

REGIONAL DISTRICT OF NANAIMO
ELECTORAL AREA PLANNING COMMITTEE
TUESDAY, JULY 27, 2004
6:30 PM

(RDN Board Chambers)

A G E N D A

PAGES

CALL TO ORDER

DELEGATIONS

MINUTES

- 3-6 Minutes of the Electoral Area Planning Committee meeting held Tuesday, June 22, 2004.

BUSINESS ARISING FROM THE MINUTES

PLANNING

AMENDMENT APPLICATIONS

- 7-29 Zoning Amendment Application No. ZA0407 – North Cedar Improvement District – Yellow Point Road – Area A.
- 30-51 Zoning Amendment Application Nos. ZA0402 to ZA0406 – Fern Road Consulting – Spider Lake Road & Home Lake Road – Area H.

DEVELOPMENT PERMIT APPLICATIONS

- 52-60 DP Application No. 60434 – Vukicevic – 4823 Ocean Trail – Area H.
- 61-74 DP Application No. 60435 – Windsor Enterprises Inc. (DBA: Millway Market) – Anderson Greenplan – 1594 & 1596 MacMillan Road – Area A.
- 75-81 DP Application No. 60436 – B & W Land Corporation – St. Andrew's Lane (Phase 11) – Robertson Boulevard – Area G.

DEVELOPMENT VARIANCE PERMIT APPLICATIONS

- 82-89 DVP Application No. 90412 – Pryke and Lo – 235 Evanson Road – Area G.

OTHER

- 90-94 Request for Relaxation of the Minimum 10% Frontage Requirement – Timberlake - Jones Engineering Ltd., on behalf of Lot G Holdings Ltd. – off Lowry's Road – Area G.
- 95-99 Request for Cash in-lieu-of Park Land Dedication – Lost Lake Properties Ltd., on behalf of McKin Estates – off Sumar Lane – Area G.
- 100-131 Community Water Definition Amendment to Bylaw No. 500, 1987 – Electoral Areas 'A', 'C', 'D', 'E', 'G' & 'H'.

ADDENDUM

BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

NEW BUSINESS

IN CAMERA

ADJOURNMENT

REGIONAL DISTRICT OF NANAIMO

**MINUTES OF THE ELECTORAL AREA PLANNING COMMITTEE
MEETING HELD ON TUESDAY, JUNE 22, 2004, AT 6:30 PM
IN THE RDN BOARD CHAMBERS**

Present:

Director E. Hamilton	Chairperson
Director H. Kreiberg	Electoral Area A
Director D. Haime	Electoral Area D
Director P. Bibby	Electoral Area E
Alternate	
Director I. Neden	Electoral Area F
Director J. Stanhope	Electoral Area G
Director D. Bartram	Electoral Area H

Also in Attendance:

B. Lapham	General Manager, Development Services
M. Pearce	Manager, Administrative Services

CALL TO ORDER

The Chairperson welcomed Alternate Director Neden to the meeting.

LATE DELEGATIONS

MOVED Director Stanhope, SECONDED Director D. Haime, that the late delegations be permitted to address the Board.

CARRIED

Rob Wiebe, re DP Application No. 60431 – 6359 West Island Highway – Area H.

Mr. Wiebe declined to speak at this time.

Adele McKillop, re DP Application No. 60429 – Bev & Gerd Voigt, on behalf of 642703 BC Ltd. – off Kaye Road and the Island Highway – Area E.

Ms. McKillop spoke of road access concerns with this proposal and requested the Board to defer the application until the road access issues were resolved.

John Barnum, re DP Application No. 60429 – Bev & Gerd Voigt, on behalf of 642703 BC Ltd. – off Kaye Road and the Island Highway – Area E.

Mr. Barnum commented on his concerns with respect to water availability to this project.

Bev Voigt, re DP Application No. 60429 – Bev & Gerd Voigt, on behalf of 642703 BC Ltd. – off Kaye Road and the Island Highway – Area E.

Ms. Voigt announced that the PLA was in place for this development and urged the Board to proceed with the application.

MINUTES

MOVED Director D. Haime, SECONDED Director Bartrum, that the minutes of the Electoral Area Planning Committee meeting held May 25, 2004 be adopted.

CARRIED

PLANNING

AMENDMENT APPLICATIONS

Zoning Amendment Application No. 0407 – North Cedar Improvement District – Yellowpoint Road – Area A.

The Chairperson advised that this application has been deferred to the next meeting.

Zoning Amendment Application No. 0410 – Keith Brown & Associates, on behalf of 646268 BC Ltd. (Country Kitchen) – 1922 Schoolhouse Road – Area A.

MOVED Director Kreiberg, SECONDED Director Stanhope,:

1. That Zoning Amendment Application No. ZA0410 submitted by Keith Brown & Associates, on behalf of 646268 BC Ltd. to rezone the property legally described as Lot 1, Section 13, Range 6, Cranberry District, Plan 12009, from split zone [Residential 2, Subdivision District F (RS21)/ Commercial 1 Subdivision District M (CM1M)] to Comprehensive Development 18 Subdivision District 'Z' (CD18Z) in order to facilitate light industrial uses comprising of a mini warehouse use and a heavy equipment display/servicing use be approved to proceed to public hearing.
2. That "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.301, 2004" be given 1st and 2nd reading.
3. That "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.301, 2004" proceed to public hearing.
4. That the public hearing on "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.301, 2004" be delegated to Director Kreiberg or his alternate.

CARRIED

DEVELOPMENT PERMIT APPLICATIONS

Development Permit Application No. 60413 – W. Erskine on behalf of Eric & Patricia Robinson – 3027 & 3029 Landmark Crescent – Area D.

MOVED Director D. Haime, SECONDED Director Bibby, that Development Permit Application No. 60413, submitted by the agent Wayne Erskine on behalf of Eric and Patricia Robinson to legalize the placement of clean fill within an Environmentally Sensitive Development Permit Area on the subject property legally described as Lot 3, Section 20, Range 3, Mountain District, Plan 31215 located at 3027 and 3029 Landmark Crescent in Electoral Area 'D' be approved, subject to the Conditions of Approval outlined in Schedules No. 1 and 2.

CARRIED

Development Permit Application No. 60423 & Request for Relaxation of the Minimum 10% Frontage Requirement – Fern Road Consulting Ltd., on behalf of Forevergreen Properties Ltd. – Adjacent to Inland Island Highway accessed from Coldwater Road – Area G.

MOVED Director Stanhope, SECONDED Director Bartram, that the request, submitted by Fern Road Consulting Ltd., on behalf of Forevergreen Properties Ltd., to allow the creation of a subdivision within the Watercourse Protection and Inland Island Highway Development Permit Areas and to relax the minimum 10% frontage requirement for proposed Lot 5 as shown on the plan of subdivision of Lot A, Block 1438, Plan VIP64704 and Proposed Closed Road, Plan 742, Both of Nanoose District, be approved subject to Schedules No. 1 and 2.

DEFEATED

Development Permit Application No. 60429 – Bev & Gerd Voigt, on behalf of 642703 BC Ltd. – off Kaye Road & the Island Highway – Area E.

MOVED Director Bibby, SECONDED Director Bartram, that the request, submitted by Bev and Gerd Voigt, on behalf of 642703 BC Ltd., to create new parcels and dedicate and construct a road as part of a 6-lot subdivision proposal for property designated within the Farm Land Protection, Watercourse Protection, and Sensitive Ecosystems Development Permit Areas and to relax the minimum setback requirement for an existing barn building from 30.0 metres to 13.0 metres from the proposed new lot line as shown on the plan of subdivision of District Lot 44, Nanoose District, Except Parts in Plans 39893, 3132 RW, be approved subject to Schedules No. 1 and 2 and the notification procedures pursuant to the *Local Government Act*.

CARRIED

Development Permit Application No. 60431 – Wiebe – 6359 West Island Highway – Area H.

MOVED Director Bartram, SECONDED Director Kreiberg, that Development Permit Application No. 60431 submitted by Rob Wiebe to vary the maximum height of two recently constructed dwelling units (1 of which is a suite in a detached garage) from 8.0 metres to 8.2 metres to recognize their height and to permit the installation of a septic field within the Environmentally Sensitive Areas Development Permit Area on the property legally described as Lot 1, District Lot 22, Newcastle District, Plan 19682, be approved subject to the requirements outlined in Schedule Nos. 1, 2, 3 and 4 and subject to notification requirements pursuant to the *Local Government Act*.

CARRIED

OTHER

Request for Relaxation of the Minimum 10% Perimeter Requirement – WR Hutchinson, BCLS, on behalf of Boa Enterprises Ltd. – South Forks Road – Area C.

MOVED Director Stanhope, SECONDED Director Bartram, that the request from WR Hutchinson, BCLS, on behalf of Boa Enterprises Ltd., to relax the minimum 10% frontage requirement for proposed Lot A, as shown on the plan of subdivision of District Lot 3, Douglas District, be approved.

CARRIED

Electoral Area F Zoning & Subdivision Bylaw No. 1285 – Finetuning Project – ALR Properties.

MOVED Director Neden, SECONDED Director Stanhope,:

1. That the staff report on the revised Electoral Area 'F' Zoning Bylaw Finetuning Project be received.
2. That the revised Terms of Reference as outlined in Attachment No. 3, be endorsed by the Board.

CARRIED

Nanaimo Airport – Official Community Plan & Zoning Bylaw Amendments – 3350 Spitfire Road – Area A.

MOVED Director Kreiberg, SECONDED Director Stanhope,:

1. That the report on the proposed amendments to the "Electoral Area 'A' Official Community Plan Bylaw No. 1240, 2001" and "RDN Land Use and Subdivision Bylaw No. 500" for the Nanaimo Airport be received for information.
2. That the Consultation Strategy for the proposed amendments to the "Electoral Area 'A' Official Community Plan Bylaw No. 1240, 2001" and "RDN Land Use and Subdivision Bylaw No. 500" current zoning for the Nanaimo Airport be approved.
3. That a public information meeting be scheduled on the proposed amendments to the "Electoral Area 'A' Official Community Plan Bylaw No. 1240, 2001" and "RDN Land Use and Subdivision Bylaw No. 500" current zoning for the Nanaimo Airport.
4. That the Public Information Meeting be chaired by Director Henrik Kreiberg or his alternate (Electoral Area 'A').
5. That the proposed OCP and Zoning Amendments be referred to the Nanaimo Airport Select Committee after the Public Information Meeting is held and preliminary referral responses are received from other jurisdictions.

CARRIED

ADJOURNMENT

MOVED Director Stanhope, SECONDED Director Bartrum, that this meeting terminate.

CARRIED

TIME: 7:10 PM

CHAIRPERSON



REGIONAL DISTRICT OF NANAIMO		
JUL 20 2004		
	GMCS	
	GMDS	
	GMES	
C.A.P. ✓		

MEMORANDUM

TO: Robert Lapham
Manager of Community Planning

DATE: July 16, 2004

FROM: Susan Cormie
Senior Planner

FILE: 3360 30 0407

SUBJECT: Zoning Amendment Application – North Cedar Improvement District (NCID)
Yellow Point Road, Electoral Area 'A'

PURPOSE

To consider an application to rezone property from Residential 2 Subdivision District 'M' (RS2M) to a Comprehensive Development Zone Subdivision District 'Z' in order to facilitate the development of the North Cedar Improvement District fire hall and administration offices.

BACKGROUND

The Planning Department has received a zoning amendment application for the property legally described as Lot A Section 12 Range 2 Cedar District Plan VIP71957 and located on Yellow Point Road in the Cedar area of Electoral Area 'A' (see Attachment No. 1 for location of subject property). The subject property, which is 0.8 ha in size, is currently zoned Residential 2 (RS2) and is within Subdivision District 'M' (minimum 2000 m² parcel size with community water service) pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987.

The subject property is designated Rural Residential pursuant to the Electoral Area 'A' Official Community Plan Bylaw No. 1240, 2001 (OCP). This property is situated adjacent to and outside the Urban Boundary as designated in the OCP. The OCP encourages public uses to locate within Urban Boundaries, but recognizes that a public use may locate outside the Urban Boundaries where sufficient land is not available or it is necessary to provide a public service in a more isolated location.

The subject property, which is generally flat in topography, is currently vacant and is surrounded by residentially zoned lands.

The subject property is proposed to be served by community water service and private septic disposal system and is located within an RDN Building Inspection area.

The applicant is requesting that Bylaw No. 500, 1987 be amended from Residential 2 Subdivision District 'M' (RS2M) (2000 m² minimum parcel size with community water service) to Comprehensive Development 17 Zone Subdivision District 'Z' (CD17Z) (no further subdivision) in order to facilitate the development of the North Cedar Improvement District fire hall and administration offices.

The Committee may recall that the North Cedar Improvement District applied to rezone this site under Amendment Bylaw No. 500.271. This bylaw was defeated at third reading following a public hearing.

The applicant has indicated that the public input from this previous application was taken into account when formulating the new proposal.

Proposal as Submitted

As part of the submission, the applicant has submitted the following information:

- proposed site plan / site section;
- proposed floor plans;
- proposed building elevations;
- site information aerial photo;
- proposed drainage works;
- septic disposal information; and
- background information concerning Fire Services Assessment.

Public Information Meeting

A public information meeting was held on June 17, 2004 at the Woodbank Elementary School Gymnasium. Notification of the meeting was advertised in the Harbour City Star and the Take 5, along with a direct mail out to all property owners within 100 metres of the subject property. Approximately 77 people attended the information meeting and provided their comments with respect to the proposal following the applicant's presentation of an overview of the proposal (*see Attachment No. 2 'Minutes of the Public Information Meeting'*). Issues raised at the public information meeting included the following:

- alternate locations/availability of other sites/Official Community Plan/Urban Boundary issues;
- noise – impact on quiet neighbourhood, sirens, and vehicular noise;
- negative impact on surrounding property values and quiet residential area;
- lighting of the site;
- sense of community with present building location;
- traffic safety and access;
- costs of the proposed building; and
- proposed future expansion plans.

ALTERNATIVES

1. To approve the amendment application to rezone the subject property from Residential 2 Subdivision District 'M' (RS2M) to Comprehensive Development Zone 17 Subdivision District 'Z' (CD17Z) as submitted by the applicant.
2. To approve the application to rezone the subject property from Residential 2 Subdivision District 'M' (RS2M) to Comprehensive Development Zone 17 Subdivision District 'Z' (CD17Z) subject to the conditions outlined in Schedule No. 1.
3. To not approve the amendment application.

PUBLIC CONSULTATION IMPLICATIONS

Comments and written correspondence from the public have raised a number of issues. The Improvement District believes the majority of these issues can be addressed (*see Attachment No. 3 correspondence from NCID*). Issues raised by the public, along with applicant and staff comments, are outlined below:

Alternate Locations / Availability of Other Sites / Official Community Plan/Urban Boundary issues

The public has indicated that other sites may be available to the Improvement District and specifically referenced the property next to the present fire hall. In response, the applicant has indicated that NCID

has met with the owner of the adjacent property to discuss the possibility of expanding the present fire hall site. However, upon investigation, NCID found that in order to achieve a suitable sized site area for the proposed development, a number of properties would have to be purchased including an existing road right-of-way. The Improvement District noted that this process would involve negotiating with several property owners to amass the properties and that some owners do not want to sell their property. NCID also noted other issues including that availability of septic disposal may be a concern on this site, the fire hall would still be located next to existing gas pumps, the costs to purchase and consolidate these properties would be expensive, and the 8 km radius response distance would not be met for all parcels in the fire protection district.

Noise

Residents have concerns with siren noise and general noise associated with the operation of the fire hall such as practices, extra meetings, and additional traffic generated by the proposed use. The Improvement District has decommissioned the siren at the current fire hall and has stated that it will continue this practice at the proposed hall. However, the Improvement District notes that firefighters must follow traffic safety standards that require sirens under certain circumstances. Therefore, while the Improvement District will reduce the use of sirens wherever possible, sirens would still be used during emergency situations. With respect to extra meetings, the NCID has indicated that there will not be a social clubroom at the new fire hall. With respect to practices, the NCID has indicated that training practices occur during specific times and is in concurrence to limit practice times. It is noted that the proposed vegetated berm is expected to help to reduce noise between the proposed fire hall and residential land uses.

With respect to additional traffic associated with the proposed fire hall, the Ministry of Transportation has indicated it will grant access to a fire hall use in this location.

Negative impact on surrounding property values and quiet residential area

Residents are concerned with the depreciation of their property values if a public use is permitted within a residential neighbourhood. The Improvement District has been in contact with the neighbouring real estate agent who has indicated that homes are selling quickly in the area and that property assessments are not decreasing. The Improvement District has stated that it will be a neighbour in the community giving the same courtesy and respect as any other neighbour.

Lighting

Residents are concerned with the night lighting of the site and how it would have a visual impact on the adjacent neighbourhood. The Improvement District has stated that it will provide lighting that reflects inward not outward and a vegetated berm along the east lot line to provide a visual barrier. The NCID has also indicated it will build a fence to reduce visual impacts from the neighbouring residential parcels.

Traffic Safety and Access

With respect to traffic safety issues, residents have stated that they are concerned about the size of the road at the site and the and specifically with traffic safety along Yellow Point and Woobank Roads. The Improvement District has stated that this site will not compromise driver and pedestrian safety and that there is a sufficient shoulder width to accommodate pedestrians. The Ministry of Transportation has provided comments, which the applicant will be able to meet. Staff recommends that if this rezoning should proceed, a valid access permit should be required prior to public hearing in order to ensure any traffic issues can be resolved.

Amenities and costs of the proposed building / Proposed future expansion plans

Residents raised concerns about future expansion of the site and the impact it would have on the residential neighbourhood as well as the costs associated with the building construction. The

Improvement District has stated that it is planning for a 30-year period and has included a removal wall in the design of the building to permit future expansion of the building as needed. Staff notes that under the proposed Comprehensive Development zone, the applicant would be restricted to a fire hall and administrative offices uses only. Building floor area requirements would be limited to the provisions of a maximum parcel coverage of 50%, which is the same provision as the Public 1 zone.

Sense of community with present building location

Residents have commented that the present fire hall offers a sense of community, which may not be present in the new location as well as a heritage component for the community. The NCID has indicated that the present fire hall building is 43 years old and does not believe that it is of any heritage significance.

GROWTH STRATEGY IMPLICATIONS

The Regional Growth Strategy recognizes that public utility uses may be located outside Urban Containment Boundaries. Therefore, growth strategy supports this proposal.

OFFICIAL COMMUNITY PLAN IMPLICATIONS

The Electoral Area 'A' Official Community Plan Bylaw No. 1116, 1998 encourages public uses to locate within the Urban Containment Boundaries; however, the Plan recognizes that such uses may be located outside urban containment boundaries in some cases. As this proposed location is outside of urban containment and this issue was raised at the Public Information Meeting with reference to a site next to the existing fire hall, staff has met with the applicant to discuss the possibility of the expansion of the existing fire hall site within the Urban Containment Boundaries. As stated above, the NCID feels that this site will not be suitable for a number of reasons including the cost to amass and consolidate a number of properties, the indication that some property owners are not prepared to sell their property, possible septic disposal issues, the proximity to existing gas pumps, and the location is outside the minimum 8.0 km radius response area.

DEVELOPMENT IMPLICATIONS

Staff is recommending that a comprehensive development zone be created for this parcel, which will permit public utility uses only, thus restricting additional uses being added at a later time. However, it should be noted that an addition to the building would be possible if all zoning provisions such as setbacks and lot coverage could be met. The applicant is in concurrence with these zoning provisions.

The applicant has supplied building profiles and site development including off-street parking areas, refuse disposal areas, signage, lighting, drainage retention pond and septic disposal areas, and a landscaped berm. In order to ensure that the building and site will be developed as proposed, these will be referenced in the recommended development covenant. The overall height of the building is proposed to be 10.0 metres, which can be specified in the corresponding CD17 zone. It is noted that a variance to the maximum height and setback requirements will be required to construct a fence adjacent to the residential properties. The applicant has indicated that this is required to provide visual screening between the residential and fire hall / NCID offices use. A variance to the maximum setback requirement will also be required to permit the placement of 1 free-standing sign adjacent to Yellow Point Road.

While the applicant has provided some information on the proposed landscaping, additional details with respect to plantings are required. As a result, staff recommends that if this application proceeds, this information be required prior to consideration of 4th reading and be included in the development covenant.

Due to the proposed use, a no further subdivision district is recommended.

With reference to the protection of groundwater, the applicant has provided certification from the Vancouver Island Health Authority with respect to the septic disposal system on site for the proposed use.

With respect to the storm water collection for the site, the applicant has provided an engineer's report setting out the proposed plan for drainage.

Staff also recommend that a reverter clause be placed on title to revert the zoning to residential if the NCID referendum for the expenditure of the fire hall fails.

The applicant has indicated that it is in concurrence to enter into a development covenant to ensure that these components of the proposed development will be met at the time of construction.

ENVIRONMENTAL IMPLICATIONS

The Environmentally Sensitive Areas Atlas does not indicate the presence of any environmentally sensitive features within the subject property.

INTERGOVERNMENTAL IMPLICATIONS

Ministry of Transportation - Ministry staff has provided comments on this application with respect to the proposed land use. The applicant will be able to meet the requirements of the Ministry.

Vancouver Island Health Authority - staff has indicated it will approve the proposal.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

The applicant is requesting the Board's consideration of a zoning amendment application in order to facilitate the construction of a fire hall and administration offices for the North Cedar Improvement District. A public information meeting was held on June 18, 2004 at which time a number of concerns were raised including this use being located within an existing residential neighbourhood, other sites may be available, noise and visual impacts, and traffic safety. The applicant has met with staff to review these concerns and they are addressed both in the report and the attached submission from the applicant. The Ministry of Transportation has approved the concept subject to requirements being met and agreed to by the applicant. The Vancouver Island Health Authority has confirmed that the application meets the current health requirements for septic disposal.


As the applicant is in concurrence with the development criteria outlined in Schedule No. 1, which includes the applicant entering into a development covenant, staff recommends Alternative No. 2, to approve the application for 1st and 2nd reading subject to the conditions outlined in Schedule No. 1 of this report.

RECOMMENDATIONS

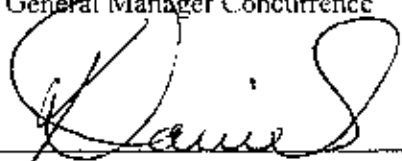
1. That the minutes from the Public Information Meeting held on June 18, 2004 be received.
2. That Zoning Amendment Application No. ZA0407 submitted by North Cedar Improvement District to rezone the property legally described as Lot A Section 12 Range 2 Cedar District Plan VIP71957 from Residential 2 Subdivision District M (RS2M) to Comprehensive Development 17 Subdivision District 'Z' (CD17Z) in order to facilitate the development of the North Cedar Improvement District fire hall and administration offices be approved to proceed to public hearing.
3. That "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.300, 2004" be given 1st and 2nd reading.
4. That "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.300, 2004" proceed to public hearing.
5. That the public hearing on "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.300, 2004" be delegated to Director Kreiberg or his alternate.



Report Writer



General Manager Concurrence



CAO Concurrence

COMMENTS:
devsys/reports/a3360 30 0407 ncid 1' & 2nd.doc

SCHEDULE NO. 1

Conditions for Approval for 1st and 2nd Reading Zoning Amendment Application No. 0407 North Cedar Improvement District

The applicant is to provide the following documentation prior to the amendment application being considered for 4th reading:

1. Applicant to prepare a Reverter document, which can be registered on the title of the subject property, that will require the zoning to revert back to the current residential zone should the construction of the fire hall/administration building not proceed. Applicant to provide a solicitor's undertaking that this document will be registered at Land Title Office prior to 4th reading of the corresponding zoning amendment bylaw. The document is to be prepared and registered at Land Title Office at the applicant's expense.
2. Applicant is to enter into a section 219 covenant restricting the following:
 - a. no outdoor burning associated with training practices.
 - b. hours of training be limited to 8:00 am to 9:00 pm Monday through Saturday; 8:00 am to 4:00 pm on Sundays and no training on statutory holidays.
3. Applicant to provide an access permit issued by Ministry of Transportation for the proposed use.
4. Applicant to provide a landscape plan setting out planting details which is acceptable to the Regional District.
5. Applicant to prepare and register a section 219 covenant on title of the subject property for the purposes of securing the following. This covenant is to be prepared and registered by the applicant to the satisfaction of the Regional District.

The Lands shall be developed as follows:

1. Building / Site Development

The fire hall / administration office building shall be sited and built in accordance with the site plan/site section drawing prepared by Johnston Davidson Architecture and dated 04 May 14 revised.

The fire hall / administration office building shall be designed in accordance with the elevations drawing prepared by Johnston Davidson Architecture and dated 04 April 4. The maximum height of the building shall be 10.0 metres.

2. Landscaping Requirements

- a. Landscaping shall be provided throughout the site in accordance with the site plan/site section drawing prepared by Johnston Davidson Architecture and dated 04 May 14 revised and landscape plan to be prepared by NCID and accepted by the RDN.
- b. Landscaping to be provided shall, at the minimum, satisfy the following criteria:
 - i. Landscaping shall be totally comprised of biologically diverse and drought resistant plants.
 - ii. Individual plants to be used in the landscaping shall have normal, well developed branches and vigorous, fibrous root systems; such plants shall be healthy, vigorous and free from defects, decay, disfiguring roots, sunscald, injuries, abrasions of the

bark, plant diseases, insect pests' eggs, borers and all forms of infestations or objectionable disfigurements.

- iii. All landscaping shall be permanently maintained in good condition with, at a minimum, the same quality and quantity of landscaping as was initially approved and without alteration of the approved design; the owner shall make provisions for the permanent irrigation works necessary to water the landscaping.
 - iv. The design of landscaping shall be such that the growth of roots, trunks, and branches of natural or introduced vegetation or the location of planted berms shall not conflict with the utilities, structures, necessary access, or require sight triangle.
 - v. A watering system for all landscaped areas.
 - vi. All landscaped areas shall be constructed completed with a permanent curbs a minimum of 15 cm in height to protect all landscaped areas from potential vehicular damage.
- c. The subject property shall be fenced as shown on the site plan/site section drawing prepared by Johnston Davidson Architecture and dated 04 May 14 revised and shall be subject to a request for variance to Bylaw No. 500, 1987.
 - d. The landscape berm may be modified at the north end to accommodate the proposed septic disposal system.

2. Storm Water Drainage

- a. Site is to be developed in accordance with the submitted engineer's storm drainage plan prepared by C-4 Engineering Ltd. and dated January 31, 2001 and as shown on the site plan/site section drawing prepared by Johnston Davidson Architecture and dated 04 May 14 revised. These works are subject to the approval of the Ministry of Transportation and the Regional District. The retention pond may be adjusted in order to accommodate the septic disposal system.
- b. These works are to be designed so not to result in an increase in pre-development flows and that any discharge of storm water from the site can be accommodated by the existing off-site road ditch system.

5. Off-Street Parking Spaces and Aisle Ways

- a. Off-street parking shall be as shown on site plan/site section drawing prepared by Johnston Davidson Architecture and dated 04 May 14 revised.
- b. All off-street parking areas shall be located behind the front face of the principle buildings. All parking areas, including aisle ways, shall be constructed to Bylaw No. 500 standards and all parking spaces shall be clearly delineated through the use of painted lines on paved surfaces or concrete parking stops on surfaces as shown on site plan/site section drawing prepared by Johnston Davidson Architecture and dated 04 May 14 revised.

6. Signage

- a. A maximum of 1 free-standing sign shall be permitted. Signage will be subject to a request for variance to Bylaw No. 993, 1995. Directional signage is exempt.
- b. Signage shall only be light with back lighting and no neon lighting is permitted.

7. Refuse Containers and Other Outdoor Storage

The refuse containers shall be adequately screened with a combination of landscape plantings and fencing, and located as shown on site plan/site section drawing prepared by Johnston Davidson Architecture and dated 04 May 14 revised.

8. Lighting

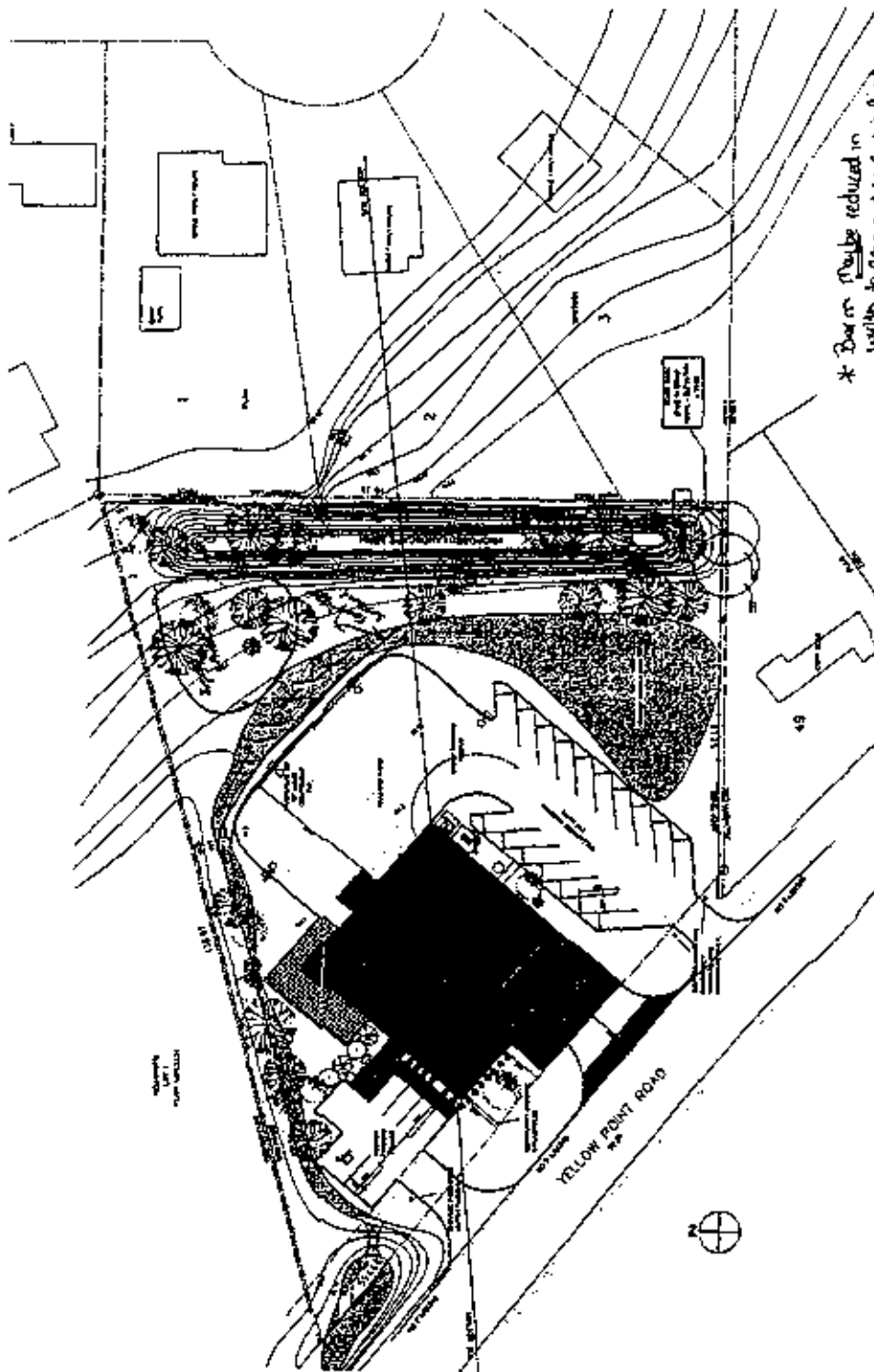
Lighting of the site shall be restricted to the site area only and not infringe on adjacent properties. Lighting shall be in the locations as shown on site plan/site section drawing prepared by Johnston Davidson Architecture and dated 04 May 14 revised.

9. Community Water Connection

The property shall be served by community water.

SCHEDULE No. 2

Site Plan
(as submitted by applicant)
(reduced for convenience)



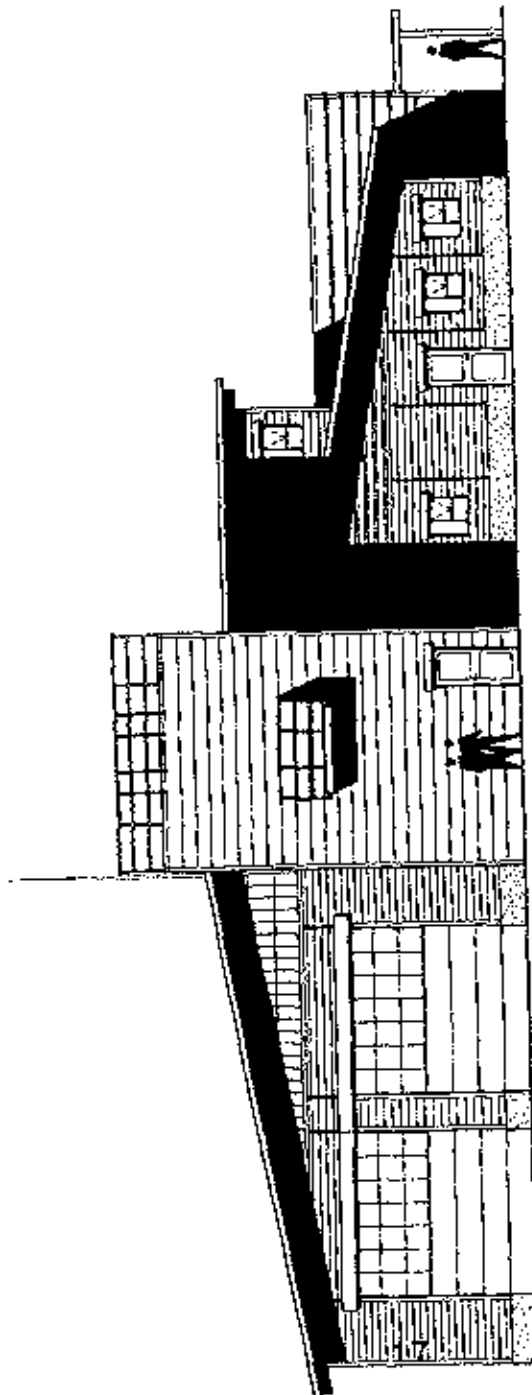
* Barriers may be reduced in width to accommodate syptic fields & to allow 50 foot setback from the retention pond.

* Retention pond needs closer to training yard if required.

