

DATE: December 2, 2019**FILE:** 3360-20/RZ 5C 18**TO:** Chair and Directors
Electoral Areas Services Committee**FROM:** Russell Dyson
Chief Administrative OfficerSupported by Russell Dyson
Chief Administrative OfficerR. Dyson**RE: Zoning Bylaw Amendment – Lot 1, Plan 3139, Wilfred Road (Unger)
Puntledge – Black Creek (Electoral Area C)
Amended Lot 1 (DD 20594-N), Block 29, Comox District, Plan 3139 Except
That Part of Said Lot Bounded on the North by Plan 5517 and East by the
Island Highway as Said Highway is Shown on Plan 4267 and Except Those
Parts in Plans 3747, 3865, 4267, 4417, 5517, 7148, 9836, 10102, 10943, 13270,
15600, 15674, 15722, 15775, 16502, 16520, 17359, 18493 1N3 19356,
PID 006-281-222**

Purpose

To summarize comments received from First Nations and external agencies (Appendix A), to recommend first and second reading of the proposed bylaw and authorize a public hearing be held.

Recommendation from the Chief Administrative Officer:

THAT the board give first and second reading to Bylaw No. 593, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019, Amendment No. 1” for property described as Amended Lot 1 (DD 20594-N), Block 29, Comox District, Plan 3139 Except That Part of Said Lot Bounded on the North by Plan 5517 and East by the Island Highway as Said Highway is Shown on Plan 4267 and Except Those Parts in Plans 3747, 3865, 4267, 4417, 5517, 7148, 9836, 10102, 10943, 13270, 15600, 15674, 15722, 15775, 16502, 16520, 17359, 18493 1N3 19356, PID 006-281-222 (RZ 5C 18 Unger), which rezones the property from Rural Eight (RU-8) to Residential One Exception 10 (R-1-10) that incorporates density bonus regulations;

AND FINALLY THAT pursuant to Section 464(1) of the *Local Government Act* (RSBC, 2015, c.1), the board schedule a public hearing for Bylaw No. 593, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019, Amendment No. 1” (RZ 5C 18 Unger).

Executive Summary

- The subject property is approximately 4.3 hectares in area, and is zoned Rural Eight (RU-8) (Figures 1 to 3).
- The applicants wish to rezone the property to enable a three-lot subdivision (Figure 4).
- On February 26, 2019, the Comox Valley Regional District (CVRD) Board adopted a resolution to refer the application to First Nations and external agencies for comment.
- Comments received are outlined in Appendix A. Highlights include the Advisory Planning Commission (APC) for Electoral Area C supported the proposal and encouraged the applicants to conserve the northeastern corner of the lot for environmental protection (Figure 5). Island Health commented that the proposal would have low impact on the Black Creek Oyster Bay (BCOB) water system, and referenced the Island Health Subdivision Standards. Note that if the rezoning application were to be approved, the proposed subdivision plan will then need to meet the Island Health Subdivision Standards at the

subdivision stage.

- According to Section 72, Community Amenity Contributions, of Bylaw No. 337, being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014” (OCP), staff met with the applicants to discuss community amenity contributions. It was agreed that the community amenity contribution would be 0.45 hectares of land located at the northeastern corner of the lot for park space and a Statutory Right of Way of 5 metres in width for access from Paulsen Road (Figure 6).
- Staff has prepared an amendment bylaw (Appendix B) that incorporates density bonus amenities, which will enable the applicants to develop the subject property at the requested 1.0 hectare density conditional upon the provision of this specific community amenity. Staff is satisfied that the density bonus amenity suitably balances the cost of providing the amenities relative to the scale of the proposed development.
- Staff recommend that the proposed bylaw be given first and second reading, and that a public hearing date be set.

Prepared by:

B. Chow

Brian Chow, RPP, MCIP
Rural Planner

Concurrence:

T. Trieu

Ton Trieu, RPP, MCIP
Manager of Planning Services

Concurrence:

S. Smith

Scott Smith, RPP, MCIP
General Manager of Planning
and Development Services
Branch

Stakeholder Distribution (Upon Agenda Publication)

Applicants	✓
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Background/Current Situation

The subject property is located on Wilfred Road (Figures 1 to 3) and is approximately 4.3 hectares in area. It is bounded by Wilfred Road to the south and an unopened road right of way to the west. There is a wetland area to the north and east of the property. The subject property is zoned RU-8 (Figure 3). The applicants wish to rezone the property to enable a three-lot subdivision. The applicants have submitted a draft subdivision plan (Figure 4).

On February 29, 2019, the board endorsed the First Nations and external agency referral list. After this board meeting, there was a need to confirm the status and location of a watercourse that runs southwest to northeast within the subject property. On June 20, 2019, a Qualified Environment Professional submitted a revised *Riparian Areas Regulation* report to confirm that the watercourse is a ditch (Figure 5). On July 31, 2019, staff sent out referrals. On August 29, 2019, staff sent out follow up letters to First Nations groups that had not responded. Note that any individual or agency can provide comments until the termination of the public hearing. The comments are outlined in Appendix A. The highlights include:

- K’ómoks First Nation and We Wai Kai Nation do not have any comments or concerns on this application. None of the other First Nations have provided a response.
- No responses were received from BC Assessment Authority or the Ministry of Transportation and Infrastructure.

- APC for Electoral Area C supported this application. The commission recommended that the applicants consider creating smaller lots and leave a larger parcel at the northeastern corner as a covenanted reserve. This recommendation will be addressed in the Voluntary Community Amenity Contribution Analysis section below.
- Island Health indicated that the subject property is within the BCOB water service system. The impact of the proposal on this water system is low. Island Health recommended that CVRD staff analyze the maximum number of connections moving forward to ensure future development does not exceed the water system capacity. The second general comment references the need for the proposal to meet Island Health Subdivision Standards.

