

DATE: August 2, 2018

FILE: 3360-20/RZ 4C 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 – 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 seek Comox Valley Regional District (CVRD) Board support to undertake external agency and First Nations referrals for a proposed rezoning to resolve a split zoned situation and to enable future subdivision.

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 August 2, 2018, and direct staff to start the external agency referral process for Parcel A (DD 10199W) of Lot 21, Block 29, Comox District, Plan 4267, PID 005-027-462 (Pajak) as part of a proposed amendment (RZ 4C 18) of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005”;

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

AND FINALLY THAT the Comox Valley Regional District Board authorize staff to begin discussions on provision of community amenities as per Section 72 “Community Amenity Contributions” of Bylaw No. 337, being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014.”

Executive Summary

- The subject property is located at 2245 Schulz Road in Electoral Area C (Figures 1 and 2).
- The approximate size of the property is 4.2 hectares.
- 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 applicant wishes to rezone the property in order to resolve the split zone situation, and to provide subdivision opportunities. While the current plan is to subdivide into three lots, the applicant requests a zone with a minimum lot area of subdivision of 0.4 hectares.
- Note that the zoning bylaw is under review. In the proposed zoning bylaw, the minimum lot area for residential zones will be 1.0 hectare, based on feedback from Vancouver Island Health Authority (VIHA).
- The subject property is in the Saratoga Miracle Beach Settlement Node as per the Comox Valley Regional District Regional Growth Strategy (RGS) and Rural Comox Valley Official Community Plan (OCP). The rezoning application is consistent with these plans.

- The draft Saratoga Miracle Beach Local Area Plan (LAP) designates the subject property within “Residential” and is within the Core Development Area. The rezoning application is also consistent with the draft.
- The CVRD Board is recommended to conduct First Nations and external agency referrals for this rezoning application (Appendix B). External referral will help in determining actual redevelopment potential. In addition, the CVRD Board is recommended to authorize staff to begin discussions on provision of community amenities as per Section 72 of the OCP.

Prepared by:

B. Chow

Brian Chow, MCIP, RPP
Rural Planner

Concurrence:

A. Mullaly

Alana Mullaly, M.Pl., MCIP, RPP
Acting General Manager of Planning
and Development Services Branch

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 a long, skinny lot, 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. While the current plan is to subdivide into three lots, the applicant requests a zone with a minimum lot area of subdivision of 0.4 hectares.

Official Community Plan Analysis

Bylaw No. 337 being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014,” designates the subject property within Saratoga and Miracle Beach Settlement Node. The draft Saratoga Miracle Beach LAP designates this property as Residential and is within the Core Development Area. This designation is for small-lot neighbourhoods with single detached dwellings and provisions for secondary suites, carriage houses and secondary dwellings. The residential density is to be between four to 24 units per hectare subject to the availability of community water and sewer services. The rezoning application is consistent with the growth management framework of these plans.

Section 33(4) of the OCP indicates that the community amenity policy in part 4 of the OCP is to be applied for development in settlement nodes. It is a priority to have community amenities that support the goals and objectives of the settlement node and local area plan. Section 72 of the OCP contains the policies on community amenity contributions.

Zoning Bylaw Analysis

The subject property is split zoned. In the review of zoning history, the property first appeared as split zoned in Bylaw No. 869, which was adopted on April 28, 1986. (The applicant owned this property in October 1986.) Currently, in Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005”, the minimum lot area for subdivision for the CR-1 zone is 2.0 hectares and the minimum lot area for the R-1B zone is 0.40 hectares, if the lot is connected to either community water or sewer. The subject property is in the Black Creek/Oyster Bay Water Local Service Area. Approximately 1.0 hectare of the 4.2 hectare lot is zoned R-1B.

The application to rezone the entire lot to a residential zone that will enable subdivision. The applicant requests to rezone the lot to a zone with the minimum lot area of 0.4 hectares, based on the current minimum subdivision lot area in the R-1B zone. The current plan is to subdivide into three lots and leave the remainder density for the future. 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 VIHA. Through the rezoning process, the applicant will be required to demonstrate the actual subdivision potential based on on-site servicing capacity. A site specific study will ensure that onsite wastewater treatment systems will be sustainable for the long term.

