

REGIONAL DISTRICT OF NANAIMO
ELECTORAL AREA PLANNING COMMITTEE
TUESDAY, MAY 27, 2003
7:00 PM

(RDN Board Chambers)

A G E N D A

PAGES

CALL TO ORDER

DELEGATIONS

MINUTES

- 3-6 Minutes of the Electoral Area Planning Committee meeting held Tuesday, April 22, 2003.

BUSINESS ARISING FROM THE MINUTES

PLANNING

AMENDMENT APPLICATIONS

- 7-15 Zoning Amendment Application No. ZA0305 – Sarkozy – Wembley Road – Area G – Land Use & Subdivision Amendment Bylaw No. 500.293.

DEVELOPMENT PERMIT APPLICATIONS

- 16-22 DP No. 60324 – Weldon/Kyler – 796 Miller Road – Area G.

DEVELOPMENT VARIANCE PERMIT APPLICATIONS

- 23-33 DVP No. 90310 – Raines – 2424 Ainsley Place – Area E.
- 34-40 DVP No. 90311 – Fern Road Consulting Ltd. on behalf of R. & L. Todsen & McTay Holdings Ltd. – Off Hawthorne Rise & White Pine Way – Area G.
- 41-46 DVP No. 90312 & Request for Relaxation of the Minimum 10% Frontage Requirement – K. & B. Sorenson on behalf of Kristoff Enterprises – Hodge's & Lowry's Roads – Area G.

OTHER

- 47-68 Aquaculture – Official Community Plan & Zoning Amendments Issues & Public Consultation Framework.

69-75

Terms of Reference & Public Consultation Strategy for a 'Finetuning' Exercise
for the Electoral Area 'F' Zoning & Subdivision Bylaw No. 1285.

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, APRIL 22, 2003, AT 7:00 PM
IN THE RDN BOARD ROOM

Present:

Director E. Hamilton Alternate	Chairperson
Director H. Kreiberg	Electoral Area A
Director D. Haime	Electoral Area D
Director P. Bibby	Electoral Area E
Director L. Biggemann	Electoral Area F
Director J. Stanhope	Electoral Area G
Director D. Bartram	Electoral Area H

Also in Attendance:

B. Lapham	General Manager, Development Services
P. Shaw	Manager of Community Planning
S. Cormie	Senior Planner
M. Burton	Recording Secretary

LATE DELEGATIONS

Steve Atkinson, re DP No. 60318 – Steven & Janet Atkinson – Jameson Road – Area D.

The Chairperson noted that the Mr. Atkinson was not in attendance.

MINUTES

MOVED Director Bartram, SECONDED Director Haime, that the minutes of the Electoral Area Planning Committee meeting held March 25, 2003 be adopted.

CARRIED

PLANNING

DEVELOPMENT PERMIT APPLICATIONS

DP Application No. 60301 – Juthans/Murphy – 5489 Deep Bay Drive – Area H.

MOVED Director Bartram, SECONDED Director Biggemann, that Development Permit Application No. 60301, submitted by Sven Juthans and Colleen Murphy, for the property legally described as Lot 39, District Lot 1, Newcastle District, Plan 20442, requesting to:

1. Vary the minimum setback for the front lot line:
 - (a) From 8.0 metres to 2.8 metres to accommodate the existing garage and courtyard.
 - (b) From 8.0 metres to 0.0 metres to accommodate the existing woodshed.
2. Vary the eastern interior lot line setback:
 - (a) From 2.0 metres to 0.7 metres to accommodate the existing workshop at the rear of the parcel.
 - (b) From 2.0 metres to 0.0 metres to accommodate the existing woodshed.

DP Application No. 60319 – Fairway Pointe Properties Ltd. – 730 Barclay Crescent – Area G.

MOVED Director Stanhope, SECONDED Director Bibby, that Development Permit Application No. 60319 submitted by Fairway Pointe Properties Ltd. For the property legally described as Lot D, District Lot 126, Nanoose District, Plan 49145, be approved, subject to the conditions outlined in Schedules No. 1, 2, 3, 4 and 5 of the corresponding staff report and to the notification procedure subject to the *Local Government Act* with respect to the proposed variances to Bylaw No. 500, 1987.

CARRIED

DP Application No. 60320 – Roy/Sims – 3371 Blueback Drive – Area E.

MOVED Director Bibby, SECONDED Director Bartram, that Development Permit Application No. 60320, submitted by Fern Road Consulting/Roy to legalize a retaining wall sited a minimum of 8.2 m from the natural boundary with the Nanoose Bay Official Community Plan Bylaw No. 1118, 1998 Watercourse Protection Development Permit Area on the property legally described as Lot 28, District Lot 78, Nanoose District, Plan 15983, be approved subject to the requirements outlined in Schedules No. 1, 2 and 3.

CARRIED

DP Application No. 60322 – Intracorp Developments Ltd./Fairwinds – Andover Road/Goodrich Road – Area E.

MOVED Director Bibby, SECONDED Director Stanhope, that Development Permit Application No. 60322 by Intracorp Development Ltd. for the property legally described as Lot 27, District Lots 8 and 78, Nanoose District, Plan VIP 73214 be approved subject to the conditions outlined in Schedules No. 1, 2, 3, 4 and 5 of the corresponding staff report and to the notification requirements pursuant to the *Local Government Act* with respect to the proposed variances to Bylaw No. 500, 1987.

CARRIED

DEVELOPMENT VARIANCE PERMIT APPLICATIONS

DVP Application No. 0304 – Melvyn – Seaview Drive – Area H.

MOVED Director Bartram, SECONDED Director Haime, that Development Variance Permit Application No. 0304, submitted by Fern Road Consulting, Agent, on behalf of Anthony Melvyn, to facilitate the development of a single dwelling unit and to legalize the existing rip rap retaining wall within a Residential 2 (RS2) zone by varying the minimum permitted setback to an interior side lot line from 2.0 metres to 0.0 metres, and to a watercourse from 18.0 metres horizontal distance from a stream centerline to 0.0 metres for the retaining wall and 10.5 metres for the dwelling unit, and to vary the maximum permitted height of a dwelling unit from 8.0 metres to 4.572 metres as measured from the existing fill grade, for the property legally described as Lot 3, District Lot 28, Newcastle District, Plan 22249, be approved, subject to notification procedures pursuant to the *Local Government Act* and subject to the conditions outlined in Schedule No. 1.

CARRIED

DVP Application No. 90307 – Irwin – 771 Mariner Way – Area G.

MOVED Director Stanhope, SECONDED Director Biggemann, that Development Variance Permit Application No. 90307, submitted by Maureen Irwin, to vary the minimum permitted setback within the Residential 1 (RS1) zone from 2.0 metres to 1.1 metres for the interior side lot line in order to facilitate the construction of a single-storey addition to an existing dwelling unit for the property legally described as Lot C, District Lot 181, Nanoose District and Part of the Bed of the Strait of Georgia, Plan VIP72454 be approved subject to Schedules No. 1, 2 and 3 of the staff report and the notification requirements pursuant to the *Local Government Act*.

CARRIED

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DVP Application No. 90308 – Neale – 3495 Bluebill Place – Area E.

MOVED Director Bibby, SECONDED Director Bartram, that Development Variance Permit Application No. 90308 to relax the 'interior side lot line' setback requirement from 2.0 metres to 0.5 metres for the siting and construction of an attached garage and to relax the minimum 'interior side lot line' setback requirement from 2.0 metres to 0.0 metres to legalize the siting of an existing accessory building for the property legally described as Lot 53, District Lot 78, Nanoose District, Plan 15983 be approved, subject to Schedules No. 1, 2, and 3 and to the notification requirements pursuant to the *Local Government Act*.

CARRIED

DVP Application No. 90309 – Homes by Kimberly on Behalf of Walsh – 777 Mariner Way – Area G.

MOVED Director Stanhope, SECONDED Director Haime, that Development Variance Permit Application No. 90309, to relax the minimum interior side lot line setback requirement from 2.0 metres to 0.5 metres to accommodate the siting of an accessory building for the property legally described as Lot E, District Lot 181, Nanoose District and Part of the Bed of the Strait of Georgia Plan VIP72668 be approved, subject to Schedules No. 1, 2 and 3 and the notification requirements pursuant to the *Local Government Act*.

CARRIED

FRONTAGE RELAXATION

Request for Relaxation of the Minimum 10% Frontage Requirement – Leo Smith & Marilyn Rae Smith – Hobson's Road – Area D.

MOVED Director Haime, SECONDED Director Stanhope, that the request, submitted by Leo Smith and Marilyn Rae Smith to relax the minimum 10% frontage requirement for proposed Lot 2, as shown on the plan of subdivision of Lot 1, District Lot 161, Nanoose District, Plan VIP65475 Except That Part in Plan VIP73924, be approved, subject to the large arbutus tree being protected.

CARRIED

Request for Relaxation of the Minimum 10% Frontage Requirement – Leigh Millan, BCLS on Behalf of Lois Dahl Holmgren – Cedar Road – Area A.

MOVED Director Kreiberg, SECONDED Director Stanhope, that the request, submitted by Leigh Millan, BCLS, on behalf of Lois Dahl Holmgren, to relax the minimum 10% frontage requirement for the Proposed Remainder of Section 7, Range 1, Cedar District as shown on the plan of subdivision of the Remainder of Section 7 with Exceptions and That Part of Section 8 Lying to the East of the Nanaimo River with Exceptions, Both of Range 1, Cedar District, be approved.

CARRIED

Request for Relaxation of the Minimum 10% Frontage Requirement – Keith & Linda Jack/CO Smythies – 2375 Hemer Road – Area A.

MOVED Director Kreiberg, SECONDED Director Haime, that the request, submitted by CO Smythies, BCLS, on behalf of Keith Douglas Jack & Linda Jeanette Taylor Jack, to relax the minimum 10% perimeter frontage requirement for proposed Lot 2, as shown on the plan of subdivision of Lot 5, Section 13, Range 2, Cedar District, Plan 40406, be approved subject to the applicant registering a Section 219 covenant on proposed Lot 2 restricting further subdivision, including all forms of strata subdivisions.

CARRIED

ADJOURNMENT

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

TIME: 7:18 PM

CARRIED

CHAIRPERSON



REGIONAL DISTRICT OF NANAIMO			
MAY 21 2003			
CHAIR		GMCrs	
CAO		GMDS	
GMCrs		GMES	
		EAP	✓
TO:		DATE:	

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: May 16, 2003

FROM: Deborah Jensen
Planner

FILE: 3360 30 0305

SUBJECT: Zoning Amendment Application No. ZA0305 - Sarkozy
Electoral Area 'G' - Wembley Road

PURPOSE

To consider an amendment application to rezone property located in the French Creek area of Electoral Area 'G' from Residential 1 (RS1) to Residential 2.1 (RS2.1) to facilitate the development of a residential duplex.

BACKGROUND

The Regional District of Nanaimo has received an application to rezone a property 1410 m² in size from Residential 1 (RS1) to a zone to permit the development of a residential duplex for the property legally described as Lot B District Lot 29 Nanoose District Plan VIP74062. The subject property is located adjacent to Wembley Road to the east and is surrounded by Residential 1 (maximum 1 dwelling unit per parcel) zoned properties to the north, west, and south (see Attachment No. 2 for location of subject property).