Response from the CVRD

With respect to water system capacity, CVRD engineering services branch staff confirmed that there is capacity for this proposal. However, based on the comments from Island Health and current status of the third well project for the BCOB system, CVRD staff will review capacity for future connections. Moving forward, CVRD staff are undertaking internal and external analysis to determine if further connections to the water system can be supported before an additional water supply is added to the system.

Some of the current water conservation strategies include watering restrictions to help manage consumption in the summer months and making some operational changes. CVRD staff are continuing to monitor consumption of and demand for the system.

With respect to Island Health Subdivision Standards, the rezoning application focuses on the minimum lot area for subdivision. If the proposed bylaw amendment were to be approved, the applicants will then submit a subdivision application, and at this stage, the applicants will work with a Registered Onsite Wastewater Practitioner to design a wastewater treatment system on each proposed lot. Each system will have to meet the requirements in the Subdivision Standards. This takes into consideration soil characteristics, provision of water (e.g., well or community system), and setbacks. Despite the Zoning Bylaw's regulated minimum lot area, any proposed lot will have to prove its capacity to handle an onsite wastewater treatment system under the Subdivision Standards.

Based on these comments, staff proposes a density bonus zone that includes community amenity contribution.

Density Bonus Zoning Tool

As permitted in the *Local Government Act* (RSBC, 2015, c.1) (LGA), a local government can establish different density provisions within a zone. A zone can include a "base" density and can include specific conditions under which a property can be developed at a higher density. Note that a developer always has the option to develop at the "base" density. The CVRD has used density bonus zoning previously. For example, Rural Twenty Density Bonus (RU-20DB) wherein the "base" minimum lot size is 20 hectares, but in exchange for a donation of 1.8 hectares of land, construction of a gravel parking area, registration of a conservation covenant over Hindoo Creek, provision of a rainwater management plan and construction of multi-use trails, the developer would then be able to subdivide 11 lots with a minimum lot area of 4 hectares.

A more recent example is the draft Residential One Exception Nine (R-1-9) zone for the rezoning application at 2245 Schulz Road. The "base" minimum lot is 2 hectares, but in exchange for a donation of 0.15 hectares of land for park space north of Saratoga Park, a regional district park, the

developer will then be able to have a minimum lot area of 0.4 hectares. Note that this amending bylaw has not been adopted yet.

Density bonus zoning has the advantage of being highly predictable and transparent: the amenities are explicitly identified in the zone such that elected officials, the property owner and the general public can readily see the range of density options and know what the community can expect if the developer opts to take advantage of the “bonus density”. Further, the lands are not tied up by a specific development proposal that “pre-zones” land on the basis of the current land owner’s vision for development of the lands.

Voluntary Community Amenity Contribution Analysis

As the northeastern corner of the subject property is part of the Saratoga Wetlands, the CVRD community parks department is interested in securing this general area as park space for conservation (Figure 5). In addition, there needs to be a Statutory Right of Way from the unopened portion of Paulsen Road to provide access (Figure 6). It should be noted that some of this area is within the 21.3 metre Streamside Protection and Enhancement Area (SPEA) of the watercourse (Figure 7). A SPEA is an environmental setback from the watercourse to protect riparian areas. Securing a part of Saratoga Wetlands and keeping it in a natural state not only benefits the environment, but also mitigates rainwater runoff from buildings, roads and other impervious surfaces west of the subject property.

CVRD staff negotiated this voluntary community amenity contribution with the applicants. Both parties agreed that the applicants would offer 0.45 hectare of land for park space and a 5 metre wide Statutory Right of Way from Paulsen Road (Figure 6). CVRD staff is satisfied that the proposed voluntary contribution suitably balances the cost of providing the amenities relative to the scale of the proposed development.

To include this community amenity contribution, a density bonus zone is proposed. If the contribution of the 0.45 hectares of land and a 5 metre wide Statutory Right of Way were to be provided, the minimum lot area would be 1.0 hectare. This would enable a three-lot subdivision even with the deduction of the land offered as park space. This community amenity contribution will be presented at the public hearing. After the conclusion of the public hearing, the agreement for the community amenity contributions will be finalized and secured with a Section 219 Restrictive Covenant at the applicant’s expense prior to the final reading of the bylaw.

Policy Analysis

Sections 464 through 466 of the LGA establish the requirements and procedures for holding a public hearing prior to adoption of a Zoning Bylaw amendment, including notification requirements. Bylaw No. 328, being the “Comox Valley Regional District Planning Procedures and Fees Bylaw, Bylaw No. 328, 2014,” implements the LGA’s requirements and states that public hearings are held following second reading and that notification within the Settlement Node designation will be mailed to property owners and tenants within 50 metres of the property for which the bylaw amendment is proposed.

Section 482 of the LGA states that a local government can establish different density rules within a zone whereby, upon satisfaction of conditions relating to the conservation or provision of amenities, a property owner is entitled to develop land at a higher density.

The OCP establishes a framework for community amenity contributions and the creation of 1.0 hectare lots is consistent with the growth management in the OCP and Bylaw No. 120, being the “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010.”

Options

At this time, the board has the following options:

1. Approve first and second reading of proposed Bylaw No. 593 (Appendix B), authorize the public hearing be held, and direct that the donation of a 0.45 hectare of land for park space and a 5 metre wide Statutory Right of Way from Paulsen Road for access be considered as a community amenity contribution prior to the final reading of this proposed bylaw.
2. Refer proposed Bylaw No. 593 back to staff for revision.
3. Deny the application to rezone.

Based on the discussions contained within this report, staff recommends option 1.

