

REGIONAL DISTRICT OF NANAIMO
ELECTORAL AREA PLANNING COMMITTEE
TUESDAY, SEPTEMBER 30, 2003
6:30 PM

(RDN Board Chambers)

A G E N D A

PAGES

CALL TO ORDER

DELEGATIONS

MINUTES

- 3-5 Minutes of the Electoral Area Planning Committee meeting held Tuesday, August 26, 2003.

BUSINESS ARISING FROM THE MINUTES

PLANNING

PLANNING

AMENDMENT APPLICATIONS

- 6-30 ZA0310 – Green Choice Energy Limited – Peterson Road – Area F.

DEVELOPMENT PERMIT APPLICATIONS

- 31-36 DP No. 60344 – Sullivan – Maxey & Newfield Roads – Area D.
- 37-43 DP No. 60346 – D. Friesen on behalf of Ming's Stores Ltd. Inc. – 1694 Cedar Road – Area A.
- 44-53 DP No. 60347 – Oughtred/Sims – McFeely Drive – Area G.
- 54-63 DP No. 60348 – Symington – 857 Flamingo Drive – Area G.

DEVELOPMENT VARIANCE PERMIT APPLICATIONS

- 64-70 DVP No. 90317 & Request for Relaxation of the Minimum 10% Frontage Requirement – RK Brown & Associates on behalf of W. Roine – Farrar, Yellow Point and McQuarrie Roads – Area A.
- 71-76 DVP 90318 – Kehoe & Adams Freeman – 3475 Cambridge Road – Area E.
- 77-82 DVP No. 90319 – Smith & Tomei – 2476 Nuttal Drive – Area E.

FRONTAGE RELAXATION

- 83-88 Request for Acceptance of Cash in-lieu-of Park Land Dedication & Relaxation of the Minimum 10% Frontage Requirement – Fern Road Consulting Ltd. on behalf of Windward Development (2002) Ltd. Inc. No. 640334 – Arrowsmith Way & Wembley Road – Area G.
- 89-95 Request for Acceptance of Park Land Dedication & Relaxation of the Minimum 10% Frontage Requirement – Koers & Associates on behalf of 3170497 Canada Inc., commonly known as Fairwinds Development – Carmichael Road – Area E.
- 96-100 Request for Relaxation of the Minimum 10% Frontage Requirement – K. van Westen – Whiting Way – Area A.

OTHER

- 101-116 Eagle Nest Tree Development Permit Areas.

ADDENDUM

BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

NEW BUSINESS

IN CAMERA

ADJOURNMENT

REGIONAL DISTRICT OF NANAIMO

MINUTES OF THE ELECTORAL AREA PLANNING COMMITTEE
MEETING HELD ON TUESDAY, AUGUST 26, 2003, AT 6:30 PM
IN THE RDN BOARD CHAMBERS

Present:

Director E. Hamilton	Chairperson
Director H. Kreiberg	Electoral Area A
Director D. Haine	Electoral Area D
Director P. Bibby	Electoral Area E
Director L. Biggemann	Electoral Area F
Director Joe Stanhope	Electoral Area G
Alternate	
Director D. Heenan	Electoral Area H
Alternate	
Director F. Demmon	City of Parksville

Also in Attendance:

B. Lapham	General Manager, Development Services
P. Shaw	Manager of Community Planning
N. Tonn	Recording Secretary

LATE DELEGATIONS

MOVED Director Stanhope, SECONDED Director Haine, that the following delegations be permitted to address the Committee.

CARRIED

Rob Bau, re ZA0309 – Culverden Holdings (Arbutus Meadows) – 1515 E Island Highway – Area E.

Mr. Bau raised his concerns with respect to requirements noted in Schedules 1 and 2 of the Amendment application No. ZA0309 staff report.

Ken Kyler, re DP No. 30339 – Thompson – Lot 21, Miller Road – Area G.

Mr. Kyler provided further information with respect to the application to vary the maximum height of the building to conform to flood plain regulations.

Ken Kyler, re DP No. 60340 – Astrakan/Kyler & Myrfield – Widgeon Road – Area H.

Mr. Kyler noted that the applicant is in full agreement with the terms listed in Schedules 1, 2 and 3 of the staff report, and made himself available for any questions from the Committee members.

MINUTES

MOVED Director Stanhope, SECONDED Director Bibby, that the minutes of the Electoral Area Planning Committee meeting held July 22, 2003 be adopted.

CARRIED

PLANNING

AMENDMENT APPLICATIONS

ZA0309 – Culverden Holdings (Arbutus Meadows) – 1515 E. Island Highway – Area E.

MOVED Director Bibby, SECONDED Director Stanhope,:

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1. That the minutes from the Public Information Meeting be received.
2. That Amendment Application No. 0309 submitted by Robert Bau on behalf of Samuel Bau to amend a Restrictive Covenant for the property legally described as District Lot 56, Nanoose District, Except Parts in Plans 466R, 950R, 351RW, 6761, 22727, 25734 and 39893 to permit the expansion of the existing public assembly use to include non-equestrian related events proceed to Public Hearing.
3. That the Public Hearing on the proposed Covenant amendment be delegated to Director Bibby or her alternate.
4. That any approval to permit expanded public assembly events be approved subject to the conditions outlined in Schedule No. 1 and subject to public notification pursuant to the *Local Government Act*.

CARRIED

DEVELOPMENT PERMIT APPLICATIONS

DP Application No. 60338 – Griffin – Strata Lot 3, Miller Road – Area G.

MOVED Director Stanhope, SECONDED Director Biggemann, that Development Permit Application No. 60338 submitted by Henry and Heather Griffin, to construct a single bay garage in a Sensitive Lands Development Permit Area pursuant to the "Regional District of Nanaimo French Creek Official Community Plan Bylaw No. 1115, 1998" and to vary the maximum permitted height for an accessory building from 6.0 metres to 8.2 metres for the property legally described as Strata Lot 3, District Lot 28, Nanoose District, Plan VIS4363 be approved, subject to the conditions outlined in Schedule Nos. 1 to 5 of the corresponding staff report and notification requirements pursuant to the *Local Government Act*.

CARRIED

DP Application No. 60339 – Thompson – Lot 21, Miller Road – Area G.

MOVED Director Stanhope, SECONDED Director Haime, that Development Permit Application No. 60339, submitted by K.G. Kyler, Agent, on behalf of Audrey Thompson and Dale Thompson, to facilitate the development of a single dwelling unit, accessory building and retaining wall, and vary the maximum height of buildings and minimum setback requirements within the Residential 1 (RS1) zone as set out in Schedule Nos. 1, 2 and 3 of this staff report, for the property legally described as Lot 21, District Lot 28, Nanoose District, Plan 26472, be approved as submitted subject to the notification requirements of the *Local Government Act*.

CARRIED

DP Application No. 60340 – Astrakan/Kyler & Myrfield – Widgeon Road – Area H.

MOVED Director Heenan, SECONDED Director Biggemann, that Development Permit Application No. 60340 submitted by Kyler & Myrfield Geomatics Ltd., on behalf of Y & L Astrakhan for a 2-lot subdivision within the Environmentally Sensitive Areas and Hazard Lands Development Permit Areas on the property legally described as Lot 4, District Lot 89, Newcastle District, Plan 1884, be approved, subject to the conditions outlined in Schedules No. 1, 2 and 3 of the corresponding staff report.

CARRIED

DP No. 60341 – BC Conservation Foundation – Little Qualicum River Regional Park – Area F.

MOVED Director Biggemann, SECONDED Director Kreiberg, that Development Permit Application No. 60341, submitted by the BC Conservation Foundation, to construct fish habitat enhancement structures on the property legally described as Lot 1, Block 359, Newcastle Land District, Plan VIP69346, be issued subject to the requirements outlined in Schedules No. 1, 2, 3 and 4.

CARRIED

MOVED Director Biggemann, SECONDED Director Kreiberg, that the RDN enter into an agreement with the BC Conservation Foundation which grants the Association access over the RDN Little Qualicum River Regional Park to construct structures in six separate locations on the Little Qualicum River to improve fish habitat, subject to obtaining the necessary approvals and ensuring that the long-term viability of the structures is maintained and that any liability associated with the failure of these structures is not attributed to the RDN.

CARRIED

DP Application No. 60342 – Sokol – 1558 Madrona Drive – Area E.

MOVED Director Bibby, SECONDED Director Haime, that Development Permit Application No. 60342, submitted by Al Benwell, Agent, on behalf of Scott Sokol and Carol Sokol, to legalize an existing deck structure and recognize the siting of the legal non-conforming dwelling unit and accessory building, and vary the minimum setback requirements for a coastal watercourse within the Residential 1 (RS1) zone for the property legally described as Lot 52, District Lot 68, Nanoose District, Plan 26680, be approved as submitted subject the requirements of Schedule Nos. 1 and 2 and to notification requirements pursuant to the *Local Government Act*.

CARRIED

DEVELOPMENT VARIANCE PERMIT APPLICATIONS

DVP Application No. 90316 – Ballance – 2830 Benson View Road – Area D.

MOVED Director Haime, SECONDED Director Bibby, that Development Variance Permit Application No. 90316 by Stanley Neville Balance to amend Development Variance Permit No. 0306 to allow for modifications to the design of the garage/loft to facilitate the inclusion of a balcony, sliding glass door and 4 attic dormers for the proposed garage/loft for the property legally described as Lot 8, Sections 9 and 10, Range 4, Mountain District, Plan 36191 be approved, subject to Schedules No. 1, 2 and 3 and to the notification requirements pursuant to the *Local Government Act*.

CARRIED

ADJOURNMENT

MOVED Director Stanhope, SECONDED Director Haime, that this meeting terminate.

CARRIED

TIME: 6:54 PM

CHAIRPERSON



REGIONAL DISTRICT OF NANAIMO			
SEP 22 2003			
CHAIR		GMCrs	
CAO		GMDS	
GMCms		GMES	
EAP			✓

MEMORANDUM

TO: Pamela Shaw
 Manager of Community Planning. **DATE:** September 19, 2003

FROM: Keeva Kehler
 Planner **FILE:** 3360 30 0310

SUBJECT: Zoning Amendment Application ZA0310 – GreenChoice Energy Limited
 Electoral Area ‘F’ – Peterson Road

PURPOSE

To consider an application to rezone the subject property from A-1 (Agricultural 1) to a Comprehensive Development zone in order to facilitate a commercial greenhouse operation.

BACKGROUND

The subject property (legally described as Lot A, District Lot 82, Nanoose District, Plan VIP65017) is approximately 21.1 ha in size and is located on Peterson Road within Electoral Area ‘F’ (see Attachment No. 1 for location of subject property). The subject property is currently zoned A-1 (Agricultural 1) pursuant to the “Regional District of Nanaimo Electoral Area ‘F’ Zoning and Subdivision Bylaw No. 1285, 2002.” The property has a site specific zone (A-1.7) which permits a “Composting Facility only, specifically excluding Waste Disposal” on the property.

The subject property is designated Resource Lands within the ALR pursuant to the ‘Electoral Area ‘F’ Official Community Plan Bylaw No. 1152, 1999’ (OCP). The OCP policies for this designation recognize and support the use of the land for agricultural uses.

The subject property is located within the Provincial Agricultural Land Reserve and is currently used as a stump dump, with the original timber being removed some time ago. There have been two previous applications to the ALC for the subject property. The first requested permission to establish an indoor composting facility on the property; the application was refused, but Commission stated that they would reconsider the proposal if additional information were provided. A second application was made requesting permission to subdivide the property into eight (8) 2.0 ha lots. The Commission refused this application as submitted, but allowed for the creation of a maximum of five (5) 4.0 ha lots in compliance with the newly adopted zoning bylaw for Electoral Area ‘F.’

The Provincial Agricultural Land Commission (PALC) considers the construction and operation of greenhouses to be a ‘normal’ farm use and permits this development outright under its regulations. In some cases where large volumes of fill are being deposited on or excavated from the property, the PALC requires notification of the intent to place the fill 60 days prior to works commencing. The applicants have been informed of this Provincial requirement and instructed to discuss the proposal with the PALC directly. The PALC and the Ministry of Agriculture, Food and Fisheries recommend between 66% and 75% parcel coverage for agricultural parcels that contain greenhouses.

Block 564 borders the property to the north (Englishman River Land Corporation). The properties to the south and west of the subject property are located within the ALR and Forest Land Reserve (FLR). There

is one rural residential property to the east with resource management lands beyond. The property has access to Highway 19 via Kaye Road to Peterson Road at the Kaye Road interchange.

Proposal as Submitted

The applicants are requesting to amend the maximum permitted parcel coverage for the A-1 zone from 10% to 50% to accommodate the development of ten (10) greenhouse ranges, a manager's residence, accessory office space and hog fuel storage facility. Each greenhouse range will cover an area of approximately 0.8 ha and will contain up to 20 climate-controlled buildings. The applicants propose to heat the greenhouse ranges by burning hog fuel (wood waste product) in a gasifier (*see Attachment No. 2*). One gasifier will be required for each 2 greenhouse ranges, resulting in a total of five gasifiers at the build out stage. In order to proceed with the development, the applicants will require approval from the Regional Board to establish a Comprehensive Development zone permitting the agricultural uses with maximum parcel coverage of 50% for this type of greenhouse facility (*see Schedule No. 2*).

Although the applicants have submitted much of the required information, there are several outstanding items at the time of writing the report. These include information on the source and salt content of the hog fuel, information on a registered easement agreement pertaining to the water supply, and comments from the Ministry of Water, Land and Air Protection with respect to the permitted emissions and requirements for permits. In addition, the applicants have indicated they will supply legal agreements pertaining to the drainage and existing ditching systems. The applicants state that they do not have objections to covenants protecting the groundwater or for maintenance of systems to ensure performance.

Public Information Meeting

A Public Information Meeting was held on August 27, 2003 at Nanoose Place in Nanoose Bay. Notification of the meeting was advertised in the August 19, 2003 edition of the PQ News, along with a direct mail out to all property owners within 500 metres of the subject property. Approximately 35 people attended the meeting (*see Attachment No. 3 'Report of the Public Information Meeting'*). The Planning Department has received a written submission from the Englishman River Land Corporation with respect to this application (*see Attachment No. 4*).

The following issues were raised at the meeting:

- Industrial traffic, road safety and access
- Water use and impacts on the aquifer
- Septic disposal
- Potential light pollution from the greenhouses
- Potential noise from the fans and dehumidifiers
- Water quality impacts
- Hog fuel storage, use and salt content
- Potential emissions from the gasifiers
- Vegetation retention and buffer areas

Information, as noted above, has been provided or has been requested of the applicants in response to the issues raised at the Public Information Meeting.

ALTERNATIVES

1. To approve the amendment application to rezone the 21.1 ha subject property from A-1 (Agricultural 1) to a Comprehensive Development zone with a maximum 50% parcel coverage for greenhouses as submitted by the applicants, subject to Schedules No. 1, 2, 3 and 4 and subject to the notification requirements pursuant to the *Local Government Act*.
2. To not approve the amendment application.

LAND USE IMPLICATIONS

The property subject to this application is located within the Provincial Agricultural Land Reserve and is bordered on three sides by resource land. The topography of the site and surrounding area work to

mitigate many of the off-site impacts related to the proposed use of the property. However, the increase in parcel coverage and the scale of the operation may generate some impacts on adjacent properties. Specifically, the Regional Board recently granted approval to amend the Englishman River Official Community Plan and create a new land use zone to facilitate the development of Block 564 to the north of the subject property into 158 rural residential lots. The access to the subject property is directly through portions of Block 564 along both Kaye Road and Peterson Road.

Traffic impacts from the proposed greenhouse development have been cited as a major concern both verbally at the PIM and in writing (*see Attachment No. 4*). The RDN is awaiting comments from the Ministry of Transportation with respect to access permits, speed limits and potential road upgrading requirements for Peterson Road. There is currently a stump dump in operation on the subject property, which has significant traffic levels associated with it. Concerns have been raised with respect to the levels of traffic and residential safety once the lots in Block 564 are developed for residential use. The public has expressed concerns with respect to the combined effect of the stump dump use and the vehicles associated with the construction and operation of the greenhouses. In an effort to reduce traffic impacts on the adjacent landowners, staff recommends that the stump dump use cease prior to construction commencing for the greenhouses.

The applicants have indicated that the expected traffic levels at the final build out stage will equal 20 delivery trucks per week, vehicles for 100 employees (expecting that some may carpool) and 20 truckloads of hog fuel per year. In addition to the traffic from the subject property, Peterson and Kaye Roads will have to handle traffic from the 158 residential properties within Block 564. The applicants are not proposing any upgrades to Peterson Road, but as part of the approval process for Block 564, the road will be chip sealed and surfaced.

If the applicants are granted approval to operate the proposed greenhouse facility, certain aspects of the operation will be protected under the Provincial *Farm Practices Protection (Right to Farm) Act (FPPA)*. If an approval is granted to conduct the greenhouse operation on this site, the Regional District will not be able to regulate any activities considered to be 'normal farm practices' regardless of the potential noise, odour or other impacts. Therefore, it is imperative that the RDN address these potential issues as part of the rezoning process through operating conditions as outlined in *Schedule No. 1*.

The issue of noise generated by the fans and dehumidifier equipment was raised at the PIM. The Ministry of Agriculture, Food and Fisheries 'Environmental Guidelines for Greenhouse Growers in British Columbia' (issue date 1994) states that a noise level of 65 decibels at the lot line is considered acceptable. The applicants have indicated an expected sound level of 70.9 decibels at distance of 1.5 metres from the fan source. Provided the applicants use this type of fan system, it can be expected that the noise levels generated from the greenhouse operation will be significantly less than the levels considered acceptable by the Ministry of Agriculture, Food and Fisheries. It is recommended that the applicants be required to adhere to the noise levels outlined in the provincial regulations (*see Schedule No. 1 - Noise Management*).

Staff has discussed a vegetation management and retention plan to mitigate potential impacts from noise, traffic, lighting and dust that may arise on the subject property. It should be noted that adjacent properties within the Block 564 development have a Restrictive Covenant that establishes an eight (8)-metre buffer along the bordering property line between these lots and the subject property. In addition to this 8 metre buffer, the applicants are agreeable to maintaining a 3.5 metre vegetated buffer along the northern lot line to reduce any potential negative impacts from the greenhouse operation. The applicants will retain and enhance vegetation in this area, resulting in a total vegetative buffer of 11.5 metres.

As part of the approval process, the RDN can impose operating conditions and monitor the performance of the operation once development commences. It is recommended that the applicants be required to meet standards with respect to protection of adjacent watercourses, groundwater sources and air protection. The

equipment utilised in the operation of the greenhouse facility should be maintained in a good working order to reduce any potential pollution effects. Restrictive covenants to this effect should be registered on the subject property.

OFFICIAL COMMUNITY PLAN IMPLICATIONS

The Electoral Area 'F' Official Community Plan (OCP) policies for this property located within the Resource designation recognize and support the use of the land for agricultural purposes and support the amendment application to rezone this property to accommodate the proposed greenhouse use.

Additional policies in the OCP address the preservation of the natural environment, the protection of groundwater and watercourses, and preserving water quality and quantity. It is noted that any deterioration to the natural supply of clean, fresh water will have a detrimental effect on residential well water, tourism, agriculture, commercial and recreational fish species, and other water related activities. Conditions outlined in Schedule No. 1 of this report meet the objectives as outlined in the OCP.

ENVIRONMENTAL IMPLICATIONS

Recognizing that the proposed use of the property has the potential for environmental impacts related to groundwater and drainage to the Englishman River, the applicant has provided the Planning Department with reports that address these issues. Specifically, the applicant was asked to provide a detailed drainage plan addressing both rain water and contaminated run-off from the site, and a professional engineer's report reviewing the potential impact of the proposed development on groundwater quality and quantity.

It is recommended that the Board include a condition that no more wells are drilled on the subject property to prevent excessive water draw down that may impact adjacent wells. The applicants have stated that they have sufficient water for the initial phases from the agricultural water line within Peterson Road, but they intended to drill another well when they required additional flows at the build out stage.

The applicants submitted a report prepared by Park City Engineering addressing the potential drainage impacts from the proposed increase in parcel coverage. The applicants will be required to construct a detention pond to capture the storm water run-off from the greenhouses. Additional works will capture rainwater and direct it to the pond. The water in the detention pond will be recycled as irrigation water and some may be discharged at pre-development flows to a ditching system running along an old logging road on the west boundary of District Lot 182 and Block 564. The applicants indicate that they will be creating legal agreements to use this existing ditching system for outfall from the detention pond.

In addition to this storm water detention pond, a second pond will be constructed to contain nutrient laden water resulting from the flushing of the greenhouses, which will occur every 4 to 6 months. Water will be filtered before it is flushed into the detention pond. According to the applicant, water will evaporate leaving behind a residue that can be swept up. The applicants state that this residue can be composted and given to local municipalities for community projects. Water from this detention pond will not be added to the storm run-off detention pond.

The report prepared by Park City Engineering states that there would be no increase in pre-development flows from the property after the development is completed. The engineer who prepared the report suggests that a more detailed storm water design be implemented once a more detailed survey and site plan is established.

The applicants propose to heat the greenhouses using gasifiers. Hog fuel, a wood waste product, is proposed to be burned at very high temperatures in a gasifier in order to provide fuel for heating the greenhouses. The gasifiers will only be required during the colder months to keep the temperature at a

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certain level where growing can continue. It is important that the hog fuel does not contain salt, as the salt generates dioxins when it is combusted. The Province of BC has Agricultural Waste Control Regulations that govern the emissions from wood fired boilers in agricultural operations. If a proposed use exceeds the recommended particulate matter levels, a permit is required from the Ministry of Water, Land and Air Protection. The RDN is awaiting comment from the Ministry with respect to the air emissions.

The applicants state that they intend to obtain the hog fuel from NorskeCanada and that the hog fuel will be 99.5% salt free. The applicants have not indicated that they have any contingency plan if for some reason hog fuel is not available when it is required. Staff recommends that the applicants be restricted to the burning of clean hog fuel only with a maximum salt content of 0.5% within the gasifiers.

The applicants have stated that any furans or dioxins inadvertently formed by the initial combustion of the hog fuel will be destroyed in the 2,500 degree Celsius heat of the second chamber of the gasifiers. The applicants state that dioxins and furans are organic chemicals that are destroyed at 600 – 1,100 degrees Celsius. The hog fuel will be contained within a building located on the eastern side of Peterson Road. It will be a requirement of approval that the building have an impermeable surface to prevent any leachate contaminants to the soil.

The applicants will have to apply nutrients to the greenhouse crops in order to promote growth. The issue of containing nutrient laden water is addressed above, however, the fertilizers must also be safely stored to avoid potential environmental impacts; this requirement is outlined in Schedule No. 1.

INTERGOVERNMENTAL IMPLICATIONS

City of Parksville – The City of Parksville will be discussing the proposal at its October 6, 2003 Council meeting and will provide comment after Council reviews the issues.

Ministry of Water, Land and Air Protection (WLAP) – Representatives from WLAP have expressed concern with the increase in parcel coverage to 50%. WLAP states that impacts to stream health occur once the impervious surface exceeds 10%. It is recommended that 90% of the rainfall column is restored to natural pathways (i.e. infiltrated). It is further recommended that the proponent be required to apply the same stormwater balance model that urban development is being asked to employ. As mentioned above, the RDN is awaiting comments with respect to the emissions and WLAP's requirements.

Ministry of Transportation (MOT) – MOT has indicated that a commercial access permit will be required. This has not been issued yet. At the time of subdivision, a portion of Peterson Road was proposed for closure and road was dedicated elsewhere to provide access to the adjacent Lot 1, Plan 3808 to the south of the subject property (see Attachment No. 5). However, according to MOT representatives, the requirements for road construction on the dedicated portion have not been met and the portion of gazetted road shown on the subdivision plan to be closed remains a public gazetted road to date. This issue will have to be addressed by MOT prior to issuance of an access permit. MOT has indicated that they will review the requirements for upgrades to Peterson Road when the access permit is reviewed. Speed limits will likely be imposed on Peterson and Kaye Roads when the development at Block 564 is complete. The portions of Kaye Road and Peterson Road that run through Block 564 will be chip sealed to prevent dust, but this surface is intended for residential traffic only and is not considered strong enough to sustain commercial traffic.

Vancouver Island Health Authority (VIHA) – The VIHA has requested more details on the future location of on-site sewage disposal. The current permit is for one dwelling unit and 20 workers.

Agricultural Land Commission (ALC) – The ALC supports the proposal and states that the recommended parcel coverage for greenhouse operations on ALR land is between 66% and 75%.

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Ministry of Agriculture, Food and Fisheries (MAFF) – MAFF representatives have provided some information with respect to quotas for certain agricultural crops. For example, Butter Lettuce is a regulated commodity for which quotas will be required. In some cases quotas exist for field crops, but not for greenhouse production. The applicants will have to investigate the requirements for quotas from the Province for the specific crops they intend to grow if the land use approvals are granted.

PUBLIC CONSULTATION IMPLICATIONS

In accordance with the Board's public consultation framework and the provisions of the *Local Government Act*, staff has prepared an outline of the process for consideration by the Board (*see Schedule No. 3*). As part of the Public Consultation Framework, a Public Information Meeting was held on August 27, 2003. The Summary of Minutes from the public information meeting is included for information (*see Attachment No. 3*). Should this application proceed, a Public Hearing will be held pursuant to the requirements of the *Local Government Act*.

VOTING

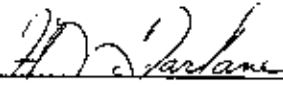
Electoral Area Directors – one vote, except Electoral Area 'B'.

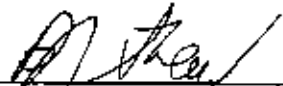
SUMMARY

The applicant is requesting consideration of a zoning amendment application in order to facilitate the construction of a commercial greenhouse operation with maximum lot coverage of 50%. A public information meeting was held and a number of issues concerning the application were raised. Given that the property is located within the Provincial Agricultural Land Reserve, is designated for Resource use in the OCP, and zoned to permit agricultural use, staff recommends that this application proceed to public hearing.


RECOMMENDATIONS

1. That the minutes from the Public Information Meeting be received.
2. That "Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Amendment Bylaw No. 1285.03, 2003" submitted by Fern Road Consulting Ltd. on behalf of H. & F. Ventures and GreenChoice Energy Ltd. to rezone the 21.1 ha property legally described as Lot A, District Lot 182, Nanoose District, Plan VIP65017 from A-1 (Agricultural 1) to Comprehensive Development 14 – 2570 Peterson Road be given 1st and 2nd reading.
3. That "Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Amendment Bylaw No. 1285.03, 2003" proceed to Public Hearing.
4. That the Public Hearing on "Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Amendment Bylaw No. 1285.03, 2003" be delegated to Director Biggemann or his alternate.


Report Writer


General Manager Concurrence


Manager Concurrence


CAO Concurrence

COMMENTS:

devs/reports/2003/Se 3360 30 0310 GreenChoice 1st & 2nd.doc

Schedule No. 1
Zoning Amendment Application No. ZA 3360 30 0310
Conditions of Approval

1. Air Quality

- a) The hog fuel burned in the gasifiers shall not contain more than 0.5% salt content and only clean hog fuel shall be used in the gasifiers.
- b) The emissions from the gasifiers shall not exceed 168mg/m³ of particulate matter (level indicated by applicants for straw) and 20% opacity.
- c) Spent fuel (ash) shall be disposed of in a manner approved by the Vancouver Island Health Authority and the Ministry of Water, Land and Air Protection.
- d) There shall be no onsite burning of plastic, paper, cardboard or solid wastes resulting from the greenhouse operation.

2. Water Quality

- a) A storm water detention pond designed by a Professional Engineer will be installed as shown on the site plan submitted by the applicants to detain runoff water from the greenhouses and prevent discharge onto adjacent properties in levels that exceed pre-development flows. The final design plan together with a report on the drainage implications shall be submitted to the Regional District of Nanaimo prior to final adoption of the zoning amendment.
- b) The storm water detention pond will be lined and will be properly maintained to prevent failure during severe storm events.
- c) Nutrient laden water flushed from the greenhouses will be adequately sterilized, filtered and directed into a separate detention/ evaporation pond. This pond shall also be lined to prevent seepage or leachate. No nutrient laden water shall be discharged into the storm water detention pond or permitted to flow into adjacent watercourses or groundwater systems. Acceptable sterilization methods include ozone treatment, heat treatment, ultraviolet light radiation treatment, membrane filtration or low-velocity sand filtration.
- d) Chlorine solutions used to clean tanks, irrigation lines and other equipment will not be discharged into the septic system without approval from the Vancouver Island Health Authority. Chlorine solutions shall not be permitted to discharge into the adjacent watercourses or into the groundwater/ aquifer.
- e) Collected irrigation leachate shall be recycled to reduce pressure on the aquifer by decreasing demand for water.
- f) No additional wells shall be drilled/ dug on the subject property.

3. Storage Facilities

- a) The hog fuel shall be stored in a building with an impermeable floor surface to prevent leachate and seepage of contaminants into the soil.
- b) Fertilizers shall be stored in a dry, cool, well-ventilated area with a concrete (impervious) containment area where spills can be easily cleaned. Fertilizer packaging shall not be burned. The pH level and electrical conductivity of the root medium shall be constantly monitored to track the nutritional status of the crop.

4. Noise Management

- a) The noise generated by the fans and dehumidifier equipment and ventilation systems shall not exceed 65 decibels at the property lines.
- b) In order to reduce the potential for noise impacts on adjacent landowners, all equipment used in the greenhouse operation will be regularly maintained.
- c) Activities that generate noise shall be restricted to regular working hours (i.e. Monday to Friday from 7am to 5 pm).

5. Vegetation Management

- a) A vegetated landscaped buffer with a width of 3.5 metres shall be installed and maintained along the northern boundary of the subject property.
- b) Landscaping shall be totally comprised of biologically diverse and drought resistant native vegetation. Individual plants to be used in the landscaping shall have normal, well developed branches and vigorous, fibrous root systems; such plants shall be healthy, vigorous and free from defects, decay, disfiguring roots, sunscald, injuries, abrasions of the bark, plant diseases, insect pests' eggs, borers and all forms of infestation or objectionable disfigurements
- c) Retention of existing vegetation is encouraged where possible.
- d) There shall be no removal of vegetation from the Covenant Area (VIP65018 and VIP65019) adjacent to Craig Creek.

6. Operating Conditions

- a) The existing stump dump activity will cease entirely prior to commencing works to construct the greenhouse facility.
- b) The operators of the greenhouse facility will obtain the necessary quota approval from the BC Vegetable Marketing Commission for any regulated commodities that may be grown on the site.
- c) The RDN will require ongoing monitoring of the storm water systems to ensure that there are no deleterious affects arising from the activities on the subject property. This monitoring will be done in accordance with 'Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002 Section 2.5 Runoff Control Standards.
- d) The RDN will require ongoing monitoring of the air quality and particulate emissions generated by the gasifiers by requiring annual reports on the emission levels for the first 5 years, and subsequently requiring reports every 3 years.
- e) The sewage disposal and septic system will be maintained in good working order to prevent any pollution of the surrounding area.
- f) All equipment and machinery associated with the greenhouse operation will be maintained in good working order as recommended by the manufacturers to prevent any negative impacts on adjacent landowners due to noise, smoke or other emissions.

Parking/ Access

- a) 114 parking spaces shall be provided as indicated on the site plan submitted by the applicant and shown in Schedule No. 4.
- b) Of the parking spaces provided, at least 2 handicapped parking spaces shall be provided. Each handicapped parking space shall be at least 3.7 metres wide and be clearly identified for its restricted usage by a sign incorporating the universal handicapped logo. The handicapped spaces shall be located as close as possible to a main accessible building entrance.
- c) All parking spaces shall be 5.2 metres in length and 3.0 metres in width.
- d) Peterson Road shall be paved from the northern property line to the point of commercial access for the greenhouses and/ or parking areas.

7. Sewage Disposal

- a) The methods for sewage disposal for the manager's residence and the employees of the greenhouses shall be approved by the Vancouver Island Health Authority.
- b) The recommendations included in the reports prepared by Lewkovich Geotechnical Engineering Ltd. dated July 24, 2003 and August 7, 2003 will be followed, subject to VIHA approval.

8. Access Permit

- a) A commercial access permit shall be obtained from the Ministry of Transportation prior to final adoption of the zoning amendment.

COVENANTS RUNNING WITH THE LAND

The applicants agree that all requirements set out in these conditions must be fulfilled prior to final adoption of the zoning amendment. All covenants are to be prepared and registered by the applicant to the satisfaction of the Regional District.

Groundwater Protection

The applicants will register a Section 219 Covenant stating that there will be no activities occurring on the property that will cause the leaching of deleterious substances into the aquifer or into surface watercourses. Further the applicants will agree that there will be no additional wells drilled or established on the subject property.

Air Quality

The applicants will register a Section 219 Covenant stating that the emissions from the gasifiers will not exceed 168mg/m³ (value provided by applicants for straw combustion) and that ambient air quality will not be adversely affected by the greenhouse operation.

Ongoing maintenance of operating systems

The applicants will register a Covenant on the property agreeing that the storm water management system, septic disposal system, nutrient detention ponds and all other equipment will be maintained in optimal working order to ensure environmental protection of the property and surrounding areas. To protect the aquifer and prevent excessive draw down on adjacent wells, there shall be no additional wells placed on the property.

Schedule No. 2
Zoning Amendment Application No. 3360 30 0310
Proposed Zoning Amendment
Comprehensive Development 14 – 2570 Peterson Road

CD-14 2570 Peterson Road	Section 4.37
---------------------------------	---------------------

4.37.1 Permitted Principal Uses

- a) Dwelling Unit
- b) Farm Use

4.37.2 Permitted Accessory Uses

- a) Accessory Buildings and Structures
- b) Farm Business
- c) Home Based Business

Notwithstanding the Permitted Principal Uses listed above, any use designated or permitted to be a farm use by the Agricultural Land Commission or the Ministry of Agriculture, Food and Fisheries is permitted within this zone.

4.37.3 Regulations Table

Category	Requirements
a) Maximum Density	2 Dwelling Units per lot, provided that one Dwelling Unit is a Manufactured Home.
b) Minimum Lot Size	20 ha
c) Minimum Lot Frontage	100 metres
d) Maximum Lot Coverage	50%
e) Maximum Building and Structure Height	10 metres
f) Minimum Setback from	
i) Front and Exterior Side Lot Lines	4.5 metres
ii) All Other Lot Lines	4.5 metres
g) Minimum Setback of all buildings or structures housing livestock or manure from all lot lines and/ or watercourses	30 metres
h) Runoff Control Standards	As outlined in Section 2.5
i) General Regulations	Refer to Section 2 – General Regulations
j) Parking Regulations	114 spaces, 2 of which shall be designated as handicapped spaces

4.37.4 Regulations

- a) The maximum lot coverage of 50% is intended to allow for a **greenhouse facility** and accessory structures only. If the property is being used for purposes other than a greenhouse facility, the maximum lot coverage shall be limited to 10%

Schedule No. 3
Zoning Amendment Application ZA 3360 30 0310
Public Consultation Framework

Goals and Objectives

The goal of the proposed amendment to the A-1 (Agriculture 1) land use zone is to facilitate the development of a commercial greenhouse operation with a maximum lot coverage of 50% on the property legally described as Lot A.

The consultation plan includes the following:

- Ongoing information shall be provided to the public and the public shall be encouraged to provide comments throughout the process.
- A Public Information Meeting was conducted on August 27, 2003. The proceedings of this meeting are attached.
- Referrals shall be made to City of Parksville, Ministry of Agriculture, Food and Fisheries, Agricultural Land Commission, Ministry of Water, Land and Air Protection, Ministry of Transportation, and Central Vancouver Island Health Region.
- Public consultation shall conclude with a Public Hearing pursuant to the requirements of the *Local Government Act*.

Methodology

The proposed bylaw amendment has generated public interest from residents throughout Electoral Area 'F' and neighbouring Electoral Areas 'E' and 'G'. A written submission has been received by the Planning Department on the proposal (*see Attachment No. 4*). To date, the RDN Planning Department has consulted with the Ministry of Health, Ministry of Transportation, Ministry of Water, Land and Air Protection, Ministry of Agriculture, Food and Fisheries, the Agricultural Land Commission and the City of Parksville on this issue. Official referrals shall be made to these agencies prior to adoption of any new land use zones.

A Public Information Meeting was conducted which provided an opportunity for citizens to provide comments and ask questions on the proposed amendment bylaw.

Public notification will be provided with a copy of the Public Hearing notice delivered by direct mail and by advertisements in the local newspaper and on the RDN Web site in accordance with the provisions of the *Local Government Act*. In addition, the Public Hearing notice will advise citizens that further information is available at the RDN Planning Department on the proposed bylaw amendment.