The subject property, which is relatively flat, is currently undeveloped and is located within a community water service area (Breakwater Enterprises) and a community sewer service area (RDN). In addition, a water supply easement is registered to the title of the subject property, and runs the length of the south property line.

The subject property is currently zoned Residential 1 (RS1) and is within Subdivision District 'Q' pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The RS1 zone allows for a maximum residential density of 1 dwelling unit per parcel. The 'Q' Subdivision District permits the creation of new parcels at 700 m² provided community water and community sewer services are provided to each parcel.

The "Regional District of Nanaimo Official Community Plan Bylaw No. 1115, 1998" (OCP) designates the subject property within the Neighbourhood Residential Land Use Designation. Pursuant to the policies of the OCP, the plan supports residential development to a maximum density of 15 units per hectare where community services are available. In addition, in order to protect the integrity of the neighbourhood to maintain and enhance existing neighbourhood characteristics and identity, the OCP recommends infill areas be restricted to ground-oriented dwelling units. The subject property is also designated within a Park Land Evaluation Area.

A public information meeting was held on May 14, 2003 at St. Columba Presbyterian Church in French Creek. Notification of this meeting was advertised in the Parksville - Qualicum News along with a direct mail-out to all property owners within a 100-metre radius of the subject property. One person other than the applicant attended the meeting (see Attachment No. 1 'Summary of Proceedings of the Public Information Meeting'). Upon review of comments received from the public, the applicant wishes to proceed with the application as submitted.

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ALTERNATIVES

1. To approve the application as submitted.
2. To approve the application subject to the conditions outlined in Schedule No. 'I' of this report.
3. To deny the amendment application.

PUBLIC CONSULTATION IMPLICATIONS

There was no opposition to the proposal at the Public Information Meeting. Pursuant to RDN policy and the requirements of the *Local Government Act*, further opportunities for consultation will be available through the notification and referral processes and the public hearing.

OFFICIAL COMMUNITY PLAN IMPLICATIONS

With respect to the provisions as set out in the OCP, the proposal to develop the parcel with a duplex (2 dwelling units) will meet the density provisions (15 units per ha).

With respect to the OCP policy which requires that infill development be designed to enhance the character of existing neighbourhood residential areas with compatible ground-oriented forms of development, staff recommend that a duplex definition be included in Part 2- Interpretation pursuant to Bylaw No. 500 as follows:

duplex means two self-contained dwelling units oriented side-by-side with separate ground level entrances and adjoined by a common wall.

This will ensure that the applicable policies of the OCP regarding build form and density are met.

There are a number of parcels designated within the Neighbourhood Residential Land Use Designation pursuant to the French Creek OCP, which would be capable of supporting a duplex use subject to rezoning, therefore, creating a new duplex zone would have implications for other properties in the French Creek area. As a result, staff proposes that a new duplex zone specifically designed for the French Creek OCP Plan Area be created. While a site-specific zone could be established for this parcel, staff feel that from an administrative point of view, a more general duplex zone specifically used in the French Creek area should be established to set a community-level standard for duplex zoning.

DEVELOPMENT IMPLICATIONS

In order to be considered for approval to be developed at a density of one unit per 700 m² the proposed duplex use would be required to be connected to community water and community sewer systems. As the property is serviced by Breakwater Enterprises the applicant will be required to provide written verification that community water services is available. With respect to community sewer, the subject property is located within the RDN local service area and is therefore capable of sewer connections.

Should the subject property be rezoned to allow a duplex use, an additional dwelling unit would be permitted on the parcel. It is also noted that at the time of construction of the duplex, separate titles for each unit could be created pursuant to the *Strata Property Act*. Therefore, in recognition of the development approval made possible by the rezoning, staff recommends that the applicable Development Cost Charges (DCCs) be secured by a restrictive covenant as if the land were being subdivided into two individual parcels. The charges would be payable prior to the issuance of a building permit.

MINISTRY OF TRANSPORTATION IMPLICATIONS

Pursuant to the *Highway Act*, the Ministry of Transportation is required to sign this proposed amendment land use bylaw. In addition, as a duplex use is proposed, an access permit from the Ministry is required. As a result, it is recommended that an access permit be in place prior to the application proceeding to the public hearing.

ENVIRONMENTALLY SENSITIVE AREAS ATLAS

The OCP and Environmentally Sensitive Areas Atlas do not indicate the presence of any environmentally sensitive areas.

VOTING

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

SUMMARY

This is an application to rezone a 1410 m² property in the French Creek area of Electoral Area 'G' from Residential 1 (RS1) to a new Residential 2.1 (RS2.1) to facilitate the development of a residential duplex use. The proposal will meet the OCP policies related to higher density development in the Neighbourhood Residential Land Use Designation. However, as the subject property will be developed at a density of 700 m² per unit and is capable of being stratified pursuant to the *Strata Property Act*, staff recommends that the applicable DCCs be secured by a restrictive covenant, as if the land were being subdivided into two individual parcels. Provided the conditions as set out in Schedule No. 1 are met by the applicant, staff recommends Alternative No. 1, to approve the rezoning application for 1st and 2nd reading and proceed to public hearing.

RECOMMENDATIONS

1. That the Summary of the Public Information Meeting on Amendment Application No. 0305, submitted by Fern Road Consulting Ltd. on behalf of Paul Sarkozy be received.
2. That "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.293, 2003" be given 1st and 2nd reading.
3. That Amendment Application No. 0305, submitted by Fern Road Consulting Ltd. on behalf of Paul Sarkozy, to rezone the subject property legally described as Lot B District Lot 29 Nanoose District Plan VIP74062, from Residential 1 (RS1) to Residential 2.1 (RS2.1) be advanced to a public hearing subject to the conditions outlined in Schedule No. 1.
4. That the Public Hearing on "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.293, 2003" be delegated to Director Stanhope or his alternate.

Report Writer

General Manager Concurrence

Manager Concurrence

CAO Concurrence

**Schedule No. 1
Conditions of Approval
Zoning Amendment No. 0305**

1. Applicant to provide an approved access permit for a duplex use from the Ministry of Transportation.
2. Applicant to provide written verification that 2 community sewer services connections will be provided to each proposed dwelling unit.
3. Applicant to provide written verification that 2 community water services connections will be provided to each proposed dwelling unit (Breakwater Enterprises).
4. Applicant to enter into a section 219 (restrictive) covenant which restricts the following:
 - a DCCs charges to be paid prior to the issuance of a building permit as follows:
 - i Pursuant to "Regional District of Nanaimo Northern Community Sewer Local Service Area Cost Charge Bylaw No. 994, 1994" or any subsequent bylaw the applicable charges for 1 residential unit as set out in bylaw at the time of building permit issuance.
 - ii Pursuant to "Regional District of Nanaimo French Creek Local Service Area Development Cost Charge Bylaw No. 1089, 1998" or any subsequent bylaw the applicable charges for 1 residential unit as set out in bylaw at the time of building permit issuance.

The applicant is to submit a solicitor's letter undertaking to enter into this restrictive covenant as outlined above prior to the application being forwarded for public hearing. The covenant is to be registered on title of the subject property prior to consideration of the application for 4th reading and adoption of the corresponding amendment bylaw. All costs associated with the covenant preparation and registration is the responsibility of the applicant. All documents related to the covenant must be submitted to the Regional District for review and acceptance prior to registration at Land Title Office.

**Schedule No. 2
Proposed Residential 2.1 (RS2.1) Zone
Zoning Amendment No. 0305**

Section 3.4.62.1

RESIDENTIAL 2.1**RS2.1****Permitted uses and Minimum Site Area**

Permitted Uses	Required Site Area with:	
	Community Water & Sewer System	No Community Services
a) Home Based Business	n/a	n/a
b) Duplex	1400 m ²	1.0 ha

Maximum Number and Size of Buildings and Structures

Accessory buildings:	Combined floor area of 100 m ² or 8% of area of parcel whichever is greater, but shall not exceed 250 m ²
Accessory building height:	- 6.0 m
Dwelling units/parcel	- 1 duplex
Height	- 8.0 m
Parcel coverage	- 35%

Minimum Setback Requirements

Front lot line	- 8.0 m
Interior side lot line	- 2.0 m
Rear lot line	- 2.0 m
Other lot lines	- 5.0 m

except where:

- a) any part of a parcel is adjacent to or contains a watercourse then the regulations in Section 3.3.8 shall apply.

Other Regulations

No setback from an interior or rear lot line shall be required for one accessory building not exceeding a floor area of 10 m² and with a maximum height of 3.0 metres.

Definition (to be added to Part 2- Interpretation of the RDN Land Use and Subdivision Bylaw No. 500, 1987):
duplex means two self-contained dwelling units oriented side-by-side with separate ground level entrances and adjoined by a common wall.

Attachment No. 1
Minutes of a Public Information Meeting
Held March 14, 2003
(Page 1 of 3)

REGIONAL DISTRICT OF NANAIMO

SUMMARY OF PROCEEDINGS OF A PUBLIC INFORMATION MEETING
HELD WEDNESDAY, MAY 14, 2003 AT 7:00 PM
AT ST. COLUMBA PRESBYTERIAN CHURCH
TO CONSIDER WEMBLEY ROAD REZONING

Note that these minutes are not a verbatim recording of the proceedings, but are intended to summarize the comments of those in attendance at the Public Information Meeting.

Present:

Joe Stanhope	Director, Electoral Area 'G'
Paul Sarkozy	Applicant
Helen Sims	Agent
Deborah Jensen	Planner

There was 1 person in attendance.

Director Stanhope opened the meeting at 7:00 pm and followed with greetings to the public and an introduction of the head table.

Director Stanhope stated the purpose of the public meeting.

Deborah Jensen provided a general overview of the proposed Wembley Road rezoning and introduced Helen Sims for further discussion.

Director Stanhope invited questions from the audience.

A. Bonesky, 761 Wembley Road, French Creek, BC, asked why the property owner had to rezone to construct a duplex on the property, but feels there is plenty of space to accommodate such a structure.

Paul Sarkozy, 2332 Brackenwood Place, Nanaimo, BC, stated he had spoken with adjacent property owners, and they are in support of the application. Paul Sarkozy supplied letters of support from the adjacent neighbours.

Director Stanhope asked if there were any final questions or comments. Being none, the Director thanked those in attendance and announced that the public information meeting was closed.

The meeting concluded at approximately 7:10 pm.

Certified fair and accurate this 14th day of May, 2003.

 D. Jensen

Deborah Jensen
Recording Secretary

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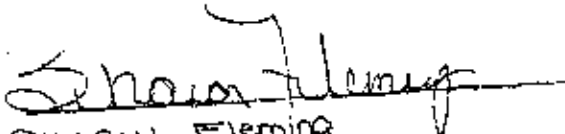
Attachment No. 1
Minutes of a Public Information Meeting
Held March 14, 2003
(Page 2 of 3)

May 14, 2003

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, B.C.
V9T 6N2

Re: Lot B, Plan V1974062, District Lot 29, Nancoos District, Wembley Road, Parkville

I/We wish to inform you that I/We are in agreement with rezoning the above property from Residential 1 (RS1) to a Residential zone allowing for two dwelling units in the form of a "duplex" on the 0.141 hectares subject property.