Financial Factors

A \$3,000 rezoning application fee has been collected for the application under Bylaw No. 328. If the board concurs with staff's recommendation to schedule a public hearing, a \$1,500 fee is required prior to the hearing. This fee covers the costs of the newspaper advertisement and direct mailing to property owners and tenants within 50 metres of the subject property, as well as the costs related to hosting the public hearing. The applicants are required to install a notice sign on the property, in accordance with Bylaw No. 328's specifications; the costs of the sign and its installation are not included in the public hearing fee and are the responsibility of the applicants.

The applicants are responsible for all costs related to surveying the park land dedication and Statutory Right of Way at the time of subdivision.

Legal Factors

The recommendation contained within this report has been prepared in accordance with the LGA and applicable CVRD bylaws.

Regional Growth Strategy Implications

Bylaw No. 120 designates the subject property within the Saratoga Settlement Node. Settlement Nodes shall accommodate growth through a balance of new development, intensification and improvements to public infrastructure (MG Policy 1B-1). The growth management framework is to direct 90 per cent of growth to Core Settlement Areas, and this Settlement Node is part of the Core Settlement Area. Therefore, the proposed rezoning to enable subdivision is consistent with this growth management framework.

Intergovernmental Factors

Appendix A lists the comments received from First Nations and external agencies on this rezoning application.

Interdepartmental Involvement

Planning staff is leading this application. Input from engineering services regarding development cost charges and water connections will be sought if the application proceeds to subdivision.

The community amenity contribution area is proposed by the community parks department. The community amenity contribution area becoming a conservation area in an unaltered state is important to protecting the hydrological and ecological function of the highly valued Saratoga Wetlands complex.

Citizen/Public Relations

The APC for Electoral Area C met on August 15, 2019, and the commission supported the rezoning application. The commission recommended that the applicants consider creating smaller lots and

leaving a larger portion at the northeastern corner to be conserved. This recommendation is addressed in the Voluntary Community Amenity Contribution Analysis section of this staff report.

If the application proceeds to public hearing, there will be a development notice sign, newspaper advertisements and adjacent owners' letters in accordance with Section 464 of the LGA and Bylaw No. 328. Any members of the public can provide comments until the termination of the public hearing.

Attachments: Appendix A – “Comments from External Agencies and First Nations”
Appendix B – “Bylaw No. 593”