Easement Analysis

The land title of the subject property identifies that there is an easement agreement (ID: L5606) between the applicant and property owners to the south (Appendix A). The easement agreement indicates that there are two easement areas, identified and outlined as Easement Area A and Easement Area B, on the subject property. The two easement areas can be used by the property owners to the south to trespass; to construct and maintain roads and associated ditches, drains, sewers or other necessary installations; and to be dedicated as public roads to the Ministry of Transportation and Infrastructure, if the signatories agree. 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.

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, 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.

Options

The board can:

1. Refer the application to external agencies and First Nations for review, or
2. Deny the application to rezone the property to allow for a reduced parcel size.

Staff recommends option 1. This will enable staff to collect specific feedback on the application.

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 subdivision or 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

Bylaw No. 120, being the “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010”, designates the subject property within the Saratoga and Miracle Beach 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. Specific uses within the settlement nodes are identified in the Saratoga Miracle Beach LAP (MG Policy 1B-2).

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.

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. A rainwater management plan is required at this rezoning application stage in order to determine and confirm the development potential. The rainwater management plan should include appropriate mitigation measures in order to maintain pre-development or natural hydrologic conditions including natural rates of surface runoff, infiltration to shallow groundwater and infiltration to deep groundwater. If the CVRD Board accepts Jim Dumont's Saratoga Master Drainage Plan, the application would need to meet the plan's recommendations.

Parkland dedication at time of subdivision only applies when a proposal includes subdivision of more than three lots.

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).

Attachments: Appendix A – "L5606 Easement"
Appendix B – "Agency List"