SHARON FLEMING
775 Wembley Rd.

Attachment No. 1
Minutes of a Public Information Meeting
Held March 14, 2003
(Page 3 of 3)

May 14, 2003

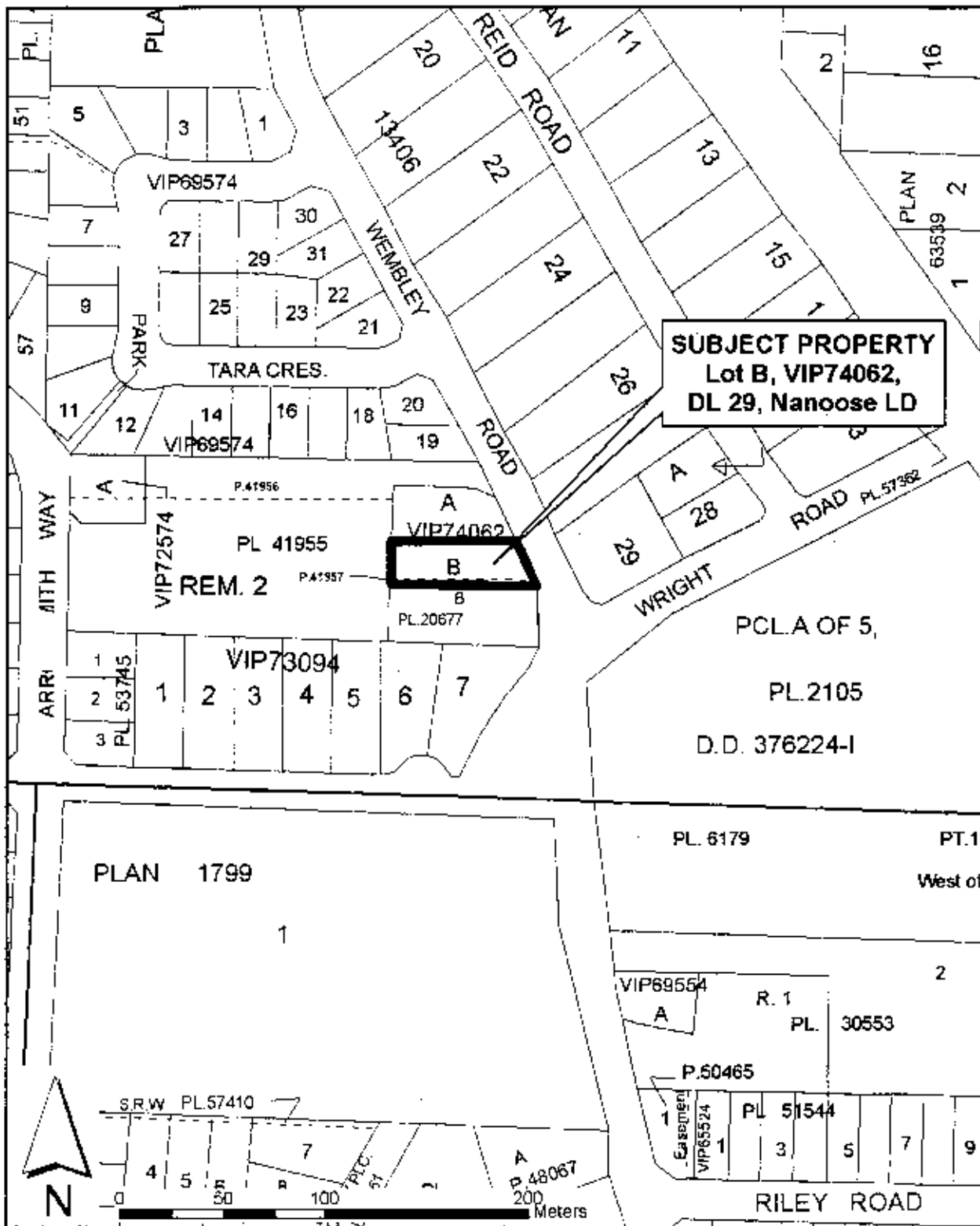
Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, B.C.
V9T 6N2

Re: Lot B, Plan VIP74062, District Lot 29, Nanoose District, Wembley Road, Parksville

I/We wish to inform you that I/We are in agreement with rezoning the above property from Residential 1 (RS1) to a Residential zone allowing for two dwelling units in the form of a "duplex" on the 0.141 hectares subject property.

A. Bonesty.
761 WEMBLEY RD.
PARKVILLE B.C.

Attachment No. 2
Subject Property Map
Zoning Amendment No. 0305





REGIONAL DISTRICT OF NANAIMO			
MAY 21 2003			
CHAIR		GMCrs	
CAO		GMDS	
CMCms		GMES	
DATE			

MEMORANDUM

TO: Pam Shaw
Manager, Community Planning

FROM: Brigid Reynolds
Planner

SUBJECT: Development Permit Application No. 60324 - Weldon/Kyler
Electoral Area 'G' - 796 Miller Road

FILE: 3060 30 60324

DATE: May 16, 2003

PURPOSE

To consider an application to facilitate the construction of a dwelling unit within the Sensitive Lands Development Permit Area pursuant to the "Regional District of Nanaimo French Creek Official Community Plan Bylaw No. 1115, 1998."

BACKGROUND

The subject property, legally described as Lot 28, District Lot 28, Nanoose District, Plan 26472, is located at 796 Miller Road in Electoral Area 'G' (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." No variances to Bylaw No. 500 are being requested as part of this application.

The Sensitive Lands Development Permit Area was established to protect the natural environment and to protect development from hazardous conditions. The French Creek OCP states that the DPA applies to "flood prone lands and all those lands within the Plan Area with a natural grade greater than 30% where the area of land may potentially be further subdivided or developed in accordance with the provisions of the Land Use and Subdivision Bylaw and environmental degradation is likely." The subject property is located within the French Creek floodplain and the Development Permit Area is designated on approximately a third of the property.

The lot slopes up from the road (approximately 60% slope) to a bench upon which the dwelling unit is proposed to be sited. Behind the proposed dwelling unit location the lot continues to slope up towards the bottom of a steep bank at the rear of the lot, which has a slope over 30%. The previous owner introduced some fill and leveled the lot to create the bench for a level building area.

The property is 56 metres from the natural boundary of French Creek. The dwelling unit is proposed to be sited approximately 7.5 m from the top of the bank of the first bench on the property. The elevation of the road is 5.3 m above the natural boundary of French Creek and the elevation of the proposed building site ranges from 6.8 m to 7.4 m above the natural boundary of French Creek. The flood construction elevation required in the "Regional District of Nanaimo Floodplain Management Bylaw No. 843, 1991" is 3.0 m above the natural boundary of French Creek. Although the proposed dwelling unit would be sited well above the required flood construction elevation, there are no exemption provisions in the French Creek OCP. That is, without specified exemption provisions, all alteration of lands taken place within the designated development permit area triggers the requirement for the review of a Development Permit Application by the RDN Board.

AGE 16

In response to the requirement for this application, the applicant's agent has requested that the RDN undertake a review of the Sensitive Lands Development Permit Guidelines pursuant to the "Regional District of Nanaimo French Creek Official Community Plan Bylaw No. 1115, 1998" to allow for exemption provisions. The applicant's agent is requesting that the OCP be amended to include an exemption in situations where a BCLS shows on a legal survey that due to the height of land, and the siting of the dwelling unit, the property and buildings would not be subject to flooding. Pursuant to the **Local Government Act** and RDN policy, proposed amendments to an official community plan would require an application, or could be initiated by the Board or could be considered as part of an OCP review. This process would require public information meetings, referrals to relevant agencies, advertising, and a public hearing.

ALTERNATIVES

1. To approve the requested development permit subject to the conditions outlined in Schedule No. 1 and 2.
2. To deny the requested development permit.
3. To approve the requested development permit and direct staff to review the Sensitive Lands Development Permit Area guidelines to consider the requested exemption.

LAND USE AND DEVELOPMENT IMPLICATIONS

Approval of the requested development permit would permit the construction of a dwelling unit within a portion of the Sensitive Lands Development Permit Area (*see Schedule No. 2*). While there is sufficient site area to move the dwelling unit approximately 7.0 metres back such that it would be outside of the Development Permit Area, behind the proposed building site the lot continues to slope up to the rear of the property and moving the dwelling unit back would require additional site preparation works. The previous owner leveled a portion of the lot to create a buildable site area; therefore, there would be less disturbance to the natural grade and landscape should the proposed dwelling unit be constructed on the existing buildable site.

The lot contains two banks. The first bank, located between the road and the dwelling unit location has a slope of approximately 60 %. The bank at the rear of the property is also more than 30% grade. The proposed dwelling unit location is a reasonable distance away from both banks and is therefore unlikely to create any slope instability. The Building Inspection Department may require a geotechnical report on this issue at the time of application for a building permit.

The proposed building site is between 6.8 metres to 7.4 metres above the natural boundary of French Creek. Therefore, the dwelling unit would be situated between 3.8 metres and 4.4 metres above the required flood construction elevation of 3.0 metres. As a result, staff would concur that, for this application, the potential flood hazard is mitigated.

As previously noted, fill has been introduced to the subject property. Again, the Building Inspection Department may require a geotechnical report for the subject property if site stability is viewed as an issue.

From staff's assessment of this application, this development permit should be approved as the proposed location for the dwelling unit is above the flood construction elevation by more than 3.0 m and the siting is a reasonable distance away from any steep slopes on the lot. Site stability does not appear to have been compromised by the introduced fill, and a previously established building site is available, therefore limiting additional extensive land disturbance.

OFFICIAL COMMUNITY PLAN IMPLICATIONS

Staff does not support the review of the Sensitive Lands Development Permit Area guidelines to consider an exemption provision whereby a BCLS can show by legal survey that the property is above the flood construction elevation as the flood hazard may be only one reason why the development permit area was designated. An automatic exemption due to the elevation of land above the flood construction elevation lessens the ability of the RDN to comprehensively review the issues on the site.

Staff has concerns with the applicant's request for an exemption to these development permit guidelines due to the 'higher test' placed on hazard land development and potential liability issues associated with approvals on hazard lands. Development permit areas to protect development against hazardous conditions generally require a higher standard of review due to the potential for loss of life and property damage that could occur. The Regional District could therefore be opening itself to potential legal ramifications without a thorough review and approval by the Regional Board.

As a generalization, the introduction of large amounts of fill could raise the land above the flood construction elevation height; however, this could create an unstable building site. Introducing large amounts of fill on a lot that could potentially be impacted by flood and/or contain steep slopes could result in damaging sediment and debris flows under extreme conditions. This could cause damage to life and property. Should the Board approve the requested OCP exemption, this could create a situation where landowners are encouraged to introduce fill to raise their building site above the flood construction elevation. While this may address the flood elevation on the lot, it will create new issues with site stability and storm water drainage. It could also trigger development variance applications for height for any buildings and structures on the property as height is measured from the natural grade, not the fill grade.

