



Committee Report

Date of Report: July 31, 2024
Date & Type of Meeting: August 14, 2024, Rural Affairs Committee
Author: Stephanie Johnson, Planner
Subject: DEVELOPMENT VARIANCE PERMIT
File: V2311G-0586.250-Filippo-DVP00245
Electoral Area/Municipality G

SECTION 1: EXECUTIVE SUMMARY

The purpose of this report is for the Rural Affairs Committee and Regional Board to consider a Development Variance Permit (DVP) application to waive the proof of water requirement for a remainder parcel under the Subdivision Bylaw. The subject property is located at 4650 Highway 6 in Electoral Area 'G'.

Specifically, this DVP application seeks to vary Section 8.02 'Individual Groundwater Services' under the RDCK's *Subdivision Bylaw No. 2159, 2011* for one new lot and remainder by waiving the proof of ground water requirement for the proposed remainder lot only. No new development is proposed for the remainder lot.

To facilitate this subdivision, a bylaw amendment application to change the Official Community Plan (OCP) land use designation and rezone the proposed new lot for a residential use was submitted, and received substantive approval on June 13, 2024 from the Regional Board. The proposed 13.4 ha remainder lot will retain the existing Parks and Recreation OCP designation and zoning.

Staff recommend that the Regional Board approve issuance of this DVP.

SECTION 2: BACKGROUND/ANALYSIS

GENERAL INFORMATION

Property Owners: Anne Filippo and Jerry Filippo

Property Location: 4650 Highway 6, Hall Siding, Electoral Area 'G'

Legal Description: LOT A DISTRICT LOT 1241 KOOTENAY DISTRICT PLAN 17958 (PID: 011-707-721)

Property Size: 14.4 hectares (35.6 acres)

Current Zoning: Parks and Recreation (PR) / INSERT

Current Official Community Plan Designation: Parks and Recreation (PR)

SURROUNDING LAND USES

North: Tourist Commercial (TC)

East: Tourist Commercial (TC) and Forest Reserve (FR)

South: Tourist Commercial (TC) and Resource Area (RA)

West: Parks and Recreation (PR) and Forest Reserve (FR)

Background Information and Site Context

The subject property is located in Electoral Area 'G' on Highway 6, approximately 10 km south of the City of Nelson at the base of Whitewater Ski Hill Road. A portion of the lot is presently used as a main entrance (Apex Kiosk) to the Nelson Nordic Ski Club trails. No new development is proposed for the remainder parcel therefore will not require servicing

A rural subdivision application was submitted to the Province (Ministry of Transportation and Infrastructure) to create a new 1.0 ha lot to allow for the construction of a one-family dwelling with on-site servicing. The proposed 13.4 ha remainder lot would retain the existing Parks and Recreation land use designation and zoning. Through the subdivision referral process, Regional District staff identified in our local government referral comments that an RDCK bylaw amendment application to successfully amend the land use designation and rezone the proposed new remainder lot is required prior to the Rural Approving Officer considering final subdivision approval.

At the June 13, 2024, 2021 Regular Open meeting the Regional Board resolved:

That *Land Use Amendment Bylaw No. 2935, 2023* being a bylaw to amend *Electoral Area 'G' Land Use Bylaw No. 2452, 2018* is hereby given THIRD READING.

And Further that the consideration of adoption BE WITHHELD for *Land Use Amendment Bylaw No. 2935, 2023* being a bylaw to amend *Electoral Area 'G' Land Use Bylaw No. 2452, 2018* until the following items have been obtained:

- i. Approval of *Land Use Amendment Bylaw No. 2935, 2023* by the Ministry of Transportation and Infrastructure, pursuant to Section 52 (3)(a) of the Transportation Act.

The RDCK application to consider amending the land use designation and rezoning for the above subdivision has now been approved by the Ministry of Transportation and Infrastructure and is also on the July 18, 2024 Regular Open meeting agenda for the Regional Board's consideration of adoption. In response, Planning staff are proceeding with bringing this variance forward to assist with the efficient processing of this development proposal.



