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**TO:** Electoral Area Services Committee      **DATE:** October 8, 2020  
**FROM:** Greg Keller  
Planner      **FILE:** PL2019-225  
**SUBJECT:** Liquor License Amendment Application No. PL2019-225  
3106 Northwest Bay Road, Electoral Area E

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**Please note: The recommendations were varied by the Committee as follows:**

- 1. That the Board consider submissions or comments from the public regarding Liquor Licence Amendment Application No. PL2019-225.**
- 2. That the Board adopt the resolution pertaining to Liquor Licence Amendment Application No. PL2019-225 attached to this report as Attachment 4 and direct staff to withhold signing the application form and submitting the resolution to the Liquor and Cannabis Regulation Branch until the applicant resolves all outstanding bylaw infractions in accordance with the conditions of approval included in Attachment 2 and the conditions in Attachment 2 change the operating time from 9:00 pm until 10:00 pm, rather than 9:00pm until 11:00 pm.**

#### RECOMMENDATIONS

1. That the Board consider submissions or comments from the public regarding Liquor Licence Amendment Application No. PL2019-225.
2. That the Board adopt the resolution pertaining to Liquor Licence Amendment Application No. PL2019-225 attached to this report as Attachment 4 and direct staff to withhold signing the application form and submitting the resolution to the Liquor and Cannabis Regulation Branch until the applicant resolves all outstanding bylaw infractions in accordance with the conditions of approval included in Attachment 2.

#### SUMMARY

An application has been received from the Jodi Lucas and William Gemmell to allow lounge and special event endorsements in conjunction with a proposed brewery and food and beverage service lounge. The request requires a resolution from the Board before it can be processed by the Liquor and Cannabis Regulation Branch (LCRB). The Regional District of Nanaimo (RDN) is requested by the LCRB to consider the impact on the community, as well as to consult with neighbouring property owners. Given that the proposed lounge and special events area are complementary to the existing farm use and are located on a large rural property, staff do not anticipate any negative community impacts. Staff recommends forwarding the prepared resolution included in Attachment 4 to the LCRB, pending Board consideration and subject to

the consideration of the public input received and resolving all outstanding bylaw infractions to the satisfaction of the RDN.

## **BACKGROUND**

This is a request for a Board resolution in support of proposed lounge and special event endorsements in conjunction with a proposed brewery and food and beverage service lounge called the Rusted Rake Brewery.

The proposed Lounge Endorsement is required to allow the sale and service of the beer produced by the brewery and other alcoholic beverages for on-site consumption. A Lounge Endorsement is considered a liquor-primary type of license that allows liquor sales and service without food. The Special Event Endorsement would allow the sale, service, and consumption of liquor during special events such as a wedding, concert, or private party. The LCRB requires the RDN to provide a Board resolution within 90 days of receiving the application, commenting on the requested endorsements prior to approval by the LCRB. In this case, the LCRB has been advised that more time is required to address a number of outstanding issues related to the subject property. The LCRB requests that the local government gather the views of the nearby residents affected by the liquor licence application.

The Rusted Rake Brewery, which is the licensee, is a proposed brewery to be located at 3106 Northwest Bay Road (see Attachment 1 – Subject Property Map). The subject property is legally described as Lot 2, District Lot 30-A, Nanoose District, Plan 3074, Except Parts shown outlined in red on Plan 561R and Plan 904R and Except Part in Plan 6592. The subject property is located in the Agricultural Land Reserve (ALR) and is zoned Agriculture 1 pursuant to the “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987” (Bylaw 500). Adjacent properties are zoned Residential 1 to the south and east and Agriculture 1 to the west (see Attachment 5 – Current Zoning Map). Nanoose Creek enters the subject property from its western boundary and runs through the subject property for approximately 350 metres before exiting its northern boundary. The subject property is currently developed with a dwelling unit, a farm, and a number of accessory buildings.

Prior to making this application, the applicant had previously operated a restaurant on the subject property contrary to Bylaw 500, the Agricultural Land Reserve Use Regulations (ALR Regulations), and without the required building permits. In response to enforcement actions by the Agricultural Land Commission (ALC) and the RDN, the applicant ceased operating the restaurant and initiated the process of establishing a brewery (alcohol production facility) using grain grown on the subject property. The ALC has confirmed that the proposed alcohol production facility is permitted and has advised that it is the applicant’s responsibility to ensure compliance with the ALR Regulations.

The applicant has obtained a Manufacturer License from the LCRB (Licence # 308342) which allows for a brewery, a sampling area, and guided tours; and has constructed a temporary brewery within an existing accessory building. The proposal is to relocate the temporary brewery to be within a proposed addition next to the building that was previously being used to operate the restaurant (see Attachment 3 – Proposed Site Plan).