There are nine Official Community Plans (OCPs) for the different plan areas within the Regional District. Of those nine, five OCPs contain development permit areas to protect development from hazardous conditions. Including the requested exemption provision for one OCP could result in requests for similar exemptions in the other OCPs.

VOTING

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

SUMMARY/CONCLUSIONS

This is an application to permit the construction of a dwelling unit within a Sensitive Lands Development Permit Area. The lot contains two steep banks: one at the front of the property and one at the rear. The proposed dwelling unit location is approximately 7.5 m from the top of the first bank and is over 27 m from the bottom of the second bank. The lot is more than 3.0 m above the flood construction elevation (i.e. 3.0 m above the natural boundary of French Creek).

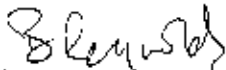
In addition to the hazard lands Development Permit application, the applicant's agent has also requested that staff undertake a review of the Sensitive Lands Development Permit Area to include an exemption provision such that where a BCLS can show on a legal survey that due to the height of land the property would not be subject to flooding, a development permit should not be required.

Due to the mitigation of siting issues on the subject property, staff support this development permit application. However, staff do not support the request for a blanket exemption to the development permit requirements as

flood elevation exemption would only partially address potential hazard issues on lands within hazard lands development permit areas.

RECOMMENDATION

That Development Permit No. 60324 submitted by Ken Kyler, BCLS on behalf of Vivian Isabel Weldon to permit the construction of a dwelling unit within a Sensitive Lands Development Permit Area on the property legally described as Lot 28, District Lot 28, Nanoose District, Plan 26472 be approved, subject to the conditions outlined in Schedule No. 1 and 2.



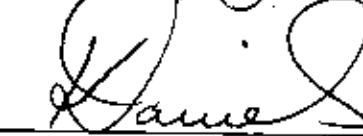
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

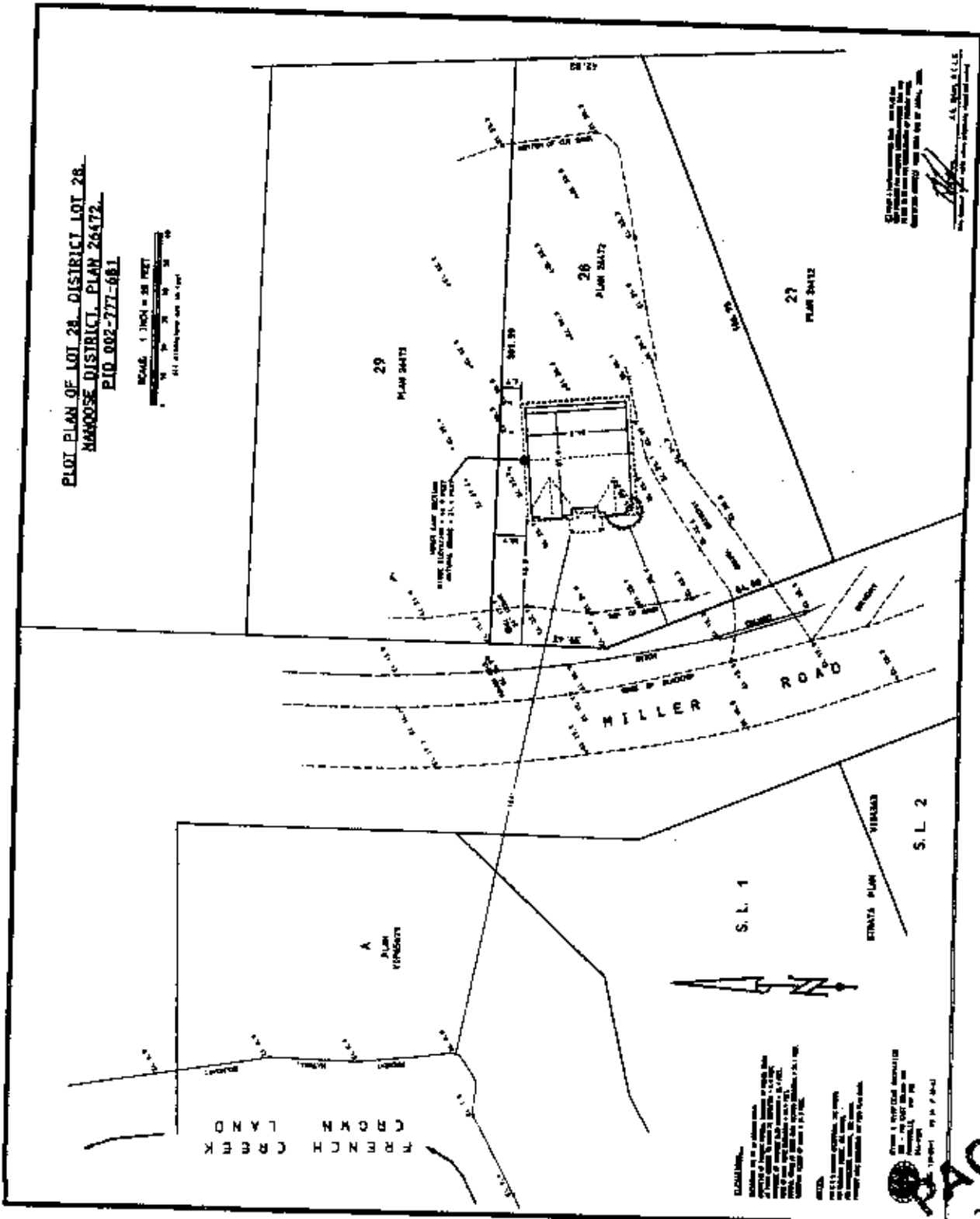
COMMENTS:

devs/reports/2003/dp ma 3060 30 60324 Weldon Kyler

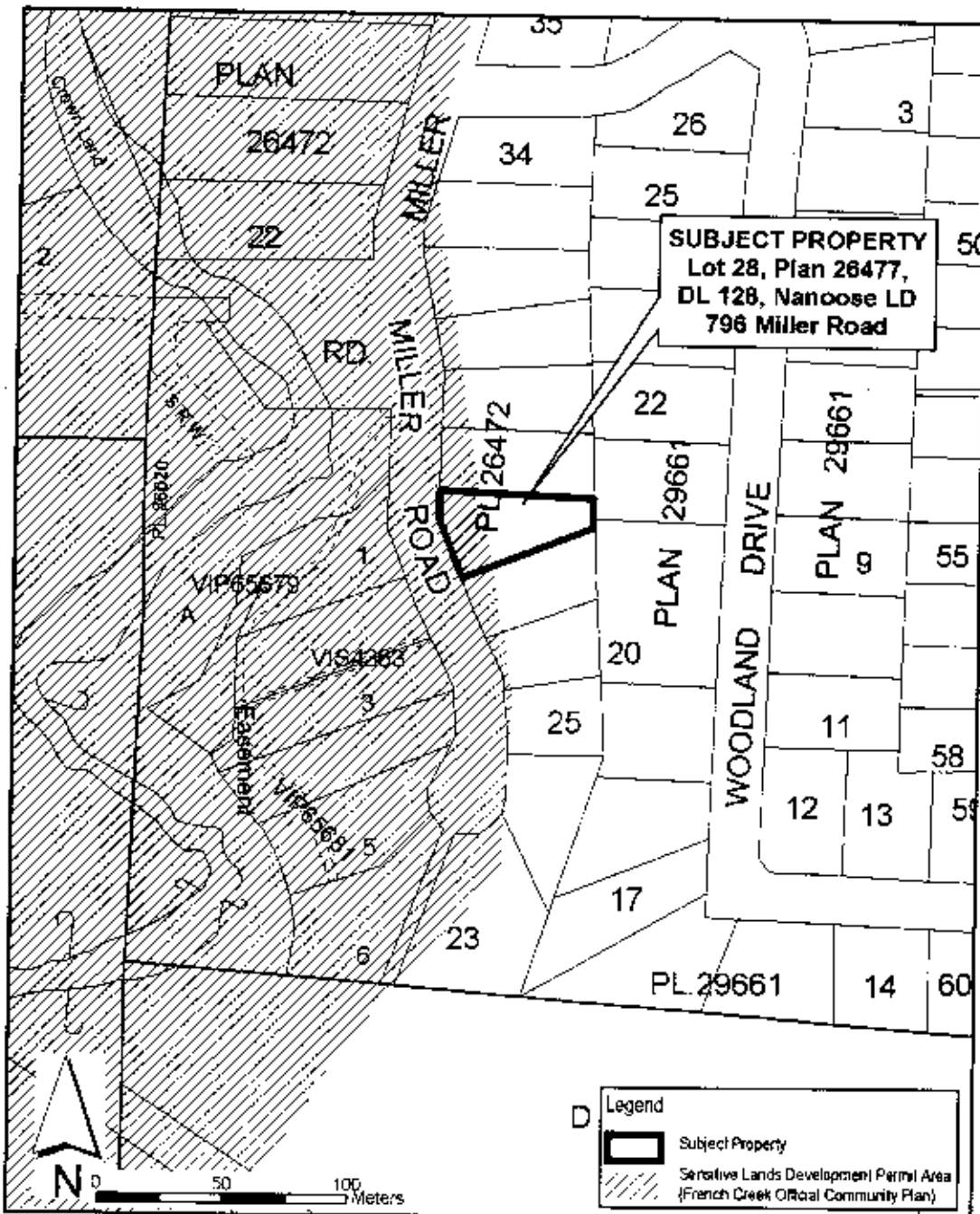
Schedule No. 1
Conditions of Approval
Development Permit No. 60324
796 Miller Road

1. 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) Tarps, sand bags, poly plastic sheeting and/or filter fabric are required to be onsite and soil piles must be covered.
 - b) Exposed soils must be seeded immediately after disturbance. Soil surfaces to be treated should be roughened.
 - c) Cover temporary fill or soil stock piles with poly plastic sheeting or tarps.
2. Should water, from roof leaders and perimeter drains, be collected and discharged over the top of the bank into the ditch adjacent to the road, provisions to reduce the erosive impacts of the water must be undertaken, including installing some form of energy dissipation.

Schedule No. 2
Site Plan
Development Permit No. 60324
796 Miller Road



Attachment No.1
Subject Property
Development Permit No. 60324
796 Miller Road





REGIONAL DISTRICT OF NANAIMO	
MAY 15 2003	
CHAIR	GMCrS
CAO	GMDS
GMCmS	GMES
RA Plan ✓	

MEMORANDUM

TO: Pamela Shaw
 Manager, Community Planning

DATE: May 16, 2003

FROM: Keeva Kehler
 Planner

FILE: 3090 30 90310

SUBJECT: Development Variance Permit Application No. 90310 - Raines
 Electoral Area 'E' - 2424 Ainsley Place, Fairwinds

PURPOSE

To consider an application for a Development Variance Permit to vary the maximum permitted dwelling unit height for a property located in Fairwinds to facilitate the development of a two (2) storey dwelling unit.

