

DATE: March 4, 2019**FILE:** 3360-20/RZ 4C 18**TO:** Chair and Directors
Electoral Areas Services Committee**FROM:** Russell Dyson
Chief Administrative OfficerSupported by Russell Dyson
Chief Administrative Officer**R. Dyson****RE: Zoning Bylaw Amendment – 2245 Schulz Road (Pajak)
Puntledge – Black Creek (Electoral Area C)
Parcel A (DD 10199W) of Lot 21, Block 29, Comox District, Plan 4267,
PID 005-027-462****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. 568, being the “Comox Valley Zoning Bylaw, 2005, Amendment No. 78” for property known as Parcel A (DD 10199W) of Lot 21, Block 29, Comox District, Plan 4267, PID 005-027-462 (2245 Schulz Road), which rezones the entire property from Country Residential One (CR-1) and Residential One B (R-1B) to Residential One Exception Nine (R-1-9) 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. 568, being the “Comox Valley Zoning Bylaw, 2005, Amendment No. 78” (RZ 4C 18).

Executive Summary

- The subject property is located at 2245 Schulz Road in Electoral Area C (Figures 1 and 2).
- The property is split-zoned: Country Residential One (CR-1) in the western portion and Residential One B (R-1B) in the eastern portion (Figure 3). The lot area is approximately 4.2 hectares.
- The applicant wishes to rezone the property in order to resolve the split zone situation and to enable subdivision. The applicant requests a zone with a minimum lot area of 0.4 hectares.
- On August 28, 2018, 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 summarized in Appendix A. The overall comments are related to rainwater management, health-related servicing and proposed lot size. With respect to rainwater management, the applicant has submitted engineering reports to support their proposal. The reports provide a general assessment of the entire property. If the rezoning is successful and the applicant applies to subdivide, through the subdivision process, the Ministry of Transportation and Infrastructure (MoTI) and the CVRD will require a rainwater management plan that assesses the size and layout of the proposed lots. This second plan ensures that each of the proposed lots can manage rainwater onsite.
- 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 applicant to discuss community amenity contributions. It was agreed that the community

amenity contribution would be 0.15 hectares of land for park space north of Saratoga Park (Figure 4).

- Staff has prepared an amended bylaw (Appendix B) that incorporates density bonus amenities, which will enable the applicant to develop the subject property at the requested 0.4 hectares density conditional upon the provision of this specific community amenity. Staff is satisfied that the density bonus amenities suitably balance the cost of providing the amenities relative to the scale of the proposed development.
- Staff recommends that the proposed bylaw be given first and second readings and that a public hearing date be set.

Prepared by:

Concurrence:

Concurrence:

T. Trieu

S. Smith

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Rural Planner

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Background/Current Situation

The subject property is located at 2245 Schulz Road and is approximately 4.2 hectares in area (Figures 1 and 2). It is bounded by Schulz Road to the north, Miracle Beach Elementary School to the southeast, residential lots to the south and Old Island Highway to the west. The property is split zoned: CR-1 in the western portion and R-1B in the eastern portion (Figure 3). The applicant wishes to rezone the property in order to resolve the split zone situation, and to provide subdivision opportunities. The applicant requests the entire property be zoned to have a minimum lot area of 0.4 hectares.

On August 28, 2018, the board endorsed the agency referral list and referrals to First Nations groups. On August 29, 2018 and September 4, 2018, staff sent out referrals. On October 23, 2018, staff sent follow up letters to the 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 summarized 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. They can provide their comments until the termination of the public hearing.
- Mo'TI does not object to the proposed rezoning, but comments that they have “*concerns regarding drainage capacity of the existing infrastructure downstream of the subject property as it relates to higher density zoning*”.

Response from the CVRD

The applicant submitted engineering reports as part of the rezoning application. The reports provide a general assessment of the entire property. If the rezoning is successful, Mo'TI and CVRD staff will require a detailed rainwater management report to address each of the proposed lots at the subdivision stage. This second report will address each of the proposed lots based on their size and layout to ensure that rainwater can be managed onsite.

- Advisory Planning Commission – Puntledge - Black Creek (Electoral Area C) supports the rezoning application.

- Island Health (VIHA) staff notes concerns regarding the proposed minimum lot area relative to their Subdivision Standards, the Black Creek-Oyster Bay Water Local Service Area, and allowance for additional dwellings. They advocate for neighbourhood connectivity to the school and parkland dedication.

Response from the CVRD

VIHA will have the opportunity to review each proposed lot at the subdivision stage for compliance with their Subdivision Standards to ensure that the proposed size and shape of new properties have the capacity to sustainably operate onsite sewerage systems. 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 a septic field under the Subdivision Standards. With respect to the allowance for additional dwellings, septic filings prepared by a registered onsite wastewater practitioner are required prior to the issuance of a building permit. These filings ensure that either the existing septic field has capacity to accommodate the additional dwelling or that a new septic field has been designed to accommodate it.