A recent site visit determined that the applicant constructed a vehicular bridge approximately 17 metres in length across Nanoose Creek without the required building permit or variance to the watercourse setbacks of Bylaw 500. The applicant has submitted a concurrent Development Variance Permit application (PL2020-088) to address the bridge.

The applicant also constructed a berm and other flood protection works within the Freshwater and Fish Habitat Protection Development Permit Area (DPA) to protect the existing farm fields. The above works were conducted in approximately 2014. As the flood protection works and bridge crossing were conducted as part of an ongoing farming operation, as recommended by a riparian management plan prepared by a qualified Environmental Professional, the works qualify for an exemption from the DPA guidelines.

As of the date of this report, the applicant has applied for the required building permit applications to address the outstanding building bylaw infractions and to permit the proposed addition.

### ***Proposed Development***

The applicant proposes to construct a brewery with an accessory food and beverage service lounge. The applicant is requesting a Lounge Endorsement in order to be able to serve alcoholic beverages within the food and beverage service lounge. The applicant is also requesting a Special Event Endorsement to allow alcohol to be served outdoors during events. It should be noted that in accordance with the ALR Regulations, gathering for an event within a special event area under a Special Event Area Endorsement is a permitted farm use ancillary to an alcohol production facility. Further, the ALR Regulations pertaining to gathering for events which limit the size, location, duration, and frequency of events specifically do not apply to events held within a special event area under a Special Event Area Endorsement.

In addition, as the proposed special event area is not subject to ALR Regulations pertaining to size, location, duration, and frequency of events, the regulations contained in Bylaw 500 related to gathering for events do not apply.

In order to minimize the potential impact of the proposed Special Event Endorsement area, the applicant is proposing the following:

- i. limit the number of patrons to a maximum of 150 people;
- ii. define and limit the special event area to a maximum area of 500 m<sup>2</sup>, excluding the proposed parking area;
- iii. limit the maximum number of events to 10 per year;
- iv. limit the duration of any event to a maximum of 24 hours;
- v. install barriers made from wood, metal, and rope to contain people to the designated special event area; and,
- vi. post signs stating “No Alcohol Past This Point” at all entrances and exits.

Note, the above restrictions would not apply to special events held within the proposed designated Lounge Endorsement area.

This application also proposes that one of the special events per year would be a harvest festival held in late August which would use both the designated lounge area and the special event area. The proposal is to combine the capacity of the lounge and special event area for a maximum of 250 people. The proposal is to allow patrons to utilize and move between the special event area and the lounge.

The proposed hours of operation for the food and beverage service lounge are 9:00 am to 11:00 pm seven days per week.

### ***Liquor License Implications***

Prior to LCRB consideration of the application, under the *Liquor Control and Licensing Act*, the applicant is required to obtain a resolution from the local government providing input on the proposed liquor licence amendment. The LCRB requires the Board to provide a resolution on the potential for noise for nearby properties, impact on the community, the consistency of the amendment with the purpose of a food-primary license, and the view of residents including a description of the methods to gather feedback.

RDN Board Policy B1.6 - *Liquor License Applications* (Policy B1.6) provides guidance for how the RDN should review and consider liquor license applications. Policy B1.6 requires a public hearing, public notice sign on the property, mailout notice to adjacent property owners, and advertisements in the newspaper. However, the Board may consider a minor amendment to an existing liquor licence, without the requirement to hold a public hearing, if the proposal will not negatively impact the surrounding community and it complies with the applicable RDN bylaws and policies. All other requirements must be met for public notice, and the LCRB must be satisfied that residents have had an opportunity to provide their view.

Policy B1.6 also provides guidelines to the Board for consideration of community impact including the location of the establishment, proximity to other social or public buildings, occupant load, and liquor primary establishments within a reasonable distance, traffic, noise, parking, zoning, and other social or demographic trends. The Board resolution is required to take the form of the resolution included as Attachment 4. Staff have prepared the content of the resolution for the Board's consideration. This resolution may be amended as deemed necessary by the Board.

### ***Land Use Implications***

It should be noted that the proposed lounge, referred to as a 'Food and Beverage Service Lounge' by the ALR Regulations, is ancillary to the proposed brewery and is considered a Farm Use. As a Farm Use, the proposed Food and Beverage Service Lounge is permitted by the Agriculture 1 zone in accordance with the ALR Regulations.

This application proposes a Lounge Endorsement that would allow alcohol to be served on a single serving basis for immediate consumption within the food and beverage service lounge, which is proposed to include approximately 76.0 m<sup>2</sup> of floor area inside and 77.4 m<sup>2</sup> of floor area outside. Therefore, the proposal is consistent with the ALR Regulations.

In addition, the proposed Special Event Endorsement would allow alcohol to be served within the special event area during events. Although the 'Gathering for Events' regulations do not apply, the applicant is proposing restrictions similar to what the ALR Regulations require. This will help minimize the potential for neighbourhood impacts.