BACKGROUND

This is an application to facilitate the construction of a two storey dwelling unit on a residential property located in Fairwinds, Nanoose Bay for the property legally described as Lot 40, District Lot 78, Nanoose Land District, Plan VIP68559 (see Attachment No. 1). The subject property is a 0.19-hectare parcel located on the corner of Ainsley Place and Andover Road.

The subject property is located within the Fairwinds designation in the "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1118, 1998". It is not located in an environmentally sensitive area or hazard lands area as designated by this Official Community Plan. No watercourses or sensitive lands areas are shown on the subject property pursuant to the RDN's Environmentally Sensitive Areas Atlas, and the property is not contained within the Agricultural or Forest Land Reserves.

The subject property is zoned Residential 1, Subdivision District 'N' (RS1N) 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 interior side lot lines and 2.0 metres from the rear lot line. The maximum dwelling unit height is 8.0 metres as measured from the natural grade.

Proposed Variances

The applicant is proposing to construct a residential dwelling unit, with siting and dimensions as shown in Schedule No. 2. The proposed dwelling will consist of a two-storey home with attached garage (see Schedules No. 4, 5, 6 and 7). The property slopes down from west to east with a 2 metre drop in elevation from the corner of Ainsley Place and Andover to the eastern lot line. The property also slopes down from the south, falling about 1 metre in elevation before sharply rising up to a steep rock bluff area. The building site is located within a bowl shaped depression on the lot, hence the height variance request (see Schedule No. 3).

PAGE 23

The applicants are requesting to vary **Section 3.4.61** of the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" by increasing the maximum dwelling unit height from 8.0 metres to 9.2 metres, as measured from the existing natural grade. The applicants cite topographical constraints as the justification for the request. Due to these constraints, the applicants have indicated that they will have to raise the level of the house to allow for sufficient drainage of run-off from neighbouring lots. The applicants have indicated that a substantial amount of fill has been placed on the driveway of the adjacent lot 39; the applicants feel this will result in a loss of privacy for the subject property if the dwelling was to be placed at a the existing grade.

The architectural design of the dwelling is such that the height would not exceed 8.0 metres on a level lot, but the sloping topography of portions of the subject property results in the dwelling being 9.2 metres above the natural elevation of the lot.

There is a building scheme covenant registered on the Certificate of Title for the subject property. The scheme contains information pertaining to the development of the lots in Fairwinds, such as property setbacks, housing design, landscaping, vegetation removal and lot clearing. The building scheme also contains information on the permitted uses for the properties once they are developed (for example, the scheme prohibits Bed and Breakfast use on the lots). These building scheme conditions are in addition to the RDN's Bylaws applicable to the subject property. Although the proposed construction does not appear to be in conflict with the building scheme, it should be noted the Regional District of Nanaimo is not responsible for enforcing building scheme covenants.

ALTERNATIVES

1. To approve Development Variance Permit No. 90310 subject to the conditions outlined in Schedule No. '1'.
2. To deny the requested permit.

LAND USE AND DEVELOPMENT IMPLICATIONS

From staff's assessment of this application, the potential visual impact of the height variance is reduced due to the size of the subject property and the existing vegetation, distance between dwelling units, and the topography of the subject property and surrounding area.

As mentioned, there is a large rock outcrop in the northeast corner of the lot. Due to the existence of the rock outcrop, the proposed dwelling will likely not be visible from the adjacent Lots 39 and 60, or from lots located on the north side of Andover Road.

The properties located directly to the east of the subject property are at a significantly lower elevation and have an unimpeded view of the ocean. Given the existing orientation and elevation of these dwellings, it is the opinion of staff that the views for these lots will not be negatively impacted by the proposed development. There are two vacant lots to the south of the property on Ainsley Place. These lots are at a higher elevation than the subject property. Lot 32 and 33 are developed and each contains a residential dwelling unit. Both of these lots are oriented towards the subject property, although the present vegetated status of Lot 40 results in a limited view from these lots. These lots are also located at a higher elevation than the subject property.

AGE
22

The Board may recall that concerns have been expressed in the past with applications for height variances in the Fairwinds Area. Generally, these concerns focused on the massing of the proposed dwelling unit in instances where the variance was requested to permit a full basement beneath a two story dwelling unit (thereby creating the appearance of a three storey structure from some elevations). In this instance, the applicant's agent has indicated that the proposed dwelling unit will be elevated slightly due to the construction of a partial crawl space as part of the foundation; therefore, the dwelling unit will appear as a two storey dwelling unit from all elevations. In addition, while there are no apparent site stability issues, a geotechnical report may be necessary during the construction phase as required by the building inspector.

VOTING

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

SUMMARY/CONCLUSIONS


This is an application for a development variance permit to facilitate the development of a two storey dwelling unit. The application includes a request to vary the maximum permitted dwelling unit height from 8.0 metres to 9.2 metres. Given that the requested variance is justified by the topographical constraints of the lot and does not appear to impact any neighbouring properties, and further, that the proposed architectural style of the dwelling unit is not out of character for the Fairwinds area, staff recommends this application be approved subject to notification procedures pursuant to the *Local Government Act*.

RECOMMENDATION

That Development Variance Permit Application No. 90310, submitted by Fern Road Consulting Ltd. on behalf of Derek Raines and Janet Raines, to facilitate the development of a two storey dwelling unit and vary the maximum permitted dwelling unit height within the Residential 1 zone from 8.0 metres to 9.2 metres for the property legally described as Lot 40, District Lot 78, Nanoose Land District, Plan VIP68559, be approved as submitted subject to the notification procedures pursuant to the *Local Government Act*.



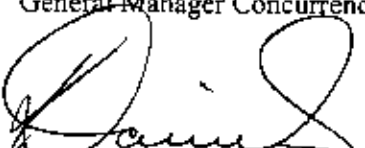
Report Writer



General Manager Concurrence



Manager Concurrence



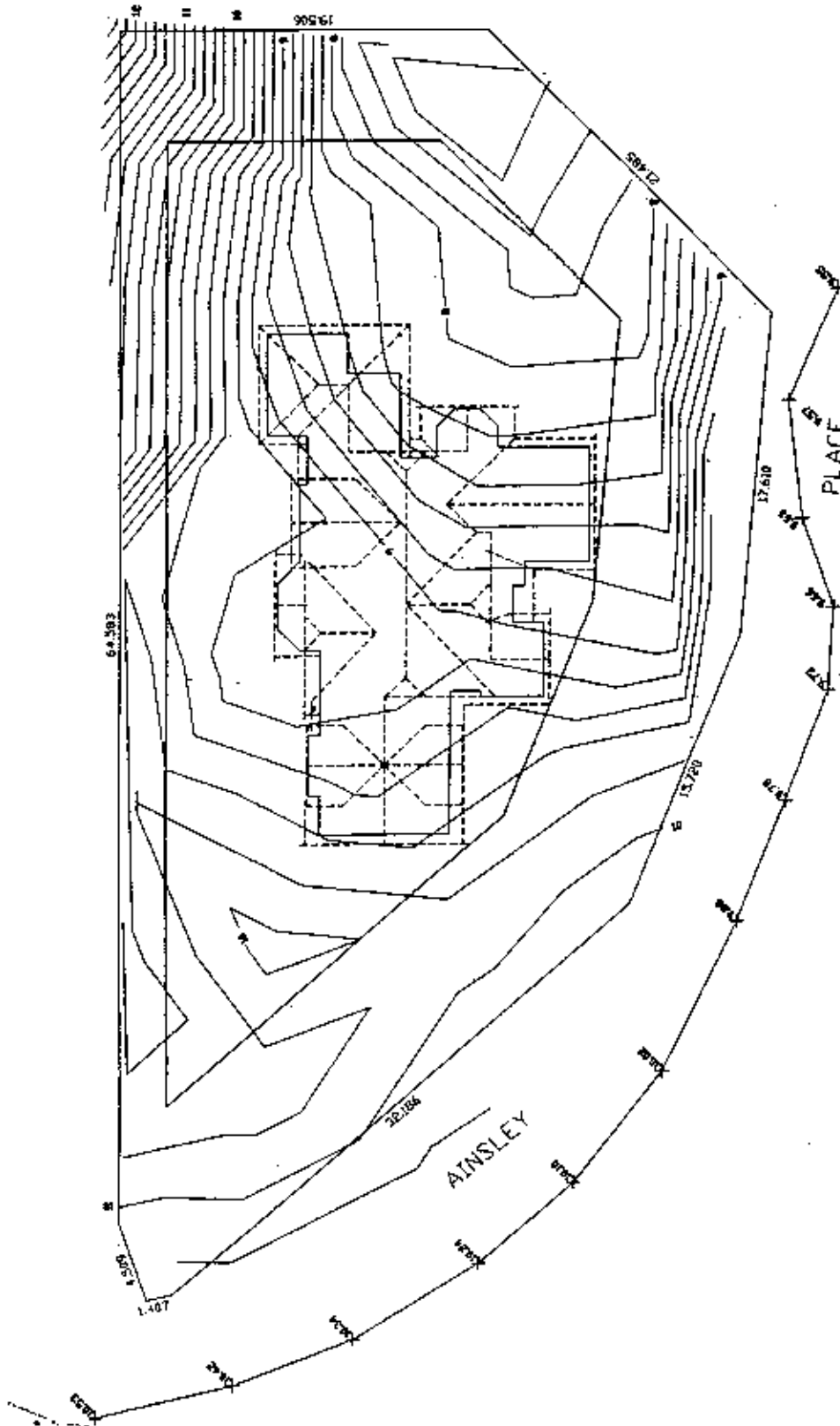
CAO Concurrence

COMMENTS:

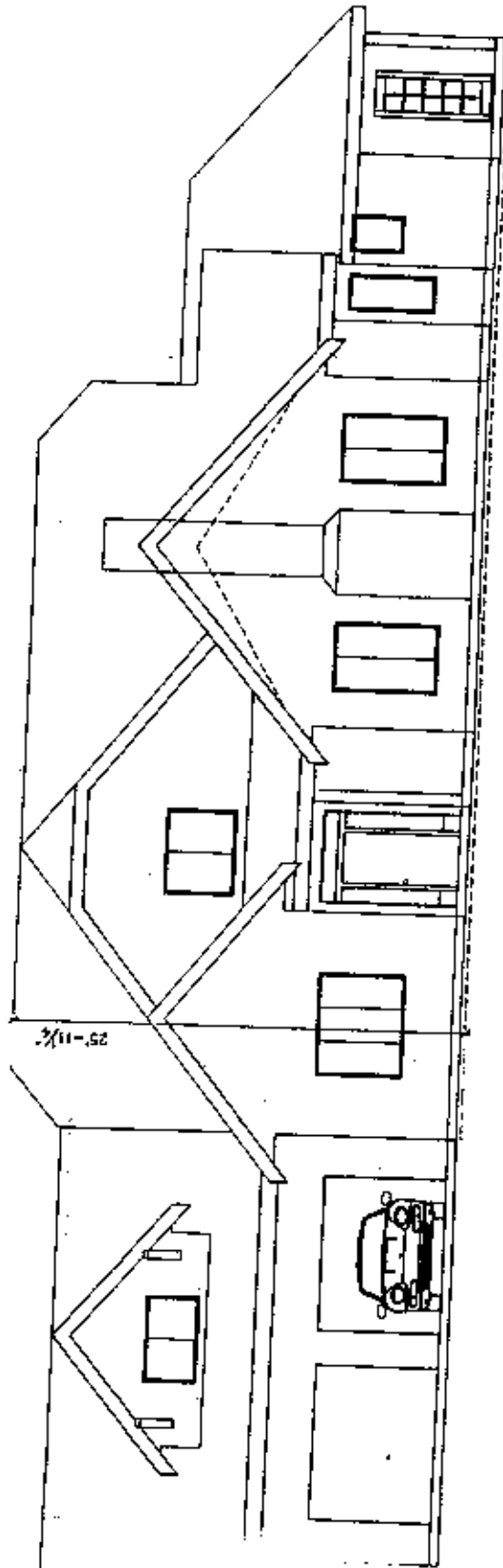
Schedule No. 1
Conditions of Approval
Development Variance Permit Application No. 90310

1. The proposed development shall be conducted in accordance with the provisions of "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987," except as varied by this Development Variance Permit. The maximum height of the dwelling unit shall not exceed 9.2 metres as measured from the existing natural grade.
2. The dwelling unit shall conform to the building plans submitted by the applicant and shown on Schedules No. 4, 5, 6 and 7.
3. The location of the proposed dwelling unit shall be consistent with the site plan submitted by the applicant and shown on Schedule No. 2.
4. A building permit shall be obtained from the RDN Building Inspection Department prior to the commencement of any works on the site.

