

DATE: October 1, 2021

FILE: 3360-20/RZ 1B 21

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

**RE: Rezoning Application - 1334 and 1338 Hudson Road (McQueen)
Lazo North (Electoral Area B)
Lot 2, District Lot 205, Comox District, Plan VIP52063, PID 017-168-309**

Purpose

To seek Comox Valley Regional District (CVRD) Board support to undertake external agency and First Nations referrals for a proposed rezoning to enable a two-lot subdivision, and to recommend that the application be externally referred (Appendix A).

Recommendation from the Chief Administrative Officer:

THAT the Comox Valley Regional District Board endorse the agency referral list as outlined in Appendix A of staff report dated October 1, 2021, and direct staff to start the external agency referral process for Lot 2, District Lot 205, Comox District, Plan VIP52063, PID 017-168-309 (1334 and 1338 Hudson Road) as part of a proposed amendment (RZ 1B 21; McQueen) of Bylaw No. 520 being the “Rural Comox Valley Zoning Bylaw, No. 520, 2019”;

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, located at 1334 and 1338 Hudson Road, is approximately 1.35 hectares in area, is zoned Country Residential One (CR-1), and is included in a Settlement Expansion Area (SEA).
- The applicant proposes to rezone the subject property to enable the use of Section 514 of *Local Government Act* (RSBC, 2015, c. 1) (LGA), which is Subdivision to Provide Residence for a Relative. The size of the proposed lot is 0.345 hectares for proposed Lot A and 1.00 hectare for the proposed remainder lot. Section 514(6) states that the proposed lots must be at least 1.0 hectare unless a smaller area, in no case less than 2,500 square metres, is approved by the medical health officer. Given this section, the applicant is seeking to use the CVRD rezoning referral to solicit comments from Island Health.
- Staff recommends that First Nations and agency referrals for this application be initiated. Once this process is completed, comments from these parties will be presented to the board for consideration of next steps.

Prepared by:

Concurrence:

Concurrence:

B. Chow

A. Mullaly

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Government Partners and Stakeholder Distribution (Upon Agenda Publication)

Applicant	✓
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Background/Current Situation

The subject property is located at 1334 and 1338 Hudson Road, and is approximately 1.35 hectares in area (Figures 1 and 2). It is bound by Hudson Road to the west, residential lots to the north and south, and Pratt Road (unopened) to the east. The property is within Comox Valley Water Local Service Area and Comox Fire Protection District. It has one water connection and two private wastewater treatment systems.

Currently, there are two single detached dwellings and several accessory buildings (Figure 3). In a review of the property history, staff noted that an Occupancy Permit was issued for the secondary dwelling in October 2015, and an Occupancy Permit was issued for the addition to the single detached dwelling in September 2019.

The applicant wishes to rezone the property to enable the use of Section 514 of the LGA, which permits subdivision to provide residence for a relative subject to the creation of lots of at least 1.0 hectare, unless a smaller area down to 2,500 square metres, in no case less than 2,500 square metres, is approved by the medical health officer. This rezoning application is the first step in the process. If this application were to be approved by the CVRD Board, the applicant would then apply to subdivide 0.345 hectares off of their property (Figure 3). The remainder lot would be approximately 1.00 hectare in area. If the CVRD Board were to approve without medical health officer’s approval, the board’s decision would be presumptive of the medical health officer’s decision, and may result in inconsistency with the LGA if the Medical Health Officer were to deny the proposed minimum lot. The applicant submitted a written brief to provide their reasons for this application (Appendix B).

There is an existing Statutory Right of Way (SROW) that is 6 metres wide for drainage purposes with the Ministry of Transportation and Infrastructure. This SROW is shown on the proposed subdivision plan for its location and orientation (Figure 3).