Site Plan

SCHEDULE No. 3 (1 of 3)

Building Profiles
(as submitted by applicant)
(reduced for convenience)

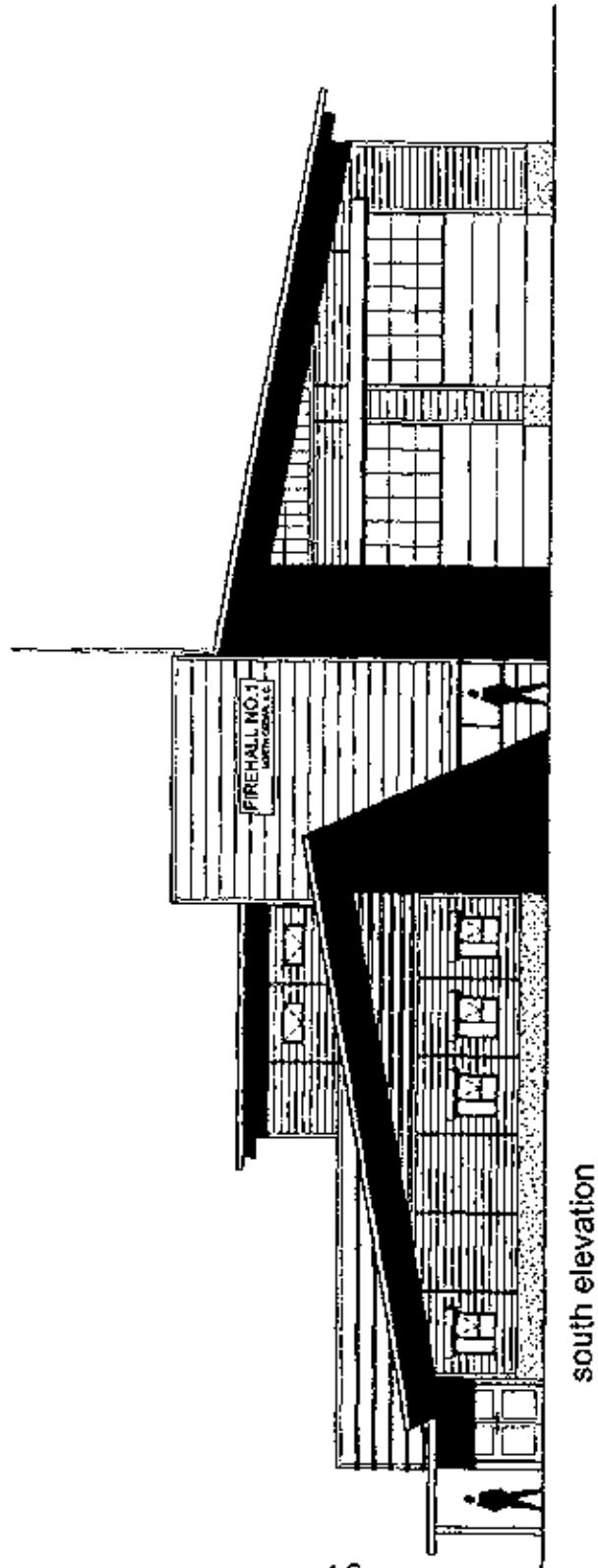


north elevation

rezoning application

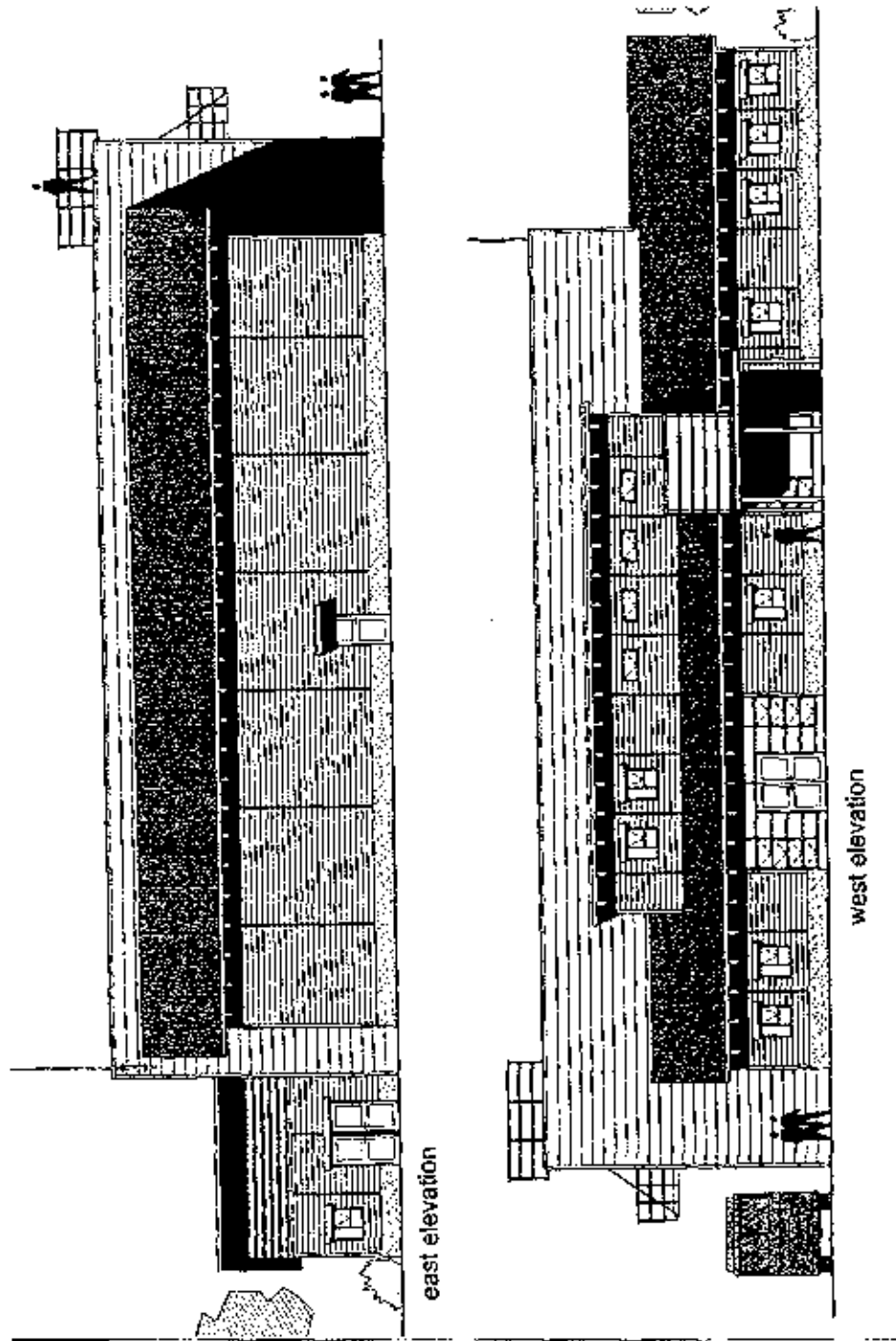
North Cedar
Firehall
Elevations

**SCHEDULE No. 3 (2 of 3)
Proposed Building Profiles
(as submitted by applicant)**



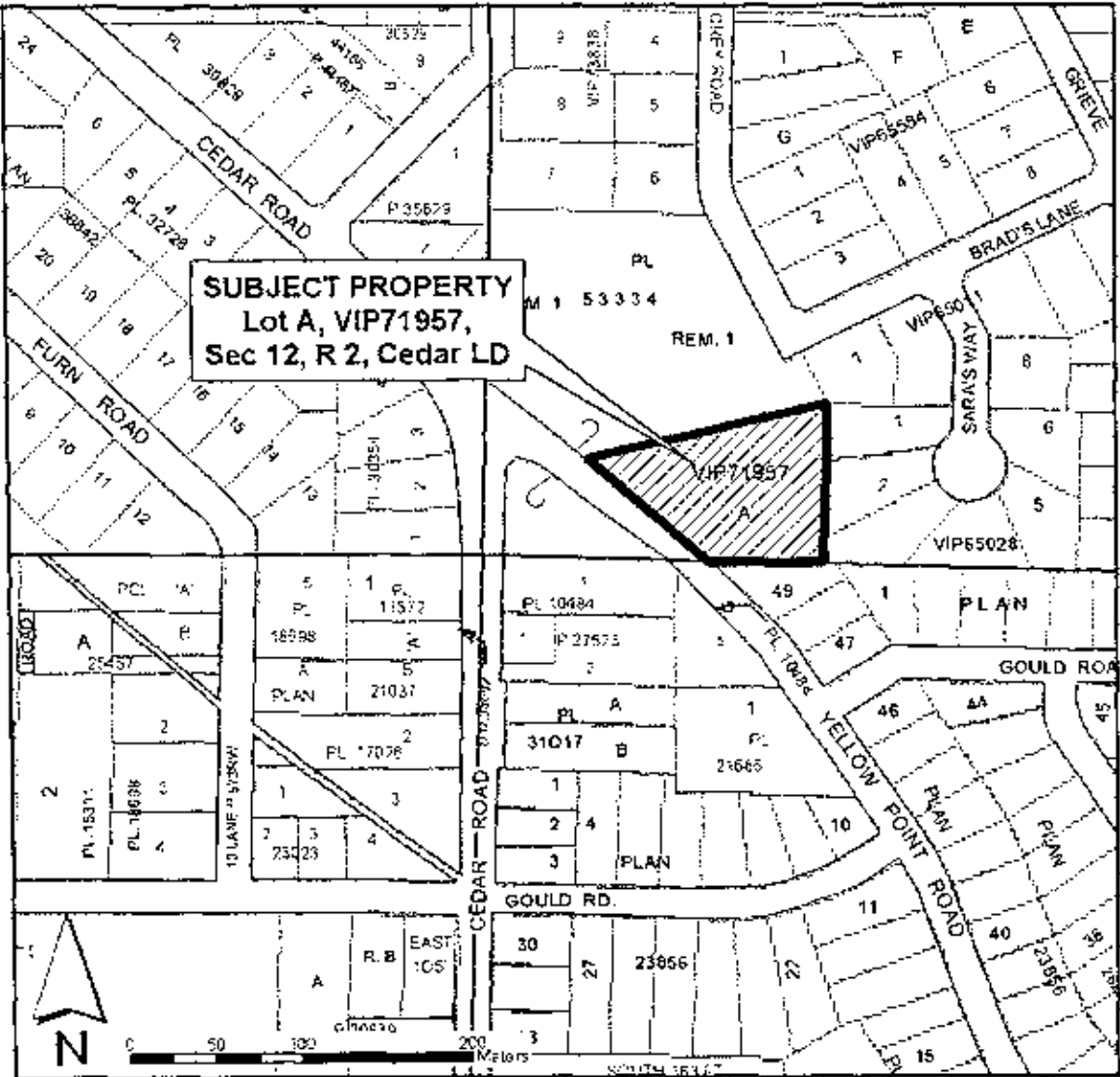
south elevation

SCHEDULE No. 3 (3 of 3)
Proposed Building Profiles
(as submitted by applicant)



ATTACHMENT No. 1

Location of Subject Property



ATTACHMENT No. 2
Minutes Of a Public Information Meeting
Held at the Woodbank Elementary School Gymnasium
1984 Woodbank Road, Cedar June 17, 2004 at 7:00 pm
Zoning Amendment Application 0407 (North Cedar Improvement District)
For the property legally described as Lot A Section 12 Range 2 Cedar District Plan VIP71957

Note: these minutes are not a verbatim recording of the proceedings, but are intended to summarize the comments of those in attendance at the Public Information Meeting.

Present:

Public in attendance: 77 persons

For the Applicant (North Cedar Improvement District):

Lynnia Lawlor, Administrator

Joe Burnett, Trustee

For the RDN:

Chair: Director Henrik Kreiberg

Robert Lapham, General Manager, Development Services

Susan Cormie, Senior Planner

The Chair opened the meeting at 7:08 pm and followed with greetings to the public and an introduction of the staff and applicants. Mr. Burnett introduced the other North Cedar Improvement District Trustees present in the audience.

The Chair stated the purpose of the public meeting and provided information on the zoning amendment process.

The NCID Administrator provided a description of their proposal.

The Chair then invited comments and questions from the audience.

Joan Muller-Dunn, 2323 Brad's Lane, read her submission, which is attached to and forms part of these minutes.

George Hermans, 2220 Yellow Point Road, stated that he is not opposed to the site, but is opposed to the cost.

Mr. Fiddick, 1431 Ivor Road, asked who is going to choose which device will be used for taxation and at what point is it chosen and by whom?

The NCID Administrator explained that the decision on the method of taxation will be made by the NCID, but this decision has not been made yet. The Administrator explained that the Improvement District needs to go through the rezoning process first and the financial decisions will come next. The Administrator also explained that the owners of parcels within the fire protection district will have an opportunity to vote on the firehall before any construction would go ahead.

John Gillanders, 1679 Cedar Road, asked what will transpire next in the approval of the firehall?

The Chair explained that the process for rezoning involves 2 public steps, the first being the meeting being held tonight. The Chair further explained that following this meeting, the application may be referred back to the applicant to address additional concerns raised at the meeting. The Chair then explained that the second step is the public hearing.

The General Manager added that the Electoral Area Planning Committee meets next Tuesday, but it is likely that this application will not be forwarded to that agenda and may be held until September.

John Gillanders, 1679 Cedar Road, asked what does the Committee base its decision on – input from the community or the NCID?

The Chair explained that the Committee takes all information into consideration in its recommendation for a zoning amendment application. The Chair also explained that the construction and cost of the building is the responsibility of the NCID, not the RDN.

David Little, 2717 Charles Road, stated that he did not think we could get away without a new firehall this proposal sounds good, and we should go ahead with it.

Boyd Hunter, 2376 Yellow Point Road, stated that he supports the application.

Mr. Saunders, 2154 Thomas Park Drive, stated that he is in favour of the proposed location and it is convenience for neighbours and further that the drivers are good.

Dawne Burnett, 2525 Pylades Drive, stated that she was one of the most concerned residents when the application came forward last time. Ms. Burnett stated that the NCID Board has considered all her concerns that she had last time and worked diligently. Ms. Burnett asked what were the comments from the Ministry of Transportation concerning Cedar Road?

The NCID Administrator stated that there are no issues with Cedar Road and Yellow Point Road intersection and the Ministry does not consider it a dangerous intersection.

Dawne Burnett, 2525 Pylades Drive, stated that she supports the proposal and is happy with the progress made.

Mary Shakespeare, 2455 Ingram Road, stated that she had some concerns about the size of the road at the site and the junction. Ms. Shakespeare asked what safety provisions being required by the Ministry?

The NCID Administrator explained stated that there are no issues with Cedar Road / Yellow Point Road intersection.

Mary Shakespeare, 2455 Ingram Road, stated that she would like to recommend that adequate provision for safe traffic movement of people, cars, and cyclists is ensured.

Orville Lavigne, 1703 Nairne Road, stated that he fully agreed with the new site.

A gentleman stated that he lives next to the proposed lot and is not opposed to the construction of the new fire hall and further noted that it is noisy where they are now anyway.

Larry Renaud, 2161 Walsh Road, stated that he is a NCID Board member and supports the fire hall location.

Chris Petres, 2089 Sara's Way, stated that he has not heard about the future needs and asked if the building is going to be sufficient to meet the needs of the community in the future.

The NCID Administrator explained that the building is designed for 30 years, but has the ability to be easily added on to in the future as it has been designed with a removal wall.

Mr. Petres stated that the proposed model is not accurate then and the NCID will need a larger site.

The NCID Administrator stated that the site is adequate for the current and future needs and if growth occurs there will be the ability to add on to the building.

Mr. Petres stated that the people who live around the proposed site need to know all the information.

Bill Campbell, 2244 Gould Road W., stated that he is in favour of the fire hall.

Brian Wallace-Tarry, 2152 Huddington Road, stated that he is a fire fighter and is in support of the fire hall and that he believes that noise is not such a big issue.

Brian Morgan, 2213 Morland Road, stated that he is the fire chief and having the fire hall next door will be great and is central to the District.

Wayne Proctor, 1771 Cedar Road, stated that as a neighbour, we will miss the fire department and that he supports the community wherever the fire hall goes.

Mike Sinclair, 2250 Quail Grove, stated that he is the newest fire fighter and he hates to see a negative spin put on the location because it might wake people up a night when someone else might need help.

Ken Cookman, 3450 Decourcey Road, stated that he is not opposed to the fire hall and asked the process for obtaining costs.

Trustee Burnett explained that the project is at preliminary design stage right now and the NCID must get through the rezoning stage before complete design drawings can be prepared. Mr. Burnett explained that when the full costing is available, the NCID will come back to the public to present.

The Chair clarified that the zoning amendment application is under the consideration of the Regional District and cost of the building is under the North Cedar Improvement District.

Mr. Herman stated that he is concerned about Woobank Road and the possible dangerous situation.

Brian Morgan stated that the Fire Department uses Woobank Road all the time and is not satisfied with the condition of the road either.

The Chair commented that he understands that there is a no fly time around the school and that if school is in, the fire department takes another route.

The NCID Administrator stated that the Ministry of Transportation gets more complaints about Woobank Road than any other road in Cedar and noted that the Improvement District does not have jurisdiction over roads.

The Chair suggested that the Regional District can bring information about Woobank Road forward to the Ministry of Transportation.

Bill Chinnick, 2179 Yellow Point Road, noted that there is another fire hall at the other end of Yellow Point Road and asked if this proposed location is centrally located or convenient. Mr. Chinnick also asked about septic disposal percolation tests.

The Chair explained about the sharing of fire protection with the North Oyster Fire Protection area.

The NCID Administrator explained that the proposed location is central to the area and every property within the NCID would be covered.

Mr. Chinnick asked about the bus location and will that be moved?

The NCID Administrator explained that the septic disposal percolation tests were approved by the health Authority.

Len Morris, Deputy Fire Chief, stated that he is in favour of the location/

Brian Wallace-Tarry, 2152 Huddington Road, stated that he was perplexed about the road issue as he would be more worried about other drivers.

David Little, 2717 Charles Road, asked about the police/ambulance facility.

The NCID Administrator explained that the province makes the decision where the ambulance facility goes and the police are not interested in funding an office.

Mr. Little, noted that people are worried about property values, and felt that resale values will hold.

Brian Morgan, 2213 Morland Road, noted that where the fire hall is now blocks traffic.

Mr. Little stated that people who are worried about Woobank Road and other roads should talk to their MLA instead of the Ministry to get action.

The Chair asked if there were any further submissions. There being none, the chair thanked those in attendance and announced that the public meeting was over.

The meeting concluded at approximately 8:27 pm.

Susan Cornie
Recording Secretary

ATTACHMENT No. 3

North Cedar Improvement District

1694 Cedar Road, PO Box 210

Cedar, BC V9X 1W1

Phone (250) 722-3711 • Fax (250) 722-3252 email info@ncid.bc.ca

June 22, 2004

Regional District of Nanaimo

RE: RDN PUBLIC INFORMATION MEETING

To Regional District Board of Directors:

On June 17th, 2004 the Regional District of Nanaimo hosted a Public Information meeting in regards to the North Cedar Improvement Districts re-zoning application for property located on Yellow Point Road. This re-zoning application is for the purpose of re-zoning the property in order to build a future fire hall and public administration waterworks facility. As you are aware the purpose of the information meeting is to allow citizens an opportunity to bring any issues to the forefront and also to allow NCID an opportunity to address these issues.

There was a submission by Ms. Muller-Dunn we wish to address and clarify starting with her first bulleted point under "Alternate Locations".

- ✓ It is correct that NCID did not continue looking for property after our first re-zoning application was denied. One of the recommendations coming out of the denial was for NCID to conduct a study in order to determine if a new facility was indeed warranted and also to study where it could be located. NCID recognized that properties were very limited and made the decision to keep the property until after the study was complete. When the study was presented it overwhelmingly supported both the need for a new facility and the proposed location. NCID decided at that time to continue on and re-apply for re-zoning of the current site.
- ✓ Land most definitely can be bought and sold very easily these days, however, the availability of an adequate site meeting all the criteria necessary to facilitate a fire hall is certainly not common in Cedar. There also is not an abundance of property that meets the criteria available without having to expropriate from current owners. Naturally it was the goal of NCID to locate on property that did not require expropriation and we believe we have met this goal. The current fire hall sits in a residential area as do most fire halls and feel Ms. Dunn's comments are moot on that point.
- ✓ The existing fire hall does not meet seismic requirements and would take major structural changes to bring the building up to code for post disaster compliance. If we attempted to do this we would have to vacate the fire hall and would be operating without fire protection and first responders unless another location could be found to operate out of temporarily. This is not feasible, not to mention the current site is far too small for expansion as is outlined in the underwriters study. The study also commented on the fact that the fire hall was located beside a gas station and did not recommend upgrading beside such a facility.
- ✓ NCID stands by the assertion that the owner of Cedar Store, Mr. Wayne Proctor never offered property to NCID. After the submission by Ms. Dunn, we telephoned Mr. Proctor to inquire why Ms. Dunn would be making this statement. Mr. Proctor advised Ms. Dunn in her conversation that the ONLY individual he ever spoke with about his plans for land and the Cedar store were with Mr. Lawrence Elliott. Mr. Elliott was the area A Director at the time. Mr. Proctor explained he had

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lunch with Mr. Elliott and outlined some idea's he had for expanding Cedar Store and offered to build a large complex which included a fire hall. Mr. Proctor told Ms. Dunn that he was not sure if Mr. Elliott ever discussed this with NCID. Mr. Elliott never met with NCID at any time during the process of the re-zoning and never approached NCID with any of the idea's presented by Mr. Proctor. Mr. Proctor did and has approached NCID to purchase the old fire hall on many occasions and has indicated to this day he wishes to purchase the property if it were available.

- ✓ The Board of Trustee's at NCID is somewhat confused by Ms. Dunn's comments regarding polarization in the community. NCID has had 3 information meetings as well as our annual general meetings and it is only at these information meetings where interaction between NCID and its citizens have taken place. NCID and its staff and trustee's have always conducted themselves in a respectful manner and have always followed municipal legislation. All local governments face both positive and negative responses to any proposal however conduct within the community is up to the individual and cannot be controlled by NCID.

Fire Services Assessment Report

- ✓ The North Cedar Improvement District drafted a terms of reference and tendered to several consultants to conduct the study as is normal practice by all local governments. The study was awarded to the Insurance Advisory Organization. The IAO is used by Insurance Companies both in Canada and the U.S. to give insurance fire ratings for homeowners and commercial insurance policies alike. Mr. Bob Nelson of the IAO conducted our study and has completed 70 such studies for cities as large as the City of Vancouver to as small as residential area's like Cedar. NCID undertook both having a Fire Underwriters Survey done as our fire rating had not been assessed in over 15 years as well as an internal audit of the fire hall operation. We also included looking at if there was a need for a new fire hall and where it should be located. For the FUS portion of the study and the internal audit of the department NCID naturally had to provide information both on our water system as well as our by-laws and procedures for the fire hall. The portion of the study that dealt with answering the question of the need for a fire hall and where it should be located was left completely to Mr. Nelson's discretion. Mr. Nelson was given free reign over the current fire hall as well as looking at all available property in Cedar without any interaction by staff or trustee's of NCID. Mr. Nelson's conclusions are his own and the board of Trustee's feel Ms. Dunn's comments about bias are her own personal conclusions and have no basis in fact.
- ✓ The process that took place for choosing a site involved NCID forming a building committee made up of residents within the community, firefighters, the administrator and the fire liaison trustee. This committee outlined the criteria needed for property to facilitate a new fire hall. NCID took this information and purchased the property in question. At the first re-zoning application NCID held a district wide information meeting. During the process of this second application NCID held 2 information meetings and participated in the RDN public information meeting. The first information meeting was with the residents surrounding the property in question and for these residents alone. Almost all of the surrounding residents attended this meeting. One of the issues that was presented was residents wanted to see a fence surrounding the perimeter of the property. NCID agreed to this and asked the architects to revise our drawings to include a fence. NCID had already decommissioned the siren at the existing fire hall which was another concern of residents that we did address. NCID answered all of the concerns at this meeting such as site lines from adjacent properties, lighting, security, drainage, noise, and sirens. No other concerns requiring change other than the fence were brought to our attention. NCID does not agree with the assertion that we have not worked with the adjacent residents as changes have been made from concerns raised at the information meeting held for the immediate residents.

Noise Visual Impact

- ✓ During the process of the first re-zoning it was clearly indicated to NCID that residents surrounding the new fire hall property did not want to have the siren from the old fire hall mounted on the new facility. The Board of Trustees made a unanimous decision to decommission the siren. As a show of good faith to our community we took that decision one step further and decommissioned the siren on the current fire hall in December 2003. Surprisingly this decision was met with both a positive and negative response. There were many who did not want to see the siren decommissioned and many who did, however, we followed through with this decision. We also wanted our fire fighters to become familiar with relying on pagers only.
- ✓ At the first information meeting held for the immediate residents the Administrator indicated that sirens are not used after 11:00 p.m. on the fire trucks. The Administrator was incorrect as it is the law that code three calls must be accompanied by sirens. When the Administrator was made aware of her error she wrote a letter admitting the mistake to every individual home that was invited to the meeting, even those who were not in attendance, apologizing for the mistake. The Administrator enclosed with the letter data showing how many calls the fire department has responded to after 11:00 p.m. over the past 5 years so that residents would have a clear indication of how many calls the department responds to on average during the night. The sirens are only used on a code three emergency call so not all calls after 11:00 p.m. require sirens.
- ✓ Training practices for the North Cedar Fire Department take place each Tuesday between 7:00 and 9:00 p.m. During this time various apparatus are tested to make sure they are functioning however the testing lasts under a minute such as testing a chain saw. Weekend practices are rare and usually encompass a course that the department is participating in such as "The Jaws of Life". These practices are held during the day time and might take place 3 times a year. Residential areas certainly have all kinds of noise that neighbours hear such as mowing lawns, using chainsaws on private property, music, children playing, all the usual residential kinds of noise. The fire department practices once a week and in the early evening when all the normal residential noises such as mowing lawns etc., are taking place. The fire department has operated for over 40 years in a residential area with the current fire hall and has maintained a great rapport with its residential neighbours in regards to noise and will continue to do so.
- ✓ The design for the new fire hall will not have a social club located up stairs. Drawings have been on display at all three information meetings clearly indicating what is going to be in the new fire hall and do not indicate a social club room.
- ✓ Lighting was addressed at all three information meetings indicating that the lighting will reflect into the property housing the fire department and not outward into residential areas. Public buildings such as schools, hospitals, fire halls and police stations are often in residential areas and construction has dealt with the issue of lighting. There are many kinds of lighting apparatus available in today's market to have the light reflected inward and not outward. NCID has also designed a berm at the back of the property that will be planted with vegetation in order to completely block any visual impact from the building. At the request of the residents, NCID will also have a fence put around the perimeter of the site and will seek an over height variance as per their request in order to make the fence somewhat taller to further diminish viewing the facility.
- ✓ NCID purchased the property in May 2000. At that time the development on Storey road was quite minimal. A developer has since purchased property on Storey road and constructed residential houses. The developer has been in the NCID offices many times in order to make arrangements for water hook up and has always known of our intention to continue on with our re-zoning application in order to build a fire hall. This developer has never been concerned with the fire hall proposal and has since built 4 new homes. Three of the four homes sold in under a month and the final home sold in about 6 weeks. A real estate agent has advised NCID he intends to develop the property located beside the proposed fire hall location. Mr. Dan Ryn has indicated to NCID he is not concerned about a fire hall being located beside his sub-division. Property Assessments for

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Cedar in 2004 are the highest they have ever been and certainly do not indicate a decrease of 10%. Public facilities such as schools, hospitals and police stations as well as fire halls do not impact the value of property surrounding them. Development around our proposed site has continued and is still continuing and the real estate agents involved in these projects do not indicate any concern for their projects due to our fire hall proposal.

The Official Community Plan

- ✓ The property in question sits right on the border of the Urban Containment Boundary. The OCP for Cedar does allow facilities outside the boundary based on exceptions. NCID has several key points that are exceptions to the preferred recommendations outlined in the OCP as follows:
 - All properties contained in the fire protection area for Cedar will fall within the 8 kilometer radius for insurance purposes. Currently 25% of the properties paying for fire protection in Cedar are outside the 8 kilometer range and fall into the category of "unprotected" for an insurance rating. These properties are paying four times more for fire insurance as properties located within a 1000 feet of a fire hydrant. All properties would become either "fully protected or semi protected" and 25% of the properties will see a savings on their homeowners insurance.
 - Costs of property located within the urban containment boundary were extremely high. Most of the properties available for purchase are located close to the Cedar Village Center the only commercial area Cedar has, making the prices for properties located in this area extremely high. NCID looked at several properties within the Urban Containment Boundary and focused in on two that worked well for housing a fire hall. One property owner wanted a million dollars and the other wanted five hundred thousand dollars. The current site cost NCID \$115,000.00.
 - The fire hall should have access to a main road. The only main road in the Urban Containment Boundary is Cedar Road which has a very high traffic volume. The fire department is already dealing with traffic problems from its current location on Cedar Road.
 - When NCID purchased the property in question there were two large developments in the works for our area. One was a very large multi-residential housing proposal for the Cedar Village Estates and the other was a large golf course residential housing project located in Boat Harbour. The proposed site is central to all of Cedar including the Boat Harbour development which currently sits outside the 8 kilometer range. Future growth was a very important consideration when looking for a suitable site. Both of these developments were on hold for a lengthy period of time, however, NCID has had meetings with both Developers in the last 3 months and the projects are now going forward once more. Both projects have been re-evaluated in order to fit into the area and are proceeding with the process for development.

Heritage

- ✓ NCID has never been approached by any group wishing to preserve the fire hall as a heritage site. We have reported at all three information meetings that we will sell the old facility and apply these funds to the monies borrowed for the new facility. It is the intention of NCID to pay down the outstanding loan with the proceeds from the old fire hall facility in order to pay off the outstanding debt in as timely a manner as possible. NCID has been approached by several interested parties including Mr. Proctor. NCID does not anticipate any problem in selling the old facility. NCID is not fully aware of the criteria for making a building a heritage site but do not believe a 43 year old building meets the standards required in order to deem the site a heritage building. It is the position of the Trustee's for North Cedar that the ratepayers would not support making the old fire hall a heritage site and forgo the monetary benefit of selling the site and applying the funds to the outstanding debt.
- ✓ NCID has been working closely with the provincial ministry with regards to financing the proposal. The Board of Trustee's wishes to keep the financial impact to our citizens to a minimum. NCID

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views all property owners within the district as receiving the same service when it comes to fire protection and for this reason have chosen to go the parcel tax method for payment versus the assessed value method for payment. Based on the preliminary cost analysis we have had completed by a costing consultant all properties will pay \$70.00 per year for the new facility. At the district wide information meeting we presented this information and we had a favourable response from those in attendance.

We trust the above will clarify how the North Cedar Improvement District has proceeded with this fire hall proposal and how it was presented to the residents of Cedar.

Sincerely,

Lynnia Lawlor
Administrator to the Board of Trustee's.



REGIONAL DISTRICT OF NANAIMO	
JUL 21 2004	
CHMR	GMCrS
CAO	GMDS
CCOMs	GMES
EAP ✓	
DATE	

MEMORANDUM

TO: Robert Lapham
General Manager of Development Services

FROM: Brigid Reynolds
Senior Planner

SUBJECT: Zoning Amendment Application Nos. ZA0402 to ZA0406 – Fern Road Consulting Electoral Area 'H' – Spider Lake Road and Horne Lake Road

FILE: 3360 30 0402 to 0406

July 16, 2004

PURPOSE

To consider five applications to rezone the subject properties from Subdivision District 'B' to Subdivision District 'D' in order to facilitate the subdivision of the subject properties with a maximum density of one dwelling unit per parcel.

BACKGROUND

The Regional District has received five applications to rezone five properties in the Spider Lake area of Electoral Area 'H'. All five properties are zoned RUIB pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987. The agent submitted the applications jointly by 1 agent and the applicants concur that they shall proceed jointly.

The five proposals are as follows:

ZA No. & Last name	Civic Address	Legal Description	Proposal	Parcel Size	Frontage Relaxation
ZA0402 West Coast Rangers Ltd.	Horne Lake Road	Lot 5, Block 347, Newcastle and Alberni Districts, Plan 33670	To subdivide into three lots - two lots with a minimum parcel size of 2.0 ha and one lot with a minimum parcel size of 4.0 ha	9.175 ha	Yes
ZA0403 Vincent	930 Spider Lake Road	Lot 4, Block 360, Newcastle and Alberni Districts, Plan 35096	To subdivide into three lots - two lots with a minimum parcel size of 2.0 ha and one lot with a minimum parcel size of 4.0 ha	8.128 ha	Yes
ZA0404 Stranaghan	950 / 960 Spider Lake Road	Lot 5, Block 360, Newcastle and Alberni Districts, Plan 35096	To subdivide into three lots - two lots with a minimum parcel size of 2.0 ha and one lot with a minimum parcel size of 4.0 ha	8.233 ha	Yes
ZA0405	1125 Spider	Lot 17, Block 360,	To subdivide into four	8.112 ha	No

Tenant	Lake Road	Newcastle District, Plan 36512	lots with a minimum parcel size of 2.0 ha		
ZA0406 Bartzen	1205 Spider Lake Road	Lot 18, Block 360, Newcastle District, Plan 36512	To subdivide into three lots - two lots with a minimum parcel size of 2.0 ha and one lot with a minimum parcel size of 4.0 ha	8.112 ha	No

Summary of Applications

ZA0402 (West Coast Rangers Ltd.) – Lot 5, Block 347, Newcastle and Alberni Districts, Plan 33670

The lot is heavily vegetated with mature Douglas Fir, Western Cedar, alder, and lots of understory. The land slopes downward from Home Lake Road approximately 8% and then rises steeply to a hilltop at the east of the property. Proposed lot C then slopes up approximately 18% to a large level area. The report prepared by Bob Davey indicates the slopes are stable but recommends building setbacks from the top and toe of the bank.

There are buildable sites on each of the proposed lots. There are no dwelling units on the lot and it is vacant except for a cleared area that contains a small temporary storage building, old machinery and debris scattered about, and caches of firewood.

Proposed Lot C is a panhandle lot and does not meet the 10 % frontage requirement. Access for Lots A and B is proposed to be by easement over a portion of the panhandle.

ZA0403 (Vincent) – Lot 4, Block 360, Newcastle and Alberni Districts, Plan 35096

The majority of the lot is heavily vegetated with mature Douglas Fir, Cedar, alder and lots of understory. The lot is primarily level but contains some rolling slopes between 5 and 10% in the centre of the parcel. There is a small dug pond that straddles proposed Lots A and B.

There are two dwelling units on the property, as well as 6 outbuildings. One of the dwelling units and the outbuildings are located on proposed Lot A, as well as a portable sawmill. The second dwelling unit is located on proposed Lot C and is a small one-room cabin.

Proposed lot C is a panhandle lot and does not meet the 10% frontage requirement. An access easement is proposed in addition to the panhandle and access is proposed to be shared with the adjacent parcel (Lot 5, Block 360, Newcastle and Alberni Districts, Plan 35096). The total width of the two panhandles is 18 metres.

ZA0404 (Stranaghan) – Lot 5, Block 360, Newcastle and Alberni Districts, Plan 35096

The majority of the lot is heavily vegetated with mature Douglas Fir, Cedar, alder and lots of understory. Proposed lots A and B are level with Spider Lake Road and they then slopes up approximately 5% to the existing dwelling unit site on proposed Lot C.

Proposed lot C contains a dwelling unit, shop, and two sheds. Proposed lot B contains a dwelling unit that is under construction and a small cabin, which will be decommissioned once construction of the dwelling unit is complete.

Proposed lot C is a panhandle lot and does not meet the 10% frontage requirement. The panhandle is located on the northern lot line; however, an access easement is proposed across proposed lot B as this is the existing access to the dwelling unit on proposed lot C.

ZA0405 (Tennent) - Lot 17, Block 360, Newcastle District, Plan 36512

The majority of the lot is heavily vegetated with mature Douglas Fir, Cedar, alder and lots of understory. The lot is level with Spider Lake Road on the south west side and slopes downward at approximately 15% to the centre of the lot which is primarily level. The report prepared by Bob Davey indicates the slope is stable and recommends no clearing of vegetation at the top of the bank and building setbacks from the top and toe of the bank.

A spring fed pond crosses proposed Lots 1, 2 and 3. This pond is designated as being within the Environmentally Sensitive Areas Development Permit Area pursuant to Bylaw No. 1335. As a result, the property owner is willing to enter into a section 219 covenant restricting vegetation removal around the pond as measured 15 metres from the natural boundary.

There are two dwelling units on the lot and two outbuildings (a woodshed and pumphouse). One is located on proposed lot 1 and the second (a small cabin) is located on proposed lot 2.

All 4 proposed lots have access from Spider Lake Road. Building sites for proposed lots 3 and 4 are located on the westerly portion of the lot adjacent to Spider Lake Road.

ZA0406 (Bartzen) - Lot 18, Block 360, Newcastle District, Plan 36512

The majority of the lot is heavily vegetated with mature Douglas Fir, Cedar, alder and lots of understory.

The lot is level with Spider Lake Road on the west side and slopes downward approximately 15% on the bottom 1/3 of the lot. The report prepared by Bob Davey indicates the slope is stable and recommends no clearing of vegetation at the top of the bank and building setbacks from the top and toe of the bank.

There is one dwelling unit currently under construction on proposed lot 3.

All 3 proposed lots have access from Spider Lake Road and there is adequate area for building sites for proposed lots 1 and 2.

General

Surrounding land uses include rural zoned parcels within the Spider Lake area. All the proposed lots will be serviced by on-site septic and wells.

Bob Davey refers to reports prepared by Golder Associates Ltd and Novatec Consultants Inc. that were undertaken for previous zoning amendment applications in the Spider Lake area and states that these reports together with his field work support that the natural environment and hydrology would not be adversely affected by the subdivision of the five lots. His report states that the groundwater levels are well below the area for septic discharge and that groundwater flows away from Spider Lake and should therefore not have any significant environmental effects to the groundwater.

The reports prepared by Bob Davey indicate that there is a safe margin for establishing septic fields within the top 1 m of the land surface. The reports also state that the soil composition allows for heavy inflows within ponding except in areas where there is high silt content, which is found in a few areas within the Spider Lake area.

The geotechnical engineer, Bob Davey indicates the lots are safe for the intended uses.

Official Community Plan

The subject properties are currently zoned for a minimum parcel size of 8.0 ha with 2 dwellings permitted on parcels greater than 8.0 ha. Pursuant to the "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw No. 1335, 2003" (OCP), all the subject properties are designated within the Rural Lands Designation. The OCP policies for this designation allow for the consideration of applications to rezone to a minimum permitted parcel size of 4.0 hectares however despite this restriction lands within the Rural land use designation may also be considered for a rezoning to the 2.0 hectare minimum permitted parcel size where the proposal meets the following criteria:

- a) One dwelling unit per parcel;
- b) Where the owner is prepared to register a covenant under section 219 of the *Land Title Act* prohibiting subdivision of the land under the *Strata Property Act*;
- c) No frontage relaxation required;
- d) No further road dedication to accommodate parcel frontage or additional parcels (as verified as of the date of adoption of this Plan); and
- e) Provision of a comprehensive plan for subdivision of the area being rezoned with a report from a recognized professional with geotechnical and geohydraulic experience indicating an assessment of the environmental suitability of the subdivision that is accepted by the RDN, Water, Land and Air Protection, and the Environmental Health Officer.

All the parcels are designated as being within the Environmentally Sensitive Features Development Permit Area for the aquifer pursuant to Bylaw No. 1335. The report prepared by Bob Davey is intended to address the requirements of this DPA.

10% Minimum Frontage Requirements

Three of the five parent parcels requesting this zoning amendment do not meet the 10% frontage requirement pursuant to section 944 *Local Government Act*, therefore approval of the Regional Board of Directors is required. In addition, access for four parcels is proposed to be by easements.

Public Information Meeting

A public information meeting was held on July 14, 2004 at the Lighthouse Community Centre. Notification of the meeting was advertised in the Parksville Qualicum Beach News newspaper and the RDN website, along with a direct mail out to all property owners within 200 metres of the subject properties. Signage has also been posted on the subject properties. Seven people attended the information meeting and provided comments with respect to the proposals (*see Attachment No. 2 'Proceedings of the Public Information Meeting'*). The only issue raised at the meeting was a concern about limiting the 4 ha parcels to one dwelling unit only.

Since 1997 there has been a minimum of 9 zoning amendment applications for 16 parcels of land in the Spider Lake area that have been before the Regional Board requesting that the minimum parcel size be reduced from 8.0 ha to 4.0 or 2.0 ha. The previous applications were approved subject to the restrictions noted above including the restriction to a maximum of 1 dwelling unit per parcel on both 4.0 ha and 2.0 ha parcels by way of a restrictive covenant.

ALTERNATIVES

1. To approve the amendment applications as submitted subject to the conditions outlined in Schedule No. 1 for 1st and 2nd reading and proceed to public hearing.
2. To approve the amendment applications with the additional condition to Schedule No. 1 that would restrict further subdivision of any parcels 4.0 ha or greater staff subject to concurrence by the applicants prior to proceeding to a public hearing.
3. To not approve the amendment application.

PUBLIC CONSULTATION IMPLICATIONS

The Electoral Area 'H' OCP Bylaw No. 1335, 2003 was adopted in March 2004. Spider Lake residents actively participated in the public forums and consultation process and removed the previous OCP policies that outlined limitations on 4.0 ha parcels.

The only issue raised at the meeting was concern about limiting the 4 ha parcels to one dwelling unit only.

PROCESS IMPLICATIONS

The applicants have requested that the advertising fee required as part of a zoning amendment application be shared amongst the applicants, thereby reducing the fee. The applicants are in concurrence that the applications will proceed together.

LAND USE AND DEVELOPMENT IMPLICATIONS

Approval of the zoning amendment application to reduce the minimum parcel size from 8.0 ha to a minimum of 2.0 ha will result in 11 new lots, in addition to the five parent parcels for a total of 16 parcels.

As with past practice and in keeping with OCP policies for the proposed 2.0 ha parcels, the applicants will be required to register a section 219 covenant that limits the number of dwelling units to one, restricts further subdivision, restricts any frontage relaxation; and restricts further road dedication to accommodate parcel frontage or additional parcels.

Three of the proposed 4 ha parcels (ZA0402, ZA0403, and ZA0404) require frontage relaxation therefore, staff recommend that the applicants be required to register a section 219 covenant restricting further subdivision as this requirement is consistent with the OCP policies to not permit the creation of 2.0 ha parcels with frontage relaxations. The restriction on further subdivision would also apply to subdivisions proposed pursuant to the Strata Property Act and is considered necessary to ensure that the integrity of the Plan policies restricting access and road dedication for the creation of 2.0 ha parcels is maintained.

ZA0404 (Stranaghan) - One of the proposed 2 ha parcels contains a cabin and a dwelling unit that is under construction. The cabin will have to be decommissioned once the dwelling unit has been completed.