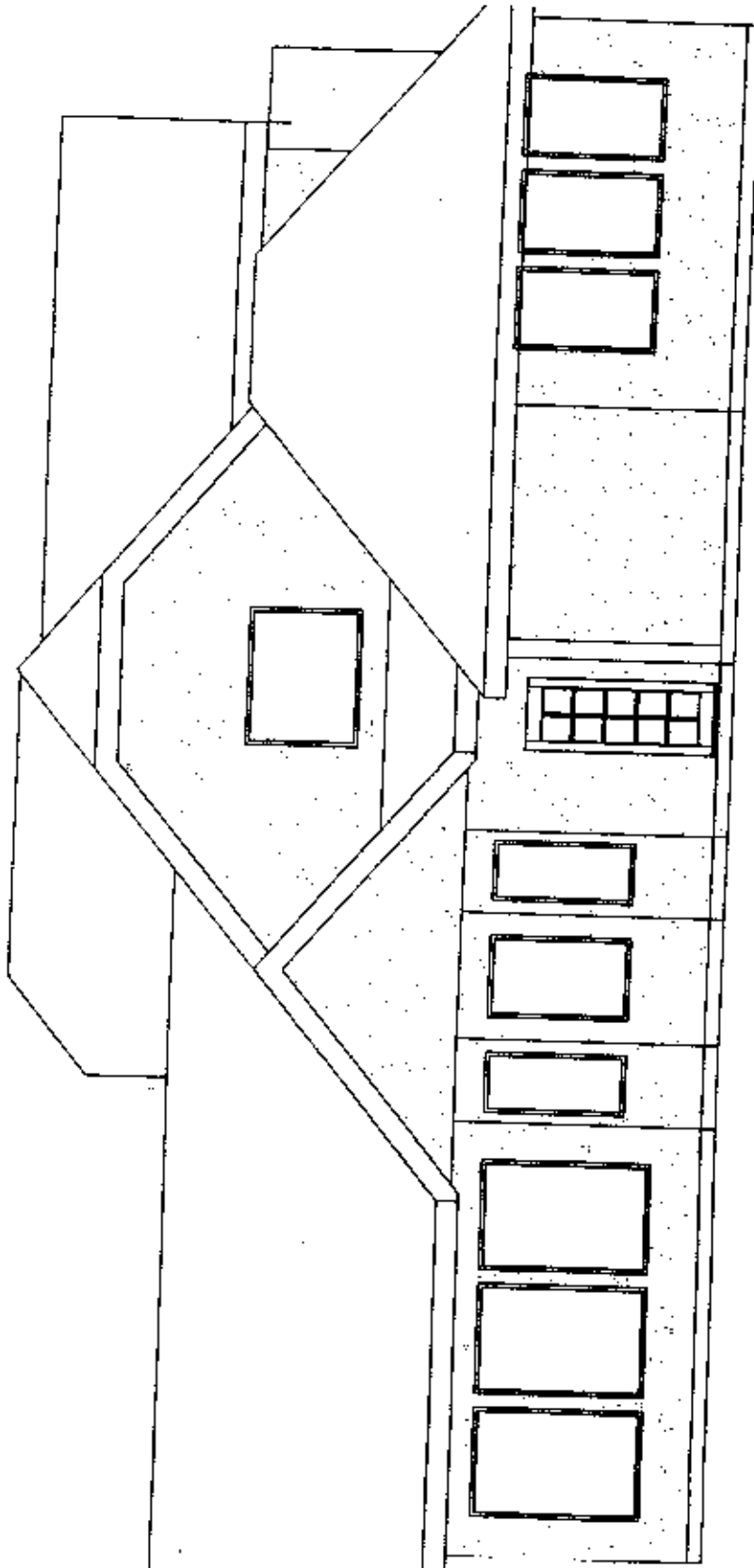
Schedule No. 3
Topographical map of Site (Submitted by Applicant)
Development Variance Permit No. 90310



Schedule No. 4
Building Profiles (Submitted by Applicant)
Development Variance Permit No. 90310

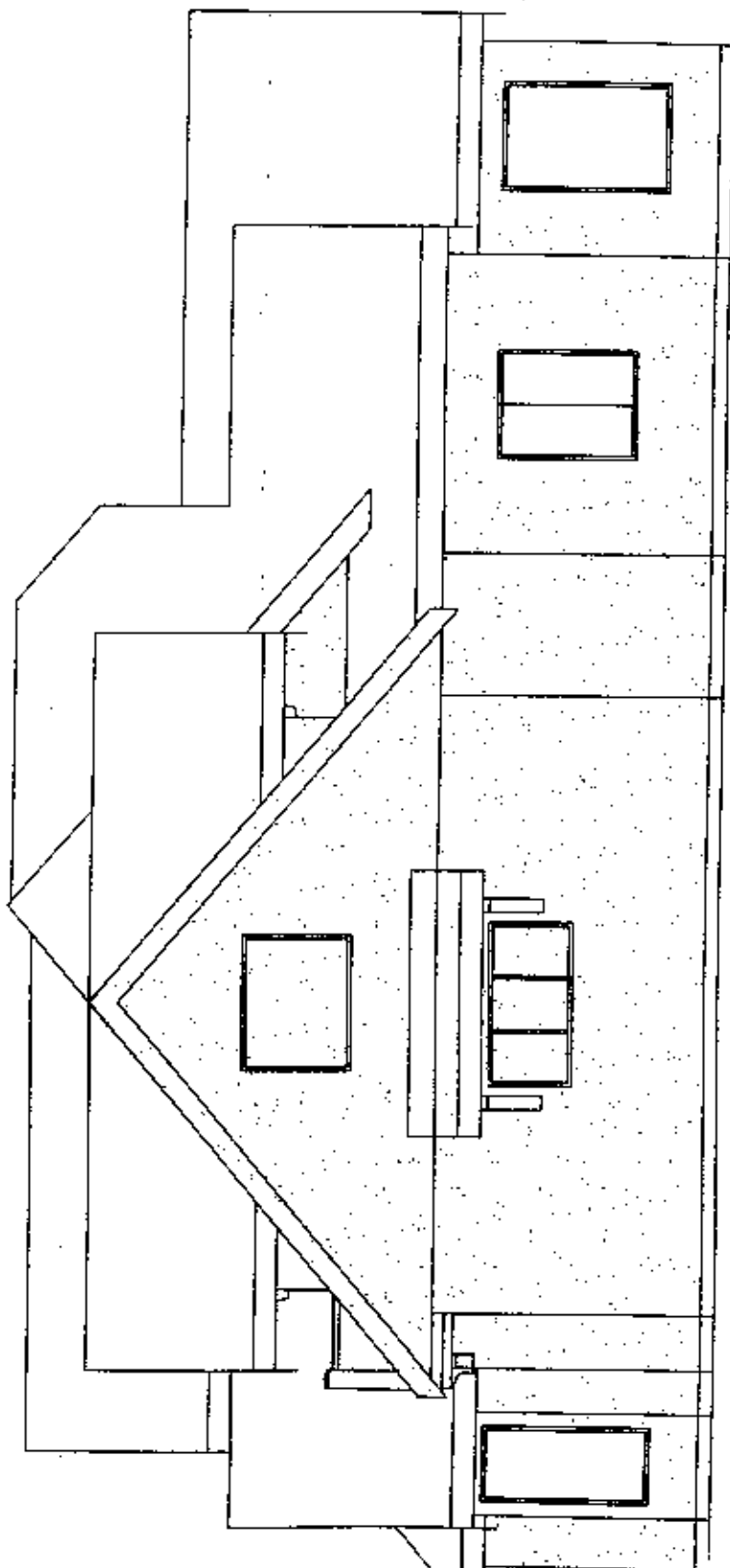


Schedule No. 5
Building Profile (Submitted by Applicant)
Development Variance Permit Application No. 90310



East View

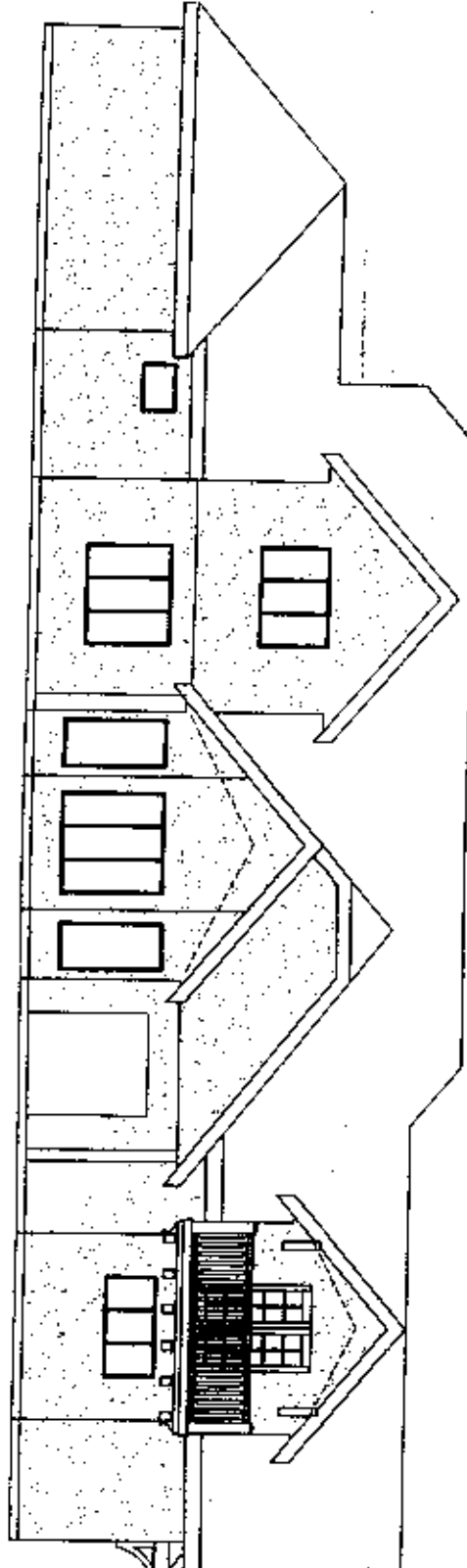
Schedule No. 6
Building Profile (Submitted by Applicant)
Development Variance Permit Application No. 90310



