

# Report

Date January 15, 2025

File:

Subject Proposed Road Closure adjacent to 6478 Paddle Road

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## PURPOSE

To seek approval to close a portion of Paddle Road and obtain authorization to enter into a Land Exchange Agreement with the owners of 6478, 6494, 6495, 6493, and 6489 Paddle Road to dedicate part of their property for a road in exchange for the road closure area.

## BACKGROUND

Cowichan Project 168 Ltd. (INC, No BC1273676) (the Developer) is the owner of roughly 2.17 ha (5.4 acres) of land in the Bell McKinnon Local Area Plan, north of Drinkwater Road. The Developer intends to construct several multi-family dwellings in up to five stages, including four apartment buildings, townhomes, and two-family dwellings. A total of 348 apartments, eight townhouse units, and 10 two-family dwellings are envisioned as part of the project.

The properties include:

6478 Paddle Road (Parcel Identifier: 002-363-313)

6494 Paddle Road (Parcel Identifier: 005-351-464)

6495 Paddle Road (Parcel Identifier: 005-351-499)

6493 Paddle Road (Parcel Identifier: 005-351-472)

6489 Paddle Road (Parcel Identifier: 005-039-029)

At the January 18, 2023, Council meeting, Council adopted Zoning Bylaw 3867 to permit the development subject to several conditions, including:

- Registration of a housing agreement requiring 10% (37 units) to be rental units with 7.5% below market and 2.5% affordable per Canada Mortgage Housing Corporation definition;
- Further road dedication by the Developer to relocate Paddle Road further to the south;
- Restrictions on use until the new public road is completed, including water, storm and sanitary utilities, sidewalks and landscaping;
- All buildings must conform to Step Code 3;
- Provide a minimum electrical rough-in for EV Charging stations for 25% of the below ground parking stalls;
- Vegetation management and maintenance plan of 15 m vegetated ALR buffer; and,
- Provide a financial contribution of \$3,300 per residential unit for parkland acquisition.

The Developer is in the process of advancing the first phases of the project and is seeking to dedicate and construct a reconfigured Paddle Road.

Before that work takes place, North Cowichan must close the existing northern portion of Paddle Road and transfer the lands to the Developer in exchange for the new road alignment and improvements.

## DISCUSSION

To meet the obligations of the Development Covenant related to subdivision and roads, North Cowichan is to close 832 m<sup>2</sup> (8,959 sq ft) of North Paddle Road. In exchange, the Developer will dedicate land shown on the January 25, 2024, sketch plan prepared by Kenyon Wilson, included in Attachment 1 and described as follows:

- (a) the approximately 2.4 m wide area, comprising approximately 73 m<sup>2</sup> that covers the portion of the lands labelled "Z" on Attachment 1;
- (b) the approximately 5.0 m wide area, comprising approximately 328 m<sup>2</sup> that covers the portion of the lands labelled "Y" on Attachment 1;
- (c) the 15.0 m wide area, comprising approximately 1,291 m<sup>2</sup> that covers the portions of the lands labelled "W" on Attachment 1; and,
- (d) the approximately 131 m<sup>2</sup> area that covers the portion of the lands labelled "X" as shown on Attachment 1.

The Developer will bear the costs related to the closure of Paddle Road, including but not limited to the preparation of the survey plans, capping of services and legal and filing fee.

North Cowichan's legal counsel, Young Anderson, has prepared a separate Road Exchange Agreement that sets out the agreement above (Attachment 2).

### *Road Closure Application*

The Developer proposes to close 832 m<sup>2</sup> of municipal-owned road and, in exchange, dedicate 1,824 m<sup>2</sup> for road, as shown in Attachment 1. Accordingly, as the amount of land being dedicated for road versus road closure is greater, no compensation issues exist with the proposed exchange.

Staff have reviewed the proposed road closure against all municipal standards and confirmed that this road right-of-way at Paddle Road is deemed surplus to municipal requirements. Staff are seeking Council's authorization of the Road Closure and Land Exchange Agreement and for Council to provide first and second readings to "Road Closure and Removal of Highway Dedication Bylaw No. 3991, 2025" (Attachment 3).

### *Next Steps*

Council is being asked to initiate the Road Closure process by providing first and second readings. Should Council proceed, the next steps anticipated are:

- The Mayor and Corporate Officer will sign the Road Exchange Agreement;
- A Notice of Disposition and Intention to Close a portion of Paddle Road will be advertised to the Public;
- At third Reading where the public can provide their feedback to Council;

- Following third Reading, the bylaw is sent to the Ministry of Transportation and Traffic for sign off ;
- The bylaw is brought back to Council for adoption; and,
- The plans can be registered in the Land Title Office following adoption of the bylaw.

## OPTIONS

### 1. **(Recommended Option)** THAT Council:

- (1) Authorize the road closure and disposition of a portion of Paddle Road and direct staff to enter into a Road Closure and Land Exchange Agreement; and,
  - (2) Give first and second reading to Road Closure and Removal of Highway Dedication Bylaw No. 3991, 2025 (to provide for highway closure and dedication removal of a portion of Paddle Road adjacent to 6493 and 6489 Paddle Road).
- Advantages: By providing approval for the road closure and land exchange for the road dedication area, the road dedication requirements will be met, and the Developer can continue developing the property as proposed. Staff will publish a notice of road closure, removal of highway dedication, and proposed property disposition as required by sections 26, 40, and 94 of the *Community Charter*.
  - Disadvantages: None identified.
  - Financial Implications: There are no financial implications for North Cowichan. The Developer has agreed to pay the legal and surveying costs and half of the costs to publish the required notices.

### 2. THAT Council deny the road closure and disposition of a portion of Paddle Road.

- Advantages: None identified.
- Disadvantages: The Developer will not meet the road dedication requirements that are part of the development covenant Council requested through the rezoning bylaw amendment process.
- Financial Implications: If Council denies the road closure, North Cowichan may be subject to litigation from the Developer.

## RECOMMENDATION

### THAT Council:

- (1) Authorize the road closure and disposition of a portion of Paddle Road and direct staff to enter into a Road Closure and Land Exchange Agreement; and,
- (2) Give first and second reading to Road Closure and Removal of Highway Dedication Bylaw No. 3991, 2025 (to provide for highway closure and dedication removal of a portion of Paddle Road adjacent to 6493 and 6489 Paddle Road).

