction standards and \$9,500 contribution toward Valentine Lane pathway upgrades, or sidewalk construction on Holly Place, at the discretion of the Town) for the development at 1918 Holly Place. It will limit the Town's ability to change uses, density, and parcel restrictions for a term of 10 years and may be assigned to another developer.



c) Development Variance Permit Application DVP 15-6

In general terms, the purpose of the Development Variance Permit Application is to vary the Town of Comox Subdivision and Development Servicing Bylaw, 1261, as follows:

- to decrease road allowance width from 20.0 metres to 15.0 metres;
- to change the type of curb from roll-over to no curb on an urban road;
- to change the number of sidewalks for a local urban road from both sides to none, and
- to not require underground wiring along the frontage of the subject property.

b. Public Hearing Submissions

Written – To ensure that written submissions are included in the minutes of the meeting, please ensure that all are submitted to the desk of the Clerk before the end of the meeting.

Verbal – The proposed bylaws and development variance permit application are now open for discussion.

c. Close of Public Hearing

I would remind those present that legal considerations prevent the members of Council from considering any representation made after the close of this Public Hearing.

Before closing the Public Hearing, I am going to call three times for any further speakers on any of the matters contained in the proposed bylaws and development variance permit application.

For the first time, is there anyone who wishes to make any further representation?

For the second time, is there anyone who wishes to make any further representation?

For the third time, is there anyone who wishes to make any further representation?

There being no further speakers, I declare this Public Hearing closed.

TOWN OF COMOX

BYLAW NO. 1814

A BYLAW TO AMEND TOWN OF COMOX ZONING BYLAW 1377

WHEREAS Council has the authority under the provisions of the *Local Government Act* to amend the Zoning Bylaw;

NOW THEREFORE the Council of the Town of Comox, in open meeting assembled, enacts as follows:

1. Title

This bylaw may be cited for all purposes as the "Comox Zoning Amendment Bylaw No. 1814"

2. Amendments

- (1) Town of Comox Zoning Bylaw 1377 is hereby amended as follows:

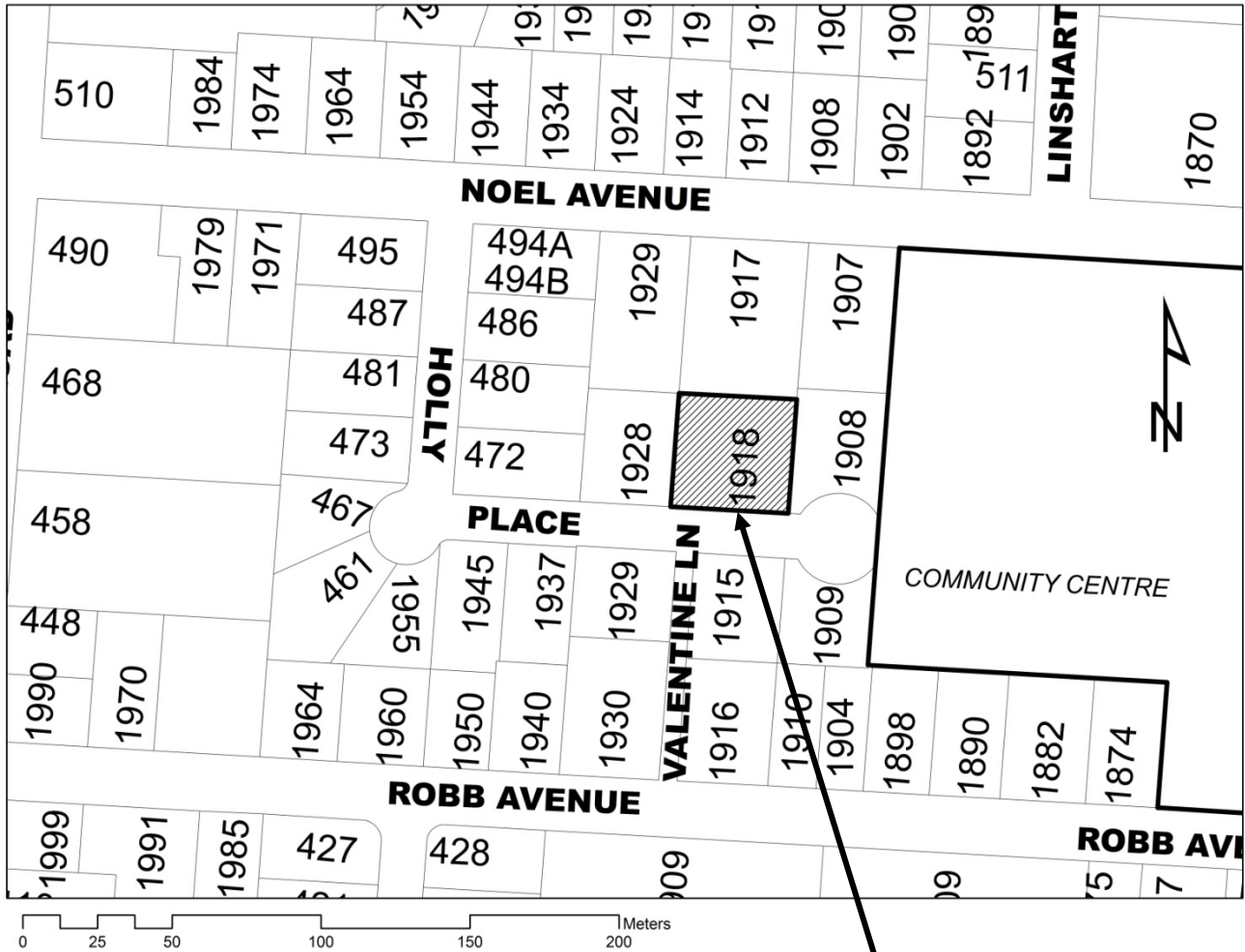
Schedule "B" (the Zoning Map):

by rezoning Parcel A (DD E36197) Lot 2, Section 53, Comox District, Plan 19622, shown shaded on SCHEDULE "1" which is attached to and forms part of this Bylaw, from R1.1 Single Family, to R3.2 Single-Family/Secondary Suite – 450 M² Parcel.

3. Adoption

- | | |
|-----------------------------------|--|
| (1) READ A FIRST time this | 4 th day of November, 2015 |
| (2) READ A SECOND time this | 4 th day of November, 2015 |
| (3) ADVERTISED A FIRST time this | 10 th day of November, 2015 |
| (4) ADVERTISED A SECOND time this | 12 th day of November, 2015 |

**SCHEDULE "1"
SUBJECT PROPERTY**



Subject Property:
 1918 Holly Place, Comox
 Parcel A (DD E36197) of Lot 2 Section 53,
 Comox District, Plan 19622

TOWN OF COMOX

BYLAW NO. 1818

A BYLAW TO ENTER INTO A PHASED DEVELOPMENT

AUTHORIZATION AGREEMENT

WHEREAS:

The Town may by bylaw enter into a phased development agreement pursuant to s. 905.1 of the *Local Government Act*,

NOW THEREFORE the Council of the Town of Comox, in open meeting assembled, having given notice and held a public hearing, enacts as follows:

1. Title

This bylaw may be cited for all purposes as the "Comox Phased Development Agreement Authorization Bylaw No. 1818: Holly Place".

2. Authorization

Council hereby authorizes the Town of Comox to enter into a phased development agreement under s.905.1 of the *Local Government Act*, in the form attached as Schedule "A" to this bylaw.

The Mayor and the Corporate Officer may execute and deliver an agreement with 0982942 B.C. Ltd. Inc., in the form attached as Schedule "A" to this bylaw.