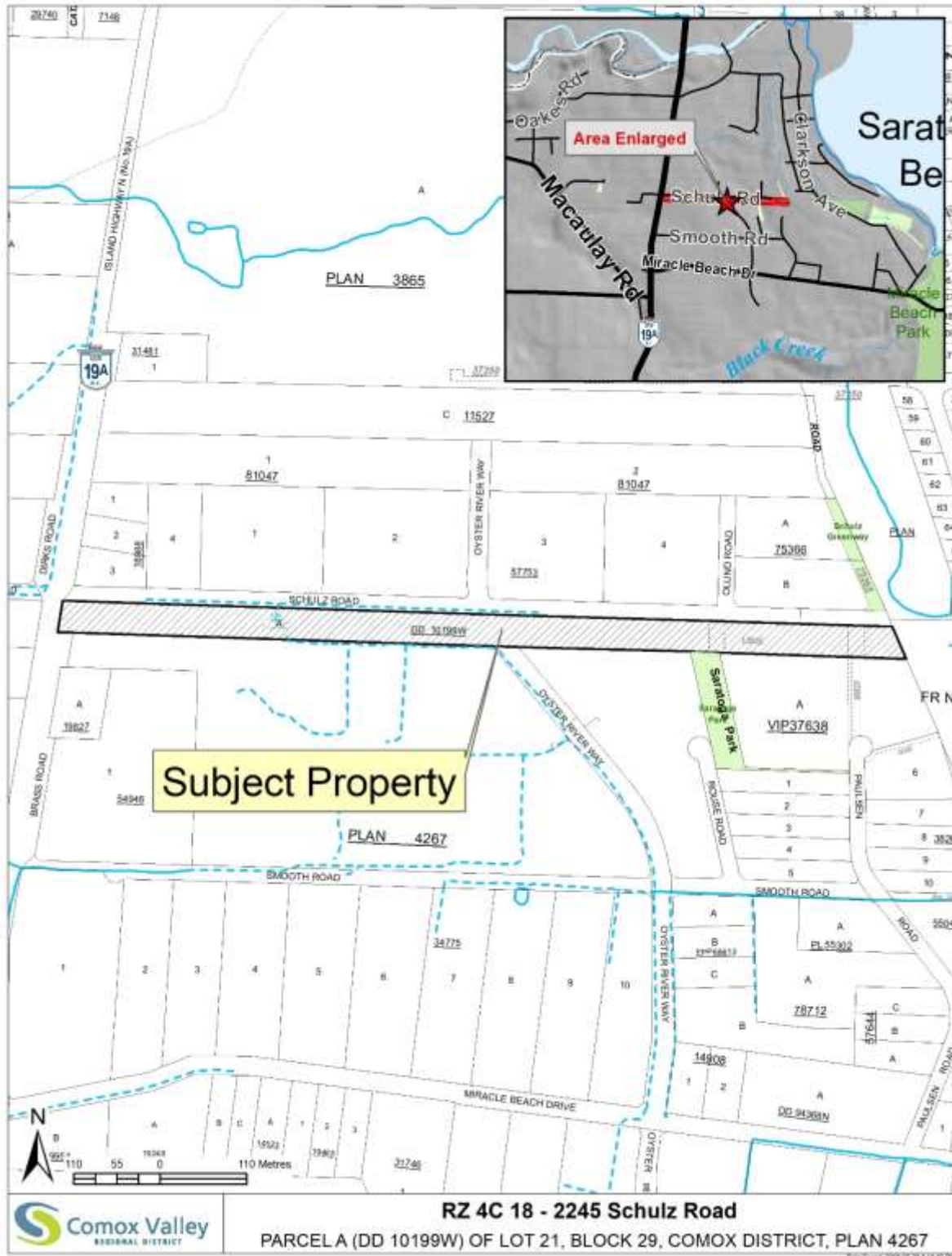


Figure 1: Subject Property Map



Figure 2: Air Photo

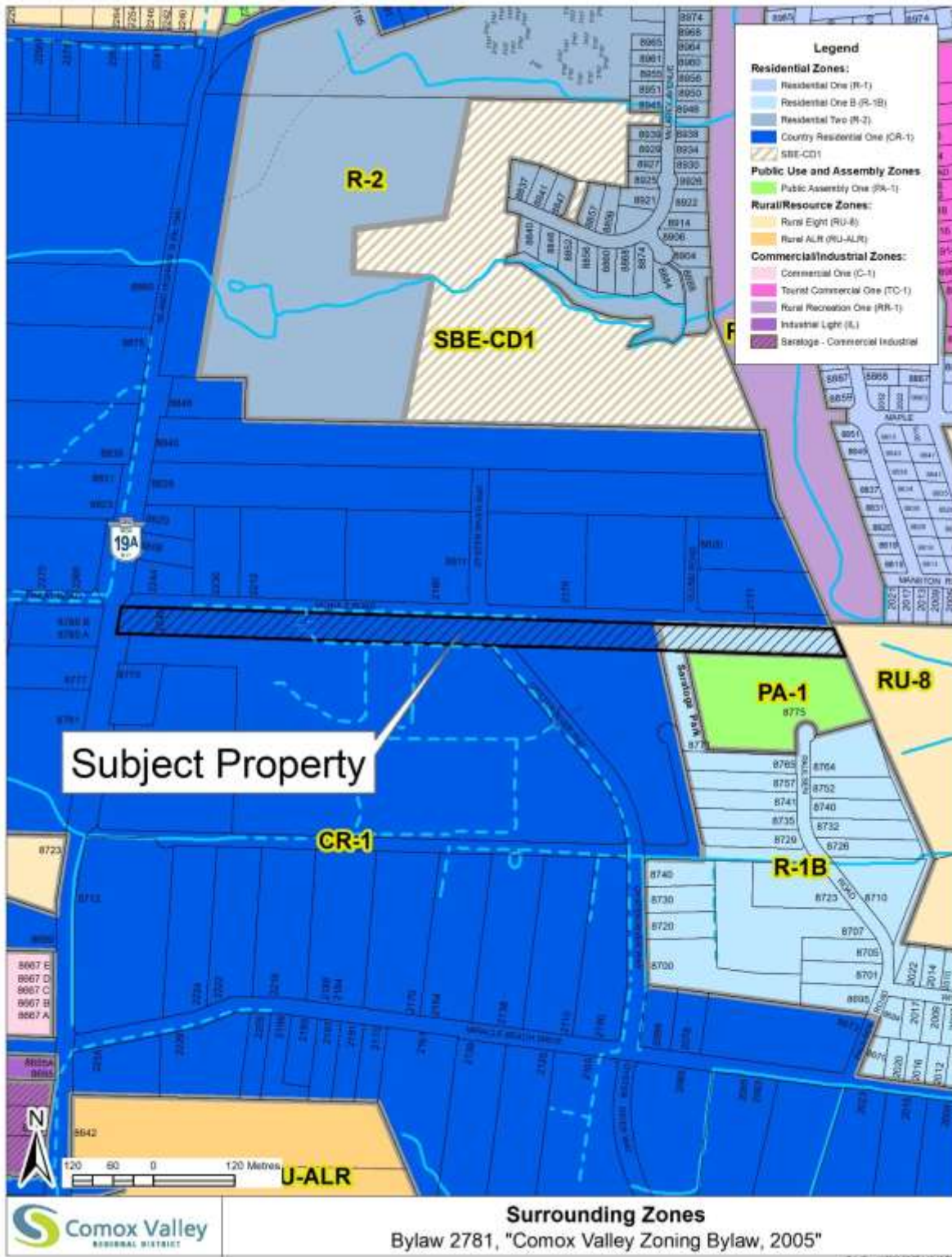


Figure 3: Zoning Map

Status: Registered

Doc #: L5606

RCVD: 1982-01-27 RQST: 2018-06-05

3.53.36

FORM 17 - LAND TITLE ACT
APPLICATION

2/2
L 5606
CPC 8979

NOTE: Before submitting this application, applicants should check and satisfy themselves as to the tax position, including taxes of the Crown Provincial, a municipality and improvement water and irrigation districts.

NATURE OF INTEREST: EASEMENT
HEREWITH FEE OF: \$10.00

➔ Send All Documents & Notices To

VICTRO Registry Services Ltd. - Agent
Box 1537, Victoria, B.C.
V8W 2X7

FULL NAME of person entitled to be registered as owner:
Shown in instrument: Leo Baldwin Richards and Evelyn Jean Richards
LEGAL DESCRIPTION:
Shown in instrument

FULL NAME, ADDRESS AND TELEPHONE NUMBER of person presenting this application:
IAIN A. BRAND, Barrister & Solicitor, 968 Fitzgerald Avenue, Courtenay, B.C. V9N 2R5
Telephone: 338-9242

Gene Dela
(Signature of Authorized Agent)

GRANT OF EASEMENT