With respect to water capacity, CVRD engineering services branch staff confirmed that there is capacity for the proposed build-out at 0.4 ha minimum lot size under the proposed zone. The Black Creek Oyster Bay water system utilizes two sources depending on the season, the system has two ground water wells located within the Oyster River Nature Park and a river infiltration gallery that draws water from the Oyster River in the summer months when consumption is high and turbidity is low. The current operating strategy is to operate only the river infiltration gallery in the summer; however, in past years (2014 and 2015), water consumption requirements were supplemented using the groundwater wells to meet demands.

Following the hot, dry summers of 2014 and 2015 the CVRD had implemented watering restrictions to help manage consumption in the summer months along with working on developing an additional groundwater source and reviewing future water availability for the system, including completing a groundwater availability assessment of the Oyster River Nature Park in 2018. The CVRD is continuing to monitor consumption and demand for the system, to implement options to service a growing population as required.

VIHA staff also advise that the rezoning could be held pending the completion of the comprehensive zoning bylaw review. However, adding additional density (e.g. smaller lot areas) is outside the scope of that review. Such a proposal is better analyzed under an individual rezoning application.

Based on these comments, staff is drafting a density bonus zone that includes community amenity contributions (see section below).

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 the Rural Density Bonus One zone (RU-DB1) wherein the "base" minimum lot size is 20 hectares, but in exchange for protection of the Wildwood Marsh the developer was able to subdivide eight lots ranging in size from two hectares to four hectares. The second density bonus zone is Rural Twenty Density Bonus (RU-20DB). 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 4.0 hectares. Note that these lots have not been created yet.

Density bonus zoning is clearly established as an enabling tool in the LGA. Density bonus zoning is recommended as the “starting point” for local governments when seeking community amenities. The Ministry of Municipal Affairs & Housing (formerly Ministry of Community, Sport and Cultural Development) suggests that *“allowing modest levels of density bonus, tied to modest contributions, strikes a good balance between ensuring new development contributes to a community while minimizing the risk that these contributions hurt housing affordability”* (i.e., the cost of providing the amenity to the developer will be passed to future purchasers).

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

On August 28, 2018, the board authorized staff to begin discussions on provision of community amenities as per Section 72 “Community Amenity Contributions” of the OCP. The CVRD community parks department requests the following two areas as community amenity contributions:

1. A donation of 0.15 hectares of land for park space north of Saratoga Park, a regional district park; and
2. A donation of 0.04 hectares of land (10-metre strip) for park space at the eastern end of the property as an extension of Schulz Greenway.

Figure 4 shows these community amenity contributions. These areas will provide neighbourhood connectivity through the regional park network. CVRD staff discussed these community amenity contributions with the applicant. The applicant and staff agreed that there would be a donation of the 0.15 hectare of park space north of Saratoga Park. CVRD staff agreed to just this community amenity contribution because of the relatively small scale of the rezoning application and the recognition that the applicant will have other commitments at the subdivision stage, such as parkland dedication or cash in lieu of parkland dedication if more than two lots are proposed to be created. At the subdivision stage, the provision of 0.04 hectares in area of park space at the eastern end of the property may be considered as the required park dedication.

To include these community amenity contributions, a density bonus zone is proposed. If the donation of the 0.15 hectare of land for park space north of Saratoga Park were provided, the minimum lot area for subdivision would be 0.4 hectares. These community amenity contributions will be presented at the public hearing. After the conclusion of the public hearing, the agreement for the community amenity contributions will be finalized 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 Zoning Bylaw adoption, 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.

Bylaw No. 337 establishes a framework for community amenity contributions and the creation of 0.4 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. 568 (Appendix B), authorize the public hearing be held, and direct that the donation of a 0.15 hectare of land for park space be considered as a community amenity contribution prior to the final reading of this proposed bylaw.
2. Refer proposed Bylaw No. 568 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 \$2,000 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 applicant is 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 applicant.

The applicant is responsible for all costs related to surveying the park land dedication 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.

Staff met with Mo'TI staff regarding possible future road networks. If a subdivision application were to be made, Mo'TI may request some land from the subject property to extend Oyster River Way to Schulz Road and to widen the Old Island Highway (Highway 19A). As these requests could be considered by the Province at the subdivision stage, they are not part of the community amenity contributions discussions with the CVRD.

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 submitted rainwater management plan was reviewed by engineering services branch staff. The comments reference that at the subdivision stage, the plan will need to meet Mo'TI's technical design guidelines. Please note that the CVRD is currently working with a rainwater management consultant for a proposed Master Drainage Plan in the Saratoga area, and this plan will be introduced to the Electoral Areas Services Committee for consideration in coming months.