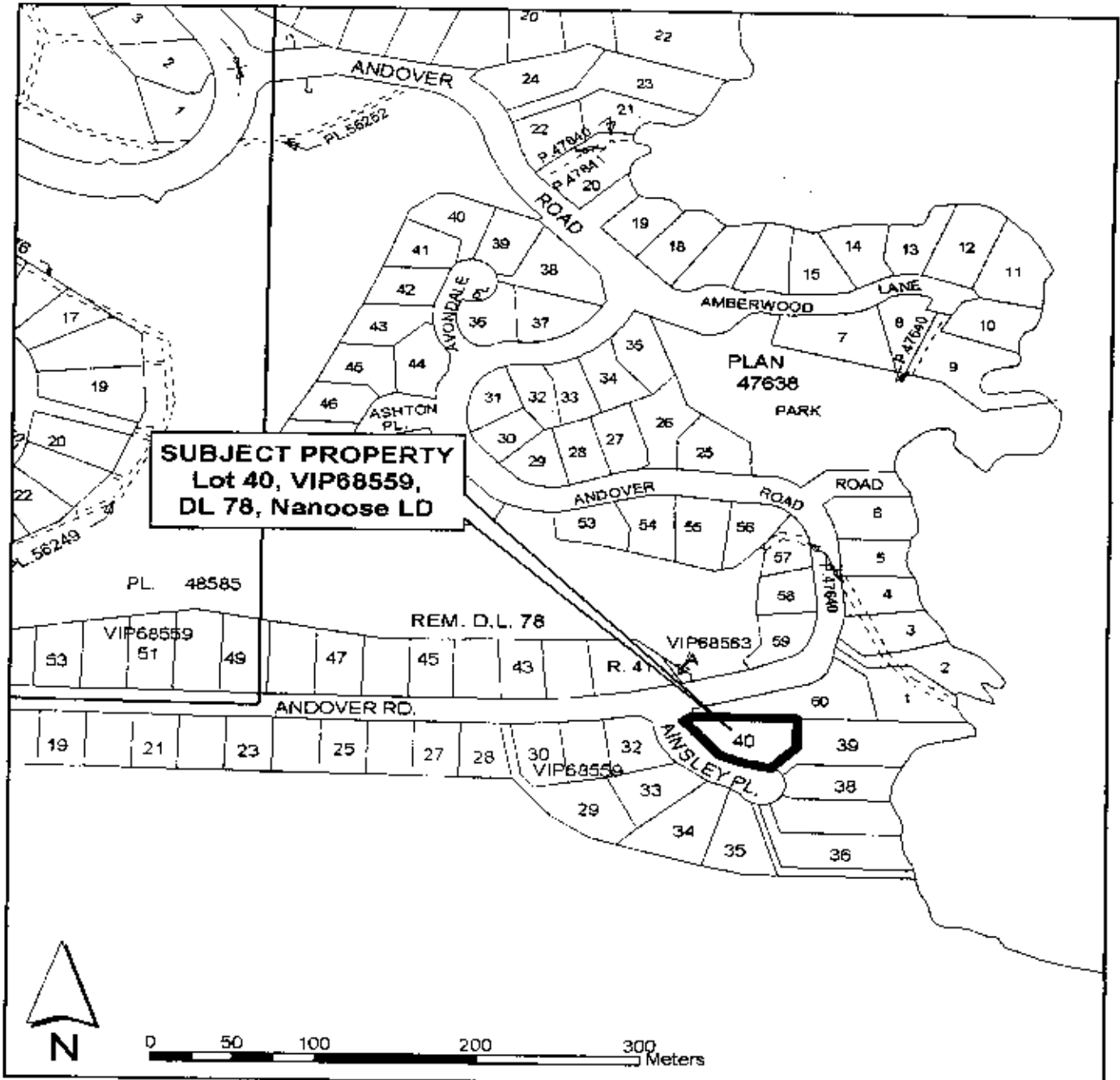
West View

Schedule No. 7
Building Profile (Submitted by Applicant)
Development Permit Application No. 90310

North View



Attachment No. 1
Subject Property Map
Development Variance Permit Application No. 90310





REGIONAL DISTRICT OF NANAIMO	
MAY 16 2003	
CHAIR	GMCrS
CAO	GMDS
CMs	GMES
EAP	

MEMORANDUM

TO: Robert Lapham
General Manager, Development Services

DATE: May 16, 2003

FROM: Pamela Shaw
Manager, Community Planning

FILE: 3320 30 14994
3090 30 90311

SUBJECT: Development Variance Permit Application No. 90311
Fern Road Consulting Ltd. on behalf of R. & L. Todsén & McTay Holdings Ltd.
Electoral Area 'G' - Off Hawthorne Rise and White Pine Way

PURPOSE

To consider a development variance permit application to relax the minimum setback requirement from a watercourse and an adjacent golf course pond to accommodate the future siting of 7 single dwelling units on 7 proposed parcels within a proposed 29-lot subdivision.

BACKGROUND

This is an application to relax the minimum setback requirement from a watercourse and golf course pond for the purposes of accommodating the future siting of 7 dwelling units on 7 future parcels as part of a 29-lot subdivision application on the property legally known as The Remainder of Lot 1 District Lot 49, Nanoose, Plan 19351 and located off White Pine Way in Electoral Area 'G' (see Attachment No. 1 for location). Surrounding uses include residential lots to the north and south, residential lots and park land to the east, and the Eaglecrest Golf Course to the west. A small watercourse crosses a portion of the subject property. In addition, the golf course property includes a constructed pond that encroaches into the subject property. The future parcels are proposed to be serviced with community water and community sewer. As part of the request, the applicants have offered to provide a covenant restricting vegetation removal and building placement for the purposes of providing protection of the watercourse.

The subject property is currently zoned Residential 1 (RS1) and is within Subdivision District 'Q' 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 29 lots. The Electoral Area Planning Committee will recall that the Regional Board is currently considering a park land exchange bylaw on this subject property.

The applicants have requested the following variances to Bylaw No. 500, 1987 (see Schedule No. 1 for proposed subdivision and proposed variances).

Proposed Lot	Requested Variance
2	9.0 m
3	9.0 m
4	9.0 m
7	6.0 m
8	6.0 m
9	6.0 m
10	6.0 m

In addition, the applicant is required to have a site-specific relaxation for floodplain management from the Ministry of Water, Land, & Air Protection. The applicant is in the process of receiving approval from the Ministry of Water, Land, and Air Protection for this relaxation.

As the minimum setback requirement from a watercourse has, in this case, been determined to be either 15.0 metres horizontal distance as measured from natural boundary or 18.0 metres horizontal distance as measured from the centerline of the watercourse, whichever is greater, variances to Bylaw No. 500, 1987 are required.

ALTERNATIVES

1. To approve the development variance permit application as submitted, subject to Schedules No. 1 and 2 and the notification procedure pursuant to the *Local Government Act*.
2. To deny the development variance permit application.

PUBLIC CONSULTATION IMPLICATIONS

As part of the required public notification process, adjacent and nearby residents and property owners will have an opportunity to comment on the proposed variances prior to the Board's consideration of the permit.

LOT CONFIGURATION / ENVIRONMENTAL IMPLICATIONS

Due to the location of the watercourse and the adjacent golf course pond, buildable site areas for proposed Lots 7, 8, 9, and 10 are limited by the setback requirements. While proposed Lots 2, 3, and 4, which are located adjacent to the RDN park land, have building site areas, the setback relaxation will allow for more flexibility in building design and location. It is noted the watercourse is situated with a shallow gully that is approximately 2 to 3 metres in width and 1 metre in depth. Portions of proposed lots 7 to 10 have previously been landscaped; natural vegetation has been removed or disturbed. The setback proposed for these lots would maintain the integrity of the watercourse and allow for the retention and enhancement of remaining natural vegetation. The proposed setbacks for lots 2 to 4 would also protect the integrity of the creek and provide for the retention of natural vegetation.

As stated above, the applicants have offered to register a vegetation retention/no buildings or structures covenant on all the proposed parcels that are within 9.0 metres of the watercourse (with the exception lands which would be required for driveway access for proposed Lot 9). This covenant will restrict development in the proposed covenant areas, thereby providing a higher level of environmental protection for lands adjacent to the golf course pond and the watercourse. It is noted that the watercourse is further protected by the proposed park land exchange.

In addition to the proposed covenant, the Ministry of Transportation, as a condition of subdivision, is requiring the applicants to provide a 6.0 metre wide statutory right-of-way over the portion of the watercourse between proposed Lots 8 and 9. It is noted that the Ministry of Transportation staff has indicated that a similar covenant will not be required by the Approving Officer at time of subdivision.

VOTING

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

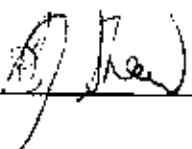
SUMMARY

This is a request to vary the minimum setback requirement from a watercourse and a pond to allow the future placement of 7 dwelling units on 7 future residential parcels. It is noted that the parent parcel is currently under consideration for an exchange of park land. The applicants have offered to register a vegetation retention/no buildings or structures covenant on those proposed parcels which are within 6.0 or 9.0 metres of the watercourse/pond (with the exception of the driveway access to proposed Lot 9) for the purposes of providing increased environmental protection for the watercourse and pond. The applicant have applied for and received approval from the Ministry of Water, Land, and Air Protection for site-specific exception from the watercourse. Pursuant to the *Local Government Act*, nearby parcel owners will be notified of the proposed variances and afforded an opportunity to comment on these variances.

Given that these variances will secure single dwelling unit building site areas and will provide environmental protection for the watercourse and pond, staff recommends the development variance permit application be approved subject to notification requirements pursuant to the *Local Government Act* and subject to the conditions outlined in Schedules No. 1 and 2.

RECOMMENDATION

That Development Variance Permit Application No. 90311, submitted by Fern Road Consulting on behalf of Richard and Linda Todsen and McTay Holdings Ltd., to relax the minimum setback requirements for proposed Lots 2, 3, and 4 to 9.0 metres horizontal distance from the adjacent watercourse and for proposed Lots 7, 8, 9, and 10 to 6.0 metres horizontal distance from the adjacent watercourse/pond in order to facilitate future building site for these parcels in conjunction with the subdivision of The Remainder of Lot 1 District Lot 49, Nanoose, Plan 19351, be approved subject to Schedules No. 1 and 2 and the notification requirements pursuant to the *Local Government Act*.