Figure 1: General Site Location

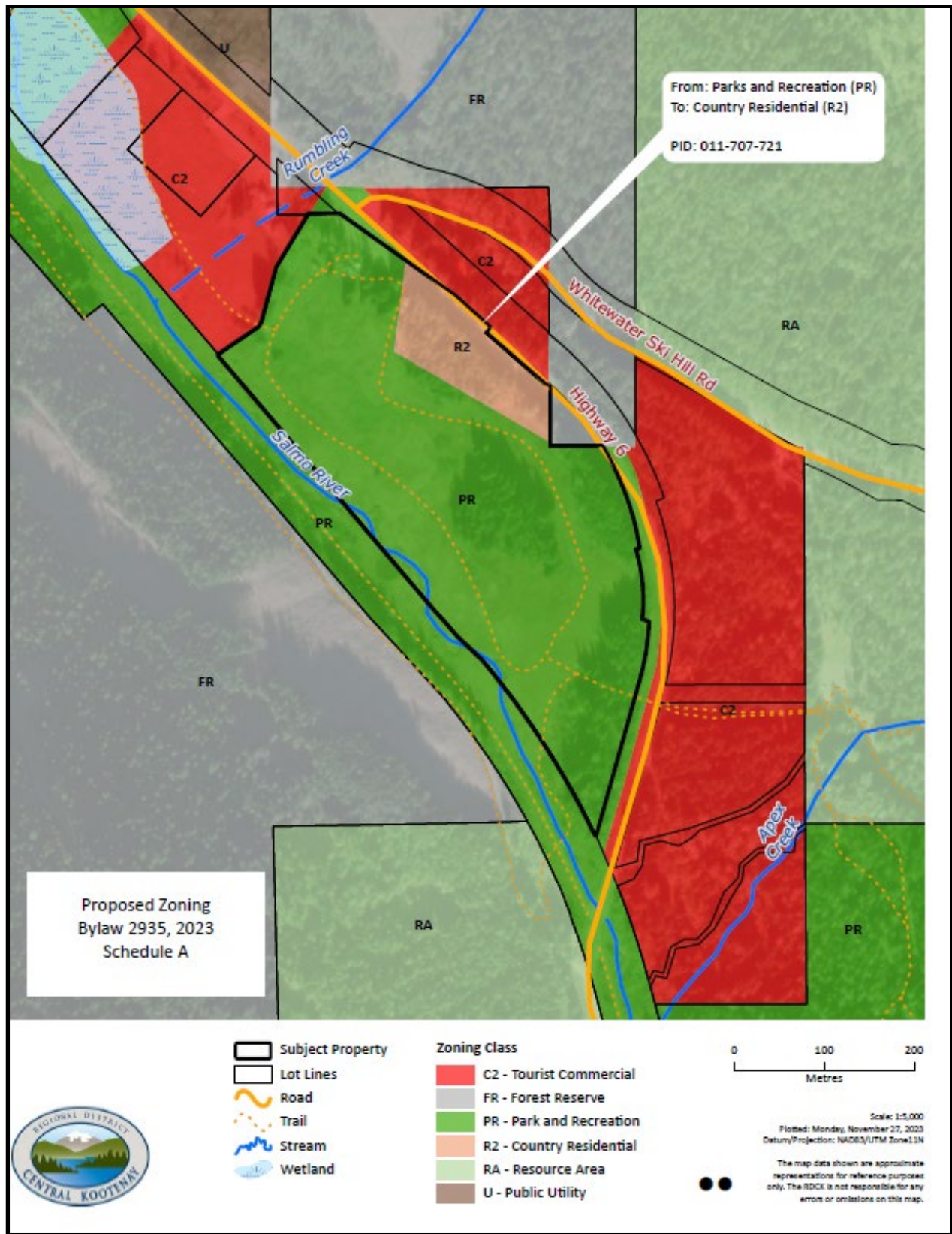


Figure 2: Proposed Zoning Ma

Development Proposal

The Regional District's Subdivision Bylaw requires proof of individual groundwater services for all new and remainder lots. The purpose of this application is to vary the subdivision servicing requirement to provide evidence that there are sufficient quantities for ground water for the proposed remainder lot only. No new development is proposed for the remainder lot. All other servicing requirements for the proposed new residential lot would remain in effect. Please see the proposed site plan and plan of subdivision in Figures 3-4.