The two community amenity contribution areas are proposed by the community parks department. In addition, parkland dedication at time of subdivision applies if the proposal includes subdivision of more than two additional lots.

Citizen/Public Relations

Advisory Planning Commission, Puntledge – Black Creek (Electoral Area C), met on September 26, 2018, and the commission supported the rezoning application. 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. 568”

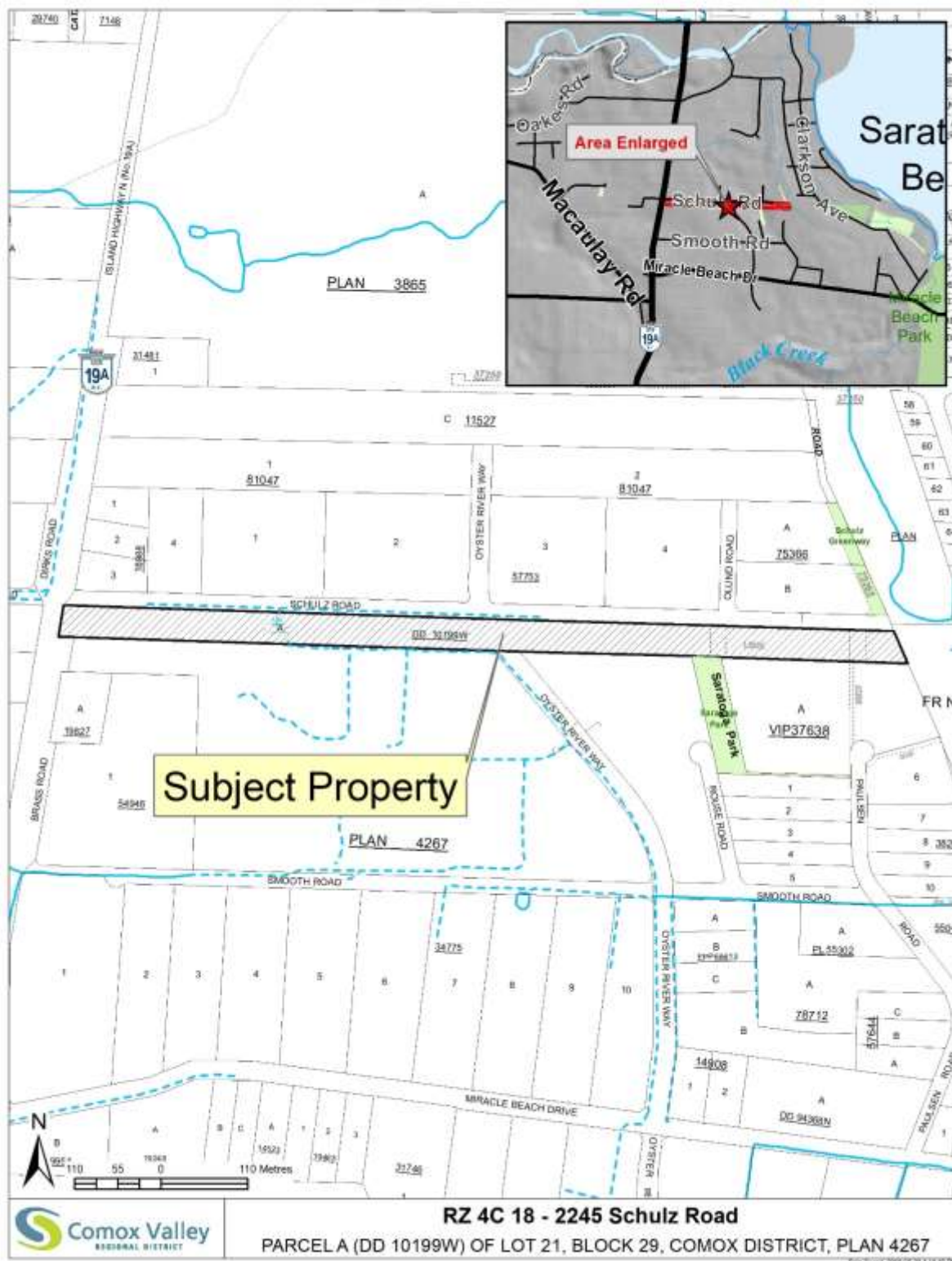


Figure 1: Subject Property Map



Figure 2: Air Photo

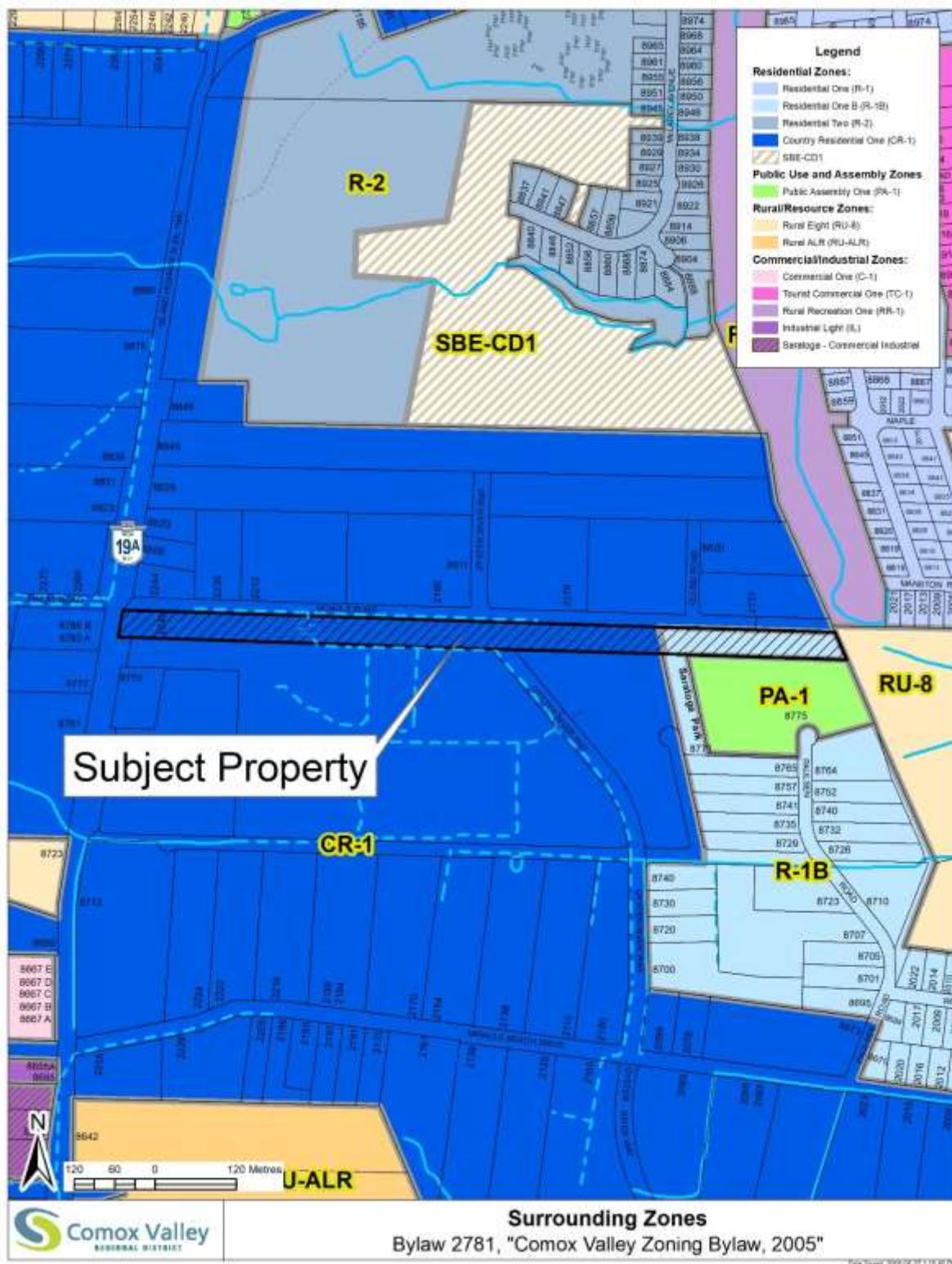


Figure 3: Zoning Map

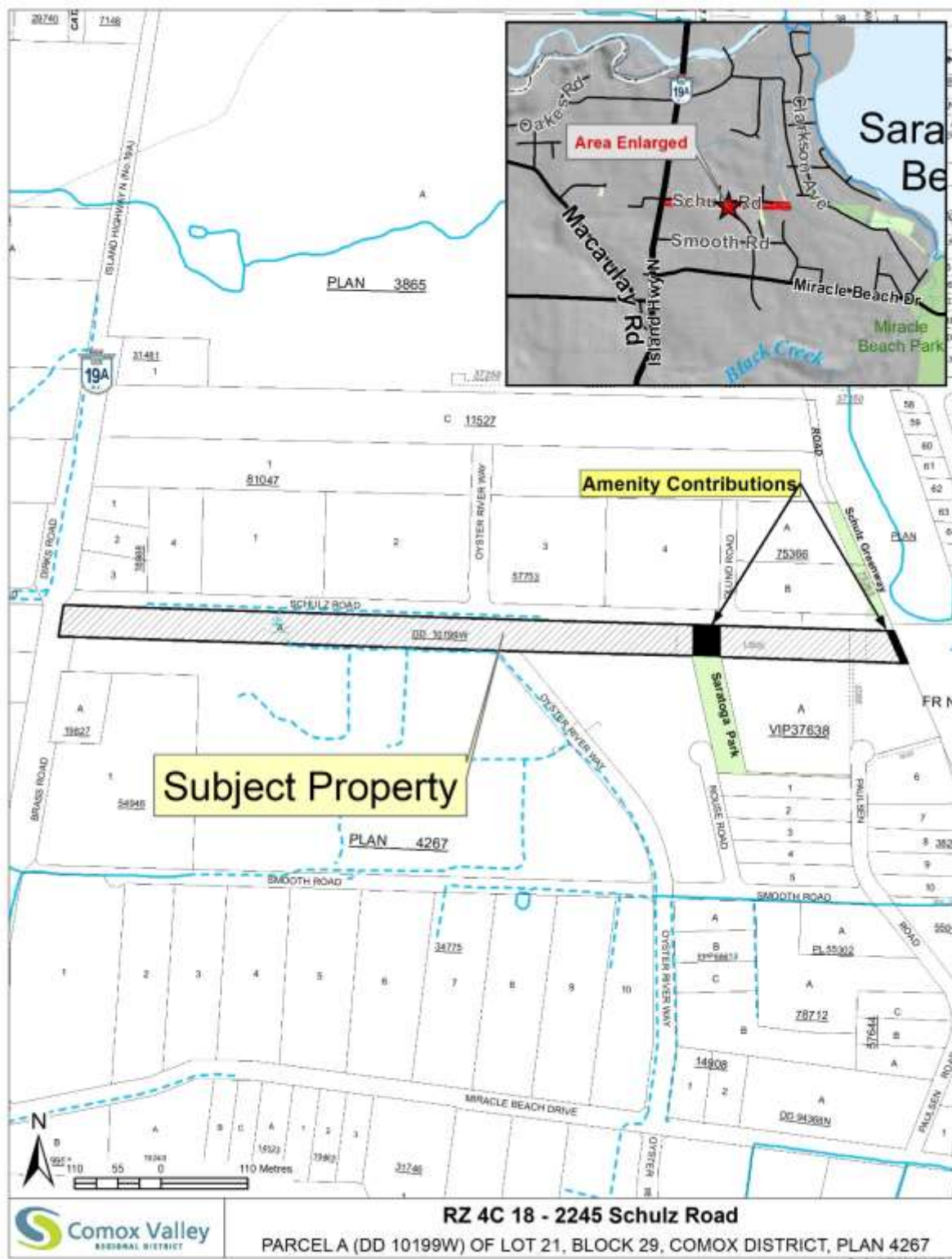


Figure 4: Two Proposed Community Amenity Contribution Areas as Recommended by the CVRD Community Parks Department.

