

**DATE:** February 23, 2018

**FILE:** 3360-20/RZ 2C 18

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

**FROM:** Russell Dyson  
Chief Administrative Officer

Supported by Russell Dyson  
Chief Administrative Officer

*R. Dyson*

**RE: Zoning Bylaw Amendment – 2410 Sackville Road (MacKenzie & Heynck)  
Puntledge – Black Creek (Electoral Area C)  
Lot C, Block 29, Comox District, Plan 25306, PID 002-904-713**

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### **Purpose**

To seek Comox Valley Regional District (CVRD) Board support on external agency and First Nations referrals for a proposed site-specific rezoning to permit water and beverage bottling.

### **Recommendation from the Chief Administrative Officer:**

THAT the Comox Valley Regional District Board endorse the agency referral list as outlined in Appendix B of staff report dated February 23, 2018, and direct staff to start the external agency referral process for Lot C, Block 29, Comox District, Plan 25306, PID 002-904-713 (MacKenzie & Heynck) as part of a proposed amendment (RZ 2C 18) of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005”;

AND FINALLY THAT Comox Valley Regional District staff consult with First Nations in accordance with the referrals management program dated September 25, 2012.

### **Executive Summary**

- The subject property is located at 2410 Sackville Road in Electoral Area C.
- In June 2017, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) referred a ground water licence application to the CVRD for comments. The CVRD objected to the proposal due to its inconsistency with the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014” (OCP), and the zoning bylaw.
- On November 21, 2017, the Province issued a conditional water licence to the applicants to extract up to 10 cubic metres per day (10,000 litres per day) or up to 3,650 cubic metres per year (3,650,000 litres per year) for fresh water bottling (Appendix A). For this licence, the Province requested the applicants to rezone the property to permit “water and beverage bottling.”
- The Province regulates extraction, but a local government can regulate any above ground uses and buildings related to the extraction through zoning.
- The subject property is zoned Rural Eight (RU-8), which does not permit “water and beverage bottling.” This use is presently only permitted in the Industrial Light (IL) zone.
- The CVRD Board is recommended to conduct First Nations and external agency referrals for this rezoning application. Once feedback is gathered, staff will report back and recommend an option, which may include denial, zoning bylaw amendment with conditions or a temporary use permit.

Prepared by:

***B. Chow***


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 Brian Chow, MCIP, RPP  
 Rural Planner

Concurrence:

***A. Mullaly***


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 Alana Mullaly, M.Pl., MCIP, RPP  
 Manager of Planning Services

Concurrence:

***A. MacDonald***


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 Ann MacDonald, MCIP, RPP  
 General Manager of Planning  
 and Development Services  
 Branch

### **Background/Current Situation**

The subject property is a 2 hectare, rural residential parcel located at 2410 Sackville Road (Figures 1 to 3). It is bounded by Sackville Road to the southeast and rural lots in all other directions.

Currently, there is a double wide mobile home with a carport on the property (Figure 4). The applicants wish to rezone the property to enable water and beverage bottling as an accessory use.

In June 2017, FLNRORD referred a ground water licence application to the CVRD for comments. CVRD staff advised that the proposal was inconsistent with the OCP and the zoning bylaw. The subject property is in the Tsolum River watershed. There is an OCP policy direction to consider the impacts of a development proposal, such as groundwater extraction, on a watershed scale. The policy is to ensure that hydrology impacts are managed using the precautionary principle and ensure that groundwater level decline and reduction in base flows to watercourses are prevented. In addition, the subject property is in a rural area, surrounded by environmentally sensitive features, and Agricultural Land Reserve, which relies on groundwater. With respect to the zoning bylaw, Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005”, the proposed “water and beverage bottling” is not a permitted use in the RU-8 zone. Staff requested that if the Province was to issue a licence, the CVRD would request that a zoning bylaw application be made to enable the CVRD Board to considered enabling “water and beverage bottling” as amendment to permit such a use on the property.

On November 21, 2017, the Province issued a conditional water licence to the applicants to extract up to 10 cubic metres (10,000 litres) per day for industrial purpose (fresh water bottling). For this licence, the Province requested the applicants apply to rezone the property to permit “water and beverage bottling” per staff’s referral comment.