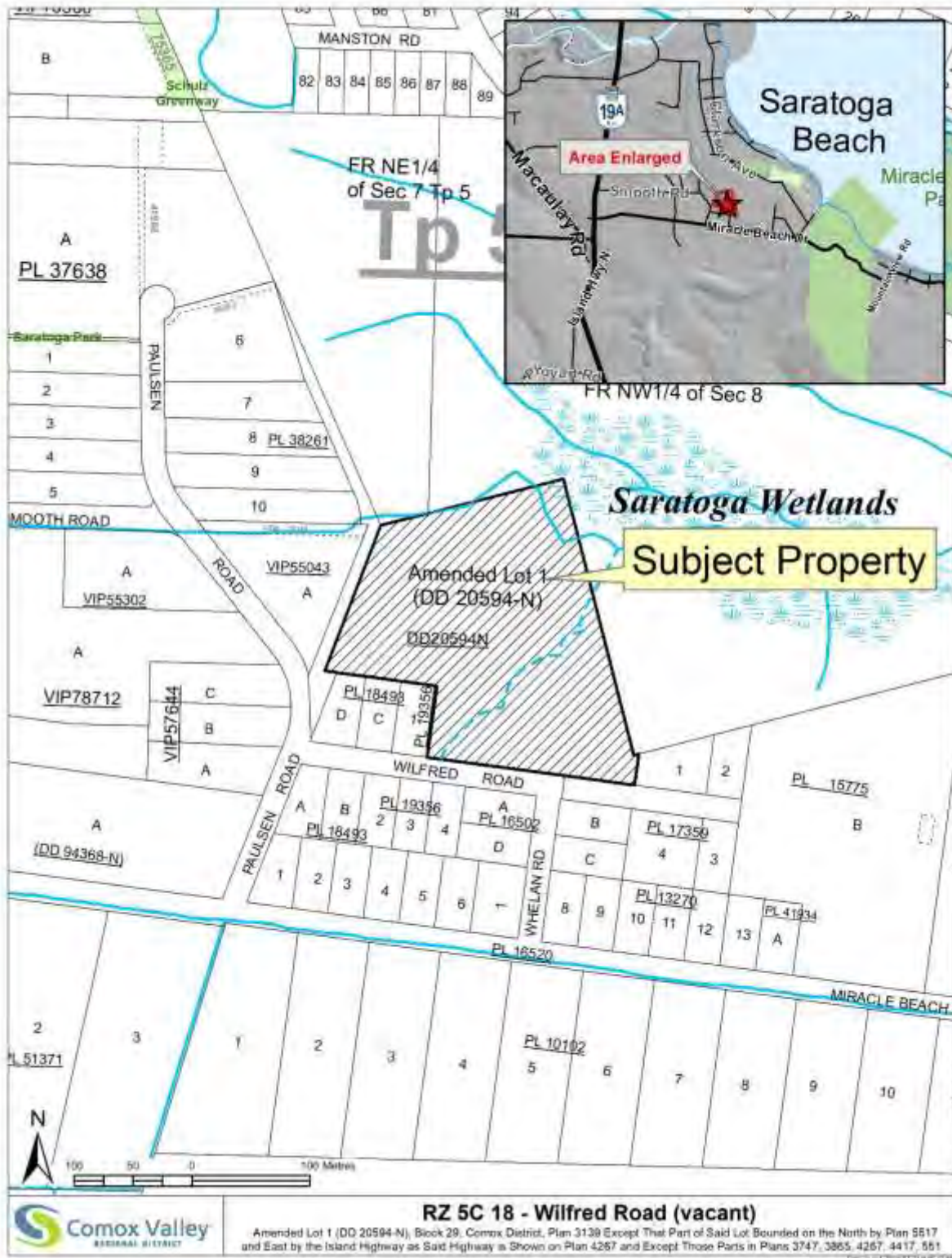


Figure 1: Subject Property Map

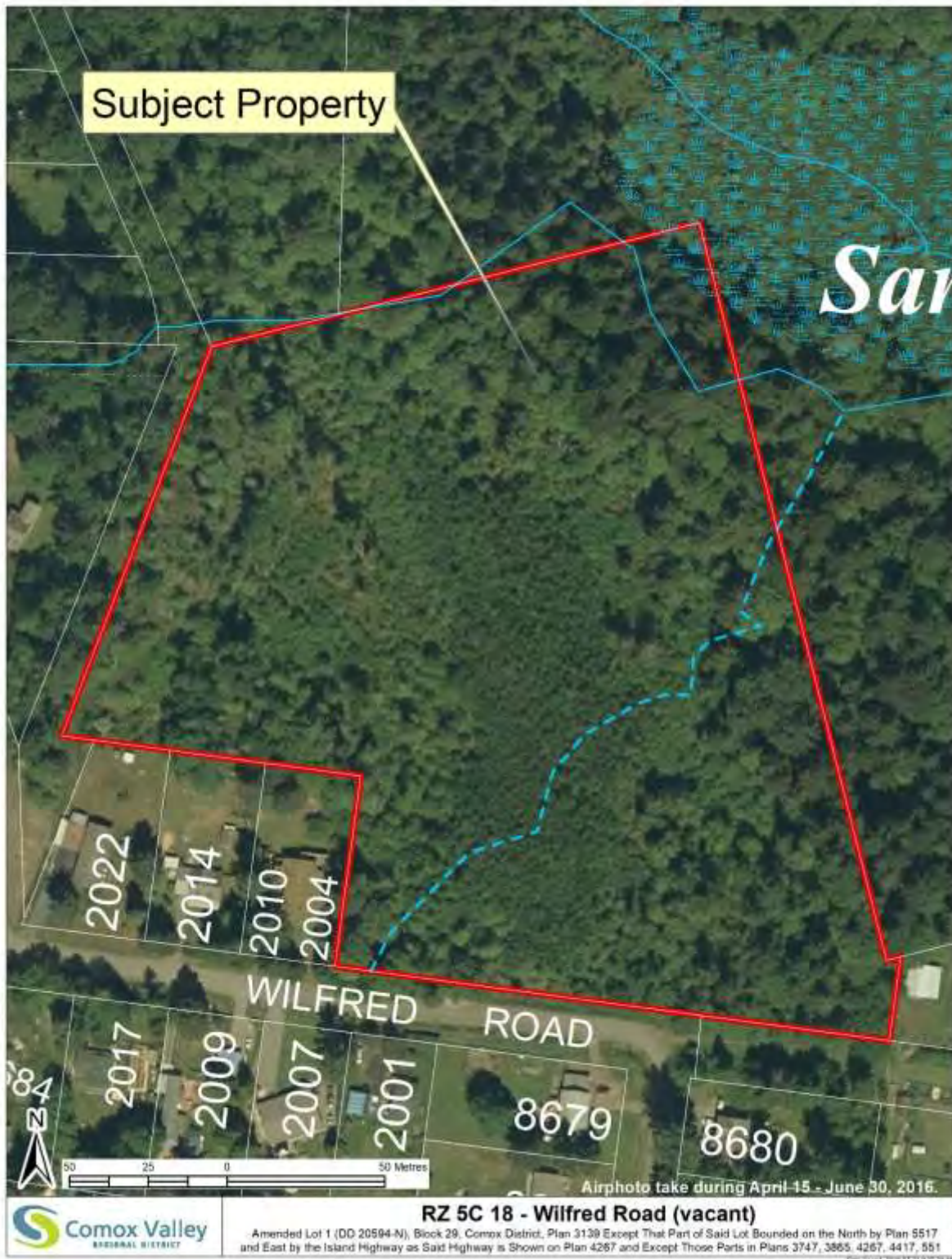


Figure 2: Air Photo