Tools and Tasks

The Public Hearing will be advertised as per the notification requirements specified in the *Local Government Act*.

The Public Hearing notice will also be posted on the RDN website (www.rdn.bc.ca).

Staff will remain available throughout the bylaw amendment process to respond to questions, concerns, or to discuss the process.

A staff report summarizing the proceedings of the Public Hearing and including copies of all written correspondence on the proposed amendment shall be forwarded to the RDN Board for the Board's consideration.

Outcomes and Products

The intent of the Zoning Bylaw Amendment process is to designate Lot A, District Lot 182, Nanoose District, Plan VIP65017 as CD-14 2570 Peterson Road in order to facilitate a commercial greenhouse operation with a maximum lot coverage of 50%.

Schedule (should application proceed)

September 2003 - Report to RDN Electoral Area Planning Committee requesting 1st and 2nd reading on proposed Zoning Amendment.

October 2003 - Report to RDN Board of Directors. Referrals to affected agencies.

October 2003 - Notification of Public Hearing posted in local newspapers and direct mail out to adjacent property owners.

November 2003 - Public Hearing held pursuant to Sections 890 and 892 of the *Local Government Act*.

December 2003 - Report to RDN Board reporting on Public Hearing and requesting consideration of 3rd reading for Amendment Bylaw.

December 2003 - Zoning amendment bylaw forwarded to Ministry of Transportation for approval pursuant to section 54 of the *Highway Act*.

January 2004 - Report to RDN Board requesting consideration of 4th reading and adoption (*pending receipt of approval from the Ministry of Transportation*).

Resources

Existing staff resources will: research, investigate, and provide recommendations, and administer the official community plan bylaw amendment including the public information meeting and public hearing processes.

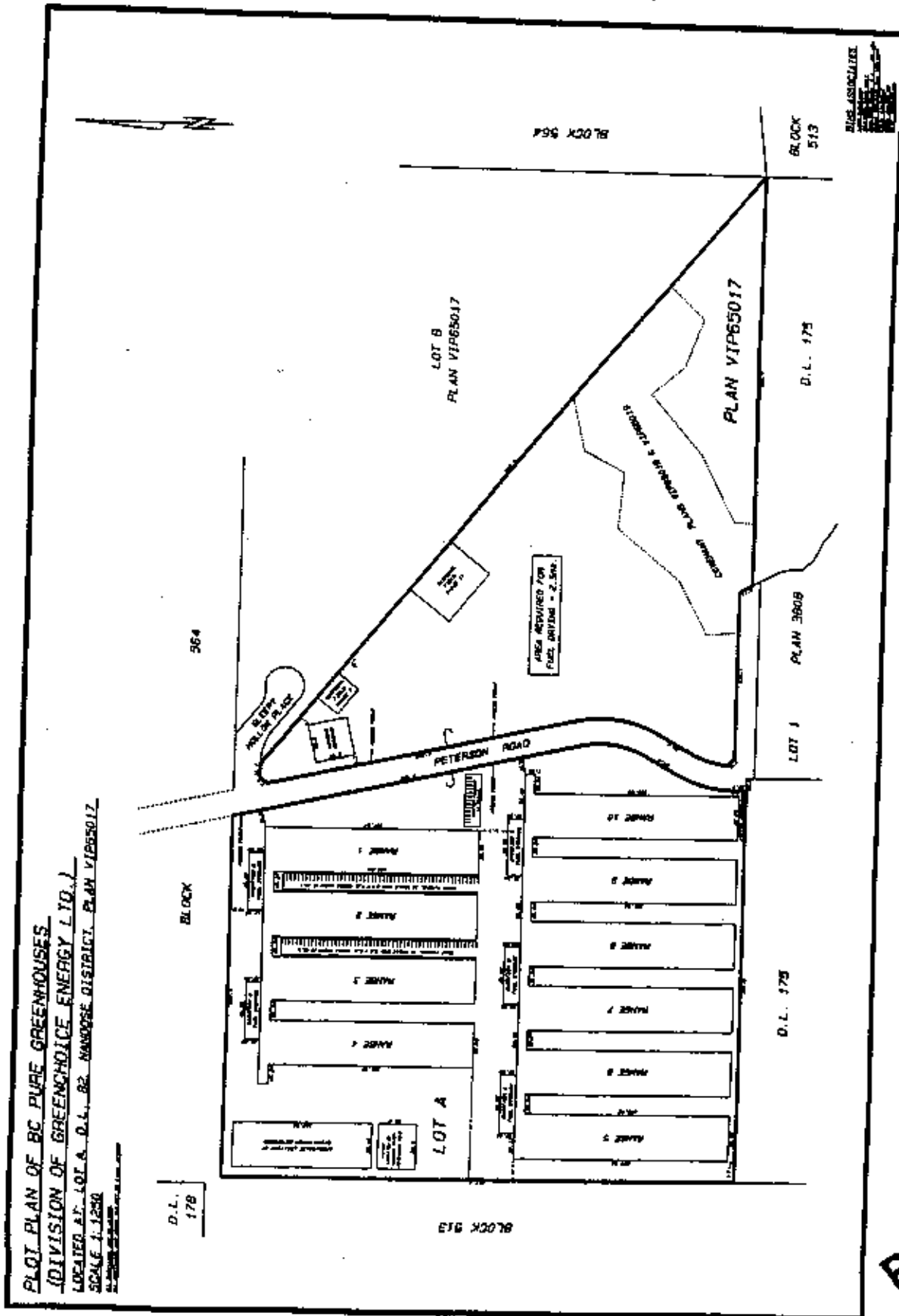
Budget

Staff time budgeted as part of regular work program in 2003 Development Services Department Provisional Budget. Total cost of mapping services, public information meeting, public hearing, mailings, advertising, and meeting room rentals estimated at approximately \$1,500.00.

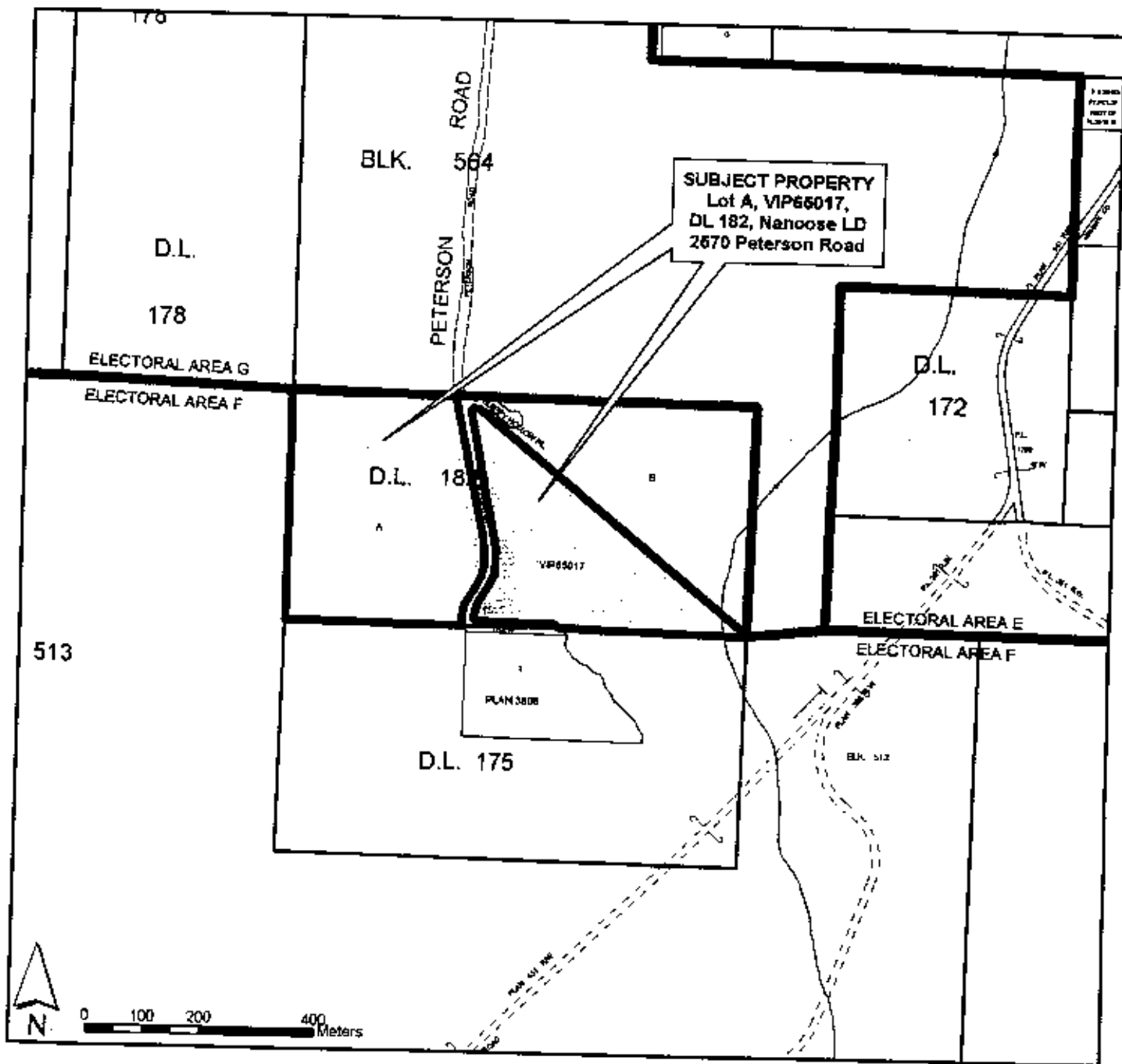
Monitoring and Evaluation

The process will be evaluated pursuant to the successful completion of the consultation requirement specified in the *Local Government Act*.

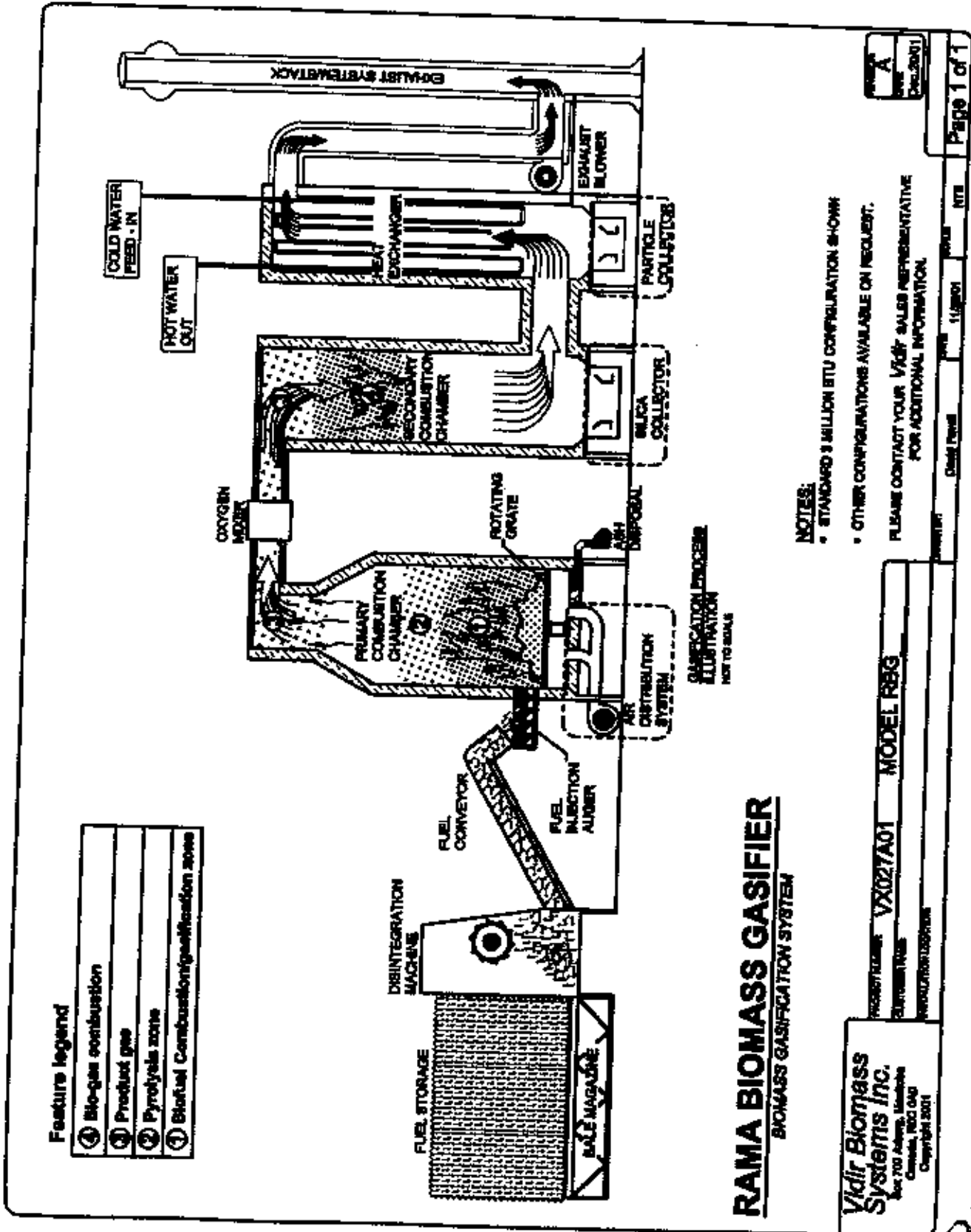
Schedule No. 4
Zoning Amendment Application No. 3360 30 0310
Site Plan (As Submitted by Applicants)



ATTACHMENT NO. 1
Location of Subject Property



ATTACHMENT NO. 2
 Sketch Plan of Gasifier using Straw Medium
 (as submitted by applicant)



- Feature legend**
- ④ Bio-gas combustion
 - ③ Product gas
 - ② Pyrolysis zone
 - ① Staged Combustion/gasification zone

RAMA BIOMASS GASIFIER
 BIOMASS GASIFICATION SYSTEM

- NOTES:**
- STANDARD 8 MILLION BTU CAPABILITY SHOWN
 - OTHER CONFIGURATIONS AVAILABLE ON REQUEST.
- PLEASE CONTACT YOUR **Vidir** SALES REPRESENTATIVE FOR ADDITIONAL INFORMATION.

Vidir Biomass Systems Inc.
 100 Adams, Mendota
 Canada, K2C 0A9
 Copyright 2001

MODEL RBG
 VX027A01

ATTACHMENT NO. 3

Report of the Public Information Meeting

**Held at Nanoose Place Multi-Use Room 1
2925 Northwest Bay Road, Nanoose Bay, BC
August 27, 2003 at 7:00 pm**

**Summary of the Minutes on Proposed
Zoning Amendment Application for Lot A, District Lot '82, Plan VIP65017, Nanoose
District**

Note: this summary of the meeting is not a verbatim recording of the proceedings, but is intended to summarize the comments of those in attendance at the Public Information Meeting.

There were approximately 33 persons in attendance.

Present for the Regional District:

Chairperson Lou Biggemann, Area Director for Electoral Area 'F'
Director Pauline Bibby, Area Director for Electoral Area 'E'
Pamela Shaw, Manager of Community Planning
Keeva Kehler, Planner

Present for the Applicant:

Helen Sims, Fern Road Consulting, Agent for the Applicants
Gerry Lenoski, President of GreenChoice Energy Ltd, Applicant
Ron Tuttle, Manager of Greenhouse Operations, Applicant
Alan Wilson, Project Manager, GreenChoice Energy Ltd., Applicant
Vaughn Roberts, Engineer, Park City Engineering, present for the applicants
Don Currie, present for the applicants

Director Lou Biggemann opened the meeting at 7:00 pm and outlined the agenda for the evening's meeting and introduced the head table. The Chairperson then introduced Ms. Helen Sims, agent on behalf of the applicant, and requested that she introduce the applicants' representatives. Ms. Sims introduced the applicants' representatives. The Chair then stated the purpose of the public information meeting and requested the planner to provide background information concerning the zoning amendment process. The planner gave a brief outline of the application process and the items submitted by the applicants to date.

The Chairperson then invited Ms. Sims, agent on behalf of the applicant, to give a presentation of the proposed zoning amendment. Ms. Sims gave an overview of the proposal and then called upon Mr. Alan Wilson, the applicants' project manager to give a presentation on the proposed greenhouse operation and its products, water supply, sewage disposal, and storm water elements of the proposal.

Mr. Wilson explained the process for growing crops in the greenhouses and spoke in detail about the gasifier equipment and the fuel (hog fuel) that would be burned for heating purposes.

Ron Tuttle provided more details on the hog fuel and the suppliers for the fuel, NorskeCanada in Crofton.

Following the applicant's presentation, the **Chairperson** invited questions and comments from the audience.

Quinlan Phillips, Peterson Road, asked about the hog fuel - what is hog fuel?

Mr. Tuttle explained that hog fuel is basically like wood chips.

Gordon Buckingham, Nanoose Bay, said that the proposal was a great idea but he was concerned about the traffic.

Carol May, Parksville, asked about the size of the septic field and if it was intended to service the employees or the greenhouses. Ms. May commented on the location of the aquifer and asked if there had been a study on the drainage or seepage into the aquifer. Ms. May also asked if there has been a specific study done for the gasifier emissions for this project.

John Barnum, Nanoose Bay, explained that the septic field was for the employees use.

Carol May asked about the direction of flow of Craig Creek.

Alan Wilson replied that they would not be drawing water from Craig Creek. They have legal access to a well that provides 13 gallons of water per minute. They only need access to 4 gallons for the first 2 ranges and when they need more water, they will drill a well. They use recycled water from the greenhouse operation.

Carol May asked about the discharge of waste water.

Ron Tuttle responded that there would be a 3600m³ detention pond to catch storm water and prevent any sudden surges. The detention pond will be used to contain water in the winter and the well will not likely be required in wetter months.

Ron Tuttle further discussed the gasifier emissions study conducted in Winnipeg. The gasifier burned flax straw and the resulting particulate matter was below 180mg/m³, which is the maximum allowed in BC. Hog fuel burns with much lower particulate emissions. The emissions will be invisible and odourless.

Sallie Dab, Johnstone Road, asked about the burning of hog fuel with salt content and stated that invisible fine particulate matter is still a major concern.

Alan Wilson said that VIDIR Biomass Ltd. had paid for the shipment of 8,000 lbs of hog fuel that not been stored in salt water to their plant in Winnipeg to study efficiency and emissions.

Sallie Dab, said that she had spoken with Ron Friesen at VIDIR and was told that the company had not done any testing of the equipment with hog fuel.

Ron Tuttle said they did not deal with Mr. Friesen and he explained that using fuel that contained salt would reduce their efficiencies. The hog fuel from NorskeCanada is certified to be salt free.

Brian May, Parksville, asked if there was any restriction to ensure that only salt free hog fuel will be burned.

Ron Tuttle responded that there are very strict rules on the storage of hog fuel. Brian Mason from NorskeCanada assures them that the logs will be salt free.

Gary Eaves, Northwest Bay Road, asked why the applicants would choose this particular location for the development. He felt that an industrial property elsewhere would be more suitable. He expressed concerns about traffic and road safety.

Alan Wilson responded that GreenChoice Energy Ltd. is an environmentally friendly company. There will be a minimal number of trucks. The maximum development is 10 ranges. Hog fuel will be trucked in once or twice a year. Water is available for the development. The natural UV rays are very helpful in the growing process.

Gerry Lenoski added that the property is located in a rain shadow and receives 2047 hours of sunlight per year, which is the main reason for locating on this property.

Keeva Kehler explained that the property is within the Provincial Agricultural Land Reserve (ALR) and is zoned for agriculture and designated for resource use in the OCP. Greenhouses are not a permitted use in industrial or commercial zones. The use can occur at the property now without any approvals and the applicants could place a number of greenhouses on the site to a maximum coverage of 10%. This application is to increase the maximum parcel coverage to accommodate a more intensive agricultural use.

Gary Eaves, Northwest Bay Road, asked if GreenChoice Energy Ltd. is a private company.

Alan Wilson responded that the company is a private company funded by venture capital. Investors receive a tax credit from the government.

Brent Kaplar, Englishman River Land Corporation asked what would happen if the storm water detention pond was insufficient to hold water in a storm event.

Vaughn Roberts, Park City Engineering stated that the detention pond is designed for 100-year storm events. A portion of the water is being recycled back into the greenhouses for irrigation purposes. The applicants can make the pond larger to detain higher volumes. The drainage will be reduced to pre-development flows. Overflow will go towards the northwest portion of the lot as it does now.

Brent Kaplar asked if water could end up on Block 564.

Vaughn Roberts said that it could eventually end up there but the idea is to create a large enough pond to catch any additional run-off and reduce flows to pre-development levels.

John Barnum addressed the question of developing this project elsewhere. Mr. Barnum reiterated that the property was in the ALR and therefore this agricultural use is well suited to the property.

Brian May stated that he understood the agricultural designation but he still felt that there would be an impact on adjacent properties.

Quinlan Phillips, Peterson Road, said that the traffic is bad on Peterson Road now and he wanted to know about the noise from the fans.

Gary Eaves asked about the commercial operation that is currently taking place on the property.

Keeva Kehler responded that the ALC has granted some approvals on the property and it has a site-specific zone for a composting facility. Any non-farm use requires approval from the Commission.

Linda McKenzie, Sleepy Hollow Place, asked if the 50% parcel coverage could be applied to a hog farm or some other use in the future.

Keeva Kehler responded that this would be a Comprehensive Development Zone and would be created for this type of greenhouse operation.

Brent Kaplar asked about the environmental issues that may exist from what is currently stored on site.

Pamela Shaw stated that the RDN has not as yet received a Contaminated Site Profile from the applicants, but that this could be discussed with the applicant.

Gary Eaves asked about the proposed condominium development on Sleepy Hollow Place and how much water will be required for this development.

Pamela Shaw explained that there is a subdivision application currently under review. The application is not yet complete.

Eric Smith, Nanoose Bay stated that the proposal will create 100 jobs and therefore will expand the economic base of the region. He felt that 2 gallons per minute per range is the same amount of water as 30 homes, which is not a significant amount. He did not have concerns with the water issue due to the detention pond. He mentioned that this is not a residential area, but is a rural residential area intended to be a buffer zone between residential and other uses. Traffic problems are not zoning problems. He was supportive of the proposal.

Pamela Shaw stated that the RDN can consider placing conditions to monitor air and the water quality as part of the rezoning approval process.

Mariann Clark asked about the height of the buildings used for storing the hog fuel.

Ron Tuttle said that the building will be flat roofed and will measure 20 feet at the peak.

Trevor Wicks stated that there is a lack of water all over the area and overuse of water can lower aquifer levels. He asked if the applicants were aware of the current problems with storm water and rivers.

Alan Wilson said that they will manage the water from this site and from their operation and would mitigate run-off impacts from their lot.

Trevor Wicks asked if 'wood waste' similar to what is on site now will be burned.

Alan Wilson said that they could obtain hog fuel for a very cheap rate. He reiterated that the industry is strictly regulated. NorskeCanada carefully monitors the chemicals applied to logs.

Deirdre Phillips, Peterson Road, asked if the applicants would prevent drainage from the site to stop run-off.

Vaughn Roberts stated that the run-off and drainage comes from a number of properties in the area, not just the subject property.

Deirdre Phillips asked if there were plans to widen the road. It is already very dangerous and large trucks do not move out of the way for residential traffic. Ms. Phillips wanted to know if the applicants would make the road safer.

Brent Kaplar stated that the road will be widened and surfaced and drainage will be addressed as part of the Block 564 subdivision.

Mariann Clark asked about emissions and smells from the gasifiers.

Ron Tuttle stated that there is absolutely no smell from the gasifiers. The hog fuel burns too hot to create any smells or even smoke.

John Barnum stated that the traffic impacts would be less than the existing traffic created by the stump dump and current activities.

Brent Kaplar asked how many trucks would be needed.

Ron Tuttle said that they would haul in 400 tons of hog fuel per year, which amounts to about 20 trucks. They will truck out finished product twice a week.

John Barnum said that the applicants could bring in the trucks at a time that suited the community, probably in the evenings.

Brent Kaplar asked if there were any plans to retain vegetation on the north side to act as a buffer for the lots on Block 564.

Alan Wilson said that there were no vegetation plans at this time.

Dianne Richardson, Errington, asked if there was a large volume of chemicals used in the growing of hydroponic crops.

Ron Tuttle said that this depends on your definition of chemicals. For example, calcium can come for a number of sources. They will provide mineral nutrients to the crops. They will be mimicking nature, but do not use bulk fertilizers.

Trevor Wicks added that nutrients can be considered pollutants in certain concentrations.

Ron Tuttle said that there will be a second detention pond for settlement of nutrients and all water will be filtered before being discharged.

Maurice Hedges, McDivitt Drive voiced his support for the proposal.

Adele McKillop asked to be placed on the mailing list for future correspondence regarding the application.

Sallie Dab expressed concern with the removal of vegetation from the site and added that she would like to see retention and enhancement of the original vegetation.

Ron Tuttle said that it would be a good idea to retain vegetation to keep dust levels down.

Quinlan Phillips asked about employee parking.

Alan Wilson said that there is 50 feet of space available on the site between the ranges where people could park. There will be no on-street parking.

Pauline Bibby asked about the potential for noise from the fans.

Alan Wilson stated that the buildings are air tight, the fans and humidifiers do not even generate a hum. The fans do not run at night – fans are only needed in the day time to keep the heat down.

Brent Kaplar asked about the employees. Would they be looking for employees from the area?

Ron Tuttle said that they hope to get employees from Malaspina and North Island Colleges. They are looking for secondary processing opportunities with local processors also. There will be spin-off opportunities from the proposal.

Kim Hammond, Parksville, discussed other greenhouse management programs in the lower mainland.

Brian May, Parksville, asked about the CD zone? Is it specifically for this type of greenhouse operation.

Pamela Shaw stated that a Restrictive Covenant could be considered to limit the use to a specific type of greenhouse operation.

Mariann Clark stated that she is concerned with the prospect of 100 cars per day traveling up Peterson Road because there are a lot of young families purchasing lots in Block 564.

The Chairperson asked if there were any other questions or comments.

Being none, **the Chairperson** thanked those in attendance and announced that the public information meeting was closed.

The meeting concluded at 8.55 pm.

Keeva Kehler

Keeva Kehler
Recording Secretary

PAGE

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ATTACHMENT NO. 4
Correspondence received
Englishman River Land Corporation letter

PLANNING DEPT
-09- 09 2003
RECEIVED

ENGLISHMAN RIVER LAND CORPORATION

11th Floor - 938 Howe Street
Vancouver, B.C.
V6Z 1N9

Tel: 604-331-6018
Fax: 604-331-6048
Email: jbordian@macdevcorp.com

September 5, 2003

Regional District of Nanaimo
Community Services
6300 Hammond Bay Road
Nanaimo, BC
V9T 6N2

Attention: Mr. Bob Lapham - General Manager of Development Services

Dear Bob:

**Re: Rezoning Application - GreenChoice Energy Ltd.
Lot A, Plan VIP 65017, DL 182, Nanoose District**

In response to the Regional District's request for comments, we are pleased to forward this submission regarding the rezoning application from GreenChoice Energy Ltd. to develop 10 - 15 greenhouses, each 0.8 hectare in size, on the above noted property. Please note that these comments are intended to augment the verbal comments that were provided by Mr. Brent Kapler at the Public Information Meeting on 27 August 2003.

As we are in the process of developing and marketing our project, River's Edge, which is situated immediately north of the subject property, our most significant concern is that the proposed greenhouse development will not create any negative impacts that will affect the livability and semi rural character of our project. Much like we were required by the Regional District to address buffer and compatibility issues as part of our rezoning application, we expect that the Regional District will require the proponents of the proposed development to address such issues as well.

Our concerns with the proposed development relate to the following potential impacts:

- a) increased traffic on Petersen and Kaye Roads, in particular truck movements and employee traffic estimated to be approximately 100;
- b) noise levels that are not compatible with the adjacent residential homes;
- c) air emissions that create noxious fumes, particulate matter, or unpleasant odours for the nearby homes from the gasifiers and from the wood waste storage areas.

ATTACHMENT NO. 4 (cont'd)
Correspondence received
Englishman River Land Corporation letter

Letter to Regional District - Greenhouse Proposal

Page 2

- Please note that the gasifiers and fuel storage area for Ranges 1-4 would be located immediately adjacent to our development;
- d) light spillage during the evenings that detracts from semi rural character of the area;
 - e) inadequate storm drainage that creates downstream flooding problems within the River's Edge neighbourhood. Please note that a storm water detention area would be located immediately adjacent to our development in the north-west corner of the subject property;
 - f) potential draw down of the other groundwater water supplies in the area; and
 - g) visual impacts associated with the buildings and wood storage areas.

We acknowledge that the proponent may have addressed a number of these issues in the technical studies that have been submitted, but we have not had the opportunity to review same. We respectfully request that the Regional District staff report to the Board include a comprehensive technical review of the proposal and indicate how each of the above noted impacts will be addressed by the proponent and the measures that will be pursued by the proponent and the Regional District used to mitigate the impacts.

Should you wish any clarification, please do not hesitate to contact me at 604-331-6018, Brent Kapler at 604-219-0506 or Mr. Michael Rosen at 604-925-0977.

Yours truly,


FOR Jerry Bordian

cc: Brent Kapler - Englishman River Land Corporation
Michael Rosen - Planning Consultant

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ATTACHMENT NO. 5



Ministry of
Transportation

Vancouver Island District
3rd Fl. - 2100 Labieux Road
Nanaimo, BC V8T 6E9

FAX SHEET

File Number: 01-002-25316

To: Keeva Kehler
Title: Planner
Company: Regional District of Nanaimo
Phone: (250) 390-6510
Fax: (250) 390-7511

From: Debbie O'Brien
Title: District Development Technician
Phone: (250) 751-3259
Fax: (250) 751-3269

Date: September 16, 2003

Pages including this cover page: 2

Comments:

Hi, Keeva: Further to our telephone conversation this morning, enclosed is a reduced copy of the registered plan VIP65017 which created lots A and B. This is the plan that was deposited in the Land Title Office. It refers to the gazetted portion of Peterson Road to be closed. As stated on the phone, this portion of Peterson Road was never closed as the applicant did not wish to construct the new dedicated portion of Peterson Road. This property now has a dedicated, unconstructed portion of Peterson Road, and an existing constructed portion of Peterson Road within the gazetted area which provides access to Lot 1, Plan 3808, District Lot 175, Nanoose District to the southeast of Lot A, Plan VIP65017.

If you have any questions, please do not hesitate to give me a call.

Regards,

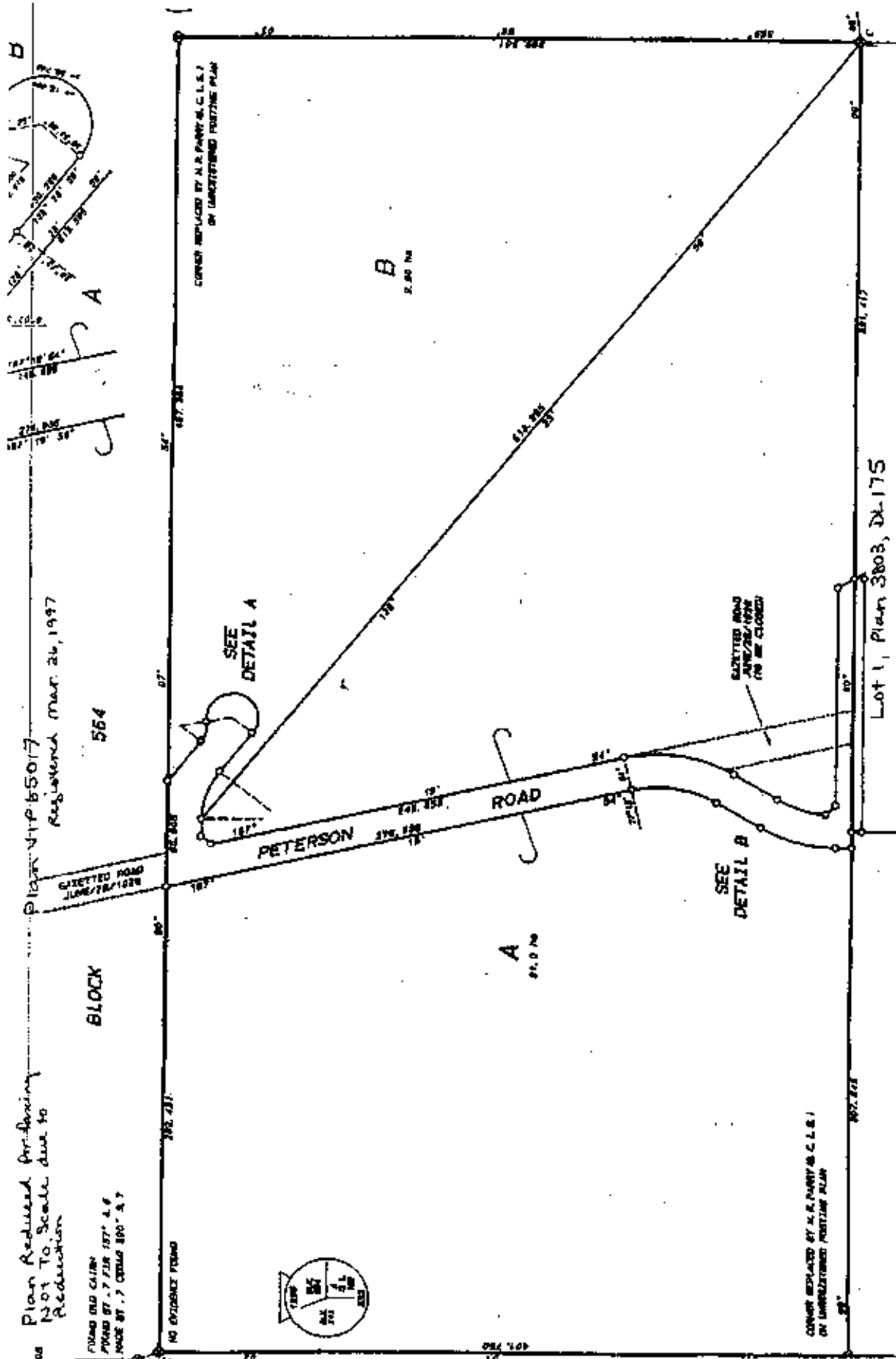
Debbie
Debbie O'Brien
District Development Technician
Vancouver Island District

encl.

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ATTACHMENT NO. 5 (cont'd)





REGIONAL DISTRICT OF NANAIMO	
SEP 18 2003	
CHAIR	GMCrs
CAC	GMDS
CMES	GMES
EAP <input checked="" type="checkbox"/>	

TO: Pamela Shaw
 Manager, Community Planning

DATE: September 19, 2003

FROM: Brigid Reynolds
 Planner

FILE: 3060 30 60344

SUBJECT: Development Permit Application No. 60344 - Sullivan
 Electoral Area 'D' - Maxey and Newfield Roads

PURPOSE

To consider an application for a development permit to approve a building envelope in a Natural Hazard Development Permit Area.

BACKGROUND

The subject property, legally described as that Part of Lot 2 lying south of Maxey Road, Plan 6930, Section 17, Range 5, Mountain Land District, is located in the East Wellington area of Electoral Area 'D' (See Attachment No. 1).

The subject property is zoned Rural 1 (RU1) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The bylaw states that buildings and structures must be set back 15.0 metres from the natural boundary of a watercourse.

The development permit area is designated for the purpose of protecting development from hazardous conditions pursuant to the Regional District of Nanaimo East Wellington - Pleasant Valley Official Community Plan Bylaw No. 1055, 1997. The guidelines state that a development permit is required for any land alteration occurring within 30 metres from the hazard area, i.e. the 100-year flood plain. The whole property is located within a maximum of 55.0 metres of the Millstone River, which is in the 100-year flood plain.

As the parcel is within a Building Inspection Area, Regional District of Nanaimo Floodplain Management Bylaw No. 843, 1991 applies and requires a building setback of 30.0 metres from the natural boundary of the Millstone River and requires that the dwelling unit be elevated 3.0 metres above the natural boundary of the River. As the proposed building envelope is a minimum of 15.0 metres from the natural boundary of the River, a site specific exemption is required from the Ministry of Water, Land and Air Protection. This has been submitted as part of this application.

The applicant was requested to apply for a development permit after a complaint was received when new fill was introduced and the existing fill was leveled and graded, without the permit. The lot is undeveloped but a substantial amount of fill has been introduced to this lot. The toe of the fill is a minimum of 12.0 metres from the natural boundary of the Millstone River.

There is no specific building plan proposed as part of this application, instead the applicant is requesting that the Board consider allowing the placement of a building envelope a minimum of 15.0 metres from the natural boundary, which would comply with the setback required pursuant to Bylaw No. 500.