3. Adoption

- | | |
|----------------------------------|--|
| (1) READ A FIRST time this | 4 th day of November, 2015 |
| (2) READ A SECOND time this | 4 th day of November, 2015 |
| (3) ADVERTISED A FIRST time this | 10 th day of November, 2015 |

- (4) ADVERTISED A SECOND time this 12th day of November, 2015
- (5) PUBLIC HEARING HELD this day of , 2015
- (6) READ A THIRD time this day of , 2015
- (7) ADOPTED this day of , 2015

Paul Ives,
Mayor

Richard Kanigan,
Corporate Officer

I HEREBY CERTIFY that this is a true copy of
"Comox Phased Development Agreement Authorization
Bylaw No. 1818: Holly Place"

Shelly Russwurm,
Deputy Corporate Administrator

**BYLAW NO. 1818
SCHEDULE "A"**

PHASED DEVELOPMENT AGREEMENT: HOLLY PLACE

PHASED DEVELOPMENT AGREEMENT: HOLLY PLACE

This Agreement dated for reference the ____ day of _____, 2015 is
AMONG:

TOWN OF COMOX, a municipal corporation, having an address of
1809 Beaufort Avenue, Comox B.C. V9M 1R9

(the "Town")

AND:

0982942 B.C. LTD. INC. a corporation having an office at BOX 3730,
Courtenay B.C. V9N 7P1

(the "Owner")

WHEREAS:

A. The Owner is the registered owner of land legally described as:

PID: 003-607-836

Parcel A (DD E36197) of Lot 2, Section 53, Comox District, Plan 19622

(the "Land");

B. The Owner has applied to the Town for an amendment to Town of Comox Zoning Bylaw 1377 ("Bylaw No. 1377") by way of Comox Zoning Amendment Bylaw No. 1814 (the "Zoning Amendment Bylaw") to permit the development on the Land for residential use;

C. The Owner wishes to provide the following amenities with respect to the development on Land.

a. A cash payment of \$9,500.00, as a contribution toward alternative transportation modes such as walking/cycling, to be used for Valentine Lane upgrades, or the installation of a sidewalk on Holly Place, at the discretion of the Town; and

b. Provision of certification that the single-family dwellings on the Land are built to a minimum Built Green Bronze standard, or equivalent standard, for single-family construction;

E. The Council of the Town has given notice and held a public hearing and has, by bylaw, authorized the execution of this Agreement;

NOW THEREFORE in consideration of the mutual promises set out in this Agreement, the parties agree pursuant to section 905.1 of the *Local Government Act* as follows:

APPLICATION OF AGREEMENT

1. This Agreement applies to the Land, including any parcels of land into which the Land may be subdivided.

BYLAW AMENDMENTS NOT TO APPLY

2. For the term of this Agreement, any amendment or repeal of sections 107.1, 107.2, 107.3, 107.4, 107.5, 107.6, 107.7, 107.8, 107.9, 107.10, 107.11, 107.12 and 107.13 of Bylaw No. 1377 as amended by the Zoning Amendment Bylaw shall not apply to Land, except:
 - (a) as provided in section 905.1(6) of the *Local Government Act*; or
 - (b) to the extent that the owner of any parcel comprising Land agrees in writing that the amendment or repeal shall apply to that land.
3. For certainty, and without limiting section 2, the Town agrees that any development permit or building permit that would be issuable in respect of Land on the date of adoption of the Zoning Amendment Bylaw will, subject to Section 9, be issued throughout the term of this Agreement in accordance with the Comox Official Community Plan, 2011 (Bylaw No. 1685), the Town of Comox Zoning Bylaw No. 1377 (apart from the sections specified in Section 2 to the extent that they may differ from the sections in force following adoption of the Zoning Amendment Bylaw), and Town of Comox Building Bylaw, 2005 ("Bylaw No. 1472"), despite any amendment or repeal of the bylaw provisions specified in section 2 that would otherwise prevent the issuance of the permit.