Official Community Plan Analysis

The Rural Comox Valley Official Community Plan (OCP), Bylaw No. 337 being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014,” designates the subject property within SEAs. The intent of this designation is to identify future growth areas for the adjacent urban municipalities. Development is limited to ensure the development of land is consistent with the goals and objectives of the member municipalities and to ensure that future servicing and redevelopment are not precluded. Until this area is amalgamated with an adjacent municipality, significant changes to the existing land use and/or a further subdivision that increases the density, impact or intensity is not envisioned. Section 36(1) of the OCP states that minimum lot area for a subdivision is 4.00 hectares. The proposed lots do not meet this policy. Section 36(2) states that a subdivision application will be reviewed in light of the planning direction in the adjacent municipality in order to ensure that consideration is given to the compatible planning and zoning requirements of that municipality. The applicable residential policy for the SEAs is that new residential development must

not preclude future land assembly and subdivisions that are compatible with the standard of the adjacent municipality.

The proposal does not comply with the growth management policies of the OCP. To address this inconsistency, other Section 514 rezoning applications have imposed a limit of density to one dwelling unit per lot in order to retain the overall density of the neighbourhood. With this limit, the rezoning application's notable change would be adding a new lot to the subject property without increasing density. This limit would bring this proposal into compliance with the aforementioned growth management policies of the OCP.

The OCP also contains development permit area guidelines, which will be applicable if this proposal were to be approved and then advanced to the subdivision stage. The subject property is within the Aquatic and Riparian Habitat Development Permit Area. There are mapped watercourses within 30 metres of the subject property. This development permit requirement will be triggered if the proposal reaches the subdivision stage.

Zoning Bylaw Analysis

The subject property is zoned Country Residential One (CR-1) by Bylaw No. 520, being the "Rural Comox Valley Zoning Bylaw, No. 520, 2019" (Figure 4). The minimum lot area for subdivision is 4.00 hectares regardless of the zone because the subject property is in the SEAs. The proposed lots are smaller than this minimum requirement. In addition, Part 500(3)(i) of the Zoning Bylaw states,

"No subdivision is permitted under Section 514 of the *Local Government Act*, on lands not within the Agricultural Land Reserve, unless the lot being subdivided is at least two times the minimum lot area specified for the applicable zone."

Therefore, the minimum lot area for the subject property should be at least 8.00 hectares for subdivision to occur. As noted previously, Section 514 of the LGA permits subdivision of a parcel that does not meet the minimum parcel size requirements of a zoning bylaw if the subdivision will provide a residence for a relative. This section also allows a local government to establish minimum parcel sizes for subdivisions that provide a residence for a relative. The applicant is requesting a rezoning to enable the use of Section 514 of the LGA.

Policy Analysis

Section 514 of the LGA concerns subdivision to provide residence for a relative. This section allows an application for subdivision to be made, which creates one new lot if the applicant has owned the parcel for at least five years and the purpose of the subdivision is to provide a separate residence for the owner's relative.

This section also allows a local government to specify a minimum property size for subdivision under this section, but the minimum cannot be less than one hectare unless a smaller area is approved by the medical health officer. The agent has advised staff that they were unable to obtain an approval from the medical health officer at this time. Therefore, one of the external agencies proposed to be referred with this proposal is Vancouver Island Health Authority (Island Health). The approval from the medical health officer is required prior to the registration of the final subdivision plan.

Section 460 of the 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, 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 amendment.

Options

The board can refer the application to external agencies and First Nations for review, or deny the application to rezone the property for a reduced parcel size. Staff recommends that external and First Nations referrals be conducted to collect feedback on the application. Specifically, the focus is to collect comments from the medical health officer to fulfill Section 514(6) of the LGA.

Financial Factors

The applicant has paid for the rezoning application review in accordance with 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 subdivision or development permit fees.

Legal Factors

The recommendations and discussion contained within this report have been prepared in accordance with the LGA. Further, if the application proceeds and the provincial approving officer approves the Section 514 subdivision, the LGA requires that concurrent with subdivision plan registration, a Section 219 Restrictive Covenant (pursuant to the *Land Title Act*) be registered on the titles of the severed and retained parcels requiring that for five years following subdivision, use of the parcels will remain residential and that the severed parcel will provide a residence for a relative. This means that the local government is responsible for ensuring that the owners comply with the terms of Section 514. Covenants are private law mechanisms and need to be actively enforced otherwise the local government may be considered to have acquiesced to any non-compliance.