CVRD Staff and Applicant Agreed to Donation of Land for Extension of Saratoga Park to Schulz Road, while the Schulz Greenway Extension will be Sought as Dedication at the time of Subdivision.

Comments from First Nations and External Agencies

First Nations

K'ómoks First Nation	"We have no comments or concerns regarding this application to rezone to facilitate subdivision"
Homalco Indian Band	No response
We Wai Kai Nation of the Laich-Kwil-Tach Treaty Society	"The We Wai Kai Nation has no comment at this time regarding this application being issued."
Wei Wai Kum First Nation	No response
Kwaikah First Nation of the Kwaikah Treaty Society	No response

Provincial Ministries and Agencies

BC Assessment Authority	No response
Ministry of Transportation and Infrastructure	<p>"The Ministry of Transportation and Infrastructure does not object to the proposed rezoning but offers the following comment for consideration:</p> <p>The Ministry has concerns regarding drainage capacity of the existing infrastructure downstream of the subject property as it relates to higher density zoning. These capacity issues are identified in the Saratoga Miracle Beach Area Master Drainage Plan by Jim Dumont P.Eng. dated February 27, 2018."</p>

Local Government

Strathcona Regional District	No response
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Other

Advisory Planning Commission Puntledge –Black Creek (Electoral Area C):	"THAT the Area C Advisory Planning Commission support Zoning Bylaw Amendment Application RZ 4C 18 for 2245 Schulz Road (Pajak) as proposed."
School District No. 71 (Comox Valley)	No response

