



## STAFF REPORT

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**DATE:** July 12, 2019

**FILE:** 0540-04 EASC

**TO:** Chair and Directors,  
Electoral Areas Services Committee

**FROM:** Dave Leitch  
Chief Administrative Officer

**RE:** LICENCE OF OCCUPATION BYERS POINT ROAD – CORTES ISLAND

### **PURPOSE/PROBLEM**

To authorize the renewal of the Byers Point Road Beach Access Licence of Occupation with the Ministry Transportation and Infrastructure (MoTI).

### **POLICY ANALYSIS**

The Regional District has held a Licence of Occupation with the Province over the Byers Point Road Beach Access since 2014, which authorizes the operation and maintenance of the facility under the Electoral Area B Parks Service.

### **EXECUTIVE SUMMARY**

The Regional District has operated the Byers Point Road Beach Access since 2014. This area has been developed as beach accesses by the SRD under a Licence of Occupation from the Province. There are limited improvements associated with this beach access site, namely trail surfacing, boardwalks and signage. Annual operating costs, which are typically limited to contractor inspections and maintenance, are approximately \$1,600 for this property combined with the adjacent BC Ferry portion also under a licence to use agreement. There continues to be strong public support and use for this beach access site.

The current licence has expired and to continue to formally operate the sites and ensure it is maintained in an acceptable condition that is safe for public use, a new Licence of Occupation is required. The Regional District has satisfied MoTI's conditions for the renewal of the licence and the document has been received for execution. The Board is required to authorize the renewal of the licence and the execution of the document by the Corporate Officer and the Chair. Once the document is executed, it will be returned to MoTI, accompanied by a minimal licensing fee, at which time the licence can be issued for a five-year term.

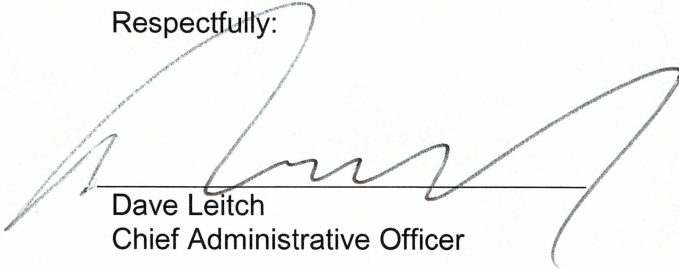
It is recommended that the renewal of the Licence of Occupation be supported and that the Corporate Officer and Chair be authorized to execute the document to facilitate the issuance of the licence, thereby authorizing the operation and maintenance of Byers Point Road Beach Access for an additional five-year term.

### **RECOMMENDATIONS**

1. THAT the report from the Chief Administrative Officer be received.
2. THAT the Committee recommend that the current and future Licence of Occupation renewal for Byers Point Road be approved, and

THAT the Chair and Corporate Officer be authorized to execute this and subsequent renewal documents.

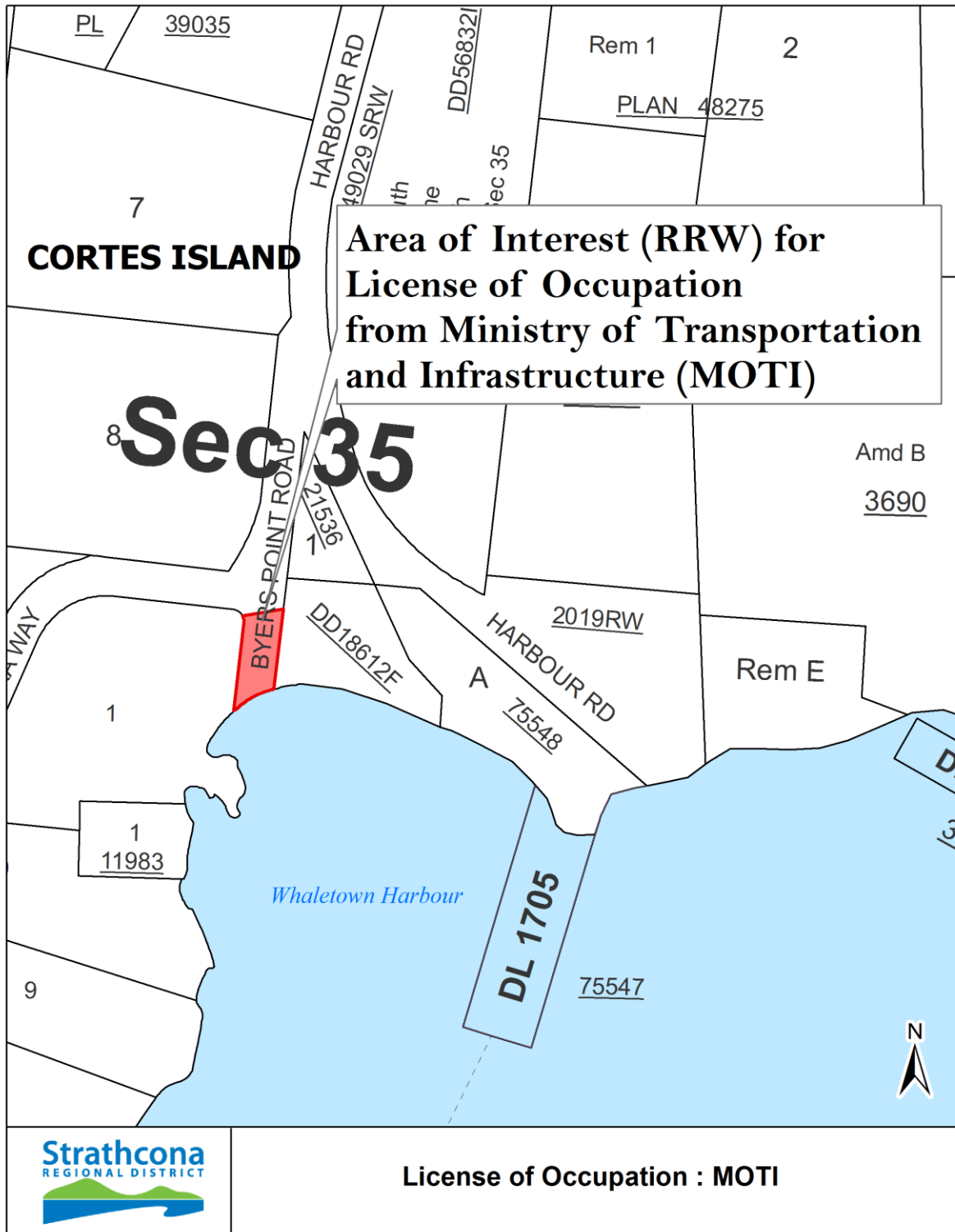
Respectfully:

A handwritten signature in black ink, appearing to read 'Dave Leitch', is written over a horizontal line. The signature is fluid and cursive.

Dave Leitch  
Chief Administrative Officer

**Prepared by:** *A. Nelson, Senior Manager, Community Services*

Attachment: Licence of Occupation (File No. 103119)



July 4, 2019

File: 103229



Strathcona Regional District  
301 – 990 Cedar Street  
Campbell River, BC V9W 7Z8

Attention: Parks Coordinator

**Re: Licence of Occupation – Byers Point Road, Cortes Island, BC**

Attached please find two copies of the above noted agreement for your review. If in agreement, please have both copies signed and return to my attention for processing. A fully executed copy will be forwarded to you in due course. Please also send a cheque in the amount of \$262.50 made payable to the **BC Transportation Financing Authority** to cover the term. Please forward to my attention at the following address:

**Ministry of Transportation and Infrastructure, Properties, 3<sup>rd</sup> Flr – 2100 Labieux Road,  
Nanaimo, BC V9T 6E9.**

As part of the agreement, also enclosed is a Certificate of Insurance to be filled out by your insurance company and returned.

Please feel free to contact me at (250) 751-3261 with any questions concerning the renewal of your licence. Thank you.

Yours truly,



Lorna Andreychuk  
Property Administrator  
for the Ministry of Transportation  
& Infrastructure  
South Coast Region

/LWA

Encs.

Contracts/Leases/Agreements/Permits Number, Location and Description	Brokers' Reference No.
	Award or Effective Date _____ (yyyy/mm/dd)

**INSURED** Name \_\_\_\_\_  
 Business Address \_\_\_\_\_

**BROKER** Name \_\_\_\_\_  
 Business Address \_\_\_\_\_

Type of Insurance	Company and Policy Number	Policy Dates yyyy/mm/dd		Limits of Liability / Amounts
		Effective	Expiry	
Commercial General Liability (Including Non-Owned Automobile Liability)				Bodily Injury and Property Damage \$ _____ Inclusive \$ _____ Aggregate \$ _____ Deductible \$ _____ SIR
Additional Insureds:				
Automobile Liability				Bodily Injury and Property Damage \$ _____ Inclusive
Umbrella/Excess Liability				\$ _____ Limits excess of \$ _____ General Liability excess of \$ _____ Automobile
<input type="checkbox"/> Builders Risk <input type="checkbox"/> Installation Floater <input type="checkbox"/> Other.				\$ _____ Site \$ _____ Other Location \$ _____ Transit
Equipment Insurance				\$ _____ Limit
Professional Liability Errors and Omissions				\$ _____ Each Claim \$ _____ Aggregate \$ _____ Deductible
<input type="checkbox"/> Protection & Indemnity <input type="checkbox"/> Hull & Machinery <input type="checkbox"/> Builders Risk (Vessels) <input type="checkbox"/> Ship Repairers' Liability				\$ _____ Limit \$ _____ Limit \$ _____ Limit \$ _____ Limit
Other.				\$ _____ Limit

I, the undersigned, certify the undersigned has reviewed the policies of insurance described above and Page 2 of this certificate and further certify that those policies have been issued to the insured named above and are in full force and effect and comply with the insurance requirements set out in the agreement / contract / lease / permit identified above, including the requirements set out on Page 2 of this certificate.

Signature of person authorized to sign on behalf of Insurers \_\_\_\_\_  
 certifying Page 1 and Page 2 of this Certificate

Print or Type Name \_\_\_\_\_

Date (yyyy/mm/dd) \_\_\_\_\_

**ADDITIONAL CONDITIONS ARE SHOWN ON PAGE 2 OF THIS CERTIFICATE OF INSURANCE**

**Notwithstanding any other terms, conditions or exclusions elsewhere in the insurance policy(s), it is understood and agreed that the insurance policy(s) are extended to include insurance conditions as follows:**

**CONDITIONS APPLICABLE TO:  
COMMERCIAL GENERAL LIABILITY**

**1. Additional Named Insured Clause for Ministry Contracts**

Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure, together with the employees, agents, and servants of the Minister, hereinafter referred to as the Additional Named Insured, is added as an Additional Named Insured, in respect of liability arising from the work or operations of the Insured and the Additional Named Insured, in connection with contracts, entered into between the Insured and the Additional Named Insured.

**2. Extension of Coverage**

Such liability insurance shall also include all liability arising out of completed operations, blanket written contractual, contingent employers liability, non-owned automobile liability, and liability assumed by the Contractor in connection with and applicable to the contract.

**3. Cross Liability**

The insurance as is afforded by this policy shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured. Any breach of a condition of the policy by any Insured shall not affect the protection given by this policy to any other Insured. The inclusion herein of more than one Insured shall not operate to increase the limit of liability under this policy.

**4. Exclusions Not Permitted**

If hazardous operations such as excavation, pile driving, shoring, blasting, underpinning, or demolition work or any other operation or work is to be performed by the Ministry or the Contractor, then this type of work or operation shall not be excluded from insurance coverage where such type of work or operation is to be performed by either party under the contract, subject to prior notification to the insurer by the Contractor.

Claims arising out of the legal liability imposed upon the Insured at common law and extended by Statute for bodily injury or death to employees of the Insured. However, exclusions applicable to liability imposed upon or assumed by the Insured under any Workers' Compensation Statutes or for assessment by any Workers' Compensation Board will be allowed.

Liability assumed by the Insured under contract with railroad companies for the use and operation of railway sidings or crossings.

**5. Products and Completed Operations Hazard**

Products and Completed Operations Hazard coverage shall be provided and such coverage shall remain in full force and effect for a period of twelve (12) months after the contracted work has been completed (twenty four (24) months for Design Build Minor Contracts), irrespective of the expiry date of the policy.

**Issuance of this certificate shall not limit or restrict the right of the Ministry of Transportation and Infrastructure to request any time certified copies of any insurance policy(s).**

**CONDITIONS APPLICABLE TO:  
PROPERTY TYPE OF INSURANCE POLICIES  
(WHERE IT IS A REQUIREMENT OF THE CONTRACT,  
AGREEMENT, LEASE OR PERMIT)**

**1. Additional Named Insured Clause**

Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure, is added as an Additional Named Insured.

**2. Loss Payable Clause**

Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure.

**3. Waiver of Subrogation**

In the event of any physical loss or damage to the work or Contractor's equipment, the settlement or payment of the subsequent claim shall be made without the right of subrogation against Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure or any of the employees, servants or agents of the Minister.

**CONDITIONS APPLICABLE TO:  
ALL POLICIES EXCEPT AUTOMOBILE LIABILITY INSURANCE  
ISSUED BY I.C.B.C. AND PROFESSIONAL LIABILITY (E&O)  
INSURANCE**

**1. Cancellation**

This policy shall not be cancelled, removed, reduced, materially changed or altered without thirty (30) days prior notice in writing by Registered Mail to:

**CORPORATE INSURANCE AND BONDS MANAGER  
MINISTRY OF TRANSPORTATION & INFRASTRUCTURE  
PO BOX 9850 STN PROV GOVT  
VICTORIA BC V8W 9T5**

or

Ministry Representative, as noted in the contract.

**CONDITION APPLICABLE TO:  
PROFESSIONAL LIABILITY / ERRORS AND OMISSIONS  
INSURANCE**

**1. Cancellation**

The required insurance shall not be cancelled, or endorsed to reduce limits of liability, without thirty (30) days notice in writing by Registered Mail to: The Corporate Insurance and Bonds Manager, Ministry of Transportation and Infrastructure, PO Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, B.C. V8W 9T5. Notification of the policy being endorsed to restrict coverage mid-term, must be provided in writing by Registered Mail to the same address, no later than the effective date of such change.



THIS AGREEMENT is made under section 62 of the *Transportation Act* and is dated for reference July 4, 2019.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the minister responsible for the *Transportation Act*

(the "Province")

AND

**STRATHCONA REGIONAL DISTRICT**

(the "Licensee")

WHEREAS:

- A. The Land is a provincial public highway (as defined in the *Transportation Act*) and, in accordance with section 58 of the *Transportation Act*, the BCTFA holds all of the Province's right and title in and to the soil and freehold of the Land.
- B. The Province may, pursuant to subsections 58(3) and 62(1) of the *Transportation Act* authorize any person to use or occupy a provincial public highway.
- C. The Licensee wishes to use and occupy the Land and the Province has agreed to permit it to do so in accordance with the terms and conditions of this Agreement.

For valuable consideration, the parties agree as follows:

**ARTICLE 1 - DEFINITIONS**

1.1 In this Agreement,

"**Agreement**" means this licence of occupation;

"**BCTFA**" means BC Transportation Financing Authority, a corporation continued under the *Transportation Act*;

"**Commencement Date**" means August 1, 2019;

"**Fee**" means the fee set out in Article 3;

"**Improvements**" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

"**Land**" means the road within Section 35, Sayward District (situated on Cortes Island), shown outlined in red and labeled Byers Point Road on the attached Schedule A to this Agreement;

"**Realty Taxes**" means all taxes, rates, levies, duties, charges and assessments lawfully levied or charged,

at any time, by any competent governmental authority which relate to the Land, the Improvements or both of them; and

"Term" means the period of time set out in section 2.2.

#### ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, the Province grants the Licensee a licence of occupation over the Land for the purpose of a park and trail and the Licensee acknowledges that this Agreement does not grant it the exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on July 31, 2024, or such earlier date provided for in this Agreement.
- 2.3 The Licensee will use and occupy the premises in accordance with the Management Plan provisions on the attached Schedule B to this License.

#### ARTICLE 3 - FEE

- 3.1 The Licensee will pay to the BCTFA **\$250.00** plus GST (equalling **262.50**) payable in advance of the term together with the tax imposed under Part IX of the *Excise Tax Act* (Canada) which is payable on that amount.

#### ARTICLE 4 - COVENANTS

- 4.1 The Licensee must
  - (a) pay, when due,
    - (i) the Fee to the Province at the address set out in Article 10,
    - (ii) the Realty Taxes, and
    - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
  - (b) deliver to the Province, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by it under this Agreement;
  - (c) observe, abide by and comply with
    - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and the Improvements, or their use and occupation, and
    - (ii) the provisions of this Agreement;
  - (d) keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to the Province, and at its written request, make the Land and the Improvements safe, clean and sanitary;
  - (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land;



- (f) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (g) not construct, place or affix any Improvement on or to the Land except as necessary for the purposes set out in section 2.1;
- (h) cut or remove timber on or from the Land
  - (i) only to address an unsafe condition or for the purposes set out in section 2.1, and
  - (ii) in accordance with an agreement issued to it under the *Forest Act* to permit the harvest of Crown timber on the Land unless the minister responsible for the *Forest Act* permits the harvest of timber on the Land without the issuance of an agreement under the *Forest Act*;
- (i) permit the Province, or its authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements;
- (j) indemnify and save the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) harmless against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities, including fees of solicitors and other professional advisors, arising out of or in connection with
  - (i) the Licensee's breach, violation or nonperformance of a provision of this Agreement,
  - (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of its entry upon, use or occupation of the Land, and
  - (iii) without limiting paragraph (ii), any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land,and the amount of all such losses, damages, fines, penalties, costs, expenses and liabilities will be payable to the Province immediately upon demand;
- (k) release the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) from and against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities arising out of or in connection with any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land; and
- (l) on the termination of this Agreement,
  - (i) peaceably quit and deliver to the Province possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any environmental contamination related to its entry upon, use or occupation of the Land),
  - (ii) within 60 days, remove from the Land any Improvement the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for it, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building or part of the Land,
  - (iii) remove from the Land any Improvement that was placed on or made to the Land by or

for the Licensee, and that the Province, in writing, directs or permits it to remove; and

- (iv) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to the Province's satisfaction, but if the Licensee is not directed or permitted to remove an Improvement under paragraph (ii) or (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of its right, interest and estate in the Land will be absolutely forfeited to the Province, and to the extent necessary, this covenant will survive the termination of this Agreement.

- 4.2 The Licensee will not permit any person to do anything it is restricted from doing under this Article.

## ARTICLE 5 - LIMITATIONS

- 5.1 The Licensee agrees with the Province that

- (a) the Province is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (b) the Province may, without the Licensee's consent, authorize other persons, including a Crown agency or ministry, to use and occupy the Land under section 62 of the *Transportation Act*;
- (c) the Licensee will make no claim for compensation, in damages or otherwise, in respect of an authorization granted by the Province under subsection (b),
- (d) all of the Licensee's costs and expenses, direct or indirect, that arise out of any interference with its rights under this Agreement as a result of an authorization granted by the Province under subsection (b) will be borne solely by the Licensee;
- (e) the Licensee releases and discharges the Province from all claims for loss or damage arising directly or indirectly out of any interference with its rights under this Agreement as a result of an authorization granted by the Province under subsection (b);
- (f) the Licensee releases and discharges the Province from all claims for losses or damages arising directly or indirectly out of any interference with its rights under this Agreement as a result of a disposition made by the Province under subsection (b);
- (g) the Licensee will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (h) any interest the Licensee may have in the Improvements ceases to exist and becomes the Province's property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(1)(ii) or (iii) in which case any interest the Licensee may have in that Improvement ceases to exist and becomes the Province's property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(1)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(1)(iii); and
- (i) if, after the termination of this Agreement, the Province permits the Licensee to remain in possession of the Land and the Province accepts money from it in respect of such possession, a tenancy from year to year will not be created by implication of law and the Licensee will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

## ARTICLE 6 - INSURANCE

6.1 The Licensee must, without limiting its obligations or liabilities under this Agreement, at its expense, maintain during the Term

- (a) Commercial General Liability Insurance including non-owned automobile and contractual liability insurance with inclusive limits of not less than \$5,000,000.00 for bodily injury, death or property damage arising from any one accident or occurrence which insurance policy will indemnify the named insureds under the policy for all sums which the insured may become liable to pay or pays for bodily injury, death or property damage or for loss of use, arising out of or resulting from the work or operations of the parties under this Agreement which must be endorsed as follows:

"It is understood and agreed that Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the "Province"), together with the employees, agents (including the BC Transportation Financing Authority and its officers, directors, employees, servants and agents), and servants of the Province (the "Additional Named Insureds"), are each added as an Additional Named Insured, in respect of liability arising from the work or operations of the insured and each Additional Named Insured, in connection with contracts entered into between the insured and the Additional Named Insured.

The Insurance as is afforded by this policy will apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any insured will not affect the protection given by this policy to any other insured. The inclusion herein of more than one insured will not operate to increase the limit of liability under this policy.";

- (b) if vessels are owned, leased or rented or used in the performance of this Agreement by the Licensee and are not covered under the general liability policy, it will provide Protection and Indemnity insurance with limits of not less than \$N/A for such vessels and will include four-fourths collision liability insurance,
- (c) if any licensed vehicles are owned, leased, rented or used by the Licensee in the performance of this Agreement, Automobile Liability Coverage with inclusive limits of not less than \$1,000,000.00 providing third party liability and accident benefits insurance for all such vehicles, and
- (d) if aircraft (including helicopters) are owned, rented, leased or used by the Licensee in the performance of this Agreement, third party liability coverage with inclusive limits of not less than \$N/A;

which, in the case of the policies of insurance described in subsections (a), (b) and (d), must include endorsements or provisions that they may not be cancelled, reduced, altered or materially changed without the insurer or insurers giving not less than 30 days' prior written notice to the Province by registered mail, which endorsements must be in terms comparable to those normally obtainable from insurers in the Province of British Columbia or Canada issuing comparable policies.

6.2 All insurance required to be maintained by the Licensee under this Agreement must be placed with insurers licensed to transact business in British Columbia or Canada and, the Licensee must, under the insurance required to be maintained by it under this Agreement,

- (a) pay all deductibles;
- (b) not exclude hazardous operations such as excavation, pile driving, shoring, blasting, under-pinning

or demolition work or any other operation or work from insurance coverage;

- (c) deliver to the Province, on the Commencement Date, on the renewal of the insurance and at other times required by the Province,
    - (i) for all policies except Automobile Liability Insurance, a completed and executed certificate of insurance in a form acceptable to the Province (as of the Commencement Date, such form is entitled "Certificate of Insurance" and is numbered H-111), and
    - (ii) evidence of Automobile Liability Insurance in the form of a duly executed Insurance Corporation of British Columbia APV47 or APV250 form or a copy of the vehicle registration/insurance certificate;
  - (d) on the Province's request, deliver to the Province evidence that the insurance remains in force and effect by way of the originals or certified copies of all current insurance policies and endorsements.
- 6.3 The Licensee acknowledges and agrees that, in the event of any third party loss or damage or any physical loss or damage to the Land (and its associated apparatus, improvements or fixtures), the settlement or payment by the insurer of the subsequent claim will be made without the right of subrogation against the Province or the BCTFA or those for whom the Province and the BCTFA are legally obligated to indemnify against such claims.

#### ARTICLE 7 - ASSIGNMENT

- 7.1 The Licensee must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without the Province's prior written consent, which consent the Province may withhold in its sole discretion.
- 7.2 For the purpose of section 7.1, if the Licensee is a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) of the Licensee will be deemed to be a transfer of this Agreement.
- 7.3 Section 7.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 7.4 Prior to considering a request for consent under section 7.1, the Province may require the Licensee to meet certain conditions, including without limitation, that it provides to the Province a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land.

#### ARTICLE 8 - CANCELLATION

- 8.1 The Licensee agrees with the Province that
  - (a) if it
    - (i) defaults in the payment of any money payable by it under this Agreement, or
    - (ii) fails to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),

and its default or failure continues for 60 days after the Province gives written notice of the default or failure to it,

- (b) if, in the Province's opinion, it fails to make diligent use of the Land for the purposes set out in this Agreement, and its failure continues for 60 days after the Province gives written notice of the failure to it;
- (c) if it
  - (i) becomes insolvent or makes an assignment for the general benefit of its creditors,
  - (ii) commits an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against it or it consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging it bankrupt under any law relating to bankruptcy or insolvency, or
  - (iii) voluntarily enters into an arrangement with its creditors;
- (d) if it is a corporation,
  - (i) a receiver or receiver-manager is appointed to administer or carry on its business, or
  - (ii) an order is made, a resolution passed or a petition filed for its liquidation or winding up;
- (e) if it is a society, it converts into a company in accordance with the *Society Act* without the Province's prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at the Province's option and with or without entry, terminate, and all of the Licensee's right, interest and estate in the Land will be absolutely forfeited to the Province.

- 8.2 If the condition complained of in subsection 8.1(a) or (b) (other than the payment of any money payable by the Licensee under this Agreement) reasonably requires more time to cure than 60 days, the Licensee will be deemed to have complied with the remedying of it if the Licensee commences remedying or curing the condition within 60 days and diligently complete the same.
- 8.3 The Licensee agrees with the Province that the Province may, on 60 days' written notice to it, terminate this Agreement if the Province or the BCTFA requires the Land for any purpose.
- 8.4 The Licensee agrees with the Province that it will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1 or 8.3 or under subsection 62(5) of the *Transportation Act*.

#### ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will attempt to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, the dispute will be resolved by arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.

- 9.4 The arbitration will be conducted at the office of the Province in Nanaimo, British Columbia, and if the Province has no office in Nanaimo, British Columbia, then at the office of the Province that is closest to Nanaimo, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within the Province's sole discretion cannot, unless it agrees, be referred to arbitration as set out in section 9.2.

#### ARTICLE 10 - NOTICE

- 10.1 Any notice or other document required or permitted to be given by either party to the other must be in writing and will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Province:

Property Services  
3<sup>rd</sup> Flr – 2100 Labieux Road  
Nanaimo, British Columbia  
V9T 6E9  
Attention: Lorna Andreychuk  
Facsimile: (250) 751-3288

to the Licensee:

Strathcona Regional District  
301 – 990 Cedar Street  
Campbell River, BC V9W 7Z8  
Attention: Parks Coordinator  
Telephone: (250)830-6707

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice or other document required or permitted to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to the Province under this Agreement will be effected by hand, courier or prepaid regular mail to the Province's address specified in or otherwise established under section 10.1, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

#### ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to the Province under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in

this Agreement or then existing at law, in equity or by statute.

- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release the Licensee from its obligation to observe and perform all the provisions of this Agreement on its part to be observed and performed unless the Province specifically releases the Licensee from such obligation in its consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the Licensee's reasonable control, other than normal weather conditions, the Licensee is delayed in performing any of its obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as the Licensee
- (a) gives notice to the Province within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of its obligation; and
  - (b) diligently attempts to remove the delay.
- 11.6 The Licensee agrees with the Province that
- (a) the Province is under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and the Licensee is solely responsible for all costs and expenses associated with its use of the Land and the Improvements for the purposes set out in this Agreement;
  - (b) nothing in this Agreement constitutes the Licensee as an agent, joint venturer or partner of the Province or the BCTFA or gives its any authority or power to bind the Province or the BCTFA in any way; and
  - (c) any information regarding this Agreement or the Licensee may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy or otherwise.
- 11.7 There are no warranties, representations, collateral agreements or conditions affecting this Agreement except as set out in this Agreement.

## ARTICLE 12 - INTERPRETATION

- 12.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 12.2 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 12.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 12.4 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.

- 12.5 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 12.6 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 12.7 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 12.8 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 12.9 All provisions of this Agreement in the Province's favour and all of its rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 12.10 Time is of the essence of this Agreement.



12.11 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made then each party will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that a party has sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

The parties have executed this Agreement as of the date of reference of this Agreement.

**SIGNED** on behalf of **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** by the minister responsible for the *Transportation Act* or the minister's authorized representative

\_\_\_\_\_  
Minister responsible for the *Transportation Act*  
or the minister's authorized representative

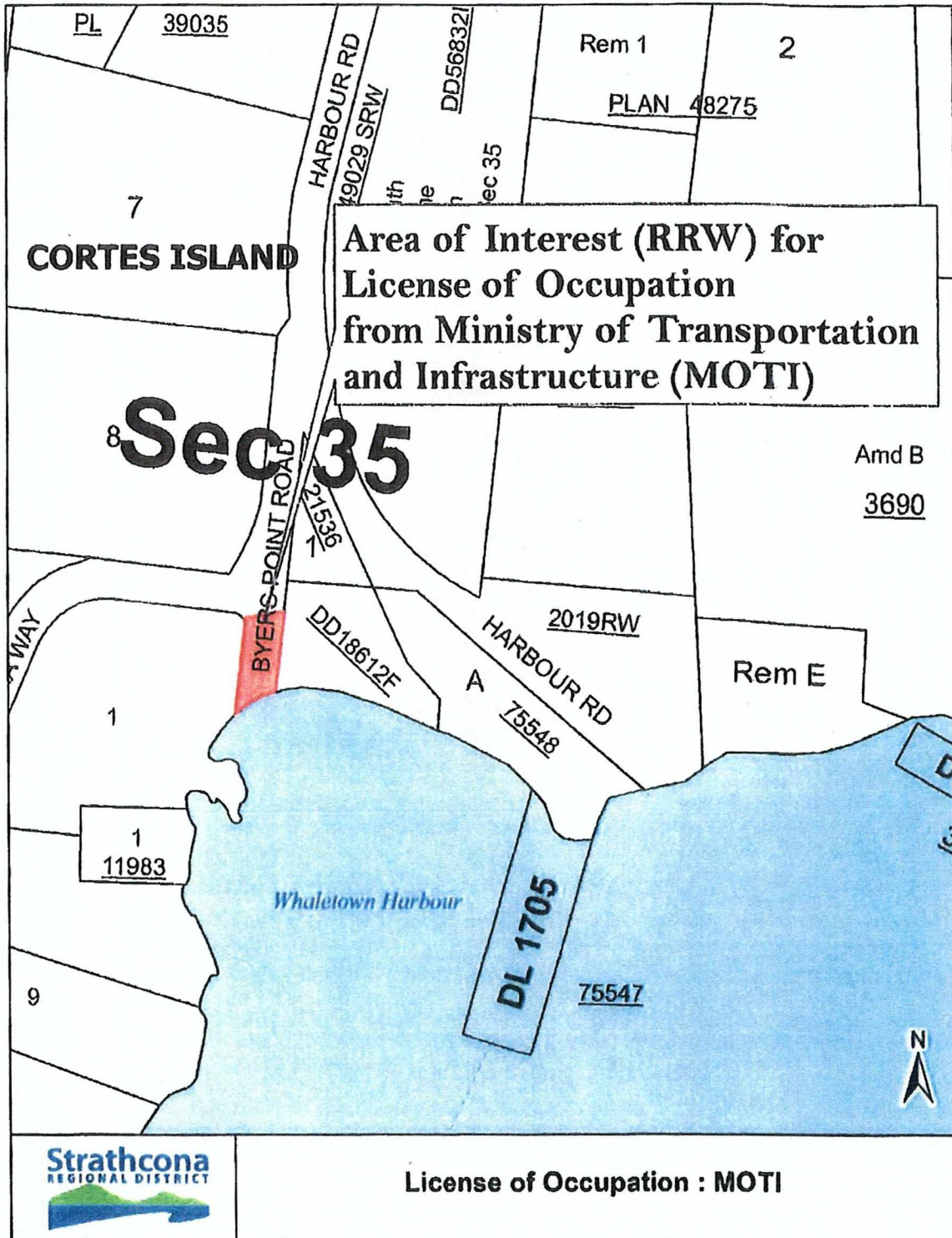
**SIGNED** on behalf of **STRATHCONA REGIONAL DISTRICT** by its authorized signatories

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

SCHEDULE A

Area of Licence shown outlined in red.



**SCHEDULE B**

The following must be adhered to as part of this agreement.

1. The Licensee will be responsible for the maintenance of the trail and picnic area facilities, including waste disposal.
2. The Licensee is responsible for maintaining positive drainage in the area covered by the licence.
3. The Licensee is responsible for agency approvals to build the trail.
4. Once the licence is no longer in place, the Licensee is responsible to return the licenced area to the original condition that existed prior to the works.