In other Section 514 rezoning applications, the CVRD has limited density to one dwelling unit per parcel, so that there is no net increase in density. The tool to enforce this limit is an exception zone that provides site specific limit on the maximum residential density of one unit per lot.

Regional Growth Strategy Implications

The Comox Valley Regional District Regional Growth Strategy (RGS) designates the subject property within SEAs. SEAs are fringe areas of municipal areas, and the intent of this designation is to have phased and orderly growth for the municipal areas to expand their boundaries, and to limit development to preclude a premature need for municipal servicing. Until a municipality has incorporated the subject property, there is a minimum lot area for subdivision of four hectares to ensure that appropriate infrastructure capacity is available, that new development does not detract from compact growth options within municipal areas, and that the financial stability of municipal areas is not negatively impacted.

Intergovernmental Factors

Appendix A 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.

Interdepartmental Involvement

Planning staff is leading this application. An internal referral was circulated for review and comments. Comments collected will be reviewed as part of the external agency and First Nations referral.

Citizen/Public Relations

Staff recommends that the application be referred to the Area B 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).

Attachments: Appendix A – Agency List
Appendix B – Applicant’s Written Brief

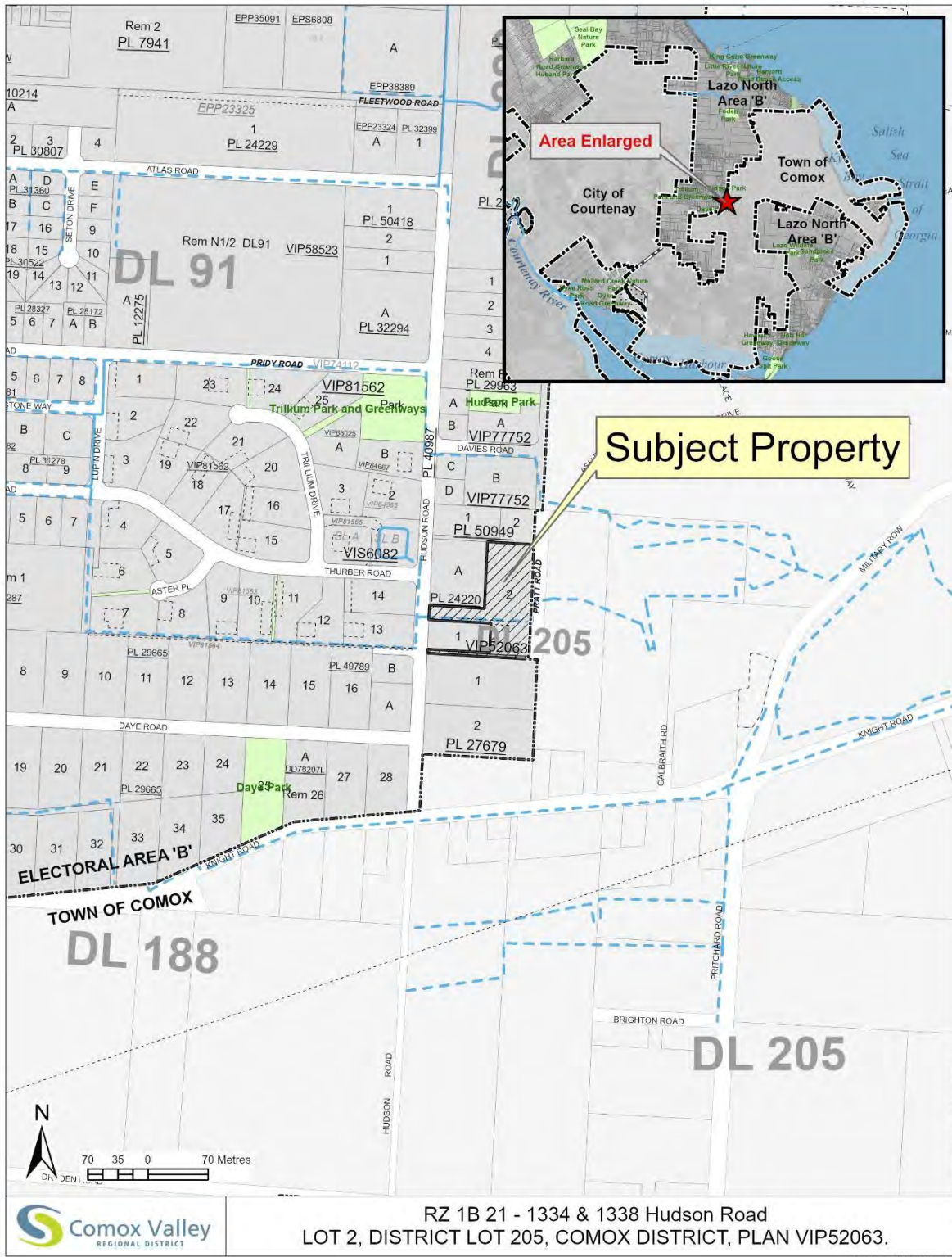


Figure 1: Subject Property Map

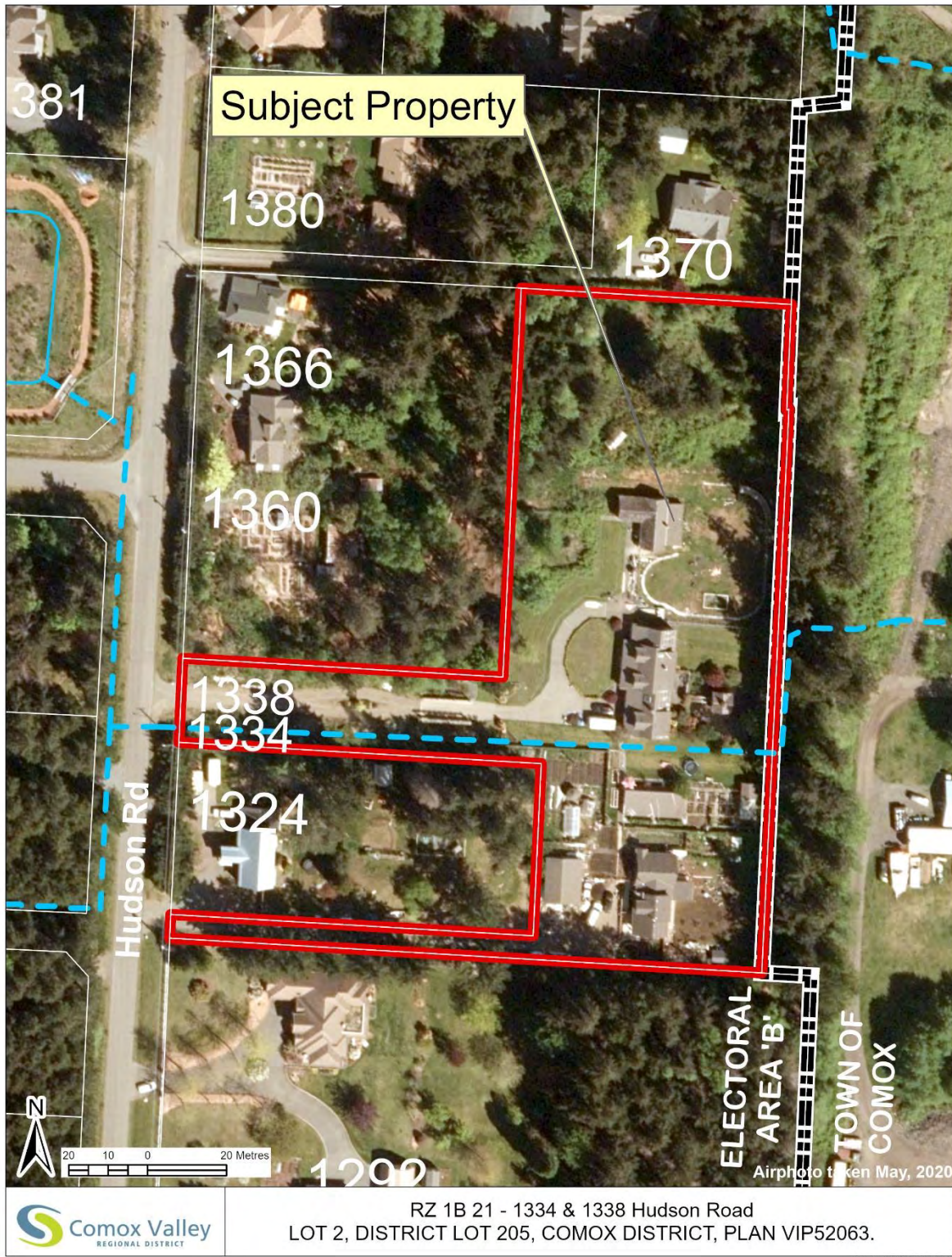


Figure 2: Air Photo

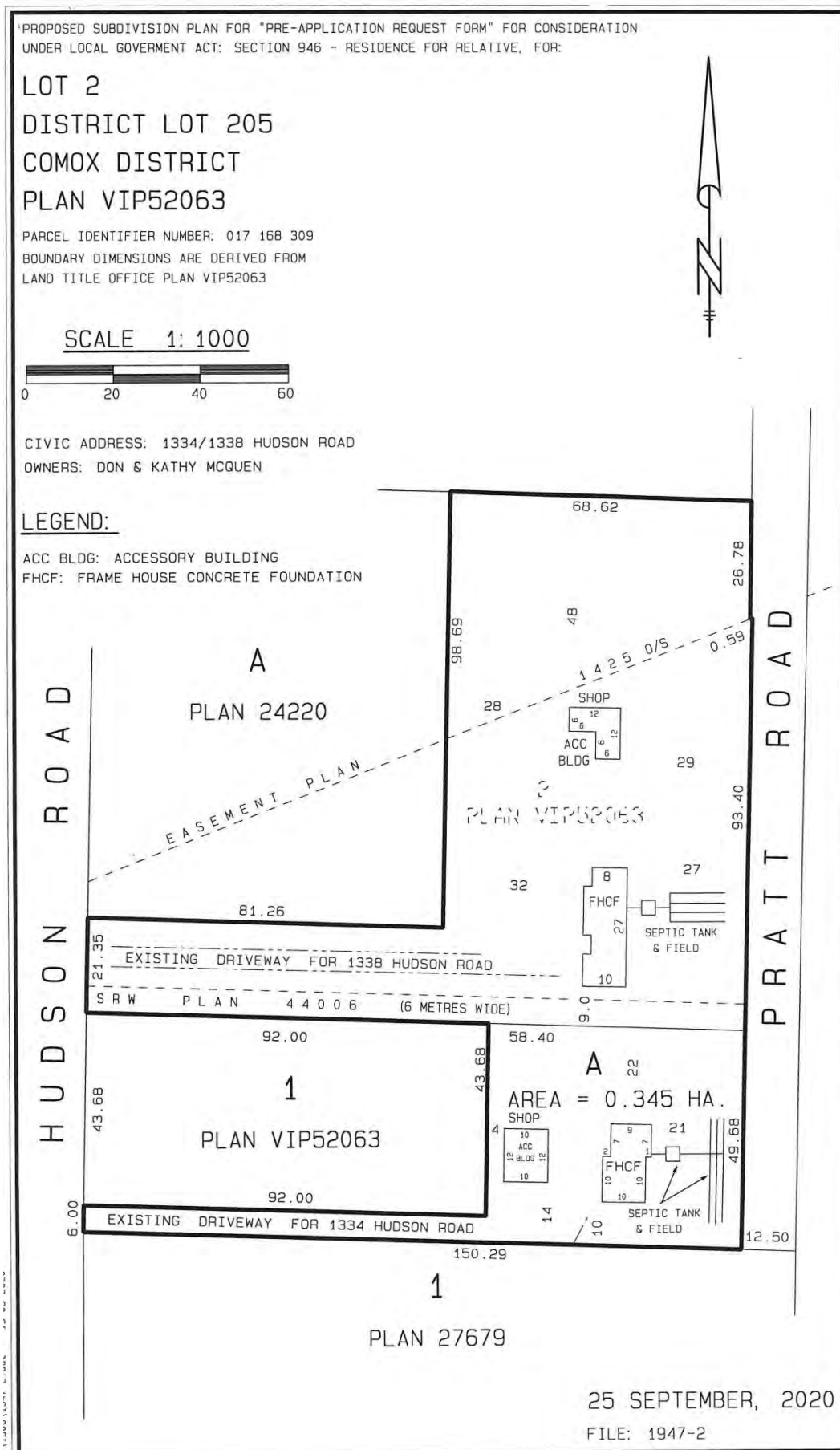


Figure 3: Proposed Subdivision Plan

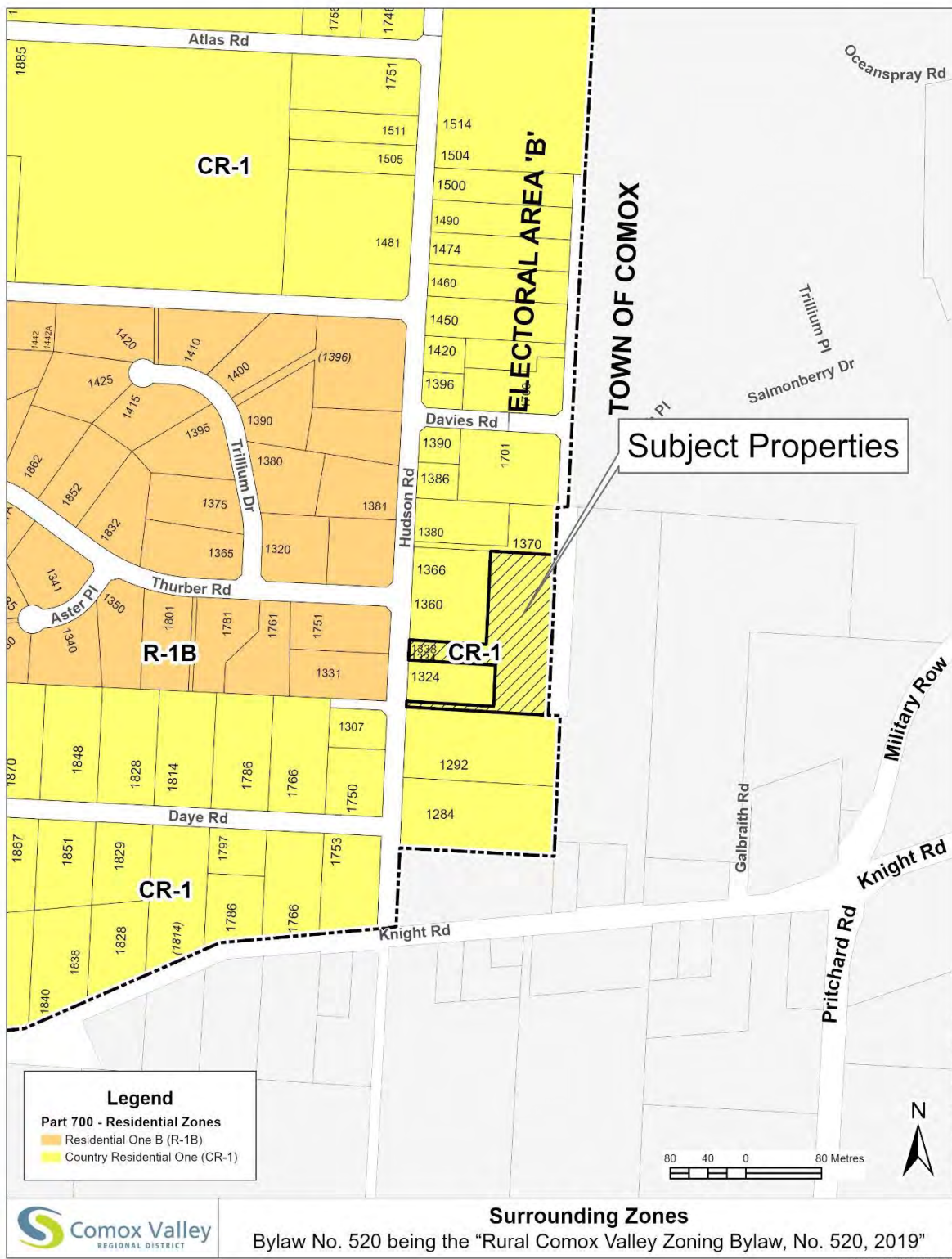


Figure 4: Zoning Map

AGENCY AND FIRST NATIONS REFERRAL LIST

First Nations

<input checked="" type="checkbox"/>	K'ómoks First Nation	<input checked="" type="checkbox"/>	Homalco First Nation