TERM OF AGREEMENT

4. The term of this Agreement is ten years from the date of adoption of the Zoning Amendment Bylaw.
5. The parties may terminate this Agreement at any time by written agreement of all parties.
6. If the Owner does not comply with all the requirements in Section 8, on which question the opinion of the Town shall be determinative provided that the Town may not act unreasonably, the Town may at its option terminate this Agreement by providing notice in writing to the Owner, provided that the Town has at least two months prior to giving such notice advised the Owner in writing of any alleged failure (the "Default Notice") and the Owner has not corrected the deficiency to the reasonable satisfaction of the Town. The Owner acknowledges the Town's unfettered right to further amend its Official Community Plan and Bylaw No. 1377 to reverse the effect of the Zoning Amendment Bylaw, in the event that the Owner fails to comply with Section 8, and waives any right it would otherwise have to claim, in respect of any such further amendment, that it has established a non-conforming use or a commitment to use Land as permitted by the Zoning Amendment Bylaw.
7. Despite the preceding section, if the default is one that cannot be corrected by the Owner, the Town may give notice of termination at the same time as the notice of default. For

certainty, if the Owner should be a corporation, the following are defaults that cannot be remedied by the Owner:

- (a) if the Owner makes a general assignment for the benefit of creditors; or
- (b) if the Owner institutes proceedings to be adjudicated bankrupt or insolvent or consents to the institution of bankruptcy or insolvency proceedings against the Owner or files an application or petition or answer or consent seeking re-organization or re-adjustment of the indebtedness of the Owner under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province of Canada relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver or receiver-manager; or
- (c) if a receiver, interim receiver, receiver-manager, trustee, liquidator, or custodian of all or substantially all of the property of the Owner or of the Owner's interest in Land is appointed or applied for by the Owner or appointed pursuant to an instrument or by order of a court; or
- (d) if a judgment, decree, or order is entered by a court of competent jurisdiction adjudging the Owner a bankrupt or insolvent or subject to the provisions of the *Bankruptcy and Insolvency Act* or determining that proceedings for re-organization, arrangement, adjustment, composition, liquidation, or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province of Canada relating to bankruptcy or insolvency have been properly instituted otherwise than by the Owner, provided that such judgment, decree or order is not in good faith contested by the Owner; or
- (e) if any application or petition or certificate or order is made or granted for the winding-up or dissolution of the Owner, voluntary or otherwise.

AMENITIES FOR DEVELOPMENT OF LAND

8. The Owner shall, provide the following amenities by the deadlines herein specified:
- (a) within 30 days of the adoption by Council of the Zoning Amendment Bylaw, and prior to any application being made for a Building Permit on the Land, pay to the Town by certified cheque, or bank draft the sum of \$9,500.00.
 - (b) before applying for an occupancy permit in respect of any buildings or portion thereof on the Land:
 - (i) The new single-family residential buildings on Land are to be constructed in accordance with, and will meet or exceed the performance requirements of the "Built Green Bronze" building standard for single-family dwellings, owned by the Built Green Canada and administered by the British Columbia branch of the Canadian Home Builders Association ("Built Green Bronze") in effect as at the date of this Agreement for the residential buildings, or equivalent standard; and

- (ii) the Owner will secure written confirmation from a professional acceptable to the Municipality that residential building on the Land meets or exceeds the “Built Green Bronze” building standard in effect as at the date of this Agreement, and the Owner will provide that written confirmation to the Town.

RESTRICTIONS ON DEVELOPMENT OF LAND

- 9. The Owner shall not, despite the adoption of the Zoning Amendment Bylaw, construct or occupy any building or structure on Land until or unless the Owner’s obligations under Section 8 have been met by the deadlines specified in the subsections of Section 8, and the Town shall be under no obligation to issue any building permit or occupancy permit or other authorization to which the Owner would be entitled were it not for this Section.
- 10. The Owner shall grant to the Town, and register in the applicable land title office against title to Land in priority to all financial liens, charges and encumbrances, a covenant under Section 219 of the *Land Title Act* with respect to the amenities to be provided under section 8.