<p>Island Health (Vancouver Island Health Authority):</p>	<p>We would like to highlight some concerns we have with this rezoning application, from a regulatory and Healthy Built Environment, perspective:</p> <p>From our regulatory view:</p> <ol style="list-style-type: none"> 1) As proposed we have concerns that this rezoning would not be capable of meeting our Subdivision Standards as outlined in the referral, i.e. “Note that the current Zoning Bylaw is under review, and in the draft Zoning Bylaw, the minimum lot area for residential zones will be 1.0 hectare, based on feedback from Island Health.” We would need to review each and every proposed lot, to ensure they meet with our Subdivision Standards, before offering a meaningful response here. 2) We have additional concerns on drinking water availability in the area. While the referral is in the Black Creek/Oyster Bay Water Local Service Area water scarcity/quantity has been a notable issue in the past [with development moratoriums] and additional groundwater sources adjacent to the Oyster River being presently explored due to expected future water demands for the area. <p>Regarding Healthy Built Environment (HBE) recommendations:</p> <ul style="list-style-type: none"> • Under the heading Easement Analysis: “While the CVRD is not a signatory in this easement, there exists an opportunity for neighbourhood connectivity, such as having another access to the school. This could be the basis for community amenity discussions per Section 72 of the OCP.” From a HBE perspective we would want to encourage this community amenity contribution as connecting neighbourhoods, especially to schools (and safe-active travel of kids to school), has vast health related benefits. Such as, “when transportation networks are designed to prioritize active transportation mobility for all residents is encouraged which leads to improved health outcomes, better physical and mental well-being, and greater opportunities for social connectedness.”¹ • While it seems that the rezoning is for only three lots, on the basis of no sewer servicing, under OCP analysis it states: “This designation is for small-lot
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	<p>neighbourhoods with single detached dwellings and provisions for secondary suites, carriage houses and secondary dwellings”. From a HBE point of view there are many reasons to support secondary suites (which we would be happy to further clarify) but if the appropriate and sustainable servicing isn’t available, i.e. meets with our Subdivision Standards for on-site waste water servicing (appropriate lot sizing and soil availability), this is something we would not support.</p> <ul style="list-style-type: none"> • Reviewing a staff report online in relation to this proposal there was a prior interdepartmental comment on... “Parkland dedication at time of subdivision only applies when a proposal includes subdivision of more than three lots.” Now, again, we have concerns about the density as it relates to water/wastewater but if the applicant is going to densify beyond three lots we would want to see this parkland dedication be included. Our health rationale would be in considerations of the “capacity of a park to cool and filter the air, or the ability of a greenway to inspire active transport and access to nature. Such interventions foster more livable surroundings that encourage physical activity and promote better mental health... furthermore, locating parks where people live can improve access to (natural) recreation space.”¹ <p>¹BCCDC (2018). Healthy Built Environment Linkages Toolkit: making the links between design, planning and health, Version 2.0. Retrieved from: http://www.bccdc.ca/health-professionals/professional-resources/healthy-built-environment-linkages-toolkit</p> <p>Overall, it is advisable (if possible) that this rezoning be considered after the current DRAFT CVRD Zoning Bylaw is finalized thereby better reflecting previous Island Health comments on land use densities and as per the above comments.</p>
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Appendix B Bylaw Status Report

BYLAW NO. 568	
Bylaw Name:	Comox Valley Zoning Bylaw, 2005, Amendment No. 78
Applicant:	Pamela S. Pajak
Electoral Area:	Puntledge - Black Creek (Area C)
File Number:	RZ 4C 18
Participants:	All Electoral Areas
Purpose:	To amend the Comox Valley Zoning Bylaw by rezoning the subject property from Country Residential One (CR-1) and Residential One B (R-1B) to Residential One Exception Nine (R-1-9), so that the split zoned situation is resolved. This amendment also enables subdivision opportunities.
Amends Bylaw:	2781
Repeals Bylaw:	
Staff Contact:	Brian Chow

STATUS	
Application Received	May 23, 2018
Electoral Areas Services Committee Approval:	August 13, 2018 Recommendation: Commence external agency referral and First Nations referral process.
Comox Valley Regional District Board:	August 28, 2018 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: Yes Date Sent: Date Approved:
Comox Valley Regional District Board:	Final Adoption:

Comox Valley Regional District
Bylaw No. 568

**A Bylaw to Amend the “Comox Valley Zoning Bylaw, 2005”
being Bylaw No. 2781**

The board of the Comox Valley Regional District, in open meeting assembled, enacts the following amendments to the “Comox Valley Zoning Bylaw, 2005,” being Bylaw No. 2781:

Section One Text Amendment

- 1) Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005,” is hereby amended as set out in Schedule A attached to and forming part of this bylaw.

Section Two Title

- 1) This Bylaw No. 568 may be cited as the “Comox Valley Zoning Bylaw, 2005, Amendment No. 78.”

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	2019.

I hereby certify the foregoing to be a true and correct copy of Bylaw No. 568, being the “Comox Valley Zoning Bylaw, 2005, Amendment No. 78,” as read a third time by the board of the Comox Valley Regional District on the XX day of XX 2019.

Corporate Legislative Officer

**Approved by the Ministry of Transportation and
Infrastructure this**

day of 2019.

Adopted this

day of 2019.

Chair

Corporate Legislative Officer

I hereby certify the foregoing to be a true and correct copy of Bylaw No. 568, being the “Comox Valley Zoning Bylaw, 2005, Amendment No. 78 ,” as adopted by the board of the Comox Valley Regional District on the XX day of XX 2019.