A geotechnical report prepared by Lewkowich Geotechnical Engineering Ltd. dated August 12, 2003 and addendum dated September 5, 2003 provides recommendations that must be incorporated into the development of the lot and this report is to be registered on title.

There is healthy riparian vegetation between the toe of the bank and the natural boundary that consists of mature trees, heavy underbrush, and shrubs. The Millstone River contains cutthroat trout throughout the whole system and fish have been stocked at the Newfield Road intersection. Federal Fisheries and Oceans have been on site and have made recommendations, which have been incorporated into this report.

There is an easement on the property for a well for an adjacent property owner. The applicant is also requesting to relocate the well a minimum of 14.0 metres of the natural boundary of the Millstone River outside where fill has been placed. While this is within the 15 metre setback as specified pursuant to Bylaw No. 500, the well is less than 1 metre in height and therefore is not considered a structure under the Bylaw. Therefore, no variance to Bylaw No. 500 will be required for the location of the well.

ALTERNATIVES

1. To approve the requested development permit subject to the conditions outlined in Schedule Nos. 1, 2, and 3.
2. To deny the requested development permit.

LAND USE AND DEVELOPMENT IMPLICATIONS

Approval of the development permit would grant a permit to the applicant who undertook land alteration works with the Natural Hazard DPA without seeking prior approval. Fill was placed on the site when the applicant bought the property approximately 9 years ago. In recent months more fill was introduced and the applicant undertook grading within 15.0 metres of the natural boundary of the Millstone River. Due to the fill, DFO made two recommendations: that the toe of the slope be pulled back to a minimum of 15.0 metres from the natural boundary of the Millstone River and the fill bank be reseeded and replanted. These recommendations have been incorporated into Schedule No. 1.

The geotechnical report has stated that the site is geotechnically safe and suitable for construction of a single wood frame residence provided the specific recommendations are followed. The property is within the 100-year floodplain of the Millstone River and it is above a portion of mine workings of the Wellington Collieries. The geotechnical report requires that a structural engineer must design the foundation when construction is proposed. As the fill was introduced without prior consultation with a geotechnical engineer, the pre-fill conditions, the type or compaction of the fill are unknown. Therefore, any new construction requires a geotechnical assessment of the fill prior to any construction.

The current location of the well and the easement is in the middle of the proposed building envelope. This location impacts the ability to site a reasonable size house and to locate a septic field. Staff would agree with the applicant's contention that the configuration and encumbrances on the lot make siting a house difficult. In staff's evaluation, the proposed building envelope meets Bylaw No. 500 requirements and the construction of the dwelling unit will not unduly impact the riparian health of the Millstone River. Any potential impacts would be mitigated by the applicant complying with the conditions outlined in the attached Schedules.

Bylaw No. 843 requires a setback of 30.0 metres from the natural boundary of the Millstone River and requires a flood construction elevation of 3.0 metres above the natural boundary. The building envelope is proposed to be a minimum of 15.0 metres from the natural boundary. To construct within the

floodplain setback requires a site-specific exemption from the Ministry of Water, Land and Air Protection. This has been submitted as part of the application and the recommendations required by MWLAP have been incorporated into the conditions of this permit.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY/CONCLUSIONS

This is an application to permit the placement of fill and to facilitate the establishment of a building envelope a minimum of 15.0 metres from the natural boundary of the Millstone River, within the Natural Hazard Development Permit Area. The development permit guidelines requires that prior to any land alteration within 30.0 metres of the 100-year flood plain of the Millstone River, the property owner must have received a permit. The applicant introduced fill and graded the property without prior approval. The applicant is requesting to relocate the easement and well to be sited a minimum of 14.0 metres from the natural boundary. A geotechnical assessment has been done and states that the site is geotechnically safe and suitable for construction provided the specific recommendations are followed. As a condition of this permit, the geotechnical report must be registered on the title. Additional conditions are required to be fulfilled to mitigate any impact to the riparian area and the Millstone River. Bylaw No. 843 requires a dwelling unit to be sited a minimum of 30.0 metres from the natural boundary of the Millstone River. As a result, a site-specific exemption has been received from the Ministry of Water, Land and Air Protection.

RECOMMENDATION

That Development Permit Application No. 60334 as submitted by Larry Sullivan and legally described as that Part of Lot 2 lying south of Maxey Road, Plan 6930, Section 17, Range 5, Mountain Land District to permit the placement of fill, to facilitate the establishment of a building envelope a minimum of 15.0 from the natural boundary, and to permit the siting of a well a minimum of 14.0 metres from the natural boundary of the Millstone River within the Natural Hazard Development Permit Area, be approved subject to the conditions as outlined in Schedule Nos. 1, 2, and 3.



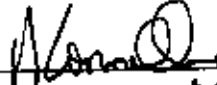
Report Writer



General Manager Concurrence



Manager Concurrence



A/ CAO Concurrence

COMMENTS:

devsvs/reports/2003/dp se 3060 30 60344 sullivan

Schedule No. 1
Conditions of Development Permit No. 60334

Site Development

1. The toe of the slope must be pulled back, such that is a minimum of 15.0 metres from the natural boundary of the Millstone River.
2. All work shall be undertaken from the top of bank.
3. Prior to the well being relocated, the RDN requires confirmation that the affected landowner has approved any change to the easement location.
4. Any well head protection structure shall not exceed 1 metre in height.
5. Any well head protection structure shall not be used to store materials or goods that could cause damage to fish and fish habitat or would be considered a potential pollutant to the Millstone River.
6. All construction or improvements to be undertaken on the property must be consistent with "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987", "Regional District of Nanaimo Floodplain Management Bylaw No. 843, 1991" and all other applicable legislation and regulations from agencies having jurisdiction over the property.
7. The toe of the slope must be armoured with rip rap, as outlined in the site-specific exemption.

Revegetation

8. At the toe of the slope in the area shown on Schedule No. 2, Cottonwood trees (*Populus balsamifera* or *P. trichocarpa*) a minimum of 1.2 metres in height, be planted a minimum of 2.0 metres apart
9. The bank must be reseeded with rye and native wild grass seed mix.
10. Plantings must be successful to an 80% take. If more than 20% of the plantings die over one year, replanting is required.
11. Individual plants to be used in the landscaping shall have normal, well developed branches and vigorous fibrous root systems: such plants shall be healthy, vigorous and free from defects, decay, disfiguring roots, sunscald, injuries, abrasions of the bark, plant diseases, insect pests' eggs, borers, and all forms of infestation or objectionable disfigurements.

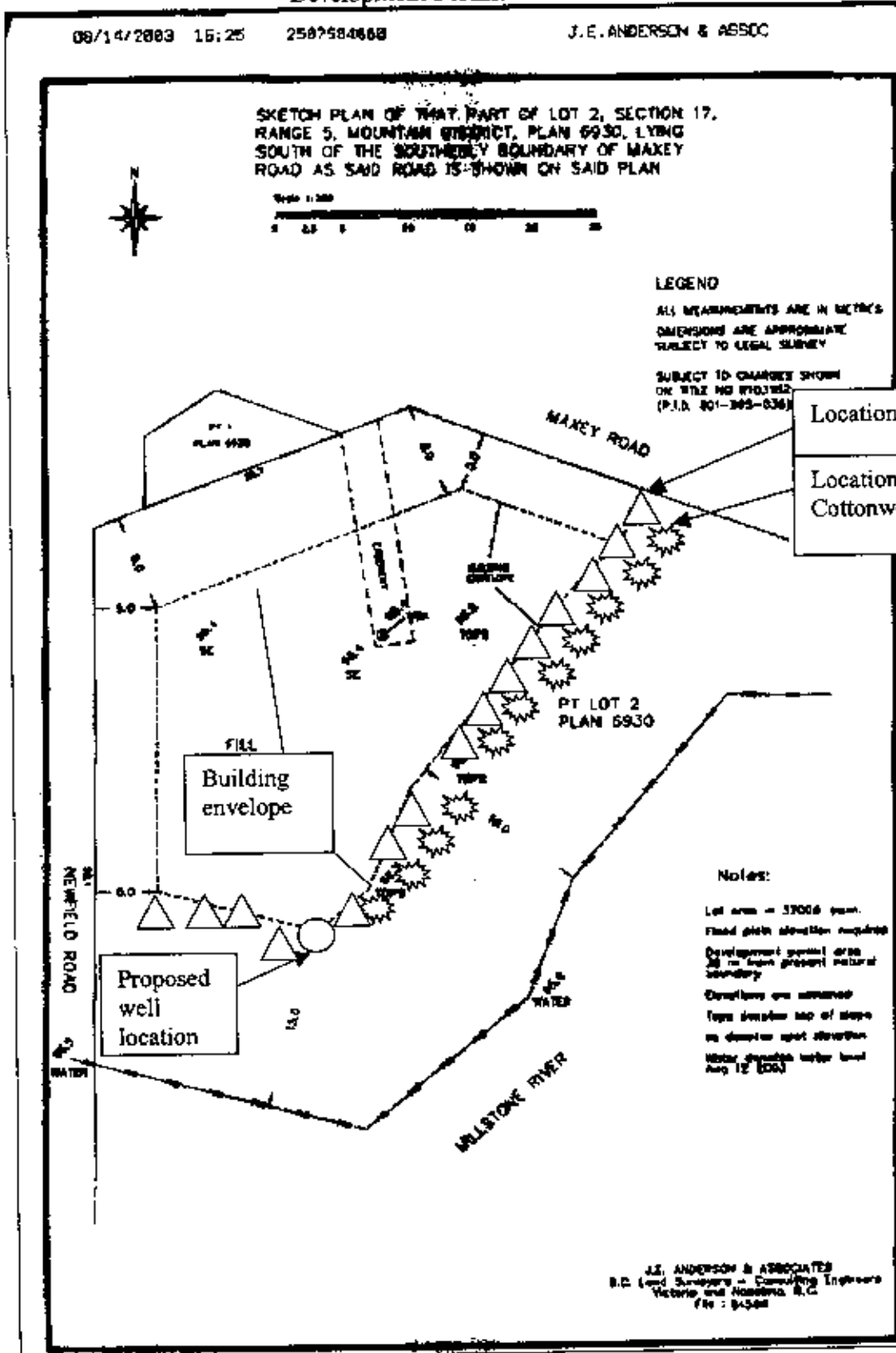
Geotechnical Report

12. Applicant to register Section 219 and save harmless covenant with respect to the geotechnical report prepared by Lewkowich Geotechnical Engineering Ltd. dated August 12, 2003 and addendums at Land Titles Office Victoria to the satisfaction of the Regional District with all costs or registration borne by the applicant.
13. Applicant to ensure that all recommendations outlined in the geotechnical report are adhered to.

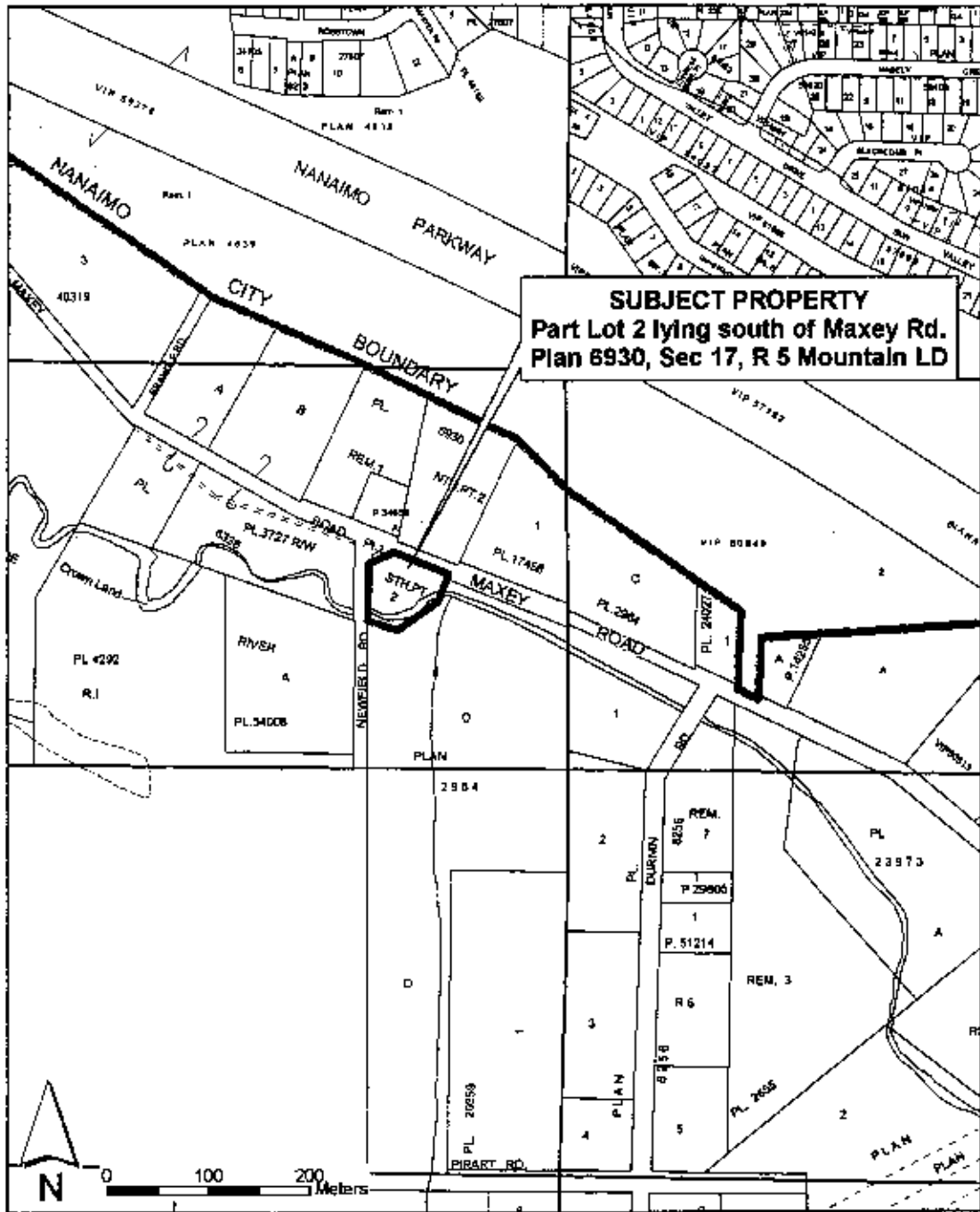
Site-specific Exemption

14. The applicant must secure a site-specific exemption from the Ministry of Water, Land and Air Protection prior to the issuance of this permit.

Schedule No. 2
 Proposed Site Plan
 Development Permit No. 60334



Attachment No. 1
Subject Property
Development Permit No. 60334





REGIONAL DISTRICT OF NANAIMO			
SEP 19 2003			
CHAIR		GMCrS	
CAD		GMDS	
GMCmS		GMES	
		EAP	✓

MEMORANDUM

TO: Pamela Shaw
Manager, Development Services

DATE: September 19, 2003

FROM: Blaine Russell
Planner

FILE: 3060 30 60346

SUBJECT: Development Permit Application No. 60346 – D. Friesen on behalf of Ming's Stores Ltd. Inc.
Electoral Area 'A' – 1694 Cedar Road

PURPOSE

To consider an application for a development permit with a variance to recognize the siting of the recently constructed addition to the principle building.

BACKGROUND

The subject property, legally described as Lot A Plan VIP71569 Sections 15 and 16 Cranberry District located at 1694 Cedar Road in Electoral Area 'A' (see Attachment No. 1 for location). Lot A is currently zoned Commercial 2 (CM2) pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987".

Pursuant to "Regional District of Nanaimo Electoral Area 'A' Official Community Plan Bylaw No. 1240, 2001", Lot A is designated within the Cedar Village & Cedar Commercial/Industrial Properties Development Permit Area No. 3. The Development Permit Area was established to address the form and character of commercial and industrial properties in and surrounding the Cedar Village area. Therefore, as the applicant has constructed an addition to the principle building within the development permit area, a development permit is required (see Schedule No. 2 for site plan).

Proposed Development and Variance

As the committee may recall a development permit was issued for this property in August 2003 for the redevelopment of the site. The addition in question was included in DP No. 60329 to be constructed meeting bylaw setback requirements, in this case 5.0 metres from the Other Lot Line (opposite Cedar Road). The applicant completed the construction of this addition and upon verification by survey it was found to be encroaching into the setback area by 0.2 metres. Therefore, as the minimum setback requirements cannot be met, the applicant is requesting a new development permit with variance.

ALTERNATIVES

1. To approve the request for a development permit with variance subject to the conditions outlined in Schedules No. 1, 2, and 3.
2. To not approve the request for a development permit.

DEVELOPMENT IMPLICATIONS

The form and character and general siting of the addition was approved pursuant to Development Permit No. 60329; in addition, this development permit also addressed signage, fencing, parking, landscape screening and highways access issues were addressed in Development Permit No. 60329. There is no need for additional conditions at this time.

The addition has been substantially completed and, due to its design, structural modification would be extremely difficult requiring near complete removal. Requiring the applicant to structurally alter the addition would create a hardship for the applicant. Other than this siting issue, the addition has been constructed in general accordance with DP No. 60329.

Staff feel that the proposed variance will have no impact on the adjacent residentially zoned property due to physical constraints of the adjacent property.

PUBLIC IMPLICATIONS

It is inconceivable that the property adjacent to the addition will in anyway be impacted by this request for variance as this is only a minor variance; in addition, the adjacent property is vacant and, due to proximity to a nearby swamp, is unlikely to be developed.

Adjacent property owners will have an opportunity to express concerns pursuant to the notification requirements of the *Local Government Act*.

ENVIRONMENTAL IMPLICATIONS

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates that there are no environmentally sensitive areas within the subject property nor is this property designated within the Streams, Nesting Trees, & Nanaimo River Floodplain Development Permit Area No. 5, which comes into effect for Area 'A' on December 11, 2003.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

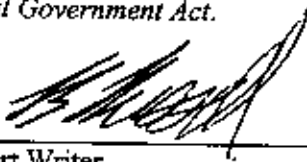
SUMMARY

This is a development permit to consider recognizing the siting of the recently constructed addition to the principal building by relaxing the other lot line setback requirements. The proposed variance to Bylaw No. 500, 1987 is outlined in Schedule No. 3 of the staff report. While it was the intention of the applicant to comply with the setback requirement as part of the initial development permit, a survey was not undertaken until after the construction was completed. It would now be extremely difficult to modify the building to comply with the setback. Despite the variation from the initial permit, as the required variance is not significant and there does not appear to be any potential impact on adjacent properties or the form and character of the development staff recommend Alternative No. 1 to approve this development permit with a variance subject to the conditions outlined in Schedule Nos. 1, 2, and 3 and the notification requirements pursuant to the *Local Government Act*.

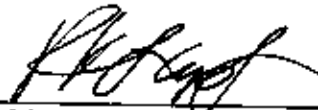
The applicant is in concurrence with the conditions outlined in the report.

RECOMMENDATION

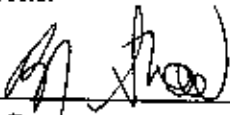
That Development Permit Application No. 60346, submitted by Friesen's Rentals and Hardware on behalf of Ming's Stores Ltd. Inc., to recognize the siting of the recently constructed addition by relaxing the minimum setback requirement from the other lot line from 5.0 metres to 4.8 metres within the Cedar Village and Cedar Commercial/Industrial Properties Development Permit Area No. 3 for Lot A Section 15 and 16 Range 8 Cranberry District Plan VIP71569 be approved subject to the conditions outlined in Schedule Nos. 1, 2, and 3 of the corresponding staff report and to the notification requirements of the *Local Government Act*.



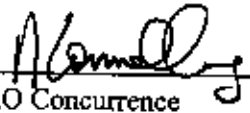
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

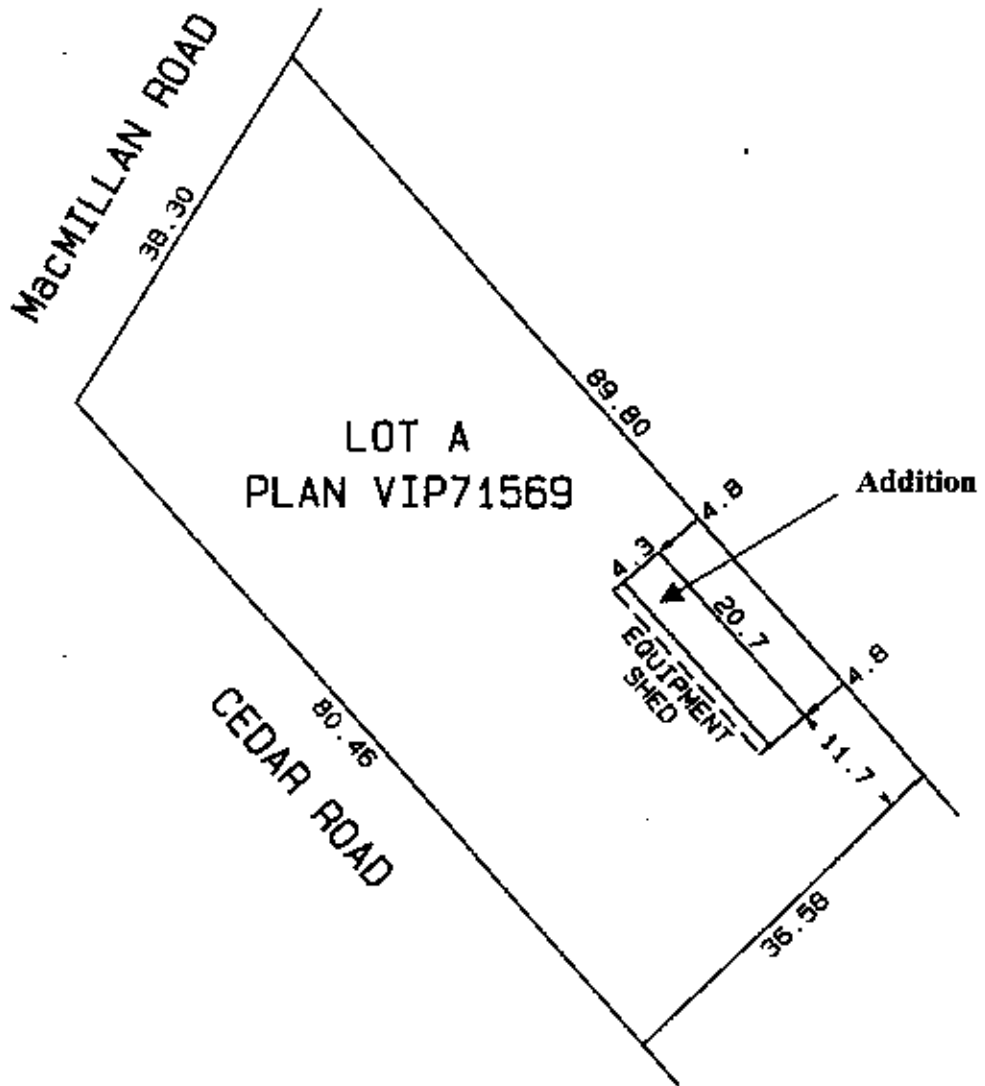
COMMENTS:

Schedule No. 1
Conditions of Development Permit Application No. 60346
1694 Cedar Road

The following conditions are to be completed as part of Development Permit No. 60329:

1. That all conditions and schedules of Development Permit No. 60329 are to be complied with except where modified by this permit.
2. That the addition to the principle building be sited according to the survey prepared by Leigh A. Millan, BCLS and dated August 15, 2003 as shown on Schedule No. 2.

Schedule No. 2
Site Plan - Development Permit Application No. 60329
(as submitted by applicant)
1694 Cedar Road

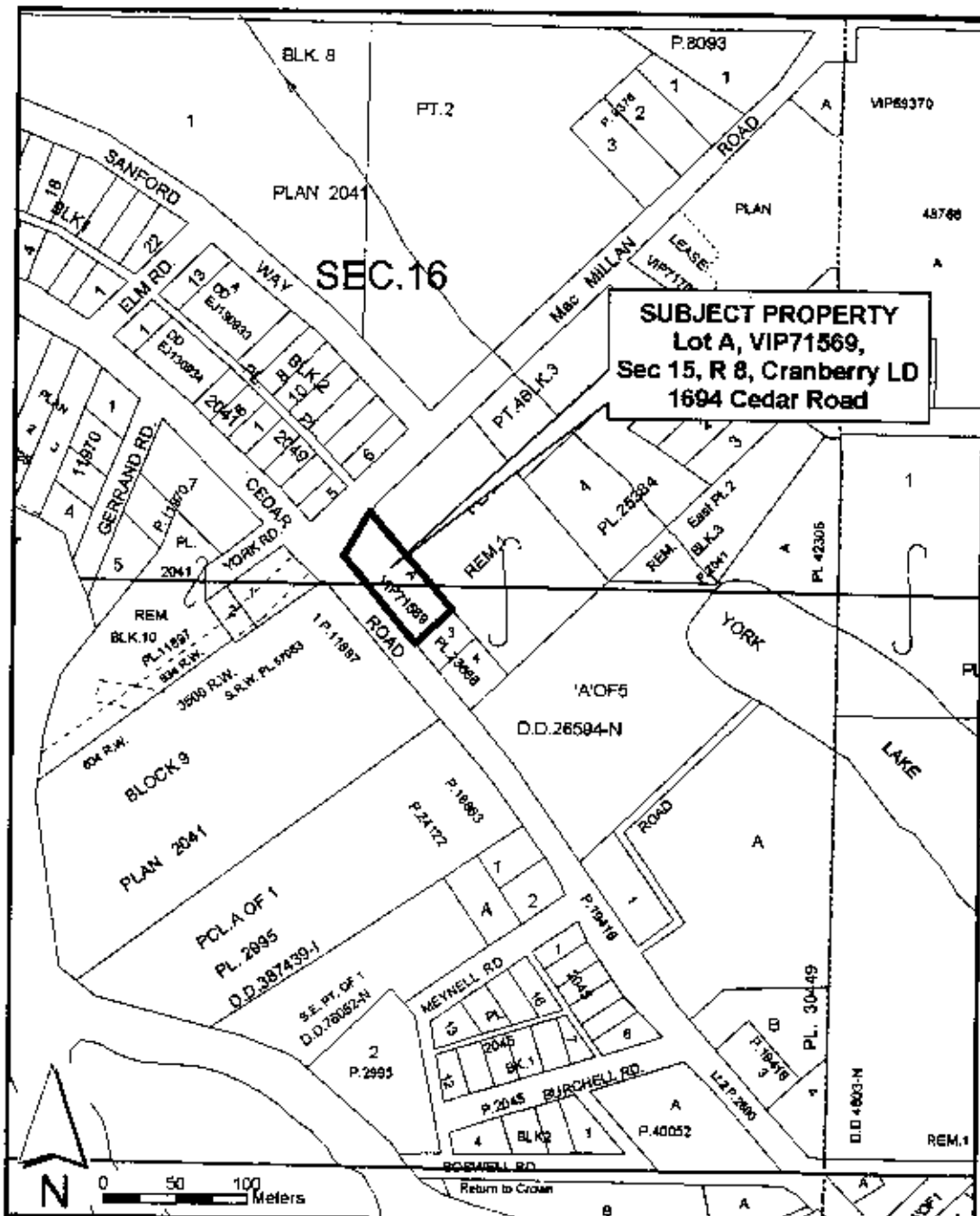


**Schedule No. 3
Requested Variance
Development Permit Application No. 60346**

The following variance is proposed:

1. By relaxing Section 3.4.12 – Minimum Setback Requirement - Other Lot Line Setback Requirement – the minimum setback requirement from the other lot line is proposed to be varied from 5.0 metres to 4.8 metres in order to legalize the siting of the addition to the principal building.

Attachment No. 1
Subject Property Map





REGIONAL DISTRICT OF NANAIMO			
SEP 22 2003			
CHAIR		GMCrS	
CAO		GMDS	
GSCms		GMES	

MEMORANDUM

TO: Pamela Shaw
Manager of Community Planning

EPA ✓	
DATE:	
FILE:	

September 19, 2003

FROM: Keeva Kehler
Planner

3060 30 60347

SUBJECT: Development Permit Application No. 60347 – Oughtred/ Sims
Electoral Area 'G' – McFeely Drive

PURPOSE

To consider an application to permit the construction of a dwelling unit and detached garage within the Environmentally Sensitive and Natural Hazard Development Permit Area pursuant to the "Regional District of Nanaimo Shaw Hill – Deep Bay Official Community Plan Bylaw No. 1007, 1996".

BACKGROUND

The subject property, legally described as Lot 3, District Lot 9, Newcastle District, Plan VIP69413, is located on McFeely Drive adjacent to the Strait of Georgia and near the Little Qualicum River Estuary in Electoral Area 'G' (see Attachment No. 1).

The subject property is zoned 'Residential 2 (RS2)' pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The minimum setback requirements for buildings and structures adjacent to the sea are 8.0 metres horizontal distance from the natural boundary. The maximum height for the dwelling unit is 8.0 metres and for accessory buildings is 6.0 metres.

As the subject property is within the RDN's Building Inspection Area, "Regional District of Nanaimo Floodplain Management Bylaw No. 843, 1991" applies. Bylaw No. 843 requires a floodplain setback of 15.0 metres from the natural boundary of the sea, except that this setback may be reduced to 8.0 metres where the sea frontage is protected from erosion by works designed by a professional engineer and maintained by the owner. It should be noted that engineered erosion works are not being proposed and thus the minimum 15.0 metre floodplain setback would be required. In addition, Bylaw No. 843 requires a flood construction elevation of 3.8 metres GSC on the subject property.

The applicant is requesting to vary the maximum dwelling unit height from 8.0 metres to 8.6 metres and has indicated that the variance is required both to meet the Flood Construction Level requirements and to maintain the proposed dwelling unit design. The lot is relatively level and is 'walk-on' waterfront property.

The Environmentally Sensitive Area Development Permit Area was established to protect the natural environment; this portion of the Development Permit Area is measured 15.0 metres from the natural boundary of the ocean. The Hazard Lands Development Permit Area was established to protect

development from hazardous conditions. The entire subject property is designated as being within the Natural Hazard Development Permit Area due to the potential flood hazard.

The subject property is bordered by residential lots to the east and west, to the north by the Strait of Georgia and to south by McFeely Drive. South of McFeely Drive is the 'Conservation 1 (ES1)' zoned Marshall-Stevenson Wildlife Sanctuary that features the Little Qualicum River Estuary.

Both Building Scheme and Geotechnical Covenants are registered on title of the subject property.

ALTERNATIVES

1. To approve the requested variances and development permit subject to the conditions outlined in Schedule Nos. 1, 2, 3, and 4.
2. To deny the requested development permit and variance.

LAND USE AND DEVELOPMENT IMPLICATIONS

Approval of the requested variance would permit the construction of a dwelling unit of 8.6 metres in height and a detached garage within the Environmentally Sensitive and Hazard Lands Development Permit Area. The applicants are not requesting any additional variances to the zoning bylaw regulations. The variance request is made due to the requirement to meet flood construction elevations on the subject property.

The plans submitted with the application indicate that there is a kitchen proposed above the detached garage. The applicants' architect has been advised that a second dwelling unit is not permitted on this property and that a separate kitchen facility above the garage would constitute a second dwelling pursuant to the definitions contained within RDN Subdivision and Land Use Bylaw No. 500, 1987. Therefore, the architect has agreed that this proposed use will be altered and the building plans will be amended to reflect the removal of the kitchen use from the detached garage.

The Building Scheme Covenant registered on the title of the subject property does not address dwelling unit height or setbacks requirements; it does however, require that a two car garage be attached or immediately adjacent to the dwelling unit. It should be noted however, that the RDN is not a signatory on this or any other building scheme and thus does not have the authority to enforce Building Scheme Covenants.

The dwelling unit is proposed to be sited over 23.7 metres from the natural boundary of the ocean; this exceeds the minimum 15.0 metres setback requirement of the Sensitive Lands Development Permit Area. By meeting or exceeding 15.0 metre setback requirements the proposed dwelling unit does not require a site-specific exemption from the Ministry of Water, Land and Air Protection provided Flood Construction Level elevation requirements are met for all habitable portions. In addition, the dwelling unit's proposed siting exceeds the 20.0 metre buffer setback recommended in the Lewkowich Geotechnical report prepared on December 18, 1996.

SITING IMPLICATIONS

Views from the existing dwellings along the ocean on McFeely Drive are not likely to be impacted by the siting of this dwelling unit or detached garage. Each property directly adjacent to this lot along McFeely has geotechnical and covenant setbacks restricting development within 20 metres of the natural boundary of the ocean. At this time, Lot 4 contains a dwelling unit but Lot 2 is unoccupied. The property's view that would be most effected by the height variance is the 'Conservation 1' zoned property across McFeely Drive. As the estuary is not developable, the issuance of a height variance should be of negligible impact on view corridors. It should also be noted that Board of Variance has issued other similar height variances within the VIP69413 subdivision and the Regional Board issued Development Permit 60308 in April 2003, which approved the construction of a dwelling unit with a 0.3 metre variance to the maximum permitted dwelling unit height, resulting in a dwelling unit height of 8.3 metres. The view corridor from the rear of three properties along Surfside Drive may be marginally impacted by the development of the dwelling, but the height variance request is minor and should not create more significant impacts than the dwelling unit would without the requested variances.

GEOTECHNICAL AND FLOOD ELEVATION IMPLICATIONS

A geotechnical report was completed by Lewkowich Geotechnical Engineering Ltd., December 18, 1996 and it states "the site is geotechnically safe and suitable for the intended use provided the recommendations of the report are followed during the design and construction of the proposed development." This report was registered on the title of the subject property at time of subdivision.

The geotechnical report concludes that "the position of the shoreline has fluctuated over the years" and therefore recommends that "a buffer to protect proposed residential structures should be provided, based on a setback of 20 metres south of a line established as the combination of the previously described historic and present natural boundaries dating back to the early 1960s." The applicants are proposing to site all development beyond the 20 metre buffer area.

A supplementary geotechnical report prepared by Davey Consulting and Engineering on August 27, 2003 was submitted with the application. The report confirms the sensitive nature of the property and states that a low-lying area consisting of unconsolidated sediments, such as this property, is subject to erosional forces of precipitation, wind and tidal activity.

The Building Inspection Department will require that the supplemental geotechnical report be registered on title as a condition of issuing the building permit.

ENVIRONMENTAL IMPLICATIONS

Given the location of the property on the foreshore and proximity to the Conservation Area, it will be required that drainage from the perimeter drains, roof leaders and other hard surfaces be directed to a rock pit and drainage from the driveway will be directed to an oil/water separator prior to being discharged. In addition, the geotechnical report dated August 27, 2003 states that "drainage from the residence and paved areas will need to be contained in order to prevent erosion of the unconsolidated sediments on the lot. Drainage leaders from the residence should be directed away from the foreshore and

towards McFeely Drive, where it should settle in a designed rock pit to infiltrate into the soil." This recommendation will be included in the Conditions of Approval (*See Schedule No. 1*).

The applicants have not indicated the location of the drainage systems on the site plan submitted with the application. Staff recommends that the Board approve the required drainage works as part of this Development Permit Application, provided the works are located away from the foreshore area towards McFeely Drive as recommended in the geotechnical report.

The property contains a vegetated area towards the foreshore, which should be maintained to reduce the potential for erosion. Existing vegetation mostly consists of aquatic grasses and low shrubs. The replanting of native vegetation shall be encouraged in this area to reduce the potential for erosion from the site.

The report states that shore line protection should be regionally assessed in conjunction with adjacent lots, as minor installations near the natural boundary or retaining walls can have a major impact on the shoreline protection potential of adjacent lots.

PUBLIC CONSULTATION IMPLICATIONS

As part of the required public notification process pursuant to the *Local Government Act*, adjacent and nearby residents and property owners will have an opportunity to comment on the proposal prior to the Board's consideration of the permit. As part of this notification process all 8 lots within the subdivision, will be notified; this will ensure that they have an opportunity to comment on the proposed variance.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY/CONCLUSIONS

This is an application to permit the construction of a dwelling unit and detached garage within the Environmentally Sensitive and Hazard Lands Development Permit Area. In addition, the applicants are requesting to vary Section 3.4.62 of 'Regional District of Nanaimo Subdivision and Land Use Bylaw No. 500, 1987' Maximum Dwelling unit height from 8.0 metres to 8.6 metres.

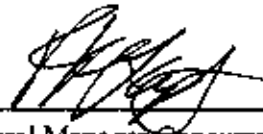
From staff's assessment of this application, it is clear that previous erosion of the parcel and the restriction on the building site related to the flood protection setback and elevation requirements has resulted in constraints to the development of the property. In addition, flood plain requirements would negatively impact the architectural style of the dwelling unit should no variance to Bylaw No. 500 be considered. The requested variances are directly related to the site constraints and the flood plain requirements for the subject property. Therefore, staff would suggest that the application has technical merit to proceed, and the application is recommended to be approved, subject to consultation resulting from the public notification process and subject to the Conditions of Approval.