<input checked="" type="checkbox"/>	Nanwaḡolas Council	<input checked="" type="checkbox"/>	Wei Wai Kum First Nation of the Kwiakah Treaty Society
<input checked="" type="checkbox"/>	Laich-Kwil-Tach Treaty Society		

Federal Departments and Agencies

<input type="checkbox"/>	Canadian Coast Guard	<input type="checkbox"/>	Public Services and Procurement Canada
<input type="checkbox"/>	Department of National Defence (CFB Comox)	<input type="checkbox"/>	RCMP
<input type="checkbox"/>	Fisheries and Oceans Canada	<input type="checkbox"/>	Transport Canada Navigable Waters
<input type="checkbox"/>	Indigenous and Northern Affairs Canada		

Provincial Ministries and Agencies

<input type="checkbox"/>	Agricultural Land Commission	<input type="checkbox"/>	Ministry of Municipal Affairs
<input checked="" type="checkbox"/>	BC Assessment	<input type="checkbox"/>	Ministry of Forests, Lands and Natural Resource Operations and Rural Development
<input type="checkbox"/>	BC Parks	<input type="checkbox"/>	Ministry of Energy, Mines and Low Carbon Innovation
<input type="checkbox"/>	BC Ferry Services Inc.	<input type="checkbox"/>	Ministry of Environment and Climate Change Strategy