Figure 3: Site Plan

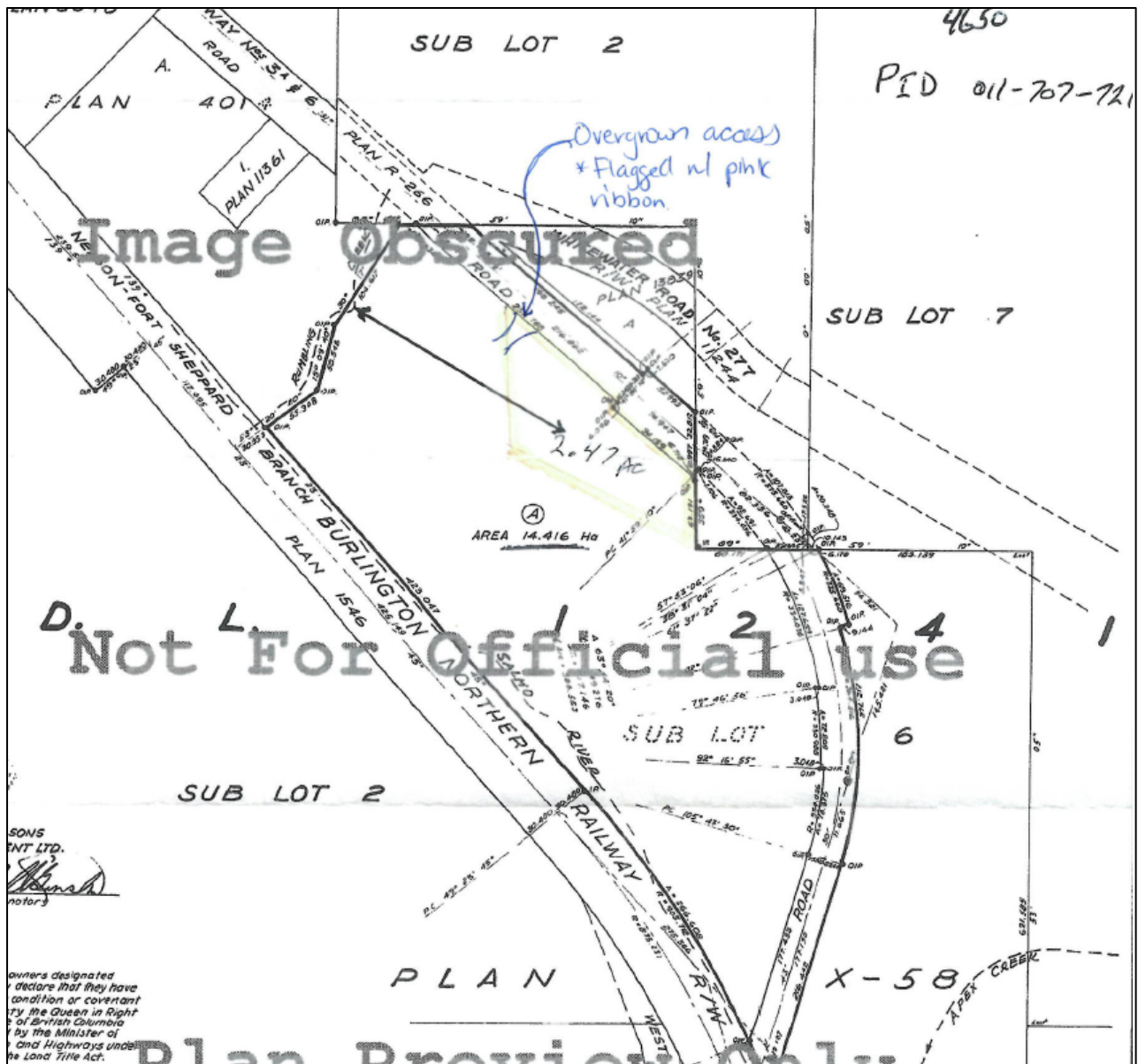


Figure 4: Proposed Subdivision Plan

Planning Policy

The Electoral Area 'G' Land Use Bylaw No. 2452, 2018 includes the following relevant policies:

Parks and Recreation Policies

The Regional Board:

5. Supports the existing network of public outdoor recreation lots and trails, as well as the creation and extension of a connected network of trails and public corridors to access community parks, recreation areas, public open space and amenities where feasible and as indicated on Schedules A.1 and A.3.
6. Recognizes the importance and significance of the Great Northern Rail Trail at a community and regional level.

- 8. Supports continued dialogue and investigation of options toward dedicated non-motorized use on portions of the Great Northern Rail Trail in collaboration with all users.
- 10. Supports the establishment of public access points along the Salmo River for the purposes of swimming, fishing and other recreational pursuits.
- 13. Encourages investigation into options for the conservation and on-going access to recreational lands associated with rock climbing adjacent to Highway 6 in proximity to Hall Siding.

SECTION 3: DETAILED ANALYSIS

3.1 Financial Considerations – Cost and Resource Allocations:

Included in Financial Plan: Yes No
 Financial Plan Amendment: Yes No
Debt Bylaw Required: Yes No
 Public/Gov’t Approvals Required: Yes No

The DVP application fee has been paid in full pursuant to the *RDCK Planning Procedures and Fees Bylaw No. 2457, 2015*.

3.2 Legislative Considerations (Applicable Policies and/or Bylaws):