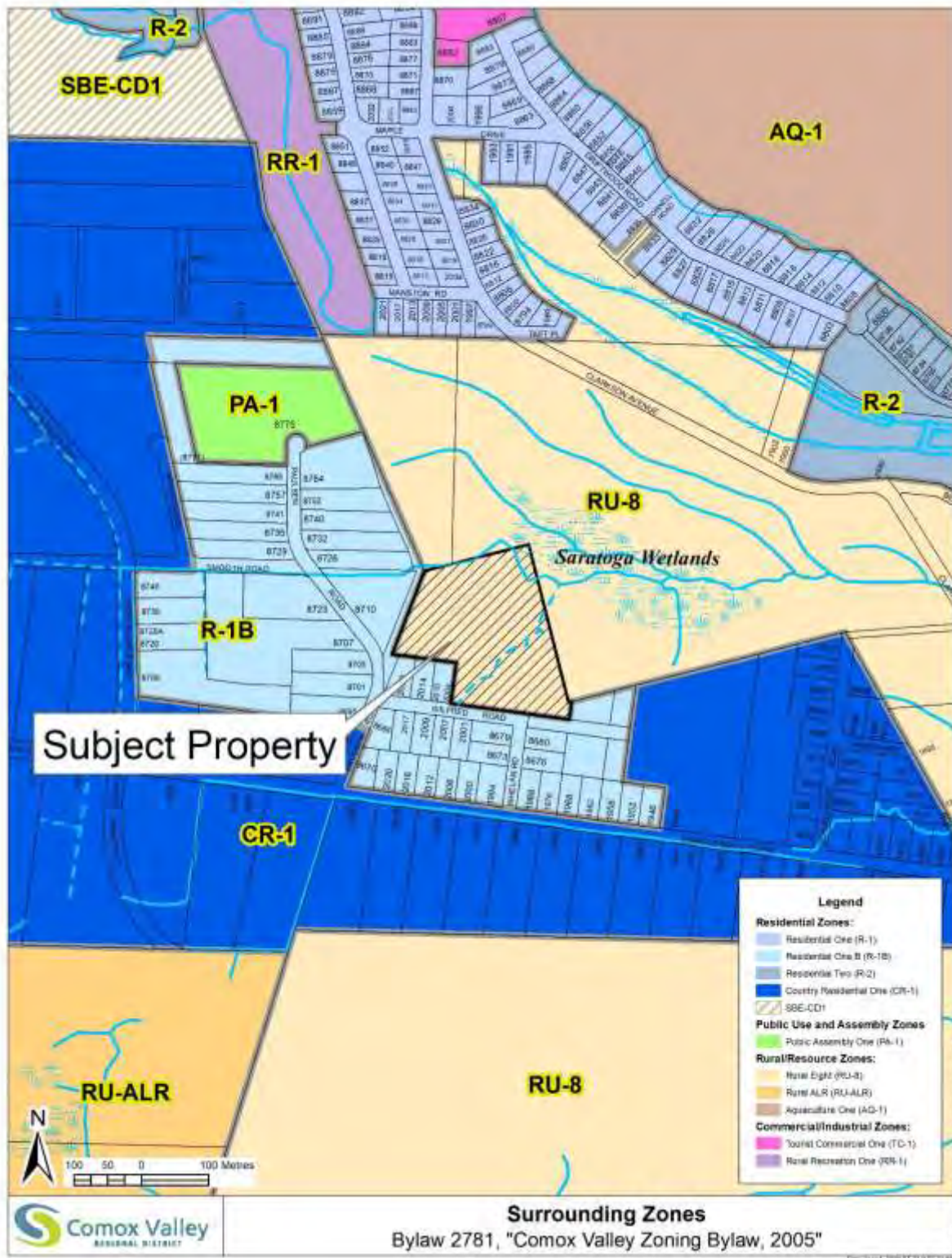


Figure 3: Zoning Map



Figure 4: Proposed Subdivision Plan Prior to the Consideration of a Voluntary Community Amenity Contribution



