

**TO:** Electoral Area Services Committee                      **DATE:** October 2, 2018  
**FROM:** Greg Keller  
              Senior Planner    **FILE:** PL2018-123  
**SUBJECT: Development Permit with Variance Application No. PL2018-123**  
**Imperial Drive and Lee Road – Electoral Area G**  
**Lot C, District Lot 29, Nanoose District, Plan VIP60349**

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**RECOMMENDATIONS**

1. That the Board approve Development Permit with Variance No. PL2018-123 to establish building envelopes, address previous land clearing, and permit the placement of fill in conjunction with a proposed nine lot subdivision subject to the terms and conditions outlined in Attachments 2 to 4.
2. That the Board direct staff to complete the required notification for Development Permit with Variance No. PL2018-123.

**SUMMARY**

This is an application for a development permit (DP), height variance for fences and accessory buildings, and parcel depth variance in conjunction with a proposed nine lot subdivision. In addition to the proposed subdivision, this DP will also establish building envelopes on each proposed parcel, address past land alteration that has occurred without DP approval, and permit the removal of an existing pump house. Given that the DP guidelines have been met and no negative impacts are anticipated as a result of the proposed variances, it is recommended that the Board approve the development permit with variance pending the outcome of public notification and subject to the terms and conditions outlined in Attachment 2 to 4.

**BACKGROUND**

The Regional District of Nanaimo (RDN) has received an application from J.E. Anderson & Associates on behalf of 1078168 BC Ltd. to establish building envelopes, permit land alteration, and permit the removal of an existing pump house. This application also includes a request to permit fence and accessory building height to be measured from finished grade and to relax the minimum parcel depth requirements in conjunction with a nine lot subdivision.

The subject property is approximately 1.76 hectares in area and is physically divided into two parts which are more than 400 metres apart and are separated by French Creek and adjacent properties (see Attachment 1 – Subject Property Map). The property is split zoned with the east part zoned Public 1 (PU1) and the west part zoned Residential 1 Zone (RS1). Both parts of the

subject property are designated within Subdivision District 'Q', pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The larger part to the west is located at the south end of Imperial Drive adjacent to French Creek and is proposed to be subdivided into eight bare land strata parcels. The other part to the east is a triangular-shaped remnant of the parent parcel located to the west of Lee Road directly adjacent to Lee Road Community Park. It is proposed that this part will retain a separate title, and will not be part of the proposed bare land strata (see Attachment 3 – Proposed Plan of Subdivision). The statutory requirement for park land dedication under Section 510 of the *Local Government Act* has been satisfied through previous subdivision.

The subject property is currently vacant and is serviced by EPCOR water and RDN sewer. A portion of the west part of the subject property has been partially cleared and some land alteration has also occurred without a DP. The east part of the subject property is densely vegetated and is also serviced by EPCOR water and RDN sewer.

The proposed development is subject to the following Development Permit Areas per the "Regional District of Nanaimo Electoral Area 'G' Official Community Plan Bylaw No. 1540, 2008" (OCP):

1. Environmentally Sensitive Features – Aquifer Protection;
2. Fish Habitat Protection; and
3. Hazard Lands Development Permit Area.

### ***Proposed Development and Variances***

This is an application to permit subdivision, establish building envelopes, address land alteration which previously occurred within the development permit area without the required approvals, and allow the removal of an existing pump house. This application also addresses the placement of fill in conjunction with a proposed nine lot subdivision.

This application includes a request to vary the following regulations from the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987":

- **Part 2 – Interpretation, definition of height** to permit the height of fences and accessory buildings to be measured from finished grade in the area outlined in Attachment 3.
- **Section 4.5.1 – Parcel Shape and Dimensions** to increase the permitted parcel depth for Lot 5 from 40% to 41.4% of the length of the perimeter of the parcel, Lot 6 from 40% to 42.4% of the length of the perimeter of the parcel, and lot 7 from 40% to 43.0% of the length of the perimeter of the parcel.

The applicant has requested the parcel depth variance as follows:

<b>Proposed Lot No.</b>	<b>Perimeter</b>	<b>Maximum Parcel Depth (40%)</b>	<b>Proposed Parcel Depth</b>	<b>Proposed Parcel Depth as a % of the Parcel Perimeter</b>
Strata Lot 5	206.29	82.52	85.3	41.4
Strata Lot 6	195.88	78.35	83.0	42.4
Strata Lot 7	199.05	79.62	85.5	43.0

**Land Use and Environmental Implications**

French Creek is adjacent to the south boundary of the west part of the subject property. As a condition of the previous subdivision which created the subject property (registered as plan VIP60349), the RDN was named on Covenant EH161738 to address potential flood hazards. This covenant requires a 50 metre setback from the natural boundary of French Creek and a minimum Flood Construction Level (FCL) of 3.5 metres above the natural boundary of French Creek. This covenant also specifies that in the event that compacted fill is utilized to achieve the FCL, then the toe of the fill must meet the minimum setback requirement of 50 metres. The proposal is consistent with the covenant requirements.