The Regional Board is not obliged to approve a request to increase density; however, pursuant to the OCP, the Board may consider rezonings where the OCP criteria are satisfied, rural integrity is maintained and environmental concerns are addressed.

MINISTRY OF TRANSPORTATION IMPLICATIONS

Three of the five parent parcels requesting this zoning amendment do not meet the 10% frontage requirement pursuant to the *Local Government Act or Land Titles Act*. This request applies to three 4 ha parcels which have a panhandle configuration.

ZA No.	Proposed Lot No.	Required frontage	Proposed frontage	% of perimeter
ZA0402	Lot C	138.3 m	39.0 m	2.8%
ZA0403	Lot C	112.6 m	7.2 m	0.64%
ZA0404	Lot C	135.3 m	9.8 m	0.72%

Once the subdivision has been complete, access for four parcels is proposed to be by easements as follows.

ZA0402 (West Coast Rangers Ltd.) - Proposed Lot C is a panhandle lot and does not meet the 10 % frontage requirement. Access for Lots A and B is proposed to be by easement over a portion of the panhandle.

ZA0403 (Vincent) - Proposed lot C is a panhandle lot and does not meet the 10% frontage requirement. An access easement is proposed in addition to the panhandle and access is proposed to be shared with the adjacent parcel (Lot 5, Plan 35096, Block 360, Newcastle and Alberni Districts). The total width of the two panhandles is 20 m.

ZA0404 (Stranaghan) - Proposed lot C is a panhandle lot and does not meet the 10% frontage requirement. The panhandle is located on the northern lot line, however an access easement is proposed across proposed lot B as this is the existing access to the dwelling unit on proposed lot C.

ZA0405 (Tennent) - All 4 proposed lots have access from Spider Lake Road.

ZA0406 (Bartzen) - All 3 proposed lots have access from Spider Lake Road.

Ministry of Transportation staff has indicated that they have no objection to these proposed zoning amendment applications and frontage relaxations. It is noted that if the amendment application proceeds, the applicants will be required to apply to the Ministry for subdivision approval. Recommendations to approve the frontage relaxation requests would be brought forward as part of adoption of the amendment bylaws.

ENVIRONMENTALLY SENSITIVE AREAS IMPLICATIONS

ZA0405 (Tennent) - The pond on this parcel is designated as a watercourse protection Development Permit Area, which is measured 15.0 metres from the natural boundary. The applicant is in concurrence to enter into a Section 219 covenant to restrict the removal of vegetation. A development permit is not required as no land alteration is occurring within the DPA to facilitate this subdivision.

The applicants were required to provide a report prepared by a professional engineer that addressed proof of potable water for the proposed lots, assurance that the new wells will not adversely impact existing surrounding wells, Spider Lake, and the watercourse, and confirmation of soil suitability for onsite sewage disposal and assurances that onsite sewage disposal will not adversely impact surrounding wells, Spider Lake and the watercourse. The reports, prepared by Bob Davey, indicate that there is a safe margin for establishing septic fields within the top 1 m of the land surface. The reports also state that the soil composition allows for heavy inflows within ponding except in areas where there is high silt content, which is found in a few areas within the Spider Lake area. The requirement to provide proof of potable water has not yet been fulfilled and is recommended to be required prior to 4th reading of the proposed bylaws.

Staff is recommending that properties with steep slopes have a section 219 covenant registered on the title outlining building setbacks and vegetation removal restrictions from the top and toe of the slope.

ZA0402 (West Coast Rangers Ltd.) - The report prepared by Bob Davey indicates the slopes are stable but recommends a setback for buildings 8 metres from the top of the bank and 8 metres from the toe of the slope.

ZA0405 (Tennent) - The report prepared by Bob Davey indicates the slope is stable and recommends no clearing of vegetation at the top of the bank. The geotechnical report prepared by Bob Davey requires that buildings be located a minimum of 10 metres from the top of the bank and that no drainage should be directed to the ground within 15 m of the top of the bank.

ZA0406 (Bartzen) - The report prepared by Bob Davey indicates the slope is stable and recommends no clearing of vegetation at the top of the bank. The geotechnical report prepared by Bob Davey requires that buildings be located a minimum of 10 metres from the top of the bank and that no drainage should be directed to the ground within 15 m of the top of the bank.

INTERGOVERNMENTAL IMPLICATIONS

Ministry of Transportation – Ministry staff has indicated that the Ministry has no objections to these applications. If the amendment application proceeds, the applicants will be required to apply to the Ministry for subdivision approval.

Vancouver Island Health Authority (VIHA) – The health inspector has indicated to the applicants' agent that the soils in the Spider Lake area provide good percolation and filtration. The reports by Bob Davey states "in conjunction to the remediations of the sands and gravel in this vertical separation also provides a safe margin in establishing septic effluent disposal fields within the top 1.0 metre of the land surface."

Archeological Branch – There are no known archeological sites on the subject properties. Applicants will be provided with information regarding the Archeological Branch.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY/CONCLUSIONS

This is an application to rezone five Rural 1 (RU1) zoned parcels from a 'B' subdivision district (minimum 8.0 parcel size) to a 'D' subdivision district (minimum 2.0 ha parcel) to facilitate the subdivision of five lots in the Spider Lake area in Electoral Area 'H' to create a total of 16 parcels. A public information meeting was held on July 14, 2004 and the main issue raised was that the 4 ha parcels should not be limited to one dwelling unit per parcel. As a result, while staff believe that a limitation to 1 dwelling unit on the newly proposed 4.0ha parcels is consistent with past practice and is not contrary to the OCP, this limitation could be waived, consistent with the public input, provided that a restriction is established to limit further subdivision or stratification of the 2 dwellings that would be possible on the proposed 4.0ha parcels.

Three applications (ZA0402, ZA0403, and ZA0404) are requesting a relaxation of the 10% minimum frontage requirement. As noted above staff is recommending a section 219 covenant be registered on the title of the properties to restrict any further subdivision in order to address the implications associated with this requested relaxation of the subdivision standards.

All five properties are designated as being within the Environmentally Sensitive Features Development Permit Area due to the aquifers. Therefore the applicants were required to provide a report prepared by a professional engineer that addressed proof of potable water for the proposed lots, assurance that the new wells will not adversely impact existing surrounding wells, Spider Lake, and the watercourse, and confirmation of soil suitability for onsite sewage disposal and assurances that onsite sewage disposal will not adversely impact surrounding wells, Spider Lake and the watercourse. The engineer reports prepared by Bob Davey indicates that there is a safe margin for establishing septic fields. The requirement to provide proof of potable water has not yet been fulfilled and staff recommend that this be completed prior to 4th reading of the proposed bylaws.

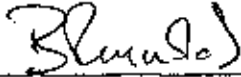
The reports prepared by Bob Davey also considered potential natural hazards. His reports detailed restrictions regarding vegetation removal and the siting of buildings and structures in proximity to the top and/or toe of the bank on the properties for ZA0402, ZA0405, and ZA0406. Due to these restrictions, the geotechnical reports shall be required to be registered on the title of the properties. Bob Davey also stated that in all cases the properties are safe for the intended uses.

In addition to the conditions agreed to by the applicants staff recommends Alternative No. 2 to approve the amendment applications subject to the applicants concurrence with the additional conditions set out in Schedule Nos. 1.

RECOMMENDATIONS

1. That the minutes of the Public Information Meeting held on July 14, 2004 be received.
2. That Zoning Amendment Application Nos. ZA0402, ZA0403, ZA0404, ZA0405 ZA0406 ZA0402 submitted by Fern Road Consulting to rezone 5 properties located in the Spider Lake area from Rural 1 (B) 8ha minimum parcel size to Rural 1 (D) 2ha minimum parcel size be approved to proceed to public hearing subject to the amended conditions included in Schedule No. 1 as recommended by staff.
3. That "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw Nos. 500.302, 500.303, 500.304, 500.305, and 500.306, 2004" be given 1st and 2nd reading.

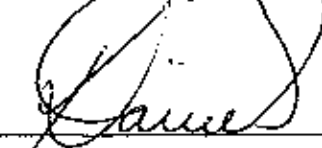
4. That "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw Nos. 500.302, 500.303, 500.304, 500.305, and 500.306, 2004" proceed to public hearing.
5. That the public hearing on "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.302, 500.303, 500.304, 500.305, and 500.306, 2004 be delegated to Director Bartram or his alternate.



Report Writer



General Manager Concurrence



CAO Concurrence

COMMENTS:

devsvs/reports/2004/za 3360 30 0402 to 0406 ju Spider lake 1st and 2nd

**Schedule No. 1
Conditions of Approval for
Zoning Amendment Application Nos. ZA0403 to ZA0406**

The applicant is to provide the following documentation prior to the amendment application being considered for 4th reading:

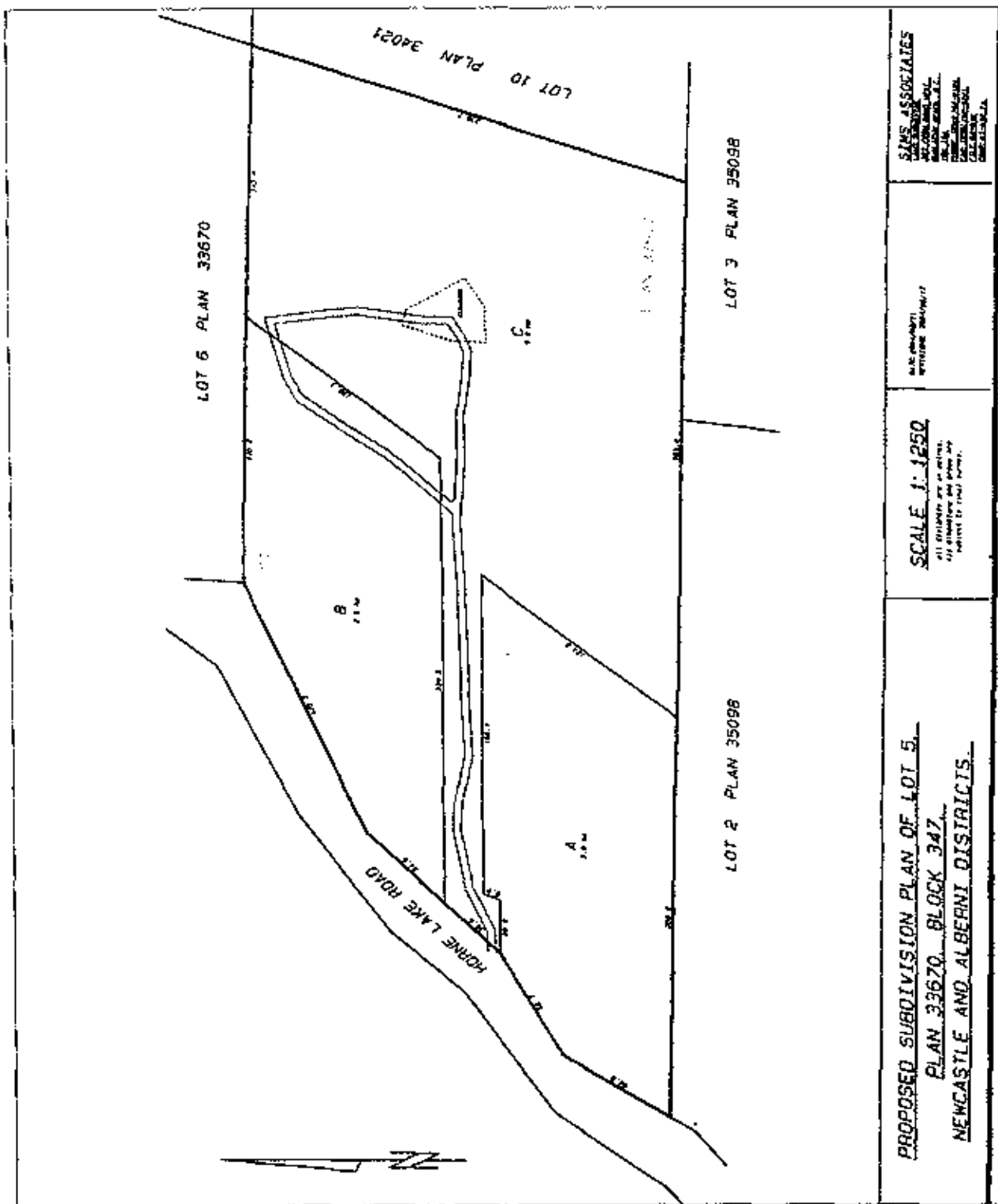
1. The registration of the following section 219 covenants. All covenants are to be prepared and registered by the applicant to the satisfaction of the Regional District.
 - a. For ZA0402, the two proposed 2 ha lots (A & B); For ZA0403, the two proposed 2 ha lots (A & B); For ZA0404, the two proposed 2 ha lots (A & B); For ZA0405, the four proposed 2 ha lots (A, B, C & D); and For ZA0406, the two proposed 2 ha lots (A & B) the following section 219 covenant shall be registered:
 - i) One dwelling unit per parcel;
 - ii) No further subdivision of the land under the *Strata Property Act*;
 - iii) No frontage relaxation; and
 - iv) No further road dedication to accommodate parcel frontage or additional parcels.
 - b. For ZA0405, the proposed Lots A, B, and C the following section 219 covenant shall be registered: No removal of vegetation within 15 metres of the pond.
 - c. For ZA0402, ZA0405, and ZA0406, the following section 219 covenant shall be registered: The geotechnical reports prepared by Bob Davey on March 3, 2004.

Schedule No. 1 Additional Conditions

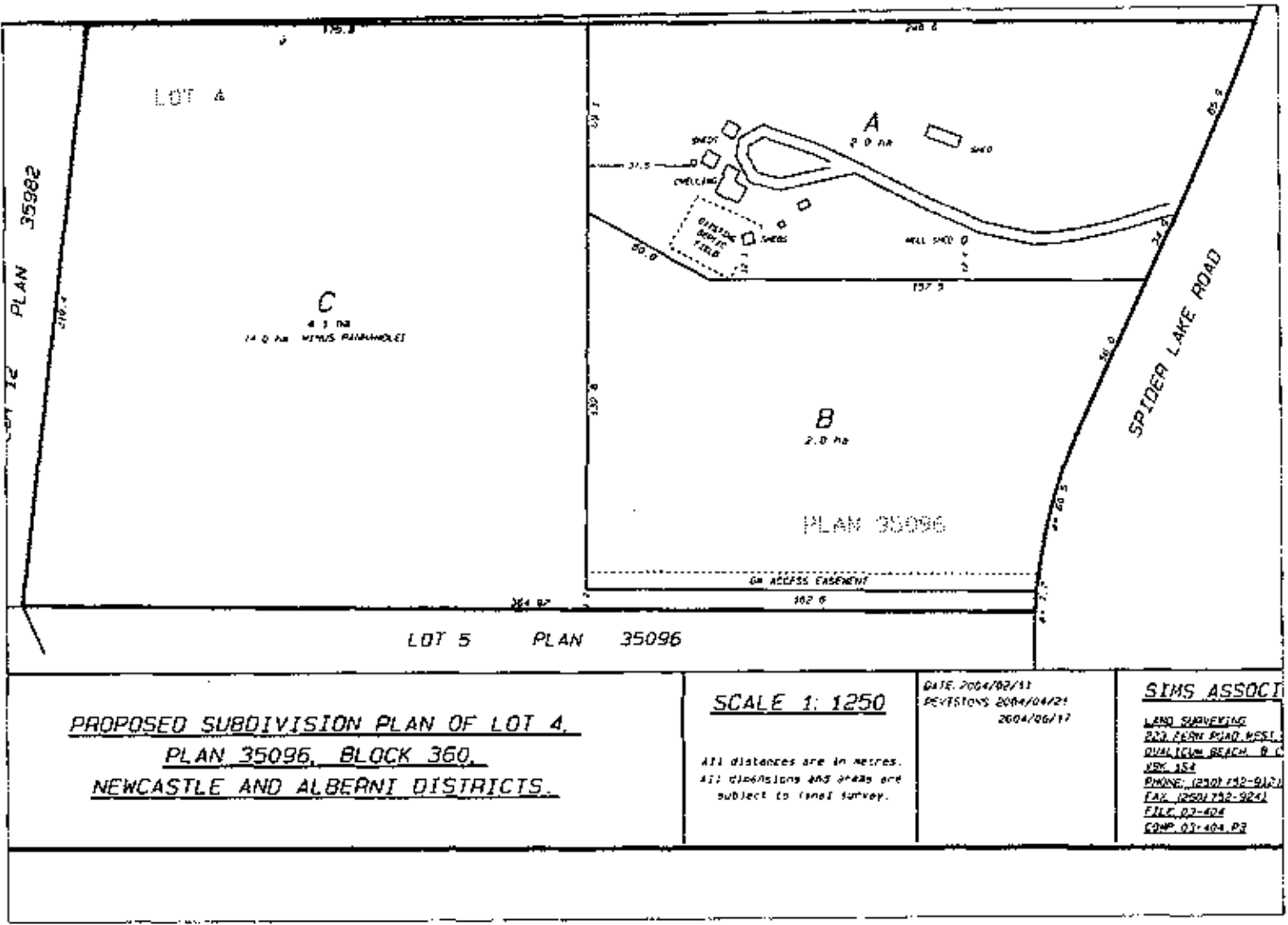
As recommended by staff and to be agreed by the applicants prior to proceeding to Public Hearing:

1. Confirmation of potable water for the proposed lots either by the development of drilled wells for each proposed parcel or by a professional engineers report with expertise in hydrology that confirms adequate water is available for the proposed development based on an analysis of existing water supply and groundwater aquifer characterization.
2. The registration of the following section 219 covenants. All covenants are to be prepared and registered by the applicant to the satisfaction of the Regional District.
 - a) For ZA0402, the proposed 4 ha lot (C); For ZA0403, the proposed 4 ha lot (C); and For ZA0404, the proposed 4 ha lot (C) the following section 219 covenant shall be registered:
 - i. No further subdivision or subdivision pursuant to the *Strata Property Act*.

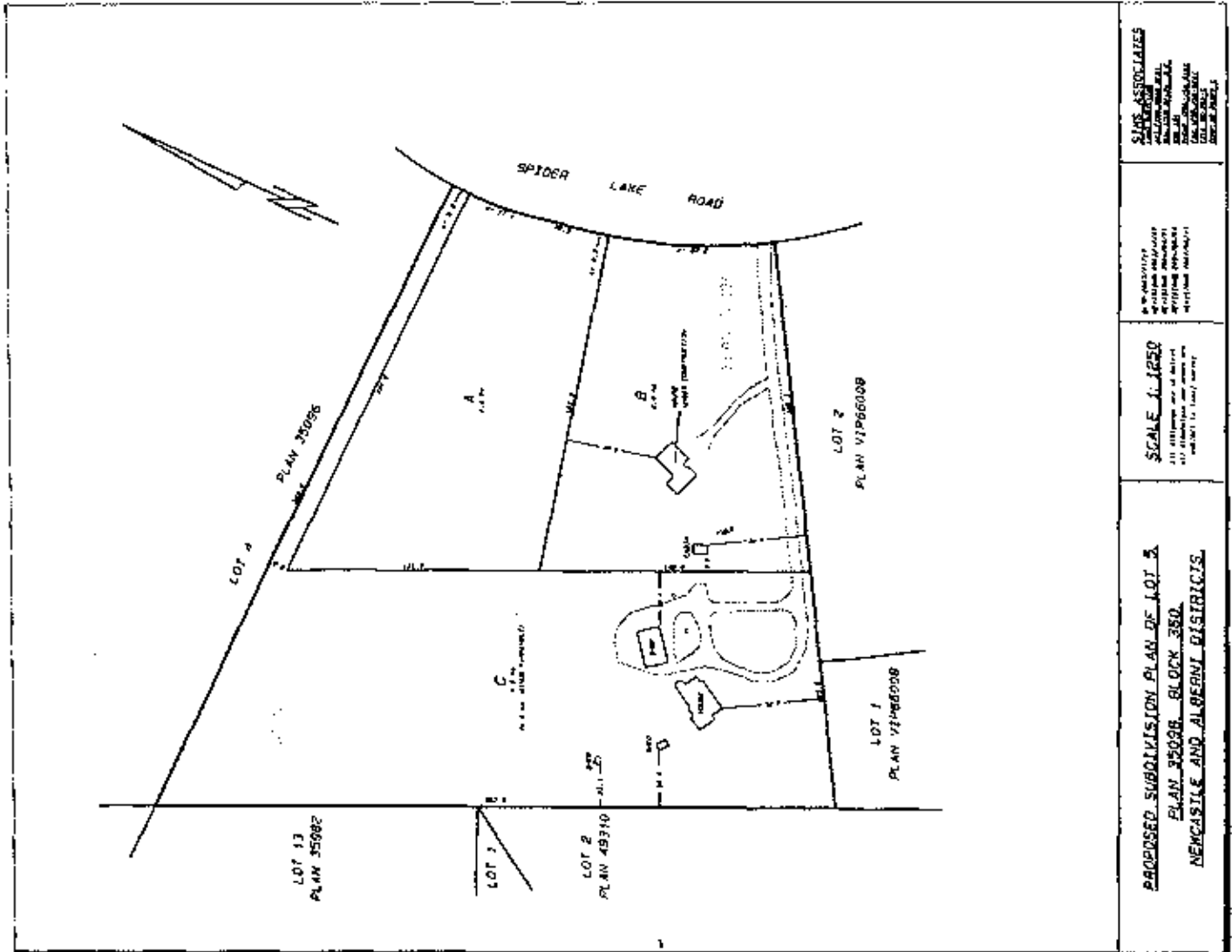
Schedule No. 2 (1 of 5)
Proposed Plan of Development ZA0402
(as submitted by applicant)
(reduced for convenience)



Schedule No. 2 (2 of 5)
 Proposed Plan of Development ZA0403
 (as submitted by applicant)
 (reduced for convenience)



Schedule No. 2 (3 of 5)
Proposed Plan of Development ZA0404
(as submitted by applicant)
(reduced for convenience)

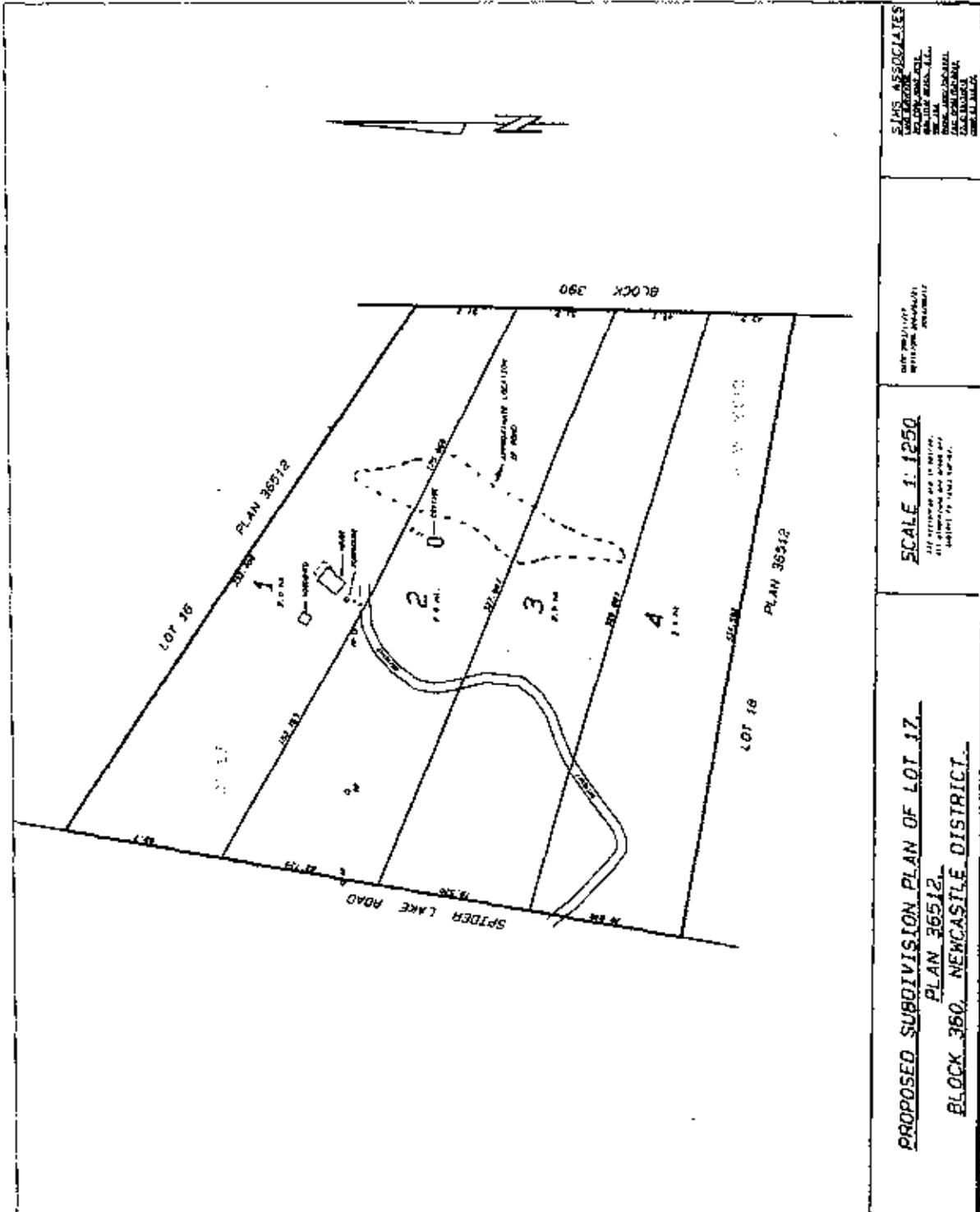


SIAS ASSOCIATES
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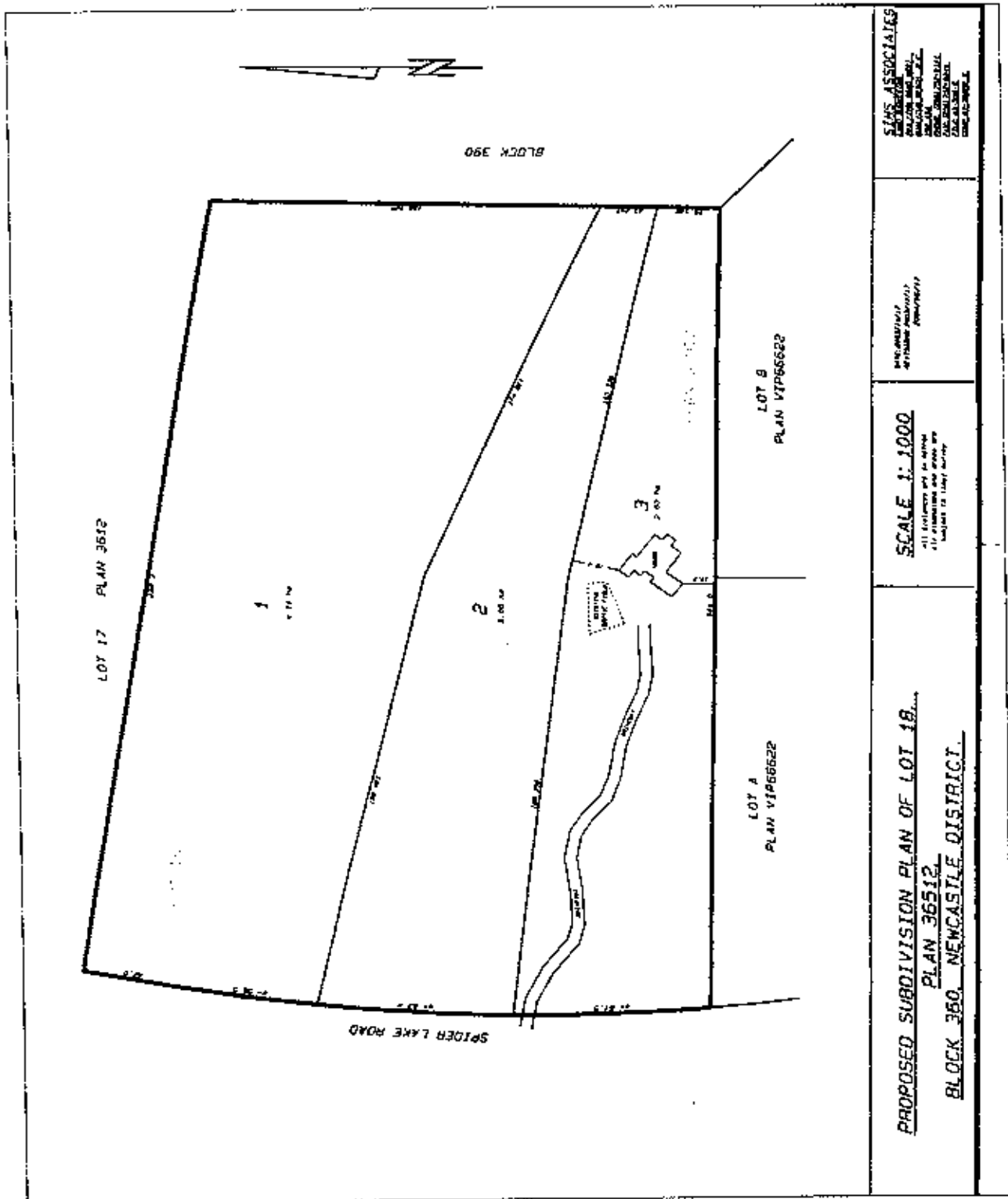
SCALE 1:1250
ALL DIMENSIONS ARE IN METERS
AND DECIMALS THEREOF
UNLESS OTHERWISE SPECIFIED

PROPOSED SUBDIVISION PLAN OF LOT 4,
PLAN 35026, BLOCK 380,
NEWCASTLE AND ALBERTI DISTRICTS.

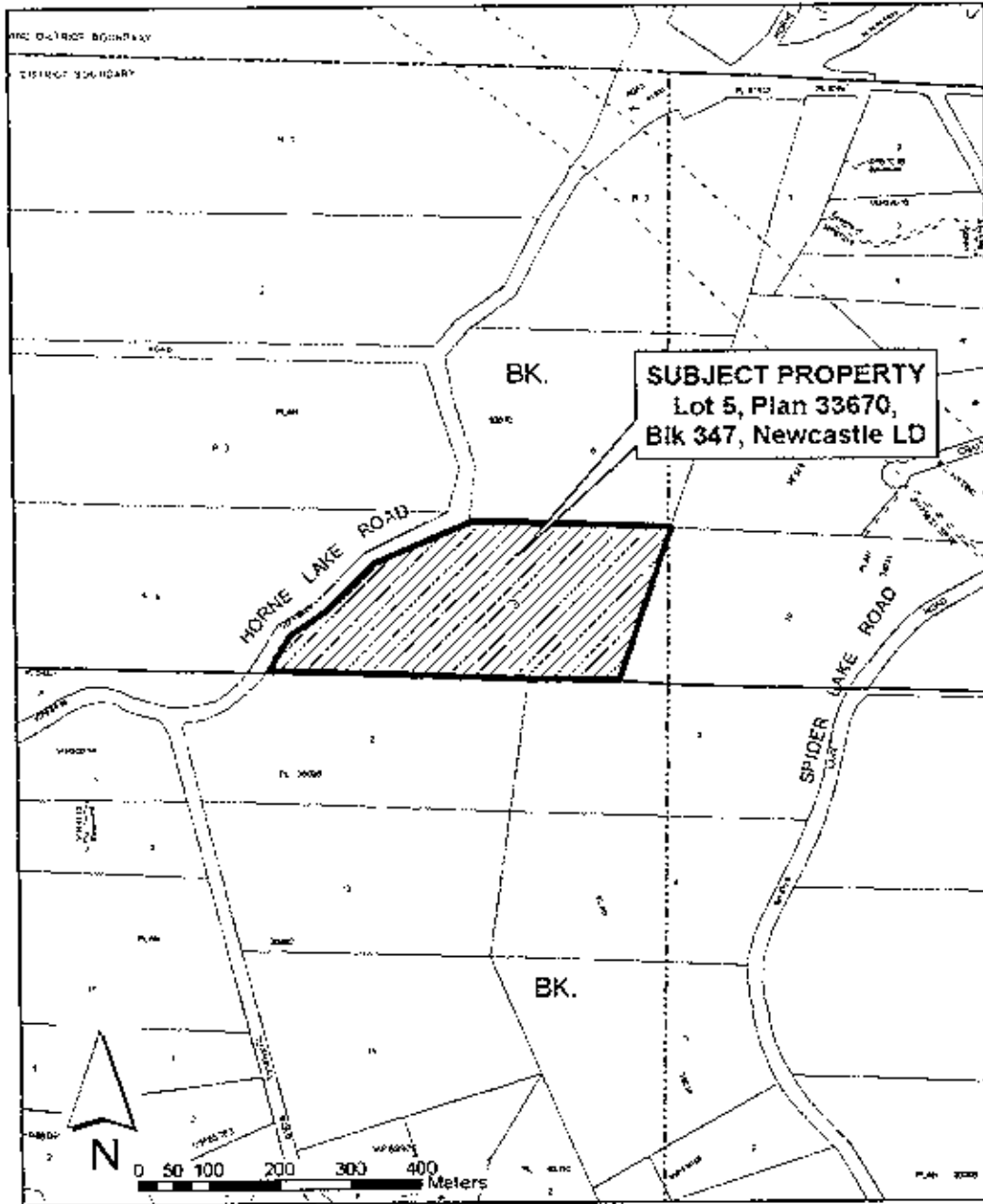
Schedule No. 2 (4 of 5)
Proposed Plan of Development ZA0405
(as submitted by applicant)
(reduced for convenience)



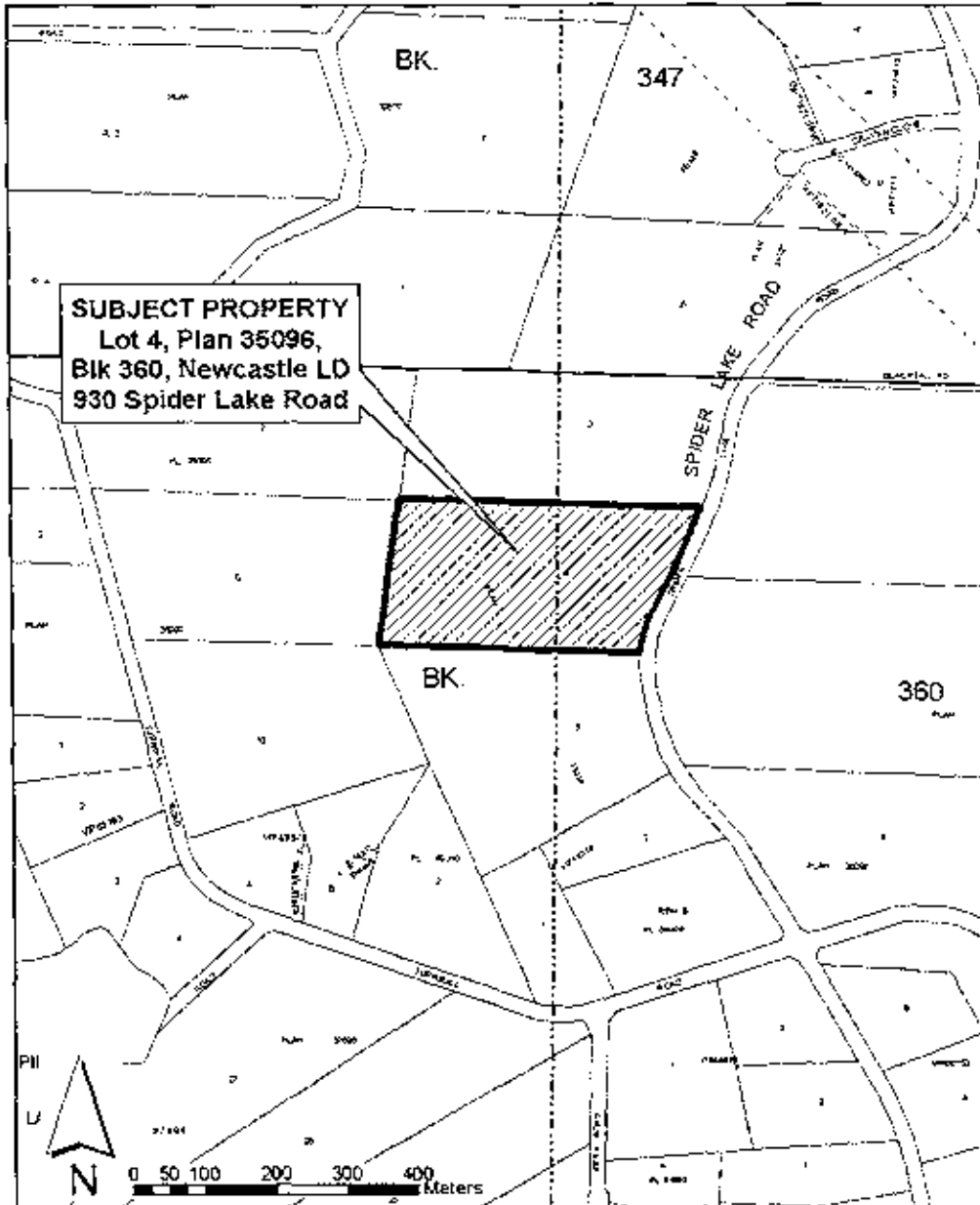
Schedule No. 2 (5 of 5)
Proposed Plan of Development ZA0406
(as submitted by applicant)
(reduced for convenience)