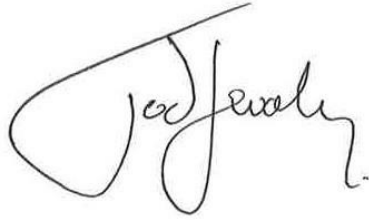
Report prepared and reviewed by:



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Bill Corsan  
General Manager, Corporate Services and Community  
Relations

**Approved to be forwarded to Council:**



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Ted Swabey  
Chief Administrative Officer

Attachments:

- (1) Sketch Plan
- (2) Road Exchange Agreement
- (3) Road Closure and Removal of Highway Dedication Bylaw No. 3991, 2025



## ROAD EXCHANGE AGREEMENT

THIS AGREEMENT dated for reference January \_\_\_, 2025 is made

BETWEEN:

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN**

7030 Trans-Canada Highway  
Duncan, British Columbia  
V9L 6A1

(the “**District**”)

AND:

**KERKHOFF (COWICHAN) LIMITED PARTNERSHIP**

15000 – 13450 102 Avenue  
Surrey, British Columbia  
V3T 5X3

(the “**Owner**”)

WHEREAS:

- A. Cowichan Project 168 Ltd. (the “**Nominee**”) is the registered owner in fee simple and Kerkhoff (Cowichan) Limited Partnership (the “**Owner**”) is the beneficial owner of those parcels of land located in the District of North Cowichan, British Columbia, legally described as follows:

Parcel Identifier: 002-363-313

Legal Description: LOT 1, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 25749

Parcel Identifier: 005-039-029

Legal Description: LOT 1, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 11460

Parcel Identifier: 005-351-464

Legal Description: LOT 1, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 10591

Parcel Identifier: 005-351-472

Legal Description: LOT 2, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 10591

Parcel Identifier: 005-351-499

Legal Description: LOT 3, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 10591

(the “**Lands**”);

- B. The District has ownership and possession of the dedicated road created by the deposit of Plan 10591, commonly known as North Paddle Road, and which provides road access to the Lands;

- C. The Owner wishes to develop the Lands and entered a development covenant with the District as a condition of a zoning amendment granted by the District to ensure that the development of the Lands proceeded in the manner set out therein;
- D. Prior to subdividing the Lands as a part of this development project, the development covenant requires the closing of a part of North Paddle Road (the "Road Closure Area"), dedication of certain portions of the Lands as public road (the "Road Dedication Area") and the exchange of the Road Closure Area and the Road Dedication Area between the District and the Owner; and
- E. The District and the Owner wish to enter into an agreement to affect the road closure of the Road Closure Area, road dedication of the Road Dedication Area and exchange of the Road Closure Area for the Road Dedication Area between the parties.

## ARTICLE 1

### DEFINITIONS & INTERPRETATION

#### 1.1 Definitions.

In this Agreement the following terms have the following meanings:

**"Agreement"** means this Road Exchange Agreement between the District and the Owner.

**"Approving Officer"** means the individual appointed as the Approving Officer for the District pursuant to the *Land Title Act* (British Columbia).

**"Beneficial Transfer"** means a transfer transferring beneficial title of the Road Closure Area to the Owner.

**"Business Day"** means a day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia.

**"Completion Date"** means the date fourteen (14) days after the later of the date that all of the conditions precedent under Article 5 have been satisfied.

**"Consolidated Parcels"** means the three legal parcels created by registration of the Road Dedication Plan as substantially shown in bold and labelled as "Lot A", "Lot B" and Lot "C" on the sketch plan of subdivision attached hereto as Schedule "A".

**"Contaminants"** means:

- (a) as defined in the *Environmental Management Act*, any biomedical waste, contamination, contaminant, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
- (b) matter of any kind which is or may be harmful to human safety or health or to the environment; or

- (c) 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.

**“Covenant Discharge”** means the Form C discharge that is necessary to discharge covenant CA7296736 from those lands legally described as PID: 005-351-499, LOT 3, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 10591.

**“Discharges”** means all registrable releases and partial releases of liens, charges or encumbrances required to be registered in order to clear title to the Road Closure Area and the Road Dedication Area except for the Permitted Encumbrances.

**“District”** means the Corporation of the District of North Cowichan, a British Columbia municipality created and existing under the *Local Government Act* (British Columbia) and the *Community Charter* (British Columbia).

**“District Solicitors”** means Young Anderson Barristers & Solicitors.

**“Environmental Laws”** 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.

**“Extension Agreement”** means any agreements required to extend necessary charges over the Road Closure Area.

**“Lands”** means collectively those parcels located within the boundaries of the District that are legally described as follows:

- (a) Parcel Identifier: 002-363-313  
Legal Description: LOT 1, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 25749
- (b) Parcel Identifier: 005-039-029  
Legal Description: LOT 1, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 11460
- (c) Parcel Identifier: 005-351-464  
Legal Description: LOT 1, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 10591
- (d) Parcel Identifier: 005-351-472  
Legal Description: LOT 2, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 10591
- (e) Parcel Identifier: 005-351-499  
Legal Description: LOT 3, SECTION 4, RANGE 5, SOMENOS DISTRICT, PLAN 10591

**“LTO”** means the Victoria Land Title Office.



**“Nominee”** means Cowichan Projects 168 Ltd., a British Columbia company duly incorporated and existing under the *Business Corporations Act* (British Columbia), which is the registered owner of the Lands.

**“Owner”** means Kerkhoff (Cowichan) Limited Partnership, a limited partnership validly existing under the *Partnerships Act* (British Columbia) of which Kerkhoff (Cowichan) GP Ltd. is the general partner and which is the beneficial owner of the Lands.

**“Owner’s Solicitors”** means McQuarrie Hunter LLP.

**“Permitted Encumbrances”** means the reservations and exceptions contained in Section 50 of the *Land Act*.

**“Road Closure Area”** means that portion of the 13.52 m wide area, comprising approximately 832 m<sup>2</sup> that covers the portions of the lands labelled “Closed Road” on the survey plan prepared by Kenyon Wilson Professional Land Surveyors, and dated January 8, 2025 attached hereto as Schedule “B”.

**“Road Closure Bylaw”** means a bylaw of the District closing to traffic the Road Closure Area and removing its dedication as road pursuant to section 40 of the *Community Charter* (British Columbia).

**“Road Closure Plan”** means the survey plan that is necessary to affect the closure of the municipal road in the Road Closure Area.