### Official Community Plan Analysis

Notwithstanding the OCP policies, the Province issued a licence to enable water extraction for the purpose of commercial sale. The OCP designates the subject property within Rural Settlement Areas (RSAs). Sections 4 and 6 focus on protecting the watersheds and recharge areas within the context of the precautionary principle.

Per OCP policy 7(1)(b), staff requested that the Province require the applicants to provide baseline data about the aquifer as well as identify the existing demand on the aquifer relating to agricultural and domestic use. The Province advised by email that such baseline data were not necessary.

The focus of the rezoning application is on the proposed use, which is water bottling on the property. Section 44(4) allows the regulation of “*industrial uses by including permitted uses, setbacks and densities in the zoning bylaw*”. Section 47(1) identifies the need to amend the zoning bylaw or issue a temporary use permit for light industrial use, and Section 48(3) “*Permits new industrial uses subject to rezoning*”. Section 47(2) identifies information required for rezoning, such as how the proposal will maintain the rural character and be compatible with adjacent land and water uses, transportation links and demands. The applicants indicated that they will construct a 22 foot by 32 foot building for

bottling, and did not indicate any other facilities. To keep the rural character, the applicants indicate that they are taking care to not change the natural beauty of the property and maintain the woodland fauna. With respect to compatibility of adjacent lands and uses, the applicants state their proposed operation will be quiet and unnoticeable, and they confirm that there will not be any onsite retail on the subject property.

### Zoning Bylaw Analysis

The subject property is zoned RU-8, which does not list Water and Beverage Bottling as a permitted use. The intent of the RU-8 zone is to provide a rural zone that permits uses such as residential use, agricultural use, nurseries, riding academies, silviculture, aquaculture, animal hospital and fish hatchery. Larger lots may permit animal kennels, wood processing, crushing and screening of sand and gravel and horse events. Currently, the Industrial Light (IL) zone is the only one that permits such a use. The rezoning application is to create a zoning exception to the RU-8 zone to permit such use.

### **Policy Analysis**

Section 460 of the *Local Government Act* (RSBC, 2015, c. 1) (LGA) states that a local government must define procedures by which a property owner may apply for a bylaw amendment. Section 479 of the LGA authorizes a local government to regulate the use, density, the size and shape of land, buildings and structures. Section 464 states that a local government must hold a public hearing before adopting a zoning bylaw.

The Province issued the conditional water licence 500169 according to *Water Sustainability Act* with the conditions of:

- Limiting the size of the container per Section 5(c) of the *Water Protection Act* (i.e., in containers of 20 litres capacity or less);
- Contacting Vancouver Island Health Authority for their requirements under the *Drinking Water Protection Act* and other relevant Acts; and
- Rezoning the property to enable “water and beverage bottling.”

### **Options**

The board has the following options:

1. Refer the application to external agencies and First Nations for review;
2. Deny the rezoning application; or
3. Consider the issuance of a temporary use permit, so that conditions of use can be established.

Staff recommends the first option, as this will enable staff to collect specific feedback on the application. Once feedback is gathered, staff will report back and recommend an option, which may include denial, zoning bylaw amendment with conditions, or a temporary use permit.

### **Financial Factors**

The applicant has paid for the rezoning application review in accordance with the Bylaw No. 328 being the “Comox Valley Regional District Planning Procedures and Fees Bylaw No. 328, 2014”. If the application proceeds to statutory public hearing, additional fees will be required. Fees paid to date account for the rezoning only and not future development permit fees.

### **Legal Factors**

This report and the recommendations contained herein are in compliance with the LGA and CVRD bylaws. The LGA authorizes a local government to regulate the use of land and buildings.

**Regional Growth Strategy Implications**

The Comox Valley Regional Growth Strategy, Bylaw No. 120, being the “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010” (RGS), designates the subject property within RSAs. In the RGS, water is identified as an important factor for the future of the Comox Valley. Objective 5-B is to “*Protect the quality of water sources*”. Supporting Policy 5B-1 is to “*Manage development on the basis of precautionary principles within watersheds*”. The RGS does not include policy regarding the commercial sale of groundwater. The Province only started regulating non-domestic ground water extraction in February 2016.