RECOMMENDATION

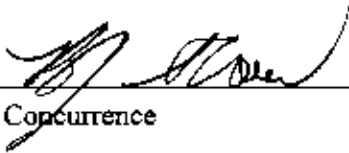
That Development Permit Application No. 60347, submitted by Helen Sims of Fern Road Consulting Ltd. on behalf of Robert and Adele Oughtred to permit the construction of a dwelling unit and detached garage within the 'Environmentally Sensitive Areas and Hazard Lands' Development Permit Areas and to vary the maximum dwelling unit height from 8.0 metres to 8.6 metres on the subject property legally described as Lot 3, District Lot 9, Newcastle District, Plan VIP69413 be approved, subject to the requirements outlined in Schedules No. 1, 2, 3, and 4 and subject to notification requirements pursuant to the *Local Government Act*.



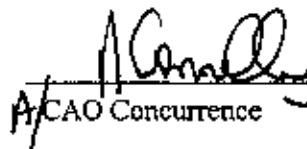
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

devsvs/reports/2002/tpser 3060 30 60347 Oughtred

**Schedule No. 1
Conditions of Approval
Development Permit No. 60347**

Development of Site

- a) Subject property to be developed in accordance with Schedule Nos. 1, 2, 3, & 4.
- b) All uses and construction of buildings and structures to be undertaken must be consistent with Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987.
- c) Confirmation of connection to the Community Sewer System must be submitted to the RDN prior to the issuance of a Building Permit.

Geotechnical Report

- a) Recommendations established by the Geotechnical Report prepared by Lewkowich Geotechnical Engineering Ltd, date stamped December 18, 1996 and registered as a Section 219 Covenant on the subject property shall be undertaken.
- b) The supplementary Geotechnical Report prepared by Davey Consulting and Engineering Ltd. will be required to be registered on the Certificate of Title as a condition of issuance of the building permit. This will ensure that the recommendations contained within this report will be undertaken.

Development Permit Protection Measures

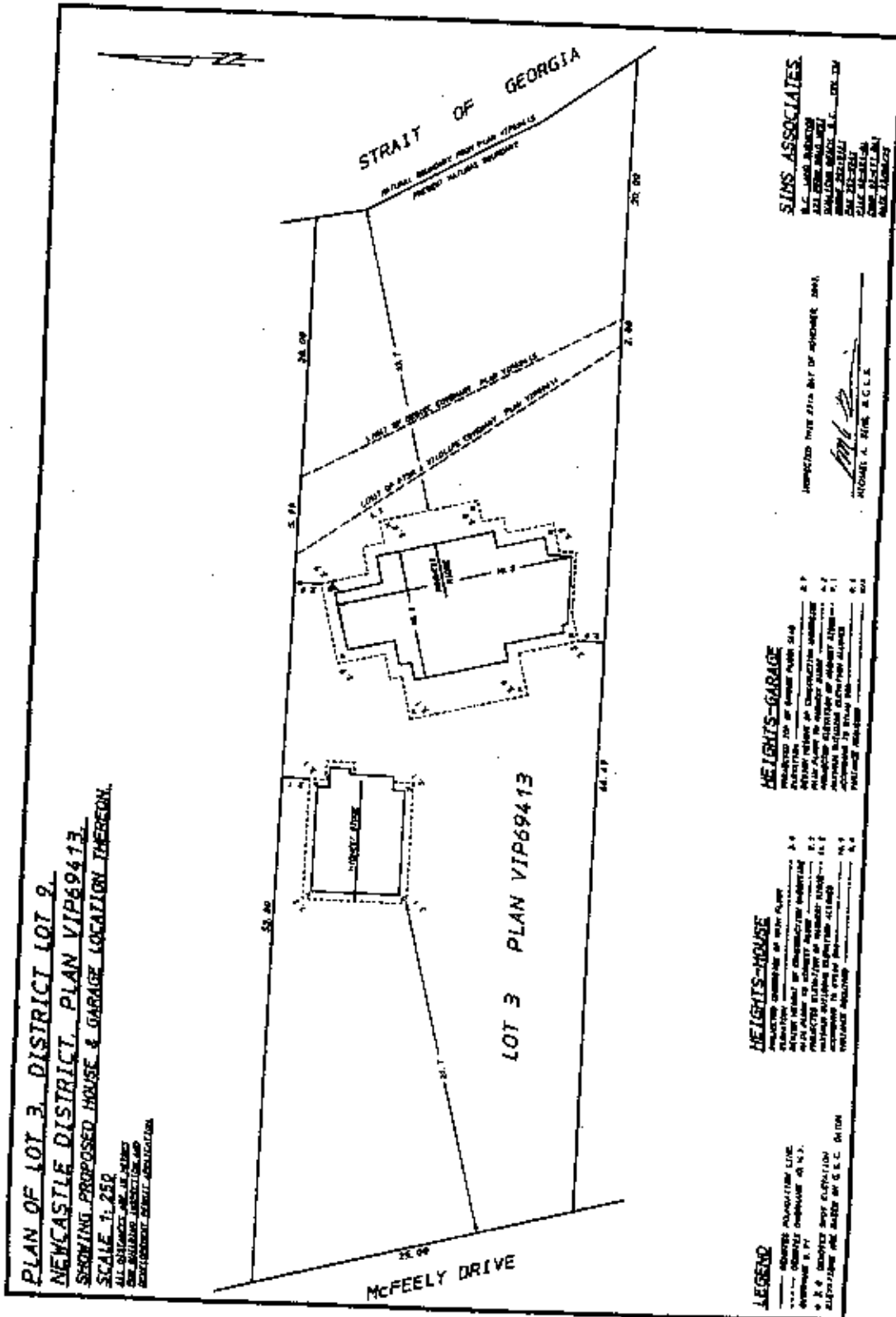
- a) No habitation, storage or building machinery shall be located below the flood elevation of 1.5 metres above the natural boundary.
- b) Sediment and erosion control measures must be utilized to control sediment during construction and land clearing works and to stabilize the site after construction is complete. These measures must include:
 - Tarps, sand bags, poly plastic sheeting and/or filter fabric are required to be onsite.
 - Direct run off flows away from Strait of Georgia using swales or low berms.
 - Exposed soils must be seeded immediately after disturbance. Soil surfaces to be treated should be roughened.
 - Cover temporary fills or soil stockpiles with polyethylene or tarps.
- c) All surface drainage collected from the perimeter drains, roof leaders and other hard surfaces shall be directed to a catch basin and drainage from the driveway will be directed to an oil/water separator prior to being discharged. Drainage systems will be located towards McFeely Drive and away from the foreshore area.
- d) Vegetation within the Environmentally Sensitive Areas Development Permit Area (i.e. within 15.0 metres of the natural boundary) shall be retained and replanting of native species is encouraged to reduce the potential for erosion due to wind, tidal and precipitation activities.
- e) The applicants will not install a retaining wall near the natural boundary

Schedule No. 2
Requested Variances
Development Permit No. 60347

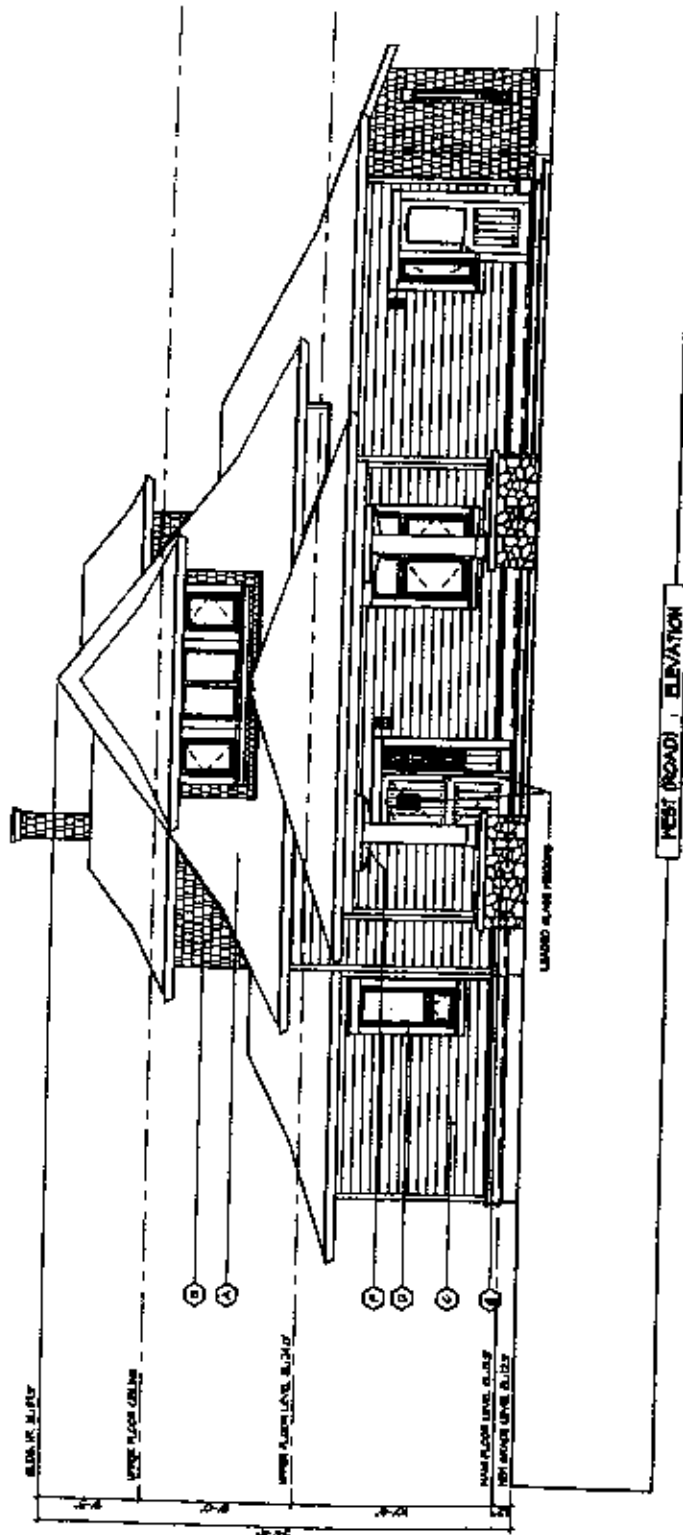
With respect to the lands, the following variances 'Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987' are proposed:

1. Section 3.4.62 Maximum Number and Size of Buildings and Structures – Dwelling Unit Height varied from 8.0 metres to 8.6 metres.

Schedule No. 3
 Site Plan (As submitted by Applicants)
 Development Permit No. 60347



Schedule No. 4
Profile Plan (As submitted by Applicants)
Development Permit No. 60347

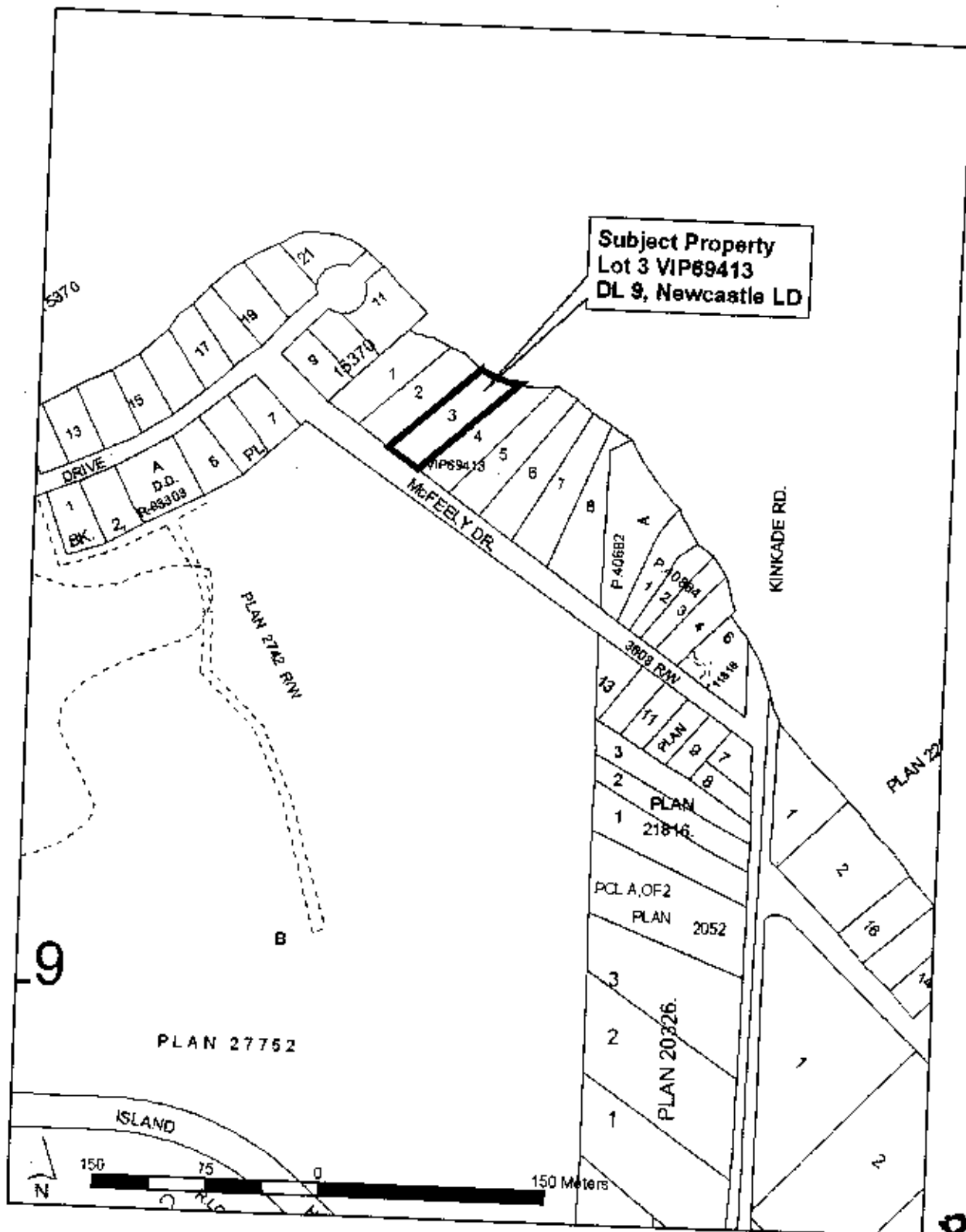


Requested variance to maximum dwelling unit height from 8.0 metres to 8.6 metres

ERIC PATTISON ARCHITECT
611 Bent Court
New Westminster, B.C.
V3M 1V3

OUGHTRED HOUSE

Attachment No. 1
Subject Property
Development Permit No. 60347





REGIONAL DISTRICT OF NANAIMO			
SEP 19 2003			
CHAIR		GMCrS	
CAO		GMDS	
GMCms		GMES	
		EAP	<input checked="" type="checkbox"/>

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: September 19, 2003

FROM: Deborah Jensen
Planner

FILE: 3060 30 60348

SUBJECT: Development Permit Application No. 60348 - Symington
Electoral Area 'G' - 857 Flamingo Drive

PURPOSE

To consider an application for a Development Permit pursuant to the "Regional District of Nanaimo Shaw Hill - Deep Bay Official Community Plan Bylaw No. 1007, 1996" Environmentally Sensitive Areas and Hazard Lands Development Permit Areas to facilitate the removal of an existing dwelling unit and construction of a new dwelling unit. The application includes a request to vary the maximum permitted height for the dwelling unit.

BACKGROUND

This is an application to facilitate the construction of a single dwelling unit on a residential property located near Qualicum Beach (*see Attachment No. 1*). The subject property, legally described as Lot 15, District Lot 10, Newcastle District, Plan 10115, is a 0.12 hectare parcel located along Flamingo Drive. It is bordered by residential properties, with the coastline located to the north.

The subject property is zoned Residential 2 (RS2) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The minimum setback requirements for buildings and structures in this zone are: 8.0 metres from the front lot line; 2.0 metres from the rear lot line and interior side lot lines; 5.0 metres from other lot lines; and 8.0 metres horizontal distance from the natural boundary of the sea. The maximum height for a dwelling unit within this zone is 8.0 metres. The property is also located within a building inspection area; therefore, the "Floodplain Management Bylaw" (RDN Bylaw No. 843) applies to this property. In this instance, the floodplain setback is set at 15.0 metres from the natural boundary of the sea, and the flood level is set at 3.8 metres GSC. The proposed construction has been designed to meet flood levels, thereby requiring a height variance from 8.0 metres to 9.0 metres. However, the structure is proposed to be located at 8.0 metres from the natural boundary of the sea, therefore the applicant has made application to the Ministry of Water, Land and Air Protection for a site specific exemption.

The siting of the existing 2-bedroom dwelling unit is shown on *Schedule No. 2*. Due to substantive repair and maintenance costs, the applicants are proposing to remove this dwelling unit and replace it with a larger 2-bedroom unit. The siting of the new dwelling unit, as shown on *Schedule No. 3*, is intended to minimize disturbance of the site by its location within the already developed area, and by minimizing the need to remove existing, mature vegetation. A septic field is already located immediately adjacent to the existing residence that is capable of supporting the new dwelling unit.

Development Permit Requirements

The building envelope is located within the Hazard Lands Development Permit Area, which is intended to address areas such as unstable slopes along the coastal shore area and areas subject to flood hazard, and the Environmentally Sensitive Lands Development Permit Area, which is intended to protect areas that are considered at risk or more easily damaged by development activities, particularly those areas along the foreshore. The development permit areas cover those lands within 15 metres of the natural boundary of the sea and establishes guidelines in recognition of the flood hazard and for the protection of the natural environment. Given that the property is located in a hazardous lands DPA, Board approval is required to permit the proposed development.

ALTERNATIVES

1. To approve Development Permit No. 60348 subject to the conditions outlined in Schedules No. 1 and 3.
2. To deny the requested permit.

LAND USE AND DEVELOPMENT IMPLICATIONS

Approval of the requested permit would allow the demolition of the existing dwelling unit and subsequent construction of a larger dwelling unit, as shown on Schedules No. 2, 3 and 4, *as attached*. As the parcel is located within the RDN Building Inspection area, the "Regional District of Nanaimo Floodplain Management Bylaw No. 843, 1992" applies and requires the dwelling unit be raised to 3.8 metres GSC, and that the area below shall not be habitable. As a result, it is difficult to accommodate the proposed dwelling unit without a variance to the height of the structure. Additionally, given that the proposed dwelling unit will be located 8.0 metres from the natural boundary of the sea, the applicant must provide "engineered works" as required under Bylaw No. 843, or obtain a site specific exemption from the Ministry of Water, Land and Air Protection. An application has been made for this exemption.

Historically, the construction of residences along Flamingo Drive has occurred within close proximity to the natural boundary of the sea. The proposed dwelling unit would be sited in the same vicinity as the existing residence, albeit with a larger footprint than the existing building. The proposed dwelling unit, including the deck structure, would be slightly set back from existing construction, thus minimizing the impact on viewscape of adjacent residences. A recently approved subdivision located opposite the subject property on Flamingo Drive includes conditions pertaining to height of structures and retention of vegetation on the newly created parcels. Due to these conditions, any impact on that development will also be minimal.

ENVIRONMENTAL IMPLICATIONS

The subject property is relatively flat, with a slight depression near the existing residence. The waterfront area consists of a clearing adjacent to a well-vegetated native grass area leading to a gravel beach. While the central portion of the property has been grass seeded for lawn, portions of the parcel contain native mature vegetation and understory, including a number of large mature trees. The applicants have indicated they are not intending to remove any of this vegetation, thus retaining natural vegetation and providing a buffer between the proposed development and adjacent lands.

A geotechnical report prepared by Lewkowich Geotechnical Engineering Ltd., dated March 25, 2003, indicates the site is suitable for construction of a wood frame residential building, but recommends that the area immediately behind the natural boundary be armored with boulders to minimize the potential for damage from erosion. The report also recommends that steps be taken to minimize the risk of environmental damage due to surface runoff by implementation of an oil/water separator or designing for "sheet flow" drainage from the driveway onto adjoining landscape areas.

The existing septic field is intended to service the proposed dwelling unit. Given its location along the northwest lot line, any possible development of the site must occur toward the natural boundary, or toward Flamingo Drive where the bulk of the natural vegetation is located. Given the environmentally sensitive nature of the site, staff suggest the optimum site for construction of the dwelling unit and driveway extension is within that area already developed, thereby minimizing the need for removal of additional vegetation.

VOTING

Electoral Area Directors - one vote, except Electoral Area 'B'.

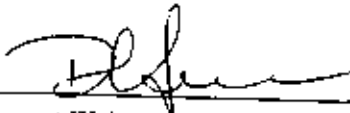
SUMMARY/CONCLUSIONS

This is an application for a development permit within the Shaw Hill - Deep Bay Official Community Plan, Bylaw No. 1007, 1996 Environmentally Sensitive Areas and Hazard Lands Development Permit Areas. The application includes a request to vary the maximum permitted dwelling unit height from 8.0 metres to 9.0 metres, and to allow for placement of the dwelling unit at 8.0 metres horizontal distance from the natural boundary of the sea, in keeping with the alignment of adjacent dwelling units and minimized disturbance on the site. As the entire property is located within the Hazard Lands Development Permit Area, there is no opportunity to reduce encroachment into the Permit Area. Bylaw No. 843 floodplain requirements further necessitate the need for a height variance to accommodate the proposed construction.

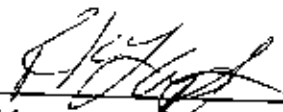
Therefore, based on site constraints and features such as location of the septic field and mature vegetation, staff recommends the requested Development Permit be approved subject to the conditions outlined in Schedules No. 1, 2 and 3 of this report and subject to notification requirements pursuant to the *Local Government Act*.

RECOMMENDATION

That Development Permit Application No. 60348, submitted by Fern Road Consulting, Agent, on behalf of Wilfred Symington and Alan Symington, to facilitate the removal of an existing dwelling unit and construction of a new dwelling unit, and to vary the maximum dwelling unit height within the Residential 2 (RS2) zone from 8.0 metres to 9.0 metres for the property legally described as Lot 15, District Lot 10, Newcastle District, Plan 10115, be approved subject to the conditions outlined in Schedule No. 1 and subject to the notification requirements pursuant to the *Local Government Act*.



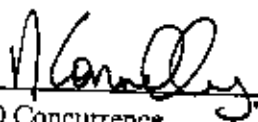
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

Schedule No. 1
Conditions of Approval
Development Permit Application No. 60348

Construction

1. The subject property is to be developed in accordance with Schedules No. 1, 2 and 3 of this staff report.
2. Registration of a Section 219 covenant pertaining to the geotechnical report, as prepared by Lewkowich Geotechnical Engineering Ltd., dated March 25, 2003, and including any additional information outlining mitigation strategies with respect to the natural hazard and vegetation protection and retention measures as required by the RDN Building Inspection Department prior to issuance of an occupancy permit. The covenant shall also stipulate that the Regional District shall be saved harmless from any action that may result from erosion, land slip, flooding or any other occurrence that might result on the subject lands.
3. An approved site specific exemption from the Ministry of Water, Land and Air Protection, or, alternatively, placement of a line of large boulders embedded into the ground behind the natural boundary, as sited and approved by a professional engineer, to minimize the potential for damage from erosion. Placement of such armoring not to damage natural shoreline conditions, including existing vegetation.
4. Installation of an oil/water separator for surface runoff, or, alternatively, the driveway engineered for "sheet-flow" drainage onto adjacent landscaped areas and directed away from the natural boundary.
5. Any excavated materials occurring as a result of building demolition or construction, or from placement of armoring, must be placed upland such that there is no potential for introduction onto the foreshore.
6. All machinery to operate from the upland portion of the subject property only.
7. Confirmation from the Ministry of Health that the existing septic field is in good working order and capable of maintaining the operations of the proposed dwelling unit.

Vegetation

8. Replant vegetation within the disturbed area. Replanting to use trees, shrubs and ground cover native to the area; all replanting to maintain and enhance the natural characteristics of the area.
9. No removal of mature or natural vegetation shall occur on the subject property.

Sediment and Erosion Control

10. Sediment and erosion control measures must be utilized to control sediment during demolition and construction in order to stabilize the site after construction is complete. These measures must include:
 - a) Exposed soils must be seeded as soon as possible to reduce erosion during rain events;
 - b) Tarps, sand bags, poly plastic sheeting and/or filter fabric are required to be onsite during the works; and
 - c) Cover temporary fill or soil stockpiles with polyethylene or tarps.

Variance

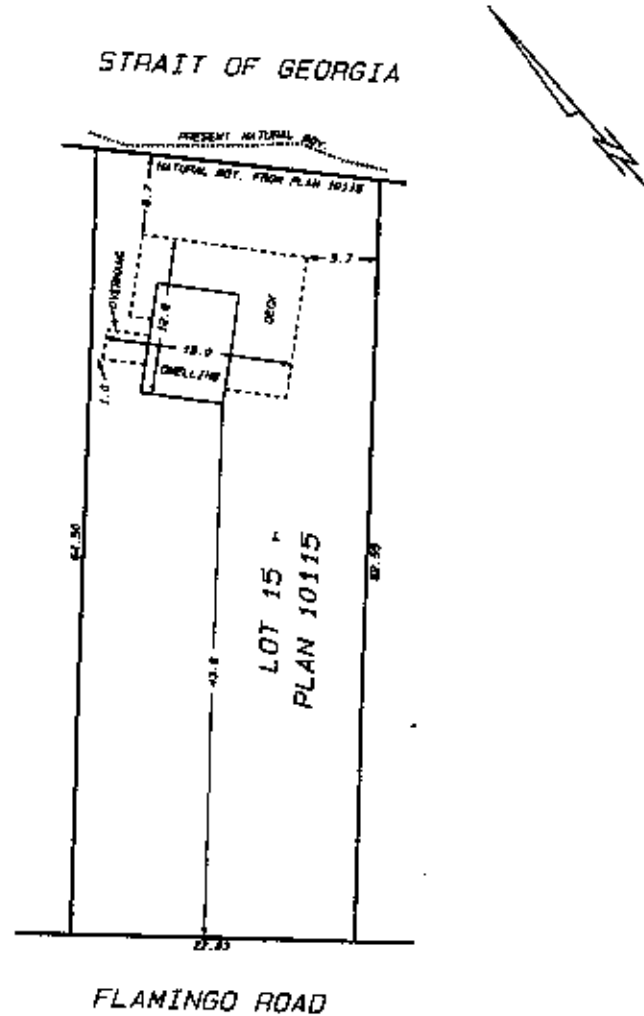
The following variance is approved based upon completion of the above-noted conditions:

1. Relaxation of the maximum dwelling unit height from 8.0 metres to 9.0 metres to facilitate the construction of a dwelling unit.

Schedule No. 2
 Site Plan - Existing Dwelling Unit
 Development Permit Application No. 60348

B.C. LAND SURVEYOR'S CERTIFICATE OF LOCATION ON
LOT 15, PLAN 10115, DISTRICT LOT 10,
NEWCASTLE DISTRICT.

SCALE 1:400 ALL DISTANCES ARE IN METRES.
 CIVIC ADDRESS: 857 FLAMINGO DRIVE, QUALICUM BEACH B.C.
 MORTGAGOR: SYMINGTON



NOTE
 THIS LOT SUBJECT TO C.T.O. CHARGE NUMBER H0200.

This Survey is prepared for the above named Mortgagee and their Lender and purports to show only the improvements shown on the above described parcel and their relative location thereon. This Plan provides no warranty or representation whatsoever with respect to any other buildings, utility, retaining wall, parking facility, fence, underground, aboveground, or overhead utility or any other improvements and their relative location in any internal or external boundaries of the above described parcel and is not to be used to re-establish property lines.

This Survey is not valid unless
 originally signed and sealed.
 This Survey is protected by copyright
 and may not be reproduced.
 Inspected this 26th day of February, 2003.

Michael J. Sims, B.C.L.S.

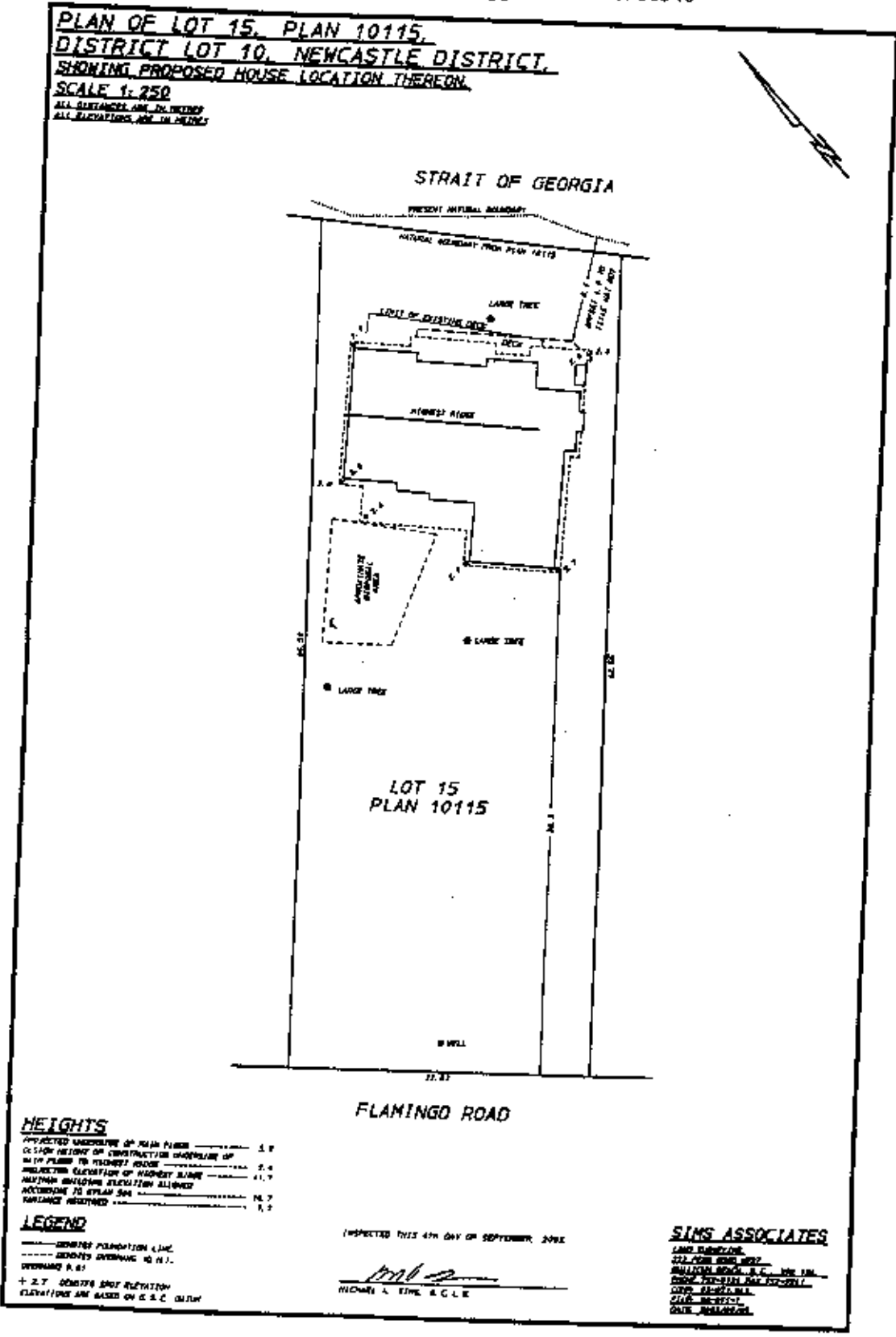
SIMS ASSOCIATES @
 LAND SURVEYING LTD.
 252 FERN ROAD WEST,
 QUALICUM BEACH, B.C. V0K 1S4
 PHONE: 789-8921 FAX: 782-9041
 OUR FILE: 03-022-1

Schedule No. 3
 Site Plan - Proposed Dwelling Unit
 Development Permit Application No. 60348

**PLAN OF LOT 15, PLAN 10115,
 DISTRICT LOT 10, NEWCASTLE DISTRICT,
 SHOWING PROPOSED HOUSE LOCATION THEREON.**

SCALE 1:250

ALL DISTANCES ARE IN METERS
 ALL ELEVATIONS ARE IN METERS



HEIGHTS

PROJECTED MAXIMUM OF MAIN FLOOR	3.7
EXISTING HEIGHT OF CONSTRUCTION UNDERLINE OF MAIN FLOOR TO HIGHEST ROOF	2.4
PROJECTED ELEVATION OF HIGHEST ROOF	41.7
MAXIMUM BUILDING ELEVATION ALLOWED ACCORDING TO STRAIN 504	46.7
HEIGHTS PERMITTED	3.7

LEGEND

- CENTER PLANNING LINE
- EXISTING OVERHANG (M.H.)
- OVERHANG (M.H.)
- + 2.7 CENTER POINT ELEVATION ELEVATIONS ARE BASED ON C.C.C. DATUM

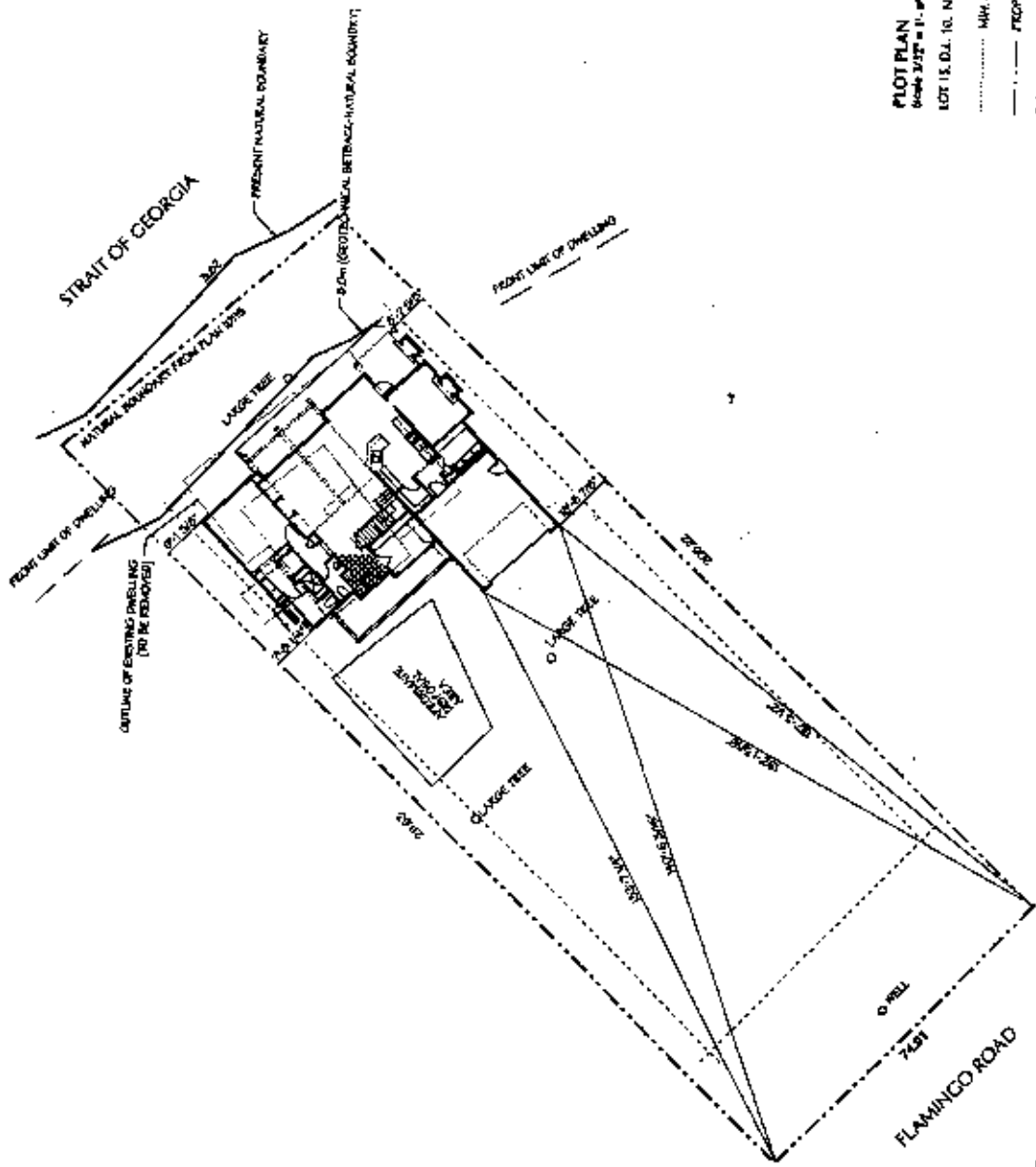
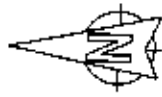
INSPECTED THIS 4TH DAY OF SEPTEMBER, 2003

Michael A. Tine
 MICHAEL A. TINE, R.C.L.E.