**“Road Dedication Area”** means collectively that portion of:

- (a) the 2.4 m wide area, comprising approximately 73 m<sup>2</sup> that covers the portion of the lands labelled “Z” as shown in the sketch plan prepared by Kenyon Wilson, Professional Land Surveyors, and dated January 25, 2024 attached hereto as Schedule “A”;
- (b) the 5.0 m wide area, comprising approximately 328 m<sup>2</sup> that covers the portion of the lands labelled “Y” as shown in the sketch plan prepared by Kenyon Wilson, Professional Land Surveyors, and dated January 25, 2024 attached hereto as Schedule “A”;
- (c) the 15.0 m wide area, comprising approximately 1,291 m<sup>2</sup> that covers the portions of the lands labelled “W” in the sketch plan prepared by Kenyon Wilson Professional Land Surveyors, and dated January 25, 2024 attached hereto as Schedule “A”; and
- (d) the approximately 131 m<sup>2</sup> area that covers the portion of the lands labelled “X” as shown in the sketch plan prepared by Kenyon Wilson, Professional Land Surveyors, and dated January 25, 2024 attached hereto as Schedule “A”.

**“Road Dedication & Consolidation Plan”** means the survey plan that is necessary to affect the dedication of the Road Dedication Area as dedicated road and the consolidation of the Road Closure Area with the Consolidated Parcels.

**“Statutory Right of Way Plan”** means the survey plan needed to register a statutory right of way on Lot “A” and Lot “B” of the Consolidated Lots that will be substantially in the form attached hereto as Schedule “C”;

**“Transfer”** means a transfer in registrable form transferring the Road Closure Area to the Nominee.

**“Utility SRW’s”** means statutory rights of way for any public utilities (including District utilities) with works currently in place on the Road Closure Area or who have notified the District that the closure and disposition of the Road Closure Area will negatively affect their undertaking.

**1.2 Schedules.** The following schedules are an integral part of this Agreement:

**Schedule A** – Sketch Plan

**Schedule B** – Road Closure Plan

**Schedule C** – Sketch Statutory Right of Way Plan

**1.3 Interpretation.**

- (a) all dollar amounts referred to in this Agreement are Canadian dollars;
- (b) reference to the singular includes reference to the plural, and vice versa, unless the context requires otherwise;
- (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) 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; and
- (f) 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”.

## **ARTICLE 2**

### **LAND EXCHANGE**

**2.1 Land Exchange.**

- (a) On the Completion Date, the Nominee will dedicate the Road Dedication Area as a public road by deposit of the Road Dedication Plan and give vacant possession to the District.
- (b) On the Completion Date, the District will transfer beneficial title to the Road Closure Area to the Owner and legal title to the Road Closure Area to the Nominee, free and clear of all registered liens, charges and encumbrances except for the Permitted Encumbrance.

**2.2 Acknowledgement of Valuation.** The parties acknowledge and agree that the Road Dedication Area and the Road Closure Area have the same value and that no adjustment on account of

value is required as between the parties in respect of the exchange of the Road Dedication Area and the Road Closure Area. For the purpose of stating market value on the Transfer and on the property transfer tax form, the Road Closure Area will be stated to have a market value of \$25,000.

**2.3 Consideration.** The parties each acknowledge and agree that as to consideration, the exchange of their respective interests in the Road Closure Area and the Road Dedication Area is sufficient and represents fair market value for the lands exchanged pursuant to this Agreement.

**2.4 Preparation of Survey Plans.** The Owner will be responsible for, at its own cost and expense, arranging for:

- (a) preparation of the Road Closure Plan;
- (b) preparation of the Road Dedication & Consolidation Plan; and
- (c) preparation of the Statutory Right of Way Plan.

which shall be in a form that is acceptable to the Owner and the District acting reasonably.

**2.5 Fees & Taxes.** The Owner will pay, as and when due and payable:

- (a) any property transfer tax payable under the *Property Transfer Tax Act* (British Columbia) in connection with the transfer of the Road Dedication Area to the Nominee (as registered owner) and the Owner (as beneficial owner);
- (b) all costs of the closure and removal of the road dedication contemplated by this Agreement including without limitation, all legal, survey, and administrative costs incurred by the District in connection with the closure and removal of the road dedication;
- (c) all costs for road dedication contemplated by this Agreement including without limitation all legal, survey, and administrative costs incurred in connection with the road dedication;
- (d) LTO registration fees in connection with the registration of the closing documents set out herein;
- (e) its own legal fees and disbursements; and
- (f) any GST payable under the *Excise Tax Act* (Canada) in respect of the transfer of the Road Dedication Area to the Nominee and the Owner.

**2.6 Access to Road Closure Area.** Subject always to District bylaws regarding the carrying out of work in District roads, the Owner, its agents, employees and contractors have a licence, exercisable on twenty-four (24) hours written notice to the District, to enter upon the Road Closure Area from time to time prior to the Completion Date, at the Owner's sole risk and expense, for the purposes of making inspections, surveys, tests and studies of the Road Closure Area. The Owner agrees to:

- (a) release and indemnify, and hold harmless, the District from and against any and all actions, cause of actions, liability, demands, losses, costs, and expense (including legal fees and disbursements) which the Owner or any third party may sustain, incur, be

subject to or liable for, arising out of or in way related to or in connection with the exercise by the Owner of its rights under this section;

- (b) leave the Road Closure Area in the same condition as that in which the Owner found the Road Closure Area; and
- (c) pay the costs for any damage caused to the Road Closure Area by the Owner, its employees, agents and contractors.

**2.7 Access to the Road Dedication Area.** The District, its agents, employees and contractors have a licence, exercisable on twenty-four (24) hours written notice to the Owner, to enter upon the Road Dedication Area from time to time prior to the Completion Date, at the District's sole risk and expense, for the purposes of making inspections, surveys, tests and studies of the Road Dedication Area. The District agrees to:

- (a) release and indemnify, and hold harmless, the Owner from any against any and all actions, cause of actions, liability, demands, losses, costs, and expense (including legal fees and disbursements) which the Owner or any third party may sustain, incur, be subject to or liable for, arising out of or in wany way related to or in connection with the exercise by the District of its rights under this section;
- (b) Leave the Road Dedication Area in the same condition as that in which the District found the Road Dedication Area; and
- (c) pay the costs for any damage caused to the Road Dedication Area by the District, its employees, agents and contractors.

**2.8 GST & Self Assessment.** The District is exempt from the payment of GST. The Owner will self-assess any GST payable in connection with the acquisition of the Road Closure Area and will provide the District with a certificate on the Completion Date confirming the same.