Compliance with Covenant EH161738 will require the placement of a significant volume of fill on the west part of the subject property which will range in depth from 0.7 metres to 2.5 metres. The applicant indicates that despite the required fill, no retaining walls 1.0 metre or more in height or that retain more than 1.0 metre of earth are required. In addition, building and structure height are measured from the 3.0 metre FCL required by RDN Floodplain Management Bylaw No. 1469 (Bylaw 1469) not the 3.5 metre FCL required by Covenant EH161738. As a result, buildings must be elevated an additional 0.5 metres above the natural boundary of French Creek than what is required by Bylaw No. 1469. This covenanted FLC requirement does impact vertical building envelope, however, each proposed parcel is capable of supporting a dwelling unit without the need for a height variance with reasonable design considerations that are sensitive to site-specific constraints.

Bylaw 500 requires that height be measured from natural grade for all buildings and structures not required to meet FCL. As a result of the proposed fill, it becomes difficult to construct fences and accessory buildings as some areas of the subject property are proposed to contain fill which is up to 2.5 metres in depth above natural grade. In response, the applicant is proposing a variance to allow the height of fences and accessory buildings to be measured from finished grade in the area outlined on Attachment 3. This will allow for the reasonable use of the proposed parcels and would avoid the need for future height variances for fences and accessory buildings.

A Preliminary Layout Approval (PLA) has been issued by the Provincial Approving Officer which includes a number of conditions. Of significance as it relates to the applicable DPA guidelines, the PLA dated August 7, 2018, requires that the portion of the land located below the high water mark be returned to the Crown and that the applicant is required to submit a drainage plan to the Ministry of Transportation and Infrastructure (MOTI). With respect to the access to water requirements of Section 75 of *the Land Title Act*, the Provincial Approving Officer has indicated that it may consider granting absolute relief. The requirement to dedicate land located below the

high water mark to the crown will provide adequate public access in conjunction with the existing road dedication. In addition, this approach is consistent with the OCP policies that pertain to road dedication and environmental protection.

To satisfy the Hazard Lands Development Permit Area (DPA) guidelines, the applicant has submitted a servicing plan prepared by J.E. Anderson and Associates dated September 12, 2018 which establishes minimum basement floor elevations, addresses on-site drainage, and addresses sediment and erosion control measures. The servicing plan specifies that the proposed floor elevations be a minimum of 8.87 metres geodetic which represents an elevation that is 3.5 metres above the natural boundary of French Creek. The servicing plan proposes that finished grades vary from approximately 8.0 metres to 8.7 metres geodetic. In accordance with the PLA, MOTI will be reviewing drainage prior to registration of the final plan of subdivision. It is recommended that the applicant be required to develop the subject property in accordance with the servicing plan (see Attachment 2 – Conditions of Approval).

To satisfy the Hazard Lands and Environmentally Sensitive Features (Aquifer) Development Permit Area (DPA) guidelines, the applicant has submitted separate geotechnical hazard assessments (Assessment) for the two separate areas of the property. The Assessments were prepared in accordance with current Engineers and Geoscientists of British Columbia Guidelines.

With respect to the east portion of the subject property adjacent to Lee Road, the applicant has submitted an Assessment prepared by Lewkowich Engineering Associates Ltd. dated September 19, 2018. The Assessment indicates that this part of the subject property is adjacent to a steep slope and contains a portion of the crest of the slope. However, the Assessment states that no additional setback is required from the crest of the slope due to its shallow angle. The Assessment concludes that the subject property is considered safe and suitable for the intended use.

With respect to the west portion of the subject property adjacent to Imperial Drive, the applicant has submitted an Assessment prepared by Lewkowich Engineering Associates Ltd. dated September 11, 2018. The Assessment concludes that the subject property is safe for the intended use and specifies that the placement of fill in the floodplain will not have a significant impact on the direction of floodwater or the extent area subject to flooding. The Assessment also provides that the import of fill material will not have a discernable impact on groundwater provided it is free of contaminants.

To ensure that the subject property is developed in accordance with the Assessments, it is recommended that the applicant be required to register the Assessments on title as a Section 219 covenant concurrently with the registration of the final plan of subdivision. To ensure that fill materials are free from contaminants, the recommended covenant is to include a requirement for the applicant to submit a report from a qualified engineer confirming that the fill is free from contaminants prior to the applicant applying for a building permit for the first dwelling unit within proposed lots 1 to 8 (see Attachment 2 – Terms and Conditions of Permit).

To satisfy the Fish Habitat Protection DPA guidelines, the applicant submitted two separate Riparian Area Assessment (RAA).

With respect to the east part of the subject property off Lee Road, the applicant submitted a RAA prepared by Aquaparian Environmental Consulting Ltd. dated November 15, 2017. The

RAA establishes a 30 metre Streamside Protection and Enhancement Area (SPEA) width which runs through a very small portion of the north-west corner of the property. The RAA includes a number of measures to protect the SPEA including installation of fencing delineating the SPEA and environmental monitoring.

With respect to the west part of the subject property, the applicant submitted a RAA prepared by Aquaparian Environmental Consulting Ltd. dated May 31, 2018. The RAA specifies a SPEA width of 30 metres. The RAA identifies a number of measures required to protect the SPEA. Measures to protect the SPEA include the installation of spit rail fencing and signage, sediment and erosion control measures, hazard tree assessment, and environmental monitoring.

To preserve the integrity of the SPEAs and demonstrate consistency with the DPA guidelines, the applicant is proposing to register a Section 219 Covenant concurrently with the final plan of subdivision to require the property to be developed in accordance with the RAAs and restrict land clearing and development activities within the SPEAs (see Attachment 2 – Conditions of Approval). To ensure that the SPEAs are delineated accurately, the covenant is to include an explanatory plan of the SPEAs.