Corporate Legislative Officer

Schedule A

Section One Text Amendment

1. Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005”, is hereby amended by:
 - a. Rezoning the entire property legally described as Parcel A (DD 10199W) of Lot 21, Block 29, Comox District, Plan 4267 (2245 Schulz Road) from Country Residential One (CR-1) and Residential One B (R-1B) to Residential One Exception Nine (R-1-9); and
 - b. Inserting the following zoning exception in Part 1200 “Exceptions to Zone Designations”

“Exception 9

Exception 9	Zone R-1	Map A-13	Amendment No. 78	Enacted
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1. Subdivision Requirements
 - a) The minimum lot area permitted shall be 2.0 hectares;
 - b) Notwithstanding any other provision of this bylaw, a density bonus to permit the minimum lot area of 0.4 hectares with provision of a donation to the Comox Valley Regional District of the following lands described below and shown on Schedule 1.

Firstly, commencing at the most north westerly corner of Lot A of Block 29, Comox Land District, Registered Plan 37638, on file in the Land Title Office, Victoria;

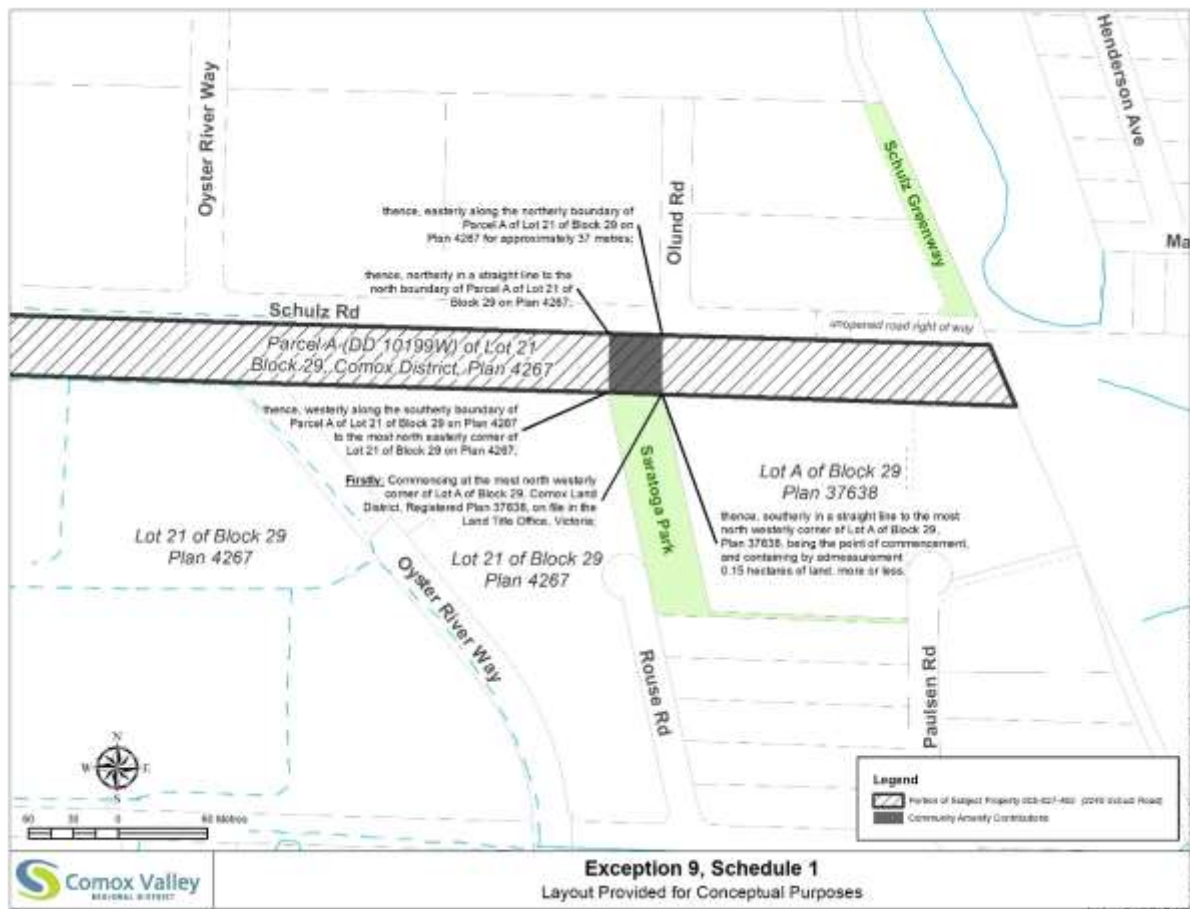
Thence, westerly along the southerly boundary of Parcel A of Lot 21 of Block 29 on Plan 4267 to the most north easterly corner of Lot 21 of Block 29 on Plan 4267;