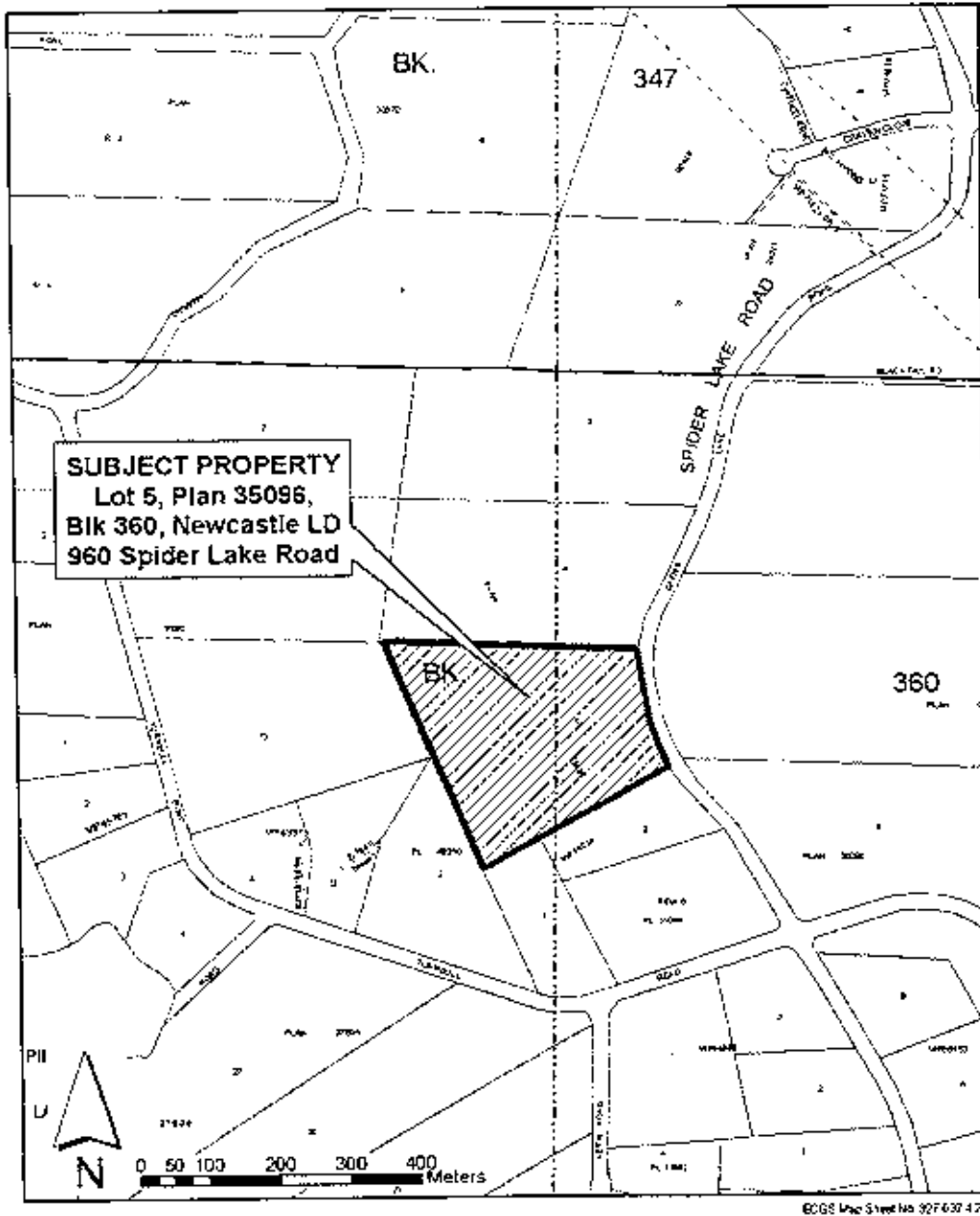
Attachment No. 1 (1 of 5)
Location of Subject Properties
ZA0402



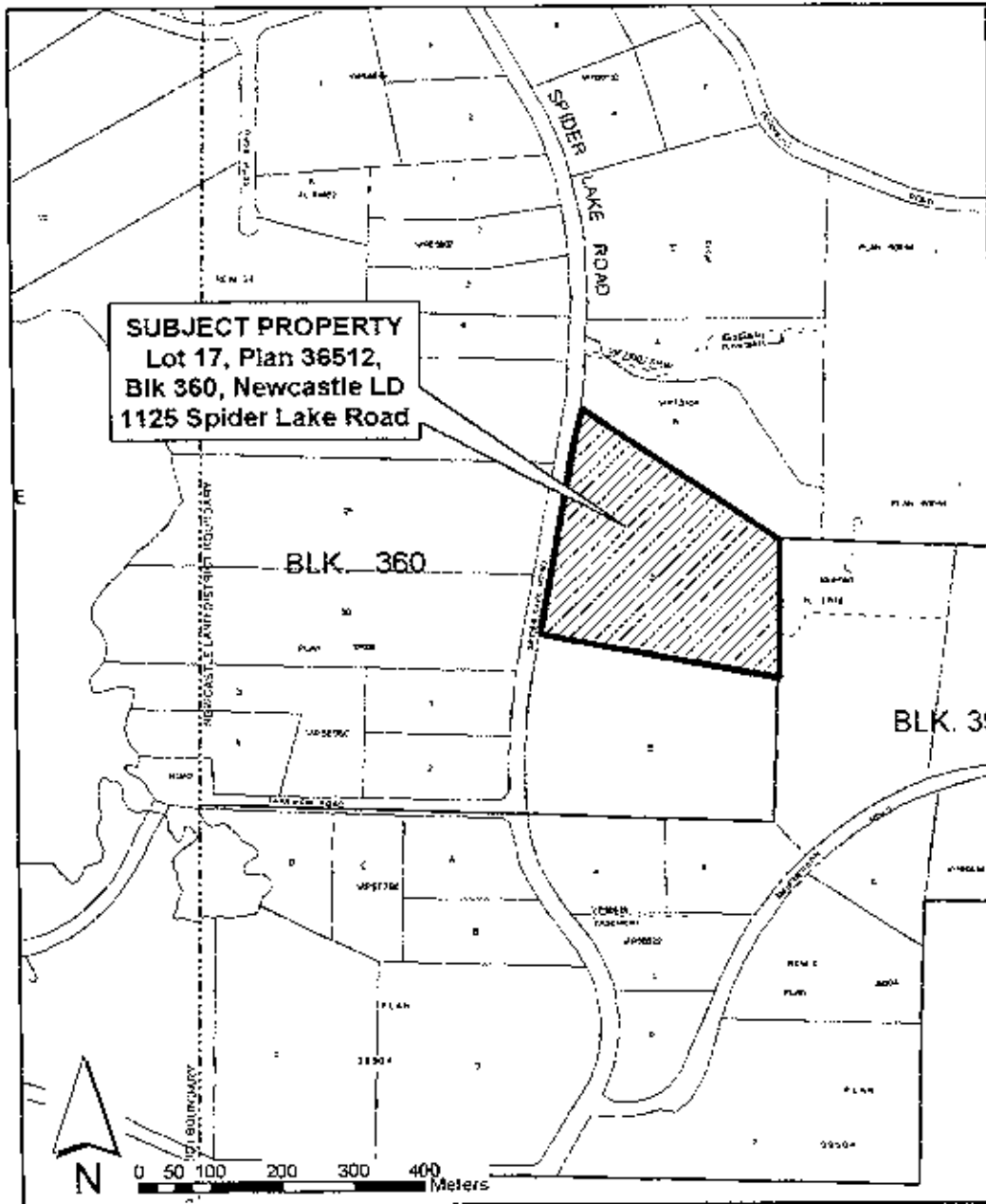
Attachment No. 1 (2 of 5)
Location of Subject Properties
ZA0403



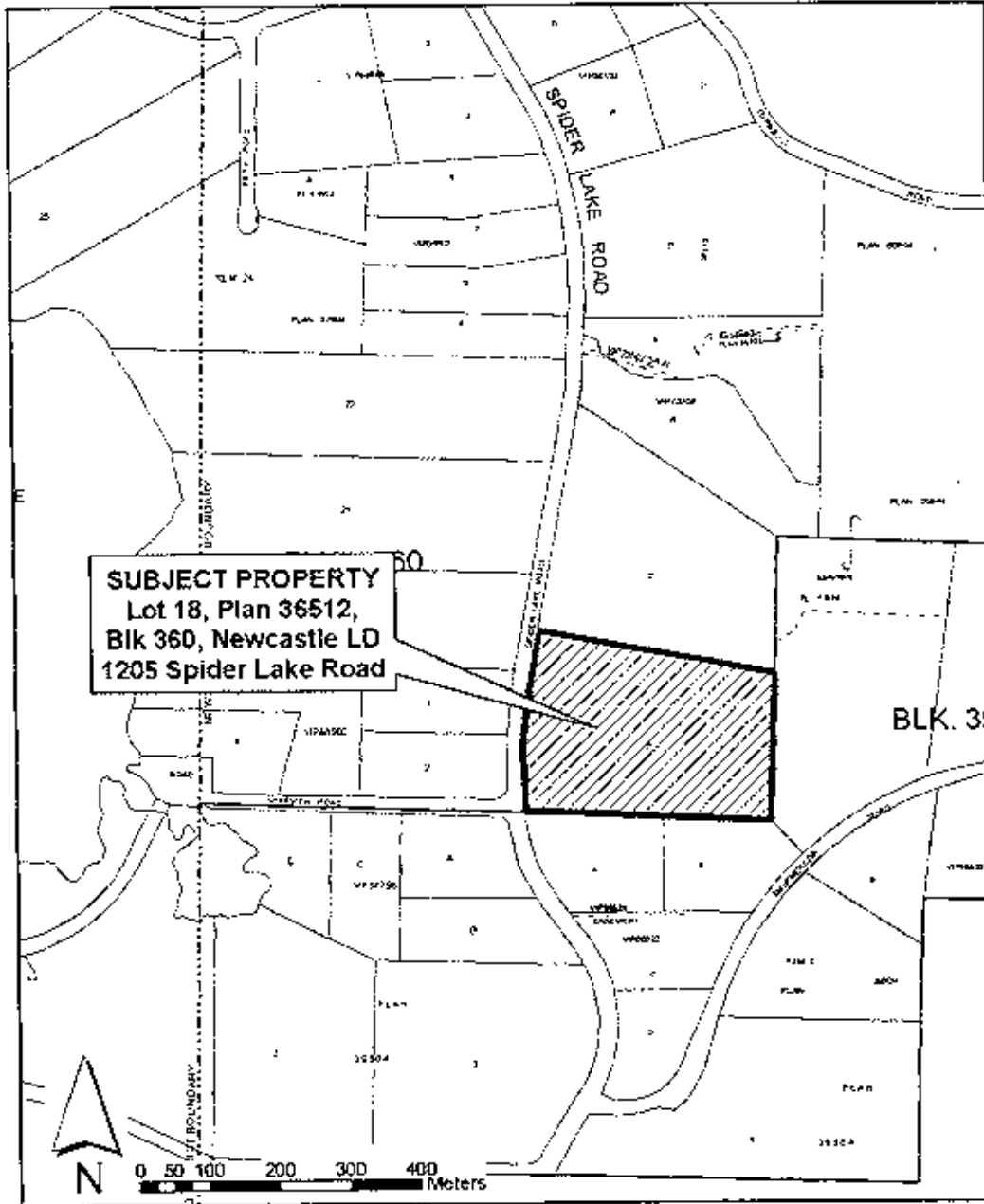
Attachment No. 1 (3 of 5)
Location of Subject Properties
ZA0404



Attachment No. 1 (4 of 5)
Location of Subject Properties
ZA0405



Attachment No. 1 (5 of 5)
Location of Subject Properties
ZA0406



Attachment No. 2
Summary of the Minutes of the Public Information Meeting

**Report of the Public Information Meeting
Held at Lighthouse Community Centre
240 Lions Way, Qualicum Bay, BC
July 14, 2004 at 7:00 pm**

**Summary of the Minutes on Proposed Zoning Amendment
Application**

Note: this summary of the meeting is not a verbatim recording of the proceedings, but is intended to summarize the comments of those in attendance at the Public Information Meeting.

There were seven persons in attendance.

Present for the Regional District:

Director Dave Bartram, Electoral Area 'H' Director
Brigid Reynolds, Senior Planner

Present for the Applicant:

Ms. Helen Sims, agent for applicants

Director Dave Bartram opened the meeting at 7:05 pm and outlined the agenda for the evening's meeting and introduced the head table including Ms. Helen Sims, agent on behalf of the applicants. The Chair then stated the purpose of the public information meeting and requested the senior planner to provide background information concerning the official community plan and zoning amendment process. The senior planner gave a brief outline of the application process.

The Chairperson then invited Ms. Helen Sims, agent on behalf of the applicants, to give a presentation of the proposed zoning amendment. Ms. Sims presented the proposed subdivision layout.

Following the applicant's presentation, the Chairperson invited questions and comments from the audience.

Jack Pipes, Turnbull Road, requested clarification regarding the new OCP, which does not limit the 4 ha parcels to 1 dwelling unit only. This issue was discussed as part of the recent OCP review and Spider Lake residents did not support this restriction.

Helen Sims, applicant's agent, stated that RDN staff was requesting this.

Director Dave Bartram stated that he would support the OCP policies, which do not restrict the 4 ha parcels to 1 dwelling unit.

Jack Pipes, Turnbull Road, asked about the size of the shared access between Lots 4 and 5, Block 360, Newcastle and Alberni Districts, Plan 35096.

Helen Sims, applicants agent, stated the width is proposed to be 18 metres and has received approval in principle from the Ministry of Transportation.

The Chairperson asked if there were any other questions or comments.

Being none, **the Chairperson** thanked those in attendance and announced that the public information meeting was closed.

The meeting concluded at 7:15 pm.

Brigid Reynolds
Recording Secretary



REGIONAL DISTRICT OF NANAIMO	
JUL 20 2004	
CHAIR	EMCS
CAG	GADE
PLN	ONES
CAP ✓	

MEMORANDUM

TO: Robert Lapham
General Manager, Development Services

DATE: July 16, 2004

FROM: Blaine Russell
Planner

FILE: 3060 30 60434

SUBJECT: Development Permit Application No. 60434 – Vukicevic
Electoral Area 'H' – 4823 Ocean Trail

PURPOSE

To consider an application to allow for the construction of a minor addition to an existing dwelling unit located in the Hazard Lands Development Permit Area pursuant to "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw No. 1335, 2003".

BACKGROUND

The subject property, legally described as Lot 62, District Lot 82, Newcastle District, Plan 31044, and located at 4823 Ocean Trail adjacent to the Strait of Georgia in Electoral Area 'H' (see Attachment No. 1).

The subject property is zoned Residential 2 (RS2) Subdivision District 'M' pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." No variances to Bylaw No. 500 are requested as part of this application.

The Hazard Lands Development Permit Area was established to protect development from hazardous conditions. The entire subject property is designated within the Hazard Lands Development Permit Area, due to the potential bank instability in the general area, pursuant to "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw No. 1335, 2003".

The subject property is bordered by the Strait of Georgia to the North, by other residential properties to the East and West, and by Ocean Trail to the South. It should be noted that the applicants also own the residential property to the West, in this case Lot 61, which contains an accessory building only. There are restrictive covenants registered on the title of the subject property and on Lot 61 by the Ministry of Transportation.

The developed portion of the subject property is comprised of a level plateau that extends from Ocean Trail for approximately 45 metres. Beyond the plateau, the property drops down a steep embankment that levels out towards the Strait of Georgia. The dwelling unit and proposed addition are located on the plateau portion of the property 17.4 metres from the top of bank. The plateau is vegetated with lawn and small shrubs with the embankment being comprised of mature Douglas fir trees and natural vegetation.

A geotechnical report, dated May 31, 2004, has been prepared by Lewkowich Geotechnical Engineering Ltd. that addresses the siting of the existing dwelling unit, proposed addition and accessory building.

ALTERNATIVES

1. To approve the requested development permit application subject to the conditions outlined in Schedules No. 1, 2 and 3.
2. To deny the requested development permit.

DEVELOPMENT IMPLICATIONS

The proposed 14.86 m² addition to the dwelling unit is one storey in height and is 1.83 metres in width with a maximum overhang of 0.61 metres. The addition is proposed to be sited 17.4 metres from the top of bank and will be setback a minimum of 3.76 metres from the western interior side lot line, as measured to the overhang (see Schedule No. 2).

Due to the size of the addition, it is unlikely to impact adjacent property owners as it is proposed to meet all zoning setback and height requirements. However, as the proposed minor addition will result in widening the existing dwelling unit, the view corridor for Lot 76 across Ocean Trail may be marginally impacted. It is unlikely that that addition will impact the view from the neighbouring property to the west any more than the existing dwelling already does.

As the subject property is designated within a Hazard Land Development Permit Area due to the steep slopes and banks in the general area, a geotechnical report is required to ensure that the site is safe for the intended use. Lewkowich Geotechnical Engineering Ltd., completed a geotechnical report on May 31, 2004 which states: "*The proposed construction of the minor addition to the existing residence on Lot 62 will not adversely impact the current stability of the adjacent coastline slope*". The report also states: "*Although portions of the existing and the proposed addition are within the construction setback area [restrictive covenant area], their siting would be considered safe from a geotechnical perspective – of their intended use (single family residence). This consideration is based on a probability of hazard of 10 percent in 50 years*". It is recommended that this report and any subsequent report be registered on the title of the subject property as a condition of the Development Permit approval, and the adherence to the recommendation of the report is included as a condition of this permit.

In addition to registering the geotechnical report on title, it is recommended that the applicants be required to prepare and register a Save Harmless Covenant on the title of the subject property saving the Regional District harmless from any action or loss that might result from hazardous conditions that may exist and that the property and that as part of this covenant that the applicants fully acknowledge the concerns addressed in the geotechnical report.

There is a restrictive covenant (document number F77759) registered on the title of both properties and is held by the Ministry of Transportation. This restrictive covenant prohibits the construction of buildings or the locating of a mobile home within 75 feet (22.86 metres) of the top of the bank along the Straight of Georgia. There are portions of the existing dwelling unit, the proposed addition, and the existing accessory building on the adjacent lot that are located within this restrictive covenant area. The Ministry of Transportation, in their letter dated June 17, 2004, has indicated that they have no objection in principle to the proposed addition to the existing dwelling unit. However, the Ministry indicates that the existing covenant may need to be amended to reflect the geotechnical report and as such it is recommended that the applicant be required to amend the restrictive covenant accordingly.

Many coastal areas along the Strait of Georgia are known to be archaeologically significant. The applicants will be advised to develop the property in compliance with the provincial *Heritage Conservation Act*.

In addition to the subject property, the applicant also owns Lot 6, directly adjacent and to the East. Presently there is an accessory building located on Lot 61 that is illegal due to the fact that there is not a principal use on the property in question; however, at this time, Lot 61 and 62 function as one property. The accessory building also does not meet RDN Bylaw No. 500, 1987 interior side lot line setback requirements. However, it appears to meet the setback requirements of the bylaw in effect at the time of construction circa 1980. The applicants have indicated that they are planning to sell Lot 61 within a few years. Given the location of the accessory building it appears that it would have to be removed in order to site a dwelling unit on the property. Therefore it is recommended that as a Condition of Approval for this Development Permit that the applicants also register the geotechnical report and safe harmless covenant on Lot 61. In addition, it is recommended that a restrictive covenant be registered prohibiting any additions to the existing accessory building and the accessory building be removed prior to the construction of a dwelling unit on Lot 61.

ENVIRONMENTAL IMPLICATIONS

Given that the minor addition is proposed to be sited more than 90 metres from the natural boundary of the Strait of Georgia, it is anticipated that the marine foreshore will not be adversely impacted. Vegetation removal for the proposed minor addition will be minimal, as the site area is presently lawn. As the minor addition is proposed to be located more than 17.4 metres from the top of bank on a plateau the environmental impacts, of the addition, are anticipated have negligible impact on the top of bank. As the subject property is within a Hazard Lands DPA, it is recommended that vegetation removal be restricted to what is absolutely necessary in order to site the proposed addition and that any additional land alteration, including vegetation removal, would require subsequent development permits.

Regarding drainage, the geotechnical report states "*Drainage from the residence is collected and directed down the slope... to discharge to the small draw...*" and that "*Although the exact discharged point was obscured by vegetation, there did not appear to be excessive scour or erosion below the pipe outlet.*" Perimeter drainage from the roof leaders of the addition will be tied in to the existing drainage system. The geotechnical engineer is silent on drainage from the proposed addition; however, as the addition is minor in nature and its roof leaders will be tied into the existing system, staff anticipates that there will be a negligible change to the drainage discharge.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY/CONCLUSIONS

This is an application for a development permit to permit the construction of an addition to an existing dwelling unit located at 4823 Ocean Trail within the Hazard Lands Development Permit Area pursuant to the "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw No. 1335, 2003" and located within a Ministry of Transportation restrictive covenant area. In addition, the residential

property to the West, in this case Lot 61, is also owned by the applicant and contains an accessory building only.

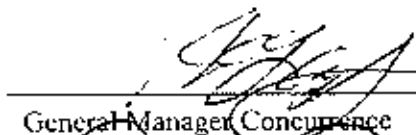
From staff's assessment of this application, the development permit area guidelines have been addressed provided the recommendations of the prepared geotechnical report and conditions of approval are adhered to, and the conditions of the Ministry of Transportation permission letter are honored, including amending the restrictive covenant. With the geotechnical report and Ministry of Transportation recommendation put into practice, the application has technical merit to be approved subject to the Conditions of Approval outlined in Schedule No. 1. Therefore, staff recommends approval of the request subject to the conditions outlined in Schedules No. 1, 2 and 3.

RECOMMENDATIONS

1. That Development Permit Application No. 60434, submitted by the applicants Daniel and Karen Vukicevic to permit the construction of an addition to an existing dwelling unit within the Hazard Lands Development Permit Area on the subject property legally described Lot 62, District Lot 82, Newcastle District, Plan 31044, located at 4823 Ocean Trail be approved, subject to the Conditions of Approval outlined in Schedules No. 1, 2 and 3.
2. That action not be taken against the existing accessory building on the property legally described as Lot 61, District Lot 82, Newcastle District, Plan 31044 subject to the Condition of Approval outlined in Schedules No. 1, 2 and 3 of this permit.



Report Writer



General Manager Concurrence



CAO Concurrence

COMMENTS:

devsvs:reports/2004/dp.ju.3060.30.60434.Vukicevic

**Schedule No. 1
Conditions of Approval
Development Permit No. 60434**

The following conditions are to be completed as part of Development Permit No. 60434:

Development of Site

1. All uses and construction of buildings and structures to be undertaken must be consistent with "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987";
2. All development on the site must be in compliance with the *Heritage Conservation Act*;
3. All works must be completed in accordance with the *British Columbia Building Code* and under the appropriate professional supervision;

Engineering

4. The recommendations of the geotechnical report prepared by Tom W. Oxland, P. Eng. and dated May 31, 2004 be adhered and that this report be registered on Title of Lots 61 and 62, District Lot 82, Newcastle District, Plan 31044 at the Land Title Office to the satisfaction of the RDN prior to the commencement of construction on Lot 62. All costs to be borne by the applicant.

Restrictive Covenants

5. The applicants is required to amend restrictive covenant F77759 with the Ministry of Transportation to recognize the siting of the existing dwelling and proposed addition and that this amended covenant be registered on Title. All costs to be borne by the applicant.
6. The applicants are required to enter into a section 219 covenant saving the Regional District of Nanaimo harmless from any action or loss that might result from hazardous conditions and acknowledging the hazards associated with the existing construction and occupancy of the dwelling unit on the property and the accessory building on the adjacent property. This Covenant to be registered on Title of Lots 61 and 62, District Lot 82, Newcastle District, Plan 31044 at the Land Title Office prior to the commencement of construction on lot 62. This covenant is to be prepared and registered by the applicant to the satisfaction for the Regional District of Nanaimo, all costs to be borne by the applicant.

Survey

7. The applicants are to provide a final survey, certified by a British Columbia Land Surveyor (BCLS). This survey must include the location and dimensions of all lot lines, existing buildings and structures (as measured to the outermost part of the structure i.e.: overhang or gutters), top of bank and natural boundary of all watercourses, zoning setback requirements, development permit area setback requirements, applicable restrictive covenant areas or restrictive covenant amendments. All costs borne by the applicant.

Sediment and Erosion Controls

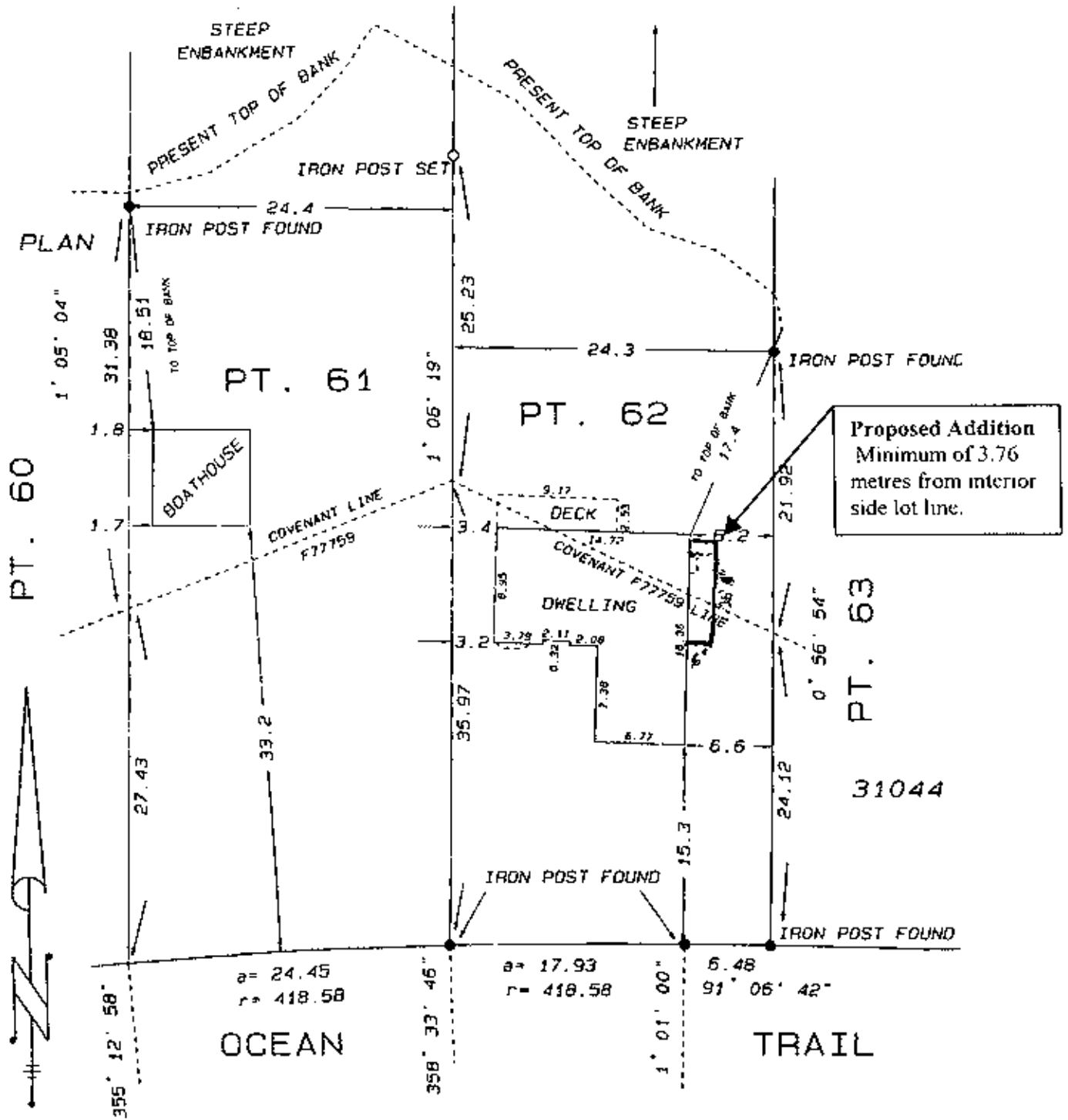
8. Sediment and erosion control measures must be utilized to control sediment during construction and land clearing works and to stabilize the site after construction is complete. These measures must include:
 - a. Tarps, sand bags, poly plastic sheeting and/or filter fabric are required to be onsite;
 - b. Direct run off flows away from top of the bank of the Strait of Georgia using swales or low berms;
 - c. Exposed soils must be seeded immediately after disturbance. Soil surfaces to be treated should be roughened;
 - d. Cover temporary fills or soil stockpiles with polyethylene or tarps;

Vegetation

9. Vegetation removal shall be limited to what is absolutely necessary in order to site the proposed minor addition as shown on Schedule No. 2 and that any additional land alteration, including vegetation removal, would be subject to the approval of subsequent development permits.

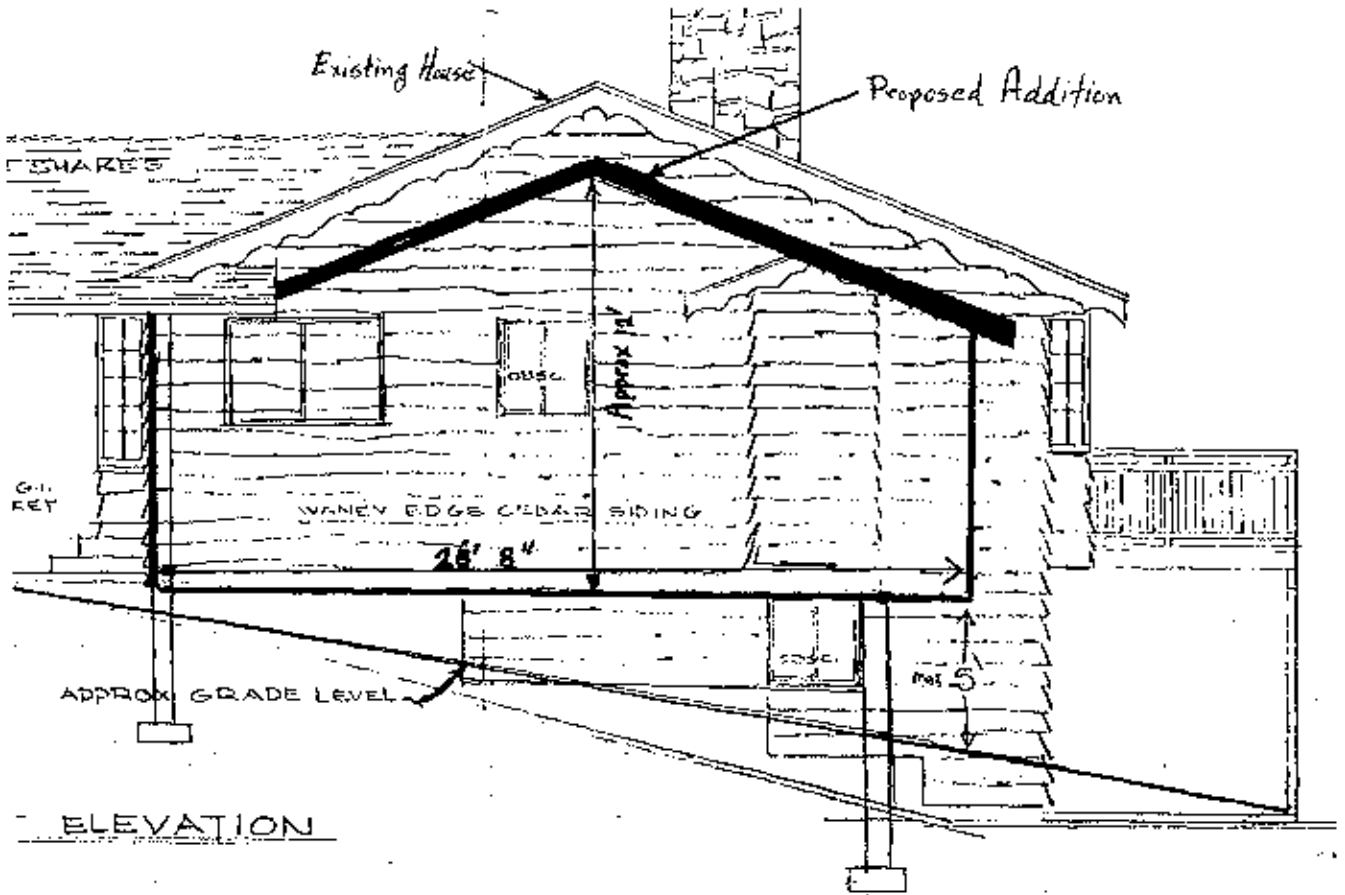
Schedule No. 2 (Part 1 of 2)
 Development Permit No. 60434

(As Submitted by Applicant / Modified to Fit This Page and to Include Conditions)

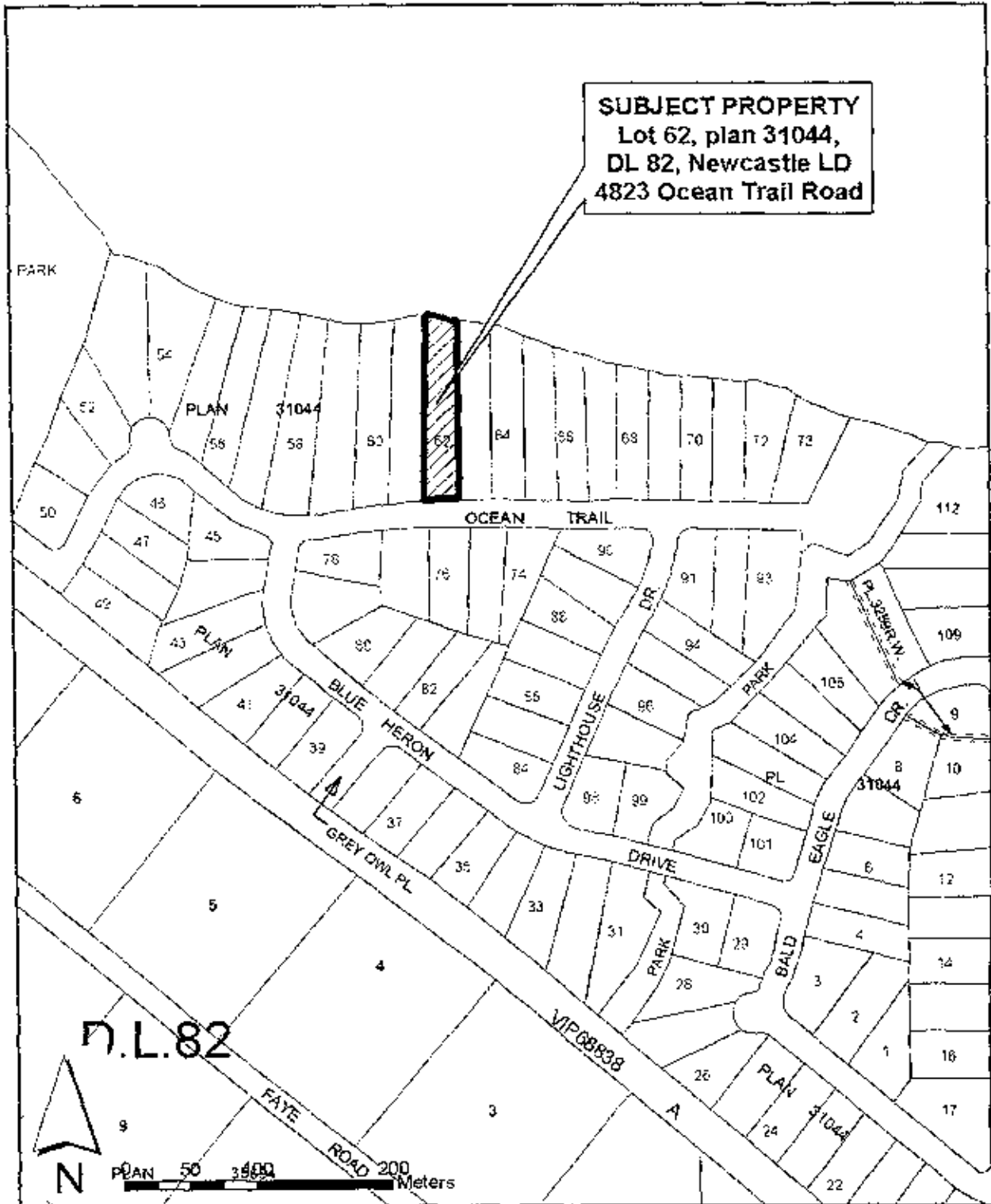


Schedule No. 3
Profile Plan
Development Permit No. 60434

(As Submitted by Applicant / Modified to Fit This Page and to Include Conditions)



Attachment No. 1
Subject Property
Development Permit No. 60434





REGIONAL DISTRICT OF NANAIMO		
JUL 20 2004		
CHAIR	EMCRS	
CAO	EMDS	
SECRETARY	EMES	

MEMORANDUM

TO: Robert Lapham
General Manager, Development Services

DATE: July 20, 2004

FROM: Blaine Russell
Planner

FILE: 3060 30 60435

SUBJECT: Development Permit Application No. 60435
Windsor Enterprises Inc. (DBA: Millway Market) - Anderson Greenplan
Electoral Area 'A' - 1594 & 1596 MacMillan Road

PURPOSE

To consider a development permit application with a variance to allow for the construction and siting of a new gas pump canopy and to allow for exterior changes to the existing main building within the Cedar Village & Cedar Commercial/Industrial Properties Development Permit Area. In addition, this application will seek to legalize the siting of the existing main building, number of parking spaces, number size dimensions and location of signage and landscaping requirements.

BACKGROUND

The subject properties, legally described as Lot A, Plan 46766 and Lot 3, Plan 11369 both of Section 17, Range 1, Cedar District, are located at 1594 & 1596 MacMillan Road in Electoral Area 'A' (see Attachment No. 1 for location).

The subject properties are both zoned Commercial 2 (CM2) and within Subdivision District 'M' pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987".

Lot A is 1,152m² and Lot 3 is 1,009 m². Uses on Lot A include retail store, gas bar, and residential use whereas Lot 3 is used for parking and as a propane filling station. Existing uses exceed site area requirements of the CM2 for properties with community water and septic disposal. An application was made to the Board of Variance (BOV) to appeal the non-conforming uses.

Surrounding land uses include Residential 2 (RS2) zoned parcels to the North and East, Holden Corso Road to the South and MacMillan Road to the West. Located across Holden Corso Road is the Cedar Secondary School and across MacMillan Road are vacant RS2 zoned parcels.

The subject properties are designated within the Cedar Village & Cedar Commercial/Industrial Properties Development Permit Area No. 3 pursuant to "Regional District of Nanaimo Electoral Area 'A' Official Community Plan Bylaw No. 1240, 2001". This Development Permit Area was established to address the form and character of commercial and industrial properties in and surrounding the Cedar Village area. Therefore, as the applicant is proposing construction within the development permit area, a development permit is required (see Schedule No. 2 for proposed site plan).

Proposed Development:

The applicant is proposing to:

- Construct a gas pump canopy
- Incorporate new signage into the pump canopy
- Remove mural sign
- Update main building façade
- Legalize existing signage, parking, and landscaping

Proposed Variances

In addition, the applicant is also requesting a number of variances concerning setbacks for the proposed canopy and existing main building as well as variances to recognize existing and proposed signage, parking and landscaping. The requested variances are outlined in *Schedule No. 4* and may be considered with the development permit application.

ALTERNATIVES

1. To approve the request for a development permit with variances subject to the conditions outlined in Schedules No. 1, 2 and 3.
2. To not approve the request for a development permit.

DEVELOPMENT IMPLICATIONS

Pursuant to Bylaw No. 500, section 3.1.6 - where a parcel exists prior to the effective date of this Bylaw and the site area of the parcel does not conform to the provisions of this bylaw, such parcel may be used for one permitted use in the applicable zone. The site area requirements for the gas bar and retail store is 1,600 m² for each use; however Lot A is only 1,152 m². Pursuant to Section 9.11.5 – **Non-conforming Uses and Siting of the Local Government Act (Community Charter)**, the Board of Variance (BOV) has the authority to vary non-conforming uses, an authority the Regional Board does not. As a result, the BOV granted a relaxation (BOV04-19) on July 14, 2004 to allow the expansion of the non-conforming uses on Lot 'A', in this case the proposed gas pump canopy.