Fish Habitat Protection DPA guideline 10 states “minimum parcel size should be met exclusive of the SPEA” and DPA guideline 11 states “the creation of new lot lines and new parcels within the SPEA should be minimized”. The intent of these guidelines is to avoid incremental encroachment into the SPEA and to minimize the cumulative impacts of SPEA fragmentation and habitat loss. In response, minimum parcel sizes are proposed to be met exclusive of the SPEA. However the proposal includes the creation of new lot lines and parcels within the SPEA. Although proposed lots 5 - 8 do not strictly satisfy DPA guideline 11, the applicant is proposing an alternative approach to meet the spirit and intent of this guideline through the registration of the proposed covenant, and by returning the portion of the land below high water mark to the crown. As a result of the proposed and required actions, approximately 50 percent of the subject property will remain in a natural state and be protected from any development.

Although the proposed parcels meet the minimum parcel area requirements of the zone, the additional flood hazard restrictions imposed by the existing covenant significantly constrain the building envelopes on proposed strata lots 5 – 8. Also the subdivision layout is also challenged by the location of the 30 metre SPEA and the alignment of Imperial Drive. A combination of covenant restrictions, road alignment, flood hazard requirements, and environmental constraints combine to make it difficult to comply with the maximum parcel depth provisions. Given that the applicant has provided sufficient rationale and the variances will not result in negative implications to adjacent properties, the applicants have made reasonable efforts to address Policy B1.5 guidelines.

### ***Intergovernmental Implications***

The subject property is located in close proximity to the French Creek Pollution Control Centre (FCPCC). The RDN Regional and Community Utilities Department recommends that the applicant be required to register a nuisance easement over the east part of the subject property to protect the RDN against liability for nuisance or other claims based on odours from the FCPCC (see Attachment 2 – Conditions of Approval).

### **Public Consultation Implications**

Pending the Electoral Area Services Committee's recommendation and pursuant to the *Local Government Act* and the "Regional District of Nanaimo Development Approvals and Notification Procedures Bylaw No. 1432, 2005", property owners and tenants of parcels located within a 50 metre radius of the subject property will receive a direct notice of the proposal and will have an opportunity to comment on the proposed variance prior to the Board's consideration of the application.

### **ALTERNATIVES**

1. To approve Development Permit with Variance No. PL2018-123 subject to the terms and conditions outlined in Attachments 2 to 4.
2. To deny Development Permit with Variance No. PL2018-123.

### **FINANCIAL IMPLICATIONS**

The proposed development has no implications related to the Board 2018 – 2022 Financial Plan.

### **STRATEGIC PLAN IMPLICATIONS**

The Plan's "Focus on the Environment" states that the Board will focus on protecting and enhancing the environment in all decisions and will "Prepare for and mitigate the impact of environmental events". The DPA guideline requirement for a biological assessment helps ensure that site-specific environmentally sensitive features are identified and that the impacts of development on the environment are identified and mitigated. The requirement for a flood hazard assessment helps ensure that the subject property is safe for the use intended.



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Greg Keller  
gkeller@rdn.bc.ca  
September 12, 2018

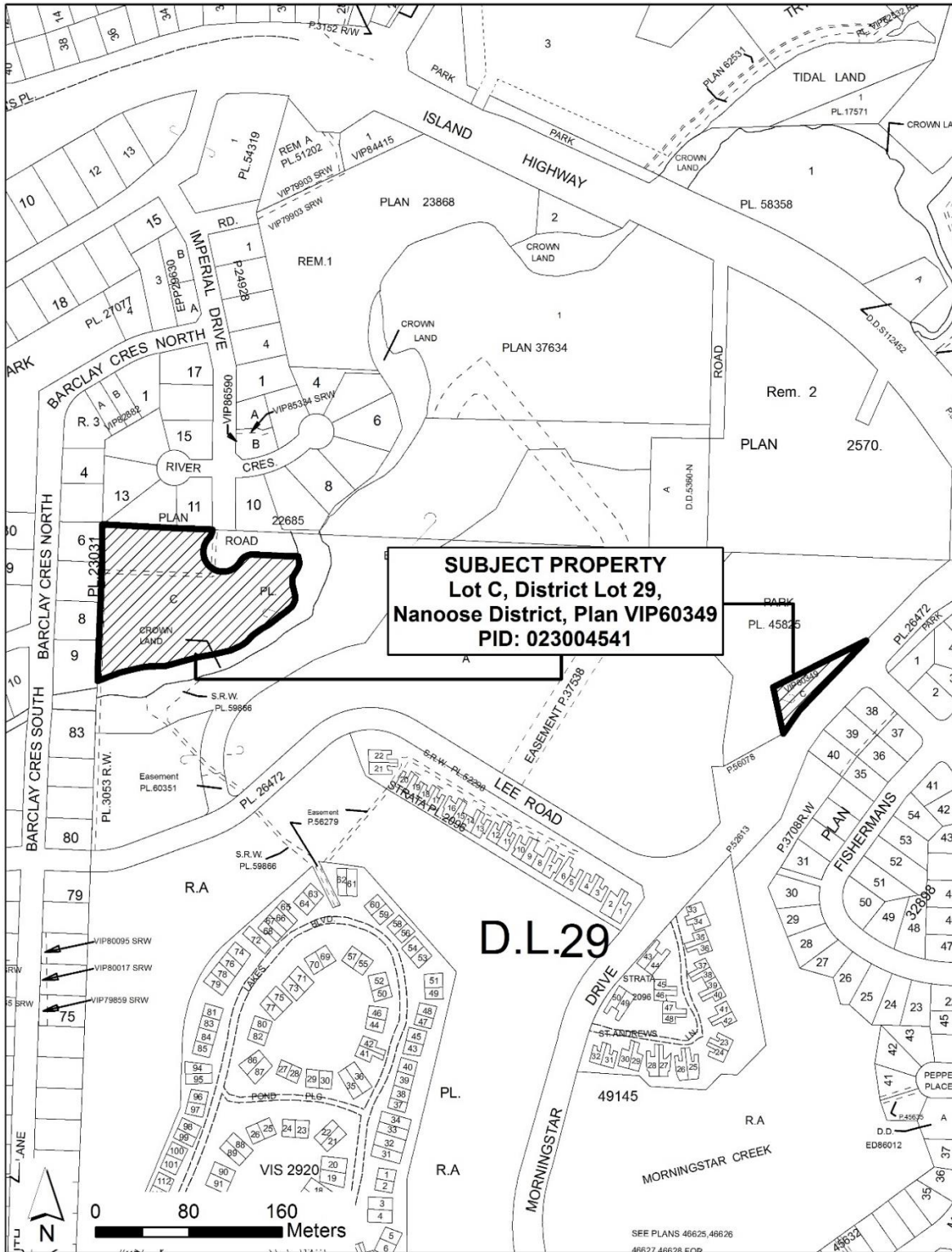
Reviewed by:

- J. Holm, Manager, Current Planning
- G. Garbutt, A/Chief Administrative Officer

Attachments:

1. Subject Property Map
2. Terms and Conditions of Permit
3. Proposed Plan of Subdivision and Variances
4. Servicing Plan
5. Fish Habitat Protection Sign

### Attachment 1 Subject Property Map



## **Attachment 2 Terms and Conditions of Permit**

The following sets out the terms and conditions of Development Permit with Variance No. PL2018-123:

### Bylaw No. 500, 1987 Variances

With respect to the lands, “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987” is varied as follows:

- **Part 2 – Interpretation, definition of height** to permit the height of fences and accessory buildings to be measured from finished grade in the area outlined in Attachment 3 generally in accordance with the finished grades established in Attachment 4.
- **Section 4.5.1 – Parcel Shape and Dimensions** to increase the permitted parcel depth for Lot 5 from 40% to 41.4% of the length of the perimeter of the parcel, Lot 6 from 40% to 42.4% of the length of the perimeter of the parcel, and lot 7 from 40% to 43.0% of the length of the perimeter of the parcel.

### Conditions of Approval

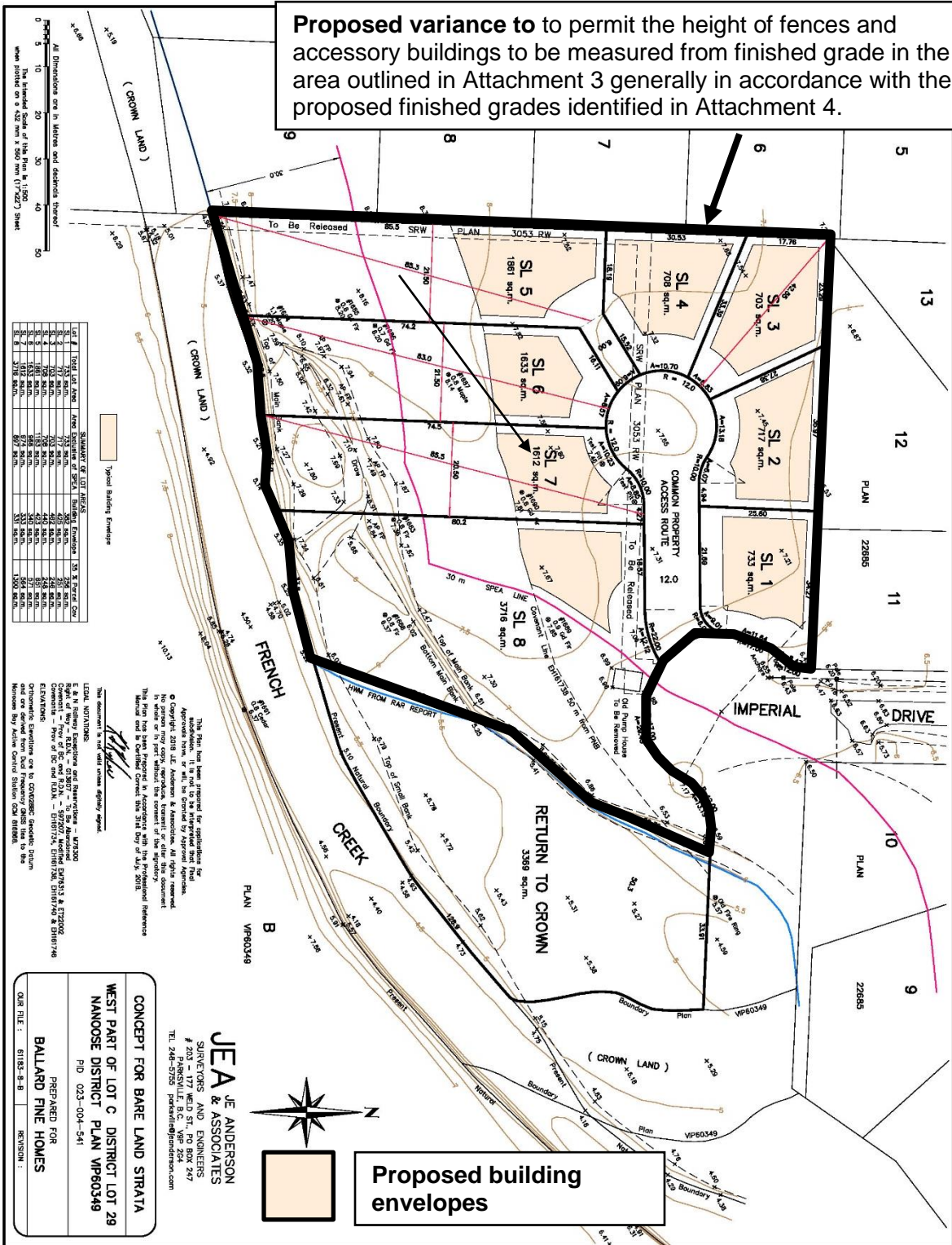
1. The site is developed in accordance with the Survey Plans prepared by J.E. Anderson and Associates, dated July 31, 2018, and September 10, 2018 and attached as Attachment 3.
2. The site is developed in accordance with the Servicing Plan prepared by J.E. Anderson and Associates dated September 12, 2018 and attached as Attachment 4.
3. The subject property shall be developed in accordance with the recommendations contained in the Riparian Areas Assessments prepared by Aquaparian Environmental Consulting Ltd. dated November 15, 2017 and May 31, 2018.
4. Prior to the RDN issuing a subdivision compliance letter, the applicant shall install a split rail fence along the SPEA boundary and a minimum of one Fish Habitat Protection Sign in a clearly visible location on the fence a minimum of every 10 metres and at least one sign per parcel in general conformance with the sign template included in Attachment 5.
5. The property owner shall provide confirmation in the form of a report prepared by a Qualified Environmental Professional (QEP), to the satisfaction of the General Manager of Strategic and Community Development, that development of the subject property has occurred in accordance with the QEP’s recommendations, prior to occupancy of the first dwelling unit within the proposed subdivision.