The rezoning application focuses on the proposed “water and beverage bottling” use. It is consistent with Objective 3-A of the RGS, which is to “*Support local business retention, development and investment*”. Supporting Policy 3B-4 supports “*value-added, community-based business development*”.

**Intergovernmental Factors**

Appendix B contains a list of agencies and First Nations, to which staff recommends referring the application. Feedback from the referral will be reported at a future electoral areas services committee meeting.

MFLNRO issued the conditional water licence on November 21, 2017.

**Interdepartmental Involvement**

Planning staff is leading this application. Internal departments do not have concerns with this proposal.

**Citizen/Public Relations**

Staff recommends that the application be referred to the Area C Advisory Planning Commission. If the application proceeds to bylaw preparation, community consultation will be held in accordance with Bylaw No. 328 (i.e. statutory mailing and public hearing).

Attachment: Appendix A – “Conditional Water Licence 500169”  
Appendix B – “Agency List”





Figure 2: Air Photo

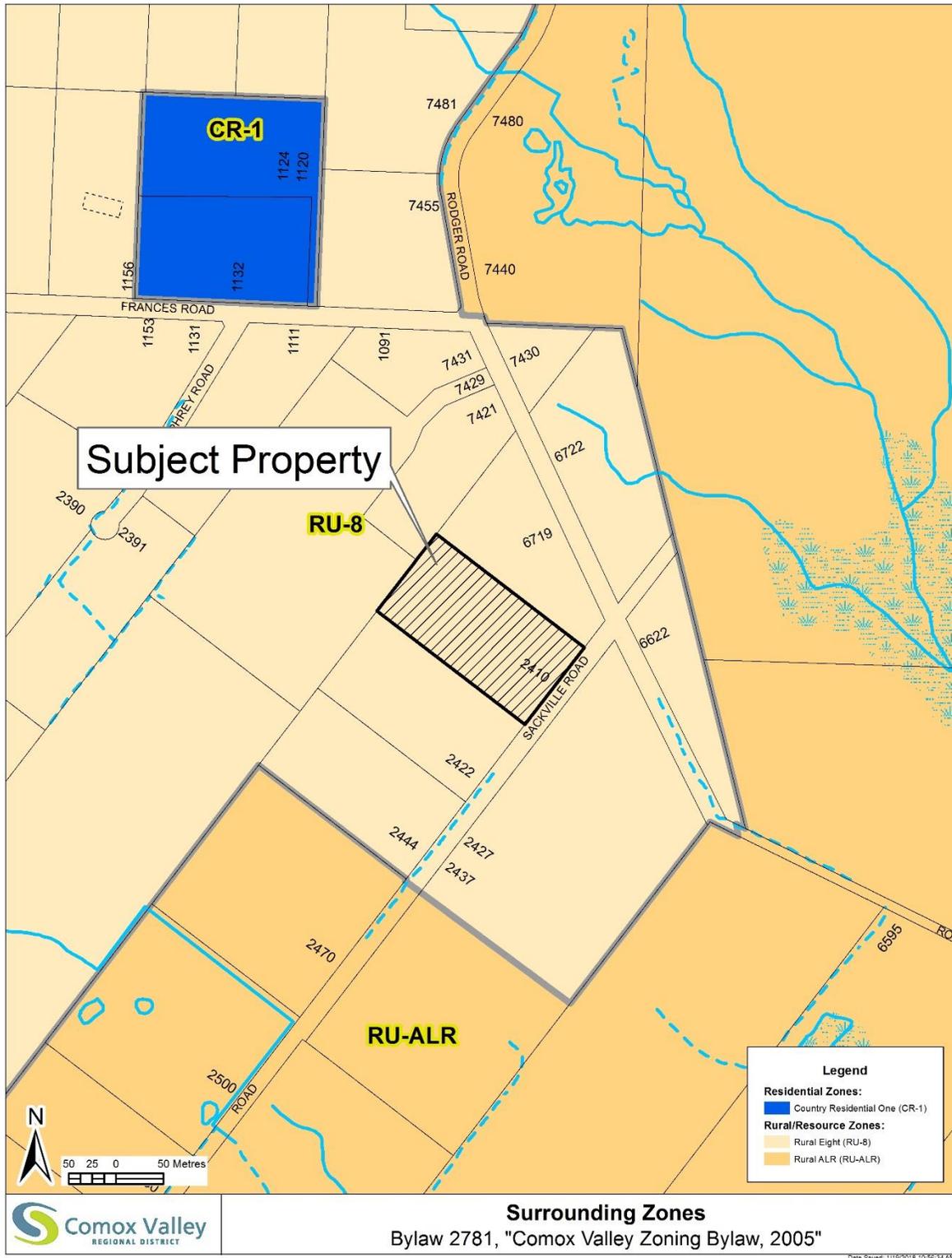


Figure 3: Zoning Map

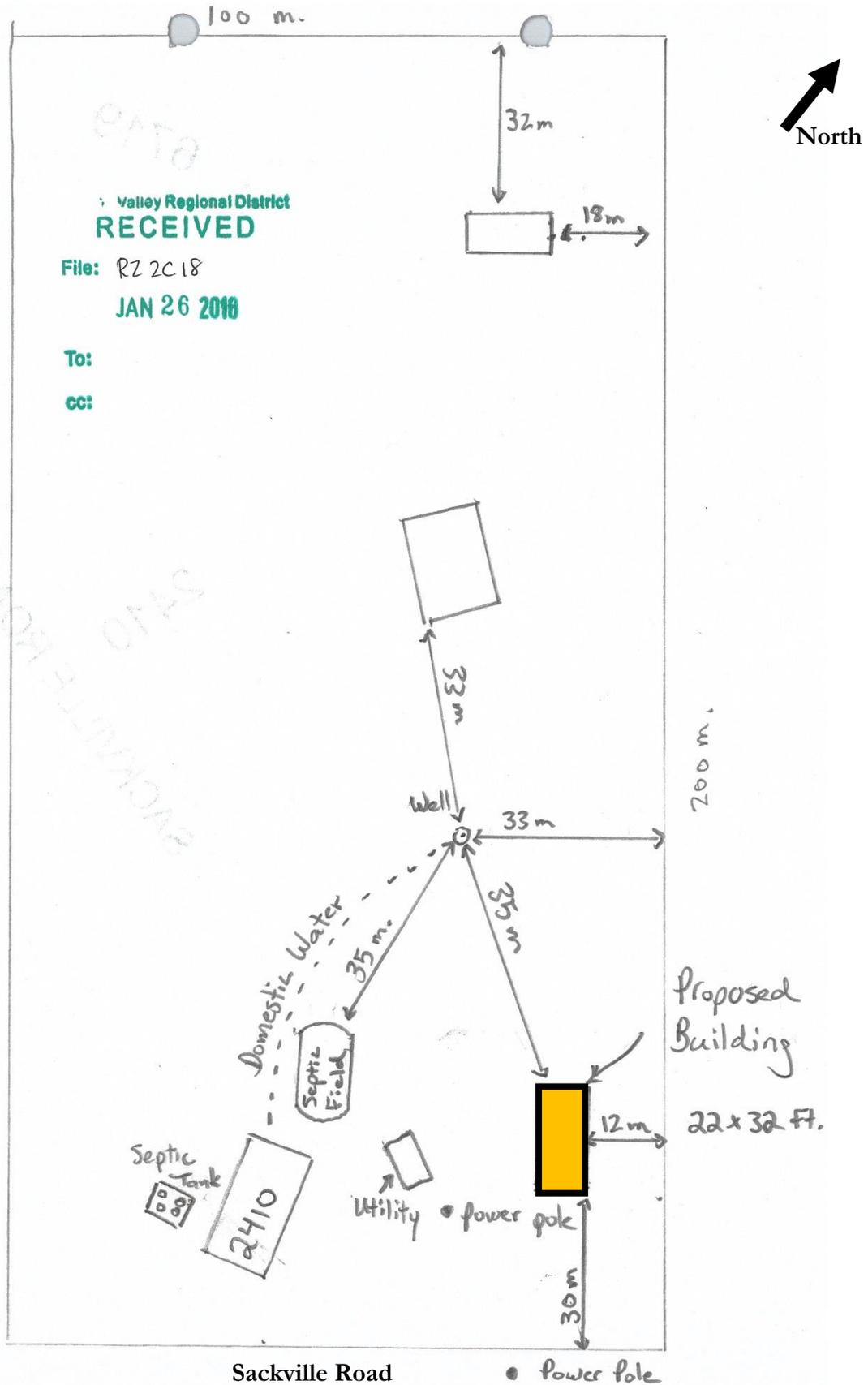


Figure 4: Proposed Site Plan if Rezoning were to be Successful



November 21, 2017

**File: 20004026**  
**vFCBC Tracking No.: 100188800**

**Christopher Scott MacKenzie and Regula Heynck**  
PO BOX 27  
Merville BC V0R 2M0

**Dear Christopher MacKenzie and Regula Heynck:**

**Re: Groundwater Licence Application 104026**

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The investigation of the above application has been completed. Enclosed is a copy of your Conditional Water Licence 500169.