Report Writer


General Manager Concurrence


CAO Concurrence

COMMENTS:

devsvs/report/2003/dvp ma 3090 30 90311 todsen/fern road.doc

**SCHEDULE NO. 1
CONDITIONS OF APPROVAL
Development Variance Permit Application No. 90311**

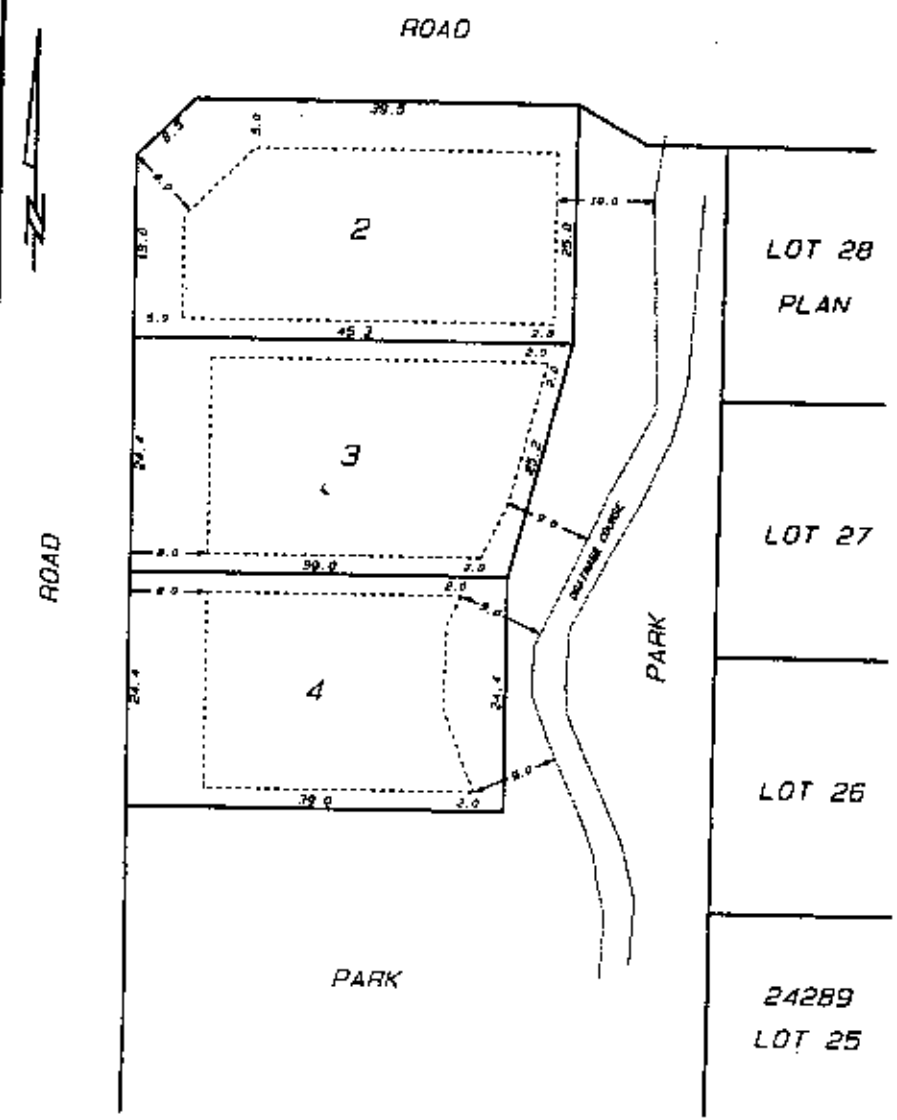
The following sets out the conditions of approval with respect to Development Variance Permit Application No. 90311:

The applicant shall prepare and register a section 219 covenant on the proposed parcels restricting the use of the land within 6.0 metres of the adjacent watercourse and pond to a vegetation retention (no removal of vegetation other than noxious weeds) / no building area for proposed Lots 8 and 9, except Lot 9 may construct a maximum 6.0 metre wide driveway access within the covenant area. 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.

1. The applicant shall prepare and register a section 219 covenant on the proposed parcels restricting the use of the land within 9.0 metres of the adjacent watercourse and pond to a vegetation retention (no removal of vegetation other than noxious weeds) / no building area for proposed Lots 3 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.
2. The applicant is required to provide proof of a site-specific relaxation for floodplain management for all affected lots from the Ministry of Water, Land, & Air Protection.

**SCHEDULE NO. 2 (2 of 2)
PROPOSED SUBDIVISION
(As Submitted by Applicant)
Development Variance Permit Application No. 90311**

SKETCH PLAN OF LOTS 2 TO 4, PHASE II,
OF PROPOSED SUBDIVISION OF LOT A,
PLAN VIP, D.L. 49, NANOOSE DISTRICT,
TO ACCOMPANY DEVELOPEMENT VARIANCE PERMIT.
SCALE 1: 500



LOT 28
PLAN

LOT 27

LOT 26

24289
LOT 25

SIMS ASSOCIATES
LAND SURVEYING
224 PERSH ROAD WEST
QUALICOM BEACH, B.C., V3K 1R4
PHONE 782-8121 FAX 782-8241
FILE: 02-487-9
COMP: 02-487-581
DATE: 2003/05/06

**PAGE
39**

REGIONAL DISTRICT OF NANAIMO	
MAY 15 2003	
CHAIR	GMCrs
CAO	GMDS
GMCrs	GMS
DATE: <i>CHP</i>	
FILE:	

MEMORANDUM

TO: Pamela Shaw
Manager of Community Planning

May 15, 2003

FROM: Susan Cormie
Senior Planner

3090 30 90312
3320 30 25072

SUBJECT: Development Variance Permit Application No. 90312 & Request for Relaxation of the Minimum 10% Frontage Requirement
Applicant: K. & B. Sorensen on behalf of Kristoff Enterprises
Electoral Area 'G', Hodge's & Lowry's Roads

PURPOSE

To consider a development variance permit application to relax the minimum interior side lot line setback requirement to accommodate the siting of existing buildings and to consider a request to relax the minimum 10% perimeter frontage requirement in conjunction with a proposed two-lot subdivision development.

BACKGROUND

The applicants have applied for a development variance permit to request the relaxation of the interior side lot line setback requirement to accommodate the siting of an existing accessory building and an existing agricultural building from a lot line proposed to be created at time of subdivision. The applicants have also requested that the minimum 10% perimeter frontage requirement be relaxed for 1 of the proposed parcels as part of a 2-lot subdivision proposal for the properties legally described as Lot A, District Lots 19 & 81, Nanoose District, Plan 13475, and located on Hodge's and Lowry's Roads within the Electoral Area 'G' (see Attachment No. 1 for location).

The subject property is currently zoned Rural 1 (RU1) and is within Subdivision District 'D' pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987. The property is also situated within the Provincial Agricultural Land Reserve. The applicant is proposing to subdivide the parent parcel 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). In addition, a portion of the parent parcel is designated within the Watercourse Development Permit Area pursuant to the French Creek Official Community Plan Bylaw No. 1115, 1998. The new parcels are proposed to be served by individual private septic disposal systems and private water wells.

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 accessory building is proposed to be located 2.5 metres from the new lot line and an existing agricultural building housing livestock is proposed to be located 23.0 metres from the new lot line. As these buildings will not meet the required minimum setbacks of 8.0 metres for an accessory building and 30.0 metres for an agricultural building housing livestock, variances to Bylaw No. 500 provisions are required. Therefore, the applicant has applied for a development variance permit requesting to vary these setbacks.

10% Minimum Frontage Requirement

The frontage for the proposed Remainder of Lot A is 164.0 metres or 6.7 % 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 also required.

ALTERNATIVES

1. To approve the request for the relaxation of the minimum 10% frontage requirement for the proposed Remainder of Lot A 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

The Provincial Agricultural Land Reserve Commission has approved the subdivision of this parcel. In keeping with the guidelines of the Land Reserve Commission not to extent roads into the ALR as well as the requirements of the *Land Title Act* to limit roads being extended into ALR lands, there are no additional roads proposed to extent into the ALR lands. This means that no additional road frontage would be possible, thus restricting the subdivision to be served by the existing road network.

With respect to the request for relaxation of the setback requirements, the applicant is proposing to create a subdivision, which will provide separate titles for the 2 existing houses on the parent parcel. Due to the location of these houses, the accessory buildings, and the agricultural buildings, the minimum setback requirement for two buildings from the proposed interior side lot line will not be able to be met upon the creation of the new interior side lot line. Adjusting the interior side lot line to the west will negatively impact upon the existing driveway and second dwelling unit while adjusting the proposed line to the east will impact the existing agricultural buildings, which are integral to the operation of the farm.

OFFICIAL COMMUNITY PLAN / ENVIRONMENTAL IMPLICATIONS

The French Creek Official Community Plan Bylaw No. 1115, 1998 designates portions of the subject properties within the Watercourse Development Permit Area. However, in this case, the applicant is exempt from requiring a development permit as the proposed subdivision and all works associated with the subdivision are outside the development permit area. Nevertheless, this information concerning the presence of the watercourses will be forwarded to the Ministry of Transportation as part of the subdivision review process. Please note that the *Farm Protection (Right to Farm) Act* would still have precedence over any environmental covenants.

VOTING

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

SUMMARY

This is a request to relax the minimum 10% perimeter frontage requirement for a proposed new parcel as part of a 2-lot subdivision proposal. This is also a request for a development variance permit to vary the minimum setback requirements to accommodate the siting of an existing accessory building and an existing agricultural building from a lot line proposed to be created when the subdivision is registered. The subject property is located within the Provincial Agricultural Land Reserve and the Commission has granted approval of the subdivision. A portion of the parent parcel is designated within the Watercourse Development Permit Area, but is exempt from requiring a development permit. Nevertheless, as part of the subdivision review process, staff will recommend to the Approving Authority the protection of the

watercourse by covenant. The Ministry of Transportation staff has indicated that they have no objection to the request for the proposed minimum 10% perimeter frontage relaxation. Therefore, as the Provincial Agricultural Land Commission has approved the subdivision, the Ministry of Transportation staff has no objection to this request, and the proposed lot line is proposed to have the least impact on the existing buildings and the operations of the farm, staff recommends Alternative No. 1, to approve relaxation of the minimum 10% perimeter frontage for the proposed Remainder of Lot A and to approve the development variance permit subject to notification procedures.

RECOMMENDATION

That the request, submitted by K & B Sorensen, on behalf of Kristoff Enterprises to relax the minimum 10% frontage requirement for the Proposed Remainder of Lot A as shown on the plan of subdivision of Lot A, District Lots 19 & 81, Nanoose District, Plan 13475 and to relax the minimum interior lot line setback requirement from 8.0 metres to 2.5 metres for the accessory building and from 30.0 metres to 23.0 metres for the agricultural building housing livestock, be approved subject to Schedule No. 1 and the notification requirements pursuant to the *Local Government Act*.

Scornie

Report Writer

[Signature]

General Manager Concurrence

[Signature]

Manager Concurrence