SIMS ASSOCIATES

LAND SURVEYOR
 272 FINE ROAD WEST
 SULLYVILLE, MICHIGAN 49783
 PHONE 269-331-8444
 FAX 269-331-8444
 WWW.SIMSASSOCIATES.COM

Schedule No. 4
Proposed Dwelling Unit Profile
(Page 1 of 2)
Development Permit Application No. 60348

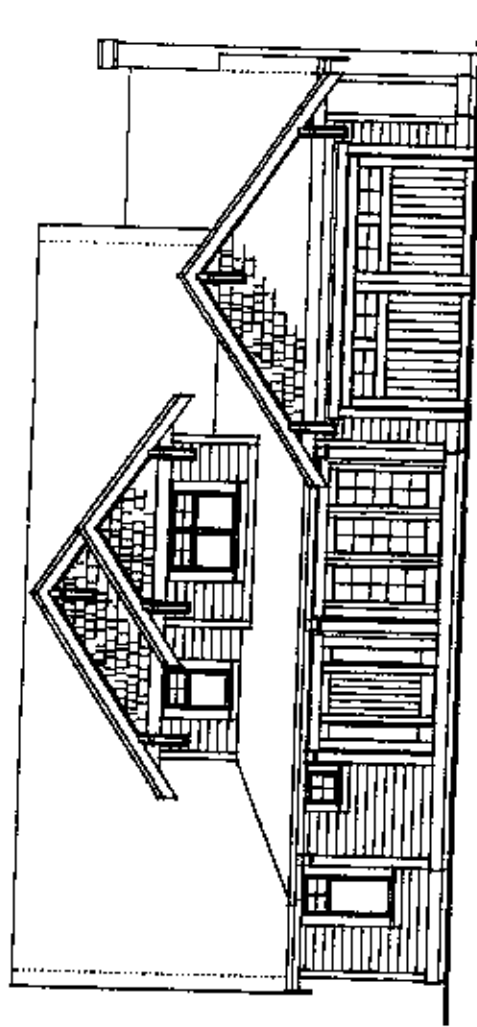


PLOT PLAN
 (Scale 3/16" = 1'-0")
 LOT 13, D.J. 10, NEWCASTLE DISTRICT, PLAN 10119

..... MIN. REQUIRED BUILDING SETBACKS
 - - - - - PROPERTY LINE

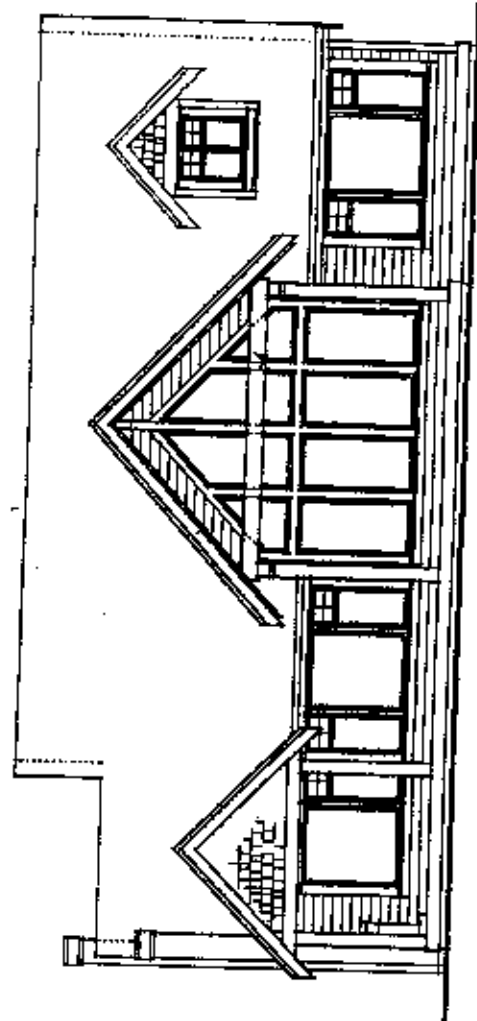
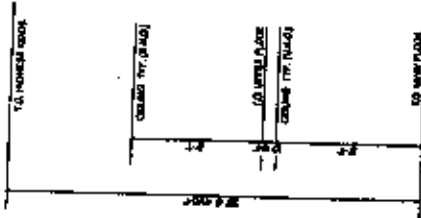
SITE DIMENSIONS AND DETAILS TO BE CONFIRMED BY CERTIFIED B.C. LAND SURVEYOR UNLESS OTHERWISE APPROVED BY LOCAL AUTHORITIES

Schedule No. 4
Proposed Dwelling Unit Profile
(Page 2 of 2)
Development Permit Application No. 60348



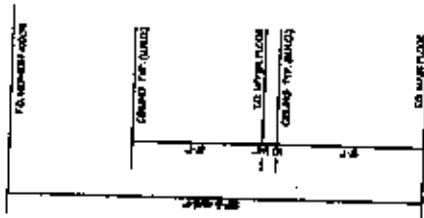
South Elevation (front)

Scale: 1/8" = 1'-0"



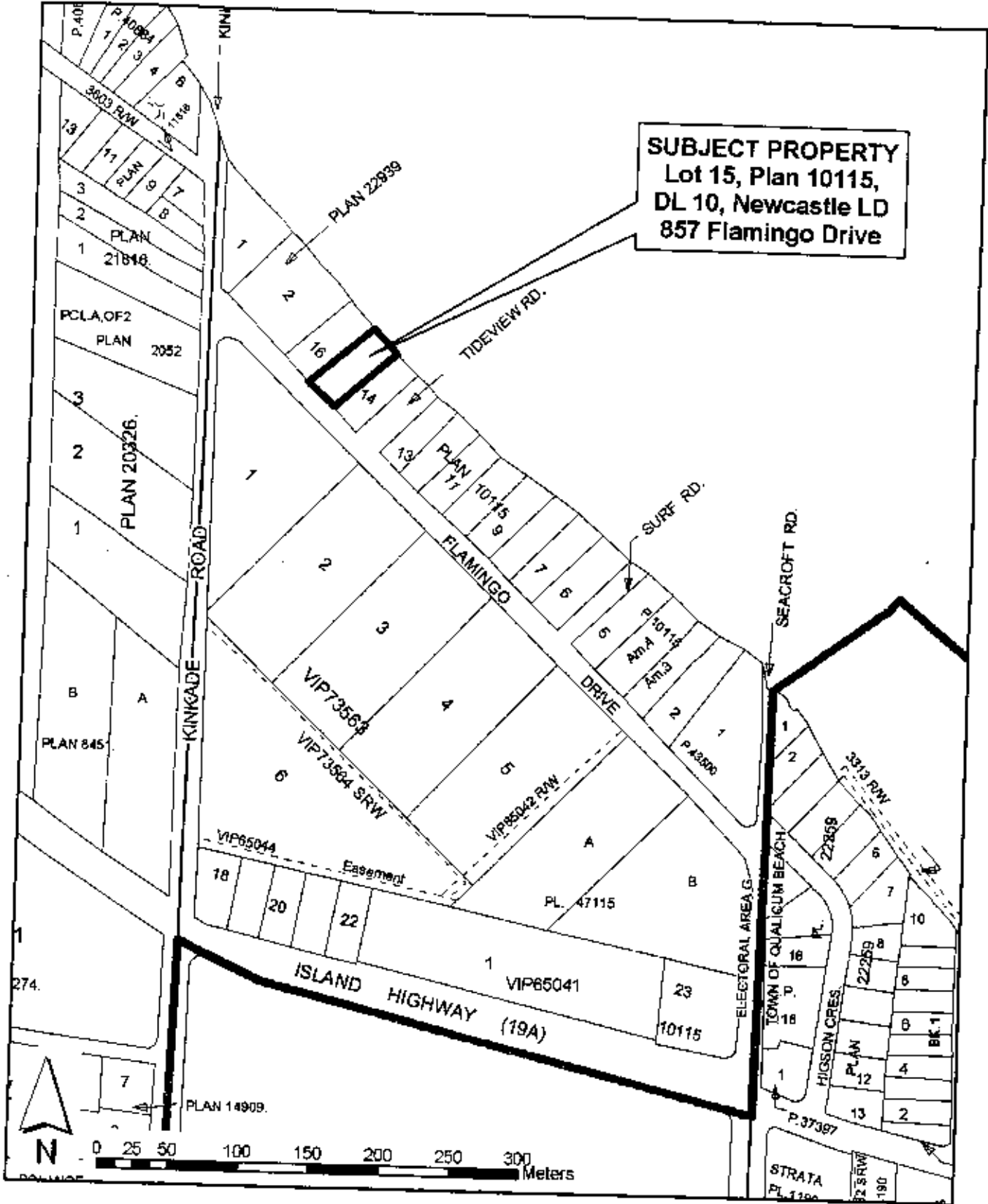
North Elevation (rear)

Scale: 1/8" = 1'-0"

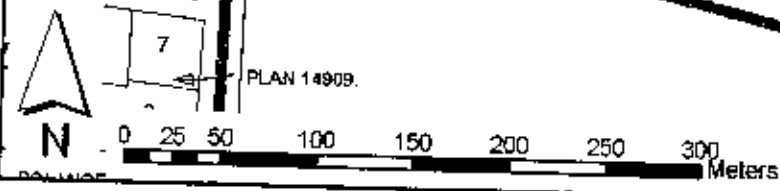


AGE
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Attachment No. 1
Subject Property Map



SUBJECT PROPERTY
Lot 15, Plan 10115,
DL 10, Newcastle LD
857 Flamingo Drive





REGIONAL DISTRICT OF NANAIMO			
SEP 22 2003			
CHAIR		GMCrS	
CAO		GMDS	
GMCms		GMES	
			ERP ✓
		DATE:	September 19, 2003

MEMORANDUM

TO: Pamela Shaw
Manager of Community Planning

DATE: September 19, 2003

FROM: Susan Cormie
Senior Planner

FILE: 3320 30 25039 & 3090 30 90317

SUBJECT: Development Variance Permit Application No. 90317 & Request for Relaxation of the Minimum 10% Frontage Requirement
Applicant: RK Brown & Associates, on behalf of Wayne Roine
Electoral Area 'A' - Farrar, Yellow Point, and McQuarrie Roads

PURPOSE

To consider a development variance permit application to relax the minimum front lot line setback requirement to accommodate the siting of an existing dwelling unit and to consider a request to relax the minimum 10% perimeter frontage requirement in conjunction with a proposed four-lot subdivision proposal.

BACKGROUND

The applicant's agent has applied for a development variance permit to request the relaxation of the minimum setback requirement from a proposed lot line adjacent to Farrar Road to accommodate the siting of an existing dwelling unit. The applicant's agent has also requested that the minimum 10% perimeter frontage requirement be relaxed for 3 of the proposed parcels as part of a 4-lot subdivision proposal for the property legally described as The East 20 Chains of Section 5, Range 5, Cedar District, Except Parcel C (DD 2340N) and Except That Part in Plan 8608, and located adjacent to Farrar, Yellow Point, and McQuarrie Roads within the Electoral Area 'A' (see Attachment No. 1 for location).

The subject property is currently zoned Rural 4 (RU4) and is within Subdivision District 'D' pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The applicant is proposing to subdivide the parent parcel into 4 lots, which will be greater than the 2.0 ha minimum parcel size, therefore meeting the minimum parcel size requirement (see Attachment No. 2 for proposed subdivision). The parcels are proposed to be served by individual private septic disposal systems and private water wells.

Watercourses within or adjacent to the subject property include a pond crossing the northwest side of the property (within proposed Lots 2 and 3); a marsh area at the end of Farrar Road (within proposed Lot 1), a watercourse flowing into the pond (within proposed Lot 2); and a second pond located along the panhandle portion of proposed Lot 4 (between proposed Lot 4 and the neighbouring property to the east).

Minimum Setback Requirements

A requirement of subdivision approval is that all existing buildings must meet current minimum setback requirements from all proposed lot lines. In this case, an existing dwelling unit is proposed to be located 5.3 metres from a proposed new lot line adjacent to Farrar Road, which is proposed to be created at time of subdivision. As this building will not meet the required minimum setbacks of 8.0 metres, a variance to

the Bylaw No. 500 provision is required. Therefore, the applicant has applied for a development variance permit requesting to vary this minimum setback requirement.

Proposed Minimum 10% Frontage Relaxation Request

Proposed Lots 2, 3, and 4, as shown on the plan of subdivision as submitted by the applicant, do not meet the minimum 10% perimeter frontage requirement pursuant to section 944 of the *Local Government Act*. The requested frontages on these proposed parcels are as follows:

<i>Proposed Lot No.</i>	<i>Required Frontage</i>	<i>Proposed Frontage</i>	<i>% of Perimeter</i>
2	91.3 m	12.0 m	1.3 %
3	67.4 m	32.0 m	4.8%
4	82.2 m	27.2 m	3.3 %

Therefore, as these proposed lots do not meet the minimum 10% parcel frontage requirement pursuant to section 944 of the *Local Government Act*, approval of the Regional Board of Directors is required.

ALTERNATIVES

1. To approve the request for the relaxation of the minimum 10% frontage requirement for proposed Lots 2, 3, and 4 and approve the development variance permit application as submitted, subject to notification procedure.
2. To deny relaxation of the minimum 10% frontage requirement and the development variance permit application.

DEVELOPMENT IMPLICATIONS

Ministry of Transportation

Due to the location of the pond (crossing proposed Lots 2 and 3), the Ministry of Transportation's Approving Authority is not requiring Farrar Road to be dedicated through to McQuarrie Road. As a result of this decision, the minimum 10% required frontage is not possible for proposed Lots 2 and 3 (Lot 2 is proposed to be served by a panhandle via Farrar Road while proposed Lot 3 is to be served by a hammerhead road configuration). With respect to Lot 4, the configuration of this proposed parcel is restricted by the existing subdivision pattern, which provides a panhandle as the only access available to this proposed parcel.

Intended Uses

With respect to intended uses on the site, a maximum of two dwelling units are permitted pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The applicant's geotechnical engineer has indicated that dwelling units can be supported on these proposed parcels.

In addition, to dwelling units as a permitted use, the Rural 4 zone supports the placement of agricultural buildings for the purposes of housing livestock or storing manure. Such buildings require a minimum setback of 30.0 metres from all lot lines and watercourses. Building envelopes on proposed Lot 2 are limited and there is not sufficient area to support agricultural buildings housing livestock or storing manure. Therefore, not all intended uses of the Rural 4 zone can be supported. As a result, staff suggests a covenant be placed on title restricting the placement of agricultural buildings that are housing livestock or storing manure unless the setbacks pursuant to Bylaw No. 500, 1987 can be met or a variance is approved by the Regional Board. This will put perspective purchasers on notice as to the limitations in

terms of intended use on this proposed lot. It is noted that the applicant's agent has indicated the applicant is in concurrence with the registration of this covenant on proposed Lot 2.

Geotechnical / Drainage

The applicant's agent has submitted a geotechnical review with respect to the management of surface water, which recommends preferred methods for handling perimeter drainage. It is staff's understanding that this covenant is required to be registered by the Approving Authority as part of the subdivision approval process. It is also noted that, as determined by the Chief Building Inspector, a further geotechnical report concerning placement of buildings may be required at building permit time.

OFFICIAL COMMUNITY PLAN / ENVIRONMENTAL IMPLICATIONS

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates the presence of an Unknown Fish Habitat (pond), its corresponding Fisheries Planning Boundary, and a Wetland Sensitive Ecosystem on the subject property. The Electoral Area 'A' Official Community Plan Bylaw No. 1240, 1999 (OCP) confirms, by ground survey, the presence of this pond, as well as 2 small streams with the wetland area as a seasonally flooded agricultural field. In addition, the OCP confirms the presence of a second pond located along the property line running perpendicular to Yellow Point Road. As a result of these environmentally sensitive areas, the OCP designates portions of the subject property within the Streams, Nest Trees, and Floodplain Development Permit Area No. 5. However, the requirements of this development permit area do not come into effect until December 11, 2003 and as this would become an in-stream application under the provisions of the *Local Government Act*, the applicant would have an additional 12 months to complete the subdivision. Therefore, this application is not subject to a development permit if the subdivision is approved by the Regional Approving Officer prior to December 11, 2004.

Although the development permit area is not yet in place, the applicant's agent has indicated that the applicant is in concurrence to provide protective covenants restricting the removal of vegetation and the placement of buildings or structures within the 15.0-metre areas for the ponds (as measured from the natural boundary), the marsh area, and the stream (as measured 15.0 metres from the top of the bank) which is in keeping with the development permit guidelines. As portions of the pond front are not vegetated, the covenant will include the enhancement and planting of native vegetation within the covenant area. It is noted that these covenants will allow a portion of panhandles to be used as driveway accesses for Lots 2 (marsh area) and 4 (adjacent pond). The applicant's agent has received a section 9 approval for construction of access crossings from Land and Water BC.

With respect to the seasonally flooded agricultural field, this area is not within the future development permit area and the applicant's agent has indicated that it has been used as an agricultural field. It is noted that that the *Farm Protection (Right to Farm) Act* would still have precedence over any environmental covenants.

While the Ministry of Land, Water and Air Protection has not recommended that the Approving Authority require floodplain elevation covenants as a condition of subdivision, it is noted that the requirements of the RDN Floodplain Management Bylaw are applicable at the time of building permit application. The applicant's agent is aware of this requirement.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

PAGE

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SUMMARY

This is a request to relax the minimum 10% perimeter frontage requirement for 3 proposed parcels as part of a 4-lot subdivision proposal. This is also a request for a development variance permit to vary the minimum setback requirement (adjacent to Farrar Road) to accommodate the siting of an existing dwelling unit from a lot line proposed to be created when the subdivision is registered. The parent parcel contains a number of environmentally sensitive features, but is exempt from the requirements of the corresponding development permit requirements of the Electoral Area 'A' OCP at this time. If the subdivision is not finalized by December 11, 2004 (time period includes the in-stream status under the provisions of the *Local Government Act*), the application will then be subject to the development permit process. Apart from this, the applicant is in concurrence to protect of the environmentally sensitive features by covenants registered on title concurrently with the subdivision plan. With respect to intended uses as outlined in the Rural 4 zone, staff notes that proposed Lot 2 will not be able to support agricultural buildings which house livestock or store manure. As a result, staff recommends a section 219 covenant be placed on title of this lot restricting this use unless setbacks can be met. The applicant's agent has indicated the applicant will support the registration of such a covenant. The Ministry of Transportation staff has indicated that they have no objection to the request for the proposed minimum 10% perimeter frontage relaxation. As the Ministry of Transportation staff has no objection to this request and the applicant is in concurrence to register the covenants as set out in Schedule No. 1 of this report, staff recommends Alternative No. 1, to approve relaxation of the minimum 10% perimeter frontage for proposed Lots 2, 3, and 4 and to approve the development variance permit to allow the existing dwelling to remain on proposed Lot 1 subject to notification procedures.

RECOMMENDATION

That the request, submitted by RK Brown, on behalf of Wayne Roine to relax the minimum 10% frontage requirement for the Proposed Lots 2, 3, and 4, as shown on the plan of subdivision of The East 20 Chains of Section 5, Range 5, Cedar District, Except Parcel C (DD2340N) and Except That Part in Plan 8609 and to relax the minimum setback requirement from 8.0 metres to 5.3 metres to allow the siting of an existing dwelling unit from a lot line (adjacent to Farrar Road) proposed to be created by subdivision, be approved subject to Schedule No. 1 and the notification requirements pursuant to the *Local Government Act*.

Alcornic

Report Writer

B. J. Sten

A/General Manager Concurrence

[Signature]

Manager Concurrence

[Signature]

A/ CAO Concurrence

COMMENTS:

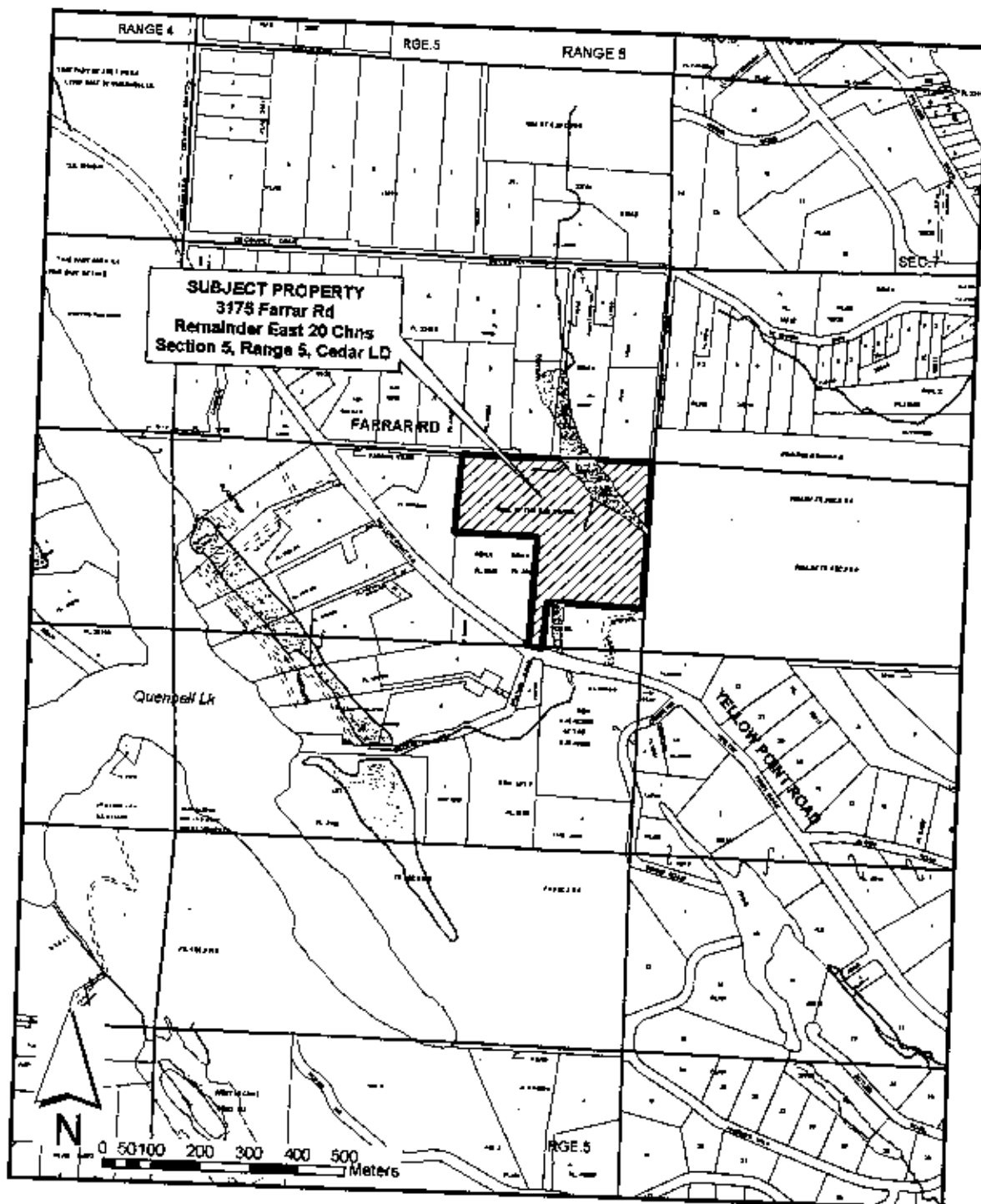
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SCHEDULE No. 1
CONDITIONS OF APPROVAL
In Conjunction with Subdivision File No. 25039

The following sets out the conditions of approval with respect to Subdivision File No. 25039:

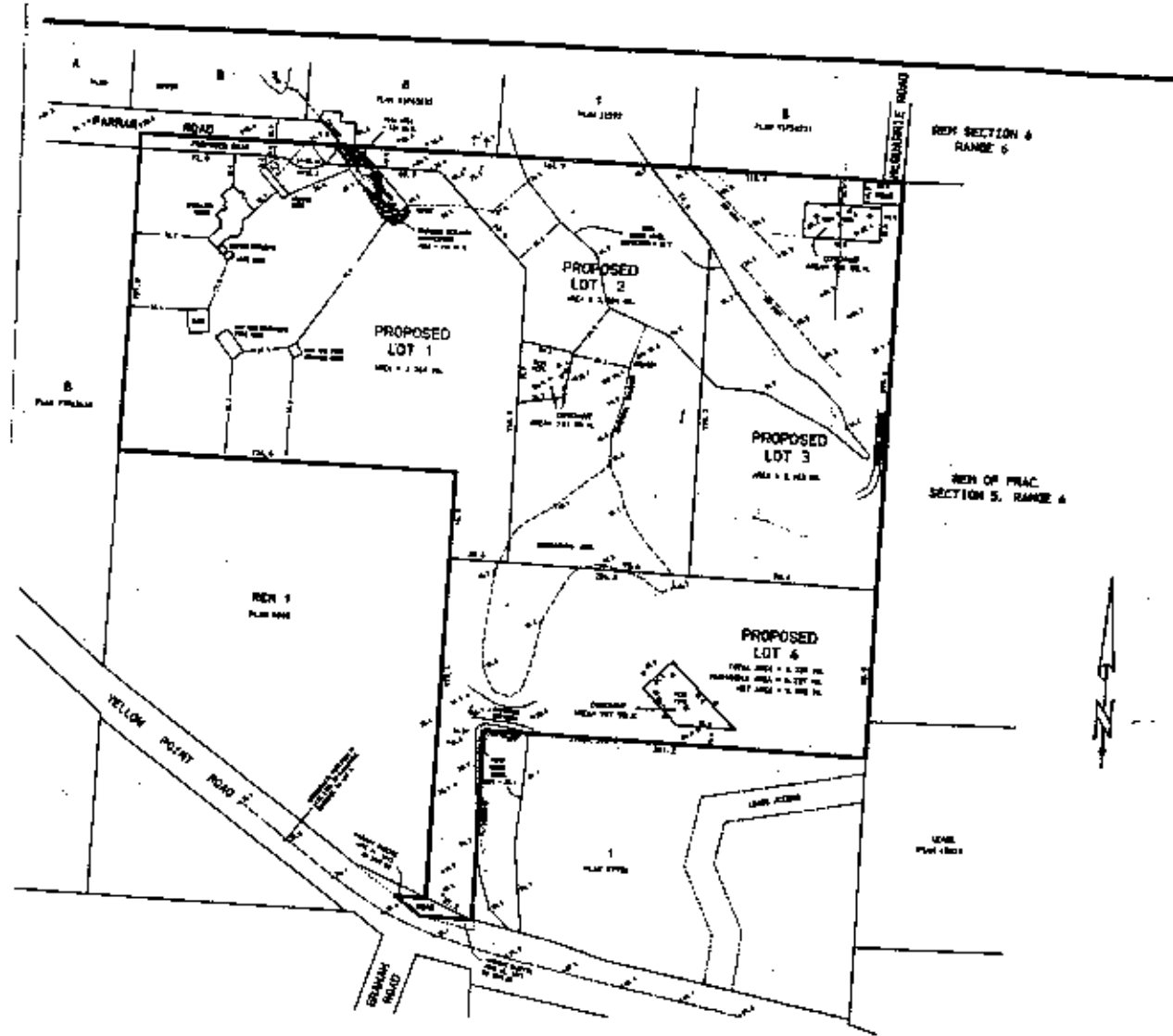
1. The following covenants are to be registered:
 - a. The applicant shall prepare and register a section 219 covenant on the proposed parcels restricting the use of the land within 15.0 metres of the stream and marsh (as measured 15.0 metres from the top of the bank) and the two ponds (as measured from the natural boundary) to a vegetation retention (no removal of vegetation other than noxious weeds) / native vegetation enhancement / no building or structures including decks or patios over proposed Lots 2, 3, and 4 with the exception of providing driveway accesses to serve Proposed Lots 2 (marsh area only) and 4. This covenant is to be reviewed and accepted by the Regional District prior to be registered on title concurrently with the plan of subdivision at Land Title Office, Victoria.
 - b. The applicant shall prepare and register a section 219 covenant on proposed Lot 2 restricting the placement of buildings and structures for the purposes of housing livestock or storing manure unless the minimum setback requirements as set out in Bylaw No. 500, 1987 or any subsequent bylaw can be met or a variance approval from the Regional Board of Directors has been granted.
2. Applicant to supply confirmation from the Department of Fisheries and Oceans with respect to approved section 9 works.

ATTACHMENT NO. 1
SUBJECT PROPERTY LOCATION



BOGS MAPSHEET NO. 92G.001.4.2

**ATTACHMENT NO. 2
PROPOSED SUBDIVISION
(as submitted by applicant)**



<p>PLAN OF PROPOSED SUBDIVISION OF THE EAST 20 CHAINS OF SECTION 5, RANGE 5, CEDAR DISTRICT, EXCEPT PARCEL C 10023400 AND EXCEPT THAT PART IN PLAN 8608, 3115 PARRISH ROAD, CEDAR</p>	<p>Prepared For: KEITH BROWN ASSOCIATES / WAYNE FIDINE</p>	<p>ALL RIGHTS RESERVED UNLESS OTHERWISE SPECIFIED THIS PLAN IS THE PROPERTY OF THE DRAWER AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM WITHOUT THE WRITTEN PERMISSION OF THE DRAWER</p>
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REGIONAL DISTRICT OF NANAIMO		
SEP 22 2003		
CHAIR		GMCrs
CAO		GMDS
GMCms		GMES

MEMORANDUM

TO: Pamela Shaw
 Manager, Community Planning

DATE: September 19, 2003

FROM: Brigid Reynolds
 Senior Planner

FILE: 3090 30 90318

SUBJECT: Development Variance Permit Application No. 90318 - Kehoe & Adams Freeman Electoral Area 'E' - 3475 Cambridge Road

PURPOSE

To consider an application for a development variance permit to vary the minimum setback requirement for the front lot line and other lot line to legalize the siting of a recently constructed retaining wall.

BACKGROUND

This is an application to vary the minimum setback to legalize the siting of a recently constructed retaining wall on a residential property in the Nanoose Bay area of Electoral Area 'E'. (see Attachment 1).

The subject property is zoned Residential 1 (RS1) pursuant to Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500. The minimum setback requirements for buildings and structures in this zone are: 8.0 metres from the front lot line, 2.0 metres from the side lot line, 2.0 metres from the rear lot line, and 5.0 metres from other lot lines. There are two lot lines adjacent to Cambridge Road: front lot line and other lot line. The retaining wall is sited within the road right of way and is a maximum of 3.0 metres in height.

The lot contains a slope of approximately 21 percent that runs on a diagonal from the north west to the south east corner of the lot. The dwelling unit is located on the slope such that the rear of the house is at a higher elevation than the front of the house. The lot continues to slope down to Cambridge Road from the front of the house on a slope of approximately 28 percent. As a result of the topography and to provide access from the road to the house the property owners have constructed a retaining wall upon which the driveway is located. The retaining wall ranges in height from 1.0 metre to a maximum of 3.0 metres.

The wall was constructed without prior approval. A building inspector, upon undertaking a regular inspection of the property, discovered the wall and informed the property owner to contact the Planning Department to address the wall. A geotechnical assessment was undertaken on September 15, 2003. The retaining wall requires a building permit and an encroachment permit and relaxation from setbacks from the Ministry of Transportation.

ALTERNATIVES

1. To approve the requested variance subject to the conditions outlined in Schedule Nos. 1, 2, and 3.
2. To deny the requested variance.

LAND USE AND DEVELOPMENT IMPLICATIONS

Approval of the requested variance would legalize the siting of a recently constructed retaining wall. The lot slopes such that the dwelling unit is at a higher elevation to Cambridge Road. Therefore the retaining wall was constructed to support a residential paved driveway and parking area.

The wall ranges in height from 1.0 metre to a maximum of 3.0 metres and it is sited within the road right of way. Therefore, the variance request is to the 0.0 metre lot line. As the retaining wall is located within the road right of way Ministry of Transportation staff has verbally indicated that an encroachment permit and a relaxation to their 4.5-metre setback is required.

The geotechnical assessment indicates that the structure is safe for the intended use as a paved driveway and parking area and recommendations that any protruding or overhanging rock be removed or repositioned to provide a consistent wall face. A building permit is required for this structure.

PUBLIC CONSULTATION IMPLICATIONS


Given the topography of the lot and adjacent lands it does not appear that the retaining wall will have any impact on views for adjacent property owners. The wall location does not appear to be located within the traveled portion of the road and should therefore not be an obstacle for pedestrians or vehicles. As part of the required public notification process, adjacent and nearby residents and property owners will have an opportunity to comment on the proposal prior to the Board's consideration of the permit.

SUMMARY

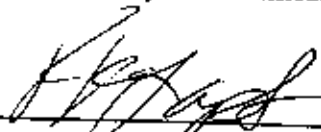
This is an application to vary the minimum setback requirements of the Residential 1 (RS1) zone to legalize a recently constructed retaining wall. The Residential 1 (RS1) zone requires buildings and structures to be located a minimum of 8.0 metres from the front lot line and 5.0 metres from the other lot line. The recently constructed retaining wall ranges from 1.0 metres to a maximum of 3.0 metres in height and is located within the road right of way therefore an encroachment permit and relaxation from MOT setbacks is required from the Ministry of Transportation. The retaining wall is necessary due to the topography of the lot as the dwelling unit is located above the road on a slope of approximately 28 percent. A geotechnical assessment states that the wall is safe for the intended use to support a residential driveway and parking area. Given the elevation of the retaining wall and the downward slope of the lot, the impact on adjacent properties is considered to be minimal.

RECOMMENDATION

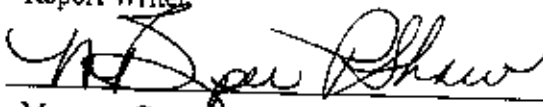
That Development Variance Permit Application No. 90318 to vary the minimum setback requirements of the Residential 1 (RS1) zone from 8.0 metres to 0.0 metres for the front lot line and from 5.0 metres to 0.0 metres from the other lot line to legalize the siting of a recently constructed retaining wall on the property legally described as Lot 31, District Lot 78, Nanoose District, Plan VIP51603 be approved, subject to the requirements outlined in Schedule Nos. 1, 2, and 3 and subject to notification requirements pursuant to the *Local Government Act*.



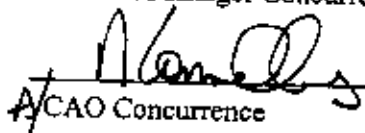
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

Schedule No. 1
Conditions of Approval
Development Variance Permit No. 90318

1. A building permit shall be required for all works.
2. Any protruding or overhanging rock be removed or repositioned to produce a consistent wall face along the entire wall.
3. Prior to the issuance of a building permit for the wall the applicant must receive an encroachment permit and relaxation from the Ministry of Transportation and submit them to the RDN.
4. Variances are subject to Ministry of Transportation approval for relaxation within the 4.5-meter road allowance.

Schedule No. 2
Requested Variances
Development Variance Permit No. 90318

With respect to the lands, the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987, the following variances are proposed:

Section 3.4.61 Minimum Setback Requirements - other lot line varied from 5.0 metres to 0.0 metres and front lot line varied from 8.0 metres to 0.0 metres to legalize the siting of a retaining wall.