Signs

There is a total of 7 existing and proposed signs on Lot A:

- Two existing illuminated freestanding signs are located in close proximity to the intersection of MacMillan and Holden Corso Roads, one on each lot.
- One existing illuminated awning sign located on the Northeast corner of the main building.
- One existing fascia sign located on MacMillan Road face of the main building. This sign is proposed to be reduced in size as part of the remodeling of Millway Market.
- Four new canopy signs are proposed to be incorporated within the gas pump canopy. Consisting of an internally illuminated 0.9144 metre high band. The illuminated band is proposed to be in the oil company's colours and to contain the franchise insignia.

As a result, the existing and proposed signs exceed the number and dimensions permitted pursuant to RDN Sign Bylaw No. 993 and the applicant is requesting to vary this bylaw. In addition, as the two freestanding signs do not meet the setbacks pursuant to Bylaw No. 500, variances to this bylaw are also being requested (*see Schedule No. 4 for proposed variances*). The higher level of signage on this site is in

keeping with the historic use of the property for commercial activities and the location of the properties within a Commercial zone and Form and Character Development Permit Area.

Parking

Due to location of the buildings and size of lots on the subject properties, there is insufficient site area to provide the required number of parking spaces. Presently there are 9 of the required 30 parking spaces; of which 6 are located on Lot 3. The applicant does have 1 loading bay as required pursuant to RDN Bylaw No. 500, 1987, however, the loading area does not meet Bylaw No. 500 aisle and setback requirements. Therefore, the applicant is requesting a relaxation to RDN Bylaw No. 500, 1987 parking and loading requirements, including a relaxation to aisle dimensions, setbacks, and the Disability Designated space (*see Schedule No. 4 for proposed variances*). It should be noted that all areas of vehicular access, including all parking stalls are comprised of a hard durable surface.

Siting

The Millway Market main building on Lot A is located a minimum of 0.79m from the other lot line, adjacent to Holden Corso Road and is located 1.42 m from the other lot line, the eastern most lot line, adjacent to residentially zoned properties (*see Schedule No. 4 for proposed variances*). Therefore, the applicant is requesting a relaxation to RDN Bylaw No. 500, 1987.

The propane tank located on Lot 3 is sited a minimum of 3.03 m from MacMillan Road and 4.36 m from the other lot line, the most northerly lot line, adjacent to residentially zoned properties (*see Schedule No. 4 for proposed variances*). Therefore, the applicant is requesting a relaxation to RDN Bylaw No. 500, 1987.

The Ministry of Transportation (MOT) has issued a Permit to Reduce Building Setback (Less than 4.5 metres from property line fronting a Highway), subject to conditions, for the proposed gas pump canopy and the existing Millway Market. As the MOT permit does not address the propane tank on Lot 3 and the existing freestanding sign on Lot 3 encroaching into the public right of way, staff recommends that the applicant obtain additional authorization.

In addition, the applicant has applied for an updated Access Permit from MOT due to the increase in density of the uses on the properties and has applied to address the encroaching sign. It is recommended that as a condition of this permit that the applicant fulfills all MOT requirements.

Landscaping

The subject properties were originally developed prior to the introduction of landscaping requirements. Therefore, at that time, no landscaping was provided on the subject properties. Due to spatial limitation on the properties it is a challenge to allocate any additional space for landscape screening than what already exists. The applicant is proposing minor improvements by landscaping the Northwest corner of Lot 3 of Plan 11369 (*As shown on Schedule No. 2*). As a result, staff is of the opinion that it is not possible to fully meet the required landscape buffer provisions pursuant to RDN Bylaw No. 500, 1987, and the proposed minor landscaping improvements are adequate given the limitations.

Given the various issues on the subject properties, it is recommended that any future changes to the properties will require a zoning amendment application, new development permit application and possibly land consolidation.

ENVIRONMENTAL IMPLICATIONS

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates that there are no environmentally sensitive areas within the subject properties nor are these properties designated within the Streams, Nesting Trees, & Nanaimo River Floodplain Development Permit Area No. 5.

The subject property is a Gasoline Service Station, a Schedule 2 activity, pursuant to the Provincial *Contaminated Sites Regulations*. As the applicant is not proposing any excavation they are specifically exempted from being required to completing a Site Survey for contamination pursuant to this regulation.

PUBLIC CONSULTATION IMPLICATIONS

As part of the required public notification process pursuant to the *Local Government Act*, adjacent and nearby property owners located within 50 metres radius will receive a direct notice of the proposal and will have an opportunity to comment on the proposed variance prior to the consideration of the Board's consideration of the permit.

VOTING

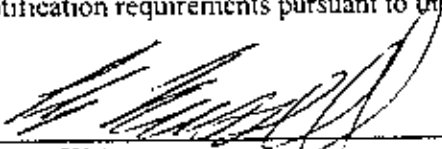
Electoral Area Directors – one vote, except Electoral Area 'B'.


SUMMARY

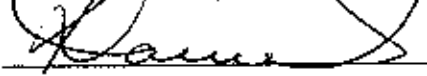
This is an application for a development permit with variances to allow for the construction and siting of a new gas pump canopy and to allow for exterior changes to the existing main building within the Cedar Village & Cedar Commercial/Industrial Properties Development Permit Area. In addition, this application seeks to legalize, the siting of the existing main building; number of parking spaces and loading area; number, size, dimensions, and siting of signage; and landscaping requirements on the subject properties. Given the longstanding commercial history of the property and applicants proposed improvements, staff supports Alternative No. 1 to approve this development permit with variances subject to the conditions outlined in Schedule Nos. 1, 2 and 3 and the notification requirements pursuant to the *Local Government Act*.

RECOMMENDATION

That Development Permit Application No. 60435 submitted by Jack Anderson of Anderson Greenplan Ltd. on behalf of Windsor Enterprises Inc. (DBA: Millway Market) with variances for the properties legally described as Lot A, Section 17, Range 1, Cedar District, Plan 46766 and Lot 3, Section 17, Range 1, Cedar District, Plan 11369, be approved subject to Schedules No. 1, 2 and 3 of the staff report and the notification requirements pursuant to the *Local Government Act*.


Report Writer


General Manager Concurrence


CAO Concurrence

COMMENTS:

Schedule No. 1 (Part 1 of 2)
Conditions of Approval
Development Permit Application No. 60435

The following conditions are to be completed as part of Development Permit No. 60435:

Building Development

1. Any significant future changes to the properties will require a zoning amendment application, and possibly land consolidation.
2. The gas pump canopy shall be sited as shown on Schedule No. 2.
3. The construction of the gas pump canopy and main building façade shall be in general compliance with that shown Schedule No. 3.
4. Prior to construction, the applicant shall obtain a Building Permit pursuant to the requirements of the Chief Building Inspector.

Survey

5. A survey prepared by *British Columbia Land Surveyor* (BCLS) to the satisfaction of the Regional District of Nanaimo shall be required upon completion of the gas station canopy if deemed necessary by the Chief Building Inspector. If a survey is deemed necessary an official copy of this survey must be provided to the Regional District of Nanaimo; This survey should include indication of the outermost part of the building such as the overhang, gutters etc.;

Engineering

6. All structures on the subject property are to be certified by a Professional Engineer and /or Professional Geotechnical Engineer if deemed necessary by the Chief Building Inspector and that any subsequent report prepared be prepared to the satisfaction of the Regional District of Nanaimo.

Signage

7. There shall be no more than 7 signs on Lot A, Section 17, Range 1, Cedar District, Plan 46766 one of which may be a free standing sign sited as shown on Schedule No. 2.
8. There shall be no more than 1 freestanding sign on Lot 3, Section 17, Range 1, Cedar District, Plan 11369 sited as shown on Schedule No. 2.
9. All signs shall be limited to the maximums as specified by the variances in this permit except that the awning sign on the Northeast side of the main building shall be limited in size to be no more than 1.0 metre high and 3.66 metres wide with a surface area of no more than 3.66 m².

Schedule No. 1 (Part 2 of 2)
Conditions of Approval
Development Permit Application No. 60435

Off-Street Parking and Loading Areas

10. There shall be a minimum of 9 off-street parking spaces and 1 loading bay as approved by the variance in this permit and located as per Schedule No. 2 with dimensions and markings pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987".
11. The six parking spaces located on Lot 3, Plan 11369 shall be maintained to service the uses on the Lot A, Plan 46766.

Ministry of Transportation

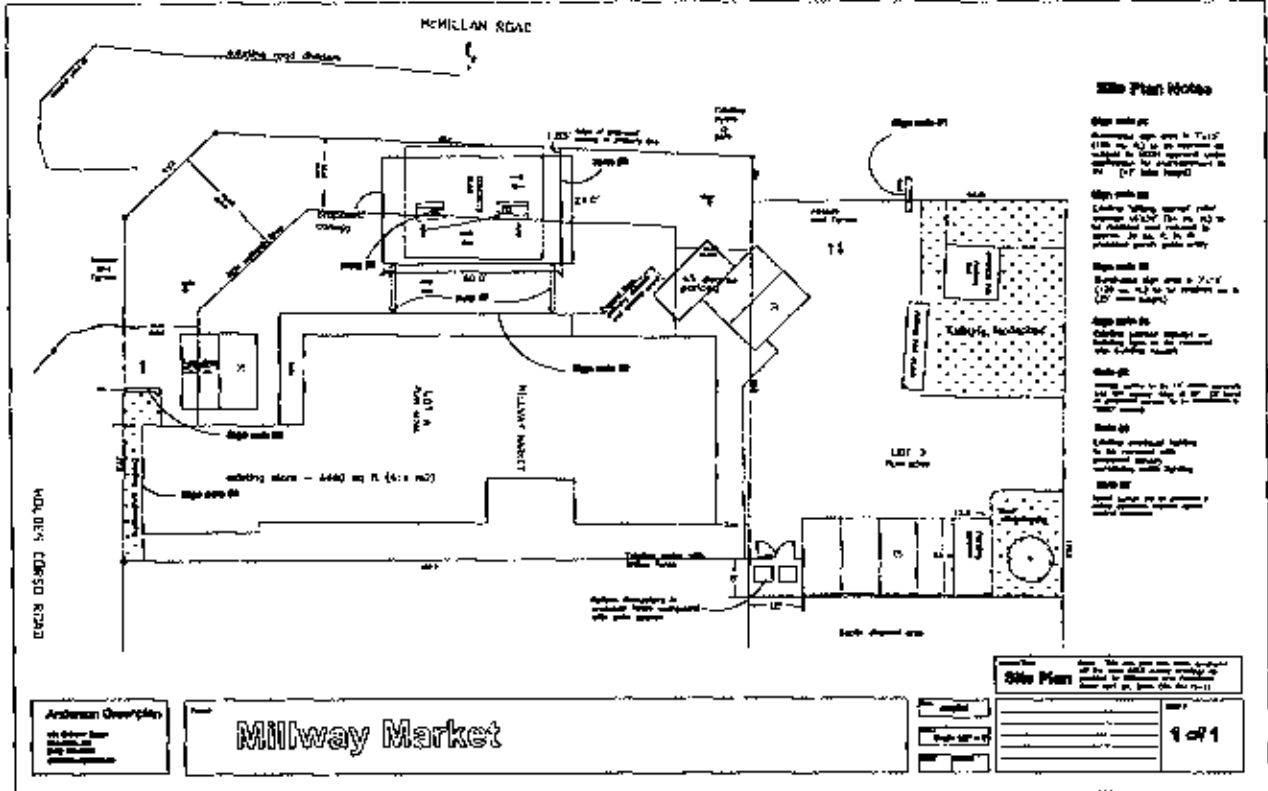
12. The applicant is to comply with the conditions of Ministry of Transportation Permit 01 002 25862 to Reduce Building Setback (Less than 4.5 metres from property line fronting a Highway).
13. The applicant is to apply for and obtain Permission to Construct Works Within Highway Right-of-Way for the Purpose Of Providing Access To A Highway from the Ministry of Transportation and shall comply with the conditions of approval.
14. The applicant is to apply for and obtain Permission to Construct Signs Under Section 214 of the "Motor Vehicle Act", R.S.B.C. 1996 from the Ministry of Transportation and shall comply with the conditions of approval.
15. The applicant is to apply for a permit to Reduce Building Setback (Less than 4.5 metres from property line fronting a Highway) for the existing propane tank.

Landscaping

16. That existing and proposed landscaping shall be permanently maintained in good condition with individual plants to be well developed, healthy and vigorous.
17. The issuance of this permit in no way precludes future development permits from requiring additional landscaping.
18. The issuance of this permit in no way precludes future development permits from requiring additional landscaping nor does it preclude future developments from being required to meet "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" landscaping requirements.

Schedule No. 2 (Part 1 of 3)
Site Plan
Development Permit Application No. 60435

(As Submitted by Applicant / Modified to Fit This Page and to Include Conditions)



Site Plan Notes

- Site note #1: Maximum site area is 7,117 (100% of 7,117) as per approved site plan. No other conditions apply.
- Site note #2: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #3: Maximum site area is 7,117 (100% of 7,117) as per approved site plan. No other conditions apply.
- Site note #4: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #5: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #6: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #7: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #8: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #9: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #10: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #11: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #12: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #13: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.
- Site note #14: Loading dock area is 1,100 sq. ft. (15% of 7,117) as per approved site plan. No other conditions apply.

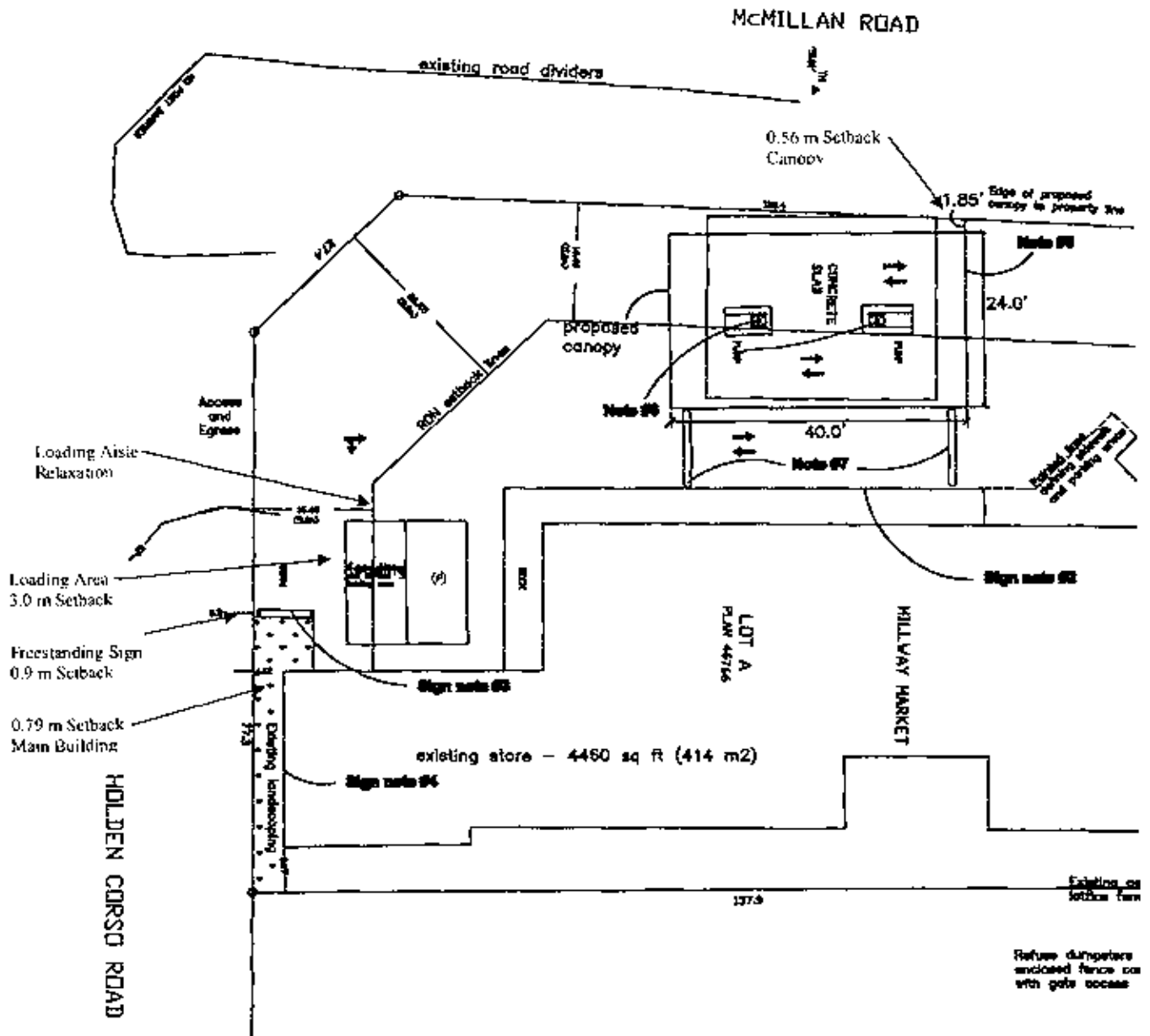
Anderson Development
1234 Main St
Vancouver, BC
V6A 1A1

Millway Market

Project Name	Millway Market
Project No.	60435
Scale	As Shown
Date	July 20, 2004
Sheet No.	1 of 1

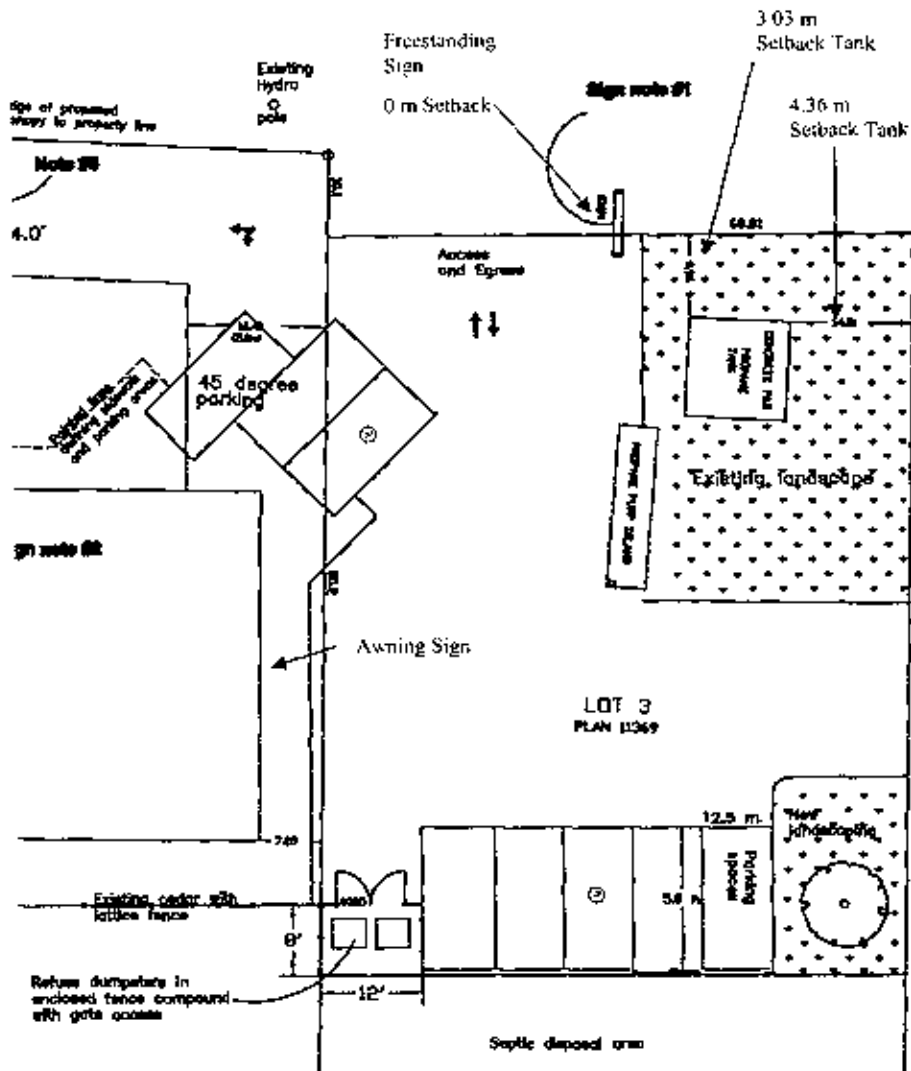
Schedule No. 2 (Part 2 of 3)
Site Plan
Development Permit Application No. 60435

(As Submitted by Applicant / Modified to Fit This Page and to Include Conditions)



Schedule No. 2 (Part 3 of 3)
 Site Plan
 Development Permit Application No. 60435

(As Submitted by Applicant / Modified to Fit This Page and to Include Conditions)



Site Plan Notes

Sign note #1
 Illuminated sign area is 7'x15' (105 sq. ft.) to be retained as subject to WOTM approval under application for encroachment to RW (17' total height)

Sign note #2
 Existing "Milway Market" raster signage 18'x36" (64 sq. ft.) to be replaced and reduced to approx. 36 sq. ft. to fit proposed porch gable entry

Sign note #3
 Illuminated sign area is 7'x18' (126 sq. ft.) to be retained as is (25' total height)

Sign note #4
 Existing pointed signage on building face to be removed with building facade

Note #5
 canopy soffits to be 14" above concrete pad with canopy ridge at 25' (3' band of proposed canopy to be finished in "dark" color)

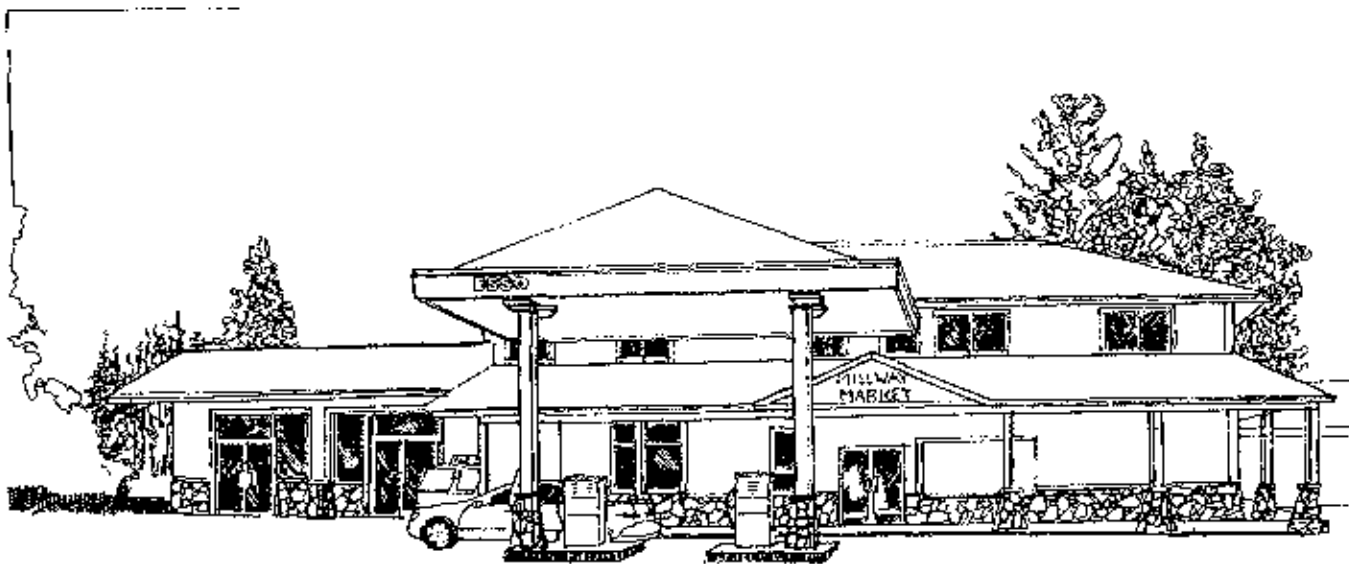
Note #6
 Existing overhead lighting to be removed with proposed canopy containing awning lighting

Note #7
 Speed bumps will be provided if safety concerns warrant speed control measures

Site Plan
 Note: This site plan has been developed off the base ICLS survey drawings as provided by Wilkinson and Associates dated April 20, 2004 (file 04115-1)

Schedule No. 3
Profile Plan
Development Permit Application No. 60435

(As Submitted by Applicant / Modified to Fit This Page and to Include Conditions)



**Schedule No. 4
Requested Variances
Development Permit Application No. 60435**

- A. With respect subject property legally described as Lot A, Section 17, Range 1, Cedar District, Plan 46766, the following variances are proposed to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987":

Freestanding Sign adjacent Holden Corso Road:

1. **Section 3.4.12 – Other Lot Line Setback Requirement** - The minimum setback requirement from the other lot line, in this case the lot line adjacent Holden Corso Road, is proposed to be varied from 5.0 metres to 0.09 metres in order to accommodate the existing freestanding sign.

Existing Main Building:

2. **Section 3.4.12 – Other Lot Line Setback Requirement** – The minimum setback requirement from the other lot line, in this case the lot line adjacent Holden Corso Road, is proposed to be varied from 5.0 metres to 0.79 metres in order to accommodate the existing main building.
3. **Section 3.4.12 – Other Lot Line Setback Requirement** – The minimum setback requirement from the other lot line, in this case the lot line adjacent Lot 1, Section 17, Range 1, Cedar District, Plan 11369, is proposed to be varied from 5.0 metres to 1.42 metres in order to accommodate the sting of the existing main building.

Proposed Gas Pump Canopy:

4. **Section 3.4.12 – Other Lot Line Setback Requirement** – The minimum setback requirement from the other lot line, in this case the lot line adjacent MacMillan Road is proposed to be varied from 5.0 metres to 0.56 metres in order to accommodate the sting of the proposed gas pump canopy.

Parking and Loading Stalls:

5. **Section 3.4.12 – Other Lot Line Setback Requirement** – The minimum setback requirement from the other lot line, in this case the lot line adjacent Holden Corso Road is proposed to be varied from 5.0 metres to 3.0 metres in order to accommodate the siting of an existing loading area.
6. **Schedule '3B' Table 1 – Required Number of Off-Street Parking Spaces** - the minimum number of off-street parking spaces be relaxed from 30 spaces to 9 spaces in total (3 spaces located on Lot A and 6 spaced locate on Lot 3) in order to legalize the existing off-street parking subject to conditions of approval pursuant to Schedule No. 1 forming part of this permit.
7. **Schedule '3B' Table 2 – Stall and Aisle Dimensions** - the minimum aisle dimensions be relaxed from that which is required in Table 2, of Bylaw No. 500, to no aisles being required for the loading area and parking space adjacent to Holden Corso Road.
8. **Schedule '3B' Table 2 – Stall and Aisle Dimensions** - the minimum stall dimensions be relaxed from that which is required in Table 2, of Bylaw No. 500, to that as shown on Schedule No. 2 for the loading area only.
9. **Schedule '3B' Section 1.2 – Disability Spaces** – the minimum number of disability spaces be relaxed from 1 to 0 spaces in order to legalize the existing parking.

Landscaping

10. **Schedule '3F' - Landscaping Regulations and Standards** - that no landscaping be required as part of this permit on Lot A, Plan 46766 and Lot 3, Plan 11369 both of Section 17, Range 1, Cedar District except that which is shown as proposed on Schedule No 2.

- B. With respect subject property legally described as Lot A, Section 17, Range 1, Cedar District, Plan 46766, the following variances are proposed to "Regional District of Nanaimo Sign Bylaw No. 993, 1995":

Number of Signs

1. **Section 5(a)** to be varied from a maximum of 2 signs to a maximum of 7 signs.

Freestanding Sign

2. **Section 5 (c)** to be varied from 11m² in surface area and a maximum height not exceeding 4 metres to maximum surface area of 23.42 m² and a maximum height not exceeding of 7.62 metres in order to legalize an existing freestanding sign located adjacent to Holden Corson Road as shown of Schedule No. 2 as Sign note #3.

Proposed Redesigned Fascia Sign:

3. **Section 5 (c)** to be varied from a maximum width not exceeding 4 metres to a maximum width not exceeding 10.98 metres in order to permit a fascia sign proposed to be located on the façade of the main building as shown of Schedule No. 2 as Sign note #2 with a general appearance as shown of Schedule No. 3.

Proposed Canopy Signs:

4. **Section 5 (c)** to be varied from a maximum width not exceeding 4 metres to a maximum width not exceeding 7.32 metres in order to permit a canopy sign proposed to be located on the North side of the gas pump canopy as shown of Schedule No. 2 as Note #5 with a general appearance as shown of Schedule No. 3.
 5. **Section 5 (c)** to be varied from a maximum width not exceeding 4 metres to a maximum width not exceeding 7.32 metres in order to permit a canopy sign proposed to be located on the South side of the gas pump canopy as shown of Schedule No. 2 as Note #5 with a general appearance as shown of Schedule No. 3.
 6. **Section 5 (c)** to be varied from a maximum width not exceeding 4 metres to a maximum width not exceeding 12.20 metres in order to permit a canopy sign proposed to be located on the East side of the gas pump canopy as shown of Schedule No. 2 as Note #5 with a general appearance as shown of Schedule No. 3.
 7. **Section 5 (c)** to be varied from a maximum width not exceeding 4 metres to a maximum width not exceeding 12.20 metres in order to permit a canopy sign proposed to be located on the West side of the gas pump canopy as shown of Schedule No. 2 as Note #5 with a general appearance as shown of Schedule No. 3.
- C. With respect subject property legally described as Lot 3, Section 17, Range 1, Cedar District, Plan 11369, the following variances are proposed to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987":

Existing Propane Tank:

1. **Section 3.4.12 – Front Lot Line Setback Requirement** – The minimum setback requirement from the front lot line, in this case the lot line adjacent MacMillan Road, is proposed to be varied from 8.0 metres to 3.03 metres distance in order to accommodate the existing propane tank located on the concrete pad.

2. **Section 3.4.12 – Other Lot Line Setback Requirement** – The minimum setback requirement from the other lot line, in this case the lot line adjacent Lot 4, Section 17, Range 1, Cedar District, Plan 11369, is proposed to be varied from 5.0 metres to 4.36 metres distance in order to accommodate the existing propane tank located on the concrete pad.

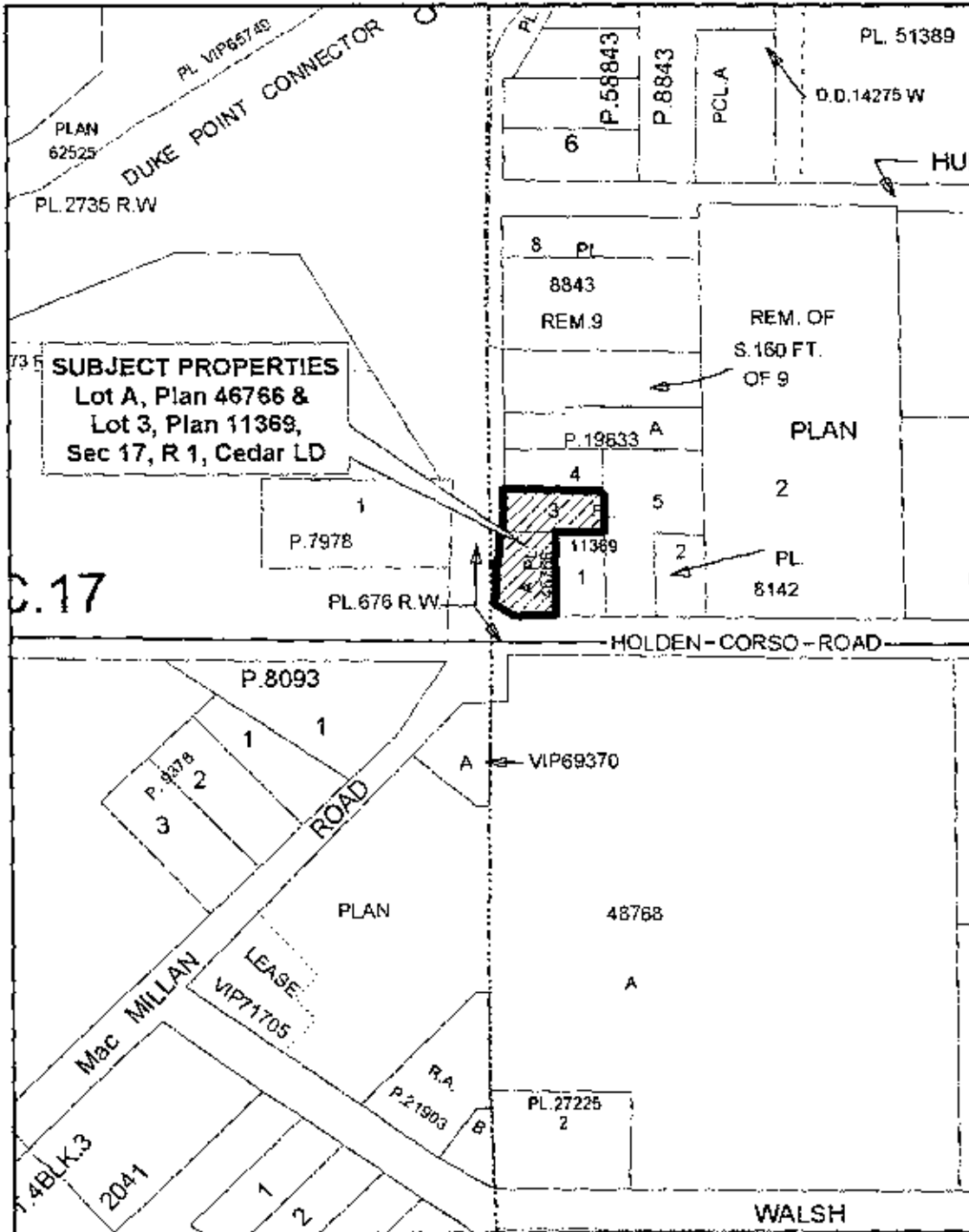
Freestanding Sign, MacMillan Road right-of-way (Shown as Sign note #1 on Schedule No. 2):

3. **Section 3.4.12 – Front Lot Line Setback Requirement** – The minimum setback requirement from the front lot line for is proposed to be varied from 8.0 metres to 0.0 metres distance in order to accommodate the existing freestanding sign within the MacMillan Road right-of-way.
- D. With respect subject property legally described as Lot 3, Section 17, Range 1, Cedar District, Plan 11369, the following variances are proposed to "Regional District of Nanaimo Sign Bylaw No. 993, 1995":

Freestanding Sign, MacMillan Road right-of-way (Shown as Sign note #1 on Schedule No. 2):

1. **Section 5 (c)** to be varied from 11m² in surface area and maximum height not exceeding 4 metres to permit a freestanding sign with a maximum surface area of 19.509 m² and a maximum height of 5.1816 metres.

Attachment No. 1
Subject Property Map



BC35 MAP SHEET NO. 92G0112 I



REGIONAL DISTRICT OF NANAIMO			
JUL 19 2004			
CHAIR		GMCFS	
CAO		GMS	
SECRETARY		GMS	
		EAAP	✓

MEMORANDUM

TO: Robert Lapham
General Manager, Development Services

DATE: July 16, 2004

FROM: Keeva Kehler
Planner

FILE: 3060 30 60436

SUBJECT: Development Permit Application DP 60436 – B & W Land Corporation
St. Andrew's Lane (Phase 11)
Electoral Area 'G', Robertson Boulevard

PURPOSE

To consider an application for a development permit, with variances, for Phase 11 of a multi-family residential phased strata complex currently being developed in the French Creek area of Electoral Area 'G'.

BACKGROUND

The subject property, legally described as Lot C District Lots 29 and 126 Nanoose District Plan 49145 Except Part in Plan VIP56481 and Strata Plan VIS 2920 (Phases 1 to 9), is located at the end of Robertson Boulevard adjacent to Morningstar Golf Course within Electoral Area 'G' (see Attachment '1' for location). The property is zoned Residential 5 (RS5) and is within Subdivision District 'Q' (development portion) pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987.

Development Permit No. 9713 was issued approving the development of the site for a 41-unit multiple residential development including variances to Bylaw No. 500, 1987. Phases 1 to 9 are complete including a total of 26 units. The Board amended the proposed layout for Phase 10 in June 2004, permitting a revision to the number of units from three to two. Various elements involving the site layout such as location of buildings, access route, and landscaping have been secured under Development Permit No. 9713 and will remain applicable to this phase of the development.

The applicant was informed that any proposed changes to the layout for Phase 11 would require Board approval. Initially, this Phase was proposed to include two duplex units. The applicant now wishes to construct one fourplex. This application includes a request to vary the minimum setback requirements approved under the previous Development Permit.

ALTERNATIVES

1. To approve the development permit as submitted with the variances subject to the conditions outlined in Schedules No. 1 and 2 and the notification procedure pursuant to the *Local Government Act*.
2. To deny the development permit as submitted.

OFFICIAL COMMUNITY PLAN IMPLICATIONS

Since the issuance of DP No. 9713, the French Creek Official Community Plan Bylaw No. 1115, 1998 (the OCP) has been adopted and designates the subject property in the French Creek Harbour Centre Development Permit Area (DPA No. 2). DPA No. 2 establishes objectives and provides guidelines for the form and character of multi-family residential developments such as this project. The original development permit application was reviewed in the context of the proposed OCP guidelines and is consistent with the current land use policies outlined in DPA No. 2. The new construction proposed in this phase of the development is also considered to be consistent with the policies outlined in DPA No. 2 as it follows the unified design theme of the earlier phases of the project.

DEVELOPMENT IMPLICATIONS

In order to provide easier and more reasonable access to the units, the developer reversed the layout of the units so that the parking and garages are facing Robertson Boulevard. This has necessitated shifting the units further back on the property to allow adequate space at the front for parking and access to each dwelling unit.

DP No. 9713 varied the setback from the property line adjacent to the eleventh fairway from 10.0 metres to 3.0 metres for Phase 11. Two of the exterior decks in the proposed fourplex will encroach into this 3.0 metre setback area. The proposed deck for Unit 125 is approximately 1.85 metres above natural grade to the top of the railing. The proposed deck for Unit 127 is approximately 2.55 metres above natural grade to the top of the railing, therefore, both of these decks are considered structures and required to meet the minimum setbacks to the lot line or obtain variance approval from the Regional Board.

As the proposed development does not meet the approved variances of DP No. 9713, this new application includes a request to vary the provisions of DP No. 9713 and Section 3.4.65 of Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500 by relaxing the minimum setback requirements for a multiple dwelling unit development from the property line adjacent to the eleventh fairway from 3.0 metres to 0.5 metres to accommodate the proposed decks for two of the units in the proposed fourplex. While this is a significant relaxation in the setback requirement the configuration of the golf course and retention of trees in this location mitigates the potential for land use conflicts.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

This is an application for a development permit for the property located at the end of Robertson Boulevard adjacent to Morningstar Golf Course within the French Creek area of Electoral Area 'G' for the purposes of modifying the site plan approved under Development Permit No. 9713. The applicant modified the original plans from two duplex units to one fourplex unit. In addition, variances to some of the dwelling units adjacent to the golf course property have been requested.