Under Section 498 of the *LGA*, the Board has the authority to vary provisions of a Zoning Bylaw or Subdivision Bylaw other than use or density through a DVP.

3.3 Environmental Considerations

As no development is proposed for this remainder parcel staff anticipate no environmental impact.

3.4 Social Considerations:

No social considerations are anticipated from this variance request.

3.5 Economic Considerations:

No economic considerations are anticipated from this proposed DVP application.

3.6 Communication Considerations:

In accordance with the *LGA* and the *RDCK’s Planning Procedures and Fees Bylaw No. 2457, 2015* a sign describing the proposal was posted on the subject property, and notices were mailed to surrounding neighbours within a 100 metre radius of the subject property. To date, no comments have been received in response to from the above notification.

Planning staff referred the application to all relevant government agencies, internal RDCK departments and the Director and Advisory Planning and Heritage Commission (APHC) for Electoral Area ‘G’ for review. The following comments were received:

Interior Health (IH)

“IH understand[s] [that] this remainder [lot] in this subdivision will be zoned parks and recreation, and there is no intention for any land use that requires water. As such, from a health perspective I have no concerns”.

Ministry of Transportation and Infrastructure

“The Ministry has no concerns with the proposed Development Variance Permit application, which is related to an active subdivision, MoTI file # 2023-03121”.