6. The subject property shall be developed in accordance with the recommendations contained in the Geotechnical Hazard Assessments prepared by Lewkowich Engineering Associates Ltd. and dated September 19, 2018 and September 11, 2018.



7. The applicant, at the applicant's expense, shall be required to register the following Section 219 Covenants to the satisfaction of the General Manager of Strategic and Community Development prior to the issuance of the RDN subdivision compliance letter:
  - a. Registering the Geotechnical Hazard Assessments prepared by Lewkowich Engineering Associates Ltd. and dated September 19, 2018 and September 11, 2018 requiring that the subject property be developed in accordance with the reports, includes a save harmless clause that releases the Regional District of Nanaimo from all losses and damages as a result of the potential hazard, and requiring the applicant to submit a report from a qualified engineer confirming that the fill is free from contaminants prior to the applicant applying for a building permit for the first dwelling unit within proposed lots 1 to 8.
  - b. Registering the Riparian Areas Assessments (RAR) prepared by Aquaparian Environmental Consulting Ltd. dated November 15, 2017 and May 31, 2018 to require the subject property to be developed in accordance with the RAR, restricting land clearing and development activities within the SPEAs and to include an explanatory plan of the SPEAs.
  - c. A nuisance easement over the east part of the subject property to advise potential buyers of the presence of the FCPPC and help protect the RDN against liability for nuisance or other claims based on odours from the FCPPC
8. The property owner shall obtain the necessary permits for construction in accordance with Regional District of Nanaimo Building Regulations.

**Attachment 3 (Page 1 of 2)**  
**Proposed Plan of Subdivision (West Part) and Variances**

**Proposed variance to** to permit the height of fences and accessory buildings to be measured from finished grade in the area outlined in Attachment 3 generally in accordance with the proposed finished grades identified in Attachment 4.



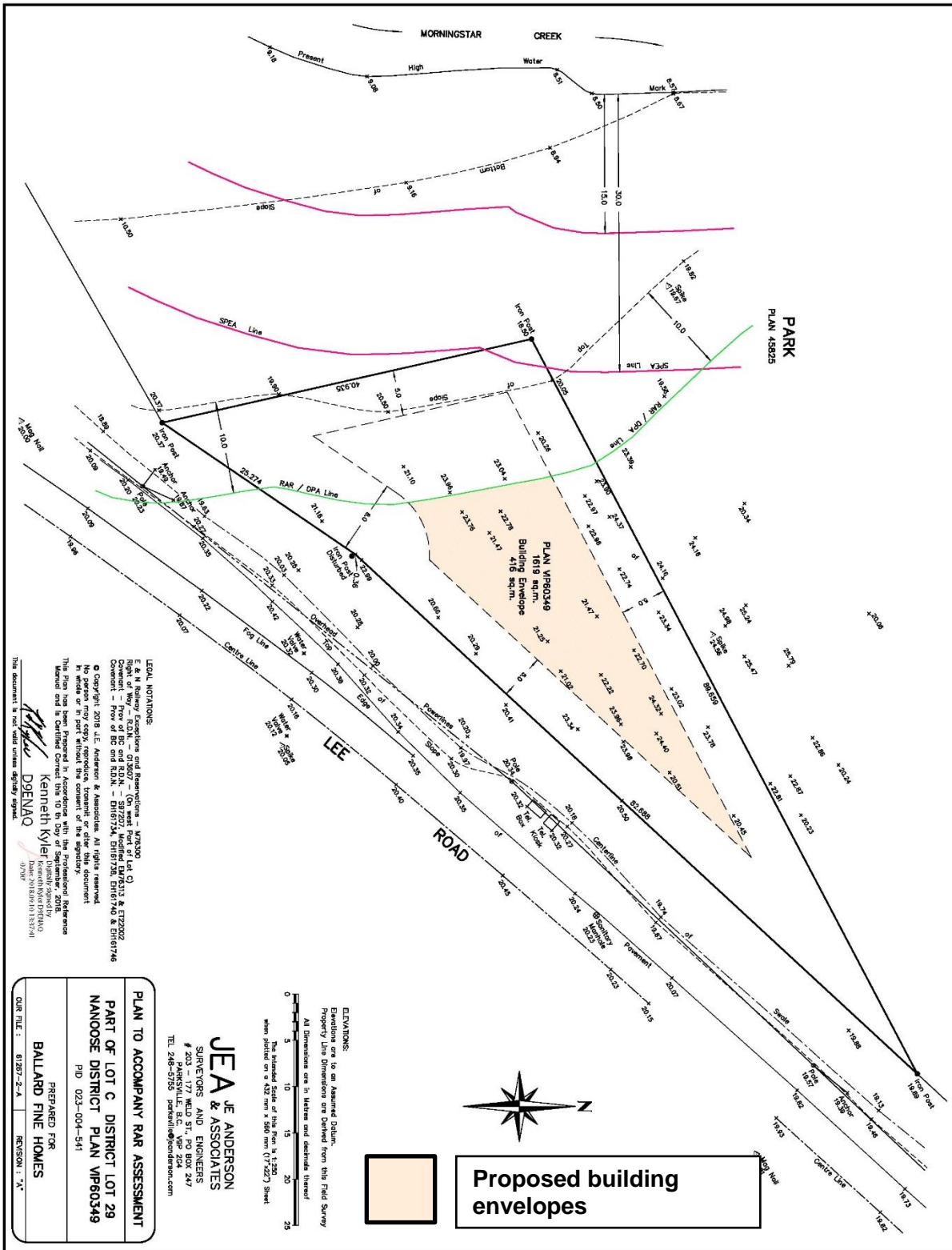
**CONCEPT FOR BARE LAND STRATA**  
**WEST PART OF LOT C DISTRICT LOT 29**  
**NANOOSE DISTRICT PLAN VP60349**  
 PREPARED FOR  
**BALLARD FINE HOMES**  
 OUR FILE : 6182-B-B REVISION :

**JEA JE ANDERSON**  
 & ASSOCIATES  
 SURVEYORS AND ENGINEERS  
 # 203 - 177 WEDS ST. PO BOX 247  
 TEL: 246-5755 jea@jeanderson.com



**Proposed building envelopes**

**Attachment 3 (Page 2 of 2)**  
**Proposed Plan of Subdivision (East Part) and Variances**



**LEGAL NOTATIONS:**  
 E & N Railway Exemptions and Reservations - W/1000  
 Right of Way - R.O.W. - G13607 - (On west Part of Lot C)  
 Comment - Prov of BC and R.O.W. - D166724, S181726, E181740 & E181746  
 © Copyright 2018 J.E.A. Anderson & Associates. All rights reserved.  
 No person may copy, reproduce, transmit or otherwise disseminate  
 in whole or in part without the consent of the signatory.  
 This Plan has been prepared in accordance with the Professional Reference  
 Manual and is certified correct true to the best of my knowledge and belief.  
 Kenneth Syler  
 Professional Engineer  
 License No. 10157/01  
 D9ENVAO  
 18/09

**PLAN TO ACCOMPANY RAR ASSESSMENT**  
**PART OF LOT C DISTRICT LOT 29**  
**NANOOSE DISTRICT PLAN VP00349**  
 PID 023-004-541  
 PREPARED FOR  
**BALLARD FINE HOMES**  
 DRAW FILE : 81207-2-A REVISION : X

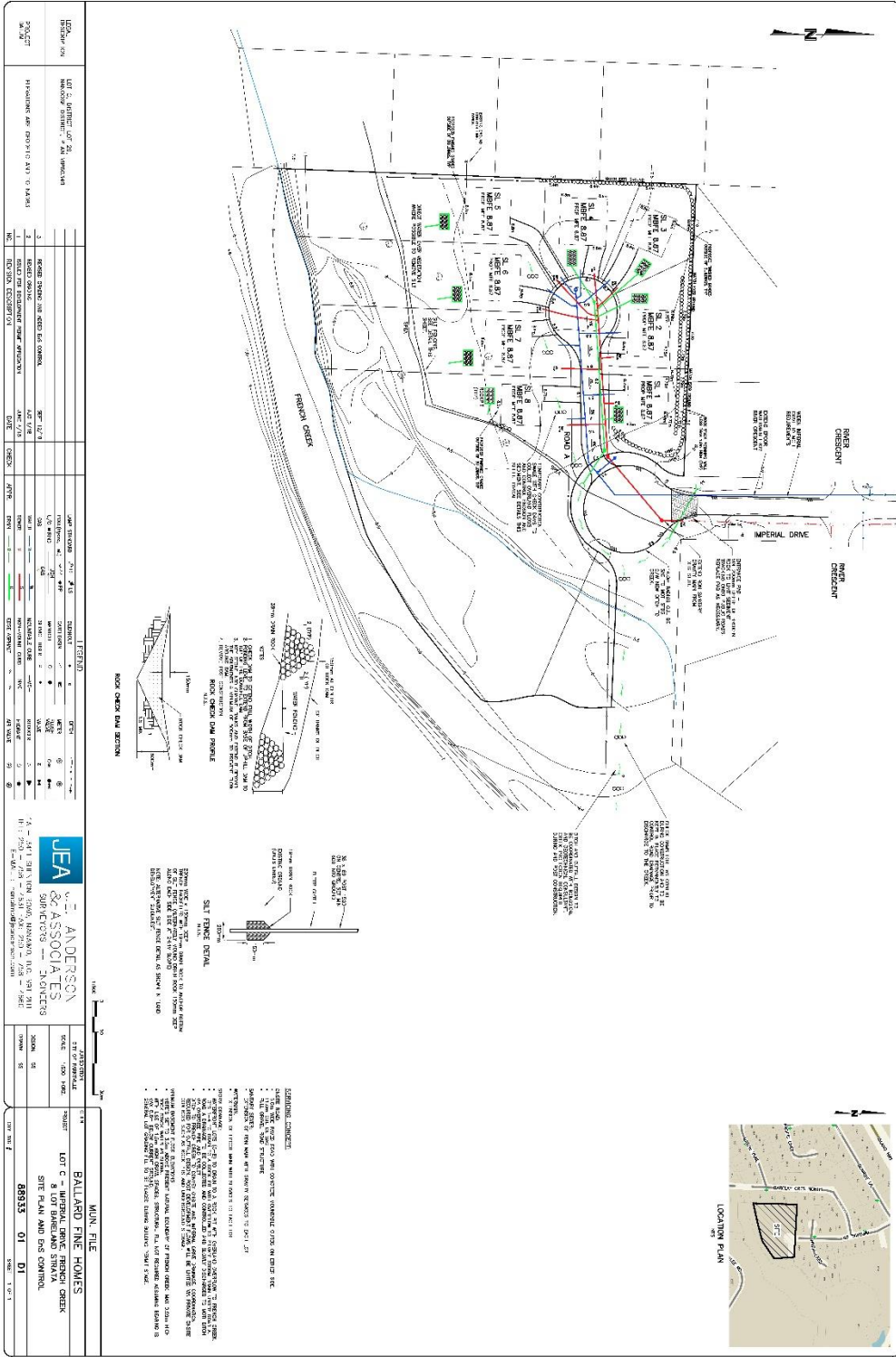
**JEA JE ANDERSON & ASSOCIATES**  
 SURVEYORS AND ENGINEERS  
 # 203 - 177 MELO ST., PO BOX 247  
 PAINESVILLE, B.C. V9A 2E4  
 TEL 248-5755 pdavis@jeaanderson.com

**ELEVATIONS:**  
 Elevations are to an Assumed Datum.  
 Property Line Dimensions are Derived from this Field Survey  
 All Dimensions are in Meters and decimals thereof  
 when plotted on a 627 mm x 914 mm (1:250) Sheet

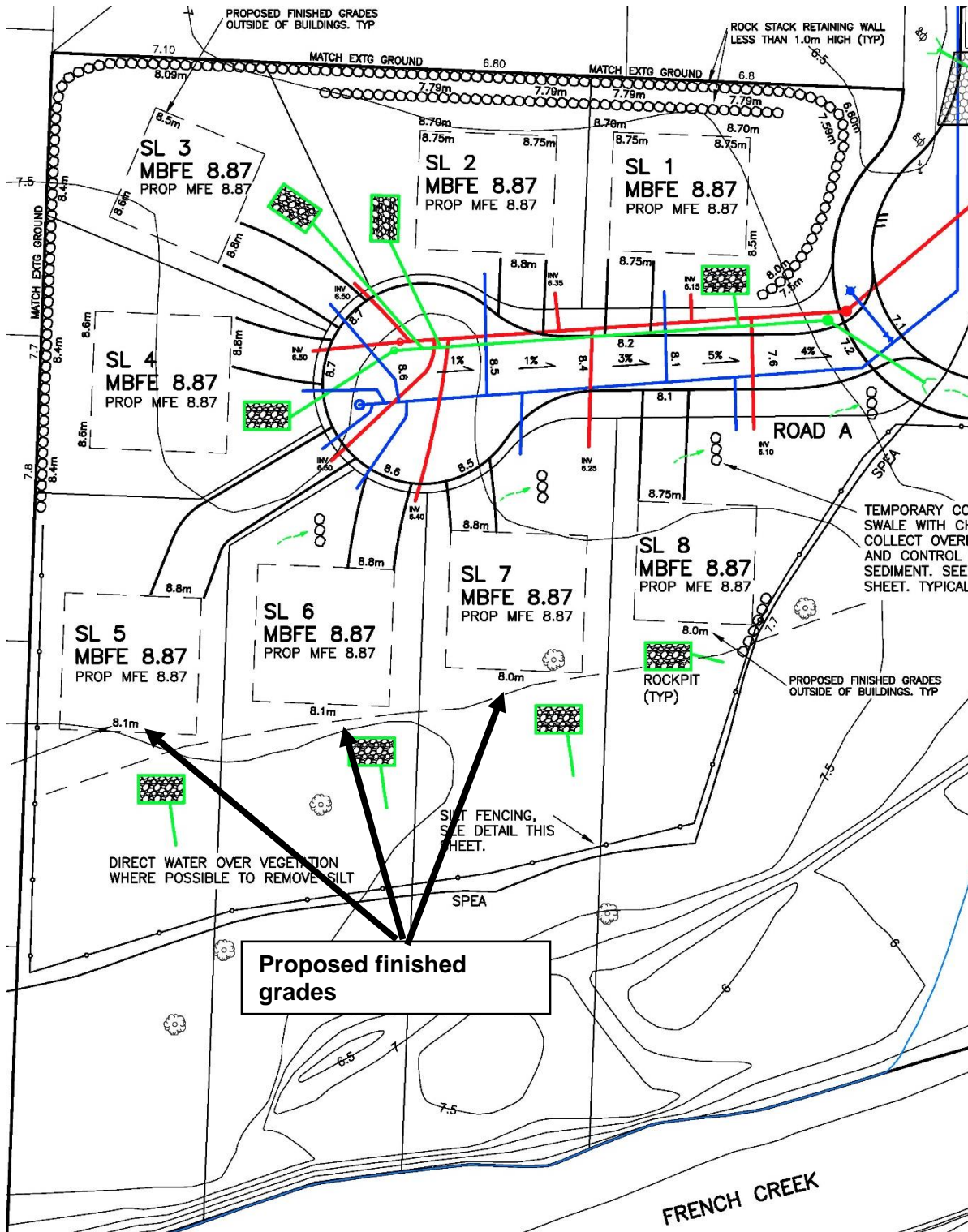


**Proposed building envelopes**

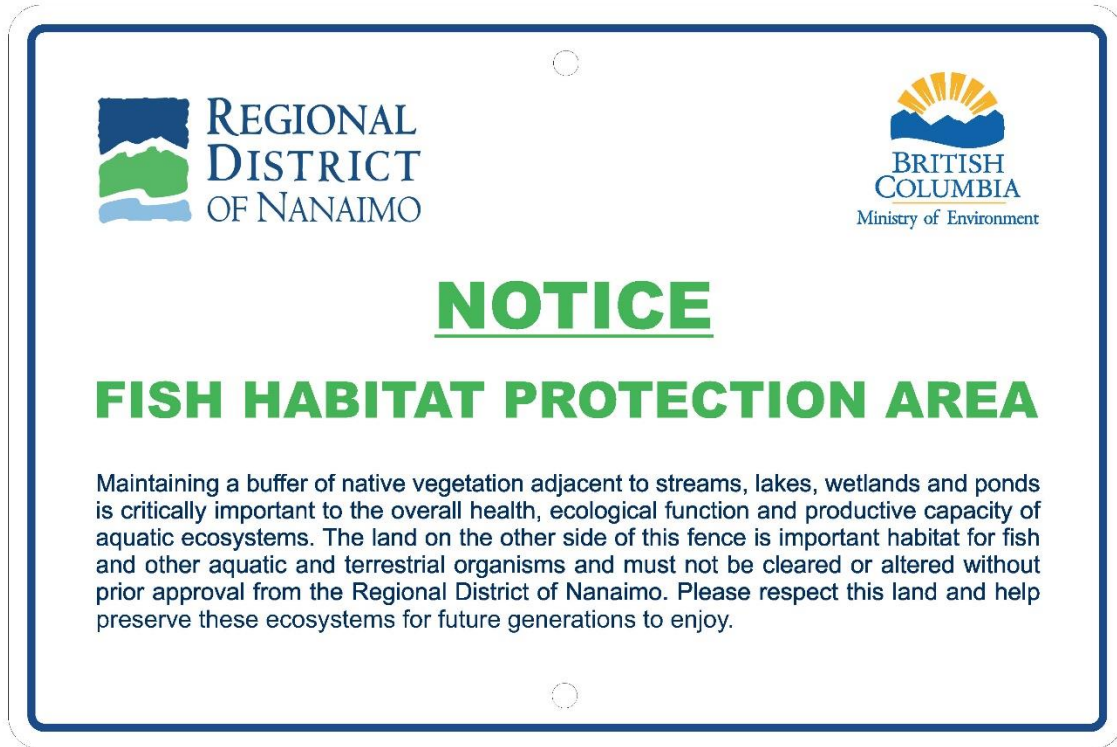
### Attachment 4 (Page 1 of 2) Servicing Plan



**Attachment 4 (Page 2 of 2)**  
**Servicing Plan – Enlarged for Convenience**



**Attachment 5**  
**Fish Habitat Protection Sign**



Aluminum or Dibond 12"x18" Radius corners  
Inline border .14"  
RDN logo: 2"x5.17"  
Ministry of Environment logo: 2.5"x2.92"  
Notice: Arial black type .90"  
Fish Habitat Protection Area: Arial black type .60"  
All other text: Arial bold type .27"