As the request is in substantial compliance with the guidelines outlined in DPA No. 2, staff recommends Alternative No. 1, to approve the development permit subject to conditions outlined in Schedule Nos. 1 and 2 and subject to notification procedures with respect to the proposed variances.

RECOMMENDATION

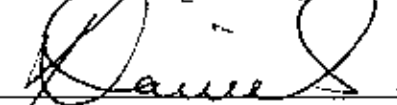
That Development Permit No. 60436, submitted by Adam Policzer on behalf of B & W Land Corp (St. Andrew's Lane) to construct a fourplex dwelling unit within the French Creek Harbour Development Permit Area (DPA No. 2) on the subject property legally described as Lot C District Lots 29 and 126 Nanoose District Plan 49145 Except Part in Plan VIP56481, be approved, subject to the conditions outlined in Schedules No. 1, 2 and 3 of the corresponding staff report and notification requirements pursuant to the *Local Government Act*.



Report Writer



General Manager Concurrence



CAO Concurrence

COMMENTS:

devsys/reports/2004/07/ju 3060 30 60436 B & W Land Corp (St. Andrew's Lane)

Schedule No. 1
Conditions of Approval
Development Permit Application No. 60436

The following sets out the conditions of approval required by this Development Permit:

1. Development Permit No. 9713

The conditions of Development Permit No. 9713 are applicable to this development, except where specifically exempted by this approval.

2. Development of the site

- a) The fourplex units shall be designed in substantial compliance with the attached Schedule No. 3.
- b) Applicant to comply with any additional conditions required by the RDN Building Inspection Department
- c) Applicant to provide written confirmation that the proposed Phase 11 will be serviced by community water.
- d) Applicant to provide written confirmation from the Ministry of Transportation that an access permit has been granted for the proposed development.

3. Landscaping requirements

- a) Areas surrounding the new construction are to landscaped to the same standard as earlier phases of the development.
- b) The area located between the driveway access and Robertson Boulevard and the residential units and Robertson Boulevard is to be landscaped to the 'Landscape Buffer Standard' as set out in Part 3, Section 3.2 of Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987.

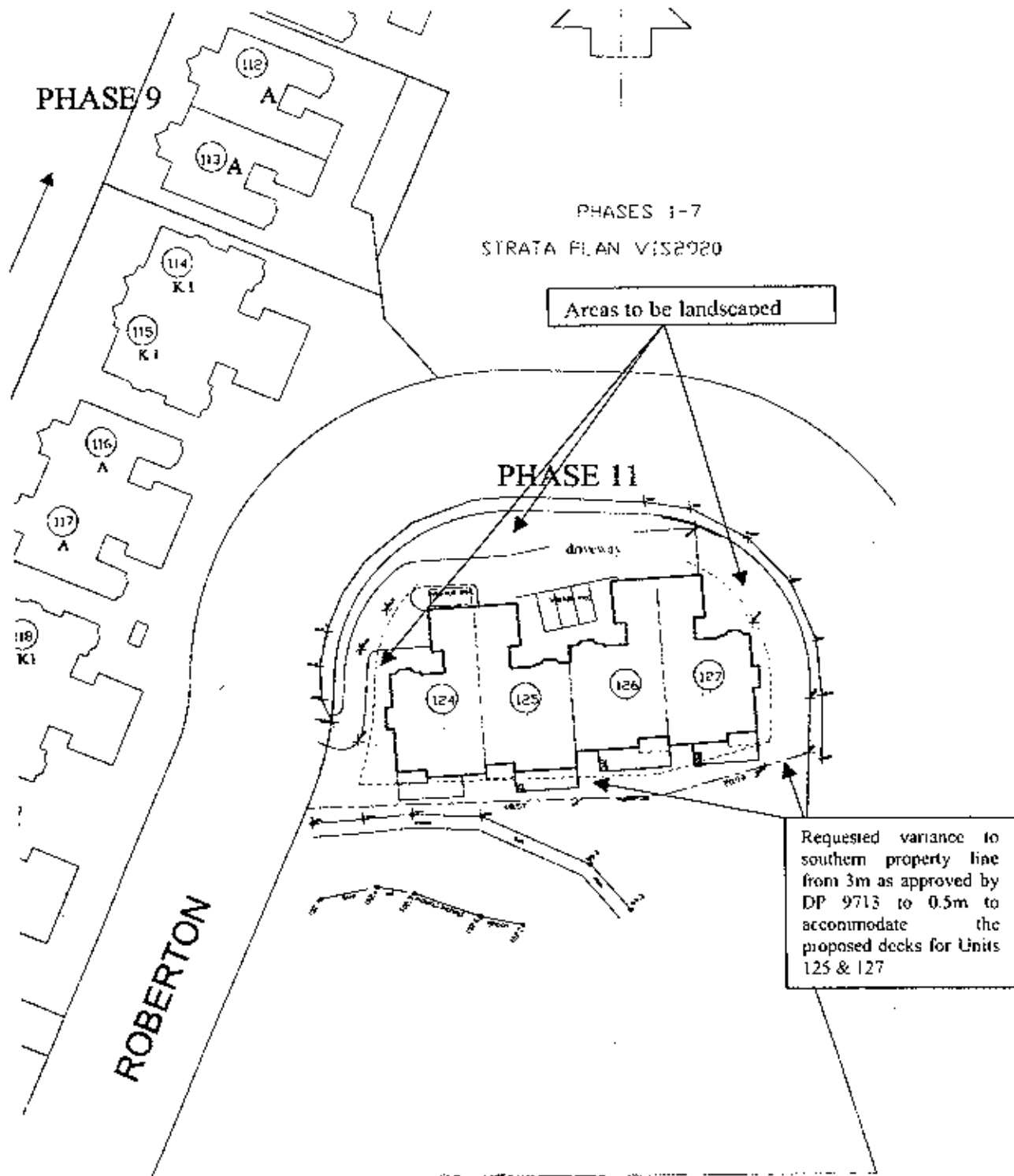
Schedule No. 2

DP No. 9713 & Bylaw No. 500, 1987- Requested Variances
Development Permit Application No. 60436

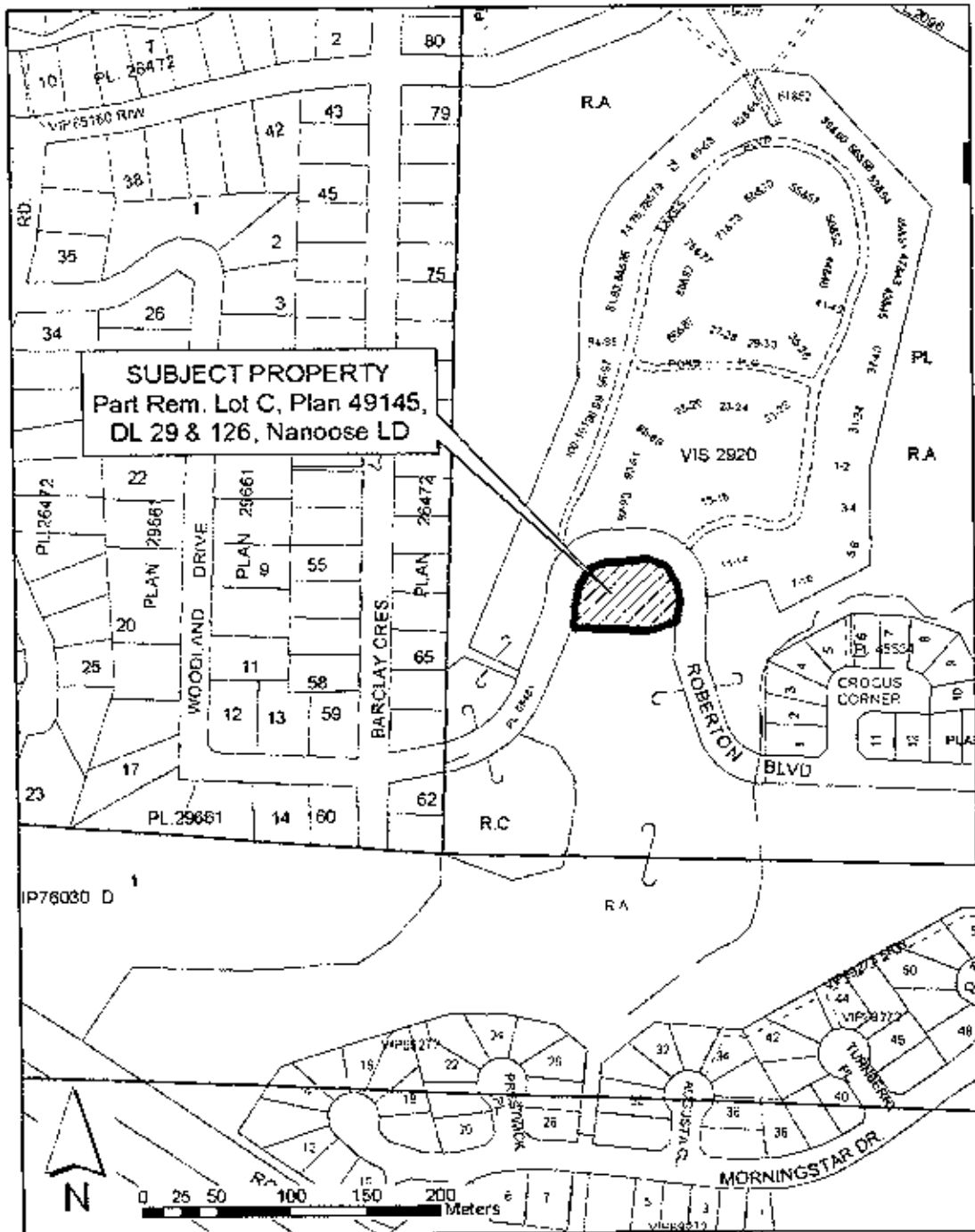
With respect to the lands, Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987 and the approved setbacks contained within Development Permit No. 9713, are proposed to be varied as follows:

1. Setbacks from the southern property line adjacent to the eleventh fairway of Morningstar Golf Course is proposed to be varied from 3.0 metres as approved by DP No. 9713 to 0.5 metres to accommodate the exterior deck of two units within a proposed fourplex.

Schedule No. 3
Proposed Site Layout
Development Permit Application No. 60436
(as submitted by applicant/reduced for convenience)



Attachment No. 1
Location of Subject Property



BCGS Map Chart No. 222-121-12



REGIONAL DISTRICT OF NANAIMO			
JUL 19 2004			
CHAS		GMES	
END		GMES	
		GMES	
		EAFC	

MEMORANDUM

TO: Robert Lapham
General Manager, Development Services

DATE: July 16, 2004

FROM: Greg Keller
Planner

FILE: 3090 30 90412

SUBJECT: Development Variance Permit Application No. 90412 – Pryke and Lo
Electoral Area 'G' – 235 Evanson Road

PURPOSE

To consider an application for a development variance permit to legalize the siting of an existing dwelling unit and to facilitate the development of a proposed addition to the dwelling on a parcel in Electoral Area 'G'.

BACKGROUND

This is an application for a development variance permit requesting the minimum setback requirement be varied in order to legalize the siting of an existing dwelling unit and to facilitate the development of a proposed addition to the dwelling on property located at 235 Evanson Road in Electoral Area 'G' and legally described as Lot 59, District Lot 9, Newcastle District, Plan 28564 (see Attachment No. 1).

The subject property, which is 999 m² in size, is currently zoned Residential 2 (RS2) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". A maximum of one dwelling unit is permitted on this parcel. Surrounding uses are similarly sized residentially zoned parcels.

The applicants are requesting a variance to relax the minimum front lot line setback requirement from 8.0 metres to 3.467 metres in order to legalize the existing dwelling unit and to facilitate the development of a proposed addition to the dwelling. The proposed addition includes the conversion of the existing carport to an enclosed garage with an overhead door with loft space above for use as office space or a guest bedroom. The applicants have also indicated that the existing carport does not facilitate enclosure due to its small size.

The subject property is moderately sloped to the northeast and is landscaped with a variety of vegetation including an evergreen hedge separating the subject property from the adjacent property to the south.

The parcel is currently served by community water and individual septic system.

ALTERNATIVES

1. To approve the development variance permit application as submitted, subject to Schedules No. 1, 2, and 3, and the notification procedures.
2. To deny the development variance permit application.

LAND USE / DEVELOPMENT IMPLICATIONS

The adjacent properties to the north and to the south of the subject parcel are corner lots and therefore have a minimum 5.0 metre setback requirement from Evanson Road as those lot lines are considered to be an 'other lot line' under Bylaw No. 500. The proposed addition may possibly impact the neighbouring property located to the south in terms of a view corridor. However, staff notes there is existing vegetation, which currently restricts the views from this neighbouring property.

The existing single dwelling unit was mistakenly sited within the front lot line setback area as shown on Schedule No. 2. This dwelling has been situated on this property for a number of years and has minimal impact on the neighbouring properties, which in fact have the lesser setback requirement from Evanson Road.

There is a small accessory building in the northeast corner of the subject parcel, which appears to be sited within the minimum required rear lot line setback. The applicants have indicated that this structure will be removed upon completion of the proposed addition, as the additional storage space will no longer be required. Therefore, staff recommends that as a condition of approval, the applicant remove the existing non-conforming accessory building.

Ministry of Transportation Implications

The Ministry of Transportation has approved relaxation of its minimum setback requirement from 4.5 metres to 3.467 metres from Evanson Road to permit the proposed addition. This approval is subject to approval of the development variance permit.

Public Consultation Implications

As part of the required public notification process, adjacent and nearby residents and property owners will have an opportunity to comment on the proposed variance prior to the Board's consideration of the permit.

Environmentally Sensitive Areas Atlas

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates that there are no environmentally sensitive areas within the subject property.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

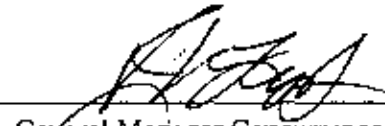
This is a request for a development variance permit to relax the front lot line setback from 8.0 metres to 3.467 metres in order to legalize the siting of an existing dwelling unit and to facilitate the construction of an addition to the dwelling unit. The Ministry of Transportation has granted a variance to the Ministry setback requirements. Due to site constraints including the placement and design of the existing dwelling unit, and as the proposal will have minimal impact on the neighbouring parcels which have a 5.0 metre setback from Evanson Road, staff recommends Alternative No. 1; to approve the development variance permit to vary the minimum setback requirement subject to Schedule Nos. 1 and 2 and the notification requirements pursuant to the *Local Government Act*.

RECOMMENDATION

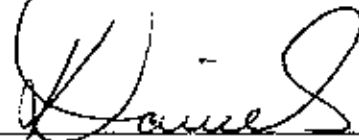
That Development Variance Permit No. 90412, submitted by Peter Pryke and Eileen Lo, to legalize the siting of an existing dwelling unit and to facilitate the development of a proposed addition to the dwelling at 235 Evanson Road by varying the minimum front lot line setback requirement from 8.0 metres to 3.467 metres, for the property legally described as Lot 59, District Lot 9, Newcastle District, Plan 28564, be approved subject to notification procedures pursuant to the *Local Government Act* and subject to the conditions outlined in Schedules No. 1, 2, and 3.



Report Writer



General Manager Concurrence



CAO Concurrence

COMMENTS:

devsvs/reports/2004/ibp/ju 3090 30 60412 Pryke & Lo.doc

**Schedule No. 1
Development Variance Permit No. 90412
Conditions of Approval**

The following conditions are to be completed as part of Development Variance Permit No. 90412:

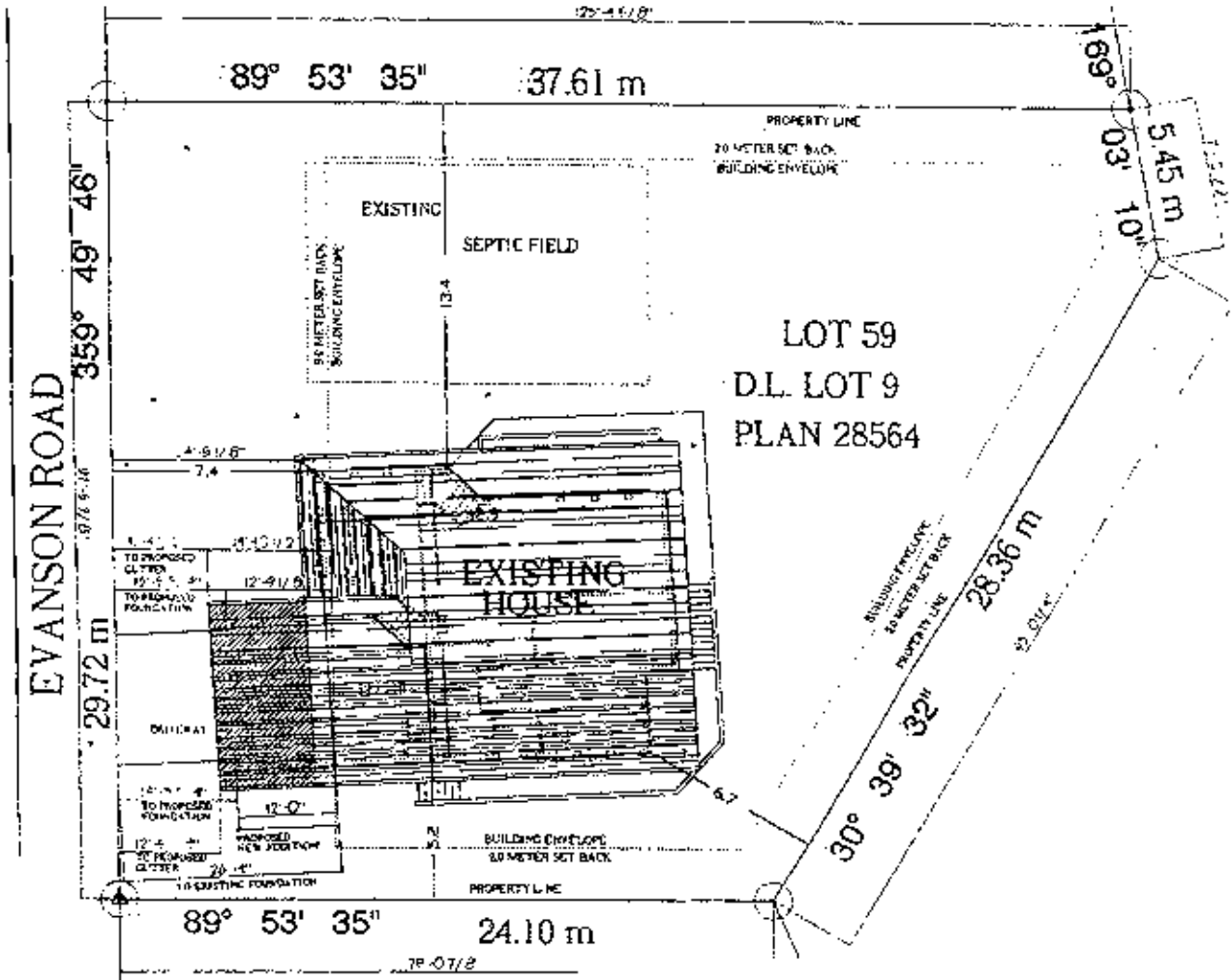
Construction

1. The subject property is to be developed in accordance with Schedules No. 1, 2 and 3 of this staff report.
2. Applicants to obtain a building permit from the Regional District of Nanaimo prior to construction.
3. A survey prepared by a registered British Columbia Land Surveyor (BCLS) shall be required at time of building permit.
4. Applicants to comply with regulations and requirements of the Ministry of Transportation correspondence dated June 24, 2004.

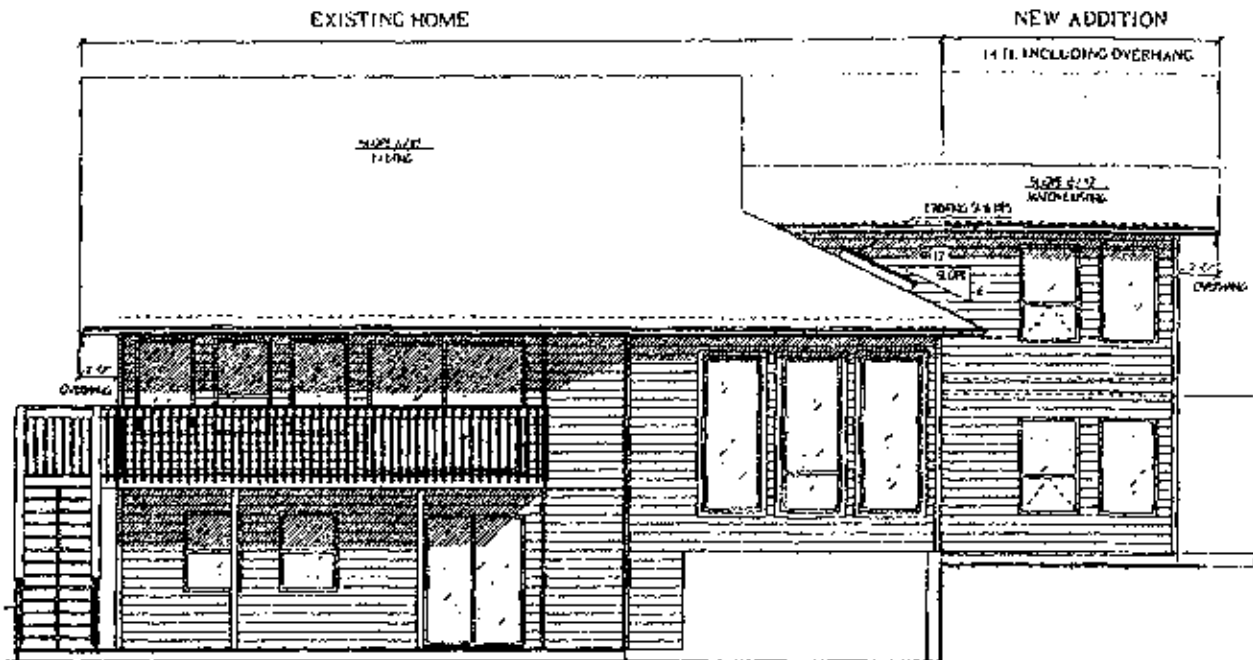
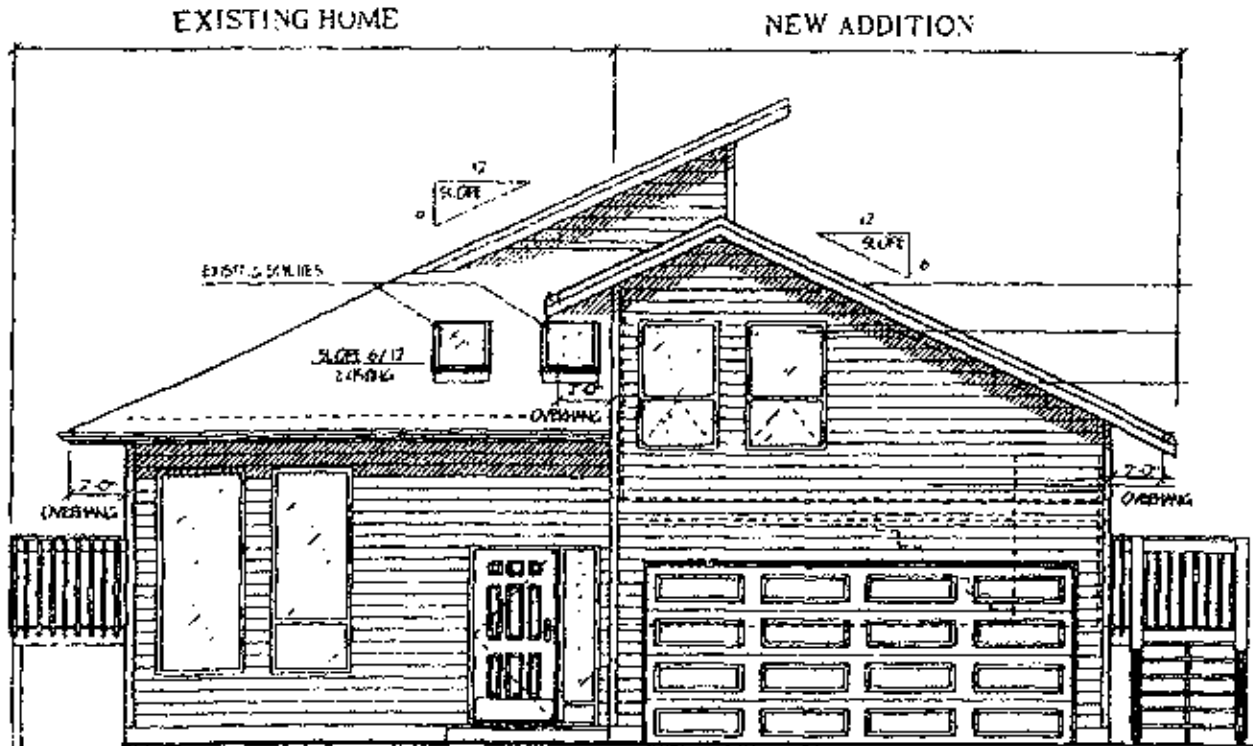
Accessory Structures

1. The existing non-conforming accessory building shall be removed at the applicants' expense and confirmation thereof shall be provided to the Regional District of Nanaimo.

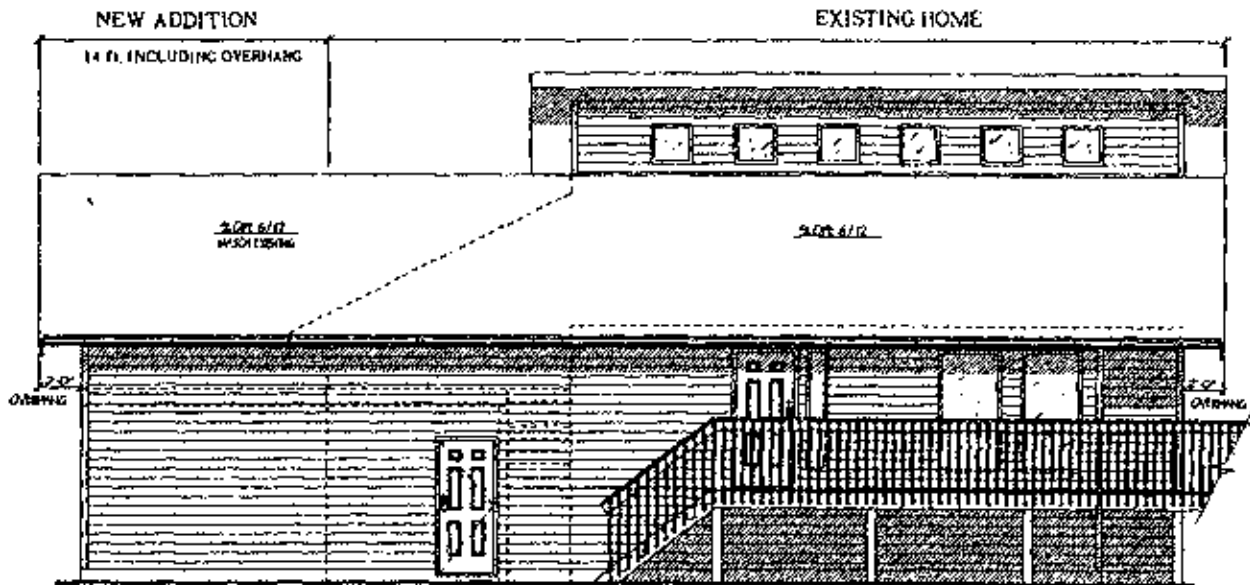
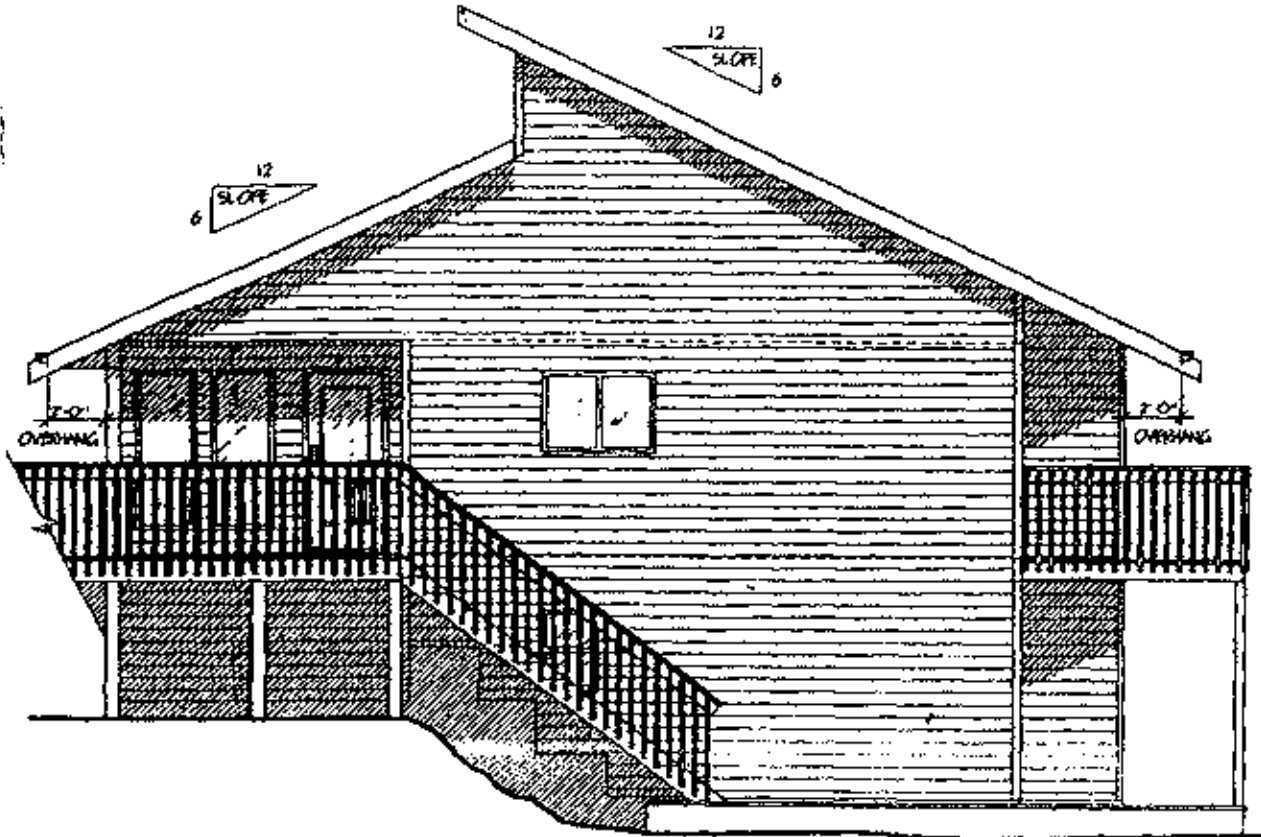
Schedule No. 2
Site Development Variance Permit No. 90412
Proposed Site Plan



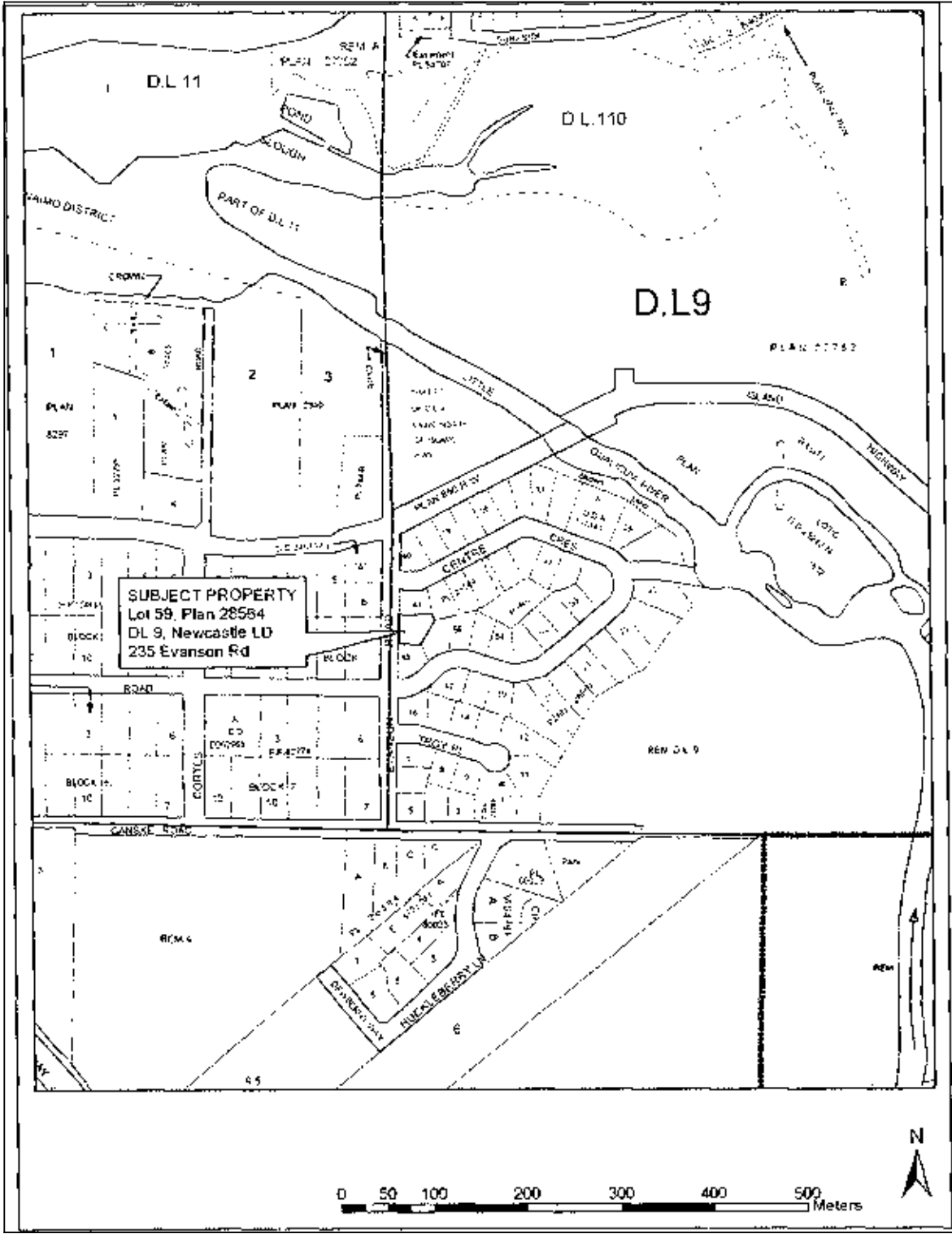
Schedule No. 3
Development Variance Permit No. 90412
Proposed Building Profile (Page 1 of 2)



Schedule No. 3
Development Variance Permit No. 90412
Proposed Building Profile (Page 2 of 2)



Attachment No. 1
Subject Property Map





REGIONAL DISTRICT OF NANAIMO	
JUL 19 2004	
CHAIR	GMCRS
CAO	GMDS
GM	GMES
EAPC	

MEMORANDUM

TO: Robert Lapham
General Manager, Development Services

DATE: July 16, 2004

FROM: Susan Cormie
Senior Planner

FILE: 3320 20 25349

SUBJECT: Request for Relaxation of the Minimum 10% Frontage Requirement
Applicant: Timberlake – Jones Engineering Ltd., on behalf of Lot G Holdings Ltd.
Electoral Area 'G' – off Lowry's Road

PURPOSE

To consider a request to relax the minimum 10% perimeter frontage requirement as part of a phased 55-lot subdivision proposal.

BACKGROUND

The applicant's agent, Timberlake-Jones Engineering Ltd., has requested that the minimum 10% perimeter frontage requirement be relaxed for 6 proposed parcels as part of a phased 55-lot subdivision proposal for the property legally described as Lot 1 District Lots 81 & 126 Nanoose District Plan VIP70880 and located off Lowry's Road within Electoral Area 'G' (see Attachment No. 1 for location of subject property).

The subject property is currently zoned Residential 1 (RS1) and is within Subdivision District 'Q' (minimum 700 m² with community water and community sewer) pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The applicant is proposing to subdivide the parent parcel into 55 lots, all of which are greater than 700 m² in size, therefore meeting the minimum parcel size requirements of Bylaw No. 500 (see Attachment No. 2 for proposed subdivision).

Breakwater Enterprises, the community water provider in the area, has confirmed that community water service is available for the proposed 55-lot subdivision. Community sewer service is available from the Regional District. With respect to storm water, the Ministry of Transportation has required that pre development flows into nearby Morningstar Creek cannot be increased as a result of this development. The applicant has provided the Ministry with a storm water management plan, which involves the use of a retention pond to be located on the adjacent golf course property, which is owned by the same company. This storm management system will be designed and constructed to meet current requirements pursuant to the RDN Floodplain Management Bylaw No. 843, 1993.

With respect to park land, the park land requirements pursuant to section 941 of the Local Government Act have been met under a previous subdivision application.

Proposed Lots 8, 9, 10, 11, 19, and 22, as shown on the plan of subdivision submitted by the applicant, do not meet the minimum 10% perimeter frontage requirement pursuant to section 944 of the Local Government Act. The requested frontages on these proposed parcels are as follows:

<i>Proposed Lot No.</i>	<i>Required Frontage</i>	<i>Proposed Frontage</i>	<i>% of Perimeter</i>
8	17.02 m	15.16 m	8.9%
9	13.36 m	12.1 m	9.0%
10	13.09 m	12.6 m	9.6%
11	13.84 m	10.0 m	7.2%
19	13.44 m	11.1 m	8.2%
22	13.54 m	11.1 m	8.1%

Therefore, as these proposed parcels do not meet the minimum 10% parcel frontage requirement, approval from the Regional Board of Directors is required.

ALTERNATIVES

1. To approve the request for relaxation of the minimum 10% frontage requirement for proposed Lots 8, 9, 10, 11, 19, and 22.
2. To deny the request for relaxation of the minimum 10% frontage requirement.

DEVELOPMENT IMPLICATIONS

The parcels proposed to have reduced frontages are located within the cul-de-sac portion of the road system. Despite the reduced frontages, due to the larger parcel sizes of proposed Lots 8, 9, 10, 11, 19, and 22, buildable site areas will be available to support the intended residential uses.

Ministry of Transportation staff has verbally indicated that the Ministry has no issues with the proposed minimum frontage relaxations.

In response to staff's concern with respect to potential land use conflicts between the existing golf course use and the proposed residential uses, the applicant is proposing to provide a tree retention / no placement of buildings or structures covenant for the proposed parcels adjacent to the golf course which may be affected by the golf course operation. As the owners of the golf course are also the owners of the subject property, and it is in the best interest of the golf course operation, the golf course management will hold and administer the covenant. The applicant will forward the covenant document to the Regional District for review prior to registration as a requirement of the subdivision approval process. In addition, the applicant has indicated that the existing vegetative buffer on the golf course adjacent to the proposed parcels will be enhanced.