Electoral Area 'G' APHC

These comments are from the approved minutes of the October 25, 2023 meeting, where the APHC also discuss the variance proposal, generally, however, no formal recommendation was made for V2311G:

*That the Area G Advisory Planning Commission **SUPPORT** the Land Use Bylaw Amendment Application to rezone a portion of the property to Country residential (R2) for the property located at 4650 Highway 6, Hall Siding and legally described as LOT A DISTRICT LOT 1241 KOOTENAY DISTRICT PLAN 17958.*

FortisBC

"Land Rights Comments

- *There are no immediate concerns or requests for additional land rights, however there may be additional land rights requested stemming from changes to the existing FortisBC Electric ("FBC(E)") services, if required.*

Operational & Design Comments

- *There are FortisBC Electric ("FBC(E)") primary distribution and transmission facilities along Highway 6. Further extension work may be required depending on future building site location(s), the cost of which may be substantial.*
- *To date, arrangements have not been made to initiate the design process and complete the servicing requirements.*
- *All costs and land right requirements associated with changes to the existing servicing are the responsibility of the applicant.*
- *The applicant and/or property owner are responsible for maintaining safe limits of approach around all existing electrical facilities within and outside the property boundaries.*
- *For any changes to the existing service, the applicant must contact an FBC(E) designer as noted below for more details regarding design, servicing solutions, and land right requirements".*

3.7 Staffing/Departmental Workplace Considerations:

Should the Regional Board approve issuance of the requested variance, staff would issue the Permit and register a Notice of Permit on the property's Title.

3.8 Board Strategic Plan/Priorities Considerations:

This application falls under the operational role of Planning Services.

SECTION 4: OPTIONS & PROS / CONS

Planning Discussion

Planning staff support the issuance of this DVP since:

- There has been no opposition received from surrounding landowners or the general public related to the proposed bylaw amendment or DVP applications to facilitate this one new lot and remainder subdivision.
- The Nelson Nordic Ski Club, who operate Nordic Ski Trails on the subject property have indicated that they support the proposed bylaw amendment and variance applications.

- The proposal to rezone/re-designate a portion of the subject property adjacent to Highway 6 is consistent with a concurrent subdivision application and at this time no significant concerns have been noted by MoTI or the RDCK.
- The proposed Parks and Recreation remainder parcel does not have an existing use or future proposed use that would require the supply of water as *“no new development is proposed”*.
- All other servicing requirements for the proposed new residential lot would remain in effect.

It is for the above reasons that Planning Services recommends that the Regional Board proceed with issuance of this DVP.

OPTIONS

Option 1

That the Board APPROVE the issuance of Development Variance Permit V2311G to Anne Filippo and Jerry Filippo for the property located at 4650 Highway 6 and legally described as LOT A DISTRICT LOT 1241 KOOTENAY DISTRICT PLAN 17958 (PID 011-707-721) to vary Section 8.02 ‘Individual Groundwater Services’ under the RDCK’s *Subdivision Bylaw No. 2159, 2011* as follows:

1. By waiving the proof of ground water requirement for subdivision file no. S2332G the proposed remainder lot only.

Option 2

That the Board NOT APPROVE the issuance of Development Variance Permit V2311G to Anne Filippo and Jerry Filippo for the property located at 4650 Highway 6 and legally described as LOT A DISTRICT LOT 1241 KOOTENAY DISTRICT PLAN 17958 (PID 011-707-721) to vary Section 8.02 ‘Individual Groundwater Services’ under the RDCK’s *Subdivision Bylaw No. 2159, 2011* as follows:

1. By waiving the proof of ground water requirement for subdivision file no. S2332G the proposed remainder lot only.

SECTION 5: RECOMMENDATION

That the Board APPROVE the issuance of Development Variance Permit V2311G to Anne Filippo and Jerry Filippo for the property located at 4650 Highway 6 and legally described as LOT A DISTRICT LOT 1241 KOOTENAY DISTRICT PLAN 17958 (PID 011-707-721) to vary Section 8.02 ‘Individual Groundwater Services’ under the RDCK’s *Subdivision Bylaw No. 2159, 2011* as follows:

1. By waiving the proof of ground water requirement for subdivision file no. S2332G the proposed remainder lot only.

Respectfully submitted,

“Submitted electronically”