THIS DEED MADE THE 30th DAY OF *December*, A.D. 1981.

LAND REGISTRY
'82 JAN 27 10:50

BETWEEN: THOMAS JOSEPH NORTON, Logger, and
WENDY ELIZABETH NORTON, His Wife,
both of R.R.#1,
Black Creek, B.C. VOR 1C0
As Joint Tenants
(hereinafter called "the Grantors")

OF THE FIRST PART

AND: LEO BALDWIN RICHARDS, Businessman, and
EVELYN JOAN RICHARDS, Housewife,
both of R.R.#1,
Black Creek, B.C. VOR 1C0
As Joint Tenants

OF THE SECOND PART

WHEREAS:

27-82 371884 L5B 3 10.00

1. The GRANTORS are the Registered Owners in Fee Simple of the land situate immediately adjacent and to the north of the Dominant Tenement, namely:

Parcel "A" (DD 10199-W) of Lot 21, Block 29,
Comox District, Plan 4267

hereinafter known as the "Servient Tenement".

2. The GRANTEES are the Registered Owners in Fee Simple of the following lands in the Comox Assessment District, namely:

Remainder of Lot 21, of Block 29, Comox District,
Plan 4267, EXCEPT Parcel "A" (DD 10199-W) thereof
and except those parts thereof included within the
boundaries of Plan 19827 and Plan 37370

FORM 1

(Section 36)

hereinafter known as the "Dominant Tenement".