Figure 5: Bodies of Water on and near the Subject Property

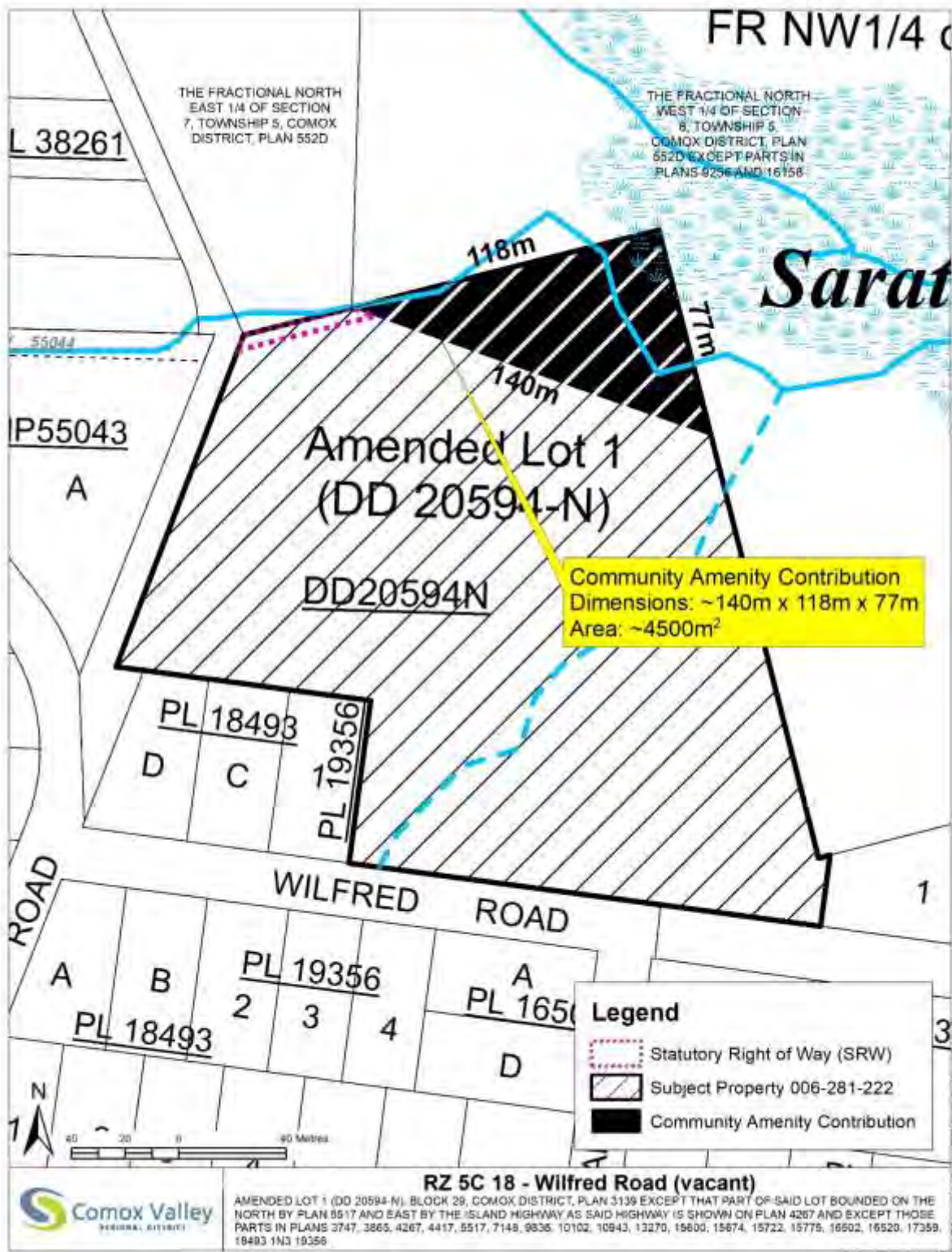


Figure 6: Voluntary Community Amenity Contribution Area

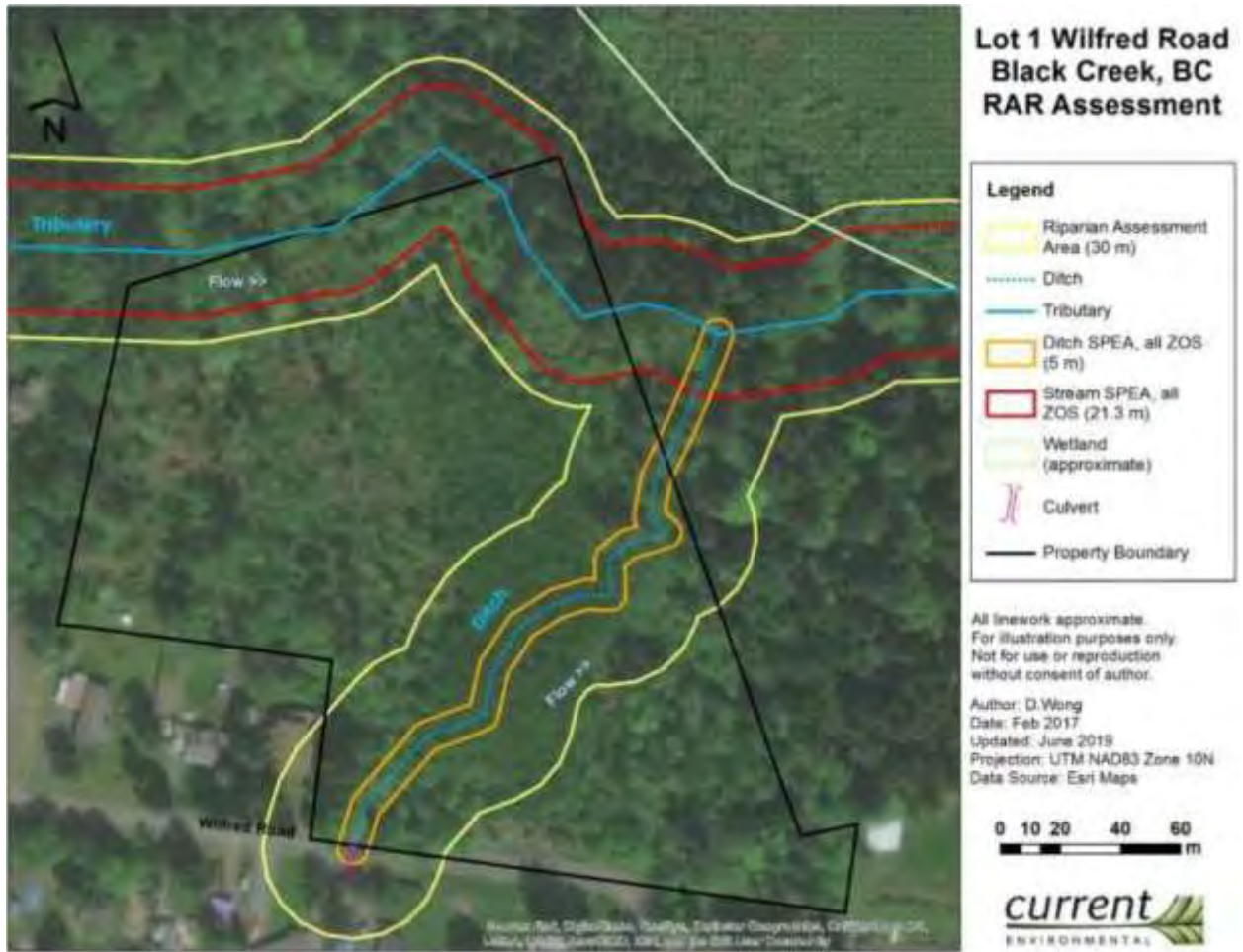


Figure 7: SPEAs of the Watercourse and Ditch

Comments from First Nations and External Agencies

First Nations

K'ómoks First Nation	“The K'ómoks First Nation does not have any comments to provide at this time regarding this application proceeding.”
Homalco Indian Band	No response
We Wai Kai Nation	“The We Wai Kai Nation has no comment at this time regarding this application being issued.”
Wei Wai Kum First Nation of the Kwiakah Treaty Society	No response
Laich-Kwil-Tach Treaty Society	No response

Provincial Ministries and Agencies

BC Assessment Authority	No response
Ministry of Transportation and Infrastructure	No response

Local Government

Strathcona Regional District	No response
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Other

Advisory Planning Commission Puntledge – Black Creek (Electoral Area C):	“THAT the rezoning application RZ 5C 18 for an unaddressed lot on Wilfred Road be supported to allow for a three parcel subdivision with a recommendation to request the owners to consider the possibility of creating smaller lots with a larger portion to be set up as a covenanted reserve.”
School District No. 71 (Comox Valley)	No response

Island Health (Vancouver Island Health Authority):

“Water

The property is located within the service delivery area of the Black Creek Oyster Bay Water system, which is an approved water system. The potential of a subdivision of this size to negatively affect the capacity of the system to provide water is low. Given that this area has been identified for further development and densification it would be recommended to consider what the maximum number of connections could be on the system moving forward to ensure that development does not exceed that capacity of the water system. We would also advise the CVRD to refer back to our letter dated March 26, 2018 on the Local Area Plan for Saratoga Miracle Beach for further information.