Stephanie Johnson, Planner MCIP RPP

CONCURRENCE

Planning Manager – Nelson Wight

General Manager of Development Services – Sangita Sudan

Chief Administrative Officer – Stuart Horn

ATTACHMENTS:

Attachment A – Draft Development Variance Permit

Attachment B – Excerpt from *RDCK Subdivision Bylaw No 2159, 2011*



Development Variance Permit

V2311G (Filippo)

Date:

Issued pursuant to Section 498 of the *Local Government Act*

TO: Robert Filippo

ADMINISTRATION

1. This Development Variance Permit (DVP) is issued subject to compliance with all of the bylaws of the Regional District of Central Kootenay (RDCK) applicable thereto, except as specifically varied or supplemented by this Permit.
2. The land described shall be developed strictly in accordance with the terms and conditions and provisions of this DVP, and any plans and specifications attached to this Permit that shall form a part thereof.
3. This DVP is not a Building Permit.

APPLICABILITY

4. This DVP applies to and only to those lands within the RDCK described below, and any and all buildings, structures and other development thereon, substantially in accordance with Schedules '1', '2' and '3':

Address: 4650 Highway 6

Legal: LOT A DISTRICT LOT 1241 KOOTENAY DISTRICT PLAN 17958 (PID: 011-707-721)

PID: 011-707-721

CONDITIONS

5. Development Variance

Regional District's Subdivision Bylaw No. 2159, 2011, Section 8.02 a. – e. an 'Individual Groundwater Services' is varied as follows:

By waiving the proof of ground water requirement for subdivision file no. S2332G for the proposed remainder lot only, as shown on Schedules '1', '2' and '3'.

6. Schedule

If the holder of the DVP does not substantially start any construction or does not register the subdivision with respect to which the permit was issued within two years after the date it is issued, the permit lapses.

7. Other

Authorized resolution _____ passed by the RDCK Board on the ____ day of _____, 202_.

The Corporate Seal of
THE REGIONAL DISTRICT OF CENTRAL KOOTENAY
was hereunto affixed in the presence of:

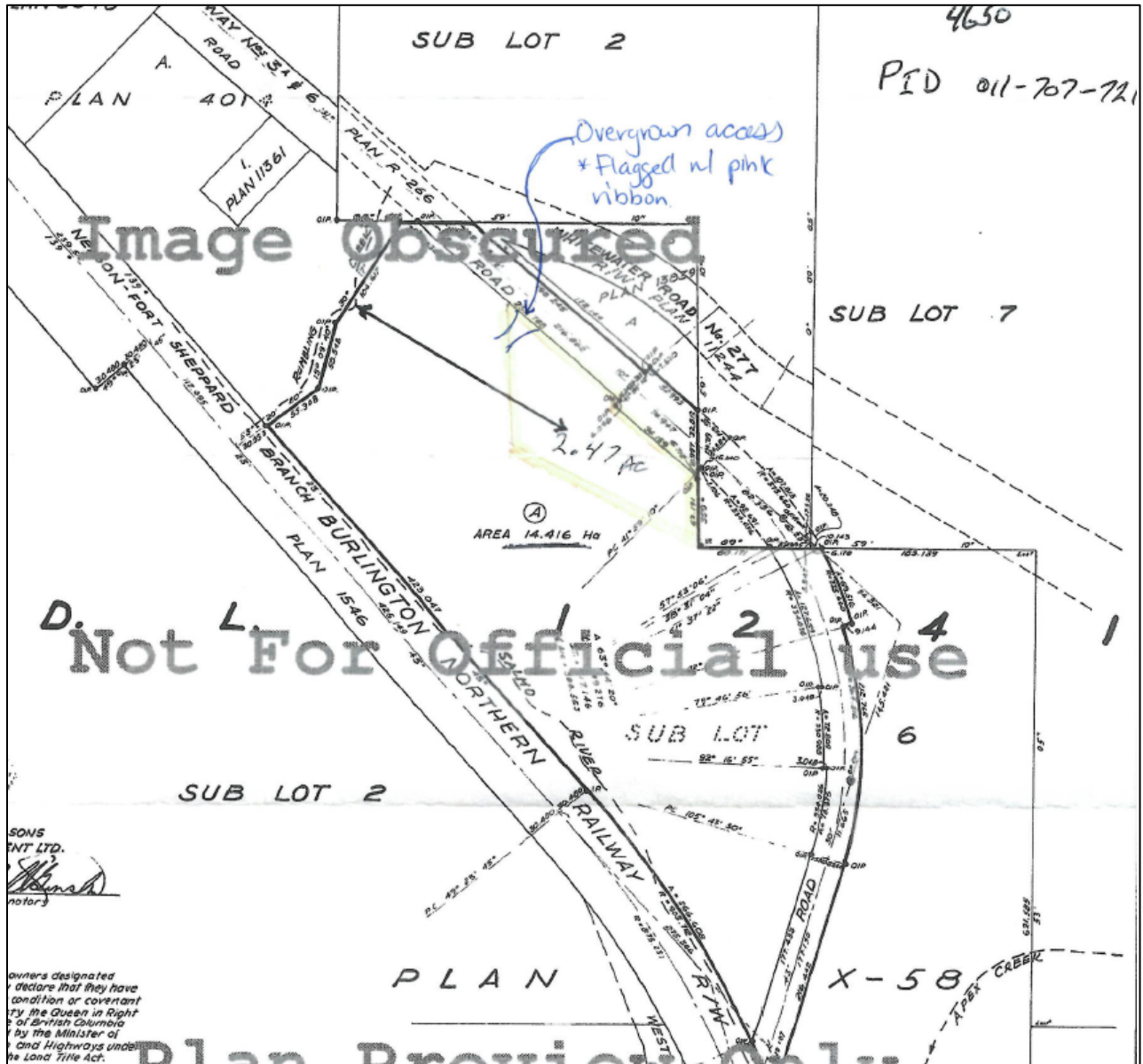
Aimee Watson, Board Chair

Mike Morrison, Corporate Officer

Schedule 1: Overall Subject Property



Schedule 2: Proposed Plan of Subdivision



Schedule 3: Site Plan



surface water.

8.02 Individual Groundwater Services

Where individual ground water sources are proposed, the applicant must provide evidence that there are sufficient quantities of ground water for each proposed lot and the remainder, and:

- a. Must drill or excavate a well on every proposed lot and the remainder and submit a well construction report signed by a registered well driller or a professional engineer;
- b. The well construction report must verify that the well is a minimum of 15 meters (49 feet) deep. If the well is less than 15 meters deep it is recommended that the minimum sealing requirements for excavated wells as found under the *Groundwater Protection Regulation 299/2004* including the installations of well identification plates is followed;
- c. The applicant must provide a well log or pump test confirming that each well is capable of producing at least 15 litres (3 imp. gal.) per minute of water, or in cases where well capacity is less than 15 litres (3 imp. gal.) per minute that balancing storage of not less than 2, 270 litres (500 imp. gal.) of water per day is provided;
- d. The sharing of one well by two or more parcels is not permitted unless a community water system is proposed and meets the requirements of this Bylaw;
- e. If untreated groundwater is to be used as proof of adequate water supply, a covenant under Section 219 of the *Land Title Act* shall be placed on Title that advises of the potential health risks associated with consuming untreated groundwater.

8.03 Community Water Systems

Where an applicant proposes to connect to an existing community water system the applicant must submit to the Regional District:

- a. A letter from the Owner/Operator of the community water system confirming that all parcels proposed can be connected to the water system and that fees have been paid for connection to the water system. Confirmation must be submitted prior to final Approval of the subdivision;
- b. Construction, extension, or addition to a community water system must not proceed until a construction permit has been issued by the Issuing Official under the *Drinking Water Protection Act*; and