MEMORANDUM OF REGISTRATION

Registered on application received
on the day and time written hereon

R E HOOPER, Registrar of the
Victoria Land Title Office

Status: Registered

Doc #: L5606

- 2 -

3. The GRANTORS have agreed to grant to the GRANTEES such Right of Way as is hereinafter contained and described.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. In consideration of the sum of \$2,000.00 paid by the GRANTEES to the GRANTORS (the receipt whereof the GRANTORS hereby acknowledge) the GRANTORS hereby GIVE AND GRANT unto the GRANTEES FULL RIGHT AND LIBERTY for the GRANTEES and their successors in title, the owners and occupiers for the time being of the Dominant Tenement or any part thereof, and their respective servants and licensees (in common with the GRANTOR and all others having the like right) at all times hereafter by day or night with or without vehicles to pass and repass along over and upon the Servient Tenement in the Easement Areas shown outlined in red on the Plan annexed hereto (which Plan is entitled Annex "A" to Grant of Easement, Norton and Norton to Richards and Richards) and which are more completely described hereinafter.

2. Without restricting the generality of the foregoing, the GRANTEES shall have the right to construct and maintain a roadway and all ancillary ditches, drains, sewers or other installations deemed necessary, practical or expedient in each of the Easement Areas for furthering the purposes and intents of the Easement granted herein and hereby.

3. The Easement Areas are comprises of two separate parcels shown as Easement Area "A" and Easement Area "B" on the Plan attached hereto.

4. Easement Area "A" is more particularly described as:

All that portion of Parcel "A" (DD 10199-W) of Lot 21, Block 29, Comox District, Plan 4267, lying to the West of and out to a limit 20 m perpendicularly distant from and parallel to a certain base line and its extensions, which said base line commences on the Southerly boundary of the said Parcel "A" 54.685 m, more or less, Westerly of the Southeast corner of the said Parcel "A" and bears Northerly to intersection with the Northerly boundary of the said Parcel "A" 37.37 m, more or less, Westerly from the Northeast corner of the said Parcel "A".

5. Easement Area "B" is more particularly described as:

All that portion of Parcel "A" (DD 10199-W) of Lot 21, Block 29, Comox District, Plan 4267, lying to the West of and out to a limit 20 m perpendicularly distant from and parallel to a certain base line and its extensions, which said base line commences on the Southerly boundary of the said Parcel "A" 274.71 m, more or less, Westerly of the Southeast corner of the said Parcel "A" and bears Northerly to intersection with the Northerly boundary of the said Parcel "A" 255.490 m, more or less, Westerly from the Northeast corner of the said Parcel "A".

6. In the event that the GRANTORS shall dedicate the land encompassed within either Easement Area "A" or Easement Area "B", or both, to the Department of Highways of the Province of British Columbia for the purposes of a public roadway,

Status: Registered

Doc #: L5606

RCVD: 1982-01-27 RQST: 2018-06-05 13.53.36

- 3 -

3

then the GRANTEES agree and undertake to execute such releases as may be required in order to permit such dedication to take place.

7. This Deed and everything contained herein shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, assigns, and the like.

IN WITNESS WHEREOF the parties have hereunto set their respective hands and seals the day and year first shown above.

SIGNED, SEALED AND DELIVERED by)
THOMAS JOSEPH NORTON and WENDY)
ELIZABETH NORTON in the presence of:)

Lena Nelson
Name)

LENA NELSON
Address 2945 Muir Road
Courtenay, B.C. V9N 6A2)
Legal Secretary)

Occupation)

Thomas Joseph Norton
THOMAS JOSEPH NORTON)

Wendy Elizabeth Norton
WENDY ELIZABETH NORTON)

SIGNED, SEALED AND DELIVERED by)
LEO BALDWIN RICHARDS and EVELYN)
JOAN RICHARDS in the presence of:)

Iain A Brand
Name)

IAIN A. BRAND
Address 968 FITZGERALD AVENUE
COURTENAY, B.C. V9N 2R5)
TELEPHONE: 338-9242)
BARRISTER & SOLICITOR)

Occupation)

L Richards
LEO BALDWIN RICHARDS)

Evelyn Joan Richards
EVELYN JOAN RICHARDS)

APPROVAL AND CONSENT

The UNION BAY CREDIT UNION, its authorized signatories, having read and understood the above Grant of Easement made by Thomas Joseph Norton and Wendy Elizabeth Norton to Leo Baldwin Richards and Evelyn Joan Richards, as Grantees, does hereby APPROVE and CONSENT to the said Grant of Easement over Parcel "A" (DD 10199-W) of Lot 21, Block 29, Comox District, Plan 4267.