Subdivision

From the information provided it appears that the intent of the rezoning application is to facilitate further subdivision of the property. Under the Island Health Subdivision Standard, the minimum expectations for a site assessment are contained therein. It is recommended that the applicant submit the required information to have the property assessed under the Standards.

Once an onsite assessment is complete, we would be in a better position to speak more clearly on the matter. The Subdivision Standards can be accessed here <https://www.islandhealth.ca/learn-about-health/environment/sewerage-subdivision>.”



Bylaw Status Report

BYLAW NO. 593	
Bylaw Name:	Rural Comox Valley Zoning Bylaw No. 520, 2019, Amendment No. 1
Applicant:	Henry and Katie Unger
Electoral Area:	Puntledge - Black Creek (Area C)
File Number:	RZ 5C 18
Participants:	All Electoral Areas
Purpose:	To amend the Rural Comox Valley Zoning Bylaw by rezoning the subject property from Rural Eight (RU-8) to Residential One Exception Ten (R-1-10). This amendment enables a three-lot subdivision.
Amends Bylaw:	520
Repeals Bylaw:	
Staff Contact:	Brian Chow

STATUS	
Application Received	September 12, 2018
Electoral Areas Services Committee Approval:	February 4, 2019 Recommendation: Commence external agency referral and First Nations referral process.
Comox Valley Regional District Board:	February 26, 2019 Recommendation: Approved external agency referral and First Nations referrals.
Electoral Areas Services Committee Approval:	Date: Recommendation:
Comox Valley Regional District Board:	1st Reading:
Comox Valley Regional District Board:	2nd Reading:
Public Hearing:	
Comox Valley Regional District Board:	3rd Reading:

Ministry of Transportation and Infrastructure:	Required: No Date Sent: Date Approved:
Comox Valley Regional District Board:	Final Adoption:

Comox Valley Regional District
Bylaw No. 593

**A Bylaw to Amend the “Rural Comox Valley Zoning Bylaw No. 520, 2019”
being Bylaw No. 520**

The board of the Comox Valley Regional District, in open meeting assembled, enacts the following amendments to the “Rural Comox Valley Zoning Bylaw No. 520, 2019,” being Bylaw No. 520.

Section One Text Amendment

- 1) Bylaw No. 520, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019,” is hereby amended as set out in Schedule A attached to and forming part of this bylaw.

Section Two Title

- 1) This Bylaw No. 593 may be cited as the “Rural Comox Valley Zoning Bylaw No. 520, 2019, Amendment No. 1.”

Read a first time this	day of	2019.
Read a second time this	day of	2019.
Public hearing held this	day of	2019.
Read a third time this	day of	2020.

I hereby certify the foregoing to be a true and correct copy of Bylaw No. 593, being the “Rural Comox Valley Zoning Bylaw, No. 520, 2019, Amendment No. 1,” as read a third time by the board of the Comox Valley Regional District on the **XX** day of **XX** 2020.

Corporate Legislative Officer

Adopted this	day of	2020.
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Chair

Corporate Legislative Officer

I hereby certify the foregoing to be a true and correct copy of Bylaw No. 593, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019, Amendment No. 1,” as adopted by the board of the Comox Valley Regional District on the **XX** day of **XX** 2020.

Corporate Legislative Officer

Schedule A

Section One Text Amendment

1. Bylaw No. 520, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019”, is hereby amended by:
 - a. Rezoning the property legally described as Amended Lot 1 (DD 20594-N), Block 29, Comox District, Plan 3139 Except That Part of Said Lot Bounded on the North by Plan 5517 and East by the Island Highway as Said Highway is Shown on Plan 4267 and Except Those Parts in Plans 3747, 3865, 4267, 4417, 5517, 7148, 9836, 10102, 10943, 13270, 15600, 15674, 15722, 15775, 16502, 16520, 17359, 18493 1N3 19356, PID 006-281-222 (Unaddressed Lot, Wilfred Road) from Rural Eight (RU-8) to Residential One Exception Ten (R-1-10); and
 - b. Inserting the following zoning exception in Part 1200 “Exceptions to Zone Designations”

“Exception 10

Exception 10	Zone R-1	Map A-13	Amendment No. 1	Enacted
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1. Subdivision Requirements
 - a) The minimum lot area permitted shall be 8.0 hectares;
 - b) Notwithstanding any other provision of this bylaw, a density bonus to permit the minimum lot area of 1.0 hectare with provision of the following to the Comox Valley Regional District described below and shown on Schedule 1.
 - i. Donation of Land
 Firstly, commencing at the most south easterly corner of The Fractional Northeast ¼ of Section 7, Township 5, Comox District, Plan 552D, on file in the Land Title Office, Victoria;
 Thence, north easterly along the “Amended Lot 1 (DD 20594-N), Block 29, Comox District, Plan 3139 Except That Part of Said Lot Bounded on the North by Plan 5517 and East by the Island Highway as Said Highway is Shown on Plan 4267 and Except Those Parts in Plans 3747, 3865, 4267, 4417, 5517, 7148, 9836, 10102, 10943, 13270, 15600, 15674, 15722, 15775, 16502, 16520, 17359, 18493 1N3 19356” to the most north easterly corner of said lot;
 Thence, south easterly along said lot for approximately 77 metres;
 Thence, north westerly in a straight line to the most south easterly corner of The Fractional Northeast ¼ of Section 7, Township 5, Comox District, Plan 552D, being the point of commencement, and containing 0.45 hectares of land, more or less.
 - ii. Statutory Right of Way to Provide Access to the Donated Land

Firstly, commencing at the most south westerly corner of The Fractional Northeast $\frac{1}{4}$ of Section 7, Township 5, Comox District, Plan 552D, on file in the Land Title Office, Victoria;