The proposed special event area is located west of the proposed brewery and is in between two existing excavated duck ponds. The ponds appear to have been constructed some time between 2005 and 2007. The applicant has submitted a Watercourse Assessment prepared by Aquaparian Environmental Consulting, dated January 6, 2020, confirming that the ponds are not connected to any watercourses and are not subject to the Riparian Areas Protection Regulation. In addition, the ponds are not subject to the "Regional District of Nanaimo RDN Floodplain Management Bylaw No. 1469, 2006" or Bylaw 500 watercourse setbacks.

The proposed special event endorsement compliments the nature of the proposed brewery and food and beverage service lounge by providing guests with a unique opportunity to enjoy beer produced with local grain as well as food prepared using ingredients sourced from the subject property. It also helps support agriculture and local food production by offering a unique opportunity for agri-tourism and sampling products prepared with ingredients grown on the subject property.

In addition, the proposed endorsements are consistent with Goals 2 and 7 of the Agricultural Area Plan (AAP) as they would help support the local agricultural economy by promoting value-added agriculture and agritourism.

Both LCRB criteria and Policy B1.6 require local government consideration of noise impacts, parking, and traffic implications on the community. Given the large size of the property, the ability to accommodate onsite parking, and the fact that the RDN has not received complaints about the restaurant while it was in operation, the addition of a Lounge Endorsement is not anticipated to result in any additional noise, parking, or traffic impacts to adjacent property owners. In addition, staff are not aware of any other similar establishments in the community.

With respect to the proposed Special Event Endorsement, at question is whether the addition of serving alcohol within the proposed special event area would result in additional noise, parking, or traffic impacts to adjacent property owners. The applicant is proposing a separate dedicated special event parking area located near the southern boundary of the subject property. In accordance with the ALR Regulations, parking areas in relation to gathering for events must not interfere with the agricultural productivity of the land. The proposed special event parking area is located on a previously disturbed portion of the site which has an established internal access road and does not interfere with agricultural production. Given the location of the existing fields, Nanoose Creek, and existing buildings and structures, the area identified for parking is located adjacent to the neighbouring residential properties. Despite the proposed location, the impacts related to parking are anticipated to be minor as the proposed parking area is located at the bottom of a densely vegetated embankment which provides a natural buffer. In addition, it is important to consider that this parking area would only be utilized during special events which are limited in frequency, duration, and scale.

With respect to traffic impacts in relation to the proposed Special Event Endorsement, due to limit on the frequency, size, and duration of gathering for events, it is anticipated that any impacts would be modest and not likely to cause a noticeable change in traffic volumes.

With respect to parking, the proposal satisfies Bylaw 500 parking requirements based on of 1 space per 10.0 m<sup>2</sup> of floor area for the restaurant and 1 space per 4 guests in relation to gathering for events. In addition, two disability spaces are proposed. All parking must meet the minimum setback requirement of 8.0 metres.

### ***Intergovernmental Implications***

The applicant's proposal has been referred to the Ministry of Transportation and Infrastructure (MOTI), RDN Building Inspection Department, the Agricultural Land Commission, and the local RCMP. MOTI has indicated that it supports approval of the proposal subject to the availability of parking. The ALC has been working with the applicant, but has advised that they do not provide comfort letters confirming compliance with the ALR Regulations.

### ***Public Consultation Implications***

In response to the COVID-19 pandemic requirements for physical distancing and a desire to continue with operations, the Board passed the following motion at its April 28, 2020 meeting:

*It was moved and seconded that the Board approve virtual public engagement for collecting input for projects and initiatives during the COVID-19 Public Health Emergency*

Upon careful consideration and consultation with the LCRB, a Public Hearing was not held. Instead, the public was invited to provide feedback and submit questions about the proposed endorsement request using virtual engagement. To ensure adequate time was provided to participate online, residents were provided approximately two weeks to ask questions and provide comments.

As part of the required public notification process, pursuant to Policy B1.6, the RDN is required to post a notice on the subject parcel advertising that the property is subject to a liquor license amendment application and is required to advertise the amendment in a local newspaper. A notice was posted on the property on February 6, 2020 and published in the Parksville Qualicum Beach News on May 27<sup>th</sup>, 2020. A notice was also mailed to property owners and tenants located within a 200 metre radius, which directed residents to the project website which contains application information and provided an opportunity to ask questions and post comments. The notice also provided the opportunity for those without access to the website to contact us by email or by phone.