Environmentally Sensitive Areas Atlas

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates that there are no environmentally sensitive areas within the area of this subdivision proposal.

VOTING

Electoral Area Directors - one vote, except Electoral Area 'B'.

SUMMARY

This is a request to relax the 10% minimum frontage provision for 6 parcels pursuant to section 944 of the *Local Government Act* as part of a 55-lot subdivision proposal. The proposed parcels that require a relaxation of the minimum 10% frontage requirement will be capable of supporting the intended residential uses permitted in the zoning provisions. Ministry of Transportation staff has indicated that they have no objection to the request for relaxation of the frontages for these parcels. With respect to the potential land use conflict between the proposed residential use and the existing golf course use, the applicant will register a section 219 covenant restricting the removal of vegetation for those parcels bordering the golf course and provide confirmation of this to the Regional District. Given that the proposed parcels will be capable of supporting the allowable residential use despite the reduced frontages and that the applicant is registering a covenant to provide a buffer between land uses, staff recommends Alternative No. 1 to approve the relaxation of the minimum 10% frontage for proposed Lots 8, 9, 10, 11, 19, and 22.

RECOMMENDATION

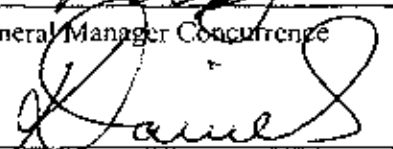
That the request from Timberlake -- Jones Engineering, on behalf of Lot G Holdings Ltd., to relax the minimum 10% perimeter frontage requirement for Proposed Lots 8, 9, 10, 11, 19, and 22 as shown on the Plan of Proposed Subdivision of Lot 1 District Lots 81 & 126 Nanoose District Plan VIP70880 be approved.



Report Writer



General Manager Concurrence

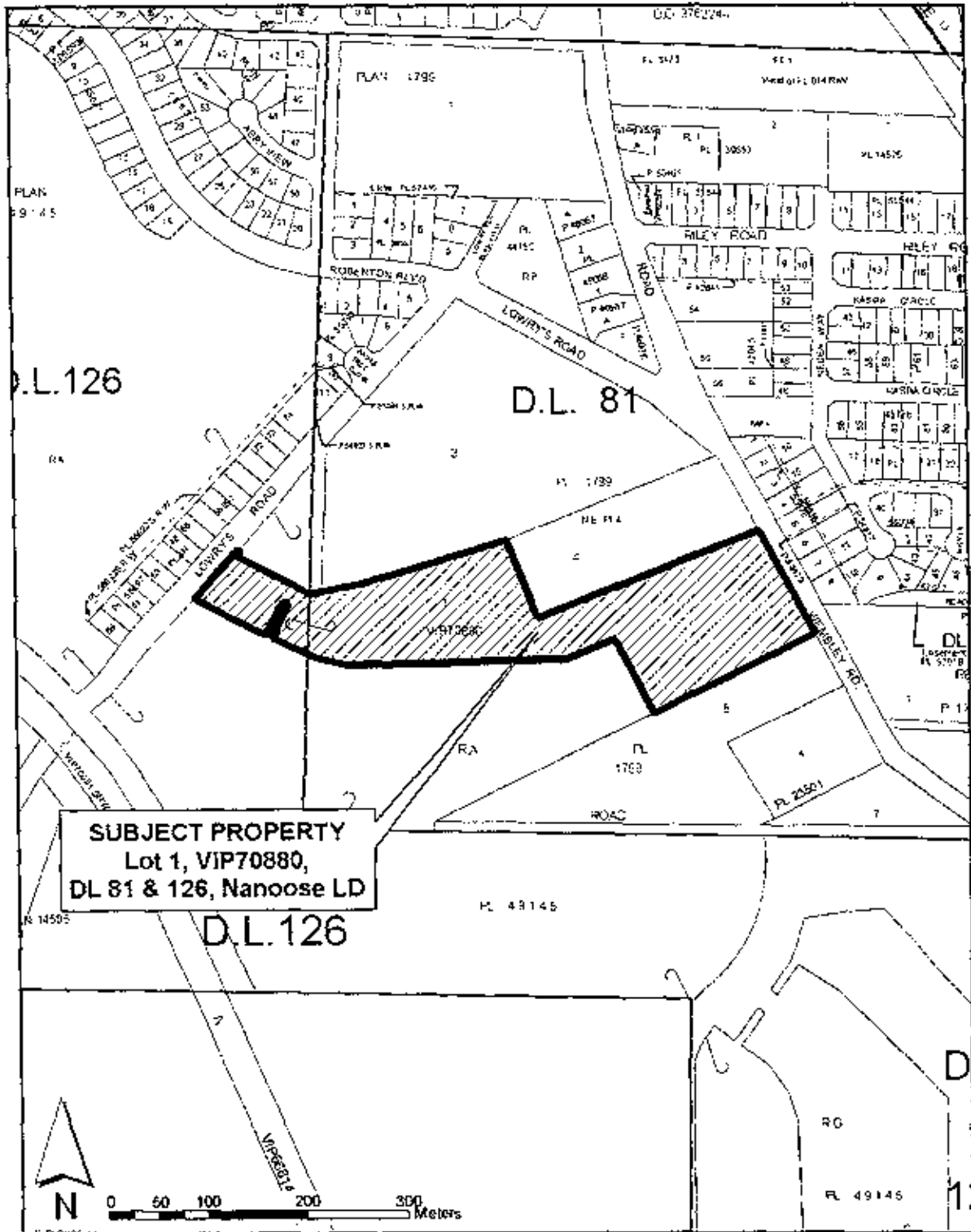


CAO Concurrence

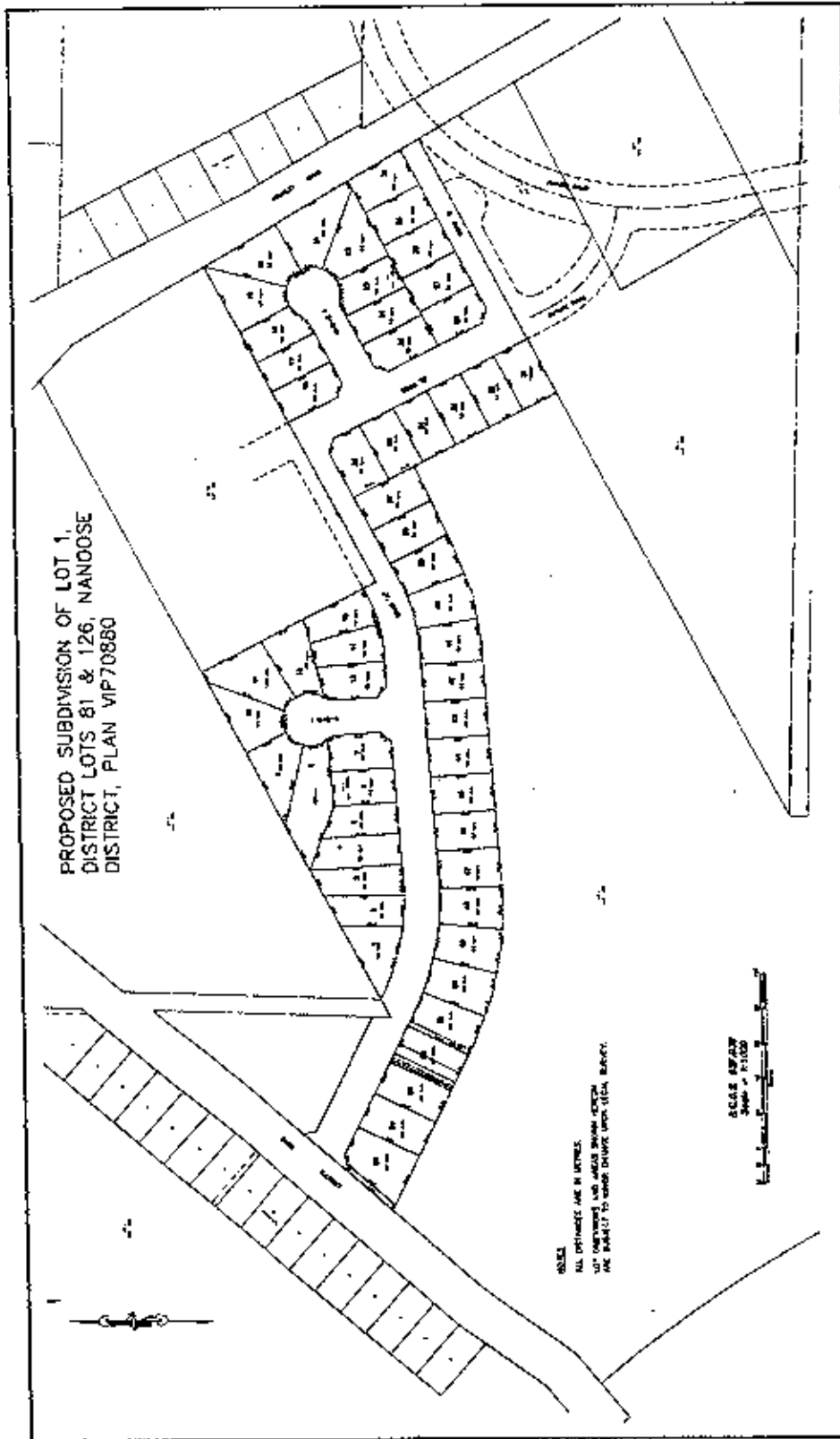
COMMENTS:

Devsrs/reports 2004/jr1ge.ju 3320 30 25349 operating engineers.doc

**Attachment No. 1
Location of Subject Property**



Attachment No. 2
 Proposed Plan of Subdivision (as submitted by applicant / reduced for convenience)



PROJECT: PROPOSED 55 LOT SUBDIVISION
 CLIENT: MORNINGSTAR LANE DEVELOPMENTS LTD.
 Drawn by: BA Date: June/04 Drawing No.: 0022-PLA
 Scale: 1:2000
 Project No.: 3320 30 25349
 Date: July 16, 2004
 Author: [Signature]

Adjacent Golf
 Course
 Property

Timberlake Jones
 engineering



REGIONAL DISTRICT OF NANAIMO		
JUL 21 2004		
CHIEF	CMO/S	
CAO	CMES	
ER/MS	CMES	
EAPC		✓

MEMORANDUM

TO: Robert Lapham
General Management, Development Services

DATE: July 20, 2004

FROM: Susan Cormie
Senior Planner

FILE: 3320 20 13571

SUBJECT: Request for Cash in-lieu-of Park Land Dedication
Lost Lake Properties Ltd. on behalf of McKIn Estates
Electoral Area 'G' – off Sumar Lane

PURPOSE

To consider a request to accept cash in-lieu-of the dedication of park land as part of a proposed 34-lot subdivision development.

BACKGROUND

The applicant, for the subdivision application concerning the properties legally described as Lots 1 and 2, District Lot 28, Nanoose District, Plan VIP61866 and located in the French Creek area of Electoral Area 'G', has requested that cash in-lieu-of park land dedication be accepted as part of a 34-lot subdivision proposal (*see Attachment No. 1 for location*).

The applicant is proposing to subdivide the parent parcels into 34 lots, all 700 m² or greater in size. The minimum parcel size requirements pursuant to Bylaw No. 500, 1987 are 700 m² with community water and sewer services and 1.0 ha where there are no community water or community sewer services available. In this case, as the parcels are proposed to be serviced by both community water and sewer service connections, the provisions pertaining to minimum parcel size will be met (*see Attachment No. 2 for proposed subdivision*).

Park Land Requirements

Where an official community plan contains policies and designations respecting the location and type of future parks, the local government may determine whether the owner must provide land or cash or a combination of both. In this case, the French Creek Official Community Plan Bylaw No. 1115, 1998 designates the subject parcel within a Park Land Evaluation Area and provides preferred park location and type criteria to be used when evaluating acquisition applications. Pursuant to the *Local Government Act*, the maximum amount of park land that the Regional District may request for this property is 5% of the total site area, in this case approximately 1380 m².

This request for providing cash in-lieu-of park land dedication was forwarded to the Electoral Area 'G' Parks Recreation and Greenspaces Advisory Committee for its review and comments.

It is noted that the applicant is in the process of applying for final approval of subdivision. The majority of the RDN requirements associated with the subdivision are now completed or near completion with the exception of the requirement for park land or cash in-lieu-of park land or a combination of both pursuant to section 941 of the *Local Government Act*. The applicant has constructed the servicing component of the development including community water and sewer services to each proposed parcel and the road works.

ALTERNATIVES

1. To accept the request for cash in-lieu-of dedication of park land as proposed by the applicant.
2. To not accept the request for cash in-lieu-of park land as proposed by the applicant and request dedication of park land or a combination of cash and park land dedication.

DEVELOPMENT IMPLICATIONS

Official Community Plan Implications

The French Creek Official Community Plan Bylaw No. 1115, 1998 supports the acquisition of park land on these properties.

Electoral Area 'G' Parks Recreation and Greenspaces Advisory Committee Implications

The request for cash in-lieu-of park land was forwarded to the Electoral Area 'G' Parks Recreation and Greenspaces Advisory Committee. The Advisory Committee recommended that park land be given instead of cash. The Advisory Committee also requested that it be able to review future proposals put forward by the applicant.

Following the input from the Electoral Area 'G' Parks Recreation and Greenspaces Advisory Committee, staff has met with the applicant and/or his agents on a number of occasions to discuss and request that a revised plan of subdivision be submitted showing a park land proposal. The applicant has suggested a number of possible park dedication plans might be put forward but as of the date of this report contends that cash-in-lieu of parkland should be accepted by the Regional District. To date the applicant has formally submitted an appraisal report and cheque for the cash in-lieu-of park land. These have been returned to the applicant. As a result of not receiving a revised plan proposing park land, the application has not been resubmitted to the Advisory Committee and staff requires further direction from the Board.

LEGAL IMPLICATIONS

This subdivision application has been ongoing for a number of years. At the time the PLA was originally issued, the provision of park land was at the option of the applicant. When the French Creek Official Community Plan Bylaw No. 1115, 1998 was adopted on October 13, 1998, it designated the subject properties within a Park Land Evaluation Area and provided policies to assist the Regional Board in its decision pertaining as to whether park land or cash in-lieu-of park land or a combination of both would be required. The applicant was informed of this requirement.

The RDN's solicitor has advised that the Board may require the applicant to provide park land for this subdivision application. This advice is based on the provisions of the *Local Government Act* and the corresponding policies set out in the French Creek OCP.

PUBLIC IMPLICATIONS

The recently adopted Board policy concerning the consideration of park land at subdivision time requires a Public Information Meeting be held in order to obtain input from the residents, landowners, and other concerned citizens. Although this application was received prior to the Board policy, the French Creek Residents Association, as well as individual members of the community have requested that a public information meeting be held concerning the resubmitted proposal for the location and amount of park land for this subdivision application.

FINANCIAL IMPLICATIONS

If the Board chooses to accept cash in-lieu-of park land, the applicant has indicated that he has had an appraisal report completed which appraises the subject properties at \$875,000. Therefore, subject to acceptance of this appraisal report, the 5% cash in-lieu-of park land would be \$43,750.00.

It is noted that the Recreation and Parks Department has not budgeted for development of any future park land in the subdivision proposal.

VOTING

Electoral Area Directors -- one vote, except Electoral Area 'B'.

SUMMARY

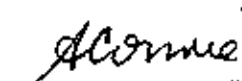
This is a request to give cash in-lieu-of park land dedication pursuant to section 941 of the *Local Government Act* as part of a 34-lot subdivision development for properties located in the French Creek area. The subdivision application, which has been ongoing for a number of years, is subject to meeting the requirements of park land or cash in-lieu-of park land or a combination of both as provided in the *Local Government Act* and the French Creek OCP and is to be determined by the Regional Board of Directors.

The proposal to pay cash in-lieu-of park land dedication was referred to the Electoral Area 'G' Parks Recreation and Greenspaces Advisory Committee, which recommended that park land dedication instead of cash in-lieu-of park land be requested. Subsequently, staff has met with the applicant and/or his agents on a number of occasions to request a proposal for park land and to date the applicant has not submitted a new formal proposal.

As the subject parcel is designated within a Park Land Evaluation Area as set out in the French Creek Official Community Plan, it is recommended that the applicant provide park land dedication. Therefore, staff recommends Alternative No. 1 that the applicant be required to provide park land in a location and amount to the satisfaction of the Regional Board as part of this 34-lot subdivision proposal and that the new proposal be forwarded to the Electoral Area 'G' Parks Recreation and Greenspaces Advisory Committee for comments and be subject to a public information meeting.

RECOMMENDATION

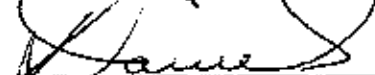
1. That the request, submitted by Lost Lake Properties Ltd. to provide cash in-lieu-of park land be refused and the applicant be required to provide the dedication of park land in an amount and location acceptable to the Regional Board of Directors as part of the 34-lot subdivision proposal of Lots 1 and 2, District Lot 28, Nanoose District, Plan VIP61866.
2. That upon receipt of a park land proposal from the applicant, the proposal be referred to the Electoral Area 'G' Parks Recreation and Greenspaces Advisory Committee and a public information meeting prior to reporting back to the Board.



Report Writer



General Manager Concurrence

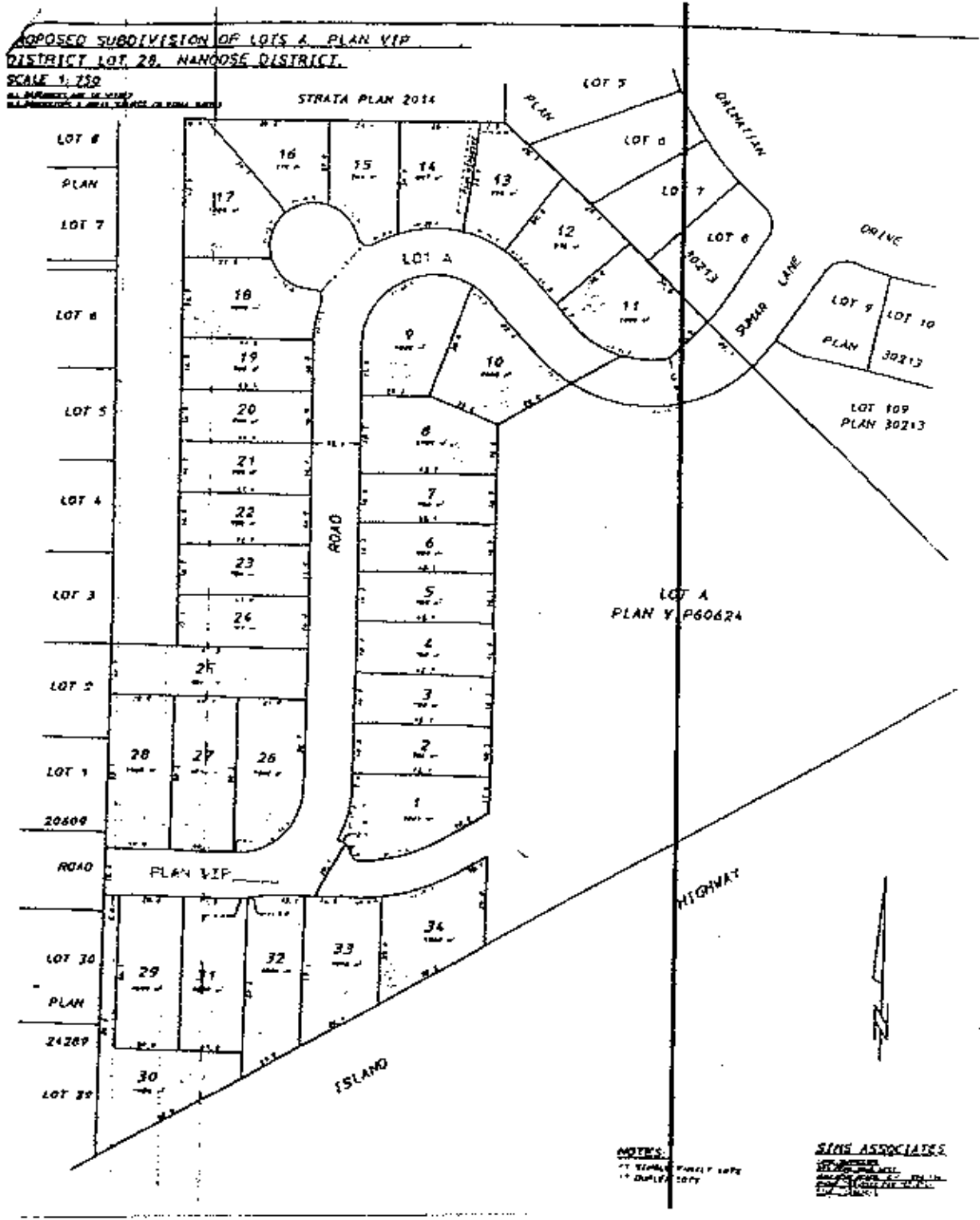


CAO Concurrence

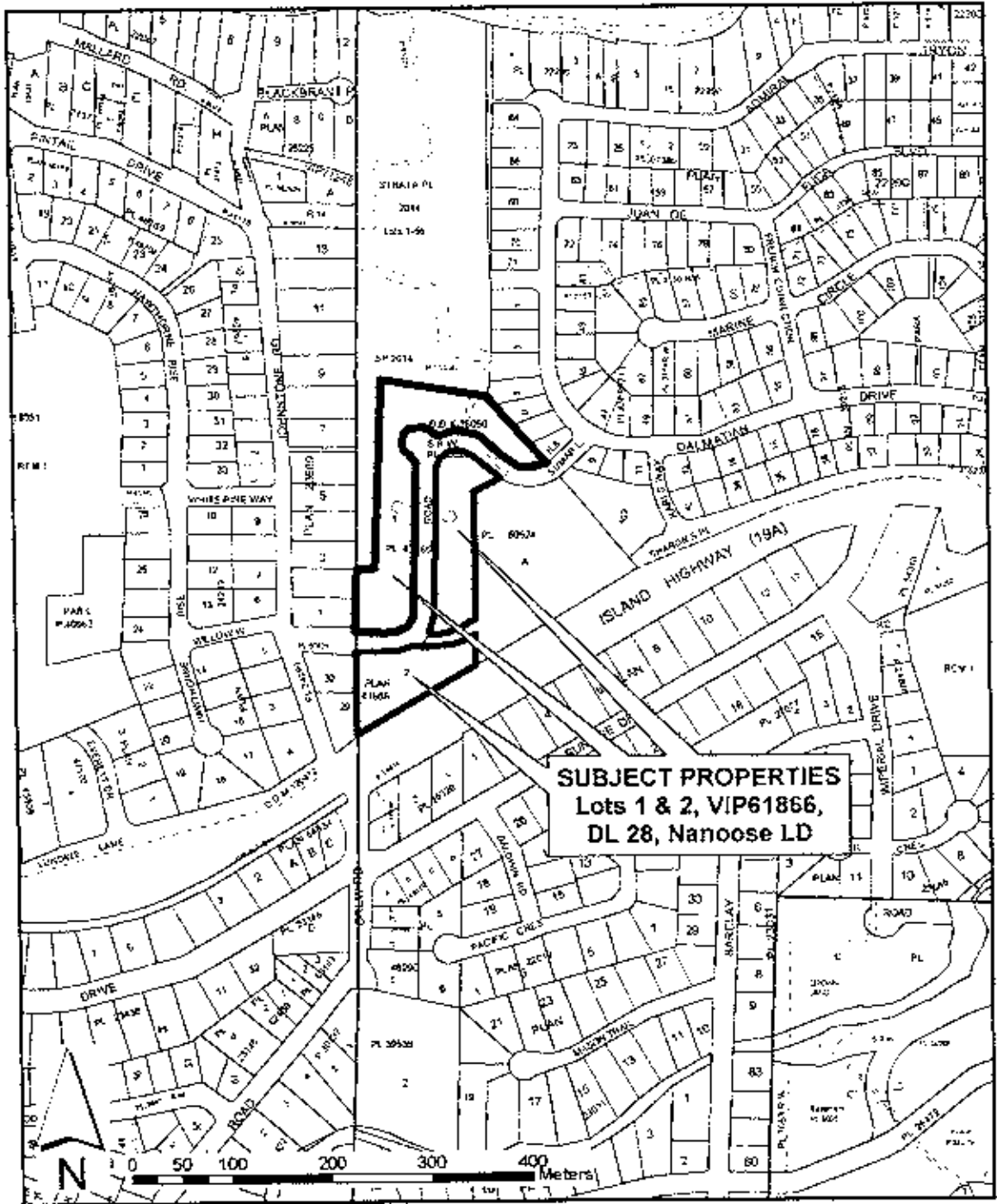
COMMENTS:

Devrs/reports/2004/frtge.ju 3320 20 13571 summar lane.doc

Attachment No. 1
 Proposed Plan of Subdivision
 (As Submitted by Applicant)



Attachment No. 2
Location of Subject Property



BCGS MAPSHEET NO 97F 039 13



REGIONAL DISTRICT OF NANAIMO	
JUL 21 2004	
CHAIR	GM/CrS
CAO	GM/S
GM/CrS	GM/S
EAPC ✓	
DATE: July 21, 2004	
FILE: 3360 30 0412	

MEMORANDUM

TO: Robert Lapham
General Manager, Development Services

FROM: Susan Cormie
Senior Planner

SUBJECT: Community Water Definition Amendment to Bylaw No. 500, 1987
Electoral Areas 'A', 'C', 'D', 'E', 'G', & 'H'

PURPOSE

To consider an amendment to the definition of *community water system* as currently defined in Bylaw No. 500, 1987.

BACKGROUND

Given the higher level of interest in community water issues, issues related to possible changes in the regulatory framework, and an apparent change in the position of the Controller of Water Rights to potentially consider the establishment of new water utilities in the RDN, staff has reviewed the current definition of community water system as defined in Land Use and Subdivision Bylaw No. 500, 1987.

The current definition is as follows:

community water system means a system of waterworks owned, operated and maintained by or on behalf of the Regional District, a municipality or an improvement district or which is operated by a person required to hold a certificate of public convenience and necessity under the Water Utility Act.

Presently, the Regional District operates 13 community water systems throughout the Region. There are also 7 improvement districts which have a water service function and approximately 19 private utilities providing community water service in the Regional District. In addition, there are 2 systems in the RDN operating as Water Users Communities under the *Water Act* and many other private agreements between property owners or within private strata corporations to share a common well.

Regional districts, municipalities, and improvement districts are subject to the relevant provisions of the *Local Government Act* concerning the provision of water to its customers. A person or corporate body holding a certificate of public convenience and necessity under the *Water Utility Act* (a private water utility) is subject to the provisions of the *Water Utility Act* but is not subject to any local government consultation or approval process. Water User Communities under the authorization of Land and Water BC, are not considered community water systems under the current definition. Private agreements to share water are currently not subject to regulatory requirements and are not considered water systems under the current definition.

It is noted that all types of water systems are subject to the *Drinking Water Protection Act* and inspection by the Vancouver Island Health Authority. A background paper on the regulatory framework was prepared by the RDN solicitor for the RDN Community Drinking Water Workshop and is attached for information. (see Attachment No. 1)

Bylaw No. 500 Current Servicing Levels

Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987 establishes zones and subdivision regulations that allow various levels of development and subdivision based on the level of servicing. For example, for a property located within a Residential 2 zone Subdivision District 'M' (RS2M) the following minimum parcel sizes are applicable as determined by the standard of services provided:

Allowable Minimum Parcel Size for Subdivision District 'M'

- with community water & sewer 2000 m²
- with community water only 2000 m²
- with community sewer only 1.0 ha
- with no community services 1.0 ha

The maximum number of uses permitted on a parcel is also subject to the level of servicing available. In the Residential 2 zone, the maximum number of dwelling units per parcel is based on the minimum site area requirements as follows:

Required Minimum Site Area for RS2 zone

- with community water & sewer 2000 m² per dwelling unit to a maximum of 2
- with community water only 2000 m² per dwelling unit to a maximum of 2
- with community sewer only 1.0 ha per dwelling unit to a maximum of 2
- with no community services 1.0 ha per dwelling unit to a maximum of 2

This means that different levels of community services may be need to be available where the subdivision of the land or more intensified uses is desired.

Staff notes that the current definition of Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285 defines community water system as being *'owned, operated and maintained by or on behalf of the Regional District of Nanaimo or a municipality'* and does not include improvement districts or private utilities.

ALTERNATIVES

1. To receive this report for information and proceed with the suggested public consultation process outlined in Schedule No. 1 and report back to the EAPC.
2. To receive this report for information and not proceed with the suggested public consultation process.

GROWTH STRATEGY IMPLICATIONS

The Growth Strategy includes a number of policies that relate to the establishment and provision of community water service. Generally, the growth strategy recognizes lands within urban boundaries as being eventually fully provided with community water service, but for lands outside urban boundaries the strategy recognizes that different service levels will be established by way of the authority of various community water service providers. The level of development allowed is guided and regulated by Official Community Plans, zoning and subdivision bylaws. Zoning and subdivision regulations cannot be amended contrary to an OCP and an OCP must be consistent with the RGS. Therefore, a decision to establish or expand a community water system must not have the affect of increasing the level of development or subdivision permitted by these plans and regulations. The RGS is applicable to local government decisions made according to the *Local Government Act*; however, Provincial decisions to establish or expand community water systems are not. Therefore, if the zoning definition is amended to

not recognize community water systems established under the *Water Utility Act*, the RGS could be more effectively implemented by placing the authority to service new development with community water service into the hands of local authorities that are subject to RGS policies.

OFFICIAL COMMUNITY PLANS IMPLICATIONS

Official community plans are to be consistent with the Regional Growth Strategy including the provision of community services. The amendment to the definition of community water system is not in conflict with any of the electoral area official community plans as this proposed change affects who is the water provider, not where community water will be provided. Removing water systems established under the *Water Utility Act* from the zoning definition of a community water system will limit the way new subdivisions are serviced but will not restrict the ability of community water providers to service existing lots.

DEVELOPMENT IMPLICATIONS

The proposed amendments will have general application for all properties subject to RDN Land Use and Subdivision Bylaw No. 500. If the amendment is approved, there will be a significant impact as various investments and planned development may be based on an expectation that an existing private water utility or other private water purveyor would provide community water service to allow for new subdivision or development. This assumption is based on the progressively increasing development opportunities allowed for some properties under the zoning bylaw if community water service is provided. However if the amendment is approved, only the existing level of development opportunity will remain for development without community water service unless a new water service area is established or expanded by a community water purveyor that is recognized by the amended community water system definition (RDN, Municipalities and Improvement Districts). Private water utilities would still be able to expand community water service to existing parcels or service development to a level that does not require community water service according to the zoning but generally would no longer be servicing more intensive development. In addition, if service connections have been previously secured or are in progress, the *Local Government Act* allows for in-stream subdivisions to be completed within 12 months of the date of adoption of the bylaw amendment.

PUBLIC CONSULTATION IMPLICATIONS

Staff believes that there will be a high level of interest in this proposed amendment. As there are a number of properties that could be affected by the proposed amendment, staff recommends a public consultation program consisting of a series of public information meetings be held across the Regional District (*see Schedule No. 1 for proposed Public Consultation Strategy*)

INTERGOVERNMENTAL IMPLICATIONS

The Ministry of Transportation Approving Authority, which approves subdivision applications involving availability of community water will need to approve the proposed amendment bylaw prior to adoption.

VOTING

Electoral Area Directors - one vote, except Electoral Area 'B'.

SUMMARY

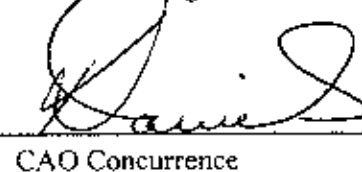
The proposed amendment to the definition of community water supply under Bylaw No. 500 is intended to limit the ability of private water utilities to service new development and subdivision at densities prescribed as needing community water service under the zoning bylaw. In order to achieve the higher levels of development or density allowed with community water, property owners would have to obtain community water service from the RDN, municipalities or improvement districts. This amendment would result in more effective implementation of the RGS and OCP's as local government authorities are required to comply with these plans whereas private water utilities are only subject to Provincial regulation. Staff recommends that a public consultation process be carried out to evaluate the community's support of such an amendment and explore alternatives with staff reporting back to the Electoral Area Planning Committee.

RECOMMENDATIONS

1. That the report on the proposed amendment to the RDN Land Use and Subdivision Bylaw No. 500 concerning the definition of community water supply be received for information.
2. That the Consultation Strategy for the proposed amendments to RDN Land Use and Subdivision Bylaw No. 500 concerning the definition of community water supply be approved.
3. That the Public Information Meetings be chaired by Director Hamilton or Director Stanhope as her alternate and staff be directed to report back to the Electoral Area Planning Committee with a summary of comments and recommendations.



Report Writer


General Manager Concurrence
CAO Concurrence

COMMENTS:

devsvs/reports/2004ju3360 30 0412 ju comm water doc

Schedule No. 1
Amendment to the Definition of Community Water Supply (Bylaw No. 500)
Proposed Public Consultation Strategy

PUBLIC CONSULTATION STRATEGY

The Public Consultation Strategy provides the work program and serves as a 'checklist' to ensure the project successfully achieves its goals; in addition, in support of the RDN's public involvement policies, this document outlines an approach for fully involving the citizens, agencies, and stakeholders in the planning process.

The *Local Government Act* also sets out specific procedural requirements that must be met in the process of amending a zoning bylaw. Specifically, the *Act* establishes notification requirements, sets out standards for advertising, and the holding of a public hearing.

AMENDMENT PROPOSAL

To amend the definition of community water supply pursuant to Land Use and Subdivision Bylaw No. 500, 1987 by deleting a person required to hold a certificate of public convenience and necessity under the Water Utility Act.

PUBLIC AND AGENCY CONSULTATION

It is recommended that the following be contacted:

- **General Public**
 - By newspaper notice to advertise time, date, and location of public information meetings
 - By RDN Web
- **Provincial Agencies**
 - Approving Authority, Ministry of Transportation
- **Other Organizations and Authorities**
 - Oceanside Construction and Development Association

SCHEDULE

The following outlines the schedule of events and publications, and sets out the key elements of each step in the review process.

<i>July</i>	Report to the EAPC on community water supply definition Request approval of Public Consultation Strategy
<i>August</i>	Report to the Board on Community Water definition Request approval of Public Consultation Strategy Notification to all referral agencies
<i>September</i>	Advertisement of PIMs Public Information Meeting
<i>October</i>	Report to EAPC requesting 1 st and 2 nd reading and proceed to public hearing Recommendation of EAPC to Board
<i>November</i>	Formal referrals to agencies Public Hearing on proposal
<i>Year end /early 2005</i>	Report to Board requesting 3 rd reading and adoption

TIMEFRAME / RESOURCE AND BUDGET

It is proposed that the amendments will be finalized by year-end 2004 and adopted in late 2004 or early 2005.

All work to gather and collate data, consult with the public, produce and design documents/consultation materials and draft the amendments will be completed by RDN staff.

One staff member and mapping resources will be assigned to the project to completion.

ATTACHMENT 1



REGIONAL
DISTRICT
OF NANAIMO

**Drinking Water Quality
Discussion Paper**

April 30, 2004

DRINKING WATER QUALITY

An Overview of the Law Governing Protection of Drinking Water in British Columbia

May 2004

Prepared for Regional District of Nanaimo

Prepared by Colin Stewart of
Staples McDannold Stewart, with the
assistance of Christina Thomas, Senior Planner
Community Services
of the Regional District of Nanaimo



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DRINKING WATER QUALITY

An Overview of the Law Governing Protection of Drinking Water in British Columbia.

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1.0 Introduction - What is Potable Water?

We are all dependant upon a safe supply of potable water. Since the Walkerton tragedy in Ontario that left seven dead, many communities in Canada have become even more aware of the fragility of the quality of our water supply. Before Walkerton, turning on the tap had become a thoughtless exercise; today we pause to consider how we can ensure that the water supply remains safe.

In British Columbia, potable water quality is now regulated primarily through the *Drinking Water Protection Act*, which was given Royal Assent on April 11, 2001 and came into effect on May 16, 2003. From a legal stand point, potable water is defined under the *Drinking Water Protection Act* as water provided by a domestic water system that meets the standards prescribed in Schedule A to the Drinking Water Protection Regulation, British Columbia Regulation 200/2003 and that is safe to drink and fit for domestic purposes without further treatment. Water may meet a legal definition of 'potable', but still contain traces of elements or biota that make it taste funny or 'off'. 'Unpalatable' is not necessarily 'unpotable' from a legal viewpoint. Over the last 40 years a series of guidelines have been developed in numerous jurisdictions setting out what should and should not be in drinking water. Such guidelines may not have legal force, but they do assist public health officials and water suppliers assess the safety of drinking water for human consumption.

I will look more closely at the interpretation to be given to this definition of "potable water" under Paragraph 3.1 in connection with my discussion of the *Drinking Water Protection Act* itself.

This paper is a general discussion of the highlights of the law applicable to drinking water protection in British Columbia. The statutes and regulations are complex and the statements in this paper are not a substitute for proper legal advice in relation to any specific circumstances.

2.0 Water Suppliers- Public Authorities; Private Companies; Property Owners

2.1 Who is a Water Supplier?

The regulations of the *Drinking Water Protection Act* apply to persons who are considered to be "water suppliers".

"Water Supplier" means a person who is the owner of a Water Supply System.

The *Drinking Water Protection Act* also contains a definition of a "water supply system".

“Water Supply System” means a domestic water system other than:

- (a) a domestic water system that serves only one single family residence; and
- (b) equipment, works or facilities prescribed as being excluded;

The Regulations do not exclude any equipment, works or facilities.

An “owner” includes a person who is responsible for the ongoing operation of the water supply system or is in charge of managing the operation. This expands the scope to include persons beyond those who have title to the water system and could include someone operating a system located on someone else’s land. The following are the types of water suppliers active in the Regional District of Nanaimo:

2.2 Local Government

(a) Municipalities

Municipalities and regional districts are created by the Province of British Columbia. They are governed by two primary pieces of legislation - the *Community Charter* and the *Local Government Act*. Although sharing many attributes, they function in slightly different ways and have some different powers.

Municipalities are governed primarily by the *Community Charter* which came into effect on January 1, 2004. Municipalities have broad authority to provide services. Typically, municipalities operate a municipal water distribution system, which serves the residents of the municipality. However, even within the boundaries of a municipality water may be provided by an improvement district, by a water utility or by private wells.