Please read the documents carefully. Any error(s) in these documents should be brought to the attention of this office as soon as possible.

There are restrictions on removing water from British Columbia and the size of the container, refer to Section 5(c) of the *Water Protection Act* for more details ([http://www.bclaws.ca/civix/document/id/complete/statreg/00\\_96484\\_01#section5](http://www.bclaws.ca/civix/document/id/complete/statreg/00_96484_01#section5)).

Please contact the local Vancouver Island Health Authority (VIHA) office to further discuss requirements under the *Drinking Water Protection Act* and other relevant Acts that VIHA administers.

You are advised that the Comox Valley Regional District requires an application to rezone the property to enable "water and beverage bottling" as the principal use on the property.

Please note the following:

- 1) Water licences do not authorize entry on privately owned land for the construction of works, or flooding. Permission of the affected landowner must be obtained or an easement expropriated. For your protection, permission should be in writing and registered with the appropriate Land Title Office.
- 2) Permission for installing works on lands or roadways which are under the jurisdiction of any government agency, must be obtained from the agency concerned.

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Please contact FrontCounter BC to assist you with notifications and any applications required if:

- a) there is any change in your mailing address;
- b) you sell the land to which the licence is appurtenant;
- c) you propose to subdivide the land to which the licence is appurtenant; or