There was a significant public response to this virtual engagement approach. The following is a brief summary of the activity on the project web page:

- 935 total visits to the page
- 509 Aware Participants (visited at least one page)
- 192 Informed Participants (downloaded a document, contributed, or visited multiple project pages)
- 66 Engaged Participants (contributed on Forum or asked a question)
- There were 817 Contributions from 64 contributors on the Forum
- There were 76 downloads of documents from the document library

Overall, the response was positive and far exceeds the participation level that typically occurs at a traditional Public Hearing. Based on the comments provided by participants, there appears to be significant support and no opposition for the proposed Lounge Endorsement. With respect to the proposed Special Event Endorsement, three submissions from the immediate neighbours to the south, nearest the proposed special event parking area were received which indicate opposition to the special event endorsement. The concerns identified relate to potential impacts of hosting events including traffic, noise, and parking.

To address the identified concerns, the applicant is proposing to limit the number, size, duration, and length of events. Also, the proposed parking area is located at the bottom of a densely vegetated embankment which provides a natural buffer. Based on our assessment, only one of the immediate neighbours at the far south end of the parking area may be able to indirectly see the proposed parking area from their property. It appears that this may be partially a result of vegetation removal near the top of the slope. The applicant indicates that they intend to utilize the land south of the proposed parking area for a future barn to house livestock.

Please refer to Attachment 6 for a report of the virtual public engagement process.

## **ALTERNATIVES**

1. To approve the attached resolution in support of Application No. PL2019-225.
2. To provide a resolution that does not support Application No. PL2019-225.
3. To not provide any resolution and have the Liquor and Cannabis Regulation Branch undertake their own public input process and consider Application No. PL2019-225 without Board input.

## FINANCIAL IMPLICATIONS

The proposed development has no implications related to the Board 2020 – 2024 Financial Plan.

## STRATEGIC PLAN IMPLICATIONS

The application has been reviewed and the proposal supports the Board's 2019-2022 Strategic Plan, specifically the Strategic Priority to Focus on Economic Health by supporting business to foster economic development.



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Greg Keller  
gkeller@rdn.bc.ca  
September 16, 2020

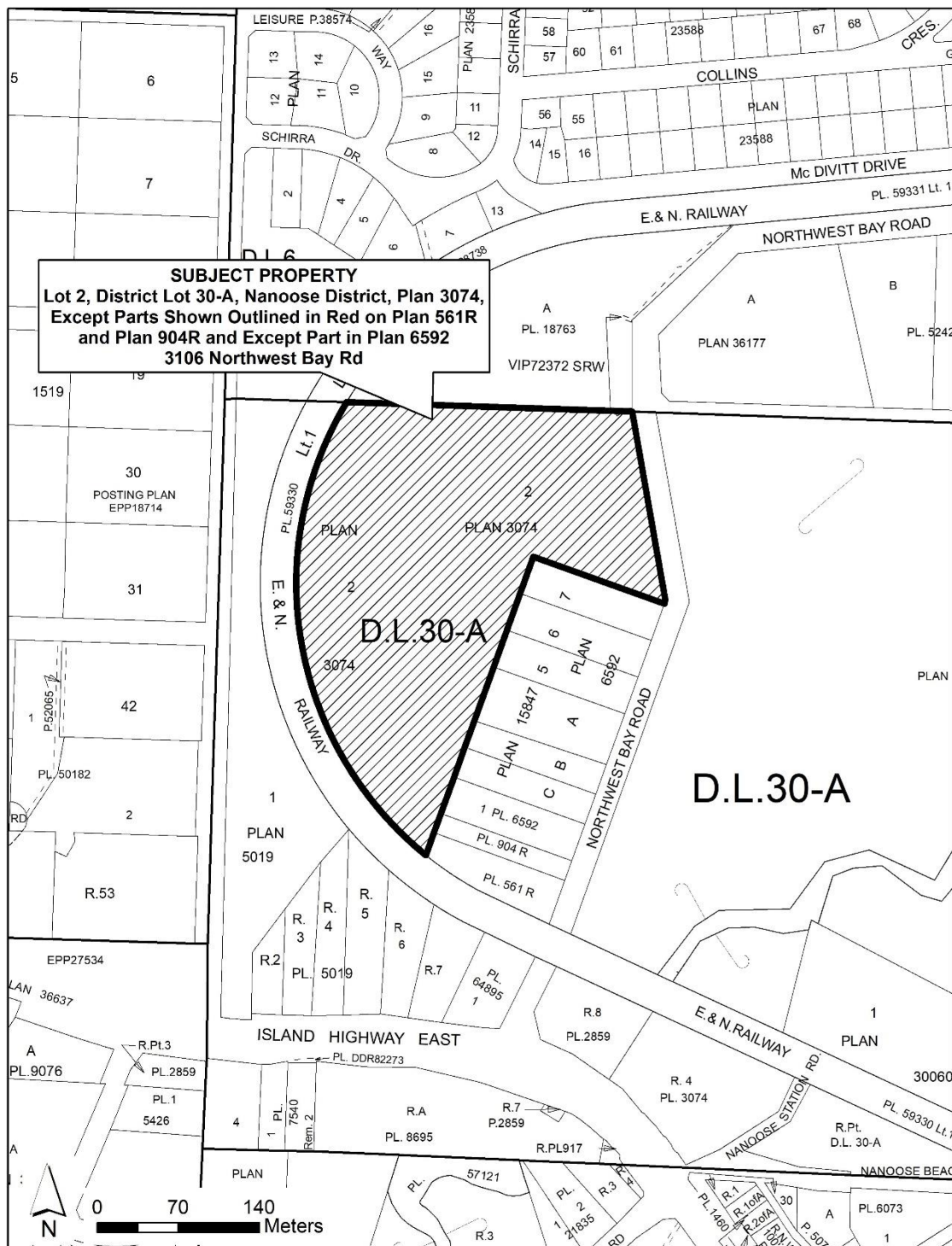
### Reviewed by:

- P. Thompson, Manager, Current Planning
- G. Garbutt, General Manager, Strategic & Community Development
- P. Carlyle, Chief Administrative Officer

### Attachments:

1. Subject Property Map
2. Conditions of Approval
3. Proposed Site Plan
4. Resolution for Rusted Rake Lounge and Special Event Endorsements
5. Current Zoning Map
6. Report of the Virtual Public Engagement





## **Attachment 2 Conditions of Approval**

### **Conditions to be completed prior to the RDN submitting the resolution to the LCRB:**

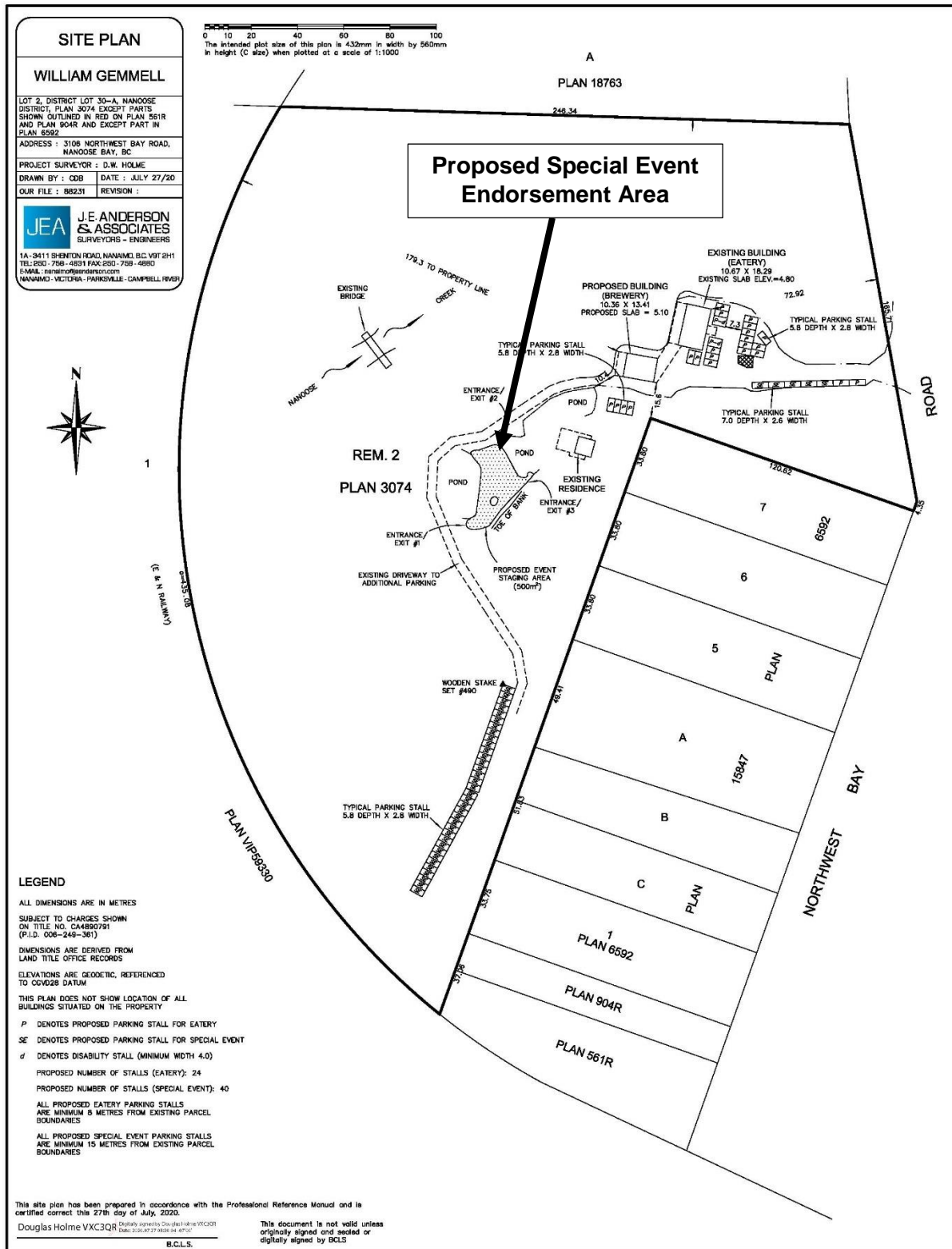
The Regional District of Nanaimo shall withhold signing the Liquor and Cannabis Regulation Branch application form and shall withhold submitting the proposed resolution to the Liquor and Cannabis Regulation Branch until the applicant:

1. resolves all outstanding RDN bylaw infractions including final inspection of the proposed brewery and all other proposed and required building permits; and
2. obtains a variance for the bridge crossing Nanoose Creek.

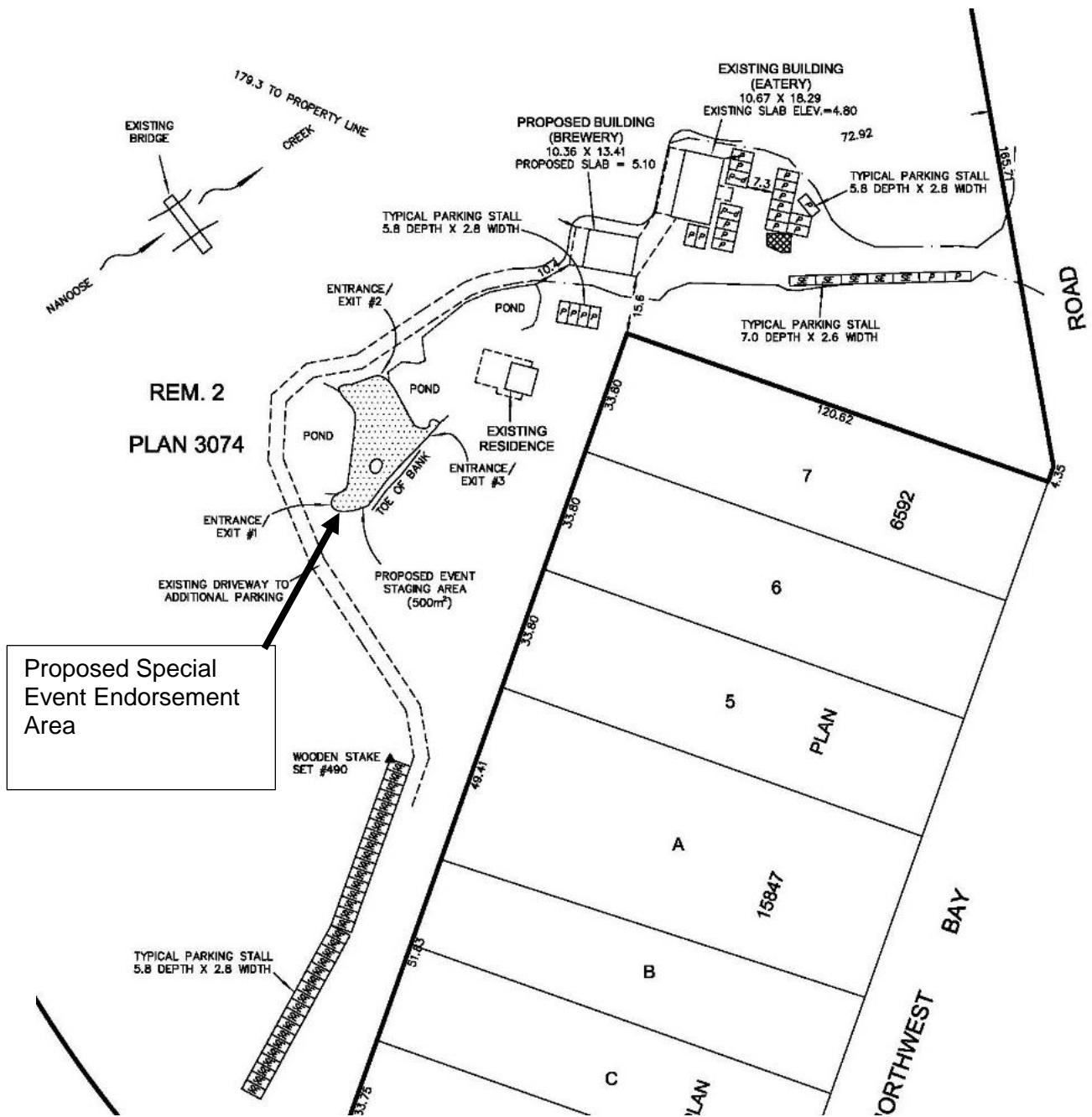
### General Conditions

1. That the proposed Lounge Endorsement be limited to a 'Food and Beverage Service Lounge' ancillary to an alcohol production facility as defined by the Agricultural Land Reserve Use Regulations.
2. That the proposed special event endorsement be limited as follows:
  - i. the maximum number of patrons shall be no more than 150 people;
  - ii. the special event area shall occupy a maximum of 500 m<sup>2</sup>, excluding the proposed parking area, to be contained in the area shown on Attachment No. 3;
  - iii. the maximum number of events shall be limited to 10 per year;
  - iv. the maximum duration of any event shall be 24 hours;
  - v. barriers made from wood, metal, and rope shall be used to contain patrons to the designated special event area; and,
  - vi. signs shall be posted stating "No Alcohol Past This Point" at all entrances and exits.

Attachment 3 (Page 1 of 2)  
Proposed Site Plan



**Attachment 3 (Page 2 of 2)**  
**Proposed Site Plan – Enlarged for Convenience**



**Attachment 4**  
**Resolution for Rusted Rake Lounge and Special Event Endorsements**  
**Liquor Licence Amendment No. PL2019-225**

Re: Proposed Lounge and Special Event Endorsements for the Rusted Rake Brewery located at 3106 Northwest Bay Road in Electoral Area E of the Regional District of Nanaimo.

At the Board meeting held on October 27<sup>th</sup>, 2020, the Board passed the following resolution with respect to the above-referenced application:

Be it resolved that:

1. The Board has considered the following:
  - a. The location of the establishment, and
  - b. The person capacity and hours of liquor service.
2. The Board of the Regional District of Nanaimo recommends the Lounge and Special Event Endorsements be approved subject to the following conditions:
  - a. That the proposed Lounge Endorsement be limited to a 'Food and Beverage Service Lounge' ancillary to an alcohol production facility as defined by the Agricultural Land Reserve Use Regulations.
  - b. That the proposed Special Event Endorsement be limited as follows:
    - i. the maximum number of patrons shall be no more than 150 people;
    - ii. the special event area shall occupy a maximum of 500 m<sup>2</sup>, excluding the proposed parking area, to be contained in the area shown on Attachment No. 3 – Proposed Site Plan;
    - iii. the maximum number of events shall be limited to 10 per year;
    - iv. the maximum duration of any event shall be 24 hours;
    - v. barriers made from wood, metal, and rope shall be used to contain patrons to the designated special event area; and,
    - vi. signs shall be posted stating "No Alcohol Past This Point" at all entrances and exits.
3. The Board's comments on the prescribed considerations are as follows:
  - a. **Community Impact**

The proposed Lounge Endorsement is required to serve liquor and operate a food and beverage service lounge ancillary to an alcohol production facility (brewery) in accordance with the Agricultural Land Reserve Use Regulations. In addition, the brewery and food service component propose to utilize local ingredients sourced from the subject property and other local farms, which provides opportunities for value-added agriculture and agri-tourism. Given the large size of the property, the ability to accommodate onsite parking, the fact that the RDN has not received complaints about the restaurant while it was in operation; the addition of a Lounge Endorsement is not anticipated to result in any additional community impacts. In addition, staff are not aware of any other similar establishments within a reasonable proximity.

The proposed Special Event Endorsement complements both the agricultural use and use of the property for a brewery. It is anticipated that the special events held on the subject property would highlight local agricultural practices and provide opportunities to sample products produced with ingredients sourced from the subject property. Provided the proposed limitations included in the above conditions of approval are implemented, the proposed Special Event Endorsement is not anticipated to have negative community impacts.

**b. Consistency with Intent of Food Primary Licence**

The primary purpose of a Food Primary Licence is to have a focus on food at all times when liquor is being served. As a focus of the proposed lounge and special event areas are to highlight food and beer produced with ingredients sourced from the subject property or nearby farms, it is not anticipated that approval would result in the lounge or special event endorsement areas being operated contrary to the intent of a Food Primary Licence.

**c. Parking and Traffic**

The proposal satisfies “Regional District of Nanaimo Land Use and Subdivision Bylaw 500, 1987” parking requirements based on of 1 space per 10.0 m<sup>2</sup> of floor area for the food and beverage service lounge and 1 space per 4 guests in relation to Gathering for Events. All parking must meet the minimum setback requirement including 15.0 metres for parking in relation to gathering for special events and 8.0 metres for parking in relation to the food and service beverage lounge.

Given the size of the proposed lounge and Special Event Endorsements in proportion to the size of the subject property no negative impacts to traffic or parking are anticipated.

**d. Noise**

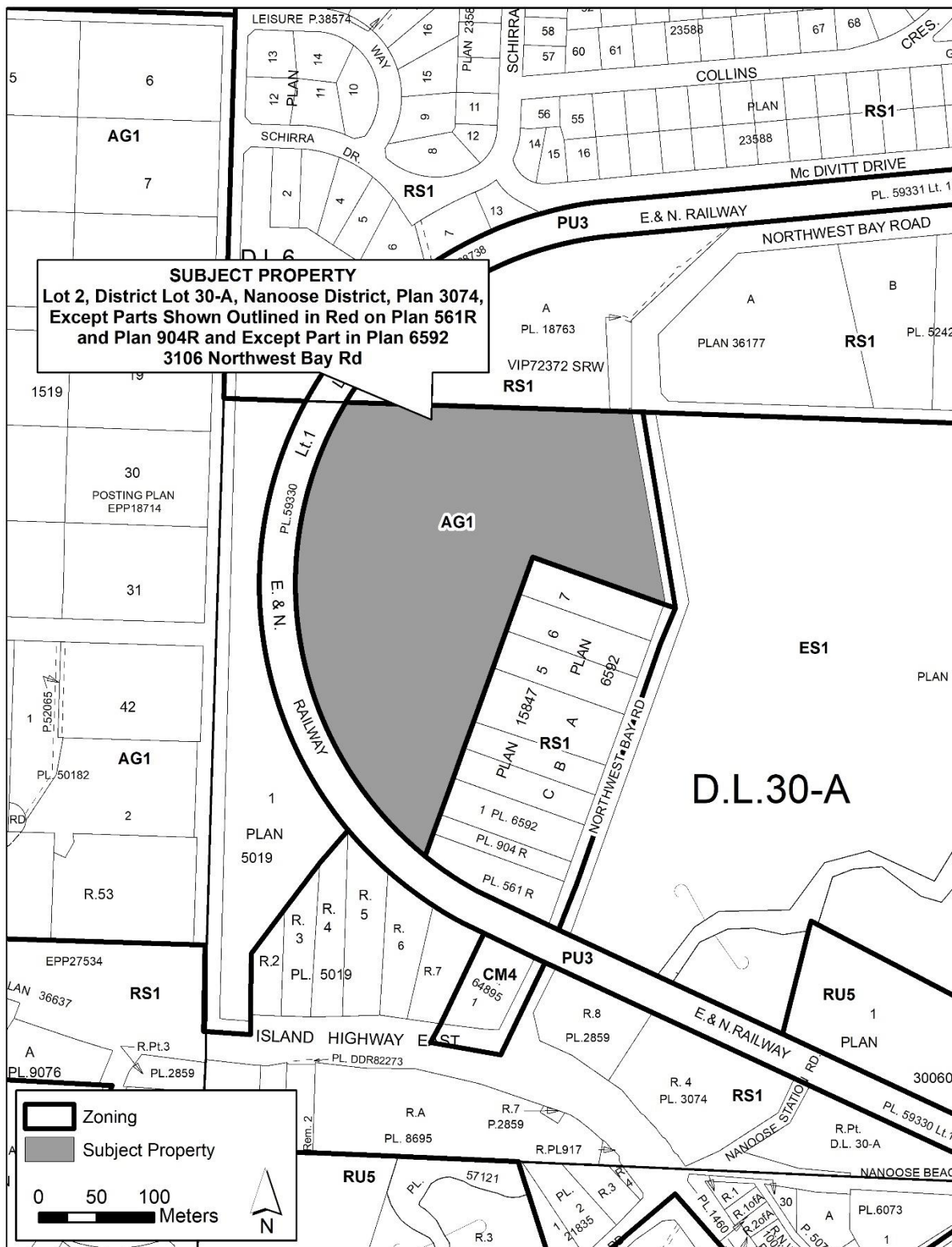
Given the size of the subject property, limited scale of the proposed lounge and special event areas, and separation distance between the proposed uses and adjacent residential properties, the proposed uses would generate little noise impact on the surrounding community.

**e. Public Notification**

The views of residents were solicited by publishing a notice on the subject property on February 6, 2020, and publishing a notice in the Parksville Qualicum Beach News on May 27<sup>th</sup>, 2020. A notice was also mailed to property owners and tenants located within a 200 metre radius of the subject property which directed residents to a project website ([rdngetinvolved.ca/PL2019-225](http://rdngetinvolved.ca/PL2019-225)) which contains application information and provided an opportunity to ask questions and post comments. Residents were given 4 weeks to comment on the proposal.

There was a significant public response to this virtual engagement approach with 935 visits to the project webpage and a number of questions and comments (see Attachment 6 of the enclosed staff report for more information). The majority of the comments received were in support of the requested Lounge and Special Event Endorsements.





**Attachment 6**  
**Report of the Virtual Public Engagement**