### **ARTICLE 3**

**3.1 Completion.** The completion of the transfer of the Road Closure Area and the Road Dedication Area contemplated by this Agreement will occur on the Completion Date or such other date as may be agreed to in writing by the District and the Owner.

**3.2 Possession.**

- (a) The District will deliver to the Owner vacant possession of the Road Closure Area free from all encumbrances other than the Permitted Encumbrances on the Completion Date.
- (b) The Owner will deliver to the District vacant possession of the Road Dedication Area free from all encumbrances other than the Permitted Encumbrances on the Completion of Subdivision Date.

**3.3 Adjustments.** There will be no adjustments in respect of the transfer of the Road Closure Area and Road Dedication Area contemplated by this Agreement.

**3.4 Risk.**

- (a) The Road Closure Area will be at the District's risk until the completion of the Transfer on the Completion Date and thereafter at the risk of the Owner.
- (b) The Road Dedication Area will be at the Owner's risk until the completion of the dedication of the Road Dedication Area as road on the Completion Date and thereafter at the risk of the District.

## **ARTICLE 4**

### **COVENANTS, REPRESENTATIONS AND WARRANTIES**

**4.1 Basic Covenants.**

- (a) The District covenants and agrees with the Owner that the District will:
  - i. deliver to the Owner the original or a true and complete copy of any other documents or information which is relevant to the operation and ownership of the Road Closure Area, which is in the possession or control of the District and which is requested from time to time by the Owner, acting reasonably;
  - ii. from the date this Agreement is executed and delivered by both parties until the Completion Date, use its reasonable commercial efforts to preserve the Road Closure Area intact as a prudent owner would; and
  - iii. cancel and terminate all contracts which relate to the use or operation of the Road Closure Area, effective as of or before the Completion Date.
- (b) The Owner covenants and agrees with the District that the Owner will:
  - i. deliver to the District the original or a true and complete copy of any other document or information which is relevant to the operation and ownership of the Road Dedication Area, which is in the possession or control of the Owner and which is requested from time to time by the District, acting reasonably;
  - ii. from the date this Agreement is executed and delivered by both parties until the Completion Date, use its reasonable commercial efforts to preserve the Road Dedication Area intact as a prudent owner would; and
  - iii. cancel and terminate all contracts which relate to the use or operation of the Road Dedication Area, effective as of or before the Completion Date;

**4.2 Representations and Warranties.**

- (a) The District represents and warrants to the Owner as representations and warranties that are true as of the date hereof and will be true at the Completion Date and that are to

continue and to survive (and not merge in) the purchase of the Road Closure Area by the Owner, that, subject to the limitations, if any, expressed herein:

- i. the District will have good and marketable legal and beneficial title to the Road Closure Area on the Completion Date, free and clear of all encumbrances other than the Permitted Encumbrances; and
- ii. neither the District entering into this Agreement nor the performance by the District of the terms hereof will result in the breach of or constitute a default under any term or provision of any instrument, document, agreement, statute, bylaw, regulation, or encumbrance to which any of the District or the Road Closure Area is bound or subject or which would result in the creation of any encumbrance on the Road Closure Area.

(b) The Owner represents and warrants to the District as representations and warranties that are true as of the date hereof and will be true at the Completion Date and that are to continue and to survive (and not merge in) the purchase of the Road Dedication Area by the District, that, subject to the limitations, if any, expressed herein:

- i. the Owner 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. the Owner is a limited partnership validly existing under the laws of British Columbia, has made all required filings under the *Partnerships Act* (British Columbia), is duly qualified to own and sell the Road Dedication Area and has full power and authority to enter into this Agreement and to carry out the transactions contemplated herein;
- iii. Kerkhoff (Cowichan) GP Ltd., being the general partner of the Owner, is duly incorporated and validly existing in the Province of British Columbia, is in good standing and has made all filings required under the *Business Corporations Act* (British Columbia);
- iv. the Owner is the beneficial owner of the Lands;
- v. the Nominee is duly incorporated and validly existing in the Province of British Columbia, is in good standing and has made all filings required under the *Business Corporations Act* (British Columbia);
- vi. the Nominee is the registered owner of the Lands as nominee, agent and bare trustee for the Owner;
- vii. the Owner is registered under the *Excise Tax Act* (Canada) for the purposes of GST and the Owner's registration number is 799684667RT000;
- viii. neither the Owner nor the Nominee is a "non-resident" of Canada within the meaning of the *Income Tax Act* (Canada);

- ix. the Owner has the authority and capacity to enter into and carry out the transactions provided for in this Agreement; and
- x. there are no tenancies or other interests affecting title to the Road Dedication Area.

#### 4.3 Site Disclosure Statement

- (a) The District hereby waives any requirement for the Owner to provide to the District a “site disclosure statement” for the Road Dedication Area under the *Environmental Management Act* (British Columbia) or the regulations thereto.
- (b) The Owner hereby waives any requirement for the District to provide to the Owner a “site disclosure statement” for the Road Closure Area under the *Environmental Management Act* (British Columbia) or the regulations thereto.

#### 4.4 As-Is, Where-Is.

- (a) the District is purchasing the Road Dedication Area and entering into this Agreement relying upon its own inspections and the representations, warranties and covenants of the Owner specifically set out herein and that there are no representations, warranties, guarantees, agreements or conditions, whether direct or collateral, or express or implied, which induced the District to enter into this Agreement or on which reliance is placed by the District, or which affects this Agreement or the Road Exchange Area, other than as specifically set out in this Agreement;
- (b) the Owner is purchasing the Road Closure Area and entering into this Agreement relying upon its own inspections and the representations, warranties and covenants of the District specifically set out herein and that there are no representations, warranties, guarantees, agreements or conditions, whether direct or collateral, or express or implied, which induced the Owner to enter into this Agreement or on which reliance is placed by the Owner, or which affects this Agreement or the Road Closure Area, other than as specifically set out in this Agreement; and
- (c) for certainty, the parties acknowledge that neither has made any representations warranties or agreements as to the condition or quality of the Road Closure Area and Road Dedication Area, including as to:
  - i. the subsurface nature or conditions;
  - ii. the environmental condition (including regarding Contaminants in, on, or under or migrating to or from the Road Closure Area and Road Dedication Area) or regarding compliance, or past or present activities on these lands, with any Environmental Law; and
  - iii. the suitability for intended use for or development of these lands.

#### 4.5 Due Diligence. It is the sole responsibility of the parties to satisfy themselves with respect to the due diligence for the Road Closure Area and Road Dedication Area including by conducting any

investigations or tests, commissioning any reports, studies, audits and carrying out other enquiries that the parties in their sole discretion consider prudent.

- 4.6 Release.** The parties assume and are solely responsible for, and release one another (including their elected and appointed officials, directors, shareholders, employees, contractors and agents) from and against any and all actions, causes of action, liabilities, demands, claims, losses, damages, costs (including remediation costs as defined in the *Environmental Management Act* (British Columbia), the cost of comply with any Environmental Laws and consultant and legal fees, costs and disbursements, expenses, fines and penalties whether occurred, incurred, accrued or caused before, on or after the Completion ate, which have arisen out of or in any way relate to or in connection with the Road Closure Area and Road Dedication Area, including:

- (a) the presence of any Contaminants in, on, under or about the Road Closure Area and Road Dedication Area as of the Completion Date; and
- (b) any error or inaccuracy in any of any documents and/or materials delivered by or made available by the parties (except to the extent that the parties specifically warrant the accuracy thereof in this Agreement).

## ARTICLE 5

### CONDITIONS PRECEDENT

- 5.1 Conditions Precedent.** The transactions contemplated by this Agreement are conditional upon the fulfillment of the following conditions:
- (a) on or before February 14, 2025, the Road Closure Bylaw will have been submitted to the Ministry of Transportation & Infrastructure and any other governmental authorities whose approval is required prior to the District's Council adopting the Road Closure Bylaw;
  - (b) on or before March 14, 2025, the Council of the Corporation of the District of North Cowichan, in its sole discretion, will have adopted the Road Closure Bylaw.
  - (c) On or before March 31, 2025, the Owner will have complied with all of the requirements of the Approving Officer that are required for the approval of the Road Dedication and Consolidation Plan and will have submitted the Road Dedication and Consolidation Plan to the Approving Officer and any other governmental authorities and chargeholders whose approval is required prior to filing the Road Dedication and Consolidation Plan in the Land Title Office.
- 5.2 Satisfaction of Conditions Precedent.** The District and the Owner agree that the conditions precedent above are for the benefit of both the District and the Owner and may not be waived. If those conditions are not satisfied by the date specified (as may be extended by the parties) then this Agreement is at an end and each of the parties have no further obligations to, nor rights against, the other in respect of this Agreement.
- 5.3 Extensions.** The District or the Owner may extend by up to sixty (60) days the date by which a conditions precedent outlined in sections 5.1(a), 5.1(b) and 5.1(c) must be satisfied by providing written notice to the other party of such extension or before such applicable date. For certainty,



any date set out in sections 5.1(a), 5.1(b) and 5.1(c) may only be extended one time under this section.

## **ARTICLE 6**

### **PREPARATION OF CLOSING DOCUMENTS**

#### **6.1 Preparation of Closing Documents.**

- (a) The Owner will, at its expense, prepare all necessary conveyancing documents, including the Transfer, the Beneficial Transfer and the application to deposits for the Road Closure Plan and Road Dedication & Consolidation Plan.
- (b) The District will prepare all documentation necessary to accompany the Road Closure Bylaw, including the Form 17's and any Utility SRWs in favour of the District, aside from the Road Closure Plan, which shall be prepared by the Owner and approved by the District.
- (c) The Owner must cause all charge holders to execute the application to deposit plans for the Road Dedication & Consolidation Plan to affect the extension of any charges over the Road Closure Area including by preparing and entering any Extension Agreements that may be required to extend the charges over the Road Closure Area.

#### **6.2 Delivery of Closing Documents by the Owner.**

- (a) No later than five (5) Business Days before the Completion Date the Owner will cause the Owner's Solicitor to deliver to the District's Solicitor:
  - i. the Transfer;
  - ii. the Beneficial Transfer;
  - iii. the GST Declaration, duly executed by the Owner;
  - iv. a statutory declaration of a director of Kerkhoff (Cowichan) GP Ltd., being the general partner of the Owner, certifying that the Owner is not non-resident within the meaning under the *Income Tax Act* (Canada);
  - v. a statutory declaration of a director of the Nominee certifying that the Nominee is not non-resident within the meaning under the *Income Tax Act* (Canada);
  - vi. a beneficiary authorization and charge agreement, duly executed by the Owner and the Nominee, under which the Owner agrees to be bound by the terms of the Utility SRW's, if any;
  - vii. the Covenant Discharge;
  - viii. the Road Dedication & Consolidation Plan (with associated application to deposit);

- ix. the Statutory Right of Way Plan (with associated application to deposit); and
  - x. the Extension Agreements, if any.
- (b) Before the Completion Date, the District will cause the District's Solicitor to deliver to the Owner's Solicitor on undertakings satisfactory to the District's Solicitor, acting reasonably:
- i. the Transfer;
  - ii. the Beneficial Transfer;
  - iii. a certified copy of the Road Closure Bylaw and Road Closure Plan;
  - iv. a Form 17 to raise title to the Road Closure Area;
  - v. a Form 17 to apply to cancel the Province's right of resumption in the Road Closure Area;
  - vi. the Covenant Discharge;
  - vii. the beneficiary authorization and charge agreement, if required;
  - viii. the Utility SRW's, if any;
  - ix. the property tax return; and
  - x. the Extension Agreements, if any.
- (c) The Owner will cause the Owner's Solicitors to prepare all associate filing forms for the documents referenced above.

## ARTICLE 7

### ROAD DEDICATION & TRANSFER

- 7.3 Closing Procedures.** On the Completion Date, after receipt by the Owner's Solicitors of all documents listed under Section 6.2(a) and Section 6.2(b), the Owner will cause the Owner's Solicitors to file documents (a) through (h) below in the LTO, in the order listed below, on a concurrent basis and as an "all or nothing" package for registration:
- (a) the Road Closure Bylaw and the Road Closure Plan (with associated application deposit);
  - (b) the Form 17 to raise title to the Road Closure Area;
  - (c) the Form 17 to apply to cancel the Province's right of resumption in the Road Closure Area;
  - (d) the Utility SRW's, if any;

- (e) the Transfer and associated property tax return and cheque;
- (f) the Covenant Discharge;
- (g) the Road Dedication & Consolidation Plan (with associated application to deposit);
- (h) the Statutory Right of Way Plan (with associated application to deposit); and
- (i) the Extension Agreements, if any.

**7.4 Concurrent Requirements.** The parties agree that all requirements of this Section 7 are concurrent requirements and that nothing will be Completed on the Completion Date until everything required to be done by Section 7 is completed.

## ARTICLE 8

### MISCELLANEOUS

**8.1 No Derogation.** Nothing contained or implied in this Agreement will impair or affect the District's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or any other enactment and all such powers and rights may be fully exercised in relation to the Road Closure Area as if this Agreement had not been entered into between the District and the Owner. The Owner acknowledges that fulfillment of the conditions precedent set out in this Agreement requires that the Council of the District to adopt certain bylaws and pass certain resolutions and the adoption of said bylaws and resolutions by the Council of the District is within its sole absolute discretion which is not in any manner subject to the provisions hereof.

**8.2 Notice.** Any notice, direction, demand, approval, certificate or waiver (any of which constitutes a "Notice" under this section) which may be or is required to be given under this Agreement must be in writing and be delivered or sent by email:

- (a) to the District:

Email: [Bill.Corsan@northcowichan.ca](mailto:Bill.Corsan@northcowichan.ca); [agreements@northcowichan.ca](mailto:agreements@northcowichan.ca)

Attention: Bill Corsan, General Manager, Corporate Services & Community Relations

and with a copy to:

Young Anderson  
1616 – 808 Nelson Street  
Vancouver, B.C. V6Z 2H2

Email: [giroday@younganderson.ca](mailto:giroday@younganderson.ca)

Attention: David Giroday

- (b) to the Owner:

Email: [nfernandes@kerkhoff.ca](mailto:nfernandes@kerkhoff.ca)

Attention: Nathalia Fernandes, Development Manager

with a copy to:

McQuarrie Hunter LLP  
1500 – 13450 102<sup>nd</sup> Avenue  
Surrey, B.C. V3T 5X3

Email: [evandergriendt@mcquarrie.com](mailto:evandergriendt@mcquarrie.com)  
Attention: Eric Vandergriendt

or to such other address or email of which notice has been given as provided in this Agreement. Any Notice that is delivered is to be considered given on the day it is delivered and any Notice that is sent by email is to be considered given on the day it is sent except that if, in either case, transmittal or delivery occurs on a day that is not a Business Day or after 5:00 p.m., it is to be considered given on the next Business Day after it is sent.

- 8.3 Time of Essence.** Time is of essence of this Agreement and the transactions for which it provides.
- 8.4 Further Assurances.** The parties will execute and deliver all such further documents, deeds, instruments, and do and perform such other acts, as may be reasonably necessary to give full effect to the intent and meaning of this Agreement.
- 8.5 Tender.** Any tender of documents or money may be made upon the parties at their respective addresses set out in this Agreement or upon their respective solicitors.
- 8.6 No Other Agreements.** This agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all representations, warranties, promises and agreements regarding its subject.
- 8.7 Assignment.** The Owner may not assign all or any part of this Agreement, or the benefit thereof, without the prior written consent of the District.
- 8.8 Benefit.** This agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
- 8.9 Modification.** This Agreement may not be changed except by an instrument in writing signed by the parties or by their successors or assigns, but the parties agree that the Completion Date

maybe changed by their agreement through their respective solicitors upon instructions to their solicitors as evidenced promptly thereafter in writing by their solicitors.

- 8.10 Interpretation.** Wherever the singular is used or neuter is used in this Agreement, it includes the plural, the feminine, the masculine or body corporate where the context or the parties so required.
- 8.11 Governing Law.** This agreement will be governed by and construed in accordance with the laws of British Columbia.
- 8.12 Non-Merger.** None of the provisions of this Agreement will merge in the transfer of the Road Closure Area or any other documents derived on the Completion Date and the provision of this Agreement will survive the completion of the transactions contemplated herein.
- 8.13 Counterparts.** This Agreement may be executed in one or more counterparts and delivered by electronic means, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.
- 8.14 Execution by Electronic Transmission.** Delivery of an executed copy of this Agreement by any party by electronic transmission will be as effective as personal delivery of an originally executed copy of this Agreement by such party.

As evidence of their agreement to be bound by the above terms and conditions, the Owner and the District have executed this Agreement below on the dates written below.

Dated this \_\_\_\_ day off January \_\_, 2025.

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorize Signatory

Dated this \_\_\_\_ day of January \_\_, 2025.

**KERKHOFF (COWICHAN) LIMITED PARTNERSHIP**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

SCALE 1 : 750



SECTION 5  
SECTION 4

PLAN 12748

Rem 2  
PLAN 4113

ALR BOUNDARY

PLAN EPP6649

PLAN 4400

PLAN 10591

PROPOSED LOT B  
1.476 ha

PLAN 4627

15m WIDE DEDICATED AREA 'W' FOR ROAD 1291 a²

PROPOSED LOT C  
0.289 ha

PLAN 25749

PROPOSED LOT A  
0.327 ha

4.97m WIDE DEDICATED FOR ROAD AREA 'Y' 329 a²

PLAN 11460

PLAN 11460

PLAN 11255

PLAN 5167

2.39m WIDE DEDICATED FOR ROAD AREA 'Z' 73 a²

PADDLE ROAD

ROAD TO BE CLOSED AREA 'V' 832 a²

ROAD CLOSED AREA 'Y' 832 a²

BOOK OF REFERENCE

PARCEL	REFERENCE	AREA
1 PLAN 25749	'Z' 2.39m	73 a²
1 PLAN 11460	'Y' 4.97m	329 a²
1 PLAN 25749	'X'	131 a²
1 PLAN 10591		
3 PLAN 10591	'W' 15m	1291 a²
ROAD CLOSED	'V'	832 a²

KENYON WILSON  
PROFESSIONAL LAND SURVEYORS  
221 CONRAGON AVE.  
DUNCAN, B. C. VPL 271 (250) 746-4745  
FILE 20-86248 PR2 Jan 25, 2024

ALL AREAS ARE IN METRES AND ARE SUBJECT TO CHANGE UPON FINAL SURVEY.

## SCHEDULE B

### ROAD CLOSURE PLAN

FORM\_SPC\_V15

#### SURVEY PLAN CERTIFICATION PROVINCE OF BRITISH COLUMBIA

PAGE 1 OF 2 PAGES

Your electronic signature is a representation that you are a British Columbia land surveyor and a subscriber under section 168.6 of the *Land Title Act*, RSBC 1996 c.250. By electronically signing this document, you are also electronically signing the attached plan under section 168.3 of the act.

**Allen Cox**  
**4QR1JL**

Digitally signed by  
Allen Cox 4QR1JL  
Date: 2025.01.08  
16:33:19 -08'00'

1. BC LAND SURVEYOR: (Name, address, phone number)

**Import Profile**

Allen L. Cox

# 221 Coronation Avenue

Phone 250 746-4745

Duncan

BC V9L 2T1

acox@kenyonwilson.ca

☐ Surveyor General Certification [For Surveyor General Use Only]

2. PLAN IDENTIFICATION:

Control Number: **173-638-2799**Plan Number: **EPP142938**This original plan number assignment was done under Commission #: **778**

3. CERTIFICATION:

☒ Form 9☐ Explanatory Plan☐ Form 9A

I am a British Columbia land surveyor and certify that I was present at and personally superintended this survey and that the survey and plan are correct.

The field survey was completed on: 2025 January 08 (YYYY/Month/DD) The checklist was filed under ECR#:

The plan was completed and checked on: 2025 January 08 (YYYY/Month/DD) 288519

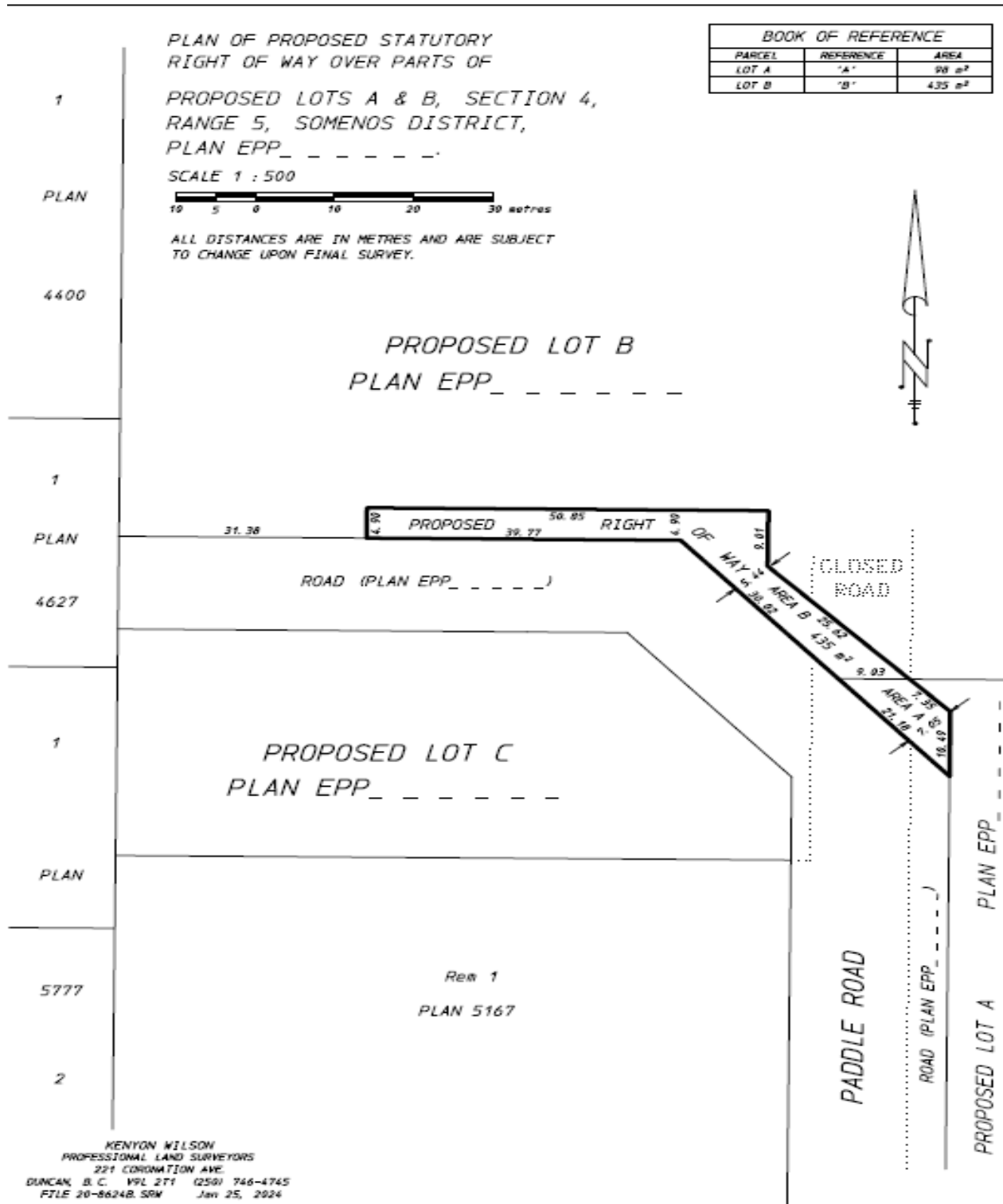
☒ None ☐ Strata Form S☒ None☐ Strata Form U1☐ Strata Form U1/U2Arterial Highway ☐Remainder Parcel (Airspace) ☐4. ALTERATION: ☐





## SCHEDULE C

## SKETCH STATUTORY RIGHT OF WAY PLAN







The Corporation of the District of North Cowichan

**Road Closure and Removal of Highway Dedication Bylaw, 2025**

BYLAW NO. 3991

---

*A bylaw to close and remove the dedication of portions of highway on North Paddle Road.*

---

WHEREAS:

- A) Under section 40 [permanent closure and removal of highway dedication] of the *Community Charter*, Council may, by bylaw, close a highway to traffic and remove the dedication of a highway;
- B) Notice of intention to close the portions of highway referred to in this Bylaw and remove its dedication as highway has been posted and published in accordance with section 94 [public notice] of the *Community Charter*, and an opportunity has been provided for persons who consider they are affected to make representations to Council;
- C) Council does not consider that the road closure will affect the transmission or distribution facilities or works of utility operators; and
- D) Council deems it expedient to provide for the closure to traffic and removal of the dedication of that portion of highway referred to in this Bylaw for the purposes of disposing of said lands.

NOW THEREFORE, the Council of The Corporation of the District of North Cowichan, in open meeting assembled, enacts as follows:

**Citation**

- 1 This Bylaw may be cited as "Road Closure and Removal of Highway Dedication Bylaw No. 3991, 2025".

**Closure, removal and transfer of highway dedication**

- 2 The portions of highway dedicated by Plan 10591 and identified as "Closed Road" on Reference Plan EPP142938, attached as Schedule A, are closed to all types of traffic.
- 3 The highway dedication of all those portions of highway to be closed by section 2 of this Bylaw is removed.

- 4 The Corporation of the District of North Cowichan is hereby authorized to dispose of and convey the portions depicted as "Road to be Closed" on Reference Plan EPP142938, attached as Schedule A, in fee simple to the Kerkhoff (Cowichan) Limited Partnership, as the beneficial owner, and Cowichan Project 168 Ltd., as the registered owner, of the adjacent parcels located at 6478, 6494, 6493, 6495 and 6489 North Paddle Road for the purpose of consolidation of the closed road with these adjacent parcels.
- 5 The Mayor and Corporate Officer are authorized to execute and deliver such transfers, deeds of land, plans and other documents as are necessary or desirable to affect the aforesaid closure and removal of highway dedication.

### **Schedules**

- 6 The following schedules are included in and form part of this Bylaw:

(a) Schedule A – Road Closure Plan, Reference Plan EPP142938

### **Severability**

- 7 If any portion of this Bylaw is held invalid by a court of competent jurisdiction, then the invalid portion must be severed and the remainder of this Bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

\_\_\_\_\_  
READ a first time on

READ a second time on

This bylaw was advertised on the municipality's \_\_\_\_site on \_\_\_\_\_, in the Cowichan Valley Citizen and the Chemainus Valley Courier on \_\_\_\_\_, and was posted to the municipality's public notice places on \_\_\_\_\_.

Notice was provided on \_\_\_\_\_ to operators of utilities whose transmission or distribution facilities or works Council considers will be affected by the closure.

READ a third time on \_\_\_\_\_.

RECEIVED the approval of the Minister responsible for the *Transportation Act* on \_\_\_\_\_.

ADOPTED on \_\_\_\_\_.

\_\_\_\_\_  
CORPORATE OFFICER

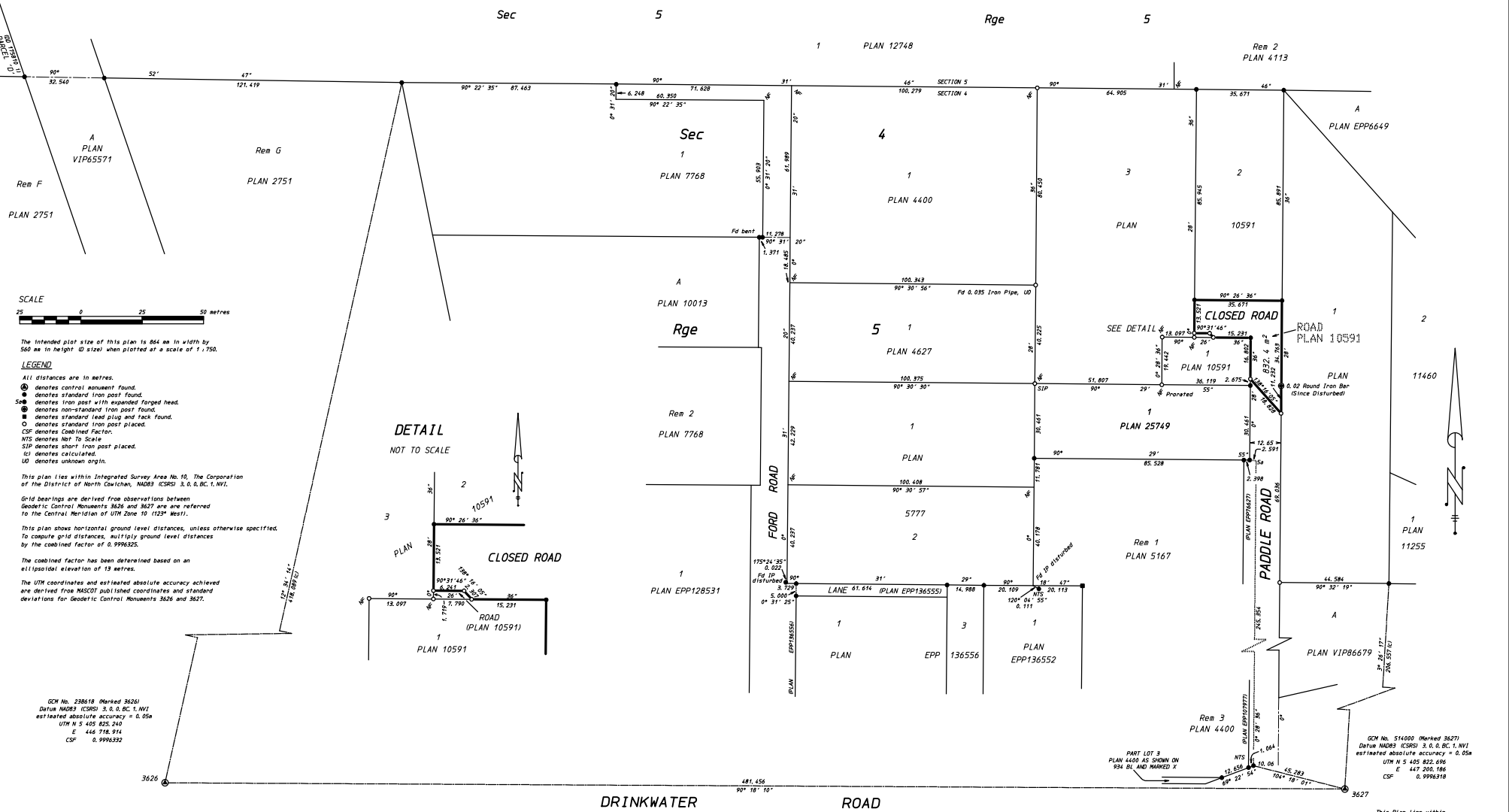
\_\_\_\_\_  
PRESIDING MEMBER

# SCHEDULE A - ROAD CLOSURE PLAN

REFERENCE PLAN TO ACCOMPANY BYLAW NUMBER 3991,  
THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN,  
TO CLOSE PART OF ROAD DEDICATED ON PLAN 10591,  
SECTION 4, RANGE 5, SOMENOS DISTRICT.

PURSUANT TO SECTION 120 OF THE LAND TITLE ACT AND  
SECTION 40 OF THE COMMUNITY CHARTER.  
BCGS 92B.082

PLAN EPP142938



KENYON WILSON  
PROFESSIONAL LAND SURVEYORS  
221 COWICHAN AVE.  
DUNCAN, B.C. V9L 2T1 (250) 746-4745  
FILE 20-8624.B1

This Plan lies within  
The Cowichan Valley Regional District.  
The field survey represented by this plan was  
completed on the 8th day of January, 2025.  
Allen L. Cox, BCIS 778