<input type="checkbox"/>	BC Transit	<input type="checkbox"/>	Ministry of Tourism, Arts, Culture and Sport
<input type="checkbox"/>	Ministry of Indigenous Relations and Reconciliation	<input checked="" type="checkbox"/>	Ministry of Transportation and Infrastructure
<input type="checkbox"/>	Ministry of Agriculture, Food and Fisheries	<input type="checkbox"/>	Ministry of Forests, Lands and Natural Resource Operations and Rural Development BC Wildfire Services

Local Government

<input checked="" type="checkbox"/>	Comox (Town of)	<input type="checkbox"/>	Alberni-Clayoquot Regional District
<input checked="" type="checkbox"/>	Courtenay (City of)	<input type="checkbox"/>	Strathcona Regional District
<input type="checkbox"/>	Cumberland (Village of)	<input type="checkbox"/>	Regional District of Mount Waddington
<input type="checkbox"/>	Islands Trust	<input type="checkbox"/>	Regional District of Nanaimo

Other

<input type="checkbox"/>	Advisory Planning Commission Area A	<input checked="" type="checkbox"/>	Advisory Planning Commission Area B
<input type="checkbox"/>	Advisory Planning Commission Area C	<input type="checkbox"/>	Agricultural Advisory Planning Commission
<input type="checkbox"/>	School District No.71 (Comox Valley)	<input checked="" type="checkbox"/>	Vancouver Island Health Authority (Island Health)
<input type="checkbox"/>	Comox Valley Economic Development Society	<input type="checkbox"/>	Comox Valley Accessibility Committee

Re: Lot 2, District Lot 205, Comox District, Plan VIP52063

1334 & 1338 Hudson Road, Comox, B.C., V9M 4A1

Rezoning Application on behalf of Don and Kathy McQueen

To whom it may concern;

The purpose of this application to subdivide the property at 1334 and 1338 Hudson Road is so that the property can remain in the family for a longer period of time, as the property has been in my family for over 100 years. It is our wishes to live out our life time on the property with the support of our son next door, and family members to occupy the land in the future.

Sincerely,

Don & Kathy McQueen