- d) you propose to alter the works authorized under the licence.

In order for you to keep your water licence in good standing, the following must be observed:

- a) continued beneficial use of water, as authorized under your licence;
- b) payment of annual rentals;
- c) compliance with the terms of your licence; and
- d) compliance with the terms of the *Water Sustainability Act*.

One of the obligations of a water licence is the payment of annual rentals and fees to the Crown for the authorization to exercise the rights granted under the licence. Failure to pay water rental invoices by a specified date may result in late-payment penalties, collection action or cancellation of the licence. Any questions in regards to invoices, statements or billing procedures should be directed to the Water Revenue Unit at 1 800 361-8866. Callers from the Victoria area should dial 250 387-9445.

The *Water Sustainability Act* gives the recipient of this notice the right to appeal my decision. Information on filing an appeal can be found on the Environmental Appeal Board website at: <http://www.eab.gov.bc.ca/>. A right of appeal from my decision lies to the Environmental Appeal Board. Notice of any appeal must (1) be in writing; (2) include grounds for the appeal; (3) be directed by registered mail to the Chair, Environmental Appeal Board, PO Box 9425 Stn Prov Govt., V8W 9V1 or personally delivered to the office of the Board at 4th Floor, 747 Fort Street in Victoria, BC V8W 3E9, [eabinfo@gov.bc.ca](mailto:eabinfo@gov.bc.ca); (4) be delivered within 30 days of receiving this letter, and (5) be accompanied by a fee of \$25.00, payable to the Minister of Finance.