Municipalities have broad authority to regulate, prohibit and impose requirements in relation to their services (*Community Charter*, Section 8(3)(a)). Municipalities also have authority under the *Charter* to regulate, prohibit and impose requirements in relation to the natural environment. (*Community Charter*, Section 8(3)(i)). Municipal authority in relation to the protection of the natural environment is subject to the limitation that any bylaw that relies upon this authority must be approved by the Minister of Water, Land and Air Protection except insofar as such bylaws are exempt from this requirement by the Spheres of Concurrent Jurisdiction, Environment and Wildlife Regulation, B.C. Reg. 144/2004. This authority is discussed in paragraph 6.2(a). Discussions with officials in the Ministry of Water, Land and Air Protection have indicated that it will not necessarily be a straightforward matter for municipalities to obtain approvals for bylaws that try to protect the environment that is so beyond what is permitted under the Spheres of Concurrent Jurisdiction - Environment and Wildlife Regulation.

There are currently three municipal government providers of drinking water in the Regional District of Nanaimo: the City of Parksville, the Town of Qualicum Beach and the District of Lantzville. It is expected that the City of Nanaimo will shortly assume the responsibility of the Greater Nanaimo Water District. Parksville and Qualicum Beach have joined with the Regional District of Nanaimo to form the Arrowsmith Joint Venture to provide for future water supply within the two municipalities and the Nanoose Bay and French Creek Electoral Areas.

(b) Regional Districts

Regional districts are governed primarily by the *Local Government Act*, although in some instances there are cross-references and linkages to the new *Community Charter*. Regional Districts generally provide water services on a sub-area basis. Each regional district service is established by a bylaw, which must define the boundaries of the service area. One of the hallmarks of the regional district governance is that the entire cost of providing a service must be financed by the property owners located in the boundaries of the service area. The *Local Government Act* is designed such that residents can pick and choose what services they want, but are responsible for funding those services and cannot rely upon the taxpayers of the regional district at large to provide subsidies. Thus, whereas in a municipality extraordinary costs incurred in relation to one neighborhood might be spread over the entire community at large, in a regional district these costs will be borne by the property owners receiving the benefit of the work. This can mean extraordinary cost burdens for individual property owners. Regional districts have largely the same regulatory powers in relation to the provision of those services as municipalities. However, under the *Community Charter* municipalities have access to some additional areas of authority. For the purposes of the discussion of drinking water quality, the most significant of these is the new area of municipal authority under the *Community Charter* in relation to protection of the natural environment (*Community Charter*, Section 8(3)(j)). Regional districts do not have a broad general authority in this area.

The Regional District of Nanaimo provides drinking water to properties within 13 defined 'water service areas' in the unincorporated (i.e. electoral area) areas of the region. These 'water service areas' in the Regional District of Nanaimo are: Arbutus Park Estates, Decourcey, Driftwood, Englishman River Community, Fairwinds, French Creek, Madrona, Morningstar, Nanoose Bay, San Pareil, Surfside, Wall Beach, and West Bay Estates. Each 'water service area' is defined by a bylaw. In addition, as discussed under paragraph 2.2, the Regional District is a participant in the Arrowsmith Joint Venture for the purpose of securing a bulk water supply for two of its Electoral Areas.

2.3 Greater Board

A greater board is defined in the *Community Charter* as the corporate body, incorporated by an Act, with responsibility for the provision of water or sewage and drainage

services. Within the Regional District of Nanaimo the Greater Nanaimo Water District is a “greater board”. The Greater Nanaimo Water District is incorporated by a special Act of the Legislature for the purpose of supplying water in bulk to the area within its jurisdiction. As a creature of the Province, greater boards are also subject to inherent limitations determined by the particular wording of the statute under which they are created. There are now few examples of such greater boards in the Province, the most notable being (in addition to the Greater Nanaimo Water Board) the Greater Vancouver Water District and the Greater Vancouver Sewerage and Drainage District. The Greater Victoria Water District was dissolved a number of years ago and the water supply functions of the Greater Victoria Water District were turned over to the Capital Regional District by special legislation.

As of the date of this writing, April 27, 2004, the *Nanaimo and South West Water Supply Act* has been given second reading in the Legislature. This Act will dissolve the Greater Nanaimo Water District and transfer the services, assets and liabilities of the Greater Nanaimo Water District to the City of Nanaimo, subject to the restrictions in the Act.

2.4 Improvement Districts (Water Districts)

Improvement districts are created by the issuance of Letters Patent under the authority of the *Local Government Act*. Almost all the authority of improvement districts is found within Part 23 of the *Local Government Act*. The powers of improvement districts, however, are generally even more narrow than the powers of regional districts and municipalities and they were largely by-passed in the series of recent legislative reforms that affected municipalities and regional districts.

The Province is no longer creating new water districts. From time to time existing water districts are subsumed by other levels of local governments, as municipalities (such as the District of Lantzville) are incorporated or in cases where residents turn to regional districts for expertise in dealing with water infrastructure issues.

There are seven improvement or waterworks districts that provide drinking water service in the Regional District of Nanaimo: Deep Bay Waterworks District, Bowser Waterworks District, Qualicum Bay/Horne Lake Waterworks District, Little Qualicum Waterworks District, William Springs Improvement District, Southwest Extension Waterworks District, and North Cedar Improvement District.

2.5 Water Utility

A water utility is a privately owned corporation that owns or operates equipment and facilities for the diverting, developing, pumping, impounding and distributing of water for compensation to five or more persons or to a corporation. Municipalities, regional districts, the Greater Vancouver Water District, an improvement district, a person who supplies water by tanker truck, a person who sells bottled water or a strata corporation where the owner/developer has ceased to own a majority of the strata lots in the strata

plan are not considered to be water utilities. As corporations, utilities have all of the powers of any other corporation, but must exercise those powers subject to the *Water Utility Act*, *Utilities Commission Act* and the general jurisdiction of the Comptroller of Water Rights. Water utilities are also subject to supervision by the B.C. Utilities Commission. The B.C. Utilities Commission is responsible for issuing a Certificate of Public Convenience and Necessity, which is essentially the authorization for the operation of the public utility.

Four water utilities provide drinking water service in the Regional District of Nanaimo: Breakwater Enterprises Limited, Whiskey Creek Estates, Whiskey Creek Utilities, and Bel Oak Estates Water Society Water Utility.

2.6 Water Users Community

Under the *Water Act*, the Comptroller of Water Rights may issue a Certificate of Incorporation to a group of six or more holders of water licenses to become a water users community. A water users' community (*Water Act*, Section 51) is a corporate body which is given certain authorities under the *Water Act*. They are similar in some respect to an improvement district, but without an elected Board of Trustees and without the legislative power of an improvement district. Every water users' community is required to designate a manager. Authority given to the water users' community includes the authority to refuse to provide service to a member who is in default of payment or who is non-compliant with a rule of the manager (*Water Act*, Section 52).

Two water user communities provide drinking water service in the region: the Boat Harbour Water Users Society² and the Olympic Springs Water System.

2.7 Unorganized Community: "Other Water Systems"

The *Drinking Water Protection Act* definition of "water supplier" is broad enough to include anyone who owns land and works that are used to supply water to another person. For example, if I own property and there is a well and water distribution line located on that property from which my neighbour obtains his water supply, then I will fall within the definition of "water supplier" under the *Drinking Water Protection Act* and will be subject to all of the provisions of that Act that apply to "water suppliers".

The key is "ownership" of the system. In the absence of an agreement to the contrary (such as a statutory right-of-way or easement) which deems the "works" located on my

²Regional District of Nanaimo has been informed that most of the owners of properties in the Boat Harbour Water User Community obtain their drinking water from wells on their individual properties because the water user community water requires substantial treatment.

land to be the property of someone else, the common law principle is that the ownership fixtures on a person's land is vested in the owner of the land.

The result can be that a person may be deemed "a water supplier" under the *Drinking Water Protection Act* even where he or she, as a favour to a neighbour, allowed the neighbour to make use of a water source on his or her land.

In addition, because the exemption from the definition "water supply system" refers only to a water supply of a single family water residence, it is possible that an owner who has a secondary suite in his dwelling and who supplies water to the tenant of that secondary suite may also be considered a "water supplier" for the purposes of the *Drinking Water Protection Act*.

Regional District of Nanaimo staff initiated communications with the 'other water systems' listed in Table 1, using contact information provided by the Vancouver Island Health Authority, to confirm the name of the system, the address and legal description of the properties provided service, and the number of residences or other uses serviced. Feedback received from the other water systems indicates that each of the 'other water systems' provides water service to between one and 100 residences or other establishments, that some of the other systems may no longer be in existence and or that there is no single responsible person or organization that wishes to assume responsibility for some of the other water systems.

It is only the individual who has a well on his or her property (or who owns a well located on his or her neighbour's property) and who supplies water from that well only to his own household that will be exempt from the definition "water supplier" under the *Drinking Water Protection Act*.

'Other water systems' were established by a private individual or organization under the *Safe Drinking Water Regulation* made pursuant to the *Health Act* and typically provide water to developments such as mobile home parks, resorts, commercial developments and campgrounds in rural areas.

It is estimated that thirty-four 'other water systems' provide water service in the Regional District of Nanaimo as listed in Table 1:

Table 1: OTHER WATER SYSTEMS	
<ul style="list-style-type: none"> ▪ Cassidy MHP ▪ Zuiderzee Campground ▪ Parklands MHP ▪ Triple E Campsite ▪ Willow MHP ▪ Rumming Road Water Utility ▪ Timberlands MHP 	<ul style="list-style-type: none"> ▪ Seabird MHP ▪ Maple Glen MHP ▪ Pires MHP ▪ Pinetree Water System ▪ Ocean Trails Resort ▪ Rondalyn Resort ▪ Casa Blanca MHP

<ul style="list-style-type: none"> ▪ Graycrest Resort ▪ Graaten MHP ▪ Island Park Estates ▪ Shady Acres ▪ 3117 Van Horne Road ▪ Pinetree Water System ▪ Errington General Store ▪ Tanglewood Condominiums WWS ▪ Trees Property WWS ▪ Parkstone Place/Englishman River Falls MHP WWS 	<ul style="list-style-type: none"> ▪ Starline Windows ▪ Rinvoid Village ▪ Parkstone Place MHP ▪ Little Qualicum Holdings ▪ Cooperville Water Systems ▪ Country Aire MHP ▪ Melrose Terrace WWS ▪ Estuary House & Qualicum Beach RV Park WWS ▪ Arnsville WWS ▪ Arbutus Beach Water Users
	<p><i>Source: Vancouver Island Health Authority Records</i></p>

2.8 Strata Corporation

While a strata corporation will not be considered "a public utility" where the majority of the lots have been sold by the owner/developer, the strata corporation may nevertheless continue to be considered a "water supplier" for the purposes of the *Drinking Water Protection Act*.

As can be seen from the above, there are a number of different statutes that will govern water providers depending on whether they are public or private; whether they are under the jurisdiction of the Utilities Commission or not. One thing that is clear is that they are all (with the limited exception of the persons supplying his or her own water) to be considered "water suppliers" within the meaning of the *Drinking Water Protection Act*.

3.0 What are the Legal Responsibilities of Water Providers?

3.1 *Drinking Water Protection Act* and Regulation

The most important obligation of water suppliers is found in Section 6 of the *Drinking Water Protection Act*.

6. Subject to the Regulations, a water supplier, must provide to the users served by its water supply system, drinking water from the water supply system that:
- (a) is potable water; and
 - (b) meets any additional requirements established by the Regulations or by its operating permit.

What is potable water? Potable water is defined in the *Drinking Water Protection Act*. This is the same definition as contained in the former Safe Drinking Water Regulation.

“potable water” means water provided by a domestic water system that:

- (a) meets the standards prescribed by Regulation; and
- (b) that is safe to drink and fit for domestic purposes without further treatment.

Schedule A to the Drinking Water Protection Regulation sets out parameters for fecal coliform bacteria and *Escherichia coli*.

TABLE 2: DRINKING WATER QUALITY STANDARDS FOR BRITISH COLUMBIA

Parameter	Standard
Total coliform bacteria (a) 1 sample in a 30 day period; (b) more than 1 sample in a 30 day period	(a) No detectable total coliform bacteria per 100 mL. (b) At least 90% of the samples have no detectable total coliform bacteria per 100 mL and no sample has more than 10 total coliform bacteria per 100 mL.
Fecal coliform bacteria	No detectable fecal coliform bacteria per 100 mL.
<i>Escherichia coli</i>	No detectable <i>Escherichia coli</i> per 100 mL.
Source: <i>Drinking Water Protection Act</i>	

However, in addition to the technical parameters, to be ‘potable’ water must also be ‘safe to drink and fit for domestic purposes’. In *Cook v. Bowen Island Realty Ltd.* [1997] B.C.J. No. 2319 a real estate company, the developer-vendor, the developer’s engineer, the local Health Board and the Province were successfully sued by a purchaser of property where significant deficiencies were discovered in the construction of the sewage disposal system and the water system. The Plaintiff’s engineer provided an opinion, which the Court accepted, that the water did not meet the standards of the Guidelines for Canadian Drinking Water Quality because of levels of turbidity, dissolved solids, iron and manganese and coliform. The Court also accepted the engineer’s opinion that the water available on the Plaintiff’s land constituted a health hazard.

From the *Cook* decision, it is clear that the Court was prepared to look to the Guidelines for Canadian Drinking Water Quality prepared by the Federal/Provincial sub-committee on Drinking Water. The Court noted that “[o]n the evidence, they are used by health units throughout Canada as the standard for measuring water potability.”

What are these guidelines? The Guidelines for Canadian Drinking Water Quality establish guidelines for the chemical, physical and microbiological parameters of drinking water for Canada. The Guidelines identify 82 elements that have been found in drinking water in Canada and are known or suspected to be harmful to human health, and specify the Maximum Acceptable Concentration (MAC) of each element deemed appropriate in drinking water. MACs are based on a review of scientific, medical and technological literature as well as data collected by researchers, toxicological studies and epidemiological studies involving accidental human exposure.

The Guidelines for Canadian Drinking Water Quality were developed by Health Canada in cooperation with representatives from the health and environment ministries of the Provinces and Territories.

The first Guidelines for Canadian Drinking Water Quality were established in 1968. Health Canada regularly reviews the standards in consultation with representatives from each Province and Territory. The Guidelines are kept current by a panel of scientific experts set up specifically for this purpose by the Government of Canada. These reviews take into account new water quality information, scientific research, epidemiological information and changes in international drinking water guidelines established by agencies such as the World Health Organization and the Environmental Protection Agency in the United States.

The Provinces and Territories of Canada are not obligated to enforce the Guidelines for Canadian Drinking Water Quality in whole or in part. Provinces and Territories may enact the Guidelines as law, or simply use them as guidelines. Quebec, Nova Scotia and Alberta adopted all of the Guidelines into law as regulated standards. Ontario established its own list of standards, which are based on the Guidelines. The use of the Guidelines in British Columbia is discussed in the next section.

The drinking water quality standards for British Columbia include only those standards established in the Guidelines for Canadian Drinking Water deemed appropriate in the opinion of the Provincial Health Officers. The Guidelines for Drinking Water Quality have not been wholly incorporated as the specifications for drinking water in BC because the vast majority of drinking water related illnesses in this Province are due to a small number of microbiological pathogens (e.g. giardia, cryptosporidium, E. coli O157:H7, campylobacter, toxoplasma and viruses), there are no existing standards or good reliable tests for the elements that represent the greatest risk to the health of people in British Columbia (i.e. giardia, toxoplasma, cryptosporidium), and the costs of testing water for all of the parameters in the Guidelines could divert money away from

addressing the true health risks of water towards repeated testing of water for a string of chemical contaminants that are of little risk in this Province.

Fecal coliform bacteria, total coliform bacteria and *Escherichia coli* are considered to be indicator organisms that water is potentially unsafe due to the possible introduction of human sewage or animal feces to the water supply. The introduction of human sewage and animal feces to the water supply presents the greatest danger to human health. Total coliform bacteria applies to the whole family of bacteria that exist in soil, water, and the intestinal tract of animals, whereas fecal coliform bacteria applies to the subset of bacteria that inhabits animals. *Escherichia coli* is a sub-type of coliform bacteria. Total coliform bacteria, fecal coliform bacteria and *Escherichia coli* are in themselves harmless and do not cause disease.

Under Section 8 of the *Drinking Water Protection Act*, a water supplier is prohibited from operating the water supply system unless that person holds a valid operating permit issued in accordance with the Regulations, complies with the terms and conditions of the operating permit and operates the water supply system in accordance with any applicable regulations.

An "owner" includes a person who is responsible for the ongoing operation of the water supply system or in charge of managing the operation. This expands the scope to include persons beyond those who have title to the water system and could include someone operating a system located on someone else's land.

Section 7 of the *Drinking Water Protection Act* requires a person to obtain a construction permit for the construction, installation or extension of a water supply system or works, facilities or equipment which are intended to be a water supply system or part of a water supply system.

The Regulations require water suppliers to monitor samples of the water. Water supply systems that serve less than 5000 people are required to sample the water four times per month, unless a Drinking Water Officer establishes different sampling frequencies under Section 8 of the *Drinking Water Protection Regulation*.

The laboratory is required to report the results in accordance with the Regulations to the Drinking Water Officer and, subject to the Regulations, to the water supplier.

In addition, water suppliers are required to notify the Drinking Water Officer if the supplier considers that there is a threat that is likely to result in the drinking water provided by its water supply system not meeting the requirements of Section 6 of the *Drinking Water Protection Act* (*Drinking Water Protection Act*, Section 13).

There are additional immediate reporting requirements that apply in the case of water supply systems that fail to meet the standards set in Schedule A to the *Drinking Water Protection Act Regulation*.

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Water monitoring requirements

11(1) in the case of prescribed water supply system, the water supplier must:

- (a) monitor its drinking water source, the water in its system and the water it provides for the parameters, and at the frequency, established by the regulations and by its operating permit;
- (b) have the sampling required for that monitoring carried out in accordance with the regulations and the directions of the drinking water officer; and
- (c) have the analyses required for that monitoring carried out in accordance with the regulations, through laboratories that meet the requirements established by the regulations and by individuals who are qualified in accordance with the regulations.

Well proofing may also be required of individuals in situations where the well is on land and subject to flooding (*Drinking Water Protection Act*, Section 16).

16(1) If required by regulation, the owner or operator of a well that provides drinking water must floodproof the well in accordance with the regulations.

The Drinking Water Protection Regulation provides the following:

14 For the purposes of Section 16 of the Act, the owner or operator of a well that provides drinking water and that is identified in an assessment as being at risk of flooding, must floodproof the well by constructing, equipping and maintaining the well in a manner which precludes the entry of flood water into the well and protects the well against damage from flood debris, ice, erosion and scour.

Under Section 18 a water supplier may be required to prepare an assessment.

3.2 Health Act, RSBC 1996 c. 179

The Drinking Water Protection Regulation has replaced the former Safe Drinking Water Regulation and the provisions of the Sanitary Regulation pertinent to drinking water under the *Health Act*.

The *Health Act* itself also still contains a number of powers that may be exercised in relation to water quality. Specifically, the medical health officer and the Local Boards of Health have powers to deal with health hazards as defined under the *Health Act*.

With respect to the *Health Act*, the authority to issue Orders under Section 63 of the *Health Act* has remained in force despite the enactment of the *Drinking Water Protection Act* and could be used in respect to any health hazard or significant risk of an imminent health hazard. The definition of health hazard under the *Health Act* seems to be broader than the definition of "drinking water health hazard " under the *Drinking Water Protection Act* and so may be used in some circumstances where the broader definition is needed.

Under Section 4 of the *Health Act*, the Provincial Health Officer may order a Medical Health Officer to take actions the Provincial Health Officer considers appropriate if he considers that the health of the public is in danger.

3.3 *Water Utility Act, RSBC 1996, c.455*

This *Act* applies to water utilities as defined in the *Act*. The water utilities defined as excluding a strata corporation or the owners/developer cease to own a majority strata lots in the strata plan.

The *Water Utility Act* allows for the cancellation of the Certificate of Public Convenience and necessity where a public convenience does not or will not require the construction or operation of a plan or a system by a water utility.

3.4 *Water Act, RSBC 1996, c. 483*

The *Water Act* is concerned primarily with ownership and licensing rights of water in British Columbia. It is not focused on preservation of the quality of water directly, although much of the authority exercised by the Comptroller of Water Rights is done with a view to minimizing harm to the water supply. Section 2 of the *Water Act* vests the property right in all water in any stream in British Columbia in the Province are subject to only private rights which may be established under licences or approvals issued by the Province under the *Water Act*.

The *Water Act* has never been brought into effect with respect to ground water. Ground water remains outside of the ownership of the Province. An owner of land is free to dig a well on his or her own land for the purposes of supplying water to one single-family residence. As discussed above, a supply of water beyond that scope will make the property owner a "water supplier" and will trigger the application of the *Drinking Water Protection Act*, including the requirement for a permit for the construction of the works.

Section 21 of the *Water Act* provides that a water licence or a person who holds an approval or person who makes a change in or about a stream must exercise reasonable care in avoiding damage to land, works, trees or other property and must make full compensation to the owners for damage or loss resulting from construction, maintenance, use, operation or failure of the works.

The *Water Act* is, in itself, a fairly complex regulatory scheme which must be consulted by water suppliers in order to familiarize themselves with the requirements and regulations of that *Act*.

3.5 *Utilities Commission Act*

This *Act* sets out the authority of the British Columbia Utilities Commission in connection with public utilities, including water utilities.

3.6 *Common Law*

Access to a clean water supply has always been a critical aspect of human existence. The common law accordingly developed a number of rules governing water rights, including the concept of riparian rights to deal with the rights and obligations of owners of land adjoining streams and rivers.

At common law, for example, riparian owners are entitled as a matter of right to receive from the upstream owners flow of water that is essentially undiminished in its quantity and quality. Rivers and streams were seen as a form of common property in which everyone was entitled to an equal benefit, subject only to the vagaries of nature, which affected the flow of water. Riparian rights protected the interests of downstream owners.

In addition, the common law was able to adapt the law of nuisance to situations involving water. For example, in the decision *Vidler v. Page* [1990] B.C.J. 2208, the British Columbia Supreme Court found a property owner liable for contamination of his neighbour's well by fecal coliforms from an equestrian centre and a deposit of hog fuel. The Court had no difficulty, on the facts, finding that the contamination of the well was caused by the activities of the neighbour.

In this case, the successful cause of action was framed in the law of nuisance. This ancient doctrine holds that one property owner is not permitted to use his property in a way that unreasonably interferes with the use and the enjoyment of his neighbour's property. Nuisances will always typically involve a trespass of some physical substance (i.e. the contaminants in the *Vidler* decision). Note that municipalities, regional districts and improvement districts are granted immunity by statute for nuisances that arise from the breakdown or malfunction of a water system. (*Local Government Act*, Section 288).

4.0 What are the Responsibilities of Individuals in Relation to their own Systems?

Water systems that are not considered to be operated by “water suppliers” under the *Drinking Water Protection Act* may nevertheless be subject to requirements under the *Drinking Water Protection Act*.

The powers under the *Drinking Water Protection Act* for the Drinking Water Protection Officer (“DWO”) to make orders with respect to unsafe drinking water conditions could be applied regardless whether the supplier is a “water supplier” for the purposes of the Act or not. The focus in these instances is on the health hazard.

5.0 Enforcement of Water Standards

5.1 Role of Local Government

Under the Building Code, buildings are to be provided with a supply of potable water. The building inspector will therefore usually want some evidence that a building will be provided with potable water prior to issuance of a permit.

5.2 Role of a Drinking Water Officer

Under Section 25 of the *Drinking Water Protection Act*, the Drinking Water Officer (“DWO”) has the power to issue an Order if the DWO has reason to believe that:

- (a) a drinking water health hazard exists; and
- (b) there is a significant risk of an imminent drinking water health hazard.

“drinking water health hazard” means:

- (a) a condition or thing in relation to drinking water that does or is likely to
 - (i) endanger the public health, or
 - (ii) prevent or hinder the prevention or suppression of disease,
- (b) a prescribed condition or thing, or
- (c) a prescribed condition or thing that fails to meet a prescribed standard;

The order may be directed to:

- (a) a person whose action or omission, in the opinion of the DWO, resulted in or significantly contributed to the drinking water health hazard or risk, or

- (b) a person who had possession, charge or control of a condition or thing that, in the opinion of the DWO caused or significantly contributed to the drinking water health hazard or risk.

5.3 Medical Health Officer

The Medical Health Officer (in addition to a health officer or a public health inspector) has authority to issue orders under Section 63 of the *Health Act* where the Medical Health Officer has reason to believe that:

- (a) a health hazard exists;
- (b) there is a significant risk of an imminent health hazard; or
- (c) the place that was the subject of inspection or the owner or occupier of it is in contravention of the *Health Act* or its regulations.

Such an order may be directed to:

- (a) a person whose action or omission resulted in or significantly contributed to the health hazard, the risk or the contravention;
- (b) a person who had possession, charge or control of the condition of the thing that constitutes the health hazard or the risk at the time it arose; or
- (c) the owner or the occupier of the place where the health hazard, risk or contravention exists.

Among other things, an order may require the doing of work specified in the order or requiring the removal from the place or the vicinity of the place of anything the order states causes a health hazard.

Given the role of the DWO, it is likely that Medical Health Officers will leave matters pertaining strictly to drinking water protection to the DWO.

6.0 Drinking Water Protection: Powers and Constraints

6.1 Protecting Watersheds and Water Supply - The Legal Framework

(a) Protection Against Causing Water Health Hazard

The most direct protection for drinking water is Section 23(1) of the *Drinking Water Protection Act*:

23(1) Subject to subsection (3), a person must not

- (a) introduce anything or cause or allow anything to be introduced into a domestic water system, a drinking water source, a well recharge zone or an area adjacent to a drinking water source, or
- (b) do or cause any other thing to be done or to occur,

if this will result or is likely to result in a drinking water health hazard in relation to a domestic water system.

(2) Subject to subsection (3), a person must not

- (a) destroy, damage or tamper with any part of a domestic water system,
- (b) open or close any part of a domestic water system,
- (c) introduce anything or cause or allow anything to be introduced into a domestic water system, a drinking water source, a well recharge zone or an area adjacent to a drinking water source, or
- (d) do or cause any other thing to be done or to occur,

if it is reasonably foreseeable that, as a result, the owner of the domestic water system would have to limit the use of the water provided by the system on the basis that there may be risk of a drinking water health hazard.

(3) The prohibitions in subsection (1) and (2) do not apply

- (a) in relation to anything required for the proper operation, maintenance or repair of a domestic water system or the treatment of water in the system,
- (b) if the introduction or activity is authorized or required by or under an enactment or the person is otherwise acting with lawful authority, or
- (c) in relation to an activity prescribed by regulation that is undertaken in accordance with any conditions prescribed by regulation.

(b) Ownership of Watershed

Watershed protection is a key component of any comprehensive plan to protect drinking water. The most effective means of watershed protection is ownership of the watershed itself. However, few water suppliers are in the fortunate position of being able to control directly all of the land necessary for the protection of the watershed. Lack of ownership is a significant constraint on a water supplier's control over water quality as other landowners have rights to use their lands.

(c) Streamside Protection Areas

Water suppliers (other than regional districts and municipalities) do not have any special powers to regulate specifically in relation to watershed protection. The Streamside Protection Regulation itself is a Regulation enacted pursuant to the *Fish Protection Act* and the purpose of that statute, of course, is protection of fish habitat rather than protection of watersheds per se. Nevertheless, protection of fish bearing streams has the indirect benefit of protecting the quality of water in streams and thus the quality of any water drawn from the streams or a reservoir fed by such streams and used for drinking water purposes.

(d) Sensitive Streams Description and Licensing Regulation, B.C. Reg. 89/2000.

This Regulation enacted pursuant to the *Fisheries Act* and the *Water Act* also provides a level of protection for designated water courses, which in the Regional District of Nanaimo includes the Englishman River.

6.2 Municipalities**(a) Municipal Power to Regulate in Relation to the Environment**

Municipalities are given their legislative authority under the *Community Charter*. That power includes the power to regulate in relation to the environment under Section 8(3)(j). However, the power of municipalities in relation to the protection of the natural environment is a power exercised concurrently with the Province. Accordingly, any bylaw that a municipality may enact in relation to the natural environment requires the approval of the Minister of Water, Land and Air Protection. It will not necessarily be a straightforward matter to obtain such approval.

There are some exceptions to the approval requirements set out in the recently enacted *Spheres of Concurrent Jurisdiction - Environment and Wildlife Regulation, B.C. Reg. 144/2004*. This regulation provides municipalities, among other powers, with the authority to enact bylaws:

- (a) regulating or prohibiting pollution of streams and other water courses; and
- (b) in relation to the application of certain pesticides on residential property or land owned by the municipality for the purposes of maintaining outdoor trees, shrubs, flowers, other ornamental plants and turf.

Municipalities cannot regulate in relation to exempted pesticides, which are listed in Annex 1 of the *Pesticide Control Act Regulation*.

The Regulation goes on to make clear that the municipality may not exercise its authority in relation to pesticides:

- (a) for the management of pests that transmit human diseases or impact agriculture or forestry;
- (b) on the residential areas of farms;
- (c) to buildings or inside buildings; and
- (d) on or land used for agriculture, forestry, transportation, public utilities or pipelines unless the public utility or pipeline is vested in the municipality.

(b) Power to Regulate Land Use and Development

Municipalities and regional districts have authority in relation to land use and planning to zone land and prohibit certain uses from taking place on land and to establish development permit areas. In Ontario the Township of Oro-Medonte was recently successful in stopping the establishment of a water bottling facility on land protected by water policies in its official plan: *Re: Gold Mountain Springs* (2002 OMBD No. 141).

In another Ontario decision, a Court confirmed that the use of land for commercial water taking is a 'use' of land: *Grey Association for Better Planning v. Artemesia (Township)* (Ont. Div. Ct.)

Planning powers, however, may not be exercised without any restraint. While local governments do have broad land use regulation authority, they probably cannot use that authority to deprive an owner of all possible uses of their land or to effectively expropriate the land from a private ownership to a public benefit. Development permits may be used to guide the development of land, however, local governments do not generally have any kind of discretion with respect to the granting of such a permit. The statutory scheme relating to development permits has been interpreted by the Courts as permitting local governments to impose conditions respecting the development of land through the issuance of development permits but the Courts have held that the development permit is not a discretionary approval.

Similarly, building permits are not discretionary. Once a developer or owner has presented an application to the building inspector that demonstrates compliance with the building bylaw and Building Code, the owner is entitled to have a building permit issued. Attempts to argue that a building inspector should consider whether the new construction will create a nuisance have not been successful.

(c) **Power to Require Drainage Works**

Under Section 907 of the *Local Government Act*, municipalities and Regional Districts have the authority to deal with stormwater runoff in connection with new development, by requiring the storm drainage works be constructed and managed in accordance with the bylaw by anyone who carries out construction of a paved area or a roof area. However, it is important to note this applies to new construction only and cannot be used to retroactively require owners of existing buildings to install expensive drainage systems.

(d) **Power to Regulate Tree Cutting**

Municipalities have broad powers to prohibit the cutting of trees under the *Community Charter*.

6.3 Regional Districts

Regional districts have even fewer powers than municipalities. The authority in relation to the protection of the natural environment available to municipalities under Section 8(3)(j) of the *Community Charter* is not available to regional districts. This precludes a regional district from enacting bylaws referred to in the Spheres of Concurrent Jurisdiction Environment and Wildlife Regulation to regulate and prohibit the pollution of streams and other water courses.

The regional district powers in relation to the issuance of development permits is likely even narrower of the authority of municipalities because of the decision of the British Columbia Court of Appeal in *Denman Island Ratepayers Association v. Denman Island (Local Trust Committee)* 24 MPLR (3d) 189 (BCCA). In that case, the Court held that a local trust committee of the Islands Trust did not have the power to regulate extensive logging or tree cutting within a development permit area established to protect the natural environment taking a narrow, rather than a broad approach to statutory interpretation. Because Regional Districts do not have the broad powers to control tree cutting enjoyed by municipalities, it is likely that the *Denman Island Ratepayers* decision will govern the interpretation of Regional District authority in this context.

6.4 Constitutional Issues

The ability of local government to regulate in relation to some areas is constrained by our Constitution, which gives jurisdiction for some area of authority exclusively to the Federal Government. This includes the use and development of Federal lands and First Nations lands.

6.5 Statutory Overrides

In addition to limitations inherent in the legislative scheme, there are examples of some statutes where the local government power is expressly overridden by Provincial regulations. The position is different in some other jurisdictions. For example, in Ontario, Section 71 of the *Planning Act* provides that the *Planning Act* prevails over the provision of another general or special Act.

A. *Agricultural Land Commission Act, SBC 2002, c.36*

This Act provides expressly that it is not subject to any enactment other than the *Interpretation Act*, the *Environment and Land Use Act* and the *Waste Management Act*. Local governments may not exercise land use authority to permit non-farm use of land in the agricultural reserve (Section 18).

B. *Farm Practices Protection (Right to Farm) Act, RSBC 1996, c. 131*

Under the *Farm Practices Protection Act*, normal farm practices are not liable in nuisance and are not subject to a number of local government bylaws including nuisance bylaws if the farm operation is conducted in accordance with normal farm practices (Section 2) and not otherwise in contravention of the *Health Act*, *Pesticide Control Act* and the *Waste Management Act*.

C. *Forest Land Reserve Act, RSBC 1996, c.158*

Section 17 of the *Forest Land Reserve Act* prohibits a local government from adopting a bylaw or issuing a building or development permit that would directly or indirectly restrict a forest management activity relating to timber production or harvesting on forest reserve land or managed forest land.

D. *Interpretation Act, RSBC 1996, c.238*

Section 14(2) of the *Interpretation Act* exempts the Province from having to comply with local government bylaws relating to the use or development of land, or in the planning, alteration, service, maintenance or use of improvements. This is a significant exemption as it extends not only to the Province but also to Crown Corporations that are agents of the Crown and entities such as colleges.

E. Mines Act, RSBC 1996, c.293

Permits may be issued under the *Mines Act* to allow mining activity (including gravel quarrying) without regarding to local zoning regulations: *Brouwer v. B.C. (Minister of Energy, Mines and Petroleum Resources)*, [2000], B.C.J. No. 2655 (B.C. Supreme Court).

On at least two occasions Courts have affirmed that because local governments have the power to prohibit soil removal by bylaw under other sections of the *Local Government Act*, they do not have the power to do so under a zoning bylaw adopted under Section 903 of that Act without the approval of the Minister of Mines and Energy.

In *Vernon (City) v. Okanagan Excavating (1993) Ltd.* (1993) 84 B.C.L.R. (2d) 130 the B.C. Supreme Court stated:

“In my view, Section 930.1 [now 723] of the *Municipal Act* of British Columbia supports the conclusion that a municipality is not authorized to regulate the removal of sand, gravel and rock from land under its power to regulate the ‘use of land’ within a municipality. Rather, to regulate such conduct, a municipality must specifically pass bylaws pertaining to the removal of these substances, these bylaws first being approved by the Minister with the concurrence of the Minister of Energy, Mines and Petroleum Resources.”

The zoning regulations of local government are therefore no impediment to the issuance of a permit under the *Mines Act* for mining activity.

6.6 Summary

Local governments do have some legislative authority that can be used in a manner that protects some land from some uses that may impair water quality. However, many of the chief concerns - agriculture, mining and forestry - are largely beyond the reach of municipal and regional regulation.

7.0 Drinking Water Protection - The Technical Options

7.1 Multiple Barrier Approach

Drinking water quality can be protected using a *multiple barrier approach* that focuses on protecting drinking water from the source to the tap.

A *multiple barrier approach* involves the identification and assessment of potential risks to drinking water at the source, during treatment, during storage and distribution and at the consumer’s tap and actions to reduce these risks, as described below.

7.2 Protecting Water Sources

Drinking water comes from either groundwater or surface water sources. Groundwater is water that is obtained from sources within the ground. Approximately 25% of all drinking water in BC comes from groundwater. Surface water is water that obtained from a surface water body such as a river, lake or pond.

The British Columbia Auditor General's 1999 report identifies seven key stresses and strains facing our drinking water sources: logging, cattle grazing, mining, outdoor recreation, transportation, agriculture, and human settlement. It is not feasible or necessary to ban all of these uses in our watersheds, however, it is possible to ensure that these uses are undertaken sensitively to minimize risks to reducing drinking water quality.

Good water source protection can prevent some contaminants from entering the drinking water supply, but even the most pristine watershed in which no human activity occurs can still harbour contaminants harmful to human health.

7.3 Ensuring Adequate Treatment

There are four main treatment methods to make raw drinking water potable: [1] primary disinfection, [2] secondary disinfection, [3] sedimentation, coagulation and flocculation; and [4] filtration.

Primary disinfection is the process that kills or inactivates organisms present in water. The common methods of disinfection are chlorination, ozonation, and ultraviolet radiation. Each disinfection method has advantages and disadvantages.

Secondary disinfection is the addition of disinfectant following primary disinfection at some point or points in the water distribution system. Secondary disinfection is primarily done to prevent re-growth of bacteria and microbes that might gain access to the water distribution system after the point of primary disinfection. Typically chloramines, a mixture of chlorine and ammonia, is used as the secondary disinfectant.

Sedimentation, coagulation and flocculation can be used as a pre-treatment to reduce the amount of suspended organic material and particles before disinfection and or filtration. *Sedimentation* involves letting water sit for a period of time, during which larger particles in water settle to the bottom leaving clearer water at the top. *Coagulation* involves the use of coagulants, which are compounds that neutralize charges so particles stick together to help the sedimentation process. *Flocculation* is a process that combines small particles into large particles to help the sedimentation process.

Filtration involves the trapping and removal of contaminants from water using a filter.

7.4 Maintaining the Distribution System

The distribution system that conveys water through pipes from the source of treatment facilities and homes needs to be maintained to reduce the possibilities of water contamination.

Regular maintenance and repair should include flushing and cleaning of watermains to prevent build up, replacement of old pipes to prevent watermain breaks, repair of leaks and broken mains, the maintenance of system pressure to prevent contamination, and regular monitoring of reservoirs and waterworks to prevent security breaches. Back up equipment should be available for use when equipment breaks and needs to be repaired.

Each water system should have appropriate systems in place to reduce the contamination of water as a result of *cross connections* and *backflow*. Cross connections are places in the distribution system in which clean water can come into contact with contaminants, unpotable water or wastewater. Backflow is when water in a main reverses direction because of pressure differences and results in contaminants being sucked into the system.

Water systems should be operated by *properly trained operators*. Water system operators should understand water quality issues, know how to maintain a water system and to protect water from contamination, know how to properly sample water and understand the significance of water test results.

7.5 At the Consumer's Tap

Consumers with health problems or weak immune systems may wish to supplement the water treatment undertaken by their provider. Supplementary measures include boiling water, using water purification tablets or household bleach to disinfect water, using a home filtration pitcher for drinking water, installing a home filtration system, or a point of use or point of entry system.