Thence, south westerly along the most westerly boundary of "Amended Lot 1 (DD 20594-N), Block 29, Comox District, Plan 3139 Except That Part of Said Lot Bounded on the North by Plan 5517 and East by the Island Highway as Said Highway is Shown on Plan 4267 and Except Those Parts in Plans 3747, 3865, 4267, 4417, 5517, 7148, 9836, 10102, 10943, 13270, 15600, 15674, 15722, 15775, 16502, 16520, 17359, 18493 1N3 19356" for approximately 5 metres;

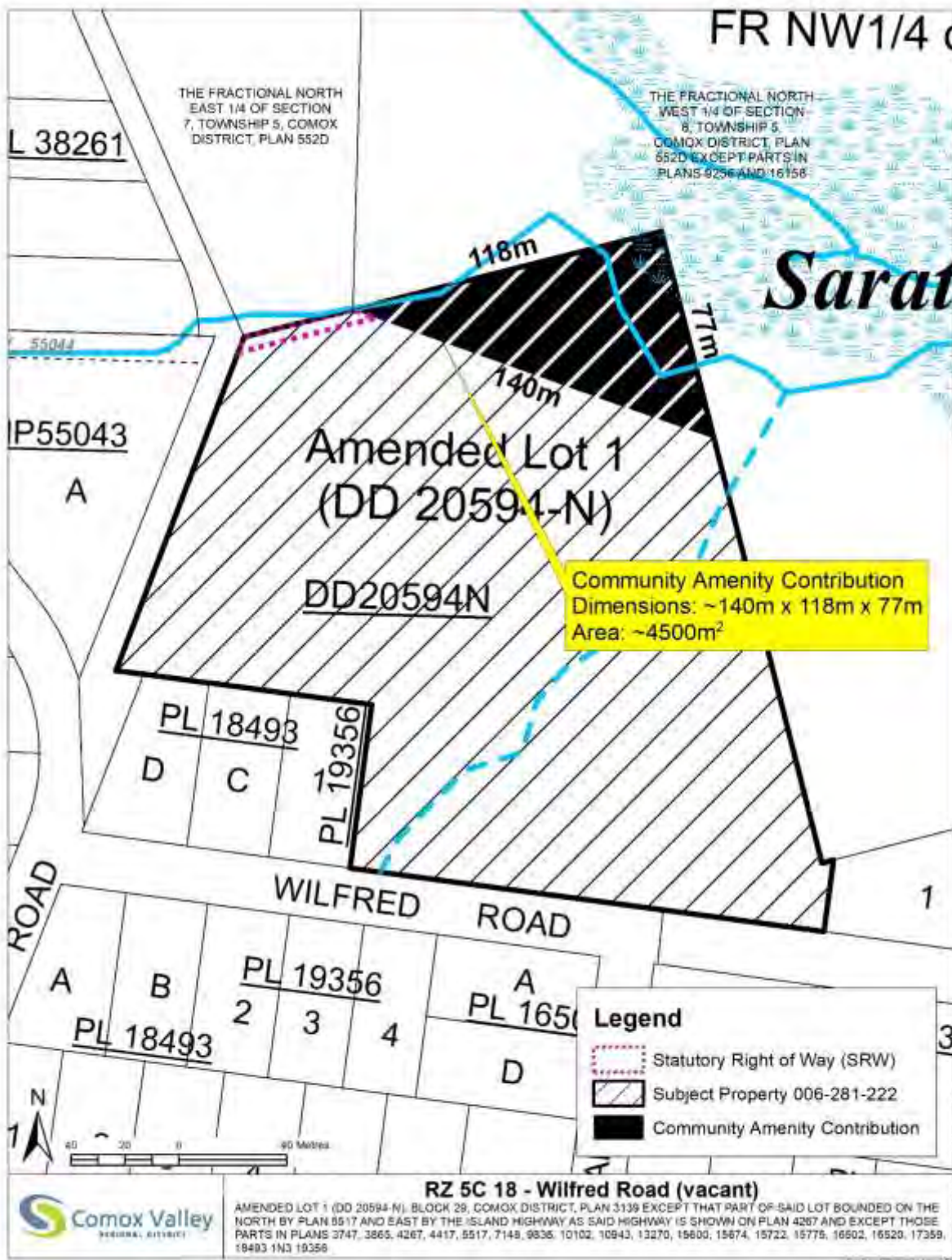
Thence, north easterly and parallel to the most southern boundary of The Fractional Northeast $\frac{1}{4}$ of Section 7, Township 5, Comox District, Plan 552D, for approximately 53 metres;

Thence, a straight line to the most south easterly corner of said lot;

Thence, south westerly along said lot to the most south westerly corner, being the point of commencement.

Notwithstanding this exception, all other regulations of the R-1 zone apply.

Schedule 1



Section Two Map Amendment

1. Map A-13 forming part of Bylaw No. 520, being the “Rural Comox Valley Zoning Bylaw, No. 520, 2019”, is hereby amended by rezoning the property legally described as “Amended Lot 1 (DD 20594-N), Block 29, Comox District, Plan 3139 Except That Part of Said Lot Bounded on the North by Plan 5517 and East by the Island Highway as Said Highway is Shown on Plan 4267 and Except Those Parts in Plans 3747, 3865, 4267, 4417, 5517, 7148, 9836, 10102, 10943, 13270, 15600, 15674, 15722, 15775, 16502, 16520, 17359, 18493 1N3 19356, PID 006-281-222” (Unaddressed Lot, Wilfred Road) from Rural Eight (RU-8) to Residential One Exception Ten (R-1-10) as shown on Appendix 1.



Appendix 1

Part of Schedule A to Bylaw No. 593 being the “Rural Comox Valley Zoning Bylaw No. 520, 2019, Amendment No. 1”.

Amends Schedule Map A-13 of Bylaw No. 520, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019.”