Thence; northerly in a straight line to the north boundary of Parcel A of Lot 21 of Block 29 on Plan 4267;

Thence, easterly along the northerly boundary of Parcel A of Lot 21 of Block 29 on Plan 4267 for approximately 37 metres;

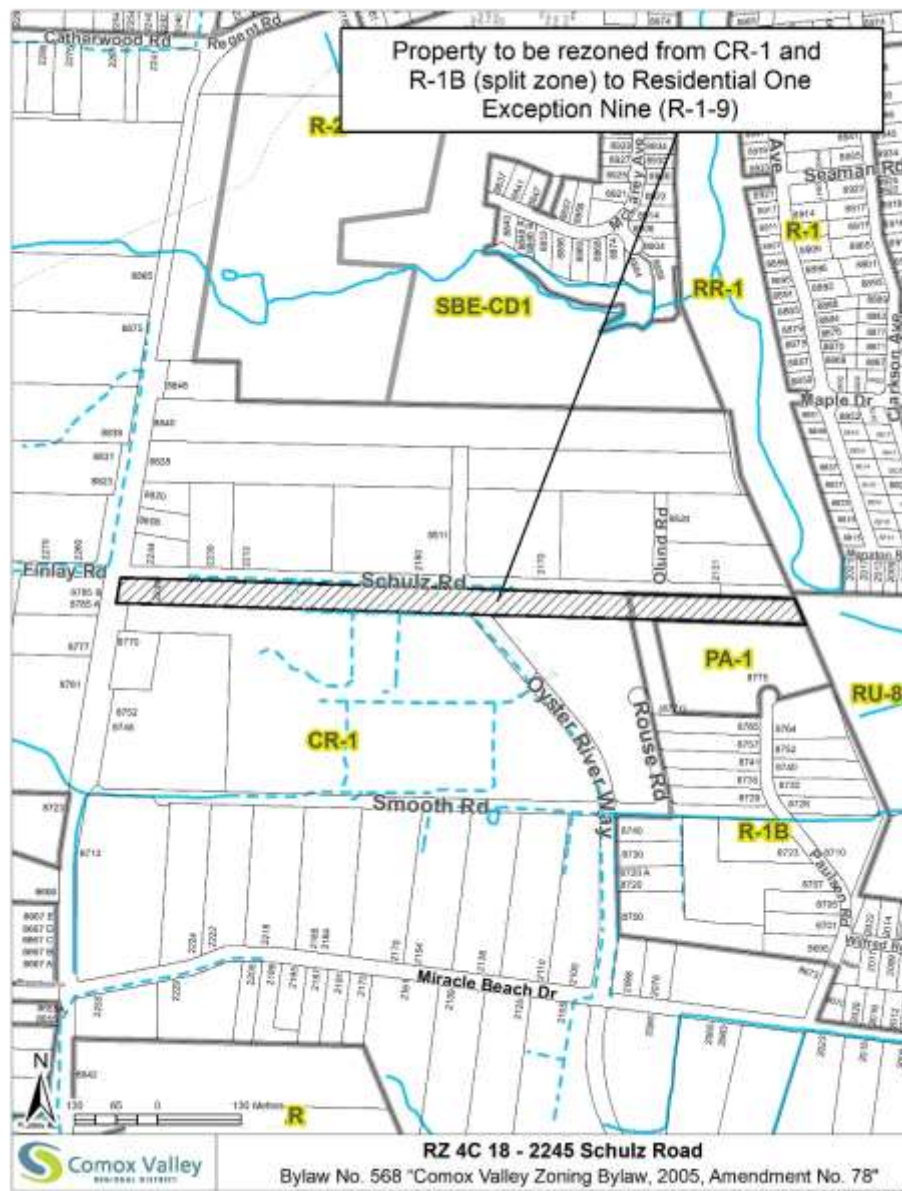
Thence, southerly in a straight line to the most north westerly corner of Lot A of Block 29, Plan 37638, being the point of commencement, and containing 0.15 hectares of land, more or less.

Notwithstanding this exception, all other regulations of the R-1 zone apply. Please refer to this link for the R-1 zone: <http://imap.comoxvalleyrd.ca/zoning/2781/R-1.pdf>.



Section Two Map Amendment

1. Map A-13 forming part of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005”, is hereby amended by rezoning the entire property legally described as “Parcel A (DD 10199W) of Lot 21, Block 29, Comox District, Plan 4267, PID 005-027-462” (2245 Schulz Road) from Country Residential One (CR-1) and Residential One B (R-1B) to Residential One Exception Nine (R-1-9) as shown on Appendix 1.



Appendix 1

Part of Schedule A to Bylaw No. 568 being the “Comox Valley Zoning Bylaw, Amendment No. 78”.

Amends Schedule Map A-13 to Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005.”