If you have any questions or concerns, please contact Tanya Dunlop, Senior Authorizations Technologist, at 250 751-7015 or by email at [Tanya.Dunlop@gov.bc.ca](mailto:Tanya.Dunlop@gov.bc.ca).

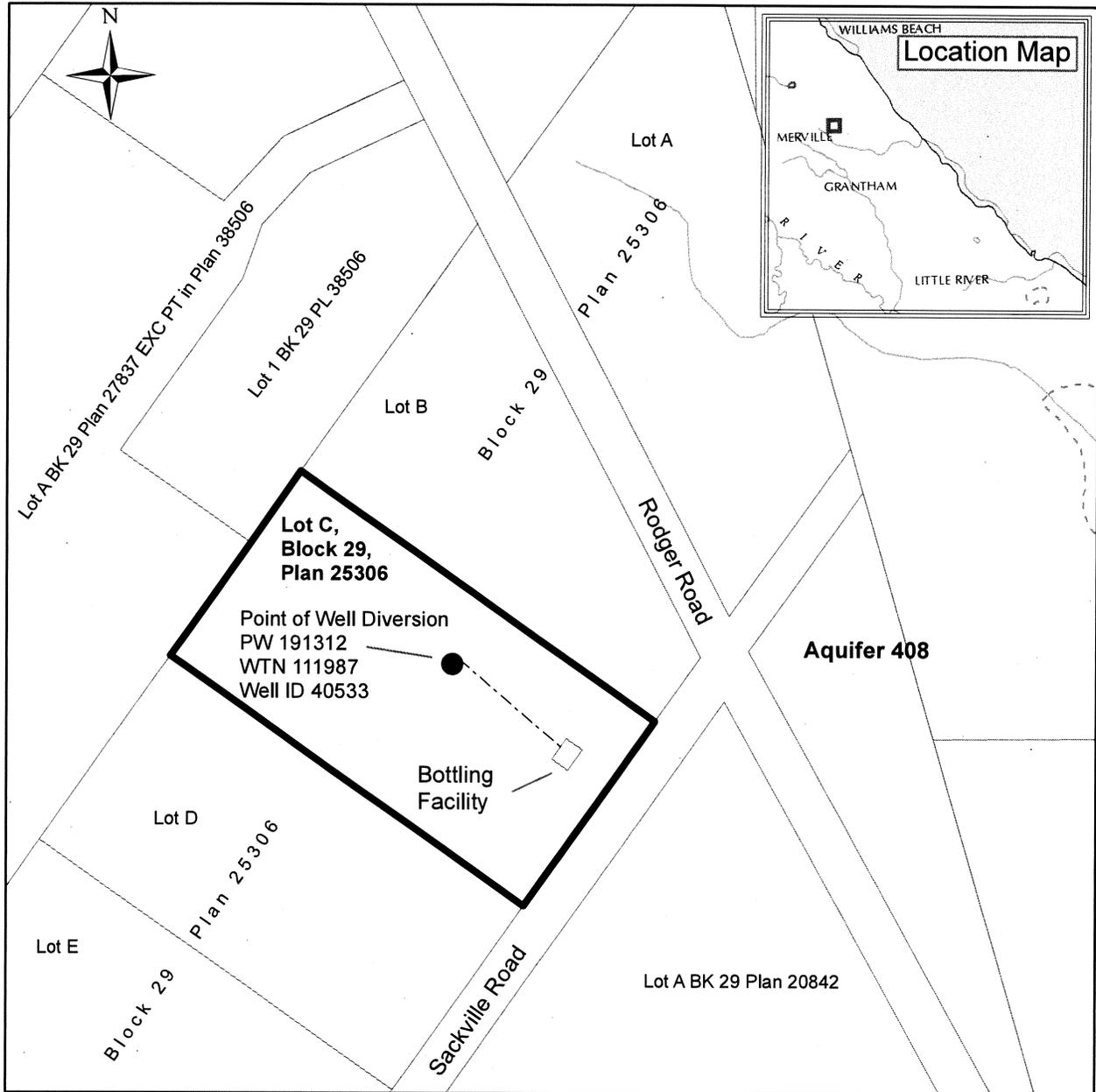
Yours truly,



David Robinson  
Assistant Water Manager

Enclosure(s)