ASSIGNMENT OF AGREEMENT

- 11. The Owner may assign this Agreement if the Town, acting reasonably, consents in writing to the assignment and the assignee has executed and delivered to the Town a notice of assumption and has entered into an assignment agreement with the Owner assigning the Agreement to the assignee.

GENERAL TERMS AND CONDITIONS

- 12. Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address of which the party has given the other party notice in writing expressly for the purposes of this Agreement.
- 13. Except as expressly set out in this Agreement, nothing in this Agreement shall prejudice or affect the rights and powers of the Town in the exercise of its functions under the *Community Charter* or the *Local Government Act* or any of its bylaws, or those of the Town’s approving officer under the *Land Title Act*, *Strata Property Act* or Bare Land Strata Regulations.
- 14. Any opinion, decision, act or expression of satisfaction or acceptance provided for in this Agreement may be taken or made by the Town’s Municipal Planner, unless expressly provided to be taken or made by another official of the Town, and in the process of exercising any such opinion, decision, act or expression of satisfaction or acceptance, the Town’s Municipal Planner or other such person shall act reasonably.
- 15. No provision of this Agreement is to be considered to have been waived by the Town unless the waiver is expressed in writing by the Town. The waiver by the Town of any

breach by any of the other parties of any provision is not to be construed as or constitute a waiver of any further or other breach.

16. Whenever in this Agreement the Town is required or entitled to exercise any discretion in the granting of consent or approval, or is entitled to make any determination, take any action or exercise any contractual right or remedy, the Town may do so in accordance with the contractual provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice or otherwise, shall have any application in the interpretation or implementation of this Agreement.
17. The Owner shall indemnify and save harmless the Town, its officers, employees, Council members, agents and others (the "Town Representatives") from and against any and all actions, causes of action, liabilities, demands, losses, damages, costs, expenses (including actual fees of professional advisors), costs for the remediation of contamination, fines, penalties and other harm of any kind whatsoever, whether related to death, bodily injury, property loss, property damage, property contamination or consequential loss or damage, suffered or incurred by the Town or any of the Town Representatives, directly or indirectly, arising from, resulting from, connected with or related to:
 - (a) any default or breach of this Agreement by the Owner; and
 - (b) any wrongful act, omission or negligence of the Owner or its directors, officers, employees, agents, contractors, subcontractors, licensees, or others for whom they are responsible in law with respect to the covenants and obligations of the Owner pursuant to this Agreement.
18. This indemnity shall survive any conclusion or other termination of this Agreement, in relation to any matter arising prior to it.
19. If the Owner is delayed or prevented from the performance of any covenant or agreement required hereunder by reason of any unavoidable cause, then performance of such covenant or agreement shall be excused for the period during which such performance is delayed or prevented and the time for the performance thereof shall be extended accordingly. For the purposes of this section, "unavoidable cause" means any event or contingency beyond the reasonable control of the Owner, including without limitation a delay caused by weather conditions, power failure, fire or other casualty, governmental laws, regulations or controls, civil commotion, insurrection, sabotage, invasion, rebellion, military or usurped power, war or war-like operations and acts of God, but excluding a delay caused by lack of funds.
20. Time is of the essence of this Agreement and will remain of the essence notwithstanding the extension of any dates.
21. The Owner acknowledges and agrees that the Town, acting reasonably, may, despite any public law limitations on the withholding of building permits and occupancy permits, withhold building permits and occupancy permits for the purpose of ensuring compliance with and administering the terms of this Agreement.
22. This Agreement may be executed in counterparts.

As evidence of their agreement to be bound by the terms, the parties have caused this Agreement to be executed and delivered under seal by their authorized signatories as of the dates set out below:

TOWN OF COMOX
by its authorized signatories:

Name:

Date: _____

Name:

0982942 B.C. LTD
by its authorized signatories:

Name:

Date: _____

Name: