

# Municipality of North Cowichan

## Special Council

### AGENDA

Monday, June 21, 2021, 6:00 p.m.

Electronically

Pages

#### 1. CALL TO ORDER

This meeting, though electronic, is open to the public. All representations to Council will form part of the public record. Proceedings will be streamed live and archived at [www.northcowichan.ca](http://www.northcowichan.ca).

**The special Committee of the Whole meeting will commence immediately following the adjournment of this meeting.**

*(Note: the meeting link and meeting ID# is the same for both meetings)*

Members of the public may join this online meeting and participate virtually during the Public Input and Question Period portions of the agenda.

- To join by computer, smartphone, or tablet, visit [northcowichan.ca/virtualmeeting](http://northcowichan.ca/virtualmeeting) for instructions.
- To join by telephone, dial 1.844.426.4405, enter the meeting ID 177 285 3051, and then press # to join the meeting.

#### 2. APPROVAL OF AGENDA

Purpose: To consider any items of business not included in the Agenda, that are of an urgent nature, must be introduced and approved at the time the agenda is adopted. Matters must be taken up in the order that they are listed unless changed at this time.

Recommendation:

That Council approve the agenda as circulated [or as amended].

#### 3. MAYOR'S REPORT

#### 4. PUBLIC INPUT

Public Input is an opportunity for the public to provide their feedback on matters included on the agenda. The maximum number of speakers to be heard during the public input period is limited to five, with a maximum of three minutes allotted to each speaker. To be added to the speakers list, please:

- click on the 'raise your hand' button, if participating by computer, smartphone, or tablet, or
- dial \*3 on your phone

#### 5. BUSINESS

## 5.1. Lease to Cowichan Green Community for 2431 Beverly Street

3 - 112

Purpose: To consider a long-term lease, at a rental rate below market value, with the Cowichan Green Community Society (CGC) for Municipal property at 2431 Beverly Street.

Recommendation:  
That Council:

1. Approve the lease agreement with the Cowichan Green Community Society for 2431 Beverly Street, for a term of 20 years plus three options of renewal (5 year terms), at an annual rent, below market value, of \$10.00;
2. Authorize the Mayor and Corporate Officer to sign the lease agreement for 2431 Beverly Street as presented and attached to the Director, Planning and Building's report dated June 21, 2021; and
3. Authorize the Director of Planning and Building to execute the forms to register the section 219 Floodplain Exemption Covenant on title to 2431 Beverly Street.

## 6. NEW BUSINESS

## 7. QUESTION PERIOD

Question Period is an opportunity for the public to ask brief questions regarding the business discussed during the meeting. To be added to the speakers list, please:

- click on the 'raise your hand' button, if participating by computer, smartphone, or tablet, or
- dial \*3 on your phone

## 8. ADJOURNMENT

Recommendation:

That Council adjourn the meeting at \_\_\_\_ p.m.

# Report

Date June 21, 2021

File: 0890-20 BEV

To Council

From Rob Conway, Director, Planning and Building

Endorsed:



Subject Lease to Cowichan Green Community for 2431 Beverly Street

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## Purpose

To consider a long-term lease, at a rental rate below market value, with the Cowichan Green Community Society (CGC) for Municipal property at 2431 Beverly Street.

## Background

In December 2020, Council supported the CGC's application for provincial funding for the construction of a facility at 2431 Beverly Street under a long term lease agreement.

On May 19, 2021, Council granted an exemption for the construction of commercial agricultural buildings on the property from the Flood Construction Requirements under the Zoning Bylaw, subject to lease provisions and registration of a covenant under s. 219 of the *Land Title Act* to (1) limit the use and development of the land in accordance with the Geohazard Assessment Report prepared by Madrone Environmental Services as enabling safe use of the land for the use intended, and (2) establish conditions respecting the reimbursement of expenses North Cowichan may incur as a result of a breach of the covenant.

On June 2, 2021, Council authorized staff to publish the notice of Council's intention to lease 2431 Beverly Street to the Cowichan Green Community Society for less than market rent pursuant to sections 24 [*publication of intention to provide assistance*], 26 [*notice of proposed property disposition*] and 94 [*requirements for public notice*] of the *Community Charter*.

## Discussion

The lease and covenant were prepared by North Cowichan's external legal counsel. A notice of Property Disposition with intention to provide assistance was published in the June 10<sup>th</sup> and 17<sup>th</sup> editions of the Cowichan Valley Citizen and on the municipal website and notice board at the Municipal Hall on June 4<sup>th</sup> (see Attachment 1).

Key points of the proposed lease, included as Attachment 2, are as follows:

- The Lessee is the Cowichan Green Community Society (CGC);
- The lease term is 20-years, with options to extend for three further 5-year terms (s. 23 and definition of "Term");
- Payment received by North Cowichan is \$10 per year of the term (definition of "Basic Rent" and s. 2.1);

- All expenses and costs incurred in respect of the property, the existing building, proposed buildings (addition for commercial kitchen, and cold storage warehouse building), and any improvements are borne by the CGC (s. 4.1 (a) and (b));
- The CGC is responsible for development and building construction costs, including permits, approvals, and charges, as well as service and utility connections required as part of the CGC's development of the lands and construction of the buildings (s. 4.1 (b) and (c)); and
- Use of the property is for a garden education center, a seed farm, Seed Incubation Pilot Program and related activities, an office, boardroom, and training area, rental of kitchen and building space for local food processing and storage, the production, processing, packaging, storage, and ancillary retail of agricultural products grown on the property and within the Cowichan region, and construction and operation of a "Food Processing and Innovation Hub", which is a shared-use food and beverage processing facility that offers food and agriculture businesses access to commercial processing space, equipment, expertise and resources to support business development and growth (s. 6.1).
- At termination, the CGC will surrender the Lands and Buildings to North Cowichan in the condition in which they were required to be kept under the Lease (s. 18.1).

The section 219 Floodplain Exemption Covenant is included as Attachment 3 and requires the property owner to use and build on the lands only in the manner specified in the Geohazard Assessment report prepared by Madrone Environmental Services Ltd. The lease requires the CGC to ensure buildings are constructed in accordance with the covenant.

Finally, building permit applications are being processed but not issued until the lease is executed.

## Options

### Staff Recommendation:

That Council:

- (1) Approve the lease agreement with the Cowichan Green Community Society for 2431 Beverly Street, for a term of 20 years plus three options of renewal (5 year terms), at an annual rent, below market value, of \$10.00;
- (2) Authorize the Mayor and Corporate Officer to sign the lease agreement for 2431 Beverly Street as presented and attached to the Director, Planning and Building's report dated June 21, 2021; and
- (3) Authorize the Director of Planning and Building to execute the forms to register the section 219 Floodplain Exemption Covenant on title to 2431 Beverly Street.

### Alternate Option:

That Council direct staff to amend the lease agreement with the Cowichan Green Community Society for 2431 Beverly Street by [*Council to identify the clauses to be modified*] before proceeding.



## Recommendation

That Council:

- (1) Approve the lease agreement with the Cowichan Green Community Society for 2431 Beverly Street, for a term of 20 years plus three options of renewal (5 year terms), at an annual rent, below market value, of \$10.00;
- (2) Authorize the Mayor and Corporate Officer to sign the lease agreement for 2431 Beverly Street as presented and attached to the Director, Planning and Building's report dated June 21, 2021; and
- (3) Authorize the Director of Planning and Building to execute the forms to register the section 219 Floodplain Exemption Covenant on title to 2431 Beverly Street.

Attachments:

1. Notice of Property Disposition
2. Proposed Lease with the Cowichan Green Community Society
3. Section 219 Floodplain Exemption Covenant

## NOTICE OF PROPOSED PROPERTY DISPOSITION

Pursuant to sections 24, 26 and 94 of the *Community Charter*, North Cowichan gives notice that it intends to (1) dispose of property at 2431 Beverly Street (shown as "Subject Property" in bold on the map below) by way of lease to the Cowichan Green Community Society (CGCS) for use as a garden education center, a seed farm, Seed Incubation Pilot Program, and related activities, an office, board room, and training area, rental of kitchen and building space for local food processing and storage, the production, processing, packaging, and storage, and ancillary retail of agricultural products grown on the Subject Property and within the Cowichan region, and construction and operation of a "Food Processing and Innovation Hub", which is a shared-use food and beverage processing facility that offers food and agriculture businesses access to commercial processing space, equipment, expertise and resources to support business development and growth; and (2) provide assistance to the CGCS by disposing of the Subject Property for less than market value.

### Description of Land:

2431 Beverly Street - Legally described as Lot 1, Section 19, Range 7, Quamichan District, Plan EPP35195 (PID: 029-237-424).

### Nature of Disposition:

20-year lease, with option to request further extension of up to three 5-year periods.

### Persons Acquiring the Property:

Cowichan Green Community Society.

### Assistance provided (consideration received by North Cowichan):

Rent of \$10 per year of the Term.

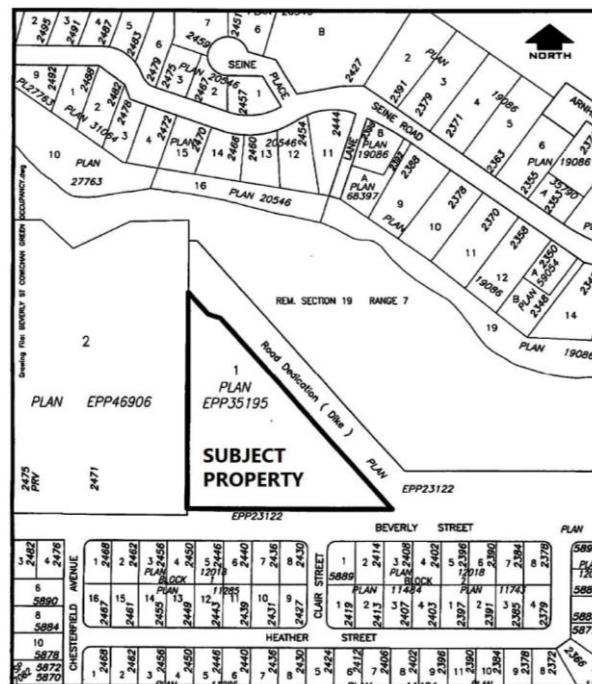
### For more information, please contact:

Rob Conway

Director of Planning and Building

Phone: 250-746-3178

Email: [rob.conway@northcowichan.ca](mailto:rob.conway@northcowichan.ca)



7030 Trans-Canada Highway | Duncan, BC V9L 6A1  
T 250.746.3100 F 250.746.3133 [www.northcowichan.ca](http://www.northcowichan.ca)

MUNICIPALITY OF  
**NORTH**  
Cowichan

**LEASE – 2431 BEVERLY ST (COWICHAN GREEN COMMUNITY)**

**TABLE OF CONTENTS**

**ARTICLE 1 - DEFINITIONS AND INTERPRETATION ..... 2**

**ARTICLE 2 - PAYMENT OF RENT ..... 4**

**ARTICLE 3 - PAYMENT OF TAXES ..... 5**

**ARTICLE 4 - CONSTRUCTION OF BUILDING..... 6**

**ARTICLE 5 - BUILDERS LIENS ..... 8**

**ARTICLE 6 - RESTRICTIONS ON OPERATIONS AND USE..... 9**

**ARTICLE 7 - REPAIRS AND MAINTENANCE .....10**

**ARTICLE 8 - ADDITIONAL RENT .....12**

**ARTICLE 9 - INSURANCE.....12**

**ARTICLE 10 - DAMAGE OR DESTRUCTION .....16**

**ARTICLE 11 - INSPECTION AND EXHIBITION BY LESSOR.....18**

**ARTICLE 12 - OBSERVANCE OF GOVERNMENTAL REGULATIONS AND ZONING .....18**

**ARTICLE 13 - EXCLUSION OF LIABILITY AND INDEMNITY .....19**

**ARTICLE 14 - SUBLETTING AND ASSIGNING .....20**

**ARTICLE 15 - MORTGAGING BY LESSEE .....20**

**ARTICLE 16 - BANKRUPTCY OF LESSEE .....21**

**ARTICLE 17 - DEFAULT BY LESSEE.....21**

**ARTICLE 18 - SURRENDER OF LEASE.....23**

**ARTICLE 19 - QUIET ENJOYMENT, OWNERSHIP OF TENANTS’ FIXTURES AND OWNERSHIP OF BUILDINGS .....23**

**ARTICLE 20 - OVERHOLDING.....24**

**ARTICLE 21 - ENVIRONMENTAL MATTERS .....24**

**ARTICLE 22 - NOTICES.....26**

**ARTICLE 23 - OPTIONS TO EXTEND .....26**

**ARTICLE 24 - MISCELLANEOUS.....28**

**LEASE – 2431 Beverly Street**

THIS LEASE dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2021

BETWEEN:

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN**  
7030 Trans Canada Highway  
Duncan, BC V9L 6A1

(the “Lessor”)

AND:

**COWICHAN GREEN COMMUNITY SOCIETY**  
360 Duncan Street  
Duncan, BC V9L 3W4

(the “Lessee”)

WHEREAS:

- A. The Lessor and the Lessee entered into a Licence of Occupation dated August 18, 2015, and licence amendments dated December 15, 2016, and July 31, 2020, for the use of the Lands for the purpose of a Cowichan Farm Incubator Pilot Program, with the term of such licence expiring July 31, 2021;
- B. The Lessee wishes to continue using the Lands for a Farm Incubation Pilot Program and related activities, and to develop a new Food Processing and Innovation Hub for the production, processing and storage of agricultural products grown on the Lands and within the region, provided the uses comply with zoning requirements, and wishes to lease the Lands for this purpose.
- C. The Lessor is the owner of the Lands and wishes to lease to the Lessee the Lands for the Term upon the terms, conditions and provisos herein so that the Lessee may construct the Buildings and otherwise use, occupy and enjoy the Lands.

WITNESS that in consideration of the rents reserved and the covenants and agreements set forth below, the parties agree as follows:

THE LESSOR HEREBY DEMISES AND LEASES UNTO THE LESSEE AND THE LESSEE DOES HEREBY TAKE AND RENT THE LANDS, TO HAVE AND TO HOLD THE LANDS UNTO THE LESSEE FOR AND DURING THE TERM AS HEREIN PROVIDED.

## ARTICLE 1 - DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In addition to the terms defined on the previous page of this Lease, capitalized terms used in this Lease have the meanings specified in this section 1.1, unless otherwise provided in this Lease:

- (a) “Additional Rent” means all sums, costs, expenses and other amounts, if any, payable by the Lessee to the Lessor pursuant to this Lease, including, without limitation, Realty Taxes, Utilities and all sums payable by way of indemnity under this Lease, but excluding Basic Rent.
- (b) “Alterations” means all alterations, changes, replacements, substitutes, additions and improvements to the Building, excluding, specifically, alterations to the exterior appearance of a Building.
- (c) “Basic Rent” means \$10.00 per year of the Term.
- (d) “Building” or “Buildings” means the buildings on the Lands, including any new buildings or structures that require a building permit to be constructed on the Lands, all as described in Schedule A, or as may be approved in writing by the Lessor, together with all, improvements, Alterations or repairs from time to time thereto.
- (e) “Commencement of Construction” means the later of the date when the first building permit for a new Building is issued to the Lessee by the City and the date when the Lessee’s contractor commences any work on the Lands related to construction of the Building.
- (f) “Environmental Laws” means any statute, law, regulation, order, bylaw, standard, guideline, permit and other lawful requirement of any governmental authority having jurisdiction over the Lands or Building, now or hereafter in force and relating in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, and includes the principles of common law and equity.
- (g) “Government Authority” means any federal, provincial, city, municipal, county, regional, or local government or government authority, and includes any department, commission, bureau, board, administrative agency, or regulatory body of any of the foregoing.
- (h) “Lands” means the lands having a civic address of 2431 Beverly Street, legally described as:

PID: 029-237-424

Lot 1, Section 19, Range 7, Quamichan District, Plan EPP35195

- (i) "Lease" means this Lease.
- (j) "Lease Commencement Date" means the date this Lease has been executed by all parties required to do so.
- (k) "Losses" means liabilities, actions, statutory or other proceedings, judgments, investigations, claims, losses, damages, orders, fines, penalties, expenses, including related professional and other fees and disbursements and costs.
- (l) "Municipality" means the Corporation of the District of North Cowichan.
- (m) "Permitted Encumbrances" means the charges and encumbrances, if any, registered on title to the Lands on the Lease Commencement Date or during the Term.
- (n) "Personnel" of a party means the elected officials and directors, officers, employees, servants and agents of that party, as applicable.
- (o) "Prime Rate" means the floating annual percentage rate of interest established from time to time by the main branch of the Bank of Montreal located in Vancouver, British Columbia, or its successor, as the base rate that is used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as its "prime rate".
- (p) "Realty Taxes" means all assessments for taxes, rates, duties (including school taxes, local improvement rates and other charges levied pursuant to the *Hospital Municipality Finance Act* (British Columbia), the *Municipal Finance Authority Act* (British Columbia) or otherwise) that now are or will or may be levied, rated, charged or assessed against the Lands, a Building, and all other structures, machinery, equipment, facilities and other property of any nature whatsoever located on the Lands, by any municipal, parliamentary, legislative, regional, school or other authority.
- (q) "Term" means twenty (20) years commencing on the Lease Commencement Date.
- (r) "Utilities" means all charges, rates and levies on account of utilities, including heat, electricity, gas, telephone, television, internet and other costs and expenses of a similar nature, and, if not included in Realty Taxes, for water and garbage, recyclables and organics collection.

## **1.2 Legislation References**

Any reference in this Lease to legislation will be deemed to include all regulations thereto, all amendments and re-enactments thereof and all successor legislation.

## **ARTICLE 2 - PAYMENT OF RENT**

### **2.1 Basic Rent**

The Lessee covenants and agrees with the Lessor to pay to the Lessor the Basic Rent each year for the duration of Term. The Lessee may choose to pay the Basic Rent to the Lessor for the entire Term on the Commencement Date, or pay the Basic Rent each year on or before January 15.

### **2.2 Net Lease**

It is the intention of the Lessor and the Lessee that all expenses, costs, payments and outgoings incurred in respect of the Lands, the Buildings and any other improvements of the Lands or for any other matter or thing affecting the Lands, will be borne by the Lessee and unless otherwise expressly stipulated to the contrary, the Basic Rent and the Additional Rent will be absolutely net to the Lessor and free of all abatements, set-off or deduction of any Realty Taxes, utilities and any other, expenses, costs, payments and outgoings of every nature arising from or related to the Lands, a Building or any other improvements of the Lands or for any other matter or thing affecting the Lands, and the Lessee will pay or cause to be paid all such Realty Taxes, Utilities, expenses, costs, payments and outgoings.

### **2.3 Interest on Amounts in Arrears**

When the Basic Rent, Additional Rent or any other amount payable hereunder by the Lessee to the Lessor is in arrears, such amount will bear interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly not in advance, from the date due until paid. Notwithstanding the foregoing, this section will not apply to defaults under section 3.1.

### **2.4 Payments Generally**

All payments by the Lessee to the Lessor of whatsoever nature required or contemplated by this Lease will be:

- (a) paid to the Lessor by the Lessee in lawful currency of Canada;
- (b) made when due under this Lease, without prior demand and without any set-off, abatement or deduction whatsoever, at the office of the Lessor or such other place as the Lessor may designate from time to time to the Lessee;
- (c) applied towards amounts then outstanding under this Lease, in such manner as the Lessor may see fit; and
- (d) deemed to be Additional Rent, in partial consideration for which this Lease has been

entered into, and will be payable and recoverable as Additional Rent, such that the Lessor will have all of the rights and remedies against the Lessee for default in making any such payment that may not be expressly designated as rent, as the Lessor has for default in payment of rent.

### **ARTICLE 3 - PAYMENT OF TAXES**

#### **3.1 Payment of Realty Taxes**

The Lessee will, during the Term, no later than the day immediately preceding the date or dates on which the Realty Taxes become due and payable, pay and discharge or cause to be paid and discharged the Realty Taxes.

#### **3.2 Delinquent Taxes**

If the Lessee in any year during the Term fails to pay any Realty Taxes when due, the Lessee will pay to the Lessor, on demand, interest on the amount outstanding at the percentage rate or rates established by the Province of British Columbia or the applicable taxing authority for unpaid Realty Taxes

#### **3.3 Right to Appeal Assessment**

The Lessee will have the right from time to time to appeal, in its own or the Lessor's name, any assessment of the Lands or Building or any Realty Taxes referred to in section 3.1, provided that such appeal will be at the sole expense of the Lessee.

#### **3.4 Payment of Utilities**

The Lessee will pay for or cause to be paid during the Term when due to the providers thereof all Utilities with respect to the Lands or a Building.

#### **3.5 Business Tax and License Fees**

The Lessee will pay or cause to be paid during the Term when due every tax and permit and license fee (including penalties and interest) in respect of any and every business carried on, in or upon the Lands or a Building or in respect of the use or occupancy of the Lands or a Building (including by or under the Lessee and by or under every sublessee, permittee and licensee), other than such taxes as corporate income, profits or excess profit taxes assessed upon the income of the Lessee (or such sublessee, permittee and licensee), whether such taxes or permit and license fees are charged by any municipal, parliamentary, legislative, regional or other authority.

#### **3.6 Other Taxes**

The Lessee will pay when due all goods and services taxes, harmonized sales taxes,



value-added taxes, sales taxes and consumption based taxes, rates, levies and assessments, including penalties and interest, that are from time to time payable by the Lessee as a result of, or that would not be payable but for, its rights and obligations contained in this Lease, including, such taxes, rates, levies and assessments payable as a result of any payment obligations herein of the Lessee to the Lessor.

### **3.7 Pro-rating Obligations**

In the first and last years of the Term, the Lessee's obligations under section 3.1 will be pro-rated according to the portion of the year included in the Term, such pro-rating to be on a per diem basis.

## **ARTICLE 4 - CONSTRUCTION OF BUILDING**

### **4.1 Lessee to Construct Building**

- (a) The Lessee will construct, at its sole cost, the Buildings outlined in Schedule A hereto that aren't already constructed on the Lands, together with other facilities ancillary thereto and connected therewith on the Lands in substantial accordance with the drawings, specifications (including materials to be used), elevations, location on the Lands and exterior decoration and design and all other documents and information upon which the issuance of the building permits by the Municipality are based and that have been approved by the Lessor. No changes will be made to such drawings, specifications, elevations, location, exterior decoration and design, other documents or information, or to the requirements of such building permits without the approval of the Lessor's Director of Planning and Building. For clarity, any structure the Lessee erects on the Lands that does not require a building permit under zoning or building bylaws does not require approval of the Lessor.
- (b) The Lessee will pay all expenses, costs, payments and outgoings related to:
  - (i) the development land and construction of a Building, including without limitation, those related to require municipal permits and approvals and any costs or charges imposed on the development of the lands related thereto; and
  - (ii) service and Utility connections required as part of the Lessee's development of the Lands and construction of a Building.
- (c) The Lessee will be responsible for connecting services and utilities required as part of the Lessee's development of the Lands and construction of the Building.

### **4.2 Substantial Completion of Building**

For the purposes of this Article 4, a Building will be deemed to have been substantially completed when the Municipality's Chief Building Inspector has certified to, or otherwise

satisfied, the Lessor that, with respect to the Building:

- (a) all work of a structural nature has been properly completed;
- (b) all building equipment and services, including elevators (if any), heating systems and air-conditioning systems (if any) and utilities have been completed, are operating properly and are available for use, and all lobbies, stairwells and other areas intended for the common use are completed except for work of a superficial nature, which is both minor in character and of a type that, owing to the likelihood of damage, may reasonably be deferred until the Building is partially or substantially occupied by tenants of the Lessee;
- (c) the Building complies with all of the Municipality's bylaws and regulations (including the Municipality's Building Bylaw);
- (d) all areas are clean and all surplus building material and rubbish have been removed;
- (e) the Building is in a condition in which it can be used or occupied as intended, and any work that is still unfinished can be completed promptly and is work the incompleteness of which will not be objectionable to a tenant of the Lessee acting reasonably;
- (f) the Building has been constructed in all respects in a good and workmanlike manner and in accordance with the drawings and specifications referenced in or approved by Lessor under section 4.1, and in compliance with all building permits issued by the Municipality; and
- (g) a certificate of completion has been issued in respect of the Building pursuant to the *Builders Lien Act* (British Columbia).

#### **4.3 Intentionally Omitted**

#### **4.4 Intentionally Omitted**

#### **4.5 Alterations After Substantial Completion**

After substantial completion of a Building, the Lessee will not make or permit to be made any Alterations affecting the structure of a Building without the written approval of the Lessor's Director of Planning and Building, which approval will not be unreasonably withheld. Without limiting the foregoing, no Alterations involving an estimated cost of more than Two Hundred Thousand Dollars (\$200,000.00) will be undertaken until the Lessee has submitted or caused to be submitted to the Lessor such drawings, specifications (including the materials to be used), elevations (where applicable), locations (where applicable), exterior decoration and design and such other documentation and information as the Lessor may request in connection with the proposed Alterations, and until all of the same have been approved in writing by the Lessor's Director of Planning and Building, which approval will not be unreasonably

withheld. The Lessee covenants and agrees with the Lessor that all Alterations undertaken by or for the Lessee once begun will be prosecuted with due diligence to completion.

#### **4.6 Intentionally Omitted**

### **ARTICLE 5 - BUILDERS LIENS**

#### **5.1 Builders Liens**

In connection with all labour performed on or materials supplied to the Lands, including but not limited to the construction of a Building, the Lessee will comply with, and will cause any contractor hired by it to comply with, the provisions of the *Builders Lien Act* (British Columbia), and with all other statutes applicable in connection therewith and in force from time to time, including any provision or statute requiring or permitting the retention of portions of any sums payable by way of holdbacks.

#### **5.2 Discharge of Builders Liens**

If and whenever any builders lien, or other lien or claim arises or is filed against the Lands in connection with work, labour, services or materials supplied to or for the Lessee or for the cost of which the Lessee may in any way be liable, the Lessee will, within fifteen (15) days after receipt of notice of such lien or claim, procure the discharge thereof, and the discharge of any certificate of pending litigation registered in respect of any such lien or claim, by payment or giving security or in such other manner as may be required or permitted by law. If the Lessee fails to comply with the foregoing, the Lessor may pay and discharge any lien claim if, in its reasonable judgement, the Lands or the Lessor's interest in the Lands becomes liable to forfeiture or sale, or is otherwise in jeopardy. The Lessee will reimburse to the Lessor any amount paid by the Lessor in discharging a lien claim and the Lessor's reasonable expenses in connection therewith.

#### **5.3 Notice by Lessor**

Pursuant to section 3(2) of the *Builders Lien Act*, the Lessor may file in the Land Title Office a "notice of interest" in respect of the Lands and for all purposes of this Lease the construction of a Building by the Lessee will be deemed not to be done at the request of the Lessor.

## **ARTICLE 6 - RESTRICTIONS ON OPERATIONS AND USE**

### **6.1 Use**

The Lessee covenants and agrees with the Lessor that neither the Lands nor a Building nor any part of the Lands or a Building will be used for any purpose except:

- (a) a garden education center,
- (b) a seed farm, Seed Incubation Pilot Program, and related activities,
- (c) an office, board room, and training area,
- (d) rental of kitchen and building space for local food processing and storage,
- (e) the production, processing, packaging, and storage, and ancillary retail of agricultural products grown on the Lands and within the Cowichan region, and
- (f) construction and operation of a “Food Processing and Innovation Hub”, which is a shared-use food and beverage processing facility that offers food and agriculture businesses access to commercial processing space, equipment, expertise and resources to support business development and growth. The Lessee will be constructing and operating the food processing and innovation hub in partnership with the Minister of Agriculture, Food and Fisheries’ and the Cowichan Valley Regional District, and it will form part of the BC Food Hub Network,

provided such uses, when commenced, are not in violation of any municipal bylaws, statutes, rules, or regulations of any Government Authority having jurisdiction that would prevent such use, including, without limitation, the Municipality’s zoning bylaws applicable to the Lands.

### **6.2 No Nuisance**

The Lessee will not carry on, or suffer or permit to be carried on, upon the Lands anything which would constitute a nuisance to the Lessor or to any neighbouring properties or their owners or occupants, acting reasonably; provided however that the Lessor acknowledges and agrees that the use of the Lands in accordance with the provisions of this Lease will be deemed as between the Lessor and the Lessee not to be a nuisance.

### **6.3 Intentionally Omitted**

### **6.4 Constitution**

The Lessee covenants and agrees that without the prior written consent of the Lessor, it will not amend or permit its constitution to be amended or varied in any way from the constitution filed in the British Columbia Corporate Registry as of the Lease Commencement Date.

## **6.5 Use by Others**

The Lessor will not permit any part of the Lands to be used or occupied by any persons other than the Lessor, its agents, employees, guests, invitees, licensees or customers.

## **6.6 Permitted Encumbrances**

- (a) The Lessee will perform and observe all of the Lessor's obligations of under the Permitted Encumbrances.
- (b) Specifically, and without limiting the generality of the foregoing, the Lessee acknowledges that the Lands are located within a flood plain area and the District of the Municipality of North Cowichan intends to register a *Land Title Act* section 219 covenant against title to the Lands governing construction on and use of the lands and that requires that, in accordance with section 524 of the *Local Government Act*, the Lands may only be used in accordance with a report by a professional engineer or geoscientist experienced in geotechnical engineering certifying that the Lands may be used safely for the use intended. The Lessee agrees that, for the Term of this Lease, it will be bound by all covenants, perform all obligations and be responsible for all liabilities, including indemnities, that are imposed on or the responsibility of the "Owner" by a section 219 covenant registered against title to the Lands that is in any way connected to the fact the Lands are in a flood plain or subject to a risk of flooding as if the Lessee was the registered owner of fee simple of the Lands. For clarity, during the Term, the Corporation of the District of North Cowichan will not be bound by the any covenant or be responsible for any obligation or liabilities contained in or in any way related to or arising from the Flood Covenant.
- (c) The Lessor will execute such documents as might reasonably be requested by the Lessee to enable it to comply with its obligations and to enjoy its rights in respect of the Permitted Encumbrances. The Lessee further covenants and agrees with the Lessor that if the Municipality exercises any of its rights in its regulatory capacity under the Permitted Encumbrances, such exercise will not be a breach of the Lessor's covenant for quiet enjoyment.

# **ARTICLE 7 - REPAIRS AND MAINTENANCE**

## **7.1 Lessor Not Obligated to Repair**

The Lessor will not be obliged to furnish any services or facilities or to make repairs or

Alterations in or to the Lands or a Building, and the Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Lands and a Building and all expenses related thereto.

## **7.2 Repairs by the Lessee**

Reasonable wear and tear excepted, so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of a Building:

- (a) the Lessee at the Lessee's cost and expense will put and keep in good order and condition, or cause to be put and kept in good order and condition, the Lands and Buildings, both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, stairways, elevators (if any) and similar devices, heating and air conditioning equipment for the Buildings, sidewalks, yards and other like areas, water and sewer mains and connections, water, steam, gas and electric pipes and conduits and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs and, subject to section 4.5, Alterations, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Buildings and any and all fixtures and equipment therein fully usable for the purposes for which the Building was constructed. Such repairs and Alterations will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Building;
- (b) the Lessee will not commit or suffer waste to the Lands or the Buildings or any part thereof;
- (c) at the expiration or earlier termination of this Lease, the Lessee will, except as otherwise expressly provided herein, surrender and deliver up the Lands with the Buildings, and the fixtures, appurtenances and equipment thereon and therein, or any replacements or substitution therefor, in good order and condition; and
- (d) if the Lessee does not fulfil its obligations set out in this Article 7, the Lessor, through its agents, servants, contractors and subcontractors, may, but will not be obliged to, enter (without hindrance by the Lessee) upon the Lands and the Buildings as required for the purpose of making any repairs necessary to put the Lands and the Buildings in good order and condition, provided that the Lessor will make such repairs only after giving the Lessee not less than fourteen (14) days written notice of its intention to do so, except in the case of an emergency when no notice will be required. Any costs and expenses (including overhead costs) incurred by the Lessor in making such repairs to the Lands and Buildings will be reimbursed to the Lessor by the Lessee on demand, together with interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly, from the date incurred until the date paid.

## **7.3 Removal of Ice and Snow from Sidewalks**

The Lessee will keep the public sidewalk adjacent to the Lands reasonably clean from rubbish, ice and snow during the times and to the extent lawfully required of an owner and if the Lessee at any time fails to do so, the Lessor, through its agents, servants, contractors and subcontractors, may remove such rubbish, ice and snow and the Lessor will not be required to give the Lessee any notice of its intention to do so. Any costs and expenses incurred by the Lessor in removing such ice and snow will be reimbursed to the Lessor by the Lessee on demand, together with interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly, from the date incurred until paid.

## **ARTICLE 8 - ADDITIONAL RENT**

### **8.1 All Defaults in Payment as Additional Rent**

If the Lessee defaults in the payment of any sums required to be paid by it pursuant to the terms of this Lease, or fails to fulfil any of its obligations under this Lease, the Lessor may (but will be under no obligation to) pay such sums or fulfil such obligations on behalf of the Lessee, and any losses, costs, charges and expenses suffered by the Lessor as a result, including sums payable by way of indemnity, whether or not expressed in this Lease to be rent, may at the option of the Lessor be treated as and deemed to be Additional Rent, in which event the Lessor will have all remedies for the collection of such sums, costs, expenses or other amounts when in arrears as are available to the Lessor for the collection of rent in arrears.

## **ARTICLE 9 - INSURANCE**

### **9.1 Insurance During Construction of Building**

Prior to Commencement of Construction, and throughout the entire period of construction until substantial completion of a Building pursuant to section 4.2, the Lessee will effect or will cause its contractor or contractors to effect and maintain in full force the following insurance coverage:

- (a) wrap-up liability insurance with limits of not less than Five Million Dollars (\$5,000,000), or such other amount as the Lessor may require from time to time, per occurrence, the Lessee as named insured and with the Lessee's subcontractors, engineers, architects and consultants included as additional insureds while engaged directly or indirectly in work or services for the named insured. Manufacturers and other suppliers and service providers be included as additional insureds while on the Lands in regards to their conducting installation or construction work for the Lands or Building, but they may not be covered for any bodily injury or property damage within the products-completed operations hazard. The insurance be obtained by the Lessee on its own behalf and as trustee for the benefit of any and all additional insureds who enter into a contract relating to the construction project on the Lands.

- (b) all-risk course of construction insurance issued in the joint names of the Lessee, the Lessor, protecting them from all loss or damage of or to the Building and all fixtures, equipment, improvements and building materials on the Lands from time to time, both during and after construction (but which may be by different policies effected from time to time covering the risk during different phases of construction of the Building, provided that at no time will the Building be uninsured) against fire, earthquake, flood and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the province of British Columbia by prudent owners, and such other perils as the Lessor may reasonably require to be insured against, to the full replacement value thereof at all times.

## **9.2 Commercial General Liability Insurance**

At all times during the Term, the Lessee will effect and keep in force commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000), or such other amount as the Lessor may require from time to time, per occurrence, against public liability claims for bodily injury, death and property damage (including loss of use) arising from the Lessee's use and occupancy of the Lands and from any occurrence or accident on the Lands or Buildings. Such insurance will be written on an occurrence basis and will provide for blanket contractual liability, including liability assumed by the Lessee under this Lease. The policy will also contain a cross liability or severability of interests clause and will name the Lessor and its Personnel as additional insureds with respect to third party claims arising out of the Lessee's operations pursuant to this Lease. The parties agree and acknowledge that the insurance will contain a waiver of subrogation in favour of the Lessor. Such waiver shall not apply to any claim, loss, or expense arising solely from the negligence of the Lessor.

## **9.3 All Risk Property Insurance**

At all times during the Term, the Lessee will effect and maintain property insurance in the name of the Lessor to the full replacement value of the Buildings and fixtures on the Lands, protecting them against "All Perils" of loss or damage including flood, sewer backup and earthquake, or as otherwise agreed to in writing by the Lessor. If a Building is constructed on the Lands during the Term, once such Building is substantially complete, the Lessee will ensure property insurance is maintained over such Building in accordance with this section.

## **9.4 Insurance – Additional Provisions**

The following provisions will apply to all policies of insurance which are referred to in this Article 9:

- (a) the policies will be primary and non-contributing with respect to any policy or self-



insured fund otherwise held or established on behalf of the Lessor;

- (b) the stated amount of value insured under property policies will be of sufficient amount that none of the Lessee, nor the Lessor will become co- insurers with respect to any loss claimed against the insurance;
- (c) each policy will be written on a form acceptable to the Lessor and with insurers licensed to do business in the province of British Columbia and acceptable to the Lessor;
- (d) any deductible amounts applying to a claim against a policy will be of an amount approved by the Lessor;
- (e) each policy will contain a clause requiring that the insurers will endeavour to provide to the Lessor a minimum of sixty (60) days prior written notice of any cancellation (except for cancellation resulting from non-payment of premiums, in which case applicable statutory provisions will apply); and
- (f) all premiums and deductibles required under said policies will be paid by the Lessee to the insurers and proof of such payment will be submitted to the Lessor.

In addition to the notification obligations of the insurers required by section 9.4(e), the Lessee will provide to the Lessor a minimum of sixty (60) days prior written notice of any cancellation, lapse or material change resulting in reduction of coverage, either in whole or in part, in respect of any of the policies of insurance which are referred to in this Article 9.

## **9.5 Evidence of Insurance**

Prior to the Lease Commencement Date the Lessee will provide the Lessor with evidence of all insurance required to be taken out pursuant to this Lease, in the form of one or more detailed certificates of insurance, in such form(s) and contents as the Lessor requests. Each certificate of insurance must identify the Lease number, policy holder and subject matter, and must not contain any disclaimer. Thereafter, and throughout the Term, forthwith upon request by the Lessor, similar evidence of renewals, extensions or replacement of such insurance will be provided in the form of such certificate(s) of insurance. In addition, if requested by the Lessor at any time, the Lessee will forthwith deliver to the Lessor a certified copy of each insurance policy requested.

## **9.6 Payment of Loss Under Insurance Policy Referred to in Section 9.1 (b) and 9.3**

- (a) The insurance monies payable under any or all of the policies of insurance referred to in Sections 9.1(b) and 9.3 will, notwithstanding the terms of the policy or policies, be paid to the Lessor.
- (b) Subject to Article 10, the Lessor will use such insurance monies for the restoration,

reconstruction, or replacement of the loss or damage in respect of which such insurance monies are payable under this Article 9 against certificates of the registered professional as the Lessee and the Lessor may agree upon who is in charge of such restoration, reconstruction, or replacement.

## **9.7 Workers Compensation Coverage**

At all times during the Term, the Lessee will, and will cause its Personnel and all others engaged in or upon any work on a Building or the Lands to, comply with the *Workers Compensation Act* (British Columbia) (the “WCA”) and the requirements and regulations of WorkSafeBC in respect of a Building and the Lands. Without limiting the generality of the foregoing, the Lessee will:

- (a) require as a condition of any agreement made with respect to construction, repair, renovation or demolition of the Building, whether with contractors, materialmen or otherwise, that there is full workers compensation insurance coverage in place in respect of all workmen, employees, servants and others engaged in or upon any work, and that all workmen, contractors or other workers require the same of their workmen and subcontractors. The Lessee will immediately notify the Lessor of any dispute involving third parties that arises in connection with obtaining and maintaining the workers compensation insurance coverage required hereby if such dispute results or may result in the required insurance coverage not being in place, and the Lessee will take all reasonable steps to ensure resolution of such dispute forthwith. The Lessee will further ensure that no amount payable pursuant to the WCA is left unpaid so as to create a lien on the Lands or the Building. If the workers compensation insurance coverage required by this section 9.7 is not in place, the Lessor will be entitled to have recourse to all remedies specified in this Lease or at law or equity; and
- (b) be deemed to be, and is hereby designated and appointed by the Lessor as, the “Prime Contractor” as that term is defined in section 118 of the WCA for the purposes of the WCA and related regulations, including the Occupational Health and Safety Regulation (the “OHS Regulation”), and the requirements and regulations of WorkSafeBC, and will in that capacity strictly comply with all requirements applicable to that designation, including without limitation those set forth in Division 3 of Part 3 of the WCA and in sections 20.2 and 20.3 of the OHS Regulation, as they may be amended from time to time. Notwithstanding the foregoing, with the prior written consent of the Lessor, a contractor hired by the Lessee to perform work on the Lands on its behalf may be designated as the Prime Contractor instead of the Lessee.

## **9.8 Release of Lessor from Liability for Insured Loss or Damage**

The Lessee hereby releases the Lessor and its Personnel, whether or not the Lessor

and its Personnel have been negligent, from any and all liability for loss or damage caused by any of the perils against which the Lessee will have insured or is obligated to insure pursuant to the terms of this Lease or any applicable law, the intent being that the Lessee's policies of insurance will contain a waiver of subrogation in favour of the Lessor. Such release and waiver of subrogation will not apply in the case that the loss or damage was the sole result of the negligence of the Lessor.

### **9.9 Insurance May Be Maintained by Lessor**

The Lessee agrees that should the Lessee at any time during the Term fail to insure or keep insured the Building against loss or damage by fire and other perils as required under Article, or fail to maintain insurance against claims for personal injury, death, or property damage or loss as required under Article 9, then in any of such events, the Lessor, although not obliged to do so, may obtain and maintain such insurance in such amount or amounts with such deductible amounts and for such period or periods of time as the Lessor deems advisable; and the Lessee will pay to the Lessor as Additional Rent, upon the Lessor obtaining any such insurance and thereafter annually during the Term, within 30 days after receipt of any invoice from the Lessor, such amounts as the Lessor has expended for such insurance. If the Lessor pays for or obtains and maintains any insurance pursuant to this section 9.9, the Lessor will submit to the Lessee annually a statement of the amount or amounts payable by the Lessee under this section 9.9 as the cost of such insurance for the next ensuing year, and upon receipt of payment will apply the payment on account of the premiums of such insurance with the loss, if any, thereunder payable to the Lessor or the Lessee as their interests may appear.

## **ARTICLE 10 - DAMAGE OR DESTRUCTION**

### **10.1 Intentionally Omitted**

### **10.2 Lessee's Obligation When Building Partially Damaged or Destroyed**

Subject to the provisions of sections 10.5, the Lessee covenants and agrees with the Lessor that in the event of partial damage to or partial destruction of a Building, the Lessee will either:

- (a) replace any part of the Building damaged or destroyed with a new structure in accordance with any agreement which may be made by the Lessee with the Lessor; or
- (b) in the absence of any such agreement, repair or replace such damage or destruction to a standard comparable to the standard of the structure being repaired or replaced.

### **10.3 Lessee's Obligations When Building Completely or Substantially Destroyed**

Subject to the provisions of sections 10.5, the Lessee covenants and agrees with the

Lessor that in the event of complete or substantially complete destruction of a Building, the Lessee will either:

- (a) reconstruct or replace the Building with a new structure or structures in accordance with any agreement which may be made by the Lessee with the Lessor; or
- (b) in the absence of any such agreement, replace the Building with a new structure or structures comparable to the structure or structures being replaced.

#### **10.4 Replacement, Repair or Reconstruction**

Any replacement, repair or reconstruction of a Building or any part thereof pursuant to the provisions of sections 10.2 or 10.3 will be made or done in compliance with section 4.5 and Article 7.

#### **10.5 Destruction or Damage During Last Five Years of Term**

- (a) In the event of the complete or substantial destruction of a Building during the last five (5) years of the Term, the Lessee may, at its option, either reconstruct or replace the Building so destroyed or damaged in accordance with section 10.3 or decline to do so, and instead elect to terminate this Lease, provided that the Lessee makes such election within sixty (60) days after the date on which the Building was so destroyed and notifies the Lessor of its election forthwith after making it;
- (b) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Lessee pursuant to section 10.5(a), the Lessee will demolish and completely remove the Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 9, be distributed as follows:
  - (i) firstly, to reimburse the Lessee for all costs and expenses necessarily incurred by the Lessee in the demolition and removal of the Building and all foundations and debris from the Lands and the restoration of the Lands as aforesaid;
  - (ii) secondly,
    - to pay the balance of the insurance monies, if any, as follows:
      - (A) to the Lessor the amount calculated as follows:
 
$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days in expired portion of the Term} \div \text{total days in Term}); \text{ and}$$
      - (B) to the Lessee the amount calculated as follows:

amount payable = (balance of insurance monies) x (days remaining in the Term ÷ total days in Term); and

- (c) Notwithstanding anything contained herein, in the event the Lessee terminates this Lease in accordance with this section 10.5, this section 10.5 will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this section 10.5 or any part thereof remains unperformed.

## **ARTICLE 11 - INSPECTION AND EXHIBITION BY LESSOR**

### **11.1 Inspection by Lessor**

It will be lawful for representatives of the Lessor to enter the Lands and the Buildings at all reasonable times during the Term in order to examine the condition thereof. If the Lessor determines that any of the repairs described in section 7.2 are required, the Lessor may give notice of such required repairs to the Lessee, and the Lessee will within thirty (30) days after every such notice, or such longer period as provided in section 17.1(d), complete the required repairs.

### **11.2 Intentionally Omitted**

## **ARTICLE 12 - OBSERVANCE OF GOVERNMENTAL REGULATIONS AND ZONING**

### **12.1 Compliance**

The Lessee covenants to competently and faithfully observe and comply with all laws, bylaws and lawful orders which apply to the Lands and the Buildings or the Lessee's occupation of or activities on the Lands or in the Buildings, including without limitation municipal, regional, provincial, and federal legislative enactments concerning, without limitation, all environmental, police, fire, and sanitary regulations, zoning and building bylaws, and any municipal, regional, provincial, federal or other government regulations that relate to the construction and erection of the Buildings, to the equipment and maintenance of the Buildings, to the operation, occupation, and use of the Buildings or the Lands to the extent that the Lessee operates, occupies, and uses the Buildings or the Lands and to the making of any repairs, replacements, alterations, additions, changes, substitutions, or improvements of or to the Buildings, the Lands, or any part of them. The Lessee also covenants to not use or occupy or permit to be used or occupied the Lands or the Building or any part thereof for any illegal or unlawful purpose or in any manner which would result in the cancellation or threatened cancellation of any insurance, or in the refusal of any insurer to issue any insurance as requested. If any law, bylaw or lawful order is directed at or places a duty or obligation upon the Lessor, then the same will be performed and observed by the Lessee, at its cost, in the place and stead of the Lessor.

## **12.2 Zoning**

- (a) The Lessee does not represent or warrant that the Municipality's zoning bylaw applicable to the Lands on the Lease Commencement Date permits all or any of the permitted uses of the Lands outlined in this Lease.
- (b) If, in order to lawfully carry out any of the uses permitted under this Lease, the Lessee must apply to amend the Municipality's zoning bylaw applicable to the Lands or obtain a temporary use permit from the Municipality, the Lessee is responsible for doing so at its' sole cost and expense.

## **ARTICLE 13 - EXCLUSION OF LIABILITY AND INDEMNITY**

### **13.1 Limitation of Liability and Release**

Neither the Lessor nor its Personnel or contractors will be liable for, and the Lessee hereby releases the Lessor and its Personnel and contractors from all Losses, including without limitation, Losses as a result of:

- (a) any bodily injury or death caused, suffered or sustained in or about the Lands or the Buildings; or
- (b) any property damage or other loss or damage to the Lands or the Buildings, or to any property belonging to the Lessee or to any other person in or about the Lands or the Buildings,

unless resulting from the negligence or willful acts of the Lessor or its Personnel or contractors, as the case may be.

### **13.2 Exclusion of Liability**

Notwithstanding section 13.1, neither the Lessor nor its Personnel or contractors will be liable in any circumstances for:

- (a) business, economic or indirect loss or damage of any nature whatsoever, however caused, which may be suffered or sustained by the Lessee or any other person who may be in or about the Lands or the Buildings; or
- (b) any loss against which the Lessee is obligated to insure or has insured.

### **13.3 Indemnification**

The Lessee will indemnify and save harmless the Lessor and its Personnel and contractors from and against all Losses which the Lessor or its Personnel or contractors may suffer or incur arising out of this Lease; provided, however, that such indemnity will not apply to the extent to which such Losses result from the respective negligence

and/or willful acts of the Lessor or its Personnel or contractors, as the case may be. Subject to the foregoing proviso, the Lessee will indemnify and save harmless the Lessor and its Personnel and contractors in respect of all Losses:

- (a) as a result of bodily injury or death, property damage or other damage arising from the conduct of any work by or any act or omission of or relating to or arising from the occupation or possession of the Lands and the Buildings by the Lessee or any assignee, subtenant, Personnel, contractor, invitee or licensee of the Lessee; or
- (b) suffered or incurred by the Lessor or its Personnel and contractors that arise, whether directly or indirectly, from any breach by the Lessee, its Personnel, contractors or any other person for whom the Lessee is responsible in law, of any of its covenants and obligations under this Lease.

#### **13.4 Indemnification Survives Termination of Lease**

The obligations of the Lessee to indemnify the Lessor and its Personnel and contractors will apply and continue notwithstanding the termination or expiration of this Lease.

### **ARTICLE 14 - SUBLETTING AND ASSIGNING**

#### **14.1 Subletting and Assigning by Lessee**

The Lessee must not sublease, assign, transfer, sell or encumber the Lease or enter into any agreement for the purpose of sub-leasing, assignment, transferring, selling or encumbering the Lease, the Buildings or the Lands, except with the prior written consent of the Lessor, which consent the Lessor may arbitrarily withhold. The Lessor grants permission for the Lessee to licence the cold storage warehouse building on the Lands to the Cowichan Valley Co-operative Marketplace.

#### **14.2 Copies of Subleases**

If requested by the Lessor, a copy of all subleases, licenses or agreements to occupy will be forwarded to the Lessor within thirty (30) days after the receipt of the request.

### **ARTICLE 15 - MORTGAGING BY LESSEE**

#### **15.1 Mortgaging by Lessee**

The Lessee will not mortgage its leasehold interest under this Lease or its interest in the Lands and the Buildings.

## **ARTICLE 16 - BANKRUPTCY OF LESSEE**

### **16.1 Bankruptcy of Lessee**

If the Lessee's interest in this Lease is at any time seized or taken in execution by any creditor of the Lessee, or if the Lessee makes a general assignment for the benefit of creditors, or institutes proceedings to subject itself to the *Winding-up and Restructuring Act* (Canada) or to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files an application or petition or answer or consent seeking reorganization or readjustment of the Lessee under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or any law of Canada or any province thereof relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver, or if the Lessee or its directors pass any resolution authorizing the dissolution or winding-up of the Lessee, or if a receiver, interim receiver, trustee or liquidator of all or any part of the property of the Lessee is appointed or applied for by the Lessee, or if a judgment, decree or order is entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Winding-up and Restructuring Act* or *Bankruptcy and Insolvency Act* or determining the proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or winding-up or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency has been properly instituted, then this Lease will, at the option of the Lessor, immediately become terminated.

## **ARTICLE 17 - DEFAULT BY LESSEE**

### **17.1 Re-entry on Certain Defaults by Lessee**

Subject to the provisions of section 17.2, if and whenever:

- (a) Basic Rent or any part thereof is not paid on the day appointed for payment thereof; or
- (b) the Lessee defaults in payment of Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease, and such default continues for thirty (30) days following any specific due date on which the Lessee is to make such payment or, in the absence of such specific due date, for thirty (30) days following notice by the Lessor requiring the Lessee to pay the same; or
- (c) a Building is abandoned or remains vacant for more than thirty (30) days; or
- (d) the Lessee defaults in performing or observing any of its other covenants or obligations under this Lease, or any event occurs which by the terms of this Lease constitutes a breach hereof or confers upon the Lessor the right to re-enter or forfeit



or terminate this Lease, and the Lessor has given to the Lessee notice of such default or the happening of such event, and if at the expiration of forty-five (45) days after the giving of such notice the default continues to exist, or in the case of a default which cannot with due diligence be cured within the period of forty-five (45) days aforesaid, if the Lessee does not commence the rectification of such default within the said forty-five (45) day notice period and thereafter promptly and diligently and continuously proceed with such rectification; or

- (e) this Lease expires or is forfeited or terminated pursuant to any other provision contained herein, including, without restricting the generality of the foregoing, the termination of this Lease pursuant to the provisions of section 10.5,

then and in every such case, it will be lawful for the Lessor at any time thereafter without notice or demand, with or without process of law and by forced entry if necessary, to enter into and upon the Lands and the Buildings, or part thereof in the name of the whole, and, if this Lease has not already expired or been forfeited or terminated, to terminate this Lease by leaving upon the Lands notice in writing of such termination. If the Lessor terminates this Lease pursuant to this section 17.1, or otherwise as a result of default of the Lessee, or if the Lessee has forfeited this Lease, the Lessee will be liable to the Lessor for the rents and all other amounts to be paid and the covenants to be performed by the Lessee up to the date of such termination or forfeiture.

## **17.2 Intentionally Omitted**

## **17.3 Remedies of Lessor are Cumulative**

The remedies of the Lessor specified in this Lease are cumulative and are in addition to any remedies that the Lessor may have at law or equity. No remedy will be deemed to be exclusive, and the Lessor may from time to time have recourse to one or more or all of the available remedies specified herein, or at law or equity. In addition to any other remedy provided in this Lease, the Lessor will be entitled to restrain by injunction any violation or attempted or threatened violation by the Lessee of any of the covenants or agreements contained herein.

## **17.4 Waiver by Lessor**

The failure of the Lessor to insist upon the strict performance of any covenant or agreement contained in this Lease will not waive such covenant or agreement, and the waiver by the Lessor of any breach of any covenant or agreement of the Lessee under this Lease will not constitute a waiver of such covenant or agreement in respect of any other breach. The receipt and acceptance by the Lessor of rent or other monies due hereunder with knowledge of any breach of any covenant or agreement by the Lessee will not constitute a waiver of such breach. No waiver by the Lessor will be effective unless made in writing.

## **ARTICLE 18 - SURRENDER OF LEASE**

### **18.1 Surrender of Lease**

At the termination or expiration of the Term, whether by forfeiture, default or lapse of time, the Lessee will surrender the Lands and Buildings to the Lessor in the condition in which they were required to be kept by the Lessee pursuant to the provisions of this Lease, including, without restricting the generality of the foregoing, the provisions of section 10.5(b), except as herein otherwise expressly provided.

## **ARTICLE 19 - QUIET ENJOYMENT, OWNERSHIP OF TENANTS' FIXTURES AND OWNERSHIP OF BUILDINGS**

### **19.1 Covenant for Quiet Enjoyment**

Subject to the Lessor's rights herein, and subject to the Permitted Encumbrances as extended or modified from time to time, if the Lessee pays the Rent hereby reserved and all other amounts payable hereunder, and observes and performs all of the obligations, covenants and agreements of the Lessee herein contained, the Lessee may peaceably enjoy and possess the Lands for the Term, without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming through, from or under the Lessor, provided however that the enforcement by the Lessor, in its capacity as a local government, of its laws, bylaws and orders that touch and concern the Lands and Buildings will not be a breach of the Lessor's covenant set forth in this section 19.1.

### **19.2 Ownership of Lessee's Fixtures**

The Lessee may remove from the Buildings and the Lands fixtures or improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Buildings or the Lands. The Lessee will make good any damage to the Buildings caused by any removal of the tenants' fixtures.

### **19.3 Ownership of Buildings**

The Buildings will become the absolute property of the Lessor, free and clear of all liens, charges, encumbrances, equities or claims of any kind or nature whatsoever, save and except for the Permitted Encumbrances, upon the expiration or earlier termination of the Term or any permitted period of overholding, except as provided in Article 10, but will be deemed, as between the Lessor and the Lessee during the Term, to be the separate property of the Lessee and not of the Lessor but subject to and governed by all the provisions of this Lease, provided always that the Lessor's absolute right of property in the Buildings, which will arise at the expiration or earlier termination of the Term or any permitted period of overholding, will take priority over any other interest in

the Buildings that may now or hereafter be created by the Lessee without the prior written consent of the Lessor, and provided that all dealings by the Lessee with the Buildings which in any way affect title thereto will be made expressly subject to this right of the Lessor and the Lessee will not assign, encumber or otherwise deal with the Buildings separately from any permitted dealing with the leasehold interest under this Lease, to the intent that no person will hold or enjoy any interest in this Lease acquired from the Lessee who does not at the same time hold a like interest in a Building.

## **ARTICLE 20 - OVERHOLDING**

### **20.1 Overholding**

The Lessee covenants and agrees with the Lessor that if the Lessee overholds and the Lessor accepts rent after the expiration of the Term, the new tenancy thereby created will be a tenancy from month to month and not a tenancy from year to year and will be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month, provided however that the monthly Basic Rent payable by the Lessee will be the then market rental value of the Lands and the Buildings as determined from time to time in the bona fide opinion of the Lessor, and such monthly Basic Rent will be paid in advance. The Lessee will also pay monthly as Additional Rent one-twelfth of the then current amount described in section 2.1.

## **ARTICLE 21 - ENVIRONMENTAL MATTERS**

### **21.1 Definitions**

For the purposes of this Article 21:

- (a) "Contaminants" mean any pollutants, contaminants, deleterious substances, underground or aboveground tanks, asbestos materials, urea formaldehyde, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance which is now or hereafter prohibited, controlled or subject to Environmental Laws.

### **21.2 Lessee's Covenants and Indemnity**

The Lessee covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the Lands or Buildings for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with Contaminants, without the prior written consent of the Lessor, which consent may be arbitrarily withheld. The Lessor consents to the Lessee's use and storage of fuel, oil and similar products on the Lands and Buildings for the purpose of operating and maintaining the Lessee's equipment.

- (b) to strictly comply, and cause all persons for whom it is at law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Lands and Buildings;
- (c) to promptly provide to the Lessor a copy of any environmental site investigation, assessment, audit or report relating to the Lands or Buildings and conducted by or for the Lessee at any time before, during or after the Term, or any renewal or extension thereof. The Lessee hereby waives the requirement for the Lessor to provide a site profile for the Lands pursuant to the *Environmental Management Act* (British Columbia), any regulations enacted pursuant thereto, or any similar or successor legislation;
- (d) to promptly provide to the Lessor on request such written authorizations as the Lessor may require from time to time to make inquiries of any governmental authorities regarding the Lessee's compliance with Environmental Laws;
- (e) to promptly notify the Lessor in writing of the existence or release of any Contaminant on, in or under the Lands or Buildings or of any other occurrence or condition on the Lands or any adjacent property that could contaminate the Lands or the Buildings or result in the non-compliance of the Lands or Buildings with Environmental Laws, or subject the Lessor or Lessee to any fines, penalties, orders, investigations or proceedings under Environmental Laws;
- (f) on the expiry or earlier termination of this Lease, or at any time if requested by the Lessor or required pursuant to Environmental Laws, to remove from the Lands and Buildings all Contaminants, and to remediate any contamination of the Lands or any adjacent or other affected property resulting from Contaminants, in either case brought onto, used at, created upon or released from the Lands by the Lessee or any person for whom the Lessee is at law responsible. The Lessee will perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants will remain the property of the Lessee, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding their degree of affixation to the Lands or Buildings; and
- (g) without limiting the generality of Article 13, to indemnify the Lessor and its Personnel and contractors from any and all Losses (including the cost of remediation of the Lands and Buildings and any other affected property) arising from or in connection with:
  - (i) any breach of or non-compliance with the provisions of this Article 21 by the Lessee; or
  - (ii) the release or alleged release of any Contaminants on or from the Lands related to or as a result of the use and occupation of the Lands and Buildings by, or any act or omission of, the Lessee or any person for whom the Lessee is responsible at law.

The obligations of the Lessee under this Article 21 will survive the expiry or earlier

termination of this Lease, and the obligations of the Lessee under this Article 21 are in addition to, and will not limit, the other obligations of the Lessee under this Lease.

## **ARTICLE 22 - NOTICES**

### **22.1 Notices**

All notices, demands and request which may or are required to be given pursuant to this Lease will be in writing and will be sufficiently given if served personally upon the party for which it is intended, or mailed prepaid and double registered:

- (a) in the case of the Lessor, addressed to:

7030 Trans Canada Hwy, Duncan, BC, V9L 6A1

Attention: Director of Planning and Building

- (b) in the case of the Lessee, addressed to:

360 Duncan Street, Duncan, BC, V9L 3W4

Attention: Executive Director

or at such other addresses as each of the parties may from time to time advise by notice in writing. The date of receipt of any such notice, demand or request will be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed as aforesaid on the fifth business day next following the date of such mailing; provided, however, that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down of postal service or other labour dispute which affects the delivery of such notice, then such notice will be deemed to be received when actually delivered.

## **ARTICLE 23 - OPTIONS TO EXTEND**

### **23.1 First Extension Option**

If the Lessee duly and punctually observes and performs the covenants, agreements, conditions, and provisos in this Lease on the part of the Lessee to be observed and performed, the Lessee may, at the expiration of the original Term, submit a written request to the Lessor in the manner provided for in this Lease not earlier than 12 months and not later than nine months prior to the expiration of the original Term, for an extension of the original Term for a further period of five (5) years (the "First Extension Period") commencing on the expiration of the original Term, upon all of the covenants, agreements, conditions, and provisos contained in this Lease except this first option to extend and, if the Buildings have not been constructed in accordance with section 4.1, section 4.1. Within 60 days of receiving a written request under this section, the Lessor will decide, in its sole

discretion, if it wishes to grant such request and provide notice of such decision to the Lessee in writing, and if the Lessor elects not to grant such request, this Lease will terminate upon the expiration of the original Term.

### **23.2 Second Extension Option**

If the Lessee duly and punctually observes and performs the covenants, agreements, conditions, and provisos in this Lease on the part of the Lessee to be observed and performed, the Lessee may, at the expiration of the First Extension Period, submit a written request to the Lessor in the manner provided for in this Lease not earlier than 12 months and not later than nine months prior to the expiration of the First Extension Period, for an extension of the original Term for a further period of five (5) years (the "Second Extension Period") commencing on the expiration of the First Extension Period, upon all of the covenants, agreements, conditions, and provisos contained in this Lease except this second option to extend and, if the Buildings have not been constructed in accordance with section 4.1, section 4.1. Within 60 days of receiving a written request under this section, the Lessor will decide, in its sole discretion, if it wishes to grant such request and provide notice of such decision to the Lessee in writing, and if the Lessor elects not to grant such request, this Lease will terminate upon the expiration of the First Extension Term.

### **23.3 Third Extension Option**

If the Lessee duly and punctually observes and performs the covenants, agreements, conditions, and provisos in this Lease on the part of the Lessee to be observed and performed, the Lessee may, at the expiration of the Second Extension Period, submit a written request to the Lessor in the manner provided for in this Lease not earlier than 12 months and not later than nine months prior to the expiration of the Second Extension Period, for an extension of the original Term for a further period of five (5) years (the "Third Extension Period") commencing on the expiration of the Second Extension Period, upon all of the covenants, agreements, conditions, and provisos contained in this Lease except this third option to extend and, if the Buildings have not been constructed in accordance with section 4.1, section 4.1. Within 60 days of receiving a written request under this section, the Lessor will decide, in its sole discretion, if it wishes to grant such request and provide notice of such decision to the Lessee in writing, and if the Lessor elects not to grant such request, this Lease will terminate upon the expiration of the Third Extension Term.

### **23.4 Basic Rent**

The Basic Rent for the First Extension Period, the Second Extension Period and the Third Extension Period, as the case may be, will be \$10.00 per year.

### **23.5 Limited to Three Extensions**

The Lessor and the Lessee acknowledge and agree that pursuant to sections 23.1, 23.2 and

23.3 above the Lessee is given the option of extending the original Term for only three extension periods of five (5) years each, and at the expiration of the Third Extension Period there will be no further option to extend.

### **23.6 Lessee's Requirement to Give Notice**

The exercise of the options to extend are solely within the control of the Lessee, and nothing contained in this Lease obligates or requires the Lessor to remind the Lessee to exercise the options to extend. The Lessor's acceptance of any future rent for either the First Extension Period, the Second Extension Period or the Third Extension Period, as the case may be, will in no way be deemed a waiver of the Lessee's requirement to give notice within the time limits set out in sections 23.1, 23.2 and 23.3 above for extending.

### **23.7 Terms of Lease Incorporated**

The extension of lease for the First Extension Period, the Second Extension Period or the Third Extension Period, as the case may be, is deemed to incorporate all of the terms and provisions of the Lease as modified by this Article 23, and the parties ratify and confirm all of the terms and conditions of the Lease as so amended. The parties will not be obliged to enter into a separate extension of lease to give effect to this Article 23 but the Lessee will, at the Lessee's cost, execute a separate extension of lease if required by the Lessor to do so.

## **ARTICLE 24 - MISCELLANEOUS**

### **24.1 Registration**

For the purposes of section 5(2) of the *Property Law Act* (British Columbia), the Lessee expressly agrees that the Lessor is not required to deliver this Lease to the Lessee in registrable form under the *Land Title Act* and that this Lease or any version thereof will not be registered in the Land Title Office against title to the Lands.

### **24.2 Statements by Lessor**

The Lessor and the Lessee will, at any time and from time to time, upon not less than thirty (30) days prior request by the other party, execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this Lease is unmodified and in full force and effect, or if there have been modifications, the nature of such modifications and that the same are in full force and effect as modified;
- (b) the dates to which the rent and any other amounts payable under this Lease have been

paid; and

- (c) that to the best of the information and belief of the maker of the statements, the Lessor and the Lessee are not in default under any provision of this Lease, or, if in default, the particulars thereof.

#### **24.3 Time of Essence**

Time will be of the essence of this Lease, save as otherwise specified herein.

#### **24.4 Formality of Modifications**

This Lease may not be modified or amended except by an instrument in writing executed by the Lessor or their successors or assigns, and by the Lessee or its successors or permitted assigns.

#### **24.5 Captions and Headings**

The captions and headings throughout this Lease are for convenience and reference only and the words and phrases contained therein will in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Lease nor in any way affect this Lease.

#### **24.6 Enurement**

It is further agreed and declared by the Lessor and the Lessee that this Lease will extend to, be binding upon and enure to the benefit of the Lessor and the Lessee, the successors and assigns of the Lessor, and the successors and permitted assigns of the Lessee.

#### **24.7 Covenants or Conditions**

All of the provisions of this Lease will be deemed and construed to be conditions as well as covenants, as though the words specifically expressing or importing covenants or conditions were used in each separate provision hereof.

#### **24.8 References**

The words "herein", "hereby", "hereunder" and words of similar import refer to this Lease as a whole and not to any particular Article, section or subsection in this Lease.

In this Agreement, where the word "including" is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word "including".



**24.9 Arbitration**

Any questions, disputes or differences which may arise in connection with this Lease or the interpretation of any of its terms shall be referred to arbitration to be conducted in accordance with the *Arbitration Act*, S.B.C. 2020, c. 2, or any legislation in substitution therefor. The cost of arbitration shall be born equally between the parties except that each party shall pay the cost of any appraiser and lawyers hired by them.

**IN WITNESS WHEREOF** this Lease has been duly executed on the dates set out below, and is effective from and after the last date signed.

<b>THE CORPORATION OF THE DISTRICT</b>	)	
<b>OF NORTH COWICHAN</b> by its authorized	)	
signatories:	)	C/S
	)	
_____	)	
Name: Al Siebring	)	
Title: Mayor	)	
	)	
_____	)	
Name: Michelle Martineau	)	
Title: Corporate Officer	)	
Date: _____		

<b>COWICHAN GREEN COMMUNITY</b>	)	
<b>SOCIETY</b> by its authorized signatories:	)	
	)	C/S
	)	
_____	)	
Name: Judy Stafford	)	
Title: Executive Director	)	
	)	
_____	)	
Name:	)	
Title:	)	
Date: _____		

Schedule A

## Buildings

1. Existing building structure (approximately 1,000 sq.ft.),
2. Addition to existing building structure for commercial kitchen (approximately 1,000 sq. ft.).
3. New cold storage warehouse building (approximately 3,000 sq. ft.).
4. New second commercial kitchen building (approximately 1,500 sq. ft.).
5. Alternatively to 3 and 4 above, one new cold storage warehouse and commercial kitchen building (approximately 4,500 sq. ft.).



1. Application

**Jordan Adam  
YOUNG ANDERSON  
1616 808 Nelson Street  
Vancouver BC V6Z 2H2  
604-689-7400**

File No. 24-338  
Covenant-Flooding

2. Description of Land

PID/Plan Number	Legal Description
<b>029-237-424</b>	<b>LOT 1 SECTION 19 RANGE 7 QUAMICHAN DISTRICT PLAN EPP35195</b>

3. Nature of Interest

Type	Number	Additional Information
<b>COVENANT</b>		<b>S.219</b>

4. Terms

Part 2 of this instrument consists of:

**(b) Express Charge Terms Annexed as Part 2**

5. Transferor(s)

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

6. Transferee(s)

**THE CORPORATION OF THE DISTRICT OF NORTH  
COWICHAN**  
7030 TRANS CANADA HIGHWAY  
DUNCAN BC V9L 6A1

7. Additional or Modified Terms



8. Execution(s)

This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Witnessing Officer Signature

Execution Date

Transferor Signature(s)

\_\_\_\_\_

YYYY-MM-DD

**THE CORPORATION OF THE  
DISTRICT OF NORTH COWICHAN**  
By their Authorized Signatory

\_\_\_\_\_  
**Name:**

(as to both signatures)

\_\_\_\_\_  
**Name:**

**Officer Certification**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Witnessing Officer Signature

Execution Date

Transferor Signature(s)

\_\_\_\_\_

YYYY-MM-DD

**THE CORPORATION OF THE  
DISTRICT OF NORTH COWICHAN (as  
Transferee)**  
By their Authorized Signatory

\_\_\_\_\_  
**Name:**

(as to both signatures)

\_\_\_\_\_  
**Name:**

**Officer Certification**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**Electronic Signature**

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

**TERMS OF INSTRUMENT – PART 2**

**SECTION 219 COVENANT RE FLOODING**

THIS AGREEMENT dated for reference the 11<sup>th</sup> day of June, 2021 is

BETWEEN:

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN**  
7030 Trans Canada Highway  
Duncan, BC V9L 6A1

(collectively, the “Owner”)

AND:

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN**  
7030 Trans Canada Highway  
Duncan, BC V9L 6A1

(the “Municipality”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of the parcel of land in the Corporation of the District of North Cowichan, British Columbia which is legally described as:

PID: 029-237-424

LOT 1 SECTION 19 RANGE 7 QUAMICHAN DISTRICT PLAN EPP35195

(the “Lands”);

- B. The Lands are subject to flood control requirements outlined in the Zoning Bylaw, including the requirement that the underside of a floor system of any building, structure or manufactured home used for habitation, business, or storing goods which can be damaged by water must not be lower than the flood construction level established in the Zoning Bylaw;
- C. The Owner has entered into a lease (the “Lease”) over the Lands with the Cowichan Green Community Society (the “Society”) and under such lease the Society will use the lands for a farm incubation pilot program and related activities and to develop a new food processing and innovation hub for the production, processing and storage of agricultural products grown within the region, and, in doing so, will construct the Proposed Buildings (hereinafter defined), and the underside of the floor system of the Proposed Buildings will be below the applicable flood construction level;

- D. In order to use the Lands for its' intended purposes under the Lease, the Society has applied to the Municipality for an exemption for the Lands from the flood control requirements in the Zoning Bylaw, and under the Lease, has agreed to be bound by the terms of this Agreement as if it was the owner of the Lands under this Agreement; and
- E. Pursuant to Section 524 of the *Local Government Act*, the Society has provided the Report to the Municipality, and the Report certifies that the Lands may be safely used for the purposes for which the exemption application was made, in spite of the hazard of flooding, if the Lands are used in accordance with conditions specified in the report, and, accordingly, the Corporation of the District of North Cowichan wishes to enter into this covenant in its' role as municipality and owner of the Lands in order to allow the Society to use the Lands for its' purposes under the Lease.

THIS AGREEMENT is evidence that, in consideration of the sum of one dollar paid by the Municipality to the Owner, the receipt and sufficiency of which the Owner acknowledges, the Owner and the Municipality agree as follows:

1. **Definitions** – In addition to the words defined in the Recitals, in this Agreement, the following terms have the following meanings:
  - (a) **"Agriculture"** has the meaning assigned to it in the Zoning Bylaw.
  - (b) **"Dwelling Unit"** has the meaning assigned to it in the Zoning Bylaw.
  - (c) **"Proposed Buildings"** means:
    - (i) an approximately 185.8m<sup>2</sup> addition to the approximately 93m<sup>2</sup> pre-engineered building located on the Lands as at the reference date of this Agreement to allow for a commercial kitchen; and
    - (ii) a cold storage warehouse building with a size of approximately 278.7m<sup>2</sup>.
  - (d) **"Report"** means the Geohazard Assessment prepared by Roberta Adams, M.Sc., P.Geo., and Luke Wagner, G.I.T., of Madrone Environmental Services Ltd., in the Geohazard Assessment dated March 29, 2021, a copy of which is attached to this Agreement as Schedule A.
  - (e) **"Zoning Bylaw"** means the Corporation of the District of North Cowichan Zoning Bylaw 1997, No. 2950, as consolidated, revised, amended, re-enacted or replaced from time to time.
2. **Lands Use and Building Only in Accordance with Report** – The Owner shall use and build on the Lands only in the manner specified in the Report and in accordance with the recommendations of the Report.



3. **Owners' Covenants** – Without limiting the generality of section 1, the Owner agrees that:
  - (a) it will not build on the Lands except to construct the Proposed Buildings;
  - (b) no building or structure or any part thereof located on the Lands will be used or inhabited as a Dwelling Unit or residence of any kind;
  - (c) the Lands will be used only for Agriculture uses; and
  - (d) the Owner will advise the Municipality if intends to change the use of the Lands.
4. **Owner Acknowledgement** – The Owner acknowledges the entering into and registration of this Covenant by the Municipality does not constitute a representation or warranty by the Municipality to the Owner or any other person that the Lands, any building or structure placed on the Lands or any person on the Lands will not be injured or damaged by flooding, even where the Report is complied with.
5. **Reimbursement** – The Owner shall reimburse the Municipality for any expenses that it may incur as a result of a breach of section 2 or 3 by the Owner, on a solicitor and own client basis in the case of expenses for legal services.
6. **Indemnity** – As an integral part of this Agreement, pursuant to section 219(6)(a) of the *Land Title Act*, the Owner hereby indemnifies the Municipality from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses, demands and losses at any time suffered or incurred by, or brought against, the Municipality, or any of its elected or appointed officials, officers, employees or agents, arising from or in connection with any breach of any provision of this Agreement, the enforcement by the Municipality of this Agreement, the issuance of any permit or approval by the Municipality or any officer or employee of the Municipality or the occurrence of flooding.
7. **Municipal Permits** – The Owner agrees that the Municipality may withhold building permits and occupancy permits with respect to any building or other structure from time to time constructed or proposed to be constructed on the Land, as the Municipality may, in its sole discretion, consider necessary to ensure compliance with this Agreement.
8. **Specific Relief** – The Owner agrees that the public interest in ensuring that all of the provisions of this Agreement are complied with strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the Municipality, in the event of an actual or threatened breach of this Agreement.
9. **No Effect on Powers** – Nothing in this Agreement shall:

- (a) affect or limit the discretion, rights or powers of the Municipality or the Municipality's Approving Officer under any enactment or at common law, including in relation to the use, development or subdivision of the Land;
  - (b) affect or limit any enactment relating to the use, development or subdivision of the Land; or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use, development or subdivision of the Land.
- 10. **Municipality Discretion** – Where the Municipality or a representative of the Municipality is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent:
  - (a) the relevant provision shall not be considered fulfilled unless the approval, opinion, determination, consent or expression of satisfaction is in writing signed by the Municipality or the representative, as the case may be;
  - (b) the approval, opinion, determination, consent or satisfaction is in the sole discretion of the Municipality or the representative, as the case may be; and
  - (c) the Municipality or the representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the Municipality or the representative may do any of those things in the same manner as if it were a private person and not a public body or employee or officer thereof.
- 11. **No Obligation to Enforce** – The rights given to the Municipality under this Agreement are permissive only and nothing in this Agreement shall give rise to any legal duty of any kind on the Municipality to anyone or obligate the Municipality to enforce this Agreement or to perform any act or incur any expense.
- 12. **Agreement Runs with Land** – This Agreement shall burden and run with, and bind the successors in title to, the Land and each and every part into which the Land may be subdivided by any means (including by deposit of a strata plan of any kind under the *Strata Property Act* (British Columbia)).
- 13. **Waiver** – No waiver by the Municipality of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.
- 14. **Remedies** – No reference to or exercise of any specific right or remedy by the Municipality shall prejudice or preclude the Municipality from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such

remedy and the Municipality may from time to time exercise any one or more of such remedies independently or in combination.

15. **Priority** – The Owner shall cause this Agreement to be registered in the applicable land title office against title to the Land with priority over all financial liens, charges and encumbrances, and any leases and options to purchase, registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge, encumbrance, lease or option to purchase to execute an instrument in a form required by the Municipality under which such holder postpones all of the holder’s rights to those of the Municipality under this Agreement in the same manner and to the same extent as if such lien, charge, encumbrance, lease or option to purchase had been registered immediately after the registration of this Agreement.
16. **Modification** – This Agreement may not be modified except by an agreement or instrument in writing signed by the Owner or its successor in title and the Municipality or a successor or assignee.
17. **Further Assurances** – The Owner shall do and cause to be done all things, including by executing further documents, as may be necessary to give effect to the intent of this Agreement.
18. **Owner’s Expense** – The Owner shall perform its obligations under this Agreement at its own expense and without compensation from the Municipality.
19. **Severance** – If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity or enforceability of the remainder of this Agreement.
20. **Interpretation** - In this Agreement:
  - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
  - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
  - (c) the term “enactment” has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of 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;
  - (f) reference to a particular numbered section, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered section or lettered schedule of this Agreement;
  - (g) all Schedules to this Agreement form an integral part of this Agreement;
  - (h) time is of the essence; and
  - (i) where the word "including" is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word "including".
21. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.
22. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns, as the case may be.
23. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject.
24. **Execution in Counterparts & Electronic Delivery** – This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

As evidence of their agreement to be bound by this Agreement, the parties have executed the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement.

## Schedule A



### GEOHAZARD ASSESSMENT

**2431 Beverly Street  
Municipality of North Cowichan  
Duncan, B.C.**

**FOR:**

Mr. Gord Parkin  
Valcore Contracting  
250-920-8591  
[gord@valcorecontracting.ca](mailto:gord@valcorecontracting.ca)

**BY:**

Roberta Adams, M.Sc., P.Geo.  
Luke Wagner, G.I.T.  
Madrone Environmental Services Ltd

**REVIEWED BY:**

Jessica Stewart, P.Geo., P.Ag

March 29, 2021

MADRONE ENVIRONMENTAL SERVICES LTD.  
#202-2790 GLADWIN ROAD • ABBOTSFORD • BC • V2T 4S7  
TEL 604.504.1972 • FAX 604.504.1912 • WWW.MADRONE.CA

DOSSIER: 21.0024



## **GEOHAZARD ASSESSMENT**

**2431 Beverly Street  
Municipality of North Cowichan  
Duncan, B.C.**

### **FOR:**

Mr. Gord Parkin  
Valcore Contracting  
250-920-8591  
[gord@valcorecontracting.ca](mailto:gord@valcorecontracting.ca)

### **BY:**

Roberta Adams, M.Sc., P.Geo.  
Luke Wagner, G.I.T.  
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## TABLE OF CONTENTS

<b>1</b>	<b>INTRODUCTION.....</b>	<b>1</b>
1.1	SCOPE AND OBJECTIVES.....	2
1.2	LEGISLATIVE CONTEXT.....	2
1.3	GEOHAZARD SAFETY CRITERIA.....	3
1.4	METHODS .....	4
<b>2</b>	<b>BACKGROUND INFORMATION .....</b>	<b>5</b>
2.1	SITE DESCRIPTION .....	5
2.2	EXISTING DATA SOURCES.....	7
2.3	AIR PHOTO ANALYSIS .....	7
2.4	REVIEW OF PREVIOUS STUDIES .....	11
2.4.1	FLOOD RECORD.....	12
2.4.2	INTEGRATED FLOOD MANAGEMENT PLAN, 2009.....	14
2.4.3	UPDATED COWICHAN - KOKSILAH RIVER FLOOD MAPPING PROJECT, 2021.....	15
2.4.4	CURRENT FLOOD PROTECTION .....	16
2.4.5	STEPS TAKEN TO COMBAT CHANNEL AGGRADATION.....	18
2.4.6	SUMMARY OF PREVIOUS REPORTING .....	19
<b>3</b>	<b>EXISTING DATA AND SITE OBSERVATIONS.....</b>	<b>20</b>
3.1	PHYSICAL SETTING.....	20
3.2	HYDROLOGY.....	20
3.2.1	THE COWICHAN RIVER .....	21
3.2.2	SOMENOS CREEK .....	22

3.3	FIELD OBSERVATIONS.....	22
4	<b>GEOMORPHIC HAZARDS.....</b>	<b>24</b>
4.1	INUNDATION BY FLOODING .....	25
4.1.1	CLIMATE CHANGE, SEA LEVEL RISE, AND FUTURE FLOOD MANAGEMENT ISSUES.....	25
4.1.2	FLOOD CONSTRUCTION LEVEL (FCL) .....	26
5	<b>CONCLUSIONS AND RECOMMENDATIONS .....</b>	<b>28</b>
6	<b>CLOSURE .....</b>	<b>32</b>
APPENDIX A.....LIMITATIONS AND CONDITIONS OF USE FOR THIS REPORT		
APPENDIX B.....CAVE (1993) CRITERIA		
APPENDIX C.....FIGURES		
APPENDIX D.....ASSURANCE STATEMENTS		
APPENDIX E.....2016 AMENDMENT		

## LIST OF TABLES

TABLE 1: AIRPHOTO ANALYSIS FOR AREA SURROUNDING PROPERTY.....	8
TABLE 2: FLOODING RECORDS AFTER YEAR 2000.....	12
TABLE 3: HISTORIC FLOODING PRIOR TO 2000.....	13
TABLE 4: SUMMARY OF SUBJECT PROPERTY ATTRIBUTES AND SETTING.....	20
TABLE 5: GEOTECHNICAL HAZARDS, THEIR ASSOCIATED ANNUAL RETURN FREQUENCY AND RESPONSE TO BUILDING APPROVAL APPLICATION AS APPLICABLE TO THE SUBJECT PROPERTY. ....	<b>ERROR! BOOKMARK NOT DEFINED.</b>



## LIST OF FIGURES

FIGURE 1: PLAN VIEW OF PROPERTY ON 2016 GOOGLE™EARTH PRO IMAGERY. ....	6
FIGURE 2: AIRPHOTOS SHOWING THE SITE AND ITS SURROUNDINGS ARE DATED FROM 1936 THROUGH 2007 AND ACQUIRED FROM UBC'S GEOGRAPHIC INFORMATION CENTER. ....	10
FIGURE 3: FLOOD PROTECTION WORKS CONSTRUCTED SINCE THE RELEASE OF THE 2009 INTEGRATED FLOOD MANAGEMENT PLAN. ....	18
FIGURE 4: 2005 ORTHOPHOTO SHOWING THE EVOLUTION OF THE COWICHAN RIVER PROXIMAL THE SOMENOS CREEK CONFLUENCE. FROM THE NHC 2009 REPORT, DESCRIBED IN SECTION 2.4. ....	22
FIGURE 5: PLAN VIEW IMAGE OF THE PROTECTIVE INFRASTRUCTURE (DIKES) THAT SURROUND THE PROPERTY. ....	23
FIGURE 6: 2021 FLOOD MAPPING IN THE PROXIMITY OF THE PROPERTY; 200 YEAR FLOOD WITH YEAR 2100 CLIMATE CHANGE SCENARIO FLOODPLAIN MAP, MAY SHEET 2 OF 7 FROM NHC, 2021. ....	27
FIGURE 7: OVERVIEW OF THE SITE (GREEN POLYGON). ....	C2
FIGURE 8: LEGAL PLAN OF THE SITE (EPP35195) 2431 BEVERLY STREET. ....	C3
FIGURE 9: SITE PLAN. ....	C4

## **GEOHAZARD ASSESSMENT**

### **2431 Beverly St, Municipality of North Cowichan, Duncan, B.C.**

#### **1 Introduction**

Madrone Environmental Services Ltd. ('Madrone') was retained by Mr. Gord Parkin of Valcore Contracting (the 'Client') on behalf of his clients (Cowichan Green Community), to complete a geotechnical hazard (geohazard) assessment of 2431 Beverly St, B.C. (the 'Land' or 'Property' or 'Site'), PID 029-237-424. The Property is zoned Rural (A2) and sits within one of the Municipality of North Cowichan's Official Community Plan<sup>1</sup> (OCP) mapped floodplain areas<sup>2</sup>.

The land parcel parallels Somenos Creek, approximately 1.4 km northwest of its confluence with the Cowichan River. Somenos Creek has historically been subject to backwater flooding from the Cowichan River (referred to as ponding in the OCP). Because of this, the Property is included within the Municipality of North Cowichan (MNC) Natural Hazard Areas (floodplain). All hazard lands identified in the OCP are subject to *Development Permit Guidelines for DPA-4*<sup>3</sup>. Undertaking land development within a DPA requires approval from the Municipality of North Cowichan.

The provincial Community Charter (Section 56) requires that any new development subject to or likely to be subject to geotechnical hazards requires a geotechnical hazard assessment to characterize the hazards, estimate their probability of occurrence, and provide a professional opinion that states the Site is safe for the use intended.

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<sup>1</sup> Municipality of North Cowichan, Bylaw 3450, Official Community Plan, Retrieved February 12, 2021 from:  
[https://www.northcowichan.ca/assets/Municipal-Hall/Bylaws/Official\\_Community\\_Plan\\_Bylaw.pdf](https://www.northcowichan.ca/assets/Municipal-Hall/Bylaws/Official_Community_Plan_Bylaw.pdf)

<sup>2</sup> Municipality of North Cowichan. Bylaw 3450, 2011 Map 8 Natural Hazard Areas.

<sup>3</sup> Development Permit Area 4 - Hazard Lands. Guidelines for Development. Retrieved February 22, 2021. <https://www.northcowichan.ca/assets/Departments/Planning-and-Land-Use/docs/DPA-4%20Hazard%20Lands.pdf>

The applicant shall provide confirmation from a Qualified Professional that the proposed development is safe for its intended use, meets with the requirements of this bylaw, and meets the guidelines in the *Hazard Acceptability Thresholds for Development Approvals by Local Governments*<sup>4</sup>. A hazard and risk assurance statement contained in appendix J of the *Professional Practice Guidelines – Legislated Flood Assessments in a Changing Climate in BC*<sup>5</sup> must also be completed by a Qualified Professional.

It is our understanding that the property owners wish to construct two buildings that will be designed to assist in commercial agricultural operations<sup>6</sup>. The first building will be a 185.8 m<sup>2</sup> addition to the structure already on Site and a second building is a cold storage warehouse (278.7 m<sup>2</sup>). The Municipality of North Cowichan requires a geohazard assessment be conducted for the property; that includes a report of recommendations with assurance statements stating that the assessment meets all the requirements for a development permit.

## 1.1 Scope and Objectives

The scope of work summarized through this report includes a geotechnical hazard assessment of the Site, and determination of areas of concern on Site for the proposed buildings described above.

Municipal policies and EGBC guidelines require that any proposed novel development subject to or likely to be subject to geotechnical hazards require assessment. Therefore, the primary objectives of this geotechnical hazard assessment are characterized and estimated probability of geohazard occurrence. The secondary objective is a professional opinion as to whether the Site with proposed land development is safe for the use intended, if or when mitigation measures are incorporated.

This geotechnical hazard assessment is limited to 2431 Beverly Street, Duncan, B.C. The scope of this report does not extend to other properties; however, we considered the potential for hazards from adjacent areas to affect the subject property.

## 1.2 Legislative Context

The MNC Natural hazard areas (DPA-4) are designated according to Section 56 of the *Community Charter* and are subject to building permit guidelines that designates “the land may be used safely for the use intended”. Natural hazard areas assigned by the MNC are intended to protect existing and future

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<sup>4</sup> Cave, P. W. (1993). Hazard Acceptability Thresholds for Development Approvals by Local Government. *British Columbia Geologic Hazards Workshop, February 20 & 21, 1991*.

<sup>5</sup> EGBC. Profession Practice Guidelines. Retrieved November 24, 2020 from <https://www.egbc.ca/getmedia/f5c2d7e9-26ad-4cb3-b528-940b3aa90699/Legislated-Flood-Assessments-in-BC.pdf>.

<sup>6</sup> The 'commercial agriculture' use for this development also includes activities such as education, community gathering space, food processing and warehousing. For simplicity in the report, we will refer to the intended use as 'commercial agriculture'.

development from natural hazards such as flooding, debris torrents, channel bank erosion, and potential instability of adjacent slopes.

Madrone has prepared this report in accordance with the guidelines for geotechnical hazard assessments as described in:

1. Municipality of North Cowichan Official Community Plan, 2011, No. 3450<sup>7</sup>;
2. Guidelines for legislated flood assessments in a Changing Climate in BC (EGBC, 2018)<sup>8</sup>
3. Hazard acceptability thresholds for development approvals by local government (Cave, 1993);
4. Guidelines for legislated landslide assessments for proposed residential developments in BC (EGBC, 2010).

### 1.3 Geohazard Safety Criteria

The 1993 Dr. Peter Cave report<sup>9</sup> identified five municipal responses to a development permit application, ranging from outright refusal, through approval with various conditions, to unconditional approval. Cave (1993), distinguishes the following geohazards based on their effects:

1. inundation by flood waters;
2. mountain stream erosion and avulsion;
3. debris flows and debris torrents;
4. debris floods;
5. small-scale, localized landslides;
6. snow avalanches;
7. rock fall;
8. massive catastrophic landslides; and
9. river erosion and avulsion.

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<sup>7</sup> Municipality of North Cowichan, Bylaw 3450, Official Community Plan, Retrieved February 12, 2021 from:  
[https://www.northcowichan.ca/assets/Municipal-Hall/Bylaws/Official\\_Community\\_Plan\\_Bylaw.pdf](https://www.northcowichan.ca/assets/Municipal-Hall/Bylaws/Official_Community_Plan_Bylaw.pdf)

<sup>8</sup> <https://www.egbc.ca/getmedia/f5c2d7e9-26ad-4cb3-b528-940b3aaa9069/Legislated-Flood-Assessments-in-BC.pdf>

<sup>9</sup> Cave, P. W. (1993). Hazard Acceptability Thresholds for Development Approvals by Local Government. *British Columbia Geologic Hazards Workshop, February 20 & 21, 1991.*

The Cave report also distinguished seven types of proposed development ranging from minor renovation to major rezoning. Then, for each type of geohazard and each type of development permit, the appropriate municipal response to various ranges of the geohazard's probability of occurrence was specified. We have combined each applicable type of geohazard and the types of approval to form a matrix for the type of proposed developments, which will be a considered New Building for the purposes of this report (see Appendix B).

## 1.4 Methods

Our assessment method involves a detailed description of the surficial geology and geomorphology of the Site, with a particular focus on flood and erosion hazards.

Roberta Adams M.Sc., *P.Geo.*, and Luke Wagner *G.I.T.*, visited the Site on January 20, 2021 to conduct the Site assessment and traverse of the surrounding property. The property was measured with clinometer, measuring tape, and compass. Photographs were taken of the Site and GPS placemarks were added to a handheld device.

We have collected and reviewed appropriate background information, conducted fieldwork on and beyond the Property, and considered changed conditions (i.e., climate and land use). For geohazard analysis, we have reviewed, characterized, and estimated geohazards that may affect the Property, namely, inundation by floodwaters from the Cowichan River and Somenos Creek. We have described the method of geohazard analysis used, referred to an appropriate regional guideline for levels of geohazard safety, compared this guideline with the findings of our investigation, made a finding on the levels of safety on the Property based on the comparison, and made recommendations to reduce geohazards.

Based on data collected from the Site and surrounding area, we established a range of annual probability of individual geohazard event occurrence for all forms of geohazard present. These ranges are then compared to safety thresholds presented in Cave (1993), which has not been formally adopted by the MNC as their geohazard safety evaluation criteria, but Roberta Adams, *P.Geo.*, and QP for this assessment, considered these criteria to be an appropriate guideline for risk acceptability in this assessment. This geohazard assessment has been peer-reviewed by Jessica Stewart, *P.Geo.* of Madrone.

## 2 Background Information

### 2.1 Site Description

The subject property is located along the western extent of the Beverly Street and is positioned within the floodplains of both Somenos Creek and Cowichan River. The property parallels a northwest to southeast flowing stretch of the Somenos Creek (Figure 1), which in turn flows into the Cowichan River approximately 1770 m downstream of the Property to the southeast. The Cowichan River and Somenos Creek have a history of documented floods occurring throughout recorded history, and most notably in 1979, 1986, 2007, and 2009. Because of this, extensive flood mitigation structures (dikes, flood walls, and pumping stations) have been constructed along both watercourses, and in low-lying or flood prone landscapes in the Cowichan Valley.

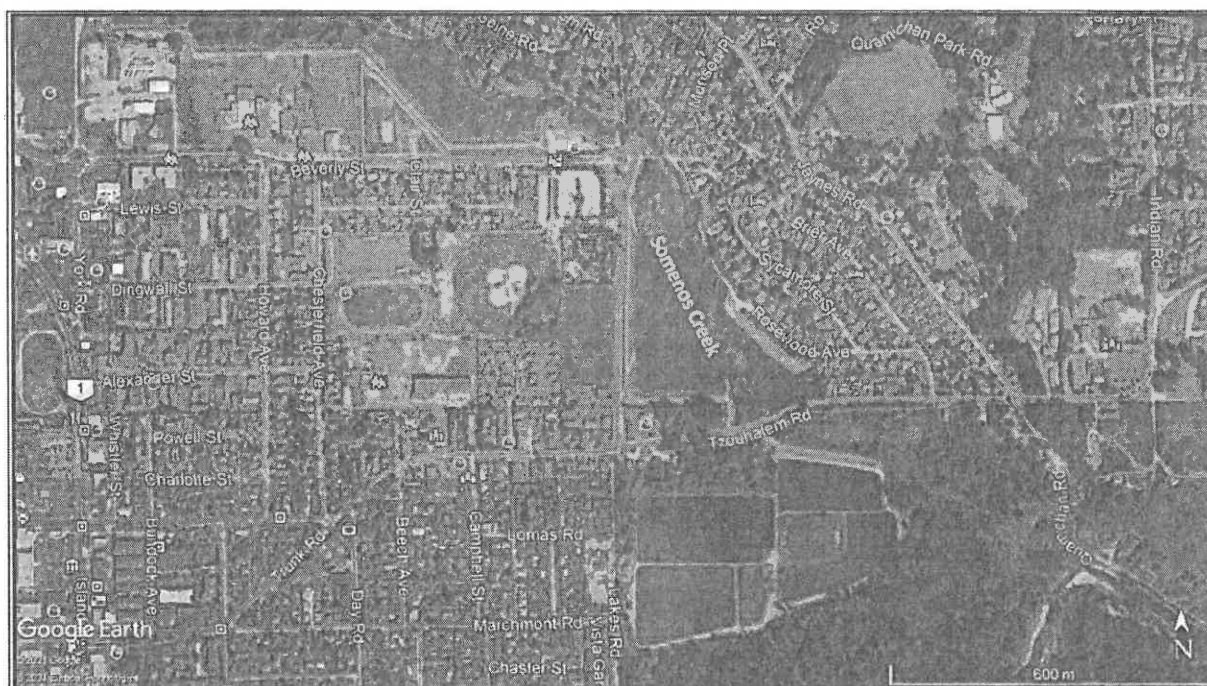
The headwaters of the larger Cowichan River (now referred to as 'the Cowichan') surround Cowichan Lake, while the smaller tributary, Somenos Creek, is fed from Somenos Marsh and agricultural land upstream of the site. Historically, during periods of flooding, flow within the Cowichan River 'backs up' from Cowichan Bay and causes flooding throughout its low-lying tributaries, including Somenos Creek.

The Property parcel (approximately 1.37 ha) is triangular in shape and has historically been used for agricultural purposes. Currently, the site is farmed and contains infrastructure that is operated by the Cowichan Green Community. This group hosts numerous community building events that are intended to promote organic farming and allow for distribution of locally grown produce. The Client hopes to expand their services by the construction of an addition (185.8 m<sup>2</sup>) to the pre-engineered building already on Site, as well as a secondary 278.7 m<sup>2</sup> warehouse for cold storage. The development permit application made in January to the MNC also states that a new truss system and roof will also be installed over the existing structure<sup>10</sup>.

According to Google™Earth Pro, the approximate (unverified) elevation range at the centerline of Beverly Street (directly in-front of the property) is 7 m above sea level (a.s.l.). The topographic survey for the site has elevation ranging between 6 and 7 m (a.s.l.).

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<sup>10</sup> Property Information for 2431 Beverly Street. Retrieved February 22, 2021  
[https://cgov.northcowichan.ca/apps/PIP/REPORTS/PROPERTYINFORMATION.ASPX?func=PR  
OPINFO-20180414124005&templateName=WEBLINK&SearchFor=14330&SearchBy=PIP-GISLINK](https://cgov.northcowichan.ca/apps/PIP/REPORTS/PROPERTYINFORMATION.ASPX?func=PR<br/>OPINFO-20180414124005&templateName=WEBLINK&SearchFor=14330&SearchBy=PIP-GISLINK)



**FIGURE 1: PLAN VIEW OF PROPERTY ON 2016 GOOGLE™EARTH PRO IMAGERY.**  
The Site (green polygon) is positioned between Somenos Creek (north/northeast) and Beverly Street (south). The Somenos Creek confluence with the Cowichan River is found approximately 1770 m downstream of the Property to the southeast.

## 2.2 Existing Data Sources

For this assessment, we collected and reviewed:

- iMapBC<sup>11</sup>;
- Air photos from 1936 to 2007 via UBC's Geographic Information Centre;
- Previous reports and studies;
- Municipality of North Cowichans Official Community Plan, 2011, No. 3450;
- Municipality of North Cowichans Website<sup>12</sup>;
- Climate data<sup>13</sup>;
- Seismic data<sup>14</sup>.

## 2.3 Air Photo Analysis

As part of our assessment, we reviewed aerial photographs (air photos) available via the University of British Columbia Geographic Information Centre<sup>15</sup> and GeoBC<sup>16</sup>. The photos dated back to 1936, but vary widely in quality, resolution, and scale. Having the stereo-pairs (adjacent photos along a flight line) allowed viewing in three dimensions. The purpose is to track the timing of local developments, identify flooding or avulsion in the general vicinity of the property, as well as identify any features (e.g., small channels, swales, isolated flood deposits) that may not be clearly visible during field assessments.

<sup>11</sup> Government of British Columbia. (updated 2015, September 3). iMapBC 2.0. Retrieved from <http://maps.gov.bc.ca/ess/sv/imapbc/>

<sup>12</sup> Municipality of North Cowichan Website. Retrieved February 16, 2020 from: <https://maps.fvrd.ca/portal/apps/webappviewer/index.html?id=6ae55e6da5f14e11a9a5e07a78f33955>

<sup>13</sup> Environment Canada. (modified January 25, 2017). 1981 - 2010 Climate Normals and Averages - Normals. Retrieved February 16, 2020 from: [http://climate.weather.gc.ca/climate\\_normals/index\\_e.html](http://climate.weather.gc.ca/climate_normals/index_e.html)

<sup>14</sup> Natural Resources Canada. (modified 2016, February 10). 2015 National Building Code of Canada seismic hazard calculator. Retrieved from [http://www.earthquakescanada.nrcan.gc.ca/hazard-alca/interpolat/index\\_2015-en.php](http://www.earthquakescanada.nrcan.gc.ca/hazard-alca/interpolat/index_2015-en.php)

<sup>15</sup> <https://gic.geog.ubc.ca/> Geographic Information Centre - University of British Columbia.

<sup>16</sup> Air Photo Viewer from <https://www2.gov.bc.ca/gov/content/data/geographic-data-services/digital-imagery/air-photos/air-photo-viewer>

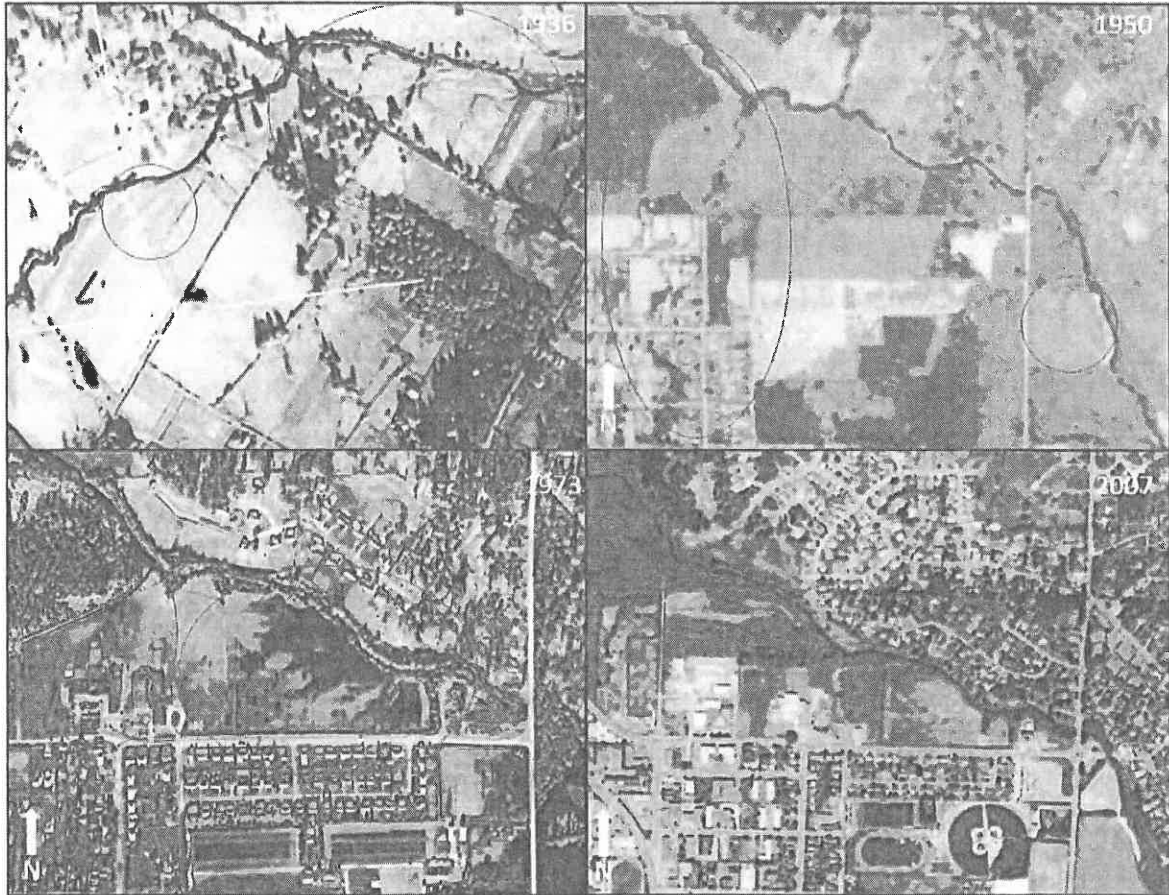


**TABLE 1: AIRPHOTO ANALYSIS FOR AREA SURROUNDING PROPERTY.**

All distances (m) are interpreted from Google™Earth Imagery.

Photo Number(s)	Year Taken	Interpretation
BC-06: 20	1936	Close up overview of Site; good detail - Farmland parallels the Somenos Creek and a linear ditch appears along the current alignment of modern-day Beverly Street. South east of where Lakes Road crosses the Somenos Creek, floodplains can be seen (e.g., linear splaying overbank channels) and are directed inline with the Cowichan River. It appears that channel bars (elongate hillocks) also occur ~ 375 m upstream of the Lakes St bridge approximately 60 m northeast of the Site. An accessory channel is also directed south towards what eventually is developed into Beverly Street and Alexander Elementary School.
BC-246: 74	1946	Distant overview of Site; moderate detail - Somenos River confluence with the Cowichan River is visible in the image. At the confluence, a large gravel bar has been deposited by the Cowichan. Surrounding the bar is a historic meander of the Cowichan and the Somenos Creek channel. Numerous historic meanders are also observed within the landscape and stretch out towards Tzouhalem Road. These historic meanders all appear to deposit into the confluence of the Somenos and Cowichan Rivers. Inland of Beverly Street to the south (proximal to Cowichan Sportsplex), two channels are observed directed southwest to northeast.
BC1053: 63	1950	Distant overview of Site; moderate detail - An accessory channel of the Somenos Creek is directed south towards what will be Alexander Elementary (AE) and Quamichan Middle School (QMS) and crosses Beverly Street, Lewis Street, Dingwall Street, and appears to terminate south of Alexander Street. Farmlands appear to be active where the Property is found. Somenos Creek deposits into a relic alluvial channel of the Cowichan River and flows around a gravel bar (previously mentioned) before depositing into the Cowichan River.
BC2082: 68	1956	Close up overview; good quality - Somenos Marsh is flooded up to the Island Highway. Lewis, Dingwall, and Alexander Streets have been constructed and development is starting to occur. Historic meanders can also be seen on either side of Lakes Road directed east to west. Historic overflow channel directed south towards Beverly Street and beyond still exists and is overgrown. Somenos Creek and Cowichan River confluence is overgrown with trees.
BC5047: 63	1962	Distant overview: good quality - Beverly Street has been constructed, as well as a housing development to the South of it. Building have now been constructed in the footprints of AE and QMS. Large holding ponds have been built east to the Somenos Creek confluence with the Cowichan River. The Cowichan River meanders west of the holding ponds; have become overgrown with trees and vegetation. Historic flood channels from the Somenos and Cowichan are less prevalent in the landscape along Beverly Street and Lakes Road. Cowichan River has changed course proximal to the Somenos Creek confluence and the main channel of the Cowichan now flows down a historic meander. The main channel now shares connectivity and has truncated the Somenos Creek. Around this confluence the landscape has been deforested.
BC7076: 200	1968	Moderately distant overview: good quality - Somenos Creek has flooded and linear saturated channels extend from Beverly Street to the north towards the Somenos Creek. Farmland at the property appears plowed. Historic channel from the Somenos Creek that is directed south has been cleared of vegetation and its course travels through the center of two recently constructed buildings (QMS and AE). Cowichan River alluvial reaches occur proximal to the mouth of the Somenos.

Photo Number(s)	Year Taken	Interpretation
BC7565: 26	1973	Close up overview; good quality - Somenos Creek has flooded towards the Property and Beverly Street. <b>Stagnant water (ponding) can be seen throughout the farmland that is found on the Property and its extent.</b> The Somenos Creeks confluence with the Cowichan River is also flooded up to Lakes Road. New flood channel directed south occurs slightly upstream of the historic south flowing channel (commented on previously). This is directed to the west of the Property and ponded water can be seen in the landscape surrounding the school.
NC78002: 119 NC78002: 119	1978	Close up overview; very good quality - Landscape east of Lakes Road towards the Somenos Creek appears saturated and numerous linear channels can be seen. North of Beverly Street at the Property the landscape still appears saturated and shares connectivity to the Somenos Creek. QMS and AE Schools are operational, and the accessory channels mentioned before, no longer exist. Further holding ponds (4 total) have been constructed along Tzouhalem Road.
BC84027: 261	1984	Distant overview; poor to moderate quality - Evidence of historic flooding is no longer visible within the landscape surrounding the Property and the Somenos Creek. Land at the Property has been developed and a linear vegetated feature parallels the Somenos Creek, up to its crossing with Tzouhalem Road.
15BCB92131; 046	1992	Distant overview; moderate quality - Forested area behind the school has been logged and historic channels in this area no longer exist (obscured by land developments, grading, levelling). Lower reaches of the Somenos Creek near its confluence with the Cowichan appears more densely forested.
30BC98036: 065	1998	Moderate overview; good quality, colour - The Property is actively being farmed. Historic channel leading to Quamichan school is cleared of grass.
ME07 460C0308	2007	Distant overview; very good quality; colour - No notable changes to the landscape directly surrounding the Property. Area is actively farmed, and the historic channel mentioned in 1998 imagery and prior is still unvegetated. Entirety of the Cowichan River has been redirected into one channel proximal to the confluence with the Somenos Creek.



**FIGURE 2: AIRPHOTOS SHOWING THE SITE AND ITS SURROUNDINGS ARE DATED FROM 1936 THROUGH 2007 AND ACQUIRED FROM UBC'S GEOGRAPHIC INFORMATION CENTER.**

1936 images show evidence of flooding (channel bars and splaying overbank channels) that exists proximal to the Site. 1950 Image shows historic channel found west of the Property and directed towards Alexander Elementary School as well as: Lewis, Dingwall, and Alexander Streets. 1973 image shows flooding that has affected the Site and areas surrounding Beverly Street and Lakes Road. 2007 Images show how the landscape has been developed and evidence of historic flooding has been obscured through intensive land development (except for farmland preserved along the floodplain).

## 2.4 Review of Previous Studies

The following list includes studies and reports that are considered relevant to the subject property and its surrounding area:

1. Lower Cowichan/ Koksilah River Integrated Flood Management Plan, 2009, Cowichan Valley Regional District, BC, Northwest Hydraulic Consultants, Flood Management Plan, September 2009<sup>17</sup>;
2. Updated Cowichan- Koksilah River Flood Mapping Project Final Report, Cowichan Valley Region District, Northwest Hydraulic Consultants Ltd. February 16<sup>th</sup>, 2021 (Flood Mapping, 2021)<sup>18</sup>;
3. Effects of Gravel Removal on Flood Levels Results of Hydraulic Modelling, Cowichan Valley Regional District Memorandum, Northwest Hydraulic Consultants, August 10<sup>th</sup>, 2011 (Gravel Removal, 2011)<sup>19</sup>;
4. Trans-Canada Highway Corridor Management Plan- Drinkwater Road to Cowichan Bay Road, City of Duncan Cowichan Tribes Council, Urban Systems, Corridor Management Plan, October 2005 (Corridor Management, 2005)<sup>20</sup>;
5. Cowichan River – Riverbottom Road Area Flood and Erosion Hazard Mapping Final Report Revision 1, Cowichan Valley Regional District, Northwest Hydraulic Consultants, September 3, 2020 (Flood and Erosion, 2020)<sup>21</sup>;
6. Phase 1 and 2 Environmental Assessments for 2591 Beverly Street, Duncan, B.C., Madrone Environmental Services Ltd, Environmental Assessment, November 12, 2019 (Environmental Assessment, 2019);
7. B.C. Dike Classification Study, Prepared for Ministry of Lands and Natural Resource Operations and Rural Development, Northwest Hydraulic Consultants, Final Report, May 31, 2019;
8. Cowichan Valley November 2009 Flooding- Documentation and Assessment, Final Report. Prepared for The Municipality of North Cowichan, Northwest Hydraulic Consultants. Assessment, November 2009 (Flood Documents, 2009)<sup>22</sup>;

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<sup>17</sup> <https://duncan.ca/wp-content/uploads/2016/07/2009-Integrated-Flood-Management-Plan.pdf>

<sup>18</sup> <https://www.cvrld.ca/DocumentCenter/View/99894/Lower-Cowichan--Koksilah-Flood-Mapping-Report-2021>

<sup>19</sup> <https://www.cvrld.ca/DocumentCenter/View/7998/NHC---Effect-of-Gravel-Removal-on-Flood-Levels>

<sup>20</sup> [https://www2.gov.bc.ca/assets/gov/driving-and-transportation/reports-and-reference/reports-and-studies/vancouver-island-south-coast/tch\\_corridor\\_plan\\_drinkwater\\_cowichan\\_bay\\_road.pdf](https://www2.gov.bc.ca/assets/gov/driving-and-transportation/reports-and-reference/reports-and-studies/vancouver-island-south-coast/tch_corridor_plan_drinkwater_cowichan_bay_road.pdf)

<sup>21</sup> <https://www.cvrld.ca/DocumentCenter/View/98393/Cowichan-River---Riverbottom-Road-Flood-and-Erosion-Hazard-Mapping-Report>

<sup>22</sup> <https://www.cvrld.ca/DocumentCenter/View/8001/Post-flood-assessment---NHC-Flood-Report-7MB?bidId=>

## 9. Municipality of North Cowichan Website, Our Flood Protection System; and

\*Report authored before the Guidelines for legislated landslide assessments for proposed residential developments in BC came into effect (APEGBC, 2010).

The geotechnical hazard assessments included within the list were retrieved from online sources and obtained from Madrone's Geohazard Library. Important information from select reports are described in detail as follows.

### 2.4.1 Flood Record

The following tables summarize the flooding events outlined in previous assessments.

**TABLE 2: FLOODING RECORDS AFTER YEAR 2000.**

Information acquired from the Cowichan-Koksilah River Flood Mapping Project Final Report (Report 2, above).

Date	Reported Flooding
November 16-21, 2009	Flood event with approximately a 7-year return period. Flooded Lakes Road and JUB Sewage Treatment Plant, flooded the Cowichan Tribes Reserve. Three hundred homes were evacuated and \$810k was required for long-term support for 121 families. Extensive flooding caused partially by accumulated gravel deposits and log jams.
January 29, 2018	Heavy rainfall over 2-days flooded several areas of the Cowichan Valley. Several main roads were closed including Canada Avenue. Flood event with an approximate 11-year return period.
February 01, 2021	Record peak flows on Koksilah- Cowichan River causing evacuation of Cowichan Tribes members. Flooding closed Sahlilton Rd, Cowichan Bay Rd and Canada Ave.

**TABLE 3: HISTORIC FLOODING PRIOR TO 2000.**

Table acquired from the Lower Cowichan/Koksilah River Integrated Flood Management Plan (Report 3, above). Only reports mentioning Beverly Street or Somenos Marsh were included.

Year	Date	Assoc. Max. Daily Flow (m <sup>3</sup> /s)			Weather Conditions	Reported Flooding
		Cowichan Lake	Duncan	Koksilah		
1961	n/a	n/a	n/a	n/a	n/a	In the Somenos Lake area, which usually flooded each year at this time, floodwaters spread out over an area three times the normal size of the lake. The lowest part of the area to the southeast of the city, which was mostly reserve land, was hit hardest by the floodwaters. At least 30 families were evacuated from this area. Civil Defense crews sandbagged dikes at the foot of Beech Street in Duncan.
1966	Dec. 9-13	286	362	148	Rain-on-snow in combination with high tides	The Cowichan and Somenos Creeks overflowed their banks. The Clem-Clem area between the two rivers was worst hit, two families were evacuated, and many others stranded. Somenos Creek flood waters were pumped to prevent flooding of homes on Beverly Street. A small dam on the Cowichan River burst causing flooding at the Cowichan Tribes Reserve.
1972	Jan 20-24	106	178	154	Rain-on-snow	The Cowichan and Somenos Creeks overflowed their banks. The Somenos Creek flooded the Cowichan Bay Road by a depth of 1.3 m for 1.6 km. Poor drainage caused flooding at Prevost and Beverly Streets.
1972	Dec. 25-26	234	425	183	Rain-on-snow in combination with high tides	Beverly Street was flooded; more than 50 families were forced to leave their homes. High tides damaged the docks. The Cowichan Bay area and the Cowichan Tribes Reserve were flooded.
1982	Oct 24-30	139	217	123	Heavy rain	The Cowichan River flooded 80 ha of farmland. The river was in the process of changing its course, threatening to wash out the highway. The area just west of Tzouhalem Road was flooded by water up to 1 m deep. An unfinished dike partly contained floodwaters.

## 2.4.2 Integrated Flood Management Plan, 2009

The Integrated Flood Management Plan (Report 3, listed above) is a multi-disciplinary Flood Management Plan that was released in 2009 by the adjacent municipality, Cowichan Valley Regional District (CVRD), and outlines strategies and mitigation measures that would reduce the potential for future floods affecting the Cowichan River and Koksilah River systems. This flood management plan includes areas surrounding the Property (Somenos Lake and Somenos Creek) and classifies the area as being a floodway. Waters could be between 1 and 5 m in depth at the Property during modeled floods depending on the model scenario, as shown within the Flood Hazard mapping<sup>23</sup>; Northwest Hydraulic Consultants (NHC) recommends a Flood Construction Level (FCL) of 9.7 m for the Property (calculated as the 200-year flood level plus 0.6 m of freeboard).

Extensive background studies were made using modeling and mapping that assessed the magnitude and extent of flood hazards within the Cowichan Valley. This modelling found that none of the existing dikes had adequate freeboard for a 200-year flood over their entire length. Relevant to the Property, it was found that the Lakes Road and Beverly Street area, is prone to backwater flooding from Somenos Creek and the JUB sewage lagoons and outfall was vulnerable to flooding and bank erosion.

The entire floodplain area is vulnerable to alterations in dike crest levels. It was suggested that further raising or extending dikes should not be permitted unless it could be demonstrated that there will be no net water level rise at other locations (particularly upstream). Moreover, extensive riprapping and artificial straightening along the Cowichan River has resulted in a canal-like appearance over much of its length and could require maintenance or repair.

Simulated 200-year flood levels of Somenos Creek and Somenos Lake also showed generally higher water levels than those predicted in earlier studies. The modelling showed that the Lakes Road and Trunk Road bridges could have inadequate clearance under open water conditions and could be prone to trapping floating debris, and potential structural failure.

Recommended actions from these studies includes:

- Dike upgrades or new dike construction;
- Channel maintenance and improvement programs;
- Gravel removal and maintenance programs;
- Log jam removal and modification programs;
- Selective vegetation removal;

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<sup>23</sup> Map 1, Flood Hazard Map, Cowichan Valley Regional District, Lower Cowichan/ Koksilah River Integrated Flood Management Plan, 2009



- Set-back dike construction;
- Upstream sediment and debris control;
- Road modifications;
- Bridge replacements;
- Recommended compensation projects.

### **2.4.3 Updated Cowichan - Koksilah River Flood Mapping Project, 2021**

This study was released February 16, 2021 (prior to the issuance of this report) and is a follow up report to the 2009 Integrated Flood Management Plan. A list of 12 strategies that were adopted by the CVRD are listed within the report. The list includes steps that have been taken or will be taken to reduce flood hazards within the CVRD. Steps include restoring the river and its tributaries to a more natural state, while considering environmental and social values. Moreover, the CVRD recognizes that portions of the city exist within a floodplain and protective measures have been taken to protect areas of risk. Engineered structures (dikes, flood walls, pump stations, berms) have been installed that will mitigate the impacts of high flows and decrease flood-related vulnerability to people, areas of development and wildlife habitat.

Using a comprehensive two-dimensional hydraulic model, Northwest Hydraulic Consultants (NHC) was able to simulate flooding along the Lower Cowichan River, Somenos Creek and Koksilah River. The model was used to create 1:5,000 scale floodplain maps representing 200-year floods and are included within the 2021 report prepared for the CVRD. These maps also incorporate the effects of sea level rise and climate change using standards issued by EGBC and Natural Resources Canada.

Several factors have been recognized to contribute to flooding along the Lower Cowichan/ Koksilah River floodplain, and these include:

- Flooding on the mainstem rivers due to overtopping of banks and floodplain spills;
- Backwater controlled flooding on tributaries such as Somenos Creek;
- Flooding governed by high tides/storm surge in Cowichan Bay;
- Erosion, sedimentation and debris jamming which may lead to dike failures, bank breaching or major channel shifting (avulsions) (Flood Mapping, 2021)."

Future flood management will be an ongoing concern for the city. Over the last century increasing sediment supply from upstream sources, adjustment of river courses for roads, rail lines and bridges, as well as channelization works have increased risk of channel shifting and avulsion along the river. "Long term sediment and debris management are now essential for maintaining the stability of the river system and ensuring that dikes will function during critical time periods" (Flood Mapping, 2021).



It is also recognized that much of the floodplains is densely populated and ringed by dikes. These protective works must be regularly inspected, maintained and if necessary, upgraded to respond to climate change. As is, "the structures provide security against most flood events" (Flood Mapping, 2021); however, dike breaches could lead to flow spills and ponding of water on the floodplain.

As the frequency and intensity of river flooding is expected to increase in response to climate change; dynamic adaptive planning will have to be undertaken to manage and change the nature of flood hazards over time. Monitoring and dike maintenance will be essential component of flood mitigation and planning within the within the region.

#### 2.4.4 Current Flood Protection

Since the 2009 Integrated Flood Management Plan was issued, the Municipality of North Cowichan<sup>24</sup> has completed several upgrades to its infrastructure that is intended to mitigate the effects of flooding. Upgrades occurred in three separate phases and are highlighted in Figure 3:

##### Phase 1: Shown in yellow

- Removal of a major log jam and gravel deposit in the Cowichan River located in the vicinity of the JUB STP outfall pipe;
- Raising the JUB STP berms and registration as dikes ;
- Raising Tzouhalem Road;
- A new dike along the north side of Tzouhalem Road behind the Petro Can Gas Station; and
- Upgrading the City of Duncan's Marchmont Flood Pump Station to increase its pumping capacity.

##### Phase 2: Shown in green (north of the Cowichan River) and purple (south of the Cowichan River)

###### *North Side of the Cowichan River:*

- The Lakes Road Dike and Stop Log Floodwall;
- The Beverly Street Dike ;
- The York Road Flood Pump Station; and
- A floodwall at Quamichan Village to prevent the confluence of the Cowichan River from continuing its migration to the North and East, protecting Quamichan Village and access road to the village.

###### *South Side of the Cowichan River:*

- The South Side Spur Dike (raised and armored);
- The Connector Dike;
- The Mission Road Dike; and
- The Hatchery Road Setback Dike.

<sup>24</sup> Municipality of North Cowichan Website, Our Flood Protection System, Retrieved February 16, 2021 from: <https://www.northcowichan.ca/EN/main/departments/engineering/Flood-Protection/our-flood-protection-system.html>

**Phase 3: Shown in red (north of the Cowichan River) and orange (south of the Cowichan River)**

*North of the Cowichan River in and around the Somenos Basin:*

- The Trans-Canada Highway dike, along the east side of the Highway from Beverly Street to south of Holmes Creek;
- The Canada Avenue Flood Pump Stations, which pumps rainfall runoff that accumulates in the urban core behind the dikes over the dikes;
- The Canada Avenue Floodwall from the Canada Avenue Flood Pump Station, running south to north along the east side of Canada Avenue, and then east to west south of Philip Street to high ground near the Berkley Sanitary Pump Station;
- The Rosewood Avenue Dike; and
- The Seine Road Flood Protection Works (Berm).

*Adjacent to the Cowichan River immediately north and south of the River on Cowichan Tribes land:*

- Dike A along the north east bank of the River from Allenby Road to the rail bridge (Black Bridge);
- Dike B along the north bank of the River from the rail bridge (Black Bridge) to the Trans-Canada Highway;
- Floodwall C south of the River from Allenby Road to the rail bridge (Black Bridge). The flood wall is set back from the River; and
- Dike D along the south bank of the River from the rail bridge (Black Bridge) to the Trans-Canada Highway.

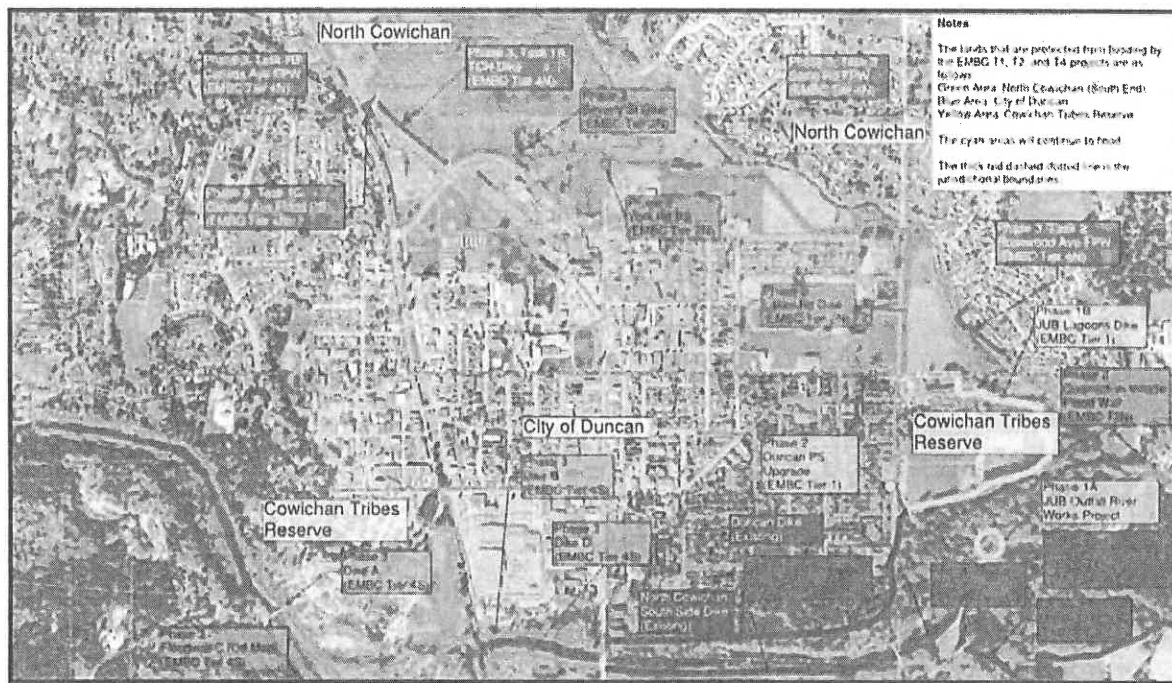


FIGURE 3: FLOOD PROTECTION WORKS CONSTRUCTED SINCE THE RELEASE OF THE 2009 INTEGRATED FLOOD MANAGEMENT PLAN.

#### 2.4.5 Steps Taken to Combat Channel Aggradation

The 2009 NHC Flood Management Plan outlined channel aggradation as being a contributing factor to increased water levels within the Cowichan and Koksilah Rivers systems. Ultimately, channel aggradation could create instability within the river channel and lead to channel avulsions.

The Integrated Flood Management Plan compared 1977 and 2008 cross sections and determined that 251,000 m<sup>3</sup> of sediment had been deposited within the reaches of the Cowichan River; downstream of Highway 1. This study also accounted for various gravel removal projects that have occurred downstream of the Allenby Bridge, on the Cowichan River, prior to 2011 and determined an overall sediment volume of 450,000 m<sup>3</sup> had been deposited throughout its lower reaches. This totaled to an average bed level raise of 0.7 m over a 31-year (22.5 mm/year) period (Gravel Removal, 2011).

This data was checked independently by reviewing historic Water Survey of Canada stage-discharge measurements at the Allenby Bridge and other stage measurements for Somenos Creek that the Department of Fisheries and Oceans had tabulated. The data showed that bed levels lowered near the Allenby Bridge, and this was likely linked to downstream channelization of the river course and gravel removal that had occurred.

A net increase in water level was noted in Somenos Creek and Somenos Lake (0.5 to 0.7 m over 20 years) over the 31-year period. Since Somenos Creek and Lake floods through backwater flooding from the Cowichan River, it was determined that increased bedload within the Cowichan River's lower reaches had led to increased water levels throughout Somenos Marsh.

Pro-active measures (sediment and log jam removals) have been taken by the CVRD, and in 2012 a long-term sediment and large woody debris management plan was introduced. The goal of this plan is to maintain stable design flood profiles within the Cowichan and Koksilah Rivers; this will ensure flood levels do not continue to rise from channel aggradation. Sediment management programs have been implemented in key locations that will reduce flood impacts and maintain safe operations of the diking systems.

In 2015 a series of hydrometric monitoring stations were also installed to detect high water and impacts of jams and debris on flood levels (Flood Mapping, 2021). Since 2016 the Cowichan tribes expanded the scope and scale of the project by undertaking a log jam removal project along the Koksilah River.

#### **2.4.6 Summary of Previous Reporting**

To summarize:

1. The subject property (2431 Beverly Street) has historically been subject to backwater flooding from the Cowichan River.
2. The Property is positioned within an area designated as a floodway and prior to infrastructure being upgraded. The Flood Scenario Maps showed the Property as being subject to inundation during 25-, 50-, 100-, and 200- year floods.
3. Numerous instances of engineered structures (historic and current) have been constructed along the Cowichan River's course. Infrastructure installed as of 2019 includes the Beverly Street and Lakes Road Dikes, which have been constructed proximal to the Property and are intended to prevent flooding from Somenos Creek.
4. Much of the floodplain within the CVRD is densely populated and ringed by dikes. These protective works must be regularly inspected, maintained and if necessary, upgraded to respond to climate change.
5. Channel aggradation will be an ongoing process that will need to be continually monitored. Long term sediment and debris management are now essential for maintaining the stability of the river system and ensuring that dikes will function during critical time periods.
6. A stoplog floodwall was constructed along lakes road to prevent debris from damaging infrastructure (Lakes Road and Trunks Road bridges) along Lakes Road and Beverly Street.

## 3 Existing Data and Site Observations

### 3.1 Physical Setting

TABLE 4: SUMMARY OF SUBJECT PROPERTY ATTRIBUTES AND SETTING.

SITE LOCATION	PID	029-237-424
	Geographic Centroid	48°47'7.89"N 123°41'27.18"W
CLIMATIC NORMALS	Annual Total Precipitation	1361.2mm (Duncan Kelvin Creek station at 103 m a.s.l (1981-2010) <sup>25</sup> .
	Annual total rainfall	1289.2 mm
	Annual total snowfall	72.0 cm
	Extreme daily precipitation	Oct 16 <sup>th</sup> 2003 (88.6 mm)
VEGETATION	BC Bio-geoclimatic Region	CDFmm Coastal Douglas Fir zone, Moist Maritime subzone is restricted to low elevation southeastern Vancouver Island <sup>26</sup> .
GEOLOGY	Bedrock Geology	uKN_V – KTN – uKN Upper Cretaceous Nanaimo Group Sedimentary Rocks (boulder, cobble, and pebble conglomerate with coarse to fine sandstone, silt, shale and coal) <sup>27</sup> .
	Surficial Geology	10/8a – Salish Sediments – Shore, deltaic and fluvial deposits (gravel, sand, silt and clay over deltaic deposits, gravel, and sand, commonly terraced) <sup>28</sup>
	Soils	CF1/ac Croft Hill Soil Association – fluvial parent material, resulting in silty clay loam textured, very poorly drained Orthic Humic Gleysol. The underlying 'ac' denotes the slope class for the area which is generally flat to undulating <sup>29</sup> .
TOPOGRAPHY		Site is situated at approximately 8 m above sea level; Site is generally level.

### 3.2 Hydrology

The property is positioned alongside Somenos Creek, which is part of the larger Cowichan River Watershed sub-basin<sup>30</sup>. The Cowichan River is comprised of several catchments, covering an approximate area of 930 km<sup>2</sup>. This river is classified as a Heritage River and is recognized for its

<sup>25</sup> [https://climate.weather.gc.ca/climate\\_normals/index\\_e.html](https://climate.weather.gc.ca/climate_normals/index_e.html) Duncan Kelvin Creek CDA Climate Station. Accessed February 15, 2021.

<sup>26</sup> <https://www.for.gov.bc.ca/hre/becweb/resources/maps/FieldMaps.html> Accessed February 15, 2021.

<sup>27</sup> N.W.D. Massey, P.J. Desjardins, and E.C. Grunsky. Accessed on February 15, 2021 from: <http://maps.gov.bc.ca/ess/sv/imapbc/>

<sup>28</sup> Geological Survey of Canada, Map 14-1965 – 'Duncan'

<sup>29</sup> Soils of South Vancouver Island BC, Soil Survey Report 44, Map Sheet 92 B 13

<sup>30</sup> Government of British Columbia. (updated August 2018). iMapBC 8.22. Retrieved from <https://maps.gov.bc.ca/ess/hm/imap4m/>

productive fish-habitat. Numerous species of fish are known to populate the waters<sup>31</sup>, including a summer chinook run that is considered by Fisheries and Oceans Canada as being one of the highest value stocks on Vancouver Island, based on conservation concerns. This river is not interpreted to be affected by construction activities on-site.

### 3.2.1 The Cowichan River

The Cowichan River watershed has experienced numerous episodes of flooding within the CVRD. Flooding typically results from high flows in the river and its tributaries that is amplified by storm surges and high tides within Cowichan Bay. When water is pushed back from Cowichan Bay into the River system, it reaches into its tributaries and low-lying landscapes surrounding the floodplain.

The Integrated Flood Management Plan (2009) by NHC compared the bank lines of the Cowichan River in 1946 and 1967 with its present-day course. The earliest photos show the Cowichan and Koksilah Rivers flowing across their floodplains in a network of interconnected channels; however, changes were noted during the construction of the Trans-Canada Highway bridge, as the main channel shifted north to its present location and the former channel was cut-off and abandoned.

During this timeframe, significant changes also occurred near the Somenos Creek confluence with the Cowichan River. Figure 4 shows how the Cowichan River channel has evolved through time in proximity to the discharge point of Somenos Creek. Most importantly, an avulsion channel has created a new island and truncated several hundreds of metres of the Somenos Creek river channel.

The analysis undertaken by NHC also noted the lower extent of the Cowichan River as being aggraded in the reach extending downstream of the Trans-Canada Highway Bridge, to Pimbury Bridge. Gravel deposition occurs near abrupt changes in channel width or sections where slopes flatten out. Channel aggradation and sedimentation reportedly contributed to the bank erosion and channel instability that occurred near the JUB outfalls and lagoon, prior to the 2009 reporting.

As a result of river modifications and dike construction, significant portions of the Cowichan River have been channelized. The right bank of the Cowichan River is also continuously confined by rip-rap, while the left bank and north branch is confined by rip-rap on about two-thirds of its length.

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<sup>31</sup> Habitat Wizard Stream Report for the Coquihalla River, Ministry of Environment, Waterbody Information, 2020. Accessed on Dec 22 from:  
[https://a100.gov.bc.ca/pub/reports/rwsservlet?habitat\\_wizard\\_streams\\_report&p\\_title=%22Ministry%20of%20Environment%22&P\\_STREAM\\_ID=6191](https://a100.gov.bc.ca/pub/reports/rwsservlet?habitat_wizard_streams_report&p_title=%22Ministry%20of%20Environment%22&P_STREAM_ID=6191)

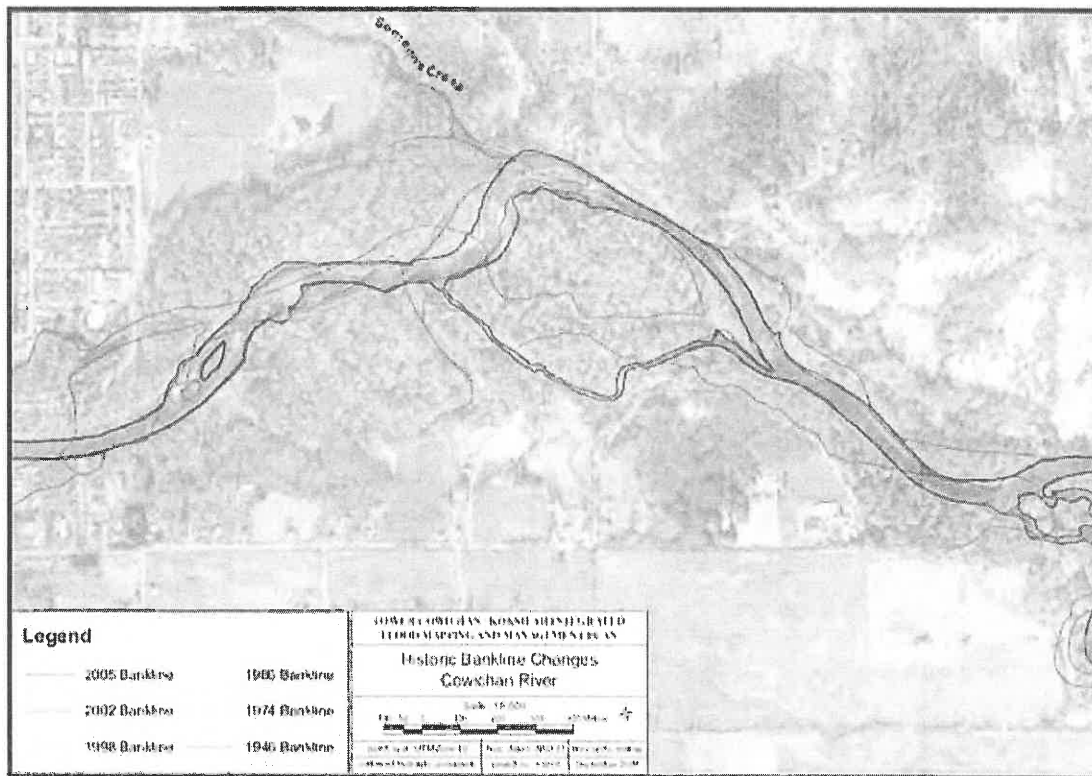


FIGURE 4: 2005 ORTHOPHOTO SHOWING THE EVOLUTION OF THE COWICHAN RIVER PROXIMAL THE SOMENOS CREEK CONFLUENCE. FROM THE NHC 2009 REPORT, DESCRIBED IN SECTION 2.4.

### 3.2.2 Somenos Creek

The closest mapped natural watercourse to the Property is Somenos Creek, which at its closest extent, is located approximately 100 m to the north. This creek flows southwest from Somenos Lake to the Cowichan River. The southern boundary of the Somenos Marsh Conservation Area is located over 1 km northwest of the Site; this area experiences seasonal inundation and backwater flow from the Cowichan River.

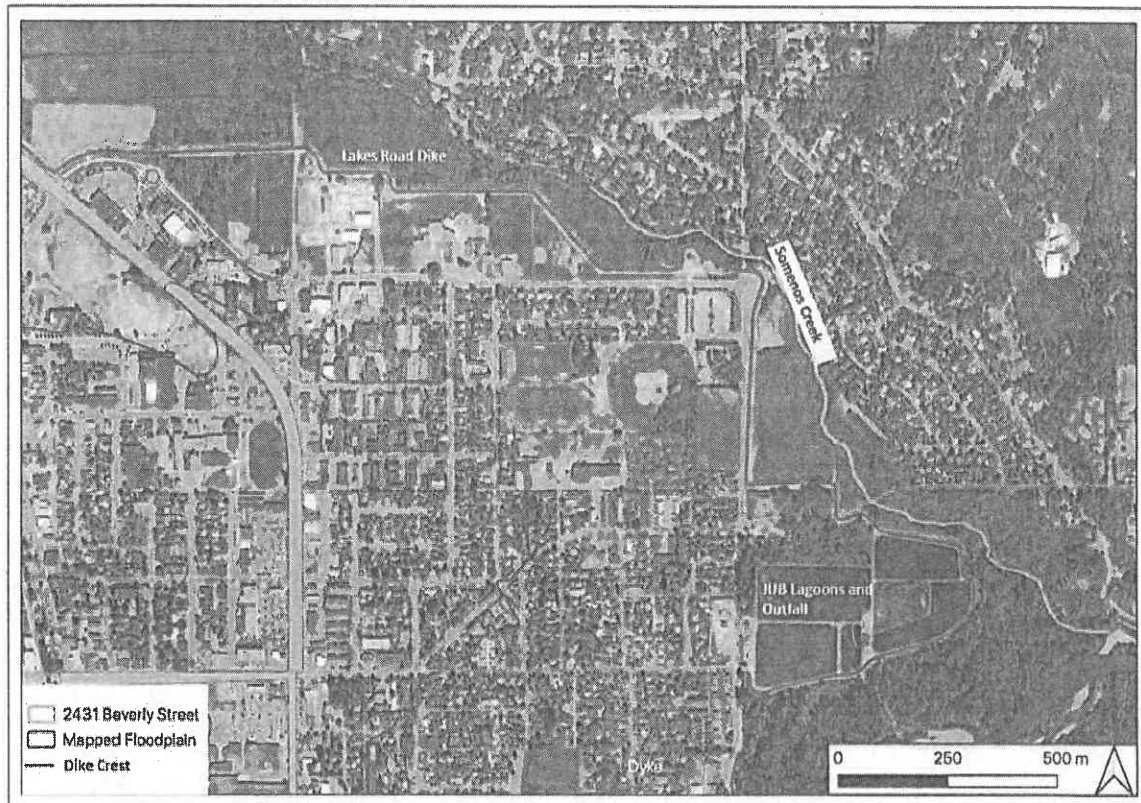
### 3.3 Field Observations

The subject property has a triangular shape and is approximately 170 m long at its western border, and 160 m in length along its southern border, encompassing an approximate area of 1.37 ha. There is an existing pre-engineered building (office) on site, with power, that was installed in 2013. The property is used for agricultural purposes and is located within the Municipality of North Cowichan.

Somenos Creek flows from the northwest to the southeast in proximity to the Property. Somenos Creek has historically been subject to backwater flooding from the Cowichan River and ponding has also been



noted to occur within the marshland during periods of high precipitation. These episodes of flooding have affected the Property and greater CVRD (as evident in airphotos). The Beverly Street Dike was installed to prevent backwater flooding within the Somenos Floodplain and parallels the southern bank of Somenos Creek, extending from its confluence with the Cowichan River at Tzouhalem Road, past the subject Property, to the Island Highway.

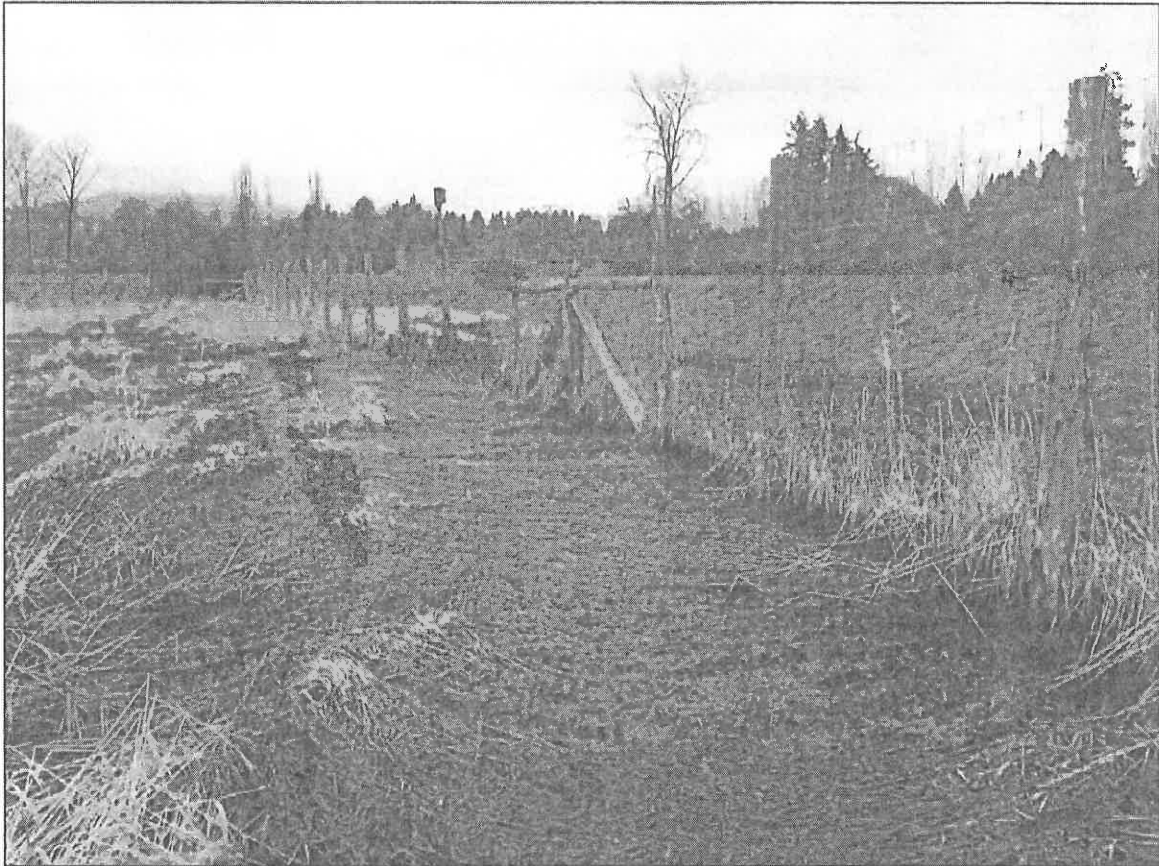


**FIGURE 5: PLAN VIEW IMAGE OF THE PROTECTIVE INFRASTRUCTURE (DIKES) THAT SURROUND THE PROPERTY.**

The floodplain is shown by the light blue line and extends past Beverly Street towards the Cowichan River in the lower right side of the figure.

While on Site, two test pits were dug with the intent to classify surficial sediments. Mottled, bedded, silty fine sands were exposed within the test pits. These are fluvial sediments – their presence indicates that the property has been subject to multiple episodes of flooding throughout its history. Northwestern extents of the property contained ponded water at the time of inspection, and a shallow water table (~40 cm depth) was also recognized within one of the test pits at the southeastern portion of the Property. Shallow and fluctuating watertables are also indicated by mottling in the soil profile.





**PHOTO 1: LOOKING NORTHWEST ALONG THE NORTHEASTERN PROPERTY BOUNDARY.**  
The Beverly Street Dike Trail (situated atop the dike) can be seen paralleling the Property boundary. The northwestern extents of the field contained ponded water.

## 4 Geomorphic Hazards

After reviewing available imagery, airphotos, previous geotechnical reports and studies, and conducting a field assessment, our evaluation indicates that the Site is subject to Inundation by Floodwaters, as described in Cave (1993).

Our evaluation also indicates that the Site, under reasonably foreseeable conditions (including climate change and seismic events), is not subject to the any additional hazards identified by Cave (1993). Consequently, we did not analyze these hazards further.

## 4.1 Inundation by Flooding

Water in the Cowichan River can flood into low-lying landscape as it becomes backed up at its confluence with the tidal-influenced Cowichan Bay.

Backwater flooding has historically caused inundation within the floodway of Somenos Creek and at the Property. Flood Scenario Maps for 25-, 50-, 100-, and 200- year floods produced for the Municipality of North Cowichan's Lower Cowichan/Koksilah River 2009 Integrated Flood Management Plan and the 2021 Update show that the Property is subject to flooding under every modelled event. The Property is contained within a floodway, and fast-flowing, deep waters could occur within the floodway during projected 200-year floods.

Since the 2009 Integrated Flood Management Plan, and Flood Hazard Map was issued to the public, the Municipality of North Cowichan has completed a series upgrades to flood protection infrastructure. Most proximal to the Property, this included constructing a dike along the southern bank of Somenos Creek that is intended to protect from backwater flooding. A stop log wall was also constructed along Lakes Road to prevent log jams at the Lakes Road and Trunk Road bridges. Many other engineered structures (Flood Pump Stations, Flood walls, and dikes) were installed upstream and downstream of the Site. However, the 2021 model and report indicate a 150 m long breach could occur along the Lakes Road/Beverly Street Dike (Breach #7), despite its recent installation.

Taking into account the history of flooding as well as the changes to infrastructure and climate change, we estimate an annual probability of flooding as being between 1:40 to 1:200 within the assessed area. This estimate makes the assumption that all required maintenance on existing protective works occurs. This includes but is not limited to monitoring of channel aggradation and debris clearing, specifically to the bridges in proximity to the property. Channel aggradation will be an ongoing process that will need to be continually monitored. Long term sediment and debris management are essential for maintaining the stability of the river system and ensuring that dikes will function during critical time periods.

Protective works must be regularly inspected, maintained and if necessary, upgraded to respond to climate change. Dike breaches proximal to the site could introduce fast flowing water to the property that could create scour to structures and cause flooding and ponding throughout the Site.

### 4.1.1 Climate change, sea level rise, and future flood management issues

The CVRD has been working with the Pacific Climate Impacts Consortium (PCIC) to produce regional projection that will help us understand how climate change may affect the region under two-time intervals. Averages (2050 and 2080) were taken from two-time intervals; 2041 through 2071 and 2071 through 2100. Modelled data for the 2050 average showed 1-day maximum precipitation increases of 18% in water supply watersheds and a 16% increase to developed watersheds, and in the 2080-time

interval values averaged 30% greater in water supply watersheds. For this reason, the CVRD's Flood Mapping Report states:

“ The available climate projections do not directly represent runoff generation or the resulting changes to discharges in the rivers. Additional hydrological modelling could potentially improve the estimates of future peak river discharges during floods. This would be a major task and is outside the scope of this current study. Furthermore, given the lack of actual hydro-meteorological data in the watersheds, it may not necessarily provide more definitive answers on how extreme events (200-year floods) will respond to climate change. The underlying projections of climate change are subject to large and unquantifiable uncertainty, including:

- Unknown future emissions of greenhouse gases;
- Uncertain response of the global climate system to increases in greenhouse gas concentrations;
- Incomplete understanding of regional and local manifestations that will result from global changes” (Flood Mapping, 2021).

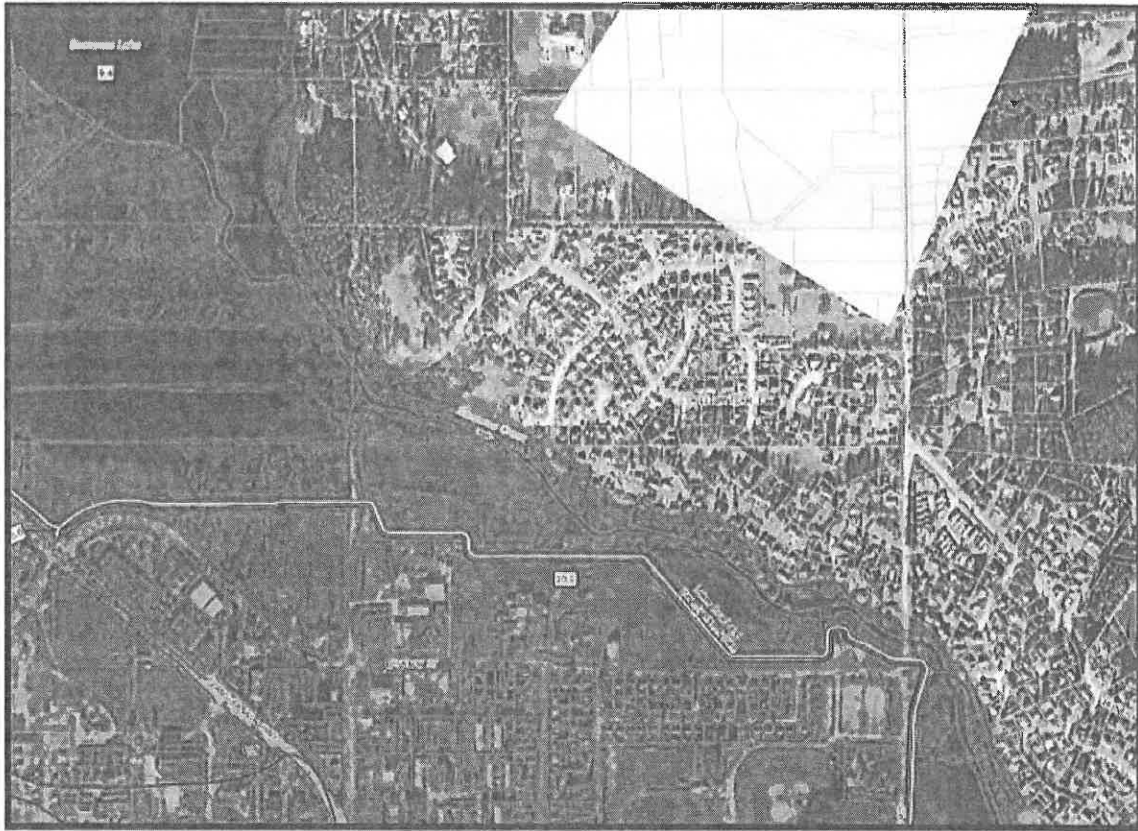
Floodplain mapping that was conducted by Northwest Hydraulics on behalf of the CVRD included a global sea level rise of 1 m within its floodplain mapping investigations, and local sea level estimates were adjusted to account for tectonic and isostatic effects.

#### **4.1.2 Flood Construction Level (FCL)**

The subject property has been designated in the MNC 2011 OCP as being within Natural Hazard Areas (DPA-4) and could be subject to flooding from the Cowichan River via backwater flow into Somenos Creek. The 2021 Integrated Flood Management Plan<sup>32</sup> indicates that Property is within a floodway and an FCL of 10.0 m was calculated, based off the 200- year flood with year 2100 climate change scenario. The average elevation on the property is below 7 m; approximately 3 m below the recommended FCL. At this time, we have no evidence to suggest that the FCL is not appropriate for the region, and our conclusions will rely on the findings of this report.

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<sup>32</sup> Sheet 4, Flood Hazard Map, Cowichan Valley Regional District, Lower Cowichan/ Somenos Creek  
Final Flood Maps, 2021



**FIGURE 6: 2021 FLOOD MAPPING IN THE PROXIMITY OF THE PROPERTY; 200 YEAR FLOOD WITH YEAR 2100 CLIMATE CHANGE SCENARIO FLOODPLAIN MAP, MAY SHEET 2 OF 7 FROM NHC, 2021.**

## 5 Conclusions and Recommendations

The subject property (029-237-424, L1 PL EPP35195, Section 19, Range 7, Quamichan Land District, Zone A2) has previously been identified by MNC in its OCP as Natural Hazard Areas (floodplain), and additionally identified through modeling and mapping by Northwest Hydraulic Consultants as being within a floodway of the Cowichan River and Somenos Creek. The property is located behind the Beverly Street Dike, south of Somenos Creek.

We conducted a standard-based approach to the geotechnical hazard investigation. We found that the property is subject to inundation by flooding; we compared these findings with the levels of safety (i.e., regulatory responses) described by Cave (1993) for a New Building and determined that the regulatory response to building approval application would be "approval with siting or protective requirements"<sup>33</sup>.

**TABLE 5: GEOTECHNICAL HAZARDS, THEIR ASSOCIATED ANNUAL RETURN FREQUENCY AND RESPONSE TO BUILDING APPROVAL APPLICATION AS APPLICABLE TO THE SUBJECT PROPERTY.**

Hazard	Location	Annual Return Frequency	Response to Building Approval Application
Inundation by Flood Waters	Modern (active) Floodway of Somenos Creek	1:40 to 1:200	Approval with siting or protective requirements

Appendix C, Figure 9 shows the proposed development relative to the existing site at the time of this report. It is our understanding that a final development plan will be provided to the appropriate parties for consideration during the permit evaluation phase, and will incorporate the recommendations outlined in this report.

The recent 2021 Integrated Flood Management Plan<sup>34</sup> indicated that Property is within a floodway; an FCL of 10.0 m was based off the 200- year flood with year 2100 climate change scenario. One of the significant reasons for this model distribution of flooding near the property is due to a breach in the Beverly Street dike that is likely to occur.

*An FCL<sup>35</sup> estimates the level at which buildings should be constructed to avoid flood related damage to a structure; it does not have a direct correlation to human safety.* The average elevation on the property is below 7.0 m;

<sup>33</sup> The response is based on the level of tolerable flood hazard to the property.

<sup>34</sup> Sheet 4, Flood Hazard Map, Cowichan Valley Regional District, Lower Cowichan/ Somenos Creek Final Flood Maps, 2021

<sup>35</sup> In the regulatory context, freeboard is used to determine the FCL by providing an allowance above the design flood level...Typical freeboard values for "water" floods that have been adopted in BC are 0.3 m above the maximum instantaneous design flood level or 0.6 m above the mean daily design flood level... In floodplain areas protected by dikes, freeboard is applied to flood elevations determined by dike breach analysis. APEGBC-Guidelines-for-Flood-Mapping-in-BC.

approximately 3 m below the recommended FCL in the most recent Flood Management Plan. Given the non-residential use of the development, it is reasonable that an exemption is applied to the development of the structures. At the time of this report, we were unable to find a route for exemption due to farm use in the current bylaws. However, after discussion with the MNC and review of the previous permit issued on site, we found that an exemption was permitted by council in 2016 (Appendix E).

We considered the relationship between the intended use and the risk to human life during a flood event. The annual probability of flooding was estimated to be 1:40-1:200, however, human life exposure at the property is limited to operating hours, approximately 40 hours a week. Risk is a function of hazard and exposure; therefore, we have estimated *the risk to human life on the property with its current intended use is LOW*<sup>36</sup>. A full risk-based analysis<sup>37</sup> is out of the scope of this work and is inappropriate for the intended small-scale commercial agricultural<sup>38</sup> use.

In addition, in the event of a flood, there will be considerable warning prior to a dike breach (i.e., rising water levels, minimal likelihood of flash events), which will give visitors the ability to vacate the area prior to reaching the hazard threshold. For instance, during periods of high flood risk, the B.C. River Forecast Centre "provides information on current and forecast streamflow conditions, including modeled forecast data, and flood advisories and warnings"<sup>39</sup>. This includes maps and warnings to the public and relevant emergency managers about the current and upcoming streamflow conditions in their area.

After review of the site and previous exemption allowed on the property in 2016, we recommend that the MNC exempt the proposed development from meeting the requirement of FCL given the intended future use of commercial agriculture buildings.

It is our understanding that MNC may require a section 219 to be registered on the property and that the property owner are aware of this. In lieu of siting and protective measures (i.e., FCL) recommended for approval, a covenant is an appropriate alternative. The covenant should include a notification

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<https://www.egbc.ca/getmedia/8748e1cf-3a80-458d-8f73-94d6460f310f/APEGBC-Guidelines-for-Flood-Mapping-in-BC.pdf.aspx>

<sup>36</sup> See Section 3.7.2.1 Risk Tolerance from EGBC Legislated Flood Assessments in a Changing Climate in BC, V2.1

<sup>37</sup> From EGBC Legislated Flood Assessments in a Changing Climate in BC, V2.1: "In contrast to the standard-based approach, a formal Risk-based approach systematically quantifies flood consequences, which are combined with Hazard Scenarios to estimate Flood Risk. Human safety and economic and environmental losses are typically the most important Consequence categories, but loss of cultural values and mental stress associated with property loss can also be included".

<sup>38</sup> The 'commercial agriculture' use for this development also includes activities such as education, community gathering space, food processing and warehousing. For simplicity in the report, we will refer to the intended use as 'commercial agriculture'.

<sup>39</sup> <https://www2.gov.bc.ca/gov/content/environment/air-land-water/water/drought-flooding-dikes-dams/river-forecast-centre> Province of B.C. River Forecast Centre.

requirement (by the landowners to the MNC) in the event that there is a proposed change in use of the property that is not considered agricultural by the MNC. *This recommendation does not extend to buildings that are intended for residential structures on-site, and does not extend to any other structured development on or off the subject property.*

Further development recommendations are as follows:

- All building foundations located on a structural fill pad should be protected from potential scour of floodwaters by placing footings on perimeter walls at least 1 m below the finished grade surrounding the building.
  - If structures are not placed on structural fill, then this recommendation does not apply.
- Flood hazard should be taken into consideration for any building foundations as designed by a qualified professional.
- No area used for residential habitation shall be located within any building, mobile home or unit, or modular home or structure at an elevation less than the Flood Construction Level.
- If a residential habitation structure is proposed at a later date, it must be at an elevation such that either:
  - the underside of a wooden floor system, or
  - the top of concrete floor slab, or
  - the top of a wooden floor system where a continuous concrete perimeter foundation is provided to a level equal to or above the floor,is greater than the Flood Construction Level.

The planned development is limited to the southern portion of the property (Appendix C, Figure 9); due to the saturated soils and highwater table associated with a fluvial plain and specifically the areas observed on-site in the northeaster quadrant. Engineering measures designed by a qualified professional could increase the feasibility of development in other portions of the property, however, that is beyond the scope of this report and is not being considered by the client at this time.

Our recommendations have reliance on the 2021 Integrated Flood Management Plan<sup>40</sup> and its modelled scenarios. We also recommend the following<sup>41</sup>:

---

<sup>40</sup> Sheet 4, Flood Hazard Map, Cowichan Valley Regional District, Lower Cowichan/ Somenos Creek  
Final Flood Maps, 2021

<sup>41</sup> Our recommendations are based on the assumption that (1) The CVRD (as the adjacent municipality/regional district) has undertaken a pro-active approach to manage geohazards within the district and has recognized that channel aggradation is an ongoing process. Long term sediment and debris management plans have been formatted and are currently being implemented. This sediment and debris management plan will be essential for maintaining stability within the river system and ensuring that dikes will function during critical time periods. (2) The CVRD (in place of the MNC) is responsible to ensure protective works are regularly inspected, maintained and if necessary, upgraded to respond to degradation or climate change. Dike breaches proximal to the site could introduce fast flowing water to the property that could create scour to structures and cause flooding and ponding throughout the Site.



- Approval with protective requirements and a covenant in place, agreeing to indemnify and save harmless MNC.
- The Site will be used as commercial agriculture space and will not be used as a place of residence.
- Surface areas of the subject Property used for vehicular parking is allowed below the Flood Construction Level provided the vehicles are removed immediately when there is an imminent risk of flooding.

Provided our recommendations are followed, we find that the property is safe for the use intended<sup>42</sup>, which is the development of two non-residential structures (an addition to an existing structure, and one new build) for commercial agricultural activities, with no significant transfer of risk.

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<sup>42</sup> From EGBC Legislated Flood Assessments in a Changing Climate in BC, V2.1 "With this statement, the QP declares that the Risks and Consequences of a given Hazard Scenario are tolerable or acceptable.... [where] "Tolerable" risks are those that society can live with given the perceived or real benefit that emerges by developing in a hazardous area. However, these risks require monitoring and usually call for further reduction.



## 6 Closure

We trust that this report meets the applicable requirements. We grant permission to the Municipality of North Cowichan to use this report. Please contact us if you require further information or services.

Prepared and Assessed by:

Prepared by:

*\*This is a digitally signed duplicate of the official manually signed and sealed document.*



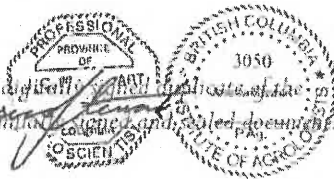
Roberta Adams, M.Sc., P. Geo.

A handwritten signature in black ink, appearing to read "Luke Wagner".

Luke Wagner, B.Sc., G.I.T.

Reviewed by:

*\*This is a digitally signed duplicate of the official manually signed and sealed document.*



Jessica Stewart, P. Ag., P. Geo.

## APPENDIX A

# **Limitations and Conditions of Use for this Report**

The contents of this Report remain the copyright property of Madrone.

By using the Report, including but not limited to providing the Report to other parties or relying on the information, observations, findings, suggestions, recommendations and opinions contained in the Report, a person who uses the Report (User) accepts and agrees to the limitations and conditions set out below.

To the extent that these limitations and conditions of use conflict with any previous agreements between Madrone Environmental Services Ltd. (Madrone) and the Client, these limitations and conditions will prevail.

Madrone grants the Client a non-transferable license to use this Report in connection with the particular project for which it has been prepared. This license does not apply to any draft version of any document. The Client may not use the Report in connection with any other work, or project without prior written approval by Madrone. If the Client is in breach of any obligation to make payment to Madrone, Madrone may revoke the license referred to above and the Client will cause to be returned to Madrone the Report and any associated documents and all copies thereof and the Client will remove from its computer systems any electronic copies of any of the documents.

Unless Madrone provides written consent, no party other than the Client may rely on the observations, data, interpretations, findings, or recommendations of this report, except that regulatory authorities may rely on it with respect to the project for which it was prepared. Madrone will consider any reasonable request by the Client to provide consent for other parties to rely on this report.

If a User, including but not limited to the Client, provides the Report to another party, the User will provide the other party with the entire Report including these limitations and conditions of use, and the User agrees to indemnify Madrone against claims by such other party arising from the failure of the other party to comply with the limitations and conditions of use.

All documents generated as part of the services for the Client with respect to the project for which the Report has been prepared, including drawings, reports, instructions, and correspondence, whether hardcopy or electronic, but excluding draft documents, are inherent components of the Report. To properly understand the information, observations, findings, suggestions, recommendations and opinions contained in the Report, reference must be made to the whole of the Report. Madrone is not responsible for use by any party of portions of the Report without reference to the whole Report and its various components.

The User agrees that the no portion of the Report, whether electronic or hard copy, no matter who owns or uses them, may be altered by any party except Madrone. If Madrone has submitted both electronic

and hard copy versions of the Report, only the signed and sealed hard copy versions shall be considered final and legally binding upon Madrone.

Madrone will maintain professional liability insurance that is usual and customary for similar firms. The total amount of all claims arising from the Report, by all Users, against Madrone or any present or former partner; executive officer, director, stockholder, employee or agent thereof, including but not limited to claims for negligence, and negligent misrepresentation, will be strictly limited to the amount of any professional liability insurance that Madrone may have available for such claims.

Madrone will not be liable for any consequential loss, injury or damages suffered by any User, including but not limited to loss of use, earnings and business interruption.

No User may bring a claim against Madrone in contract or tort more than two (2) years after Madrone's involvement in the project.

Madrone has conducted this investigation and prepared the Report in a manner consistent with the level of care normally exercised by professionals currently practicing in the area under similar conditions and budgetary constraints. No other warranties, either expressed or implied, are made.

Madrone has assumed that information provided to Madrone by the Client or other individuals or organizations is factual, complete, and accurate. Madrone is not responsible for any inaccuracies, deficiencies, or omissions resulting from receipt of incorrect or fraudulent information.

The Report pertains only to development plans and project design disclosed to Madrone by the Client at the time the Report was prepared. The applicability and reliability of any of the information, observations, findings, suggestions, recommendations and opinions contained in the Report are only valid to the extent that there have been no material alterations to or variations from any of the said descriptions provided by the Client to Madrone unless the Client has specifically requested Madrone to review and revise the Report in light of such alterations or variations. If the project does not commence within two (2) years of the Report date, no party may rely on the Report unless Madrone has been engaged to review it.

Madrone has made reasonable efforts to collect information and Site observations that are representative of conditions in the relevant portions of the Site; however, conditions may vary from place to place and conditions may change with the passage of time. Site information contained in the report pertains specifically to the points and dates of observation.

The findings of this investigation and report are based in part on Madrone's visual observations of Site conditions. Madrone's opinions do not extend to portions of the Site that were unavailable for direct observations due to circumstances reasonably beyond Madrone's control. Madrone is not responsible for detecting conditions in areas beyond the Site, if the conditions could not reasonably be known by

Madrone given restrictions to accessing such areas and the budgetary and time constraints under which the investigation was performed.

Classification and identification of the soils, rocks, and geologic units of these materials or units involves judgment, and boundaries between different soil, rock or geologic types or units may be transitional rather than abrupt. Accordingly, Madrone does not warrant or guarantee the exactness of the descriptions.

If unexpected conditions are encountered on the Site, the Client must notify Madrone in order that Madrone may determine if modifications to the findings are necessary.

The exploration and review provided in the Report are for geotechnical purposes only unless otherwise specifically stated and identified in the Report. Environmental aspects of soil and groundwater have not been included investigated or addressed in any other way.

Madrone makes no representations whatsoever, as to the legal significance of its findings, or as to other legal matters touched on in the Report, including, but not limited to, ownership of any property, or the application of any law to the facts set forth in the Report.



## **APPENDIX B**

### **Cave (1993) Criteria**

**Acceptable Annual Hazard Probabilities for a New Building**

	Approval without conditions <sup>43</sup>	Approval without conditions, but with covenant <sup>44</sup>	Approval, but with siting or protective requirements <sup>45</sup>	Approval, but with covenant and with siting or protective requirements <sup>46</sup>	Not approvable
	— increasing probability of occurrence →				
Inundation by Flood	<1:200	N/A	1:40 - 1:200	<1:40	N/A
Mountain Stream Erosion or Avulsion	<1:500	1:200 - 1:500	N/A	1:100 - 1:200	>1:100
Debris Flows / Debris Torrents	<1:10 000	N/A	1:500 - 1:10 000	1:200 - 1:500	>1:200
Debris Floods	<1:500	N/A	1:200 - 1:500	1:50 - 1:200	>1:50
Localized Landslides	<1:10, 000	N/A	1:500 - 1:10 000	1:50 - 1:500	>1:50
Snow Avalanches	<1:10, 000	N/A	N/A	1:30 to 1:10,000	>1:30
Rock Falls	<1:1000	N/A	N/A	1:500 - 1:1000	>1:500
Catastrophic Landslides	<1:1000	N/A	N/A	N/A	>1:1000
River Erosion and Avulsion <sup>47</sup>	Setback greater than 100-year erosion limit	Setback less than 100-year erosion limit <sup>48</sup>	N/A	N/A	N/A

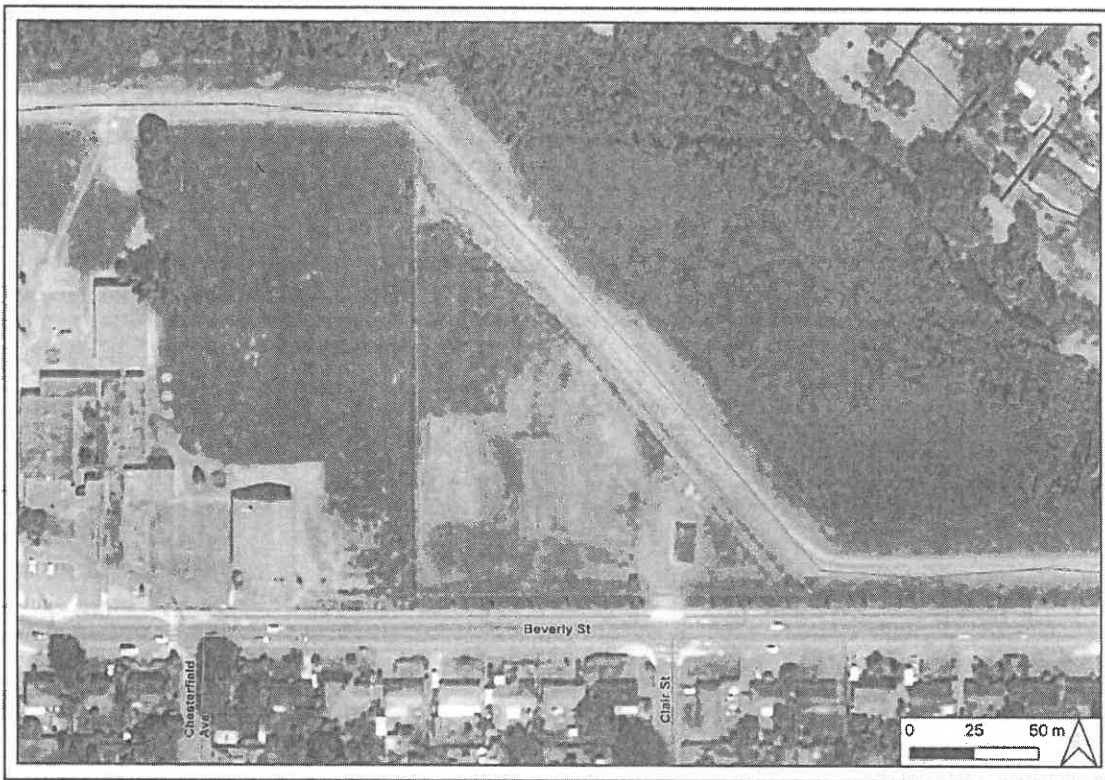
<sup>43</sup> Approval without conditions relating to hazards.<sup>44</sup> Approval, without siting conditions or protective works conditions, but with a covenant including "save harmless" conditions.<sup>45</sup> Approval, but with siting requirements to avoid the hazard, or with requirements for protective works to mitigate the hazard, or both<sup>46</sup> Approval, but with covenant including "save harmless" conditions as well as siting requirements to avoid the hazard, or with requirements for protective works to mitigate the hazard, or both.<sup>47</sup> Cave did not apply this generally, but only to the Chilliwack River.<sup>48</sup> Where threat of erosion or avulsion is immediate or extreme, building permit may not be available until approved bank protection is provided



## APPENDIX C

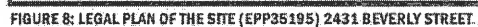
### **Figures**

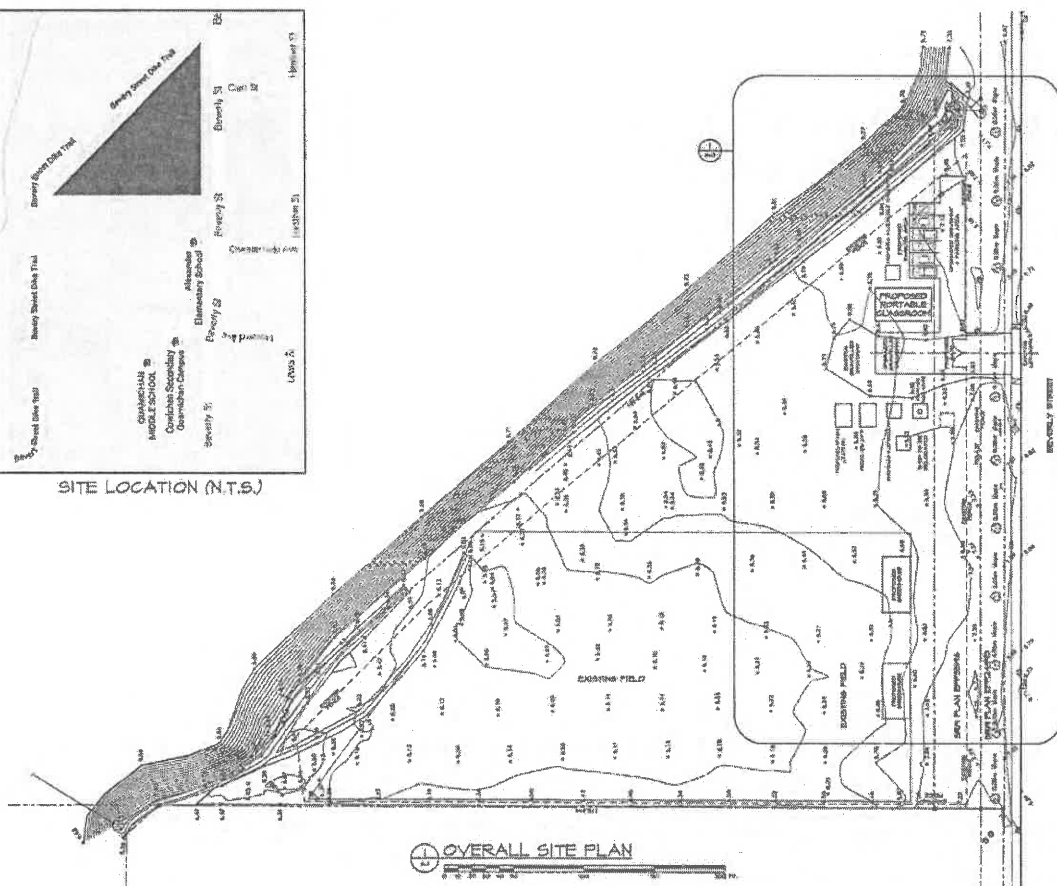
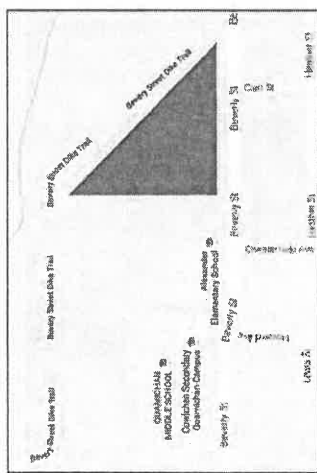




**FIGURE 7: OVERVIEW OF THE SITE (GREEN POLYGON).**

Landscape in the northern quadrant was observed to be saturated and contained a shallow water table.





GENERAL NOTES:

1. 1.66M. DISCREPANCY. LOT 1. QUANTITY IN  
BLINDS 2. 1.66M. QUANTITY IN  
BLINDS 2. 1.66M. QUANTITY IN  
BLINDS 2. 1.66M. QUANTITY IN
2. 2.00M. DISCREPANCY. LOT 2. QUANTITY IN  
BLINDS 2. 2.00M. QUANTITY IN  
BLINDS 2. 2.00M. QUANTITY IN  
BLINDS 2. 2.00M. QUANTITY IN

PHILADELPHIA

PROPOSED  
SITE DEVELOPMENT

ENTONIAN GREEN COMMUNITY  
ENTONIAN ORATOR NEED PARDON  
DUNBAR, MS

CRUISING TITLE

OVERALL SITE PLAN



1208

SCALE  
AS NOTED



12



## **APPENDIX D**

# **Assurance Statements**

## FLOOD ASSURANCE STATEMENT

Note: This statement is to be read and completed in conjunction with the current Engineers and Geoscientists BC *Professional Practice Guidelines – Legislated Flood Assessments in a Changing Climate in BC* ("the guidelines") and is to be provided for flood assessments for the purposes of the *Land Title Act*, *Community Charter*, or the *Local Government Act*. Defined terms are capitalized; see the Defined Terms section of the guidelines for definitions.

To: The Approving Authority

Date: 23-Feb-2021

Municipality of North Cowichan

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

Jurisdiction and address

With reference to (CHECK ONE):

- ☐ *Land Title Act* (Section 86) – Subdivision Approval
- ☐ *Local Government Act* (Part 14, Division 7) – Development Permit
- ☒ *Community Charter* (Section 56) – Building Permit
- ☐ *Local Government Act* (Section 524) – Flood Plain Bylaw Variance
- ☐ *Local Government Act* (Section 524) – Flood Plain Bylaw Exemption

For the following property ("the Property"):

2431 Beverly Street ( 029-237-424, L1 PL EPP35195, Section 19, Range 7, Quamichan Land District, Zone A2, North Cowichan, BC)

Legal description and civic address of the Property

The undersigned hereby gives assurance that he/she is a Qualified Professional and is a Professional Engineer or Professional Geoscientist who fulfils the education, training, and experience requirements as outlined in the guidelines.

I have signed, sealed, and dated, and thereby certified, the attached Flood Assessment Report on the Property in accordance with the guidelines. That report and this statement must be read in conjunction with each other. In preparing that Flood Assessment Report I have:

[CHECK TO THE LEFT OF APPLICABLE ITEMS]

- ☒ 1. Consulted with representatives of the following government organizations:  
Municipality of North Cowichan
- ☒ 2. Collected and reviewed appropriate background information
- ☒ 3. Reviewed the Proposed Development on the Property
- ☒ 4. Investigated the presence of Covenants on the Property, and reported any relevant information
- ☒ 5. Conducted field work on and, if required, beyond the Property
- ☒ 6. Reported on the results of the field work on and, if required, beyond the Property
- ☒ 7. Considered any changed conditions on and, if required, beyond the Property
- 8. For a Flood Hazard analysis I have:
  - ☒ 8.1 Reviewed and characterized, if appropriate, Flood Hazard that may affect the Property
  - ☒ 8.2 Estimated the Flood Hazard on the Property
  - ☒ 8.3 Considered (if appropriate) the effects of climate change and land use change
  - ☒ 8.4 Relied on a previous Flood Hazard Assessment (FHA) by others
  - ☐ 8.5 Identified any potential hazards that are not addressed by the Flood Assessment Report
- 9. For a Flood Risk analysis I have:
  - ☒ 9.1 Estimated the Flood Risk on the Property
  - ☐ 9.2 Identified existing and anticipated future Elements at Risk on and, if required, beyond the Property
  - ☐ 9.3 Estimated the Consequences to those Elements at Risk

## FLOOD ASSURANCE STATEMENT

10. In order to mitigate the estimated Flood Hazard for the Property, the following approach is taken:
- ☒ 10.1 A standard-based approach
  - ☐ 10.2 A Risk-based approach
  - ☒ 10.3 The approach outlined in the guidelines, Appendix F: Flood Assessment Considerations for Development Approvals
  - ☐ 10.4 No mitigation is required because the completed flood assessment determined that the site is not subject to a Flood Hazard
11. Where the Approving Authority has adopted a specific level of Flood Hazard or Flood Risk tolerance, I have:
- ☐ 11.1 Made a finding on the level of Flood Hazard or Flood Risk on the Property
  - ☐ 11.2 Compared the level of Flood Hazard or Flood Risk tolerance adopted by the Approving Authority with my findings
  - ☐ 11.3 Made recommendations to reduce the Flood Hazard or Flood Risk on the Property
12. Where the Approving Authority has not adopted a level of Flood Hazard or Flood Risk tolerance, I have:
- ☒ 12.1 Described the method of Flood Hazard analysis or Flood Risk analysis used
  - ☒ 12.2 Referred to an appropriate and identified provincial or national guideline for level of Flood Hazard or Flood Risk
  - ☒ 12.3 Made a finding on the level of Flood Hazard or Flood Risk tolerance on the Property
  - ☒ 12.4 Compared the guidelines with the findings of my flood assessment
  - ☒ 12.5 Made recommendations to reduce the Flood Hazard or Flood Risk
- ☒ 13. Considered the potential for transfer of Flood Risk and the potential impacts to adjacent properties
- ☐ 14. Reported on the requirements for implementation of the mitigation recommendations, including the need for subsequent professional certifications and future inspections.

Based on my comparison between:

[CHECK ONE]

- ☐ The findings from the flood assessment and the adopted level of Flood Hazard or Flood Risk tolerance (item 11.2 above)
- ☒ The findings from the flood assessment and the appropriate and identified provincial or national guideline for level of Flood Hazard or Flood Risk tolerance (item 12.4 above)

I hereby give my assurance that, based on the conditions contained in the attached Flood Assessment Report:

[CHECK ONE]

- ☐ For subdivision approval, as required by the *Land Title Act* (Section 86), "that the land may be used safely for the use intended":
  - [CHECK ONE]
  - ☐ With one or more recommended registered Covenants.
  - ☐ Without any registered Covenant.
- ☐ For a development permit, as required by the *Local Government Act* (Part 14, Division 7), my Flood Assessment Report will "assist the local government in determining what conditions or requirements it will impose under subsection (2) of this section [Section 491 (4)]".
- ☒ For a building permit, as required by the *Community Charter* (Section 56), "the land may be used safely for the use intended":
  - [CHECK ONE]
  - ☒ With one or more recommended registered Covenants.
  - ☐ Without any registered Covenant.
- ☐ For flood plain bylaw variance, as required by the *Flood Hazard Area Land Use Management Guidelines* and the *Amendment Section 3.5 and 3.6* associated with the *Local Government Act* (Section 524), "the development may occur safely".
- ☐ For flood plain bylaw exemption, as required by the *Local Government Act* (Section 524), "the land may be used safely for the use intended".

PROFESSIONAL PRACTICE GUIDELINES  
LEGISLATED FLOOD ASSESSMENTS IN A CHANGING CLIMATE IN BC

## FLOOD ASSURANCE STATEMENT

I certify that I am a Qualified Professional as defined below.

**FEB 23 2021**

Date

Prepared by

**ROBERTA ADAMS P.GEO.**

Name (print)



Signature

**1081 Canada Ave**

Address

**Duncan, BC, V9L 1V2**

**250-746-5545**

Telephone

**ROBERTA.ADAMS@MADRONE.CA**

Email

Reviewed by

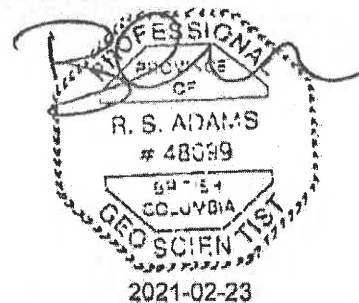
**JESSICA STEWART P.GEO.**

Name (print)



Signature

21.0024 GH A



(Affix PROFESSIONAL SEAL here)

If the Qualified Professional is a member of a firm, complete the following:

I am a member of the firm  
and I sign this letter on behalf of the firm.

**MADRONE ENVIRONMENTAL SERVICES LTD.**

(Name of firm)



## **APPENDIX E**

### **2016 Amendment**



## AMENDMENT TO LICENCE OF OCCUPATION

THIS AMENDMENT dated and in effect the 15<sup>th</sup> day of December, 2016.

### BETWEEN:

Cowichan Green Community Society  
360 Duncan Street,  
Duncan, British Columbia V9L 3W4

(the "Licensee")

### AND:

The Corporation of the District of North Cowichan  
7030 Trans-Canada Highway  
Duncan, British Columbia V9L 3X4

(the "Licensor")

### WHEREAS:

- A. The Licensor granted to the Licensee a Licence of Occupation (the "Licence") dated the 18th day of August 2015, a copy of which is attached hereto as Schedule "A";
- B. The Licensor and the Licensee have mutually agreed to amend the Licence in accordance with the terms and conditions set out herein.

**NOW THEREFORE** in consideration of the mutual promises and covenants set out in this Amendment to the Licence (the "**Amendment**"), the Licensor and the Licensee mutually covenant and agree as follows:

- 1. Clause 1(d) of the Licence is deleted and the following substituted in its place as clause 1(d):
  - (d) **licensed area** means the land outlined on Schedule "A" of this licence;

2. The following is inserted as clause 17A in the Licence:

17A. Notwithstanding the provisions of clause 17 above, and given that the entire Licensed area is in a flood plane, North Cowichan agrees that the Licensee may erect a portable structure which is exempt from provisions of North Cowichan Zoning Bylaw 1997, No. 2950 (the "Zoning Bylaw") and in particular section 14 thereof, PROVIDED THAT:

- (a) The Licensee has first complied with any terms and conditions pertaining to the said exemption set out in a resolution of Municipal Council for North Cowichan adopted on the 19<sup>th</sup> day of October, 2016 in conjunction with section 524(7) of the *Local Government Act*, RSBC 2015, c.1, a copy of which is attached as Schedule "B" of this licence; and
- (b) The Licensee has in place a policy of insurance which addresses the said exemption from provisions of the Zoning Bylaw to the satisfaction of North Cowichan, and the Licensee has provided North Cowichan with written confirmation thereof prior to construction of any portable structure as aforesaid.

3. Clause 27 of the Licence is deleted and the following substituted in its place as clause 27:

27. The Licensee agrees to indemnify and save harmless North Cowichan from and against any and all claims, losses, damages, demands, causes of action, costs and expenses, including any and all legal fees and expenses, arising out of or connected directly or indirectly with the Licensee's:

- (a) occupation and use of the licensed area, including but not limited to construction, erection, use, maintenance and occupation of any structure in the licensed area by the Licensee or by any of its employees, directors, agents, servants, or invitees;
- (b) breaching any term of this Licence.

4. Clause 31 of the Licence is deleted and the following substituted in its place as clause 31:

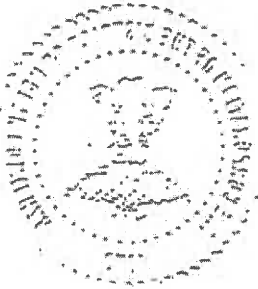
31. The Licensee releases and forever discharges North Cowichan from any and all claims arising from:

- (a) breach of any provisions of this Licence by the Licensee;
- (b) the Licensee's occupation and use of the licensed area, including but not limited to construction, erection, use, maintenance and occupation of any structure in the licensed area by the Licensee or by any of its employees, directors, agents, servants, or invitees;
- (c) North Cowichan exercising its rights under the Licence;

AND FURTHER the Licensee specifically waives any and all rights of recovery it has or may have of any kind or nature, including but not limited to any rights of recovery pursuant to any policy of

**SCHEDULE "A"**

[Attach Copy of Licence of Occupation dated August 18, 2015]

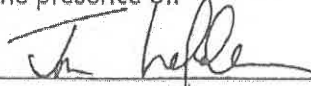


Insurance with respect to any claims against the Licensor, unless such claims are caused by the willful misconduct or negligence of the Licensor.

5. The Licensor and the Licensee hereby confirm that save and except for the Amendments set out above, the Licence in all other respects remains and continues in full force and effect.

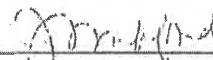
**AS EVIDENCE** of their agreement to be bound by the above terms and conditions, the Licensor and the Licensee have executed this Amendment as of the date first written above:


The Seal of the Corporation of the District of North Cowichan is hereunto affixed in the presence of:

  
\_\_\_\_\_  
Jon Lefebure, Mayor

  
\_\_\_\_\_  
Mark Ruttan, Corporate Officer

Cowichan Green Community Society by its authorized signatory:

  
\_\_\_\_\_  
Judy Stafford, Executive Director

  
\_\_\_\_\_  
Nadeane Nelson, President



7030 Trans-Canada Highway | Box 278  
Duncan, BC V9L 3X4 Canada  
www.northcowichan.ca  
T 250.746.3100  
F 250.746.3133

## Licence of Occupation

### Definitions

File No: 0890-20 BEV

1. In this licence:

- (a) **deposit** means \$1,000;
- (b) **hazardous substance** means a contaminant, dangerous good, hazardous substance, pollutant, special waste, or toxic substance, or waste, as defined under the federal *Canadian Environmental Protection Act* or provincial *Environmental Management Act*, or other applicable legislation pertaining to the environment;
- (c) **land** means lot on Beverly Street, legally described as Lot 1, Section 19, Range 7, Quamichan District, Plan EPP35195, Parcel Identifier: 029-237-424 (Folio: 206-100);
- (d) **licensed area** means the land outlined on the Schedule, containing about 3.38 acres;
- (e) **Licensee** means Cowichan Green Community, of 360 Duncan Street, Duncan, BC, V9L 3W4;
- (f) **North Cowichan** means The Corporation of the District of North Cowichan;
- (g) **permit** means an approval, authorization, consent, licence, or permit, issued under the federal *Canadian Environmental Protection Act* or provincial *Environmental Management Act*, or other applicable legislation pertaining to the environment.

### Grant of Licence

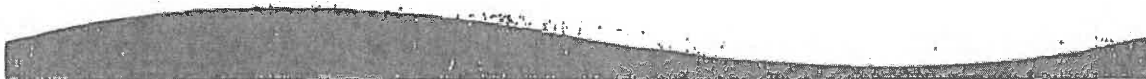
2. North Cowichan grants the Licensee a licence of occupation (called the **licence**) to occupy the licensed area, on the terms below, from August 1, 2015 through July 31, 2020.

### Licence Fee and Deposit

3. In consideration for granting the licence, the Licensee agrees to pay North Cowichan (a) \$200 (called the **licence application fee**), and (b) the deposit when this licence is signed.
4. Arrears will bear interest at 1.5 percent per month.

### Use of Licensed Area

5. The Licensee may only use the licensed area for the purpose of the Cowichan Farm Incubator Pilot Program. Before using the licensed area, the Licensee must obtain all required permits, and submit a detailed site plan that must be approved by North Cowichan.



6. The Licensee has inspected the licensed area and acknowledges that it is suitable for this use.

#### **Nature of Licence**

7. The Licensee acknowledges that this agreement grants a licence only. It does not give, and must not be deemed to give, any other interest in the licensed area.

#### **Dealings with Licence**

8. The Licensee may not assign the licence, or sub-licence all or part of the licensed area, without North Cowichan's prior written consent. North Cowichan may withhold consent without reason.
9. Assigning the licence does not release the Licensee from its obligations under the licence.
10. The Licensee may not encumber its interest in the licence.
11. The Licensee may not allow another person except its (a) agents, employees, or guests, and (b) assignees and sub-licensees whom North Cowichan permits, to occupy all or part of the licensed area.
12. The Licensee must ensure that its assignees and sub-licensees, if any, comply with the terms of the licence.
13. The Licensee and its agents, employees, assignees, and sub-licensees are not, and must not be deemed to be, agents or employees of North Cowichan.

#### **Reentry into Licensed Area**

14. The Licensee must allow North Cowichan and persons whom North Cowichan authorizes to enter the licensed area at any time on reasonable notice and for any reason.

#### **Maintenance of Licensed Area**

15. The Licensee accepts responsibility for the licensed area's welfare and agrees to keep the licensed area clean, tidy, and in good repair. The Licensee agrees to provide Council with annual reports on its progress and the condition of the Licensed Area.

#### **Repairs to Licensed Area**

16. The Licensee must repair, at its expense, damage to the licensed area that results from the use of the licensed area by the Licensee or a person whom the Licensee allows to enter it.

#### **Enactments and Permits**

17. The Licensee must, during the licence, comply with applicable enactments and permits. Without limitation, the Licensee must comply, during the licence, with applicable enactments and permits relating to (a) building, (b) fire protection and control, and (c) the environment (called environmental laws).
18. The Licensee must show North Cowichan on demand that the Licensee's permits are valid.

### **Taxes**

19. The Licensee must pay, on time, all taxes imposed during the licence on the Licensee's activity, income, and property, and the the Licensee must pay all WorkSafeBC assessments.

### **Liens**

20. The Licensee must promptly remove liens against all or part of the licensed area that arise from work done for, materials supplied to, and obligations incurred by the Licensee.

### **Utilities**

21. The Licensee must pay, on time, charges that the Licensee incurs during the licence for utilities supplied to the land.

### **Changes and Improvements to Licensed Area**

22. If a provincial or federal enactment or a change to a provincial or federal enactment requires changing the licensed area or part of the licensed area, then the Licensee must (a) notify North Cowichan, and (b) change the licensed area or part of the licensed area (as the case may be) at the Licensee's expense. Otherwise, the Licensee may not change or improve the licensed area, or part of the licensed area, without North Cowichan's prior written consent.

### **Nuisances**

23. The Licensee must not do or have done anything in the licensed area that is, in North Cowichan's opinion, a nuisance.

### **Environmental Protection**

24. The Licensee must not store or have stored, treat or have treated, or dispose or have disposed, hazardous substances in the licensed area except according to applicable environmental laws. The Licensee must notify North Cowichan immediately if (a) a hazardous substance is released in the licensed area unless it is released according to applicable environmental laws, (b) a government agency notifies the Licensee that the Licensee is not complying with an environmental law, (c) the Licensee is notified of a third-party claim relating to the environment, or (d) the Licensee learns that a hazardous substance is present in the licensed area.

25. The Licensee must investigate, and report, as North Cowichan directs, if North Cowichan reasonably suspects that the Licensee's occupation and use of the licensed area might be introducing, or increasing the presence of, hazardous substances in the licensed area.

26. If the Licensee's use and occupation of the licensed area introduces, or increases the presence of, hazardous substances in the licensed area, then the Licensee must undertake remediation (as defined in the *Environmental Management Act*) at its expense.

### **Indemnity**

27. The Licensee agrees to indemnify and save harmless North Cowichan from and against any and all claims, losses, damages, demands, causes of action, costs and expenses arising out of or connected directly or indirectly with the Licensee's (a) occupation and use of the licensed area, or (b) breaking a term of the licence.

#### **Insurance**

28. The Licensee must take out, and maintain during the licence, comprehensive general liability insurance of at least \$7,000,000., on terms, and from an insurer, acceptable to North Cowichan.
29. The Licensee's comprehensive general liability insurance policy must (a) name North Cowichan as an additional insured, (b) state that it must not be cancelled, allowed to expire, or materially changed, unless the insurer notifies North Cowichan in writing at least 30 days in advance, and (c) state that North Cowichan's insurance claims must be paid before any other.
30. The Licensee must supply North Cowichan with proofs of insurance (a) when this licence is signed, (b) on renewal of the licence, and (c) on demand.

#### **Release**

31. The Licensee releases and forever discharges North Cowichan from any and all claims arising from (a) breach of any provisions of this licence by the Licensee, (b) the Licensee's occupation and use of the licensed area, and (c) North Cowichan exercising its rights under the licence, unless such claims are caused by the wilful misconduct or negligence of North Cowichan.

#### **Curtailment or Temporary Suspension of Use**

32. If North Cowichan believes that circumstances beyond North Cowichan's control require curtailing or temporarily suspending the Licensee's use of the licensed area, then the Licensee must curtail or temporarily suspend (as the case may be) its use of the licensed area as North Cowichan directs.

#### **Default**

33. If the Licensee does not fulfill an obligation under the licence, then North Cowichan may fulfill the obligation for the Licensee. If North Cowichan incurs costs to fulfill an obligation under the licence that the Licensee does not fulfill, then North Cowichan may recover its costs of fulfilling the obligation from the Licensee on demand.

#### **Cancellation or Forfeiture of Licence**

34. North Cowichan or the Licensee may cancel the licence for just cause with at least 90 days' written notice.
35. If the Licensee does not fulfill an obligation under the licence, then North Cowichan may, rather than fulfill the obligation for the Licensee, cancel the licence in writing, effective 60 days after giving notice, unless the Licensee fulfills the obligation in that time.



36. If a creditor of the Licensee's tries to seize the licence, or take the licence in execution or attachment, or (b) the Licensee becomes bankrupt or insolvent, then the Licensee forfeits the licence, and improvements to the licensed area, to North Cowichan.

#### **End of Licence**

37. The Licensee must give up possession of the licensed area when the licence ends.
38. When the licence ends, the Licensee must (a) remove, at its expense, its property from the licensed area, (b) leave the licensed area clean, tidy, and in good repair, and (c) remove, at its expense, improvements to the licensed area as North Cowichan directs.
39. If the Licensee (a) does not change or improve the licensed area, or part of the licensed area, during the licence without North Cowichan's prior written consent, (b) removes its property from the licensed area when the licence ends, (c) leaves the licensed area in good repair when the licence ends, and (d) removes improvements to the licensed area as North Cowichan directs when the licence ends, then North Cowichan must refund the Licensee the deposit without interest. Otherwise, the Licensee forfeits the deposit to North Cowichan.

#### **Continuation of Licence**

40. If the Licensee continues to occupy the licensed area after July 31, 2020, then the licence continues on the same terms, except that (a) the Licensee must pay North Cowichan \$100 per month in advance for every month or part of a month that the Licensee continues to occupy the licensed area, and that (b) North Cowichan may cancel the licence in writing at any time.

#### **Dispute Resolution**

41. North Cowichan and the Licensee agree to try to resolve disputes that arise from or in connection with this licence as efficiently and cost-effectively as possible.
42. North Cowichan and the Licensee agree to try to resolve disputes by negotiation. To aid negotiation, North Cowichan and the Licensee agree to fully and frankly disclose relevant information.
43. North Cowichan and the Licensee agree that if a dispute is unresolved 30 days after negotiation begins, then they must try to resolve the dispute by negotiation (a) mediated by a neutral person whom the British Columbia International Commercial Arbitration Centre (called **B.C.I.C.A.C.**) appoints, and (b) administered under B.C.I.C.A.C.'s Mediation Rules.
44. North Cowichan and the Licensee agree that if a dispute is unresolved 30 days after B.C.I.C.A.C. appoints a mediator, then they must submit the dispute to arbitration administered by B.C.I.C.A.C. The place of arbitration must be North Cowichan.

#### **Freedom of Information**

45. the Licensee acknowledges that the *Freedom of Information and Protection of Privacy Act* might require disclosing (a) this licence, and (b) records relating to this licence that are in North Cowichan's custody or under its control.

To show their agreement, the parties have signed this licence on July 16, 2015.

Cowichan Green Community:

The Corporate Seal of The Corporation  
of the District of North Cowichan was  
hereunto affixed in the presence of:

Judy Stafford  
Signature of Authorized Signatory

Judy Stafford, Executive Director

Printed Name and Title

Beverly Suderman  
Signature of Authorized Signatory

BEVERLY SUDEMAN, PRESIDENT

Printed Name and Title

Nora Aras  
Signature of Witness

NORA ARAS

Printed Name of Witness

NORA ARAS

Address of Witness

3707 GIBBINS RD

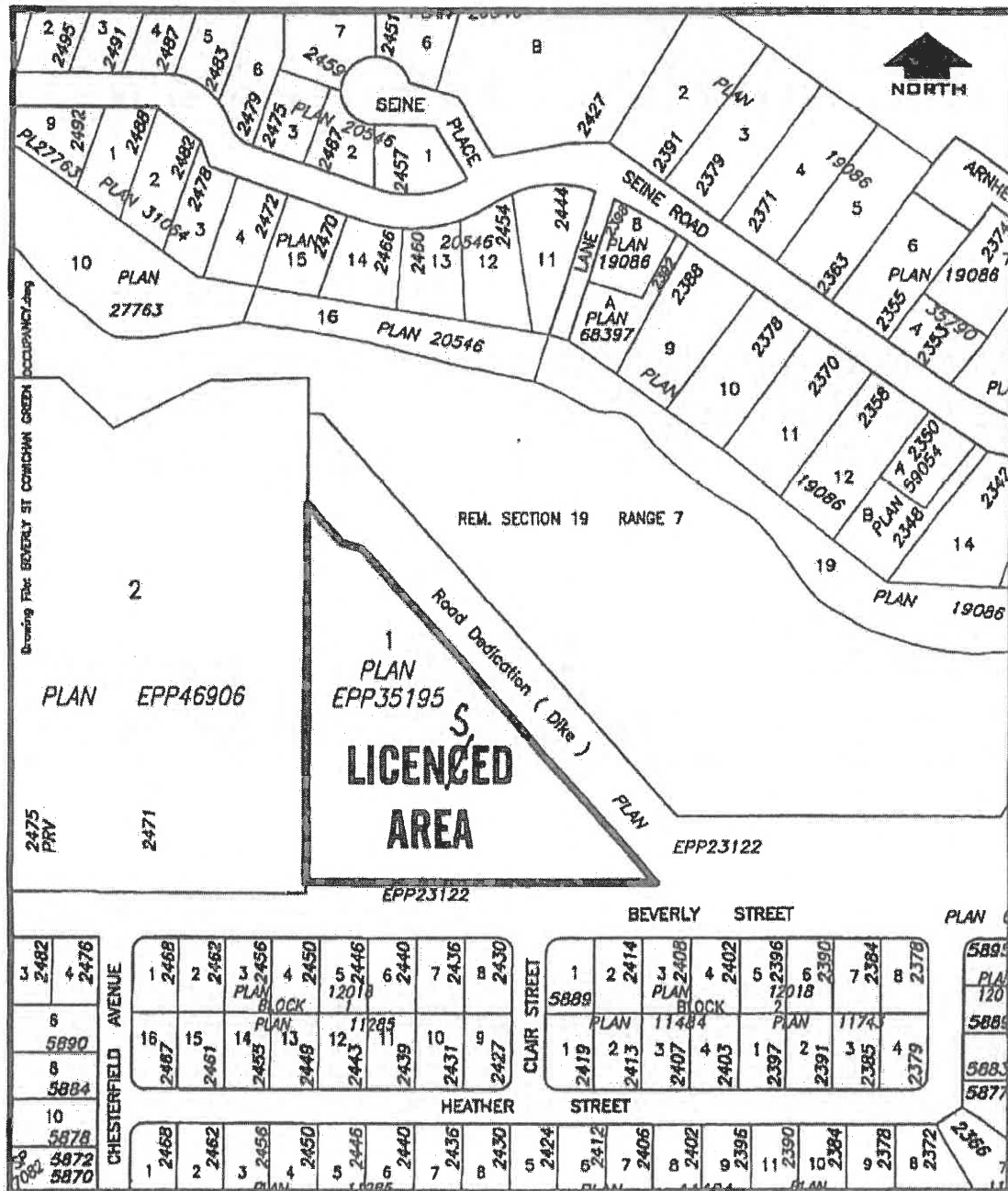
Duncan BC

V9L 6L7

Jon Lefebure  
Jon Lefebure, Mayor

Mark Ruttan  
Mark Ruttan,  
Director of Corporate Services

**Schedule  
Licensed Area**



### **Schedule B**

The following resolution was adopted by the North Cowichan Municipal Council at its Regular meeting held on October 19, 2016:

**"That Council**

- 1. endorse Cowichan Green Community's Incubator Seed Farm site plan dated September 7, 2016, subject to the existing shed being moved out of the statutory right-of-way, and**
- 2. exempt Cowichan Green Community from the flood construction level requirements in Section 14 of the Zoning Bylaw, for the sole purpose of installing a portable farm building."**

**END OF DOCUMENT**