cc: Gary Anderson, Upper Island Health Authority, [gary.anderson@viha.ca](mailto:gary.anderson@viha.ca)  
Alana Mullaly, Manager of Planning Services,  
Planning and Development Services Branch,  
Comox Valley Regional District, [amullaly@comoxvalleyrd.ca](mailto:amullaly@comoxvalleyrd.ca)



WATER DISTRICT:  
 PRECINCT:  
 LAND DISTRICT:

Nanaimo  
 Courtenay  
 Comox

Signature:

Date:

November 21, 2017

LEGEND:

Scale: 1:3,000  
 Point of Diversion: ●  
 Map Number: 92F.075.4.3  
 Pipe: -----

C.L.: 500169  
 FILE: 20004026

The boundaries of the land to which this licence is appurtenant are shown thus: **—————**



# Province of British Columbia

## *Water Sustainability Act*

### CONDITIONAL WATER LICENCE

The owner(s) of the land to which this licence is appurtenant is/are hereby authorized to divert and use water as follows:

- a) The aquifer on which the rights are granted is 408.
- b) The point of well diversion is located as shown on the attached plan.
- c) The date from which this licence shall have precedence is November 15, 2016.
- d) The purpose for which this licence is issued is industrial (fresh water bottling).
- e) The maximum quantity of water which may be diverted for industrial (fresh water bottling) purpose is 3650 cubic metres per year at a rate not to exceed 10 cubic metres per day.
- f) The period of the year during which the water may be used is the whole year.
- g) The land upon which the water is to be used and to which this licence is appurtenant is Lot C, Block 29, Comox District, Plan 25306.
- h) The authorized works are well, pipe and bottling facility which shall be located approximately as shown on the attached plan.
- i) The construction of the said works shall be completed and the water shall be beneficially used prior to December 31, 2020. Thereafter, the licensee shall continue to make regular beneficial use of the water in the manner authorized herein.
- j) The licensee must install a diversion flow measuring device to the satisfaction of the Water Manager.
- k) The licensee must retain diversion flow meter records, and have them available upon request by the Water Manager.

David Robinson  
Assistant Water Manager

## Agency and First Nations Referral List

The following agencies will receive a referral of the proposal .

### First Nations

<input checked="" type="checkbox"/>	K'ómoks First Nation	<input checked="" type="checkbox"/>	Homalco (Xwemalhkwa) Indian Band
<input checked="" type="checkbox"/>	We Wai Kai Nation of the Laich-Kwil-Tach Treaty Society	<input checked="" type="checkbox"/>	We Wai Kum First Nation
<input checked="" type="checkbox"/>	Kwiakah First Nation		

### Provincial Ministries and Agencies

	Agricultural Land Commission		Ministry of Community, Sport & Cultural Development (responsible for TransLink)
<input checked="" type="checkbox"/>	BC Assessment		Ministry of Energy & Mines
	BC Parks		Ministry of Forests, Lands and Natural Resource Operations
	Ministry of Environment	<input checked="" type="checkbox"/>	Ministry of Transportation and Infrastructure
	BC Transit		Ministry of Jobs, Tourism & Skills Training (responsible for labour)
	Ministry of Agriculture		Ministry of Aboriginal Relations and Reconciliation

### Local Government

	Comox (Town of)		Alberni-Clayoquot Regional District
	Courtenay (City of)		Strathcona Regional District
	Cumberland (Village of)		Regional District of Mount Waddington
	Islands Trust		Regional District of Nanaimo

### Other

<input checked="" type="checkbox"/>	Puntledge – Black Creek Area ‘C’ advisory planning commission		Agricultural Advisory Planning Commission
	School District No.71 (Comox Valley)	<input checked="" type="checkbox"/>	Vancouver Island Health Authority (Environmental Health)