Schedule No. 3
Site Plan
Development Variance Permit No. 90318

SEP 19 03 11:14 AM

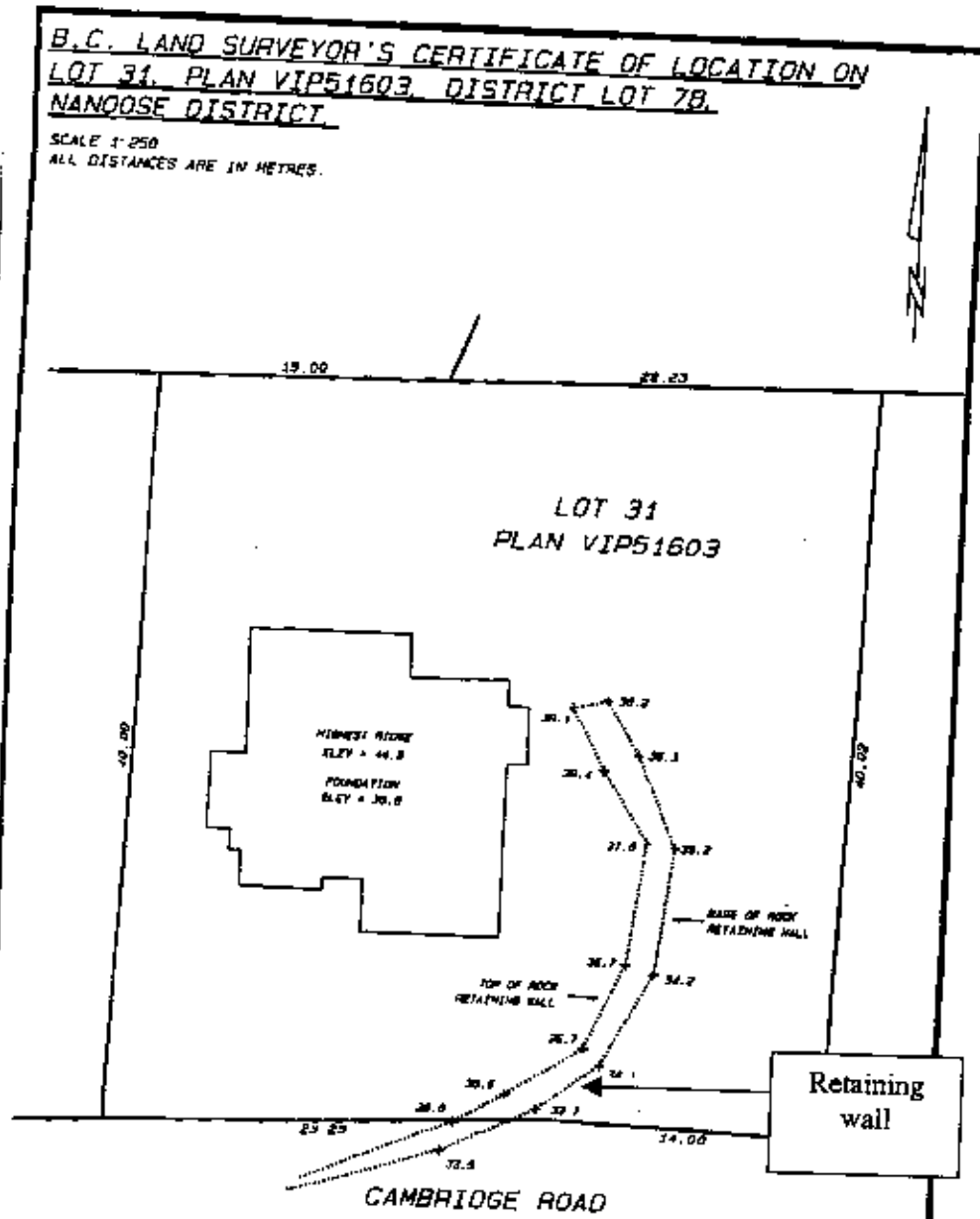
Site Assoc.

7529241

P.2

B.C. LAND SURVEYOR'S CERTIFICATE OF LOCATION ON
LOT 31, PLAN VIP51603, DISTRICT LOT 7B,
NANOOSE DISTRICT.

SCALE 1:250
ALL DISTANCES ARE IN METRES.



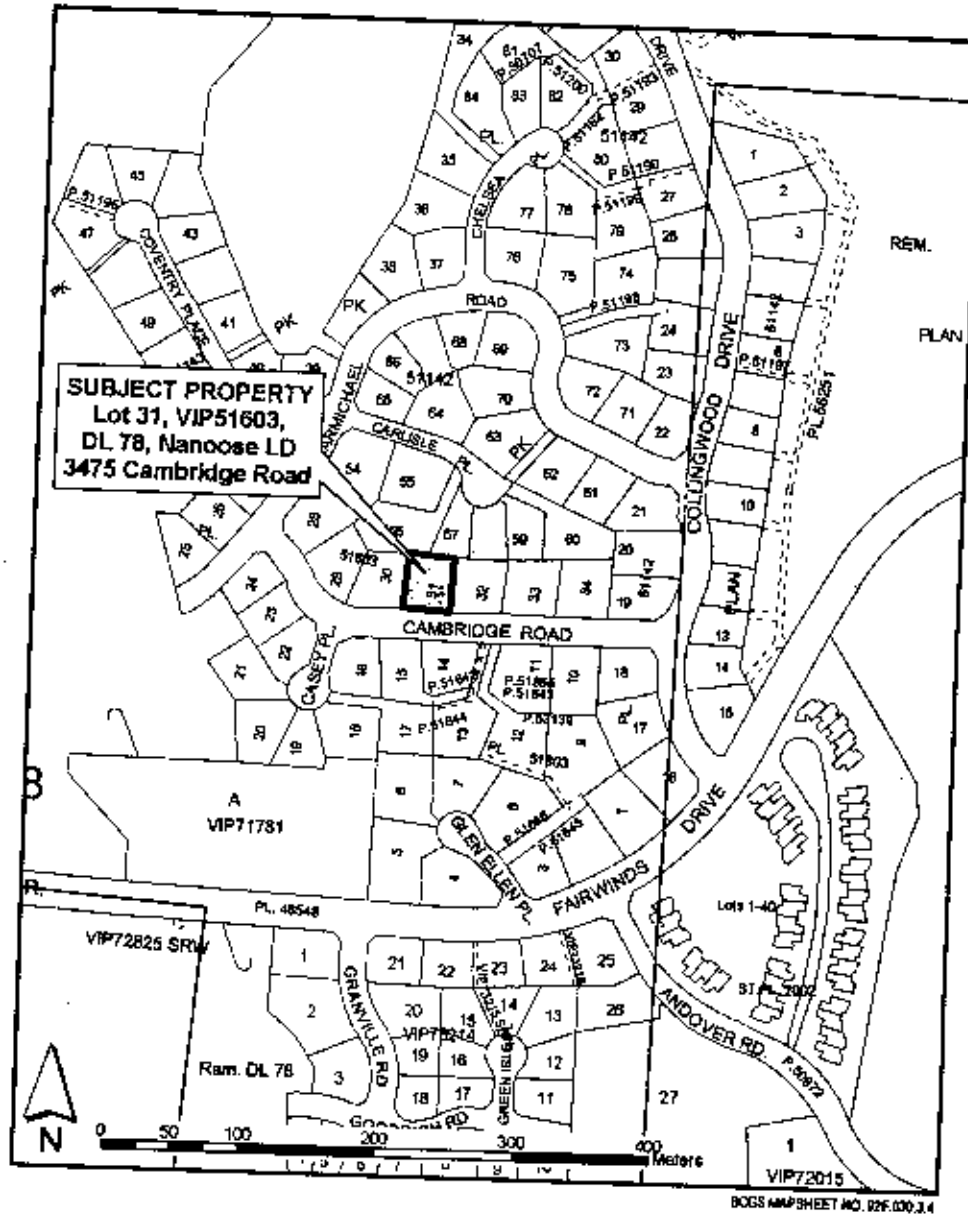
NOTE:
THIS LOT IS SUBJECT TO L.T.O. CHAMP NUMBER
M20300, E233, E237, E238, E239, E240, E241, E242, E243, E244, E245, E246, E247, E248, E249, E250, E251, E252, E253, E254, E255, E256, E257, E258, E259, E260, E261, E262, E263, E264, E265, E266, E267, E268, E269, E270, E271, E272, E273, E274, E275, E276, E277, E278, E279, E280, E281, E282, E283, E284, E285, E286, E287, E288, E289, E290, E291, E292, E293, E294, E295, E296, E297, E298, E299, E300, E301, E302, E303, E304, E305, E306, E307, E308, E309, E310, E311, E312, E313, E314, E315, E316, E317, E318, E319, E320, E321, E322, E323, E324, E325, E326, E327, E328, E329, E330, E331, E332, E333, E334, E335, E336, E337, E338, E339, E340, E341, E342, E343, E344, E345, E346, E347, E348, E349, E350, E351, E352, E353, E354, E355, E356, E357, E358, E359, E360, E361, E362, E363, E364, E365, E366, E367, E368, E369, E370, E371, E372, E373, E374, E375, E376, E377, E378, E379, E380, E381, E382, E383, E384, E385, E386, E387, E388, E389, E390, E391, E392, E393, E394, E395, E396, E397, E398, E399, E400, E401, E402, E403, E404, E405, E406, E407, E408, E409, E410, E411, E412, E413, E414, E415, E416, E417, E418, E419, E420, E421, E422, E423, E424, E425, E426, E427, E428, E429, E430, E431, E432, E433, E434, E435, E436, E437, E438, E439, E440, E441, E442, E443, E444, E445, E446, E447, E448, E449, E450, E451, E452, E453, E454, E455, E456, E457, E458, E459, E460, E461, E462, E463, E464, E465, E466, E467, E468, E469, E470, E471, E472, E473, E474, E475, E476, E477, E478, E479, E480, E481, E482, E483, E484, E485, E486, E487, E488, E489, E490, E491, E492, E493, E494, E495, E496, E497, E498, E499, E500, E501, E502, E503, E504, E505, E506, E507, E508, E509, E510, E511, E512, E513, E514, E515, E516, E517, E518, E519, E520, E521, E522, E523, E524, E525, E526, E527, E528, E529, E530, E531, E532, E533, E534, E535, E536, E537, E538, E539, E540, E541, E542, E543, E544, E545, E546, E547, E548, E549, E550, E551, E552, E553, E554, E555, E556, E557, E558, E559, E560, E561, E562, E563, E564, E565, E566, E567, E568, E569, E570, E571, E572, E573, E574, E575, E576, E577, E578, E579, E580, E581, E582, E583, E584, E585, E586, E587, E588, E589, E590, E591, E592, E593, E594, E595, E596, E597, E598, E599, E600, E601, E602, E603, E604, E605, E606, E607, E608, E609, E610, E611, E612, E613, E614, E615, E616, E617, E618, E619, E620, E621, E622, E623, E624, E625, E626, E627, E628, E629, E630, E631, E632, E633, E634, E635, E636, E637, E638, E639, E640, E641, E642, E643, E644, E645, E646, E647, E648, E649, E650, E651, E652, E653, E654, E655, E656, E657, E658, E659, E660, E661, E662, E663, E664, E665, E666, E667, E668, E669, E670, E671, E672, E673, E674, E675, E676, E677, E678, E679, E680, E681, E682, E683, E684, E685, E686, E687, E688, E689, E690, E691, E692, E693, E694, E695, E696, E697, E698, E699, E700, E701, E702, E703, E704, E705, E706, E707, E708, E709, E710, E711, E712, E713, E714, E715, E716, E717, E718, E719, E720, E721, E722, E723, E724, E725, E726, E727, E728, E729, E730, E731, E732, E733, E734, E735, E736, E737, E738, E739, E740, E741, E742, E743, E744, E745, E746, E747, E748, E749, E750, E751, E752, E753, E754, E755, E756, E757, E758, E759, E760, E761, E762, E763, E764, E765, E766, E767, E768, E769, E770, E771, E772, E773, E774, E775, E776, E777, E778, E779, E780, E781, E782, E783, E784, E785, E786, E787, E788, E789, E790, E791, E792, E793, E794, E795, E796, E797, E798, E799, E800, E801, E802, E803, E804, E805, E806, E807, E808, E809, E810, E811, E812, E813, E814, E815, E816, E817, E818, E819, E820, E821, E822, E823, E824, E825, E826, E827, E828, E829, E830, E831, E832, E833, E834, E835, E836, E837, E838, E839, E840, E841, E842, E843, E844, E845, E846, E847, E848, E849, E850, E851, E852, E853, E854, E855, E856, E857, E858, E859, E860, E861, E862, E863, E864, E865, E866, E867, E868, E869, E870, E871, E872, E873, E874, E875, E876, E877, E878, E879, E880, E881, E882, E883, E884, E885, E886, E887, E888, E889, E890, E891, E892, E893, E894, E895, E896, E897, E898, E899, E900, E901, E902, E903, E904, E905, E906, E907, E908, E909, E910, E911, E912, E913, E914, E915, E916, E917, E918, E919, E920, E921, E922, E923, E924, E925, E926, E927, E928, E929, E930, E931, E932, E933, E934, E935, E936, E937, E938, E939, E940, E941, E942, E943, E944, E945, E946, E947, E948, E949, E950, E951, E952, E953, E954, E955, E956, E957, E958, E959, E960, E961, E962, E963, E964, E965, E966, E967, E968, E969, E970, E971, E972, E973, E974, E975, E976, E977, E978, E979, E980, E981, E982, E983, E984, E985, E986, E987, E988, E989, E990, E991, E992, E993, E994, E995, E996, E997, E998, E999, E1000.

This Survey is not valid unless
originally signed and sealed
This Survey is protected by copyright
and may not be reproduced.
Inspected this 18th day of Sept., 2003.

[Signature]
Michael A. Sims, B.C.L.S.

SIMS ASSOCIATES @
LAND SURVEYING LTD
823 FERN ROAD WEST,
DUNLON BEACH, B.C. V0N 1S4
PHONE: 752-8481 FAX: 752-0241
OUR FILE: 03-070-04

Attachment No. 1
Subject Property
Development Permit No. 90318



SEP 19 2003

MEMORANDUM

CHAIR		GMCrS	
CAO		GMDS	
GNiCmS		GMES	

EAP ✓

TO: Pam Shaw
Manager, Community Planning

DATE: September 19, 2003

FROM: Brigid Reynolds
Senior Planner

FILE: 3090 30 90319

SUBJECT: Development Variance Permit Application No. 90319 - Smith & Tomei
Electoral Area 'E' - 2476 Nuttal Drive

PURPOSE

To consider an application to vary the minimum setback requirement from two watercourses to approve a building envelope to facilitate the construction of a dwelling unit and garage.

BACKGROUND

The subject property, legally described as Lot 8, District Lot 52, Nanoose District, Plan VIS4626, is located at 2476 Nuttal Drive in the Dorcas Point area of Electoral Area 'E' (see Attachment No. 1).

The subject property is zoned Residential 1 (RS1) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The minimum setback requirements for buildings and structures on parcels with an average slope of 5% or less adjacent to or containing a watercourse is 18.0 metres from the stream centreline or 15.0 metres from the natural boundary whichever is greater. In this case, 15.0 metres is greater. The applicant is requesting to vary the setback from the natural boundary of the retention pond and drainage ditch to 5.0 metres to permit a building envelope to facilitate the construction of a dwelling unit and attached garage (see Schedule No. 2).

The parcel contains several physical site constraints. As a condition of the subdivision, the developer was required to construct a retention pond and stormwater drainage system. The retention pond is located on Common Property in the south west corner adjacent to the parcel and the drainage runs the length of the parcel on the west side property line adjacent to the dedicated road. The retention pond and drainage ditch were constructed deeper than the original engineering required. There is a large rock outcrop on the north west side corner of the lot.

The retention pond is armoured with rip rap and has a depth of approximately 1.5 metres. There are overflow pipes located approximately 0.3 of a metre from the top of the pond. The ditch has a depth of approximately 1.0 metre. The pond and the drainage both meet the definition of a watercourse pursuant to Bylaw No. 500, i.e. any natural or man-made depression with well defined banks and a bed of 0.6 metres or more below the surrounding land serving to give direction to or containing a current of water at least six months of the year and includes the sea or any lake, river, stream, creek, spring, ravine, swamp, gulch, surface source of water supply or source of groundwater supply whether enclosed or in a conduit. The area around the pond and drainage consists of small trees and shrubs, both native and invasive species.

The lot is 1,059 m² and the building envelope is proposed to be approximately 300 m² in size to accommodate a rancher and attached garage.

ALTERNATIVES

1. To approve the requested variance subject to the conditions outlined in Schedule Nos. 1, 2, 3, and 4.
2. To deny the requested variance.

LAND USE AND DEVELOPMENT IMPLICATIONS

Approval of the requested variance would permit a building envelope and the eventual construction of a dwelling unit and detached garage. Due to the location of the retaining pond and drainage, it would not be possible to construct a dwelling unit on the lot without a variance. The rock outcrop on the north east corner of the lot provides an additional constraint making it impossible to vary other lot lines.

ENVIRONMENTAL IMPLICATIONS

The pond and drainage are not fish habitat; however, surface drainage from the subdivision and this lot flows to the marine environment via the constructed stormwater system. The vegetation around the pond consists of small trees and shrubs including both native and invasive species. The property owner is proposing to remove the vegetation on the lot and undertake formal landscaping.

SUMMARY

This is an application for a development variance permit to vary the minimum setback requirement from 15.0 metres from the natural boundary of the retention pond and natural boundary of the surface drainage ditch to a minimum of 5.0 metres for a building envelope to locate a dwelling unit and attached garage.

The lot contains physical site constraints such that a constructed retention pond is located on Common Property in the south west corner adjacent to the parcel and a drainage ditch runs the length of the parcel on the west side property line adjacent to the dedicated road thereby restricting the ability to site a dwelling unit. From staff's assessment of this application Development Variance Permit No. 90319 should be approved due to the physical site constraints and there being no alternative location for a building envelope.

RECOMMENDATION

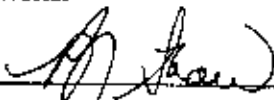
That Development Variance Permit Application No. 90319 submitted by Anthony Smith, to vary the minimum setback of 15.0 metres from the natural boundary of the retention pond and from the natural boundary of the drainage ditch to 5.0 metres and to approve a building envelope to facilitate the construction of a dwelling unit and attached garage on the property legally described as Lot 8, District Lot 52, Nanoose District, Plan VIS4626 be approved subject to the requirements outlined in Schedule Nos. 1, 2, 3, and 4 and subject to notification requirements pursuant to the *Local Government Act*.



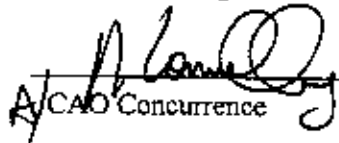
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

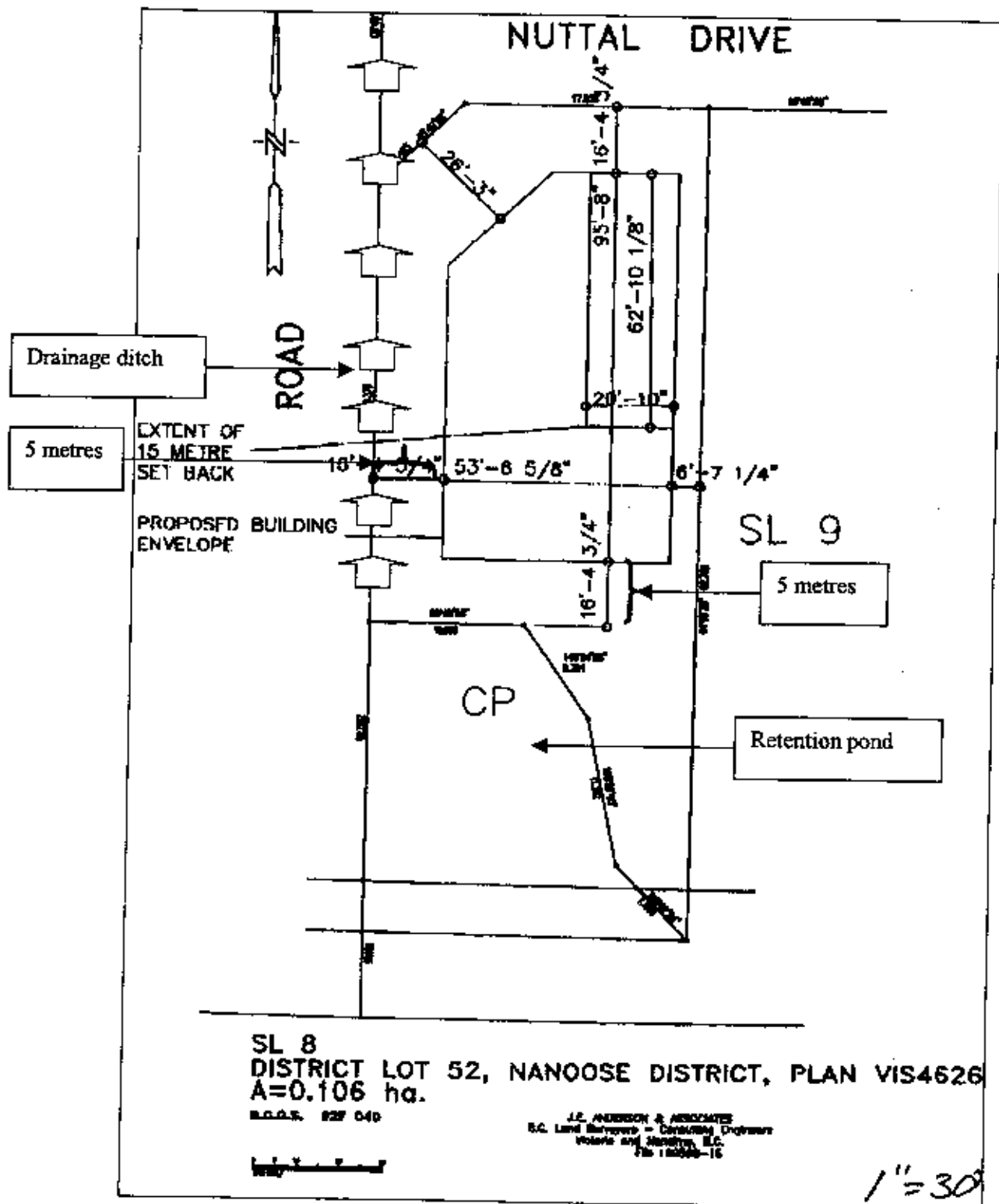
devs/reports/2003/dvp se 3090 30 90318 smith

**Schedule No.1
Conditions of Approval
Development Variance Permit No. 90319**

Site Development

1. All construction of buildings and structures to be undertaken must be consistent with Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987.
2. Sediment and erosion control measures must be utilized to control sediment during construction and land clearing works and to stabilize the site after construction is complete. These measures must include:
 - a. Exposed soils must be seeded as soon as possible to reduce erosion during rain events.
 - b. Tarps, sand bags, poly plastic sheeting, and/or filter fabric are required to be onsite.
 - c. It is your responsibility to have and utilize all appropriate sediment and erosion control materials on-site for use during and after construction to ensure sediments do not enter the watercourse.

Schedule No. 2
Site Plan
Development Variance Permit No. 90319

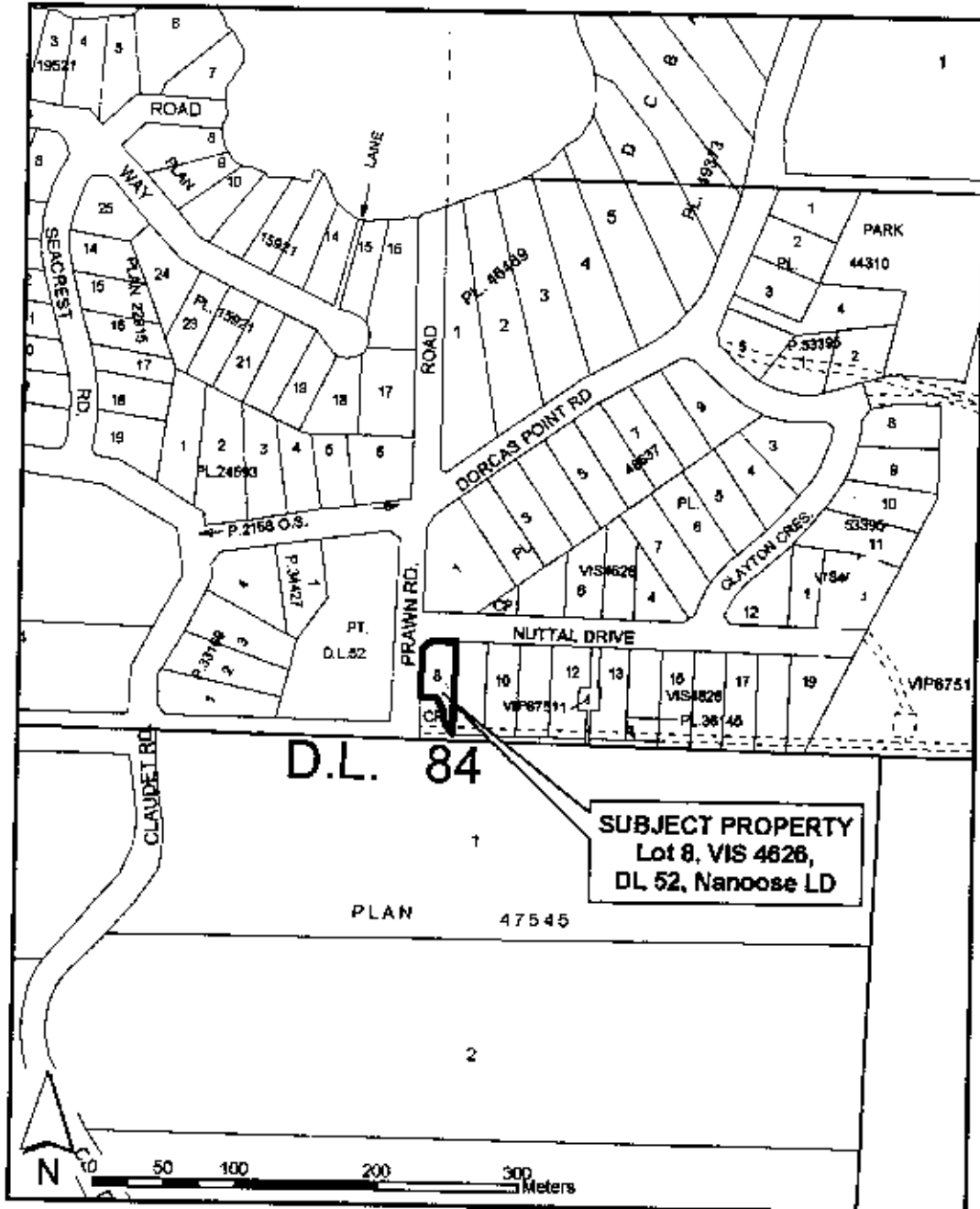


Schedule No. 4
Requested Variances
Development Variance Permit No. 90319

With respect to the lands, the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987, the following variances are proposed:

1. Section 3.3.8 Setbacks – Watercourses, excluding the sea – varied from 15.0 metres horizontal distance from the natural boundary of the retention pond to a minimum of 5.0 metres for a building envelope to locate a dwelling unit and attached garage.
2. Section 3.3.8 Setbacks – Watercourses, excluding the sea – varied from 15.0 metres horizontal distance from the natural boundary of the drainage ditch to a minimum of 5.0 metres for a building envelope to locate a dwelling unit and attached garage.

Attachment No. 1
Subject Property
Development Variance Permit No. 90319



BCGS MAPSHEET NO. 92F.040.1.1

SEP 22 2003

MEMORANDUM

CHAIR		GMCS	
CAO		GMDS	
GMCS		GMES	
		EAP	✓
		DATE:	
Planning			

TO: Pamela Shaw
Manager of Community

September 19, 2003

FROM: Susan Cormie
Senior Planner

FILE: 3320 30 24539

SUBJECT: Requests for Acceptance of Cash in-lieu-of Park Land Dedication & Relaxation of The Minimum 10% Frontage Requirement
Applicant: Fern Road Consulting Ltd. on behalf of Windward Development (2002) Ltd. Inc. No. 640334
Electoral Area 'G' – Arrowsmith Way and Wembley Road

PURPOSE

To consider a request to accept cash in-lieu-of park land dedication and to relax the minimum 10% perimeter frontage requirement as part of a proposed 14-lot subdivision development.

BACKGROUND

The applicant's agent, Fern Road Consulting Ltd., has requested that cash in-lieu-of park land dedication be accepted as part of a 14-lot subdivision proposal for the 1.323 hectare sized property legally described as Lot 2, District Lot 29, Nanoose District, Plan 41955, Except Part in VIP72574 and located between Arrowsmith Way and Wembley Road within the French Creek area of Electoral Area 'G' (see Attachment No. 1 for location). The applicant's agent is also requesting that the minimum 10% perimeter frontage requirement be relaxed for 2 of the proposed parcels within the proposed subdivision.

The subject property is currently zoned Residential 1 (RS1) and is within Subdivision District 'Q' (minimum 700 m² with community water and community sewer) pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987. The applicant is proposing to subdivide the parent parcel into 14 lots with community water and sewer services, all of which are greater than 700 m² in size, therefore meeting the minimum parcel size requirements of Bylaw No. 500 (see Attachment No. 2 for proposed subdivision). There is an existing dwelling unit located on Proposed Lot 6 of the subject property. The applicant's agent has indicated that an existing carport and shed will be removed in order to comply with bylaw requirements at the time of subdivision.

Park Land Requirement

Pursuant to section 941 of the *Local Government Act*, the owner of the subject property has the option of:

- a. providing 5% of the gross site area as park land; or
- b. paying cash in-lieu-of providing park land; or
- c. providing a combination of both park land with the balance of 5% given in cash.

Where an official community plan contains policies and designations respecting the location and type of future parks, the local government may determine whether the owner must provide land or cash. In this case, the "French Creek Official Community Plan Bylaw No. 1115, 1998" specifies that park land dedication may be considered at the time of subdivision subject to meeting the preferred park land criteria specified in the Plan. The maximum amount of park land the Regional District may request for this property is 5% or 661.5 m² of the total site area.

Minimum 10% Perimeter Frontage Requirement

Proposed Lots 6 and 8, as shown on the plan of subdivision submitted by the applicant's agent, do not meet the minimum 10% perimeter frontage requirement pursuant to section 944 of the *Local Government Act*. The requested frontages on these proposed parcels are as follows:

Proposed Parcel Number	Required Frontage	Proposed Frontage	% of Perimeter
6	21.2 m	17.3 m	8.2%
8	12.3 m	10.8 m	8.8%

Therefore, as these proposed parcels do not meet the minimum 10% parcel frontage requirement, approval of the Regional Board of Directors is required.

ALTERNATIVES

1. To accept the requests for acceptance of cash in-lieu-of park land and approve the relaxation of the minimum 10% frontage requirement for proposed Lots 6 and 8.
2. To deny the request for acceptance of cash in-lieu-of park land and require the applicant to dedicate park land and approve the request for the relaxation of the minimum 10% frontage requirement.
3. To deny the request for acceptance of cash in-lieu-of park land and require the applicant to dedicate park land and deny the request for relaxation of the minimum 10% frontage requirement.

DEVELOPMENT IMPLICATIONS

Official Community Plan Implications

Where the official community plan contains policies and designations respecting the location and type of future parks, the local government may determine whether the owner must provide land or cash or a combination of both. In this case, the French Creek Official Community Plan Bylaw No. 1115, 1998, provides preferred park location and type criteria to be used when evaluating acquisition applications. Preferred criteria include providing access to waterfront lands, providing linkages or expansion of parks and greenways and connections for neighbourhoods to parks, schools, and cultural resources, providing sites for protection of environmentally sensitive areas, supporting active or passive outdoor recreation activities, and providing viewpoints and opportunities for nature appreciation.

While the majority of the criteria are not applicable in this case, criteria concerning connections and linkages and active or passive outdoor recreation activities may be taken into consideration in the evaluation process of this request for cash in-lieu-of park land. Staff has discussed the suitability of park land within the subject property with the applicant's agent and has explored potential park land opportunities on the subject property. Currently, there is a linear connection providing pedestrian and bicycle access between Arrowsmith Way and Wembley Road via Tara Crescent to the north of the subject property. As a result of the proximity of this linear connection, a linear connection through the subject property is not considered to be necessary.

With reference to the criteria concerning park land for passive and active recreation opportunities, there are these types of opportunities available nearby on the Oceanside School grounds and the Neden Way

Community Park, which has recently been developed with playground equipment, park benches, and grassed areas.

Electoral Area 'G' Parks and Open Space Advisory Committee Implications

The Electoral Area 'G' Parks Recreation and Greenspaces Advisory Committee has reviewed the proposal and have recommended that the offer to give cash in-lieu-of park land be accepted.

Recreation & Park Implications

RDN Recreation & Parks staff has reviewed this request for cash in-lieu-of park land and recommend that the request for cash in-lieu-of park land be accepted.

Lot Configuration Implications

Due to the existing surrounding subdivision pattern, there is no opportunity to create a through road between Arrowsmith Way and Wembley Road and as a result, a cul-de-sac design is proposed. Proposed Lot 8 is situated on the cul-de-sac portion of the future road and achieving minimum 10% frontage is often difficult in a cul-de-sac layout. A buildable site area is available for proposed Lot 8. Lot 6, which is proposed to include the existing dwelling unit, is proposed to be accessed by way of panhandle off Wembley Road. The minimum setback requirements for the existing dwelling unit from the proposed new lot lines will be able to be achieved with the removal of the existing carport which that the applicant has indicated will be removed. Therefore, these proposed parcels, despite the narrower frontages, will be able to support the intended residential use.

Ministry of Transportation

Ministry of Transportation staff has indicated that they have no objection to the request for relaxation of the minimum 10% frontage requirement.

ENVIRONMENTAL IMPLICATIONS

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates that there are no environmentally sensitive areas within the subject property.

FINANCIAL IMPLICATIONS

The subject property has an assessed value of \$212,000.00 according to the 2003 authenticated assessment roll. The valuation of the property for 5% cash-in-lieu of park land charges will be based on a certified appraisal of the land at the time of preliminary subdivision approval (PLA). Therefore, it is anticipated that the appraised market value would result in approximately a \$10,600.00 contribution to Electoral Area 'G' community parks fund.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

This is a request to provide cash in-lieu-of park land pursuant to section 941 of the *Local Government Act* as part of a 14-lot subdivision development and to relax the minimum 10% perimeter frontage requirement for 2 of the proposed 14 parcels pursuant to section 944 of the *Local Government Act*. With respect to the minimum 10% perimeter frontage requirement, the proposed parcels are capable of supporting a residential use. The Ministry of Transportation staff has indicated that they have no objection to the request for the proposed minimum 10% frontage relaxation.

With respect to the park land requirement, while some of the preferred park land criteria acquisition elements as set out in the OCP are applicable, in this case, a nearby park permits access between

Arrowsmith Way and Wembley Road while other available parks and nearby school grounds in the surrounding neighbourhood negate the necessity for park land within this subdivision. The Electoral Area 'G' Parks and Open Space Advisory Committee support the applicant's request to offer cash in-lieu-of park land dedication. Therefore, given that the Ministry of Transportation has no objections to the frontage relaxation request and that Electoral Area 'G' Parks Recreation and Greenspaces Advisory Committee supports cash in-lieu-of park land dedication, staff recommend Alternative No. 1, to accept cash in-lieu-of park land and approve the 10% frontage relaxation on proposed Lots 6 and 8.

RECOMMENDATIONS

1. That the request, submitted by Fern Road Consulting Ltd., on behalf of Windward Development (2002) Ltd. Inc. No. 640334 for cash in-lieu of park land dedication be accepted.
2. That the request, submitted by Fern Road Consulting Ltd., on behalf of Windward Development (2002) Ltd. Inc. No. 640334 to relax the minimum 10% frontage requirement for proposed Lots 6 and 8, as shown on the plan of subdivision of Lot 2, District Lot 29, Nanoose District, Plan 41955, Except Part in VIP72574, be approved.