The Common Seal of the UNION BAY)
CREDIT UNION was hereunto affixed this)
25th day of January , 1982)
in the presence of:)

W. A. Johnson President
 J. P. Watters Council - Manager

(seal)

Status: Registered

Doc #: L5606

RCVD: 1982-01-27 RQST: 2018-06-05 13.53.36

5 5606

Maple Printers and Stationers Ltd., Vancouver, B.C.
Law and Commercial Stationers Form No. LTA 2

LAND TITLE ACT

FORM 2
(Sections 43 (a) and 44 (a))

AFFIDAVIT OF WITNESS

I, LENA NELSON, of CITY OF COURTENAY

in British Columbia, make oath and say:

1. I was present and saw this instrument duly signed and executed by Thomas Joseph Norton and Wendy Elizabeth Norton the party(ies) to it, for the purposes named in it.
2. The instrument was executed at Courtenay, British Columbia
3. I know the party(ies), who is(are) 19 years old or more.
4. I am the subscribing witness to the instrument and am 16 years old or more.

Sworn before me at Courtenay

in British Columbia, this 18

day of January, 19 82

Doyle W. Ostrud

Lena Nelson

*Write name and qualifications under section 48, e.g., A Commissioner for Taking Affidavits for British Columbia.
NOTE — This affidavit must be sworn by a witness who is not a party to the instrument.

Maple Printers and Stationers Ltd., Vancouver, B.C.
Law and Commercial Stationers Form No. LTA 2

LAND TITLE ACT

FORM 2
(Sections 43 (a) and 44 (a))

AFFIDAVIT OF WITNESS

I, _____, of _____

in British Columbia, make oath and say:

1. I was present and saw this instrument duly signed and executed by Leo Baldwin Richards and Evelyn Joan Richards the party(ies) to it, for the purposes named in it.
2. The instrument was executed at Courtenay, British Columbia
3. I know the party(ies), who is(are) 19 years old or more.
4. I am the subscribing witness to the instrument and am 16 years old or more.

Sworn before me at Courtenay

in British Columbia, this _____

day of _____, 19 _____

*Write name and qualifications under section 48, e.g., A Commissioner for Taking Affidavits for British Columbia.
NOTE — This affidavit must be sworn by a witness who is not a party to the instrument.