Mcormie

Report Writer

A. Shaw

A General Manager Concurrence

A. Shaw

Manager Concurrence

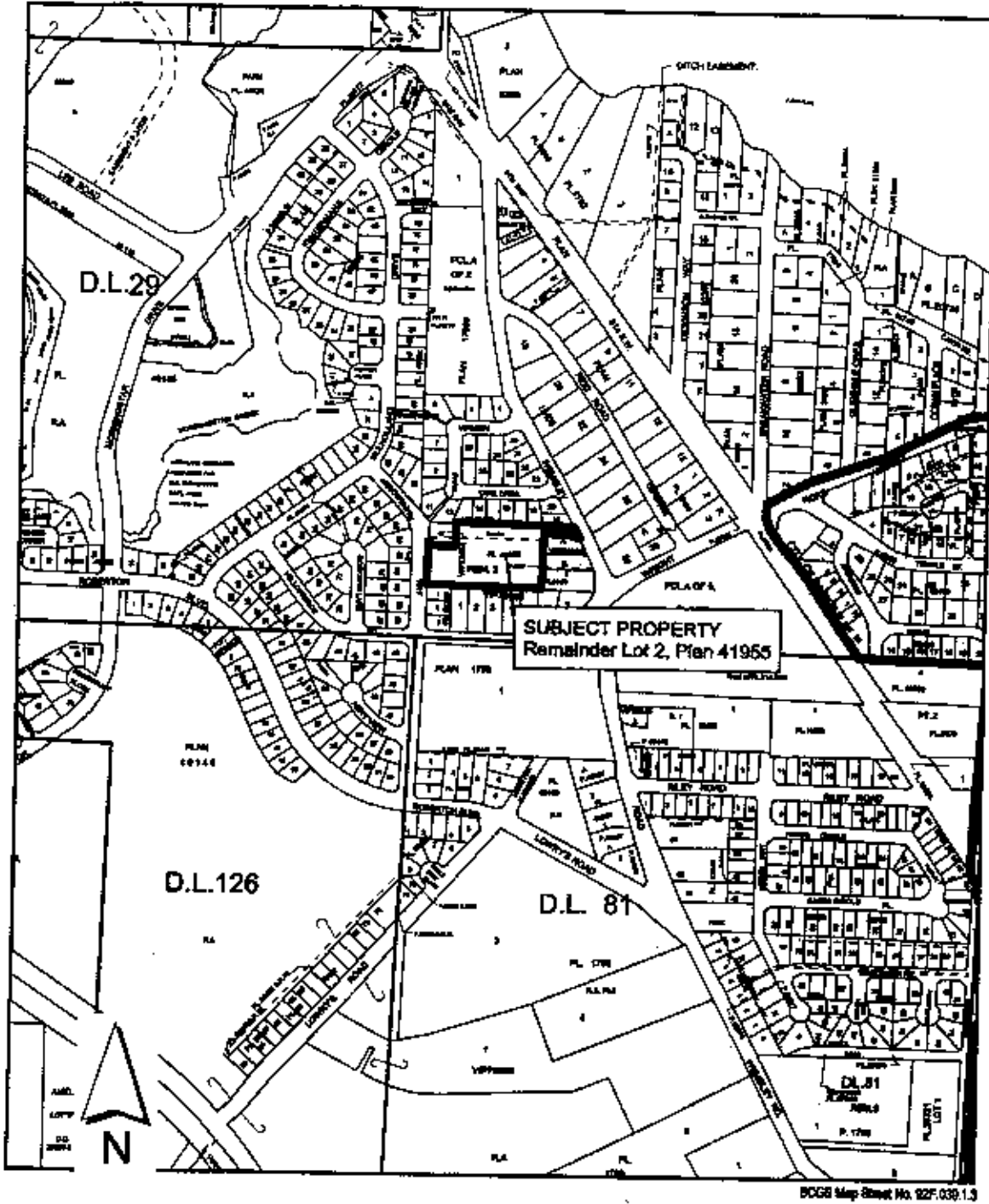
N. Donald

A CAO Concurrence

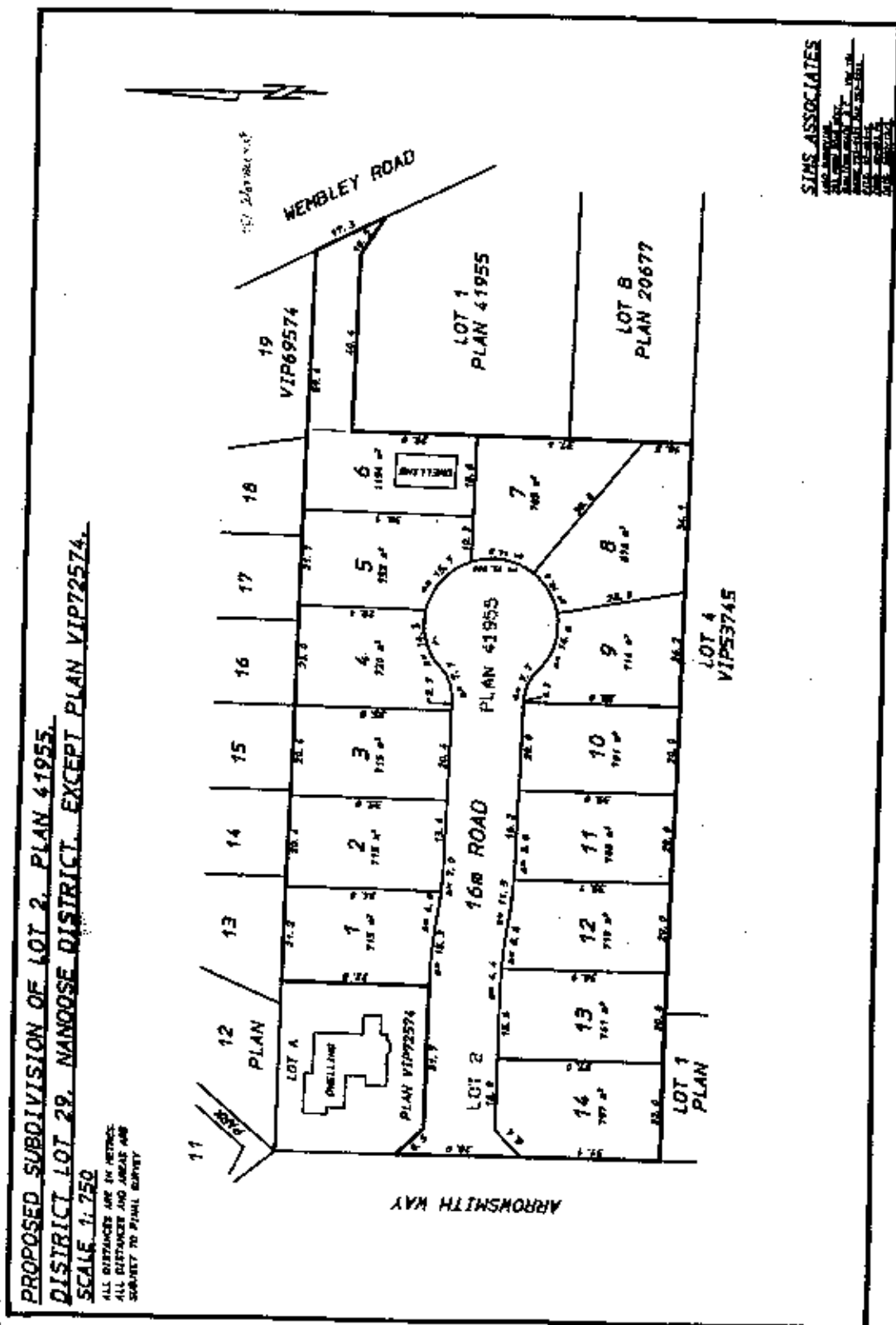
COMMENTS:

devsvs/report/2003/park/frige.se.3320.30.24539.fern.road.windward.doc

ATTACHMENT No. 1
Location of Subject Property



ATTACHMENT No. 2
 Proposed Plan of Subdivision
 (as submitted by applicant)



SEP 19 2003

MEMORANDUM

CHAIR		GMCrs	
CAO		GMDS	
GBCmS		GMES	
		CAP	<input checked="" type="checkbox"/>

TO: Pamela Shaw
Manager of Community Planning

DATE: September 19, 2003

FROM: Susan Cormie
Senior Planner

FILE: 3320 20 25258

SUBJECT: Request for Acceptance of Park Land Dedication & Relaxation of the Minimum 10% Frontage Requirement
Applicant: Koers & Associates, on behalf of 3170497 Canada Inc.; commonly known as Fairwinds Development
Electoral Area 'E' - Carmichael Road, Fairwinds (Phase 9A)

PURPOSE

To consider a request to accept park land dedication and to relax the minimum 10% perimeter frontage requirement as part of a proposed 8-lot subdivision proposal.

BACKGROUND

The applicant's agent, Koers & Associates has requested that park land dedication be accepted as part of a 8-lot subdivision proposal for the Phase 9A development of the property legally described as The Remainder of District Lot 78, Nanoose District and located at the end of Carmichael Road within the Fairwinds area of Electoral Area 'E' (see Attachment No. 1 for location of subject property). The applicant's agent is also requesting that the minimum 10% perimeter frontage requirement be relaxed for 5 of the proposed parcels.

The subject property is currently zoned Residential 1 (RS1) and is within Subdivision District 'N' (minimum 1000 m² with community water and community sewer) pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The applicant is proposing to subdivide the parcel into 8 lots with community water and sewer services, all of which are greater than 1000 m² in size, therefore meeting the minimum parcel size requirements of Bylaw No. 500 (see Attachment No. 2 for proposed subdivision).

Proposed Minimum 10% Frontage Relaxation Request

Proposed Lots 2, 3, 4, 6, and 7, as shown on the plan of subdivision submitted by the applicant, do not meet the minimum 10% perimeter frontage requirement pursuant to section 944 of the *Local Government Act*. The requested frontages on these proposed parcels are as follows:

<i>Proposed Lot No.</i>	<i>Required Frontage</i>	<i>Proposed Frontage</i>	<i>% of Perimeter</i>
2	26.2 m	3.5 m	1.3 %
3	22.5 m	3.1 m	1.4%
4	30.7 m	3.0 m	1.0 %
6	21.9 m	10.3 m	4.7 %
7	19.7 m	11.6	5.9 %

Therefore, as these proposed parcels do not meet the minimum 10% parcel frontage requirement, approval of the Regional Board of Directors is required.

Due to the overall subdivision design and the steeper slopes and rock outcrops within the subject property, the applicant has designed the Carmichael Road to terminate as a cul-de-sac. This type of street design reduces the size of available frontages. The applicant has indicated that access driveways for proposed Lot 2, 3, and 4 will be designed as one access constructed as a lane and covenanted as reciprocal access agreements. The applicant has also indicated that this type of sharing access design has been used elsewhere in the Fairwinds area successfully.

Proposed Park Land

The applicant is proposing the dedication of park land in the form of a 6.0-metre wide linear corridor totaling 1340 m² in size to be located around the perimeter of the subdivision connecting Carmichael Road with the Fairwinds Recreation Centre property. In addition, the applicant has offered to construct the park land corridor to a suitable RDN standard. In the case of the Fairwinds lands, there is currently a surplus of approximately 2.0 ha of park land dedication. Therefore, the dedication or cash in-lieu-of park land could be considered from this existing surplus. It is noted that the Fairwinds development still requires approximately an additional 16 ha of park land to meet the minimum 5% park land requirement.

ALTERNATIVES

1. To approve the request for relaxation of the minimum 10% frontage requirement for proposed Lots 2, 3, 4, 6, and 7 and accept the offer to dedicate and construct the park land subject to requirements set out in Schedule No. 1 of the staff report.
2. To approve the request for relaxation of the minimum 10% frontage requirement and require park land dedication in different amount and location.
3. To approve the request for relaxation of the minimum 10% frontage requirement and deny the offer of park land dedication and require that the 5% park land provision be deducted from the current surplus.
4. To deny the request for relaxation of the minimum 10% frontage requirement and deny the offer of park land dedication.

DEVELOPMENT IMPLICATIONS

The Fairwinds properties currently have a park land surplus of approximately 2.0 ha. This means that if there is no park land dedication accepted with Phase 9A, the required 5% park land will be subtracted from the surplus amount, in this case 890 m². Staff has discussed with the applicant potential concerns that the dedication of trail corridors, while serving some of the park land needs for Nanoose Bay, may not provide for other park land interests. In response to this concern, the applicant has agreed to calculate the amount of linear trail park land at 50% of the total area for the proposed linear trail corridor dedication. Therefore, the proposed park land calculation would be 670 m² (50% of 1340 m²). If the dedication is accepted, 220 m² (balance of the maximum 5% park land provision) would still be subtracted from the surplus park land amount (*see Schedule No. 1 – Conditions of Approval*).

As part of the subdivision review process, staff has discussed the suitability of a trail corridor in the proposed location and has explored other potential park land opportunities on the site. With respect to the location of the proposed park land, the subject property contains some steeper slopes and rock outcrops, and as a result, the applicant has designed the linear corridor to cross the flatter, more accessible portions of the site. In addition, the applicant has designed the park land linear corridor in such a way that it will connect to a future park land connection proposed as part of the next subdivision proposal located to the north of this application. With respect to the request to relax the 10% frontage requirement, due to the larger sizes of the proposed lots buildable site areas will be available to support the intended residential uses.

In addition, the applicant has offered to construct the proposed linear corridor to an acceptable RDN standard. With the construction of the linear corridor, there will be no immediate financial implications to the community.

The applicant is proposing that the linear corridor be connected to the Fairwinds Recreation Centre property, which is private property. In order to ensure the public may have full access to the proposed corridor, a statutory right-of-way would be required allowing public access across the recreation centre parcel. The applicant is in concurrence with this request, which is set out in Schedule No. 1 (Conditions of Approval) of this report.

The RDN Recreation & Parks staff has reviewed this request and has no objection to the applicant's proposal.

Environmentally Sensitive Areas Atlas

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates that there are no environmentally sensitive areas within the area of this subdivision proposal.

PUBLIC CONSULTATION IMPLICATIONS

Parks and Open Space Plan For Nanoose Bay

The *Parks and Open Space Plan for Nanoose Bay* sites that there are a number of gaps in the existing parks system. Included in the list of gaps in the system are surfaced trails and opportunities for hiking and cycling that are associated with outdoor recreation experience and activities. The plan also provides selection criteria for trail corridor acquisition and development when evaluating park land acquisition proposals. Criteria that meet the proposed park land dedication include:

- Provides inter community connections
- Connects recreation sites

Nanoose Bay Parks and Open Space Advisory Committee

The Nanoose Bay Parks and Open Space Advisory Committee has reviewed the proposal and have recommended that the offer to dedicate park land not be accepted and recommend that the full 5% be used to off-set the land amount in credit with Fairwinds Development Corporation. The Committee discussed the value of this small parcel and weighed it against the desire for a larger parcel to be dedicated at some point in the future.

With respect to the Nanoose Bay Parks and Open Space Advisory Committee's concerns for the need for a larger parcel for community park purposes, despite the current surplus amount (approximately 2.0 ha), another 16.0 ha will still be required to be considered for park land dedication for the Fairwinds area at the time of future development. Therefore, acceptance of the proposed park land dedication would still provide an opportunity to obtain a larger parcel for park purposes in the future, but would also achieve the objectives of providing for linear trail connections.

FINANCIAL IMPLICATIONS

If the applicant constructs the linear corridor to a suitable RDN standard, there will be no immediate financial implications to the community.

SUMMARY

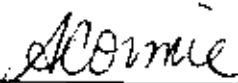
This is a request to relax the 10% minimum frontage provision for 5 parcels pursuant to section 944 of the *Local Government Act* and to offer a linear corridor trail as park land dedication as part of an 8-lot subdivision proposal. The proposed parcels that require a relaxation of the minimum 10% frontage requirement will be capable of supporting the intended residential uses permitted in the zoning provisions.

With respect to the offer to dedicate park land in the form of a trail corridor, the Nanoose Bay Parks and Open Space Advisory Committee recommends that the park land requirement be applied to reduce the surplus of dedicated park land in Fairwinds rather than the dedication of the linear trail. However, as an additional 16.0 ha still to be dedicated as park land in Fairwinds, staff feel that there is still an opportunity to obtain a larger parcel for park purposes and still meet the objective of creating linear trails as outlined in the *Parks and Open Space Plan for Nanoose Bay*. Staff has discussed potential concerns with trail dedication with the applicant and, as a result, the applicant is in concurrence to construct the trail to an acceptable RDN standard, to reduce the park land dedication calculation to be applied to the park land surplus by 50%, and to provide a statutory right-of-way across the Fairwinds Recreation Centre property to allow public to access the trail from the recreation centre.

Therefore, as the applicant is in concurrence with the conditions of approval as outlined in Schedule No. 1 staff recommend Alternative No. 1, to approve the relaxation of the minimum 10% frontage for proposed Lots 2, 3, 4, 6, and 7 and accept the offer for park land dedication in the amount and location as shown on the submitted plan of subdivision subject to the conditions set out in Schedule No. 1.

RECOMMENDATION

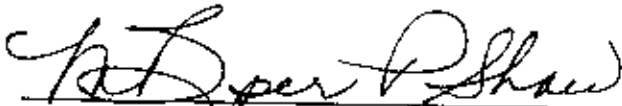
That the request from Koers & Associates, on behalf of 3170497 Canada Inc., commonly known as Fairwinds Development, to relax the minimum 10% perimeter frontage requirement for Proposed Lots 2, 3, 4, 6, and 7 as shown on the Plan of Proposed Subdivision of Phase 9A be approved and the offer to dedicate park land in the location and amount as shown on the Plan of Proposed Subdivision of Phase 9A be accepted subject to Schedule No. 1 of the corresponding staff report.



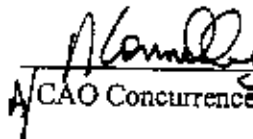
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

Devsrs/reports 2003/ftge park se 3320 30 25258 fairwinds phase 9a.doc

SCHEDULE No. 1
Conditions of Approval

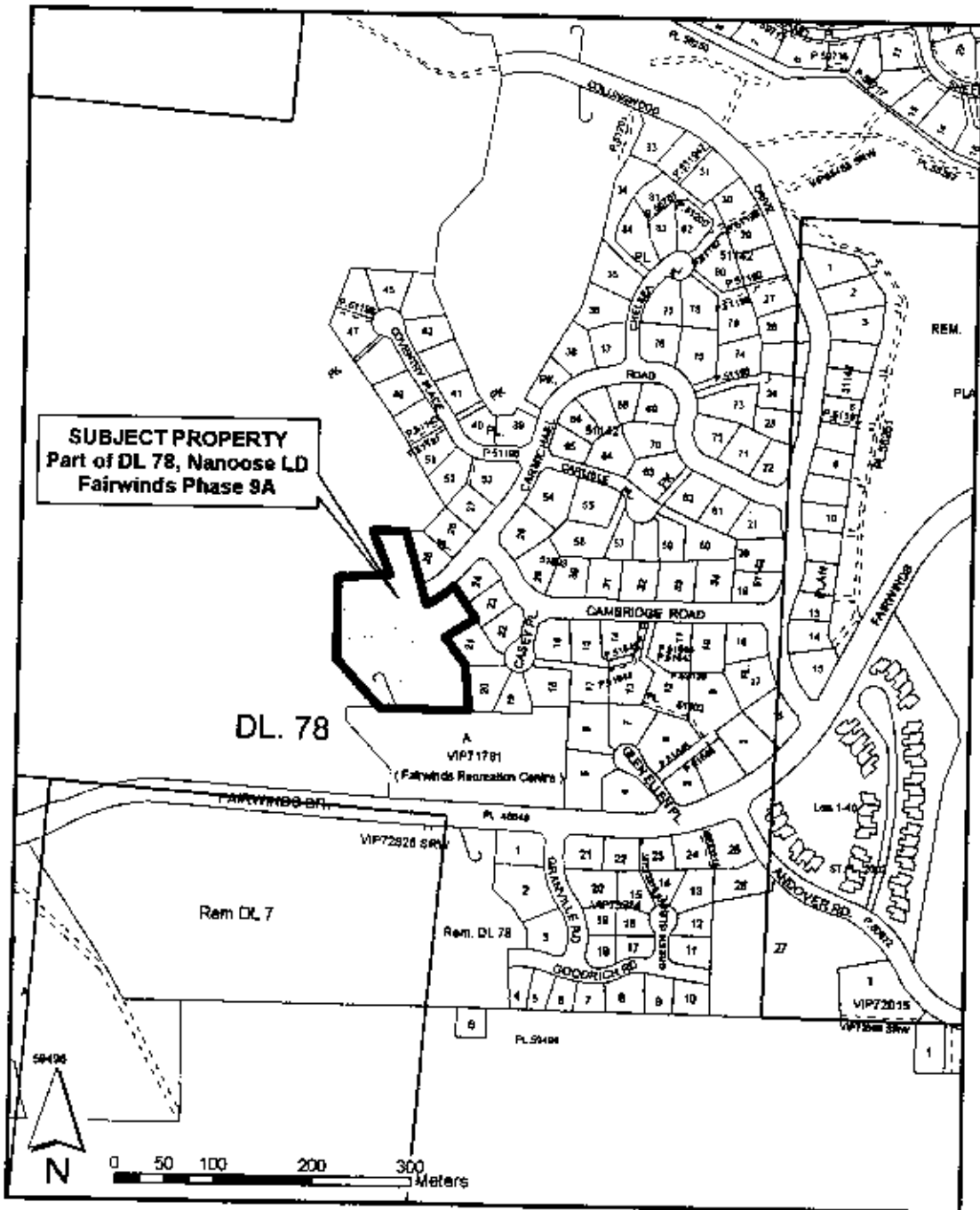
The applicant shall provide the following in conjunction with Subdivision No. 25258 (Phase 9A):

1. Register a statutory right-of-way to permit public access across the Fairwinds Recreation Centre (Lot A DL 78 Nanoose District Plan VIP71781).
2. Construct the linear corridor park land to an acceptable RDN standard in conjunction with the subdivision development.

Park Land Surplus Calculation:

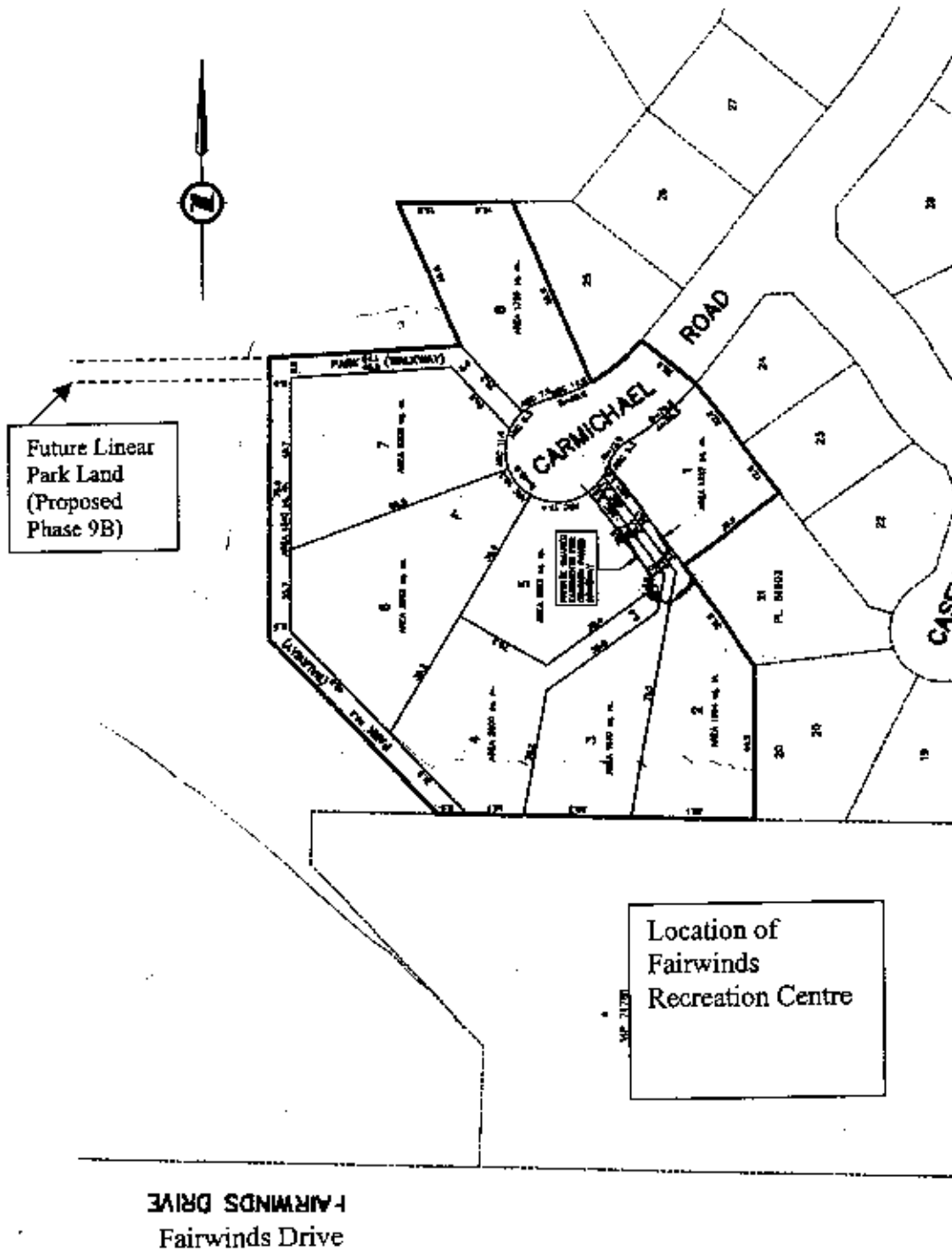
With respect to the park land surplus calculation, 50% of the total linear park land shall be applied in the park land surplus calculation in conjunction with this application.

ATTACHMENT NO. 1
Location of Subject Property



BOGS MAPSHEET NO 92F.030.3.4

ATTACHMENT NO. 2
Proposed Plan of Subdivision
(As submitted by Applicant)





REGIONAL DISTRICT OF NANAIMO			
SEP 22 2003			
CHAIR		GMCrS	
CAO		GMDS	
GMCms		GMES	
GAP ✓			
		DATE:	
		FILE:	

MEMORANDUM

TO: Pamela Shaw
Manager of Community Planning

September 19, 2003

FROM: Susan Cormie
Senior Planner

FILE: 3320 30 25143

SUBJECT: Request for Relaxation of the Minimum 10% Frontage Requirement
Applicant: K vanWesten
Electoral Area 'A', Whiting Way

PURPOSE

To consider a request to relax the minimum 10% perimeter frontage requirement as part of 2-lot subdivision proposal.

BACKGROUND

The applicant has requested the minimum 10% perimeter frontage requirement be relaxed for 1 of the proposed parcels as part of a 2-lot subdivision proposal for the property legally described as Lot 1, Section 1, Range 6, Cedar District, Plan VIP68894 Except Part in Plan VIP75488 and located on Whiting Way within the Electoral Area 'A' (see Attachment No. 1 for location).

The subject property is currently zoned Rural 4 (RU4) and is within Subdivision District 'D' pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987. The applicant is proposing to subdivide the parent parcels into 2 lots, which will be greater than the 2.0 ha, minimum parcel size, therefore meeting the minimum parcel size requirement. (see Attachment No. 2 for proposed subdivision). The parcels are proposed to be served by individual private septic disposal systems and private water wells.

The new Lot 1 is proposed to have a parcel frontage of 20.0 metres or 1.1% of the total perimeter frontage. Therefore, as this proposed lot does not meet the minimum 10% parcel frontage requirement pursuant to section 944 of the Local Government Act, approval of the Regional Board of Directors is required.

It is noted that the parent property has a section 700 filing registered on title pertaining to a bylaw enforcement issue on zoning and building inspection infractions involving the maximum number of dwelling units allowed per parcel under the Rural 4 (RU4) zone. For the Committee's information, the applicant has applied under a separate subdivision application to subdivide another parcel from the proposed remainder of Lot 1 for the purposes of resolving the bylaw issues.

ALTERNATIVES

1. To approve the request for the relaxation of the minimum 10% frontage requirement for proposed new Lot 1.
2. To deny relaxation of the minimum 10% frontage requirement.

DEVELOPMENT IMPLICATIONS

Ministry of Transportation staff has indicated that the Approving Officer is not requiring further highway dedication through the new Lot 1 at this time due to the proposed parcel size. Staff also noted that, at time of future subdivision of the proposed new Lot 1, the Approving Officer would consider the dedication of road as a condition of subdivision. Therefore, the Ministry has no objection to this request.

OFFICIAL COMMUNITY PLAN / ENVIRONMENTAL IMPLICATIONS

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates the presence of an Unknown Fish Habitat and its corresponding Fisheries Planning Boundary as well as a Wetland Sensitive Ecosystem. The Electoral Area 'A' Official Community Plan Bylaw No. 1240, 1999 (OCP) confirms, by ground survey, the presence of the wetland area and indicates that the unknown fish habitat includes a pond and stream. As a result of these environmentally sensitive areas, the OCP designates portions of the subject properties within the Streams, Nest Trees, and Floodplain Development Permit Area No. 5. However, the requirements of this development permit area do not come into effect until December 11, 2004 taking into account the 12-month in-stream status provision of the *Local Government Act*, which permits the additional time period. Therefore, this application is subject to a development permit if it is not finalized by December 11, 2004. It is noted that there are currently section 219 covenants on title, which prohibit the removal of vegetation or the placement of buildings within 15.0 metres of all watercourses.

Due to the newly designated Ladysmith Bog on the adjacent parcel in the south located in Cowichan Valley Regional District, the Ministry of Water, Land and Air Protection recommends that the wetlands located within the subject property be set aside for protection. This recommendation has been forwarded to the Approving Officer, who will take it into consideration as part of the subdivision application review process.

VOTING

Electoral Area Directors - one vote, except Electoral Area 'B'.

SUMMARY

This is a request to relax the minimum 10% perimeter frontage requirement. The parent parcel contains a number of environmentally sensitive features, but is exempt from the requirements of the corresponding development permit requirements of the Electoral Area 'A' OCP at this time. If the subdivision is not finalized by December 11, 2004 (includes the 12-month time period for in-stream applications under the provisions of the *Local Government Act*), the application will then be subject to the development permit process. There are covenants currently registered on title restricting the placement of structures and no

removal of vegetation for the watercourses. With respect to the section 700 filing on title, the applicant has another current subdivision application involving the proposed remainder of the parcel, which will address the land use bylaw infractions. The Ministry of Transportation has indicated that future road dedication will be determined at the time of future subdivision of this proposed parcel and as a result, Ministry staff has no objection to the request for the proposed minimum 10% perimeter frontage relaxation. Therefore, as the Ministry of Transportation staff has no objection to this request and the section 700 filing, with respect to bylaw infractions, are being handled under another subdivision application, staff recommends Alternative No. 1 to approve the relaxation of the minimum 10% perimeter frontage for proposed Lot 1.

RECOMMENDATION

That the request, submitted by K vanWesten to relax the minimum 10% frontage requirement for proposed Lot 1 of the proposed subdivision of the Remainder of Lot 1, Section 1 Range 6 Cedar District Plan VIP68894 as shown on the plan of subdivision be approved.

A. Connie

Report Writer

A. [Signature]

A. General Manager Concurrence

[Signature]

Manager Concurrence

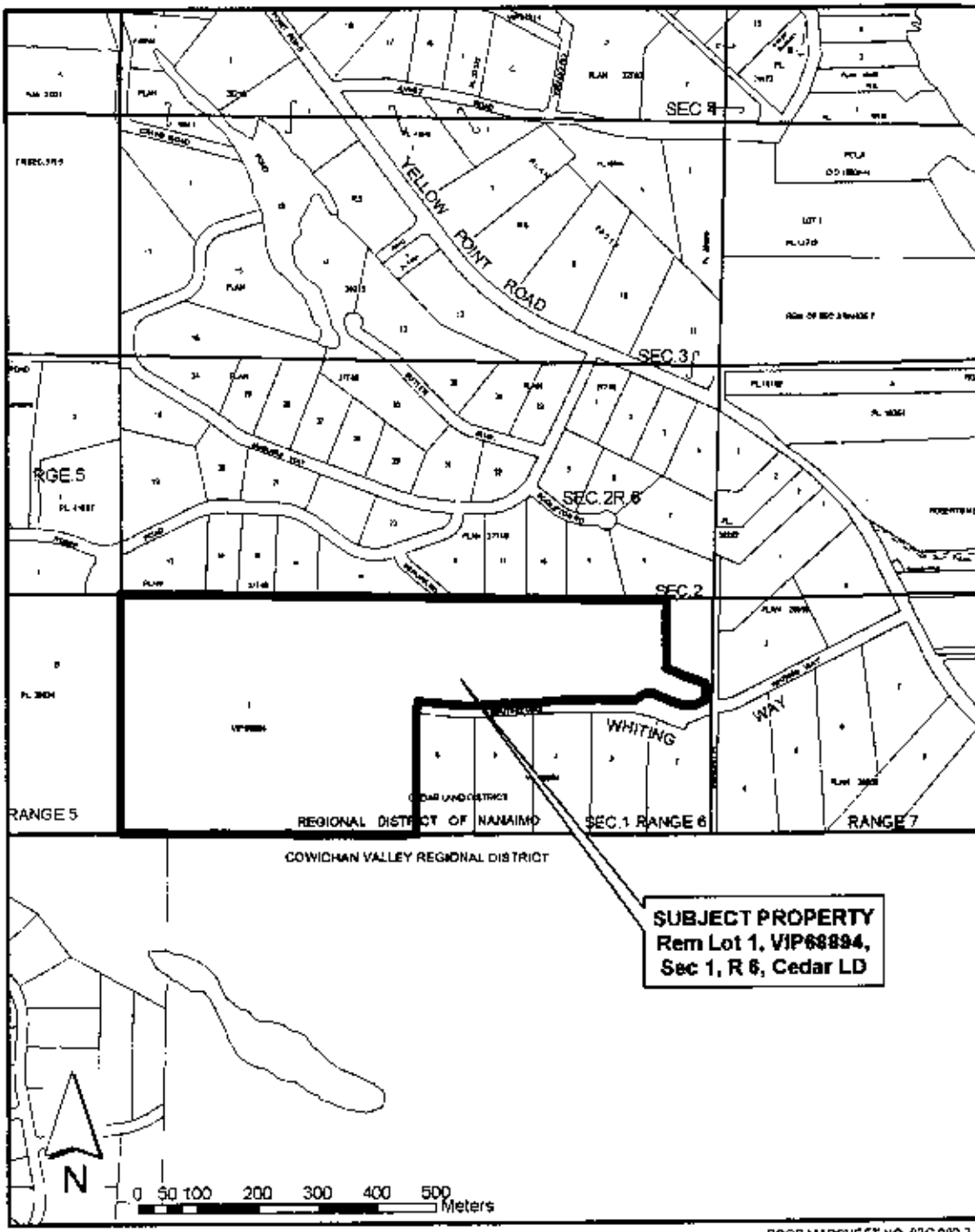
[Signature]

A. CAO Concurrence

COMMENTS:

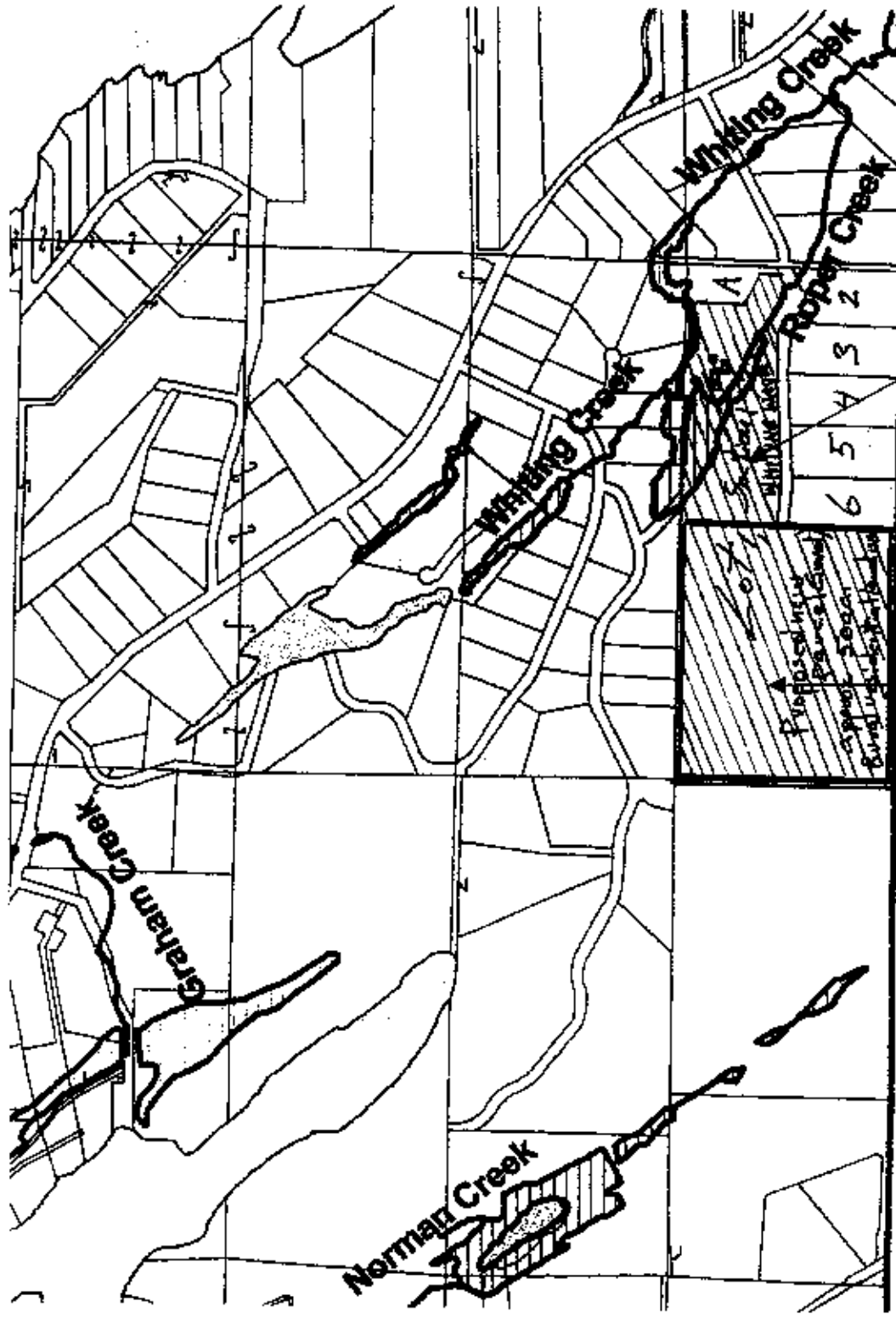
devsvs/report/2003/ se 3320 30 25143 vanwesten.doc

ATTACHMENT NO. 1
SUBJECT PROPERTY LOCATION



BCGS MAPSHEET NO 92G.002.3.1

**ATTACHMENT NO. 2
PROPOSED SUBDIVISION
(as submitted by applicant)**



PLAN OF PROPOSED SUBDIVISION
Lot 1, Sections 1, Ranges 6, Condon District, Plan 01268894
drawn: May 2003
K063

Proposed Remainder
of Lot 1

Proposed New Lot 1



REGIONAL DISTRICT OF NANAIMO	
SEP 22 2003	
CHAIR	GMCrs
CAO	GMDS
GMCms	GMES

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: September 19, 2003

FROM: Brigid Reynolds
Senior Planner

FILE: 3050 00 EATR

SUBJECT: Eagle Nest Tree Development Permit Areas

PURPOSE

To consider approval of a proposed consultation strategy to determine the level of public support for establishing development permit areas and guidelines to protect eagle trees within all electoral areas.

BACKGROUND

At the August 12, 2003 Regional Board meeting the following resolution was passed:

MOVED Director D. Haime, SECONDED Director Holdom, that staff be directed to report back to the Committee with respect to establishing development permit areas and guidelines to protect eagle trees within all electoral areas of the Regional District of Nanaimo except Electoral Area 'B'. CARRIED

Director Kreiberg requested that staff also investigate the possibility of tax relief for nesting tree encumbrances and that staff consult with habitat technicians from the Department of Fisheries and Oceans and the Ministry of Water, Land and Air Protection for input on the siting of development permit boundaries. The Chairperson also requested that staff contact Ron Spellar from BC Wildlife Federation for input.

Eagle nest trees are typically large, very old trees located near the water. Eagle nest tree requirements are considered to be specialized due to the eagles needs for unobstructed views, the potential weight of the nest, and their breeding habits. Land development has caused the loss of many current and future nest trees, thereby threatening the long-term maintenance of a breeding population of eagles. *Attachment No. 2* provides background information about eagles, their habitat needs, and other issues related to eagle nest tree protection. *Attachment No. 3* shows graphic examples of buffer areas for eagle trees.

In the past, data gathered on eagle nesting trees in the RDN has been undertaken by contractors to MLWAP. In recent years the Wildlife Tree Stewardship Group (WiTS) has begun taking over this role. MWLAP is a member of this group together with representation from BC Hydro, Environment Canada and the Federation of BC Naturalists.

The nests of eagles, herons, peregrine falcons, osprey, gyrfalcon and burrowing owls, their eggs, and their young are protected pursuant to section 34 of the Provincial *Wildlife Act*, such that it is an offence to destroy, remove or injure any of these features. The *Wildlife Act* does not establish any buffer around a nest tree.

PAGE
101

Section 919.1 of the *Local Government Act* enables Local Governments to designate Development Permit Areas (DPAs) for the protection of the natural environment, its ecosystems and biological diversity. Currently two (2) Official Community Plans (OCPs) have designated eagle trees as development permit areas: Nanoose Bay Official Community Plan Bylaw No. 1118, 1998 and Electoral Area 'A' Official Community Plan Bylaw No. 1240, 2001.

Other local governments were contacted regarding how they protect eagle trees. Often municipalities that adopt bylaws to protect trees use their authority under section 708 of the *Local Government Act* to adopt a tree protection bylaw. However, this authority is not granted to regional districts unless they make a special request to the Minister of Community, Aboriginal and Women to adopt a tree protection bylaw.

ALTERNATIVES

1. To receive the staff report for information and endorse the proposed Consultation Strategy and proceed with a request to the Province to obtain the authority for Tree Protection for the specific purpose of protecting significant trees equivalent to the provisions under section 708 of the *Local Government Act*.
2. To not proceed with the Consultation Strategy but appeal to the Province to increase the level of protection for eagle nest trees and the nesting trees of other endangered birds by initiating discussions with the Minister of Water, Land and Air Protection and Minister of Agriculture to amend the *Wildlife Act* and *Right to Farm Act*.
3. To endorse the proposed Consultation Strategy and appeal to the Province as outlined in Alternative No. 2.

OFFICIAL COMMUNITY PLAN (OCP) IMPLICATIONS

An OCP provides guidance and direction for the future development of lands in a community. Development Permit Areas (DPAs) are regulatory in nature and are generally found in an OCP. In order to designate a DPA in an OCP for a specific purpose, the environmental feature or affected area must be identified on a map adopted as part of the bylaw. In addition, clear justification for the establishment of DPAs must be detailed in the bylaw.

There are nine OCPs in the RDN and each of the municipalities within the Regional District has their own OCP and tree protection bylaws. Currently, only two OCPs within the RDN designate eagle nest trees as DPAs. The Nanoose Bay OCP designates the trees that are identified in the bylaw as being the DPA, but does not recommend a buffer area. Electoral Area 'A' OCP Development Permit No. 5 (which comes into affect in December 2003) also designates both eagle and heron nest trees identified in the bylaw and specifies that the DPA is 60.0-metre radius from the mapped nesting trees. Shaw Hill Deep Bay OCP is being reviewed and staff anticipates that eagle and heron nest tree DPAs will be designated. French Creek OCP identifies eagle trees as environmental features but does not designate them as DPAs.

The other OCPs do not specifically refer to eagle and heron nest trees but provide general policy statements for wildlife habitat protection and conservation. Shaw Hill – Deep Bay OCP; French Creek OCP; East Wellington – Pleasant Valley OCP, Lantzville OCP; and the Englishman River OCP include an objective with regards to conserving and protecting wildlife habitat that is sensitive to land use development and human disturbance. Electoral Area 'F' OCP identifies wildlife habitat as Environmentally Sensitive Areas (ESAs) and states that individual and community stewardship are the primary means of protecting these features. However, if no regulation is established, the objective or policy statement does not prevent landowners from impacting wildlife habitat or an ESA. Therefore, all the OCPs would need to be amended.

The WiTS partnership group has hired a contractor to digitize the eagle nest tree data for the RDN and other communities on Vancouver Island. The data only includes eagle nest trees and not perching or roosting trees. It is anticipated that the data will be verified and digitized by March 2004. This will provide the RDN with an up-to-date inventory. Therefore, it is recommended that any OCP amendments be undertaken subsequent to the completion of the data collection and verification process.

LAND USE AND DEVELOPMENT IMPLICATIONS

The MWLAP would estimate that there is a minimum of 200 eagle nest trees in the RDN. Currently, only a total of 21 trees are designated as Development Permit Areas: the Nanoose Bay OCP identifies 17 eagle trees and the Area 'A' OCP identifies 4 eagle trees. Pursuant to these bylaws, on a parcel that is designated as being within a DPA, a development permit must be applied for and issued by the Regional Board prior to an applicant undertaking land alteration within the designated DPA.

Depending on the location of the designated eagle nest tree, the size of the parcel on which it is located, and the size of the buffer, the whole lot and adjacent lots may be within the DPA. As outlined in the background document to this report, MWLAP recommends that a vegetated buffer of 60.0 metres be established around eagle nest trees and that during breeding season (January 30 to June 30) an additional 100.0 metres buffer area be established. Property owners proposing any development within the DPA would require a DP and may therefore be concerned over their ability to develop their parcel. Attachment No. 2 shows examples of average 'urban' and 'rural' sized lots with applied buffer areas.

As a result, it may be found necessary to implement DPA guidelines that contain flexible provisions, for example, establishing different buffer sizes for smaller infill urban lots versus larger undeveloped lots; enabling property owners to achieve the same level of density on their property as if they did not have the DPA; provisions for minor additions to existing buildings and structures; and detailed exemption provisions that allow for the removal of invasive species and maintenance of existing landscaping, and agricultural activities.

The *Farm Practices Protection (Right to Farm) Act* limits the extent to which local government can establish bylaws that would restrict 'normal farm practices'. Therefore, a development permit could not be required for land alteration that is occurring on property where agriculture is a permitted use. Staff would suggest that this issue be discussed with the Ministry of Agriculture in the attempt to either amend the Act or incorporate policies with the purpose to provide buffer protection for eagle nest trees.

Infractions of development permit area are not considered a Municipal Ticketing Infraction, therefore, any enforcement must be sought through the court system. This can be an expensive and time-consuming route and there are no guarantees. However, there was a recent court case between the Comox -

Strathcona Regional District and a property owner who breached the eagle tree development permit guidelines. The court decided in favour of the regional district and ordered the property owner to pay the regional district's court costs. In some cases where a DPA exists, property owners either knowingly or unknowingly remove vegetation contrary to the DP guidelines. As a result, the property owner must apply for a development permit after the work has been done. Replanting is often a condition of this type of application. In some cases the property owner has disputed the extent of replanting required. Therefore, staff recommend that the DP guidelines include a provision to request landscape bonding to provide some security that the works are adequately undertaken.

PUBLIC CONSULTATION IMPLICATIONS

Pursuant to the *Local Government Act*, the local government must notify the public of a proposed amendment to an OCP and hold a Public Hearing on the issue. In this case, it will be necessary for the RDN to hold a number of Public Information Meetings prior to the Public Hearing to discuss the potential implications with the public and other stakeholders. In addition, individual landowners who have eagle nest trees on their parcels will be directly notified of any Public Information Meeting or Public Hearing. The public consultation process will provide an opportunity for landowners to discuss the impacts associated with establishing DPAs for the purpose of protecting eagle nesting trees.

Eagle nest trees are discovered or are newly established on a regular basis. As a result, once the bylaw has been adopted, when new eagle nest trees are identified and verified it would be necessary to amend the bylaw to include the new tree data. Staff suggests that the review of new data and possible amendments be undertaken on a periodic basis depending of the vulnerability of the new trees identified.

ENVIRONMENTAL IMPLICATIONS

The Board's resolution only refers to eagle trees. Section 34 of the *Wildlife Act* is limited in terms of the numbers and types of species that require some level of protection as there are many other bird species that are rare and endangered that are not identified. The bald eagle is "yellow listed" which means that it is regionally significant. Three of the other species listed in section 34 of the *Wildlife Act* (herons, peregrine falcons, and osprey) are also found on the east coast of Vancouver Island and of those, Blue Herons are blue listed (threatened). Staff suggests that heron nest trees be included in the public consultation process. However, the data is not as up to date as the eagle nest tree data is.

Establishing a buffer around eagle nest trees attempts to protect eagle habitat from disturbance that results from development and the impact of adjacent land uses. Ideally the buffer should consist of mature native trees, shrubs and understorey vegetation; however, depending on the adjacent land uses, there may be no mature native vegetation within the buffer area. Therefore, the guidelines for the DPA should include the requirement to replant native vegetation within the buffer area. Recognizing that, replanting will not provide a significant buffer for a number of years until the vegetation matures.

In anticipation of adopting DPAs to protect eagle and heron nest trees there may be the undesired result of property owners removing the trees within the buffer area to avoid having to protect them in the future. As part of the public consultation process, staff will include a public awareness component to try to reduce this type of activity.

There are 14 species of birds (tree and grass nesters) indigenous to Vancouver Island that is designated as red or blue listed species. Staff suggests that the *Wildlife Act* should be amended to grant protection to a

larger number of bird species that are currently rare and endangered. As a result, this report recommends that discussions be initiated on this issue with the Minister of MWLAP. The Federation of BC Naturalists is proposing to bring a resolution to their annual convention with regards to amendments to the *Wildlife Act*.

Staff has received correspondence and comments about protecting eagle perch trees. The Perch trees are trees that are used by eagles as part of their day-to-day life cycle and are not protected pursuant to the *Wildlife Act*. The eagle tree inventory does not specifically include perch trees and the use of a tree is not as obvious as a nest tree. However, the information collected by the WiTS monitors may include perch tree activity. Those responsible for the data agree that trying to include perch trees in this process at this point in time would be too early. Therefore, staff recommends that eagle perch trees not be included in this process.

FINANCIAL IMPLICATIONS

As outlined in *Attachment No. 1*, the financial costs associated with the public consultation process are primarily attributable to the public consultation strategy. It is anticipated that at least three meetings will be required to cover the region, one in the north portion of the RDN, one in the central area, and one in the southern portion. There will also be costs associated with the required newspaper advertisements, direct mailing, meeting notices to landowners with known eagle nest trees on their parcels, and costs associated with compiling specialized mapping projects for the proposed amendments. These costs will be paid from the Electoral Area Planning Operating Budget contained within the 2004 Budget for the Development Services Department.

Property owners are eligible to receive tax credits for their personal income tax if they are willing to register a covenant or donate environmentally sensitive lands (this may include the buffer lands around an eagle nest tree) to an eligible recipient (for example, government agency or land trust). A number of criteria must be met and the property owner would be responsible for undertaking these activities if they chose to take advantage of the tax credit. In calculating the tax credit, the value of the gift is first applied to offset any capital gains tax (i.e. the difference between the appraised value of the land when it was purchased by the current landowner and its value on the day it is donated). However, no benefit must be received that is part of a development permit approval in return for the donation of the land. Therefore land that is donated as part of a development permit approval would not qualify for this tax credit.

Local governments have the power to choose to grant property tax exemptions to the owners of riparian land subject to conservation covenants being registered in favour of the local government. As eagle nest trees are often located in riparian areas there may be an opportunity to provide incentives to property owners who covenant the buffer area within the riparian zone. Staff recommend that the Regional Board consider a policy to support requests from property owners to reduce their property tax if the property owner enters into a covenant to protect riparian land, whether containing an eagle nest tree, heron rookery or not, and the property owner meets all the required criteria.

Additionally, assessors are required to consider the effect of covenants on the value of land regardless of any other tax incentive.

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INTERGOVERNMENTAL IMPLICATIONS

As previously stated, the Provincial *Wildlife Act* protects the nests of eagles, herons, peregrine falcons, osprey, gyrfalcon, and burrowing owls, their eggs and their young. The *Act* does not designate any buffer area around nesting trees. It is staff's understanding that there is no Provincial proposal to amend the *Wildlife Act* to include a buffer around nesting trees. While the legislative authority for the *Wildlife Act* rests with MWLAP, local government also has the authority to protect sensitive ecosystems. Therefore, due to the apparent public support for a more immediate response to the issue, staff believes that a Consultation Strategy to determine the level support for increasing the level of protection of these nest trees should be considered at local level by the Regional District. However, the statutory authority to determine penalties and to grant permits for the cutting of wildlife trees will remain with the Province, therefore, for this initiative to be as successful as possible, changes to the legislated level of protection and enforcement are recommended.

The inventory that is currently being digitized by the WiTS group has been gathered by MWLAP staff, contractors, and WiTS volunteer monitors. It is anticipated that this will be complete by March 2004. Should the RDN proceed with amending the OCPs to include an eagle nest tree DPA, the data used to map the locations would be supplied by the WiTS partnership group. As a result, the RDN would be relying on data that may or may not continue to be updated on a regular basis, as this is dependent on outside funding and volunteers. At some point in the future the RDN may be called upon to ensure the data is kept up to date. With the cutbacks at the Province, that MWLAP staff person may no longer be employed after March 2004.

The inventory information on heron rookeries trees is not as detailed as the eagle nest trees. However, staff recommends that heron rookeries be included in this bylaw review due to their threatened status and that they are protected pursuant to the *Wildlife Act*.

REGIONAL IMPLICATIONS

Each of the member municipality in the RDN has a different standard for protecting eagle and heron nest trees. Details of each municipality's bylaws are briefly outlined in the background document. In no case is a buffer around the tree provided. There is no regional standard for the protection of eagle nest trees or heron rookeries. Therefore, staff suggests that each municipality consider undertaking a bylaw review process to amend their level of tree protection for eagle and heron nest trees such that a regional standard is developed.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

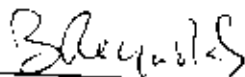
This report provides an overview of the numerous issues related to amending the nine Official Community Plans to include a development permit for the purposes of protecting eagle and heron nest trees. This report also provides an outline for a public consultation process to guide the OCP amendments. Given the efforts of volunteers, the apparent public interest in adding a higher level of protection for eagle trees as expressed by inquiries and the direction of the Board, staff recommends Alternative No. 2, to proceed with the Consultation Strategy and appeal to the Province for amendments to the *Wildlife Act* to establish added protection for eagle nest trees species listed in section 34 of the *Act*.

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RECOMMENDATIONS

1. That the staff report to establish development permit areas and guidelines to protect eagle nest trees and possibly the nesting trees of other endangered birds by proceeding with a Public Consultation Strategy, be received for information.
2. That staff be directed to proceed with the Public Consultation Strategy as outlined in Attachment No. 1.
3. That the Regional Board request that the Minister of Water, Land and Air Protection consider amendments to the *Wildlife Act* to include a buffer area around eagle nest trees and added protection for other endangered species.
4. That the Regional Board request that the Minister of Agriculture consider amendments to the *Right to Farm Act* or the incorporation of policies to provide buffer protection for eagle nest trees.
5. That the Regional Board encourage each member municipality to begin a public consultation process to introduce a regional standard of bylaw to protect eagle nest trees and a buffer around the trees.



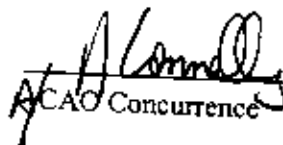
Report Writer



General Manager Concurrence



Manager Concurrence



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COMMENTS:

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Attachment No. 1
Proposed Consultation Strategy
for the Establishment of Eagle and Heron Nest Tree Development Permit Areas to the
Official Community Plans for Electoral Areas 'A', 'C', 'D', 'E', 'F', 'G', and 'H'

Background

The purpose of this Consultation Strategy is to provide the Board with an approach for consulting with the public, agencies, and interest groups on a proposal to establish eagle nest tree Development Permit Areas within Electoral Areas A, C, D, E, F, G and H Official Community Plan areas in 2004. It is proposed that the OCPs in all areas will be amended to include eagle and heron nest tree DPAs.

Recent amendments to the *Local Government Act* (section 879) require that local governments, when considering an amendment to an official community plan, must provide for 'one or more opportunities it considers appropriate for consultation with persons, organizations, and authorities it considers will be affected.'

The Consultation Strategy discussed below outlines a means for assessing the impact that establishing eagle nest tree DPAs will have on property owners, community groups, and provincial agencies.

Goals of the Consultation Strategy

The overall goal of the Consultation Strategy is to respond to community concerns and the Board's resolution regarding establishing greater protection for eagle nest trees within the RDN.

A second, but equally important goal is to ensure that all interested individuals, organizations, and agencies with an interest in eagle nest trees are meaningfully and adequately consulted on the proposed change to the eight Official Community Plans.

It should be noted that this amendment is not intended to initiate a full-scale review of any of the Electoral Area's Official Community Plans. Instead, the amendment is specific to the establishment of Eagle nest tree DPAs.

Method

Referrals will be sent to the following agencies, organizations, community groups and individuals:

- Agricultural Land Commission;
- Landowners that have an identified eagle nest tree on their property;
- Ministry of Water, Land and Air Protection;
- Ministry of Community, Aboriginal and Women's Services;
- Residents Association in various Electoral Areas;
- Vancouver Island Real Estate Board;
- Local area BC Field Naturalists;
- Nanaimo Area Land Trust;
- Wildlife Tree Stewardship Partners; and
- Other relevant wildlife groups in the region.

Members of the public or other agencies will be informed of the process through:

- On-going advertisements and information;
- Public information meetings; and
- A public hearing(s) on the proposed amendments.

Outcomes and Products

The intent of a consultation process is to effectively engage all interested parties to assess the impact and appropriateness of amending the OCPs to include eagle nest tree DPAs, and to meet all regulatory requirements established by the *Local Government Act*.

Projected Schedule

Date 2004	Action
April	<ul style="list-style-type: none"> ▪ Receive data from WiTS partnership group. ▪ Draft eagle and heron nest tree DPA guidelines. ▪ Develop mapping. ▪ Report to RDN Board on approval of public consultation plan
April	<ul style="list-style-type: none"> ▪ Referrals to government agencies, NGOs, adjacent municipalities and regional districts
April	<ul style="list-style-type: none"> ▪ Advertise issue and comment sheet in area newspapers ▪ Post issue and comment sheet on RDN Website
May/June	<ul style="list-style-type: none"> ▪ Compile referral and public comments, additional research
September	<ul style="list-style-type: none"> ▪ Three Public Information Meetings (south, central, north RDN)
Early Fall	<ul style="list-style-type: none"> ▪ Report to Committee of the Whole on public and referral comments; recommending 2nd reading for Amendment Bylaw
Early Fall	<ul style="list-style-type: none"> ▪ Report to RDN Board reporting on public and referral comments; recommending 2nd reading for Amendment Bylaw
Late Fall	<ul style="list-style-type: none"> ▪ Notification of Public Hearing
Late Fall	<ul style="list-style-type: none"> ▪ Public Hearing held pursuant to Sections 890 and 892 of the <i>Local Government Act</i>
Year end	<ul style="list-style-type: none"> ▪ Report to RDN Board on Public Hearing and requesting consideration of 3rd reading for Amendment Bylaw
Year end	<ul style="list-style-type: none"> ▪ Referral to Ministry of Community, Aboriginal and Women's Services requesting approval of Amendment Bylaw
Year end/early 2005	<ul style="list-style-type: none"> ▪ Report to RDN Board requesting consideration of 4th reading and adoption (<i>pending receipt of approval from Ministry of Community, Aboriginal and Women's Services</i>)

Resources

Existing staff resources will administer all components of the official community plan bylaw amendment process including graphics, mapping, public information meeting and public hearing processes.

Budget

Staff time budgeted as part of the regular work program in 2004 Development Services Department Budget. Total cost of mapping services, public information meeting, public hearing, mailings, advertising, and meeting room rentals is estimated at approximately \$3,500.00.

Monitoring and Evaluation

The process will be evaluated pursuant to the successful completion of the consultation requirement specified in the *Local Government Act*.

**Attachment No. 2
Backgrounder**

Bald Eagle (*Haliaeetus leucocephalus*) Biology

Bald Eagles live 20 to 25 years and mate for life. They nest in large trees, such as Douglas fir, western red cedars, Sitka spruce or western hemlock, 20 to 40 metres above ground. Most of the nest trees on the east coast of Vancouver Island (81%) are veteran Douglas firs over 150 years of age, usually found within 1 km of the shoreline.

It is common for eagle pairs to build more than one nest in their territory. Some nests can grow to be as much as 3.0 meters in diameter and weigh as much as two tons. A bald eagle pair usually builds a new nest or enlarges its old one in the same general locale for many years in a row. Once a pair has established its territory, the birds are reluctant to breed elsewhere, even when all suitable nest trees have been blown down by wind or felled. In attempts to monopolize the local food and habitat resources, a pair of bald eagles will defend an area around its nest site that may extend up to 0.8 km in all directions.

Eagles are territorial during nesting season and their nesting territory can be as much as 5 km². Mating season is approximately January through end of June. Eagles lay from one to three eggs. During incubation, one parent is always in the nest, to keep the eggs warm to protect them from predators. An average of one to two chicks fledged (to acquire the feathers necessary for flight) per successful nest. Eaglets take their first flights at 10 to 13 weeks after hatching. Approximately 40% of young eagles don't survive their first flight.

Once the young eagles have fledged they remain around the nest for four to five weeks, taking short flights while their primary feathers grow and strengthen. Six to nine weeks after fledging, juvenile eagles leave their nesting area. It takes approximately 20 weeks, from the time the parents build the nest and the young are on their own.

On Coastal BC, nesting density is high as active nests are consistently between 1 and 2 km apart. Nest success (defined as the number of young per occupied territory) is also high in Coastal BC. Since the 1960's the number of Bald Eagles breeding and wintering in BC has increased substantially. There are now over ten times as many wintering Bald Eagles in coastal BC than during the 1960s (increasing annually by 7.98 %) while the breeding Bald Eagle population of BC has increased by an average annual rate of 6.02 % over the same period. Historically, Bald Eagle populations in western North America have relied on spawned salmon for survival through the winter. The large increase in wintering eagles in coastal BC may reflect re-distribution of eagle food sources throughout western North America. The regional increases in Bald Eagles reflect a North America-wide recovery of this species after many years of significant declines.

At present, Bald Eagles nesting in Georgia Basin produce more young eagles than eagles breeding in other areas of the Pacific Coast. Bald Eagles are attracted to urban centres, and landfills, where there is easy scavenging. With the decline in salmon stocks, eagles may have switched to other food sources, such as gulls and waterfowl that are increasingly more abundant.

Many factors including prey abundance, weather conditions, habitat loss through development, toxic contaminants, pesticides and environmental pollution can impact the survival and reproductive success of Bald Eagles in coastal BC.

Great Blue Heron (*Ardea herodias*)

The Great Blue Heron is found throughout North America, Latin America, northern areas of South America, and the Galapagos. Four subspecies of Great Blue Heron are recognised as occurring within North America; *A.h. fannini* occurs in the Pacific Northwest and is the most common subspecies in British Columbia; *A.h. herodias* occurs throughout continental North America including the southern interior of British Columbia; *A.h. occidentalis* is a white form of the Great Blue Heron occurring in the Gulf of Mexico; and *A.h. cognata* occurs only on the Galapagos. According to an analysis of Breeding Bird Survey data, most heron populations appear to be stable or are increasing (Breeding Bird Survey 1999).

Great blue herons nest together in colonies, otherwise known as a heronry or rookery, and are sensitive to the effects of human disturbances. In one study of nesting behavior on the Oregon coast, heronries (with 15 to 161 active nests per heronry) were found in the tops of red alder, western hemlock, and sitka spruce. The study showed that there were far more active nest sites in isolated areas than areas adjacent to logging indicating a preference for areas away from human activity. Great blue herons often nest in the tops of trees in addition to rock ledges, sea cliffs, and the ground. The most common nest trees on the B.C. coast are red alder and black cottonwood. Heron nests can range in size from new platforms approximately 50 cm in diameter to older structures approximately 1.0 m across.

In British Columbia, herons return to nesting colonies on the coast in mid-January and in the interior in late March. Nest building is usually initiated in March on the coast and in April in the interior. First eggs are usually laid in early April.

Most heron colonies are extremely sensitive to human disturbance, particularly during the early stages of nest selection, nest building, pair formation and egg-laying.

Wildlife Act

The nests of eagles, herons, peregrine falcons, osprey, gyrfalcon and burrowing owls, their eggs, and their young are protected pursuant to Section 34 of the Provincial *Wildlife Act*, such that it is an offence to destroy, remove or injure any of these features. The *Act* does not designate any buffer area around nesting trees.

In BC, MWLAP's ranks rare or endangered species by colour code: red, blue and yellow listed species or subspecies. Red listed species are indigenous and are extirpated, endangered or threatened. Blue listed species are indigenous and are considered to be vulnerable. Yellow listed species are those deemed to be regionally significant. The Bald Eagle is a yellow listed species.

Inventory

The MWLAP estimate that there is a minimum of 200 nesting trees with the RDN. The Ministry of Water, Land and Air Protection (MWLAP), together with the Wildlife Tree Stewardship group (WiTS) continue to regularly update information on eagle nest trees (existing and new) within the RDN and across Vancouver Island. WiTS is a partnership group made up of representatives from BC Hydro, Federation of BC Naturalists, MWLAP, and Environment Canada. These agencies have entered into a data sharing agreement to collect information, develop and maintain a database of eagle nest trees.

In the past, data on eagle trees was compiled by MWLAP biologists or contract biologists to MWLAP. As stated MWLAP is a partner in the WiTS program and a MWLAP staff person works with the partnership group. The WiTS partnership is now responsible for managing the eagle nest tree data. Volunteer stewards of the WiTS partnership monitor the activity of eagle nest trees and provide updates to the WiTS coordinator. When required and as funds become available, consultants are hired to compile, groundtruth, and map eagle nest trees.

Determination of the true population size is extremely difficult and problematic for Great Blue herons. Most recorded efforts of systematic counts have focused on nest numbers in breeding colonies. Very little data prior to the past 30 years are available for herons nesting in coastal areas.

Unfortunately, herons abandon colonies and move frequently, and a constant search effort is required to locate new colonies. Counts of herons on the feeding grounds, during both the breeding and non-breeding seasons, may represent a more consistent measure of the population.

Incentives

A property owner can receive tax credits for their personal income tax if they are willing to register a covenant or donate environmentally sensitive land to an eligible recipient, for example, government agency or land trust. The program requires that a biological assessment and an appraisal be done. In calculating the tax credit, the value of the gift is first applied to offset any capital gains tax (i.e. the difference between the appraised value of the land when it was purchased by the current landowner and its value on the day it is donated). In addition, the property owner would be responsible for undertaking these activities if they chose to take advantage of the tax credit. However, no benefit must be received, that is development approval, in return for the donation of the land.

Currently, property tax exemptions only apply for riparian land, however if the nest tree was located within the riparian zone and the applicant met all the criteria they could qualify for an exemption if the Regional Board supported their application.

Buffer Zones

The document *Environmental Objectives, Best Management Practices and Requirements for Land Developments*, March 2001, published by the Ministry of Environment, Lands and Parks, Vancouver Island Region recommends a naturally vegetated "no disturbance" buffer be maintained a minimum of 60.0 metres radius around the tree or 1 ½ tree lengths whichever is greater, and that an additional noise and "no disturbance" buffer of at least 100 metres radius be maintained during the breeding season (January 30 to June 30). In addition, MWLAP recommends that buffers of 1,000 metres be maintained between active nest sites and blasting activities. Attachment No. 2 provides an example of average sized urban and rural lots with eagle nest tree buffers.

The same document recommends the following buffers for Great Blue heron colonies:

1. Undeveloped and natural sites - A 100 metre vegetated "no disturbance" buffer, measured beyond the most outlying nest tree in the colony, is needed to avoid disruption of brooding behaviour or desertion of the clutch. This distance should be applied prior to designing layouts on adjacent land.
2. An additional noise and "no disturbance" buffer is recommended during the nesting season (January 30 to August 15) especially for colonies not previously accustomed to human settlement activities. It is recommended that this additional buffer be up to 200 metres radius around larger colonies (50-200 nests) and that human disturbance in this zone be restricted during the nesting season. The

- recommended buffers noted above might be reduced where the birds have colonized existing settlement areas and where there is clear evidence that they have become adapted to human activities.
3. Existing Developed sites - A minimum naturally vegetated "no disturbance" buffer of 50 metres is strongly recommended to maintain windfirm rooting and to avoid clutch abandonment.

The Washington State Department of Wildlife recommends a 99.0 m diameter buffer of undisturbed habitat be maintained throughout the year to preserve a bald eagle nest site, and that the buffer be doubled during breeding season. They also require that property owners with eagle nest trees on their properties develop and adhere to a management plan.

For heron colonies, studies have recommended a buffer distance of 250- 300 m from the periphery of a heron colony, within which no human activity should take place during courtship and the nesting season (15 February to 31 July).

Enforcement

Fines under the *Wildlife Act* can be as high as \$50,000 with up to six months in jail. The level of fine was recently raised when a land owner in Nanoose cut down an eagle nest tree. The fine levied against the property owner was \$5,000, which was the maximum penalty at that time.

Currently if a property owner alters the land within a development permit area without first receiving a development permit, as a condition of the development permit, the land owner is required to replant the vegetation that was removed. However, it will take many years before mature vegetation is replaced, thereby leaving the nest in a more vulnerable state.

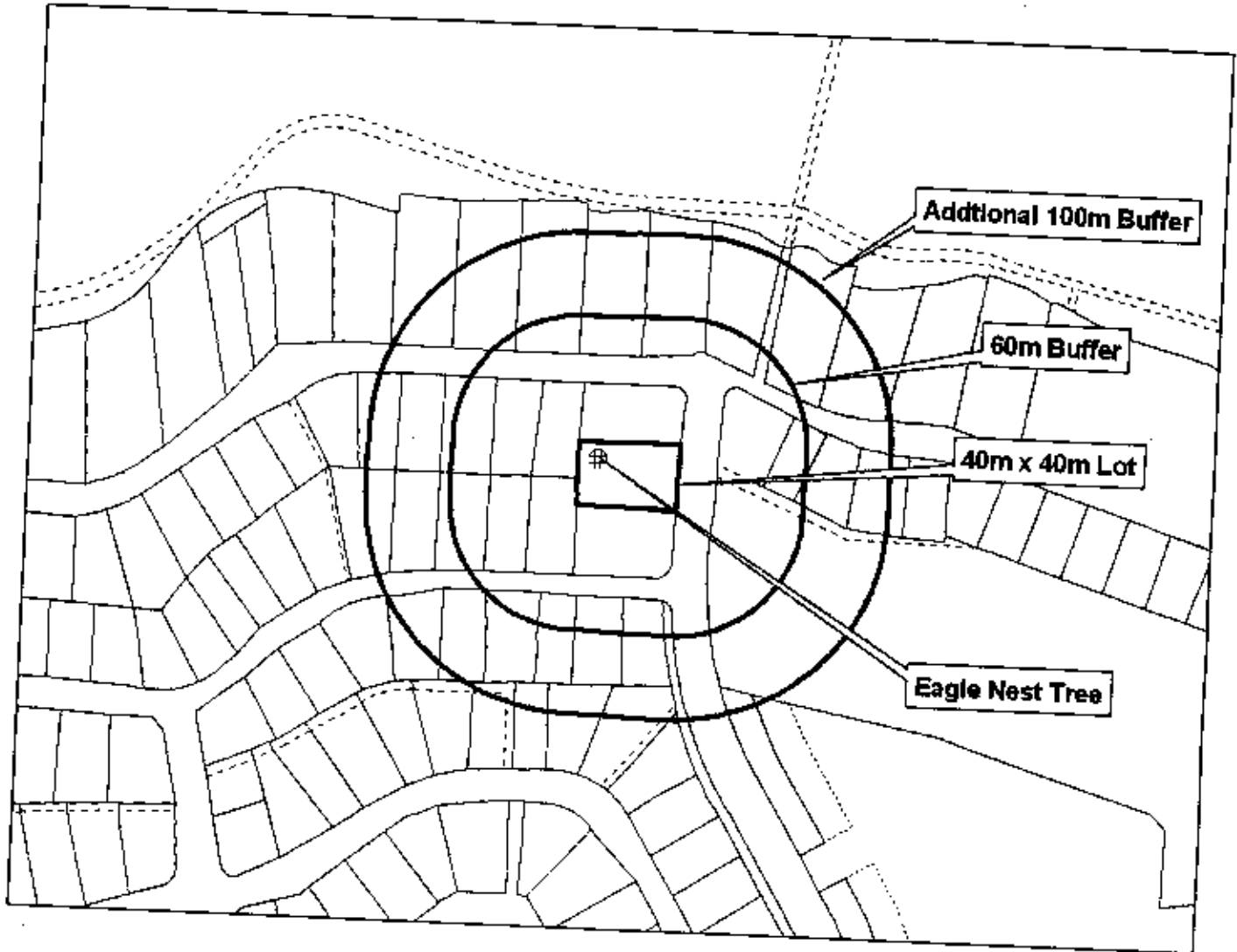
Other Jurisdiction's Tree Protection

The following outlines how the member municipalities protect wildlife trees which includes eagle nest trees: The City of Nanaimo has a tree cutting bylaw that includes Wildlife trees, however no buffer is provided for in the bylaw. The Town of Qualicum Beach Ecological DPA includes reference to wildlife trees and specifically includes eagle nest trees, however no buffer is specifically identified. The Town is also in the process of reviewing their bylaws to provide protection of significant trees and it is anticipated that eagle nest trees will be included in this review. According to City of Parksville staff, a park was created around the one identified eagle nest tree. The City of Parksville also has a tree cutting bylaw but wildlife trees are not specifically included, however the following types of trees are identified in the bylaw, Douglas Fir tree having a diameter greater than 30 centimeters (12 inches) and any tree having a diameter greater than 50 centimeters (20 inches), and eagle nest trees would likely fit within these descriptions. No buffer is provided for in the bylaw.

The Regional District of Comox-Strathcona designates eagle nest trees and heron nest colonies as DPAs in some but not all of their electoral areas. The buffer area ranges from 160 metres for eagle nest trees to 300 metres for heron nest colonies. The District of North Cowichan has designated an eagle nest tree DPA and refers to the buffers outlined in the document *Environmental Objectives, Best Management Practices and Requirements for Land Developments*, March 2001. The Cowichan Valley Regional District has not established any eagle nest tree DPAs.

Attachment No. 3 (1 of 2)
Buffer Area Examples

Example of 'urban' sized lot of 1600 m² with an eagle tree and buffer of 60.0 metres and additional 100.0 metres no disturbance buffer.



Attachment No. 3 (1 of 2)
Buffer Area Examples

Example of 'rural' sized lot of 2.0 ha with an eagle tree and buffer of 60.0 meters and additional 100.0 metres no disturbance buffer.