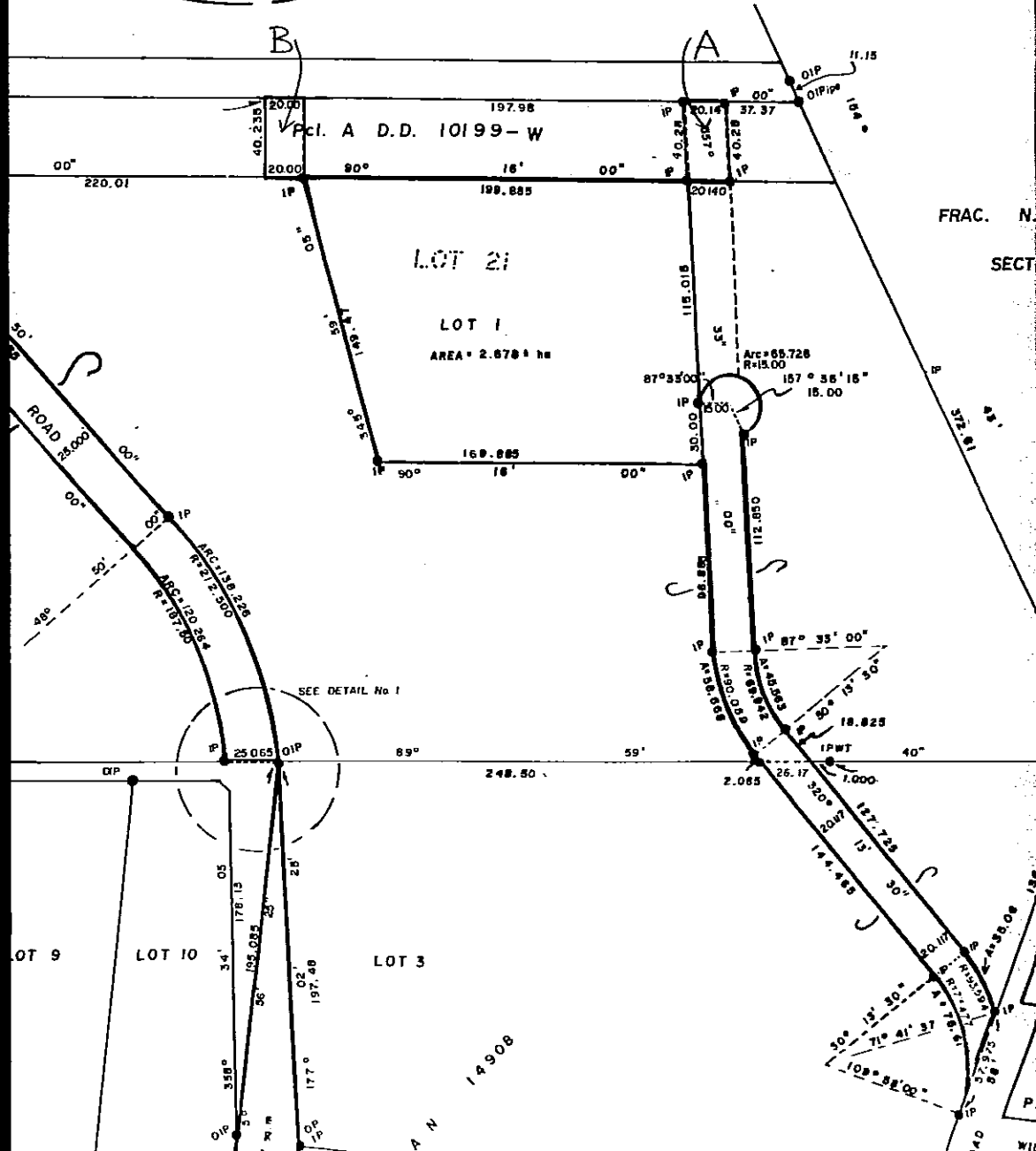
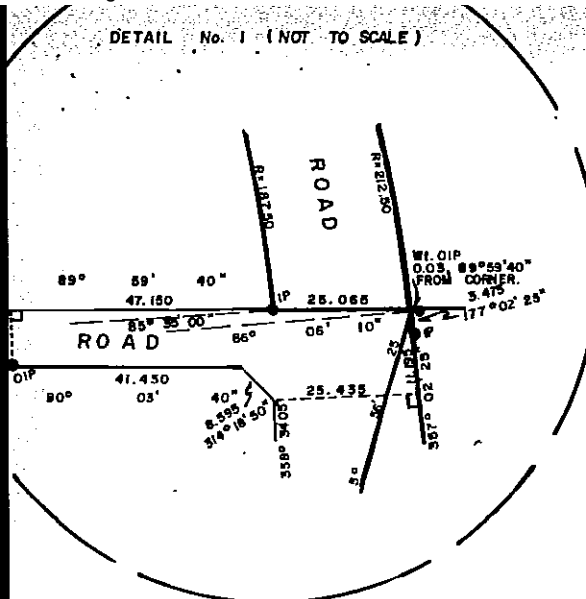
Status: Registered

Doc #: L5606

DEPOSITED L 5606

Annex "A" to Grant of Easement
Norton and Norton to Richards and Richards

Easterly portion of Parcel "A" (DD 10199-W)
Block 29, Comox District, Plan 4267,
shown outlined in yellow.



FRAC. N.
SECT

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 (Xwemalhkwu) 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 Indigenous Relations and Reconciliation

Local Government

	Comox (Town of)		Alberni-Clayoquot Regional District
	Courtenay (City of)	<input checked="" type="checkbox"/>	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
<input checked="" type="checkbox"/>	School District No. 71 (Comox Valley)	<input checked="" type="checkbox"/>	Vancouver Island Health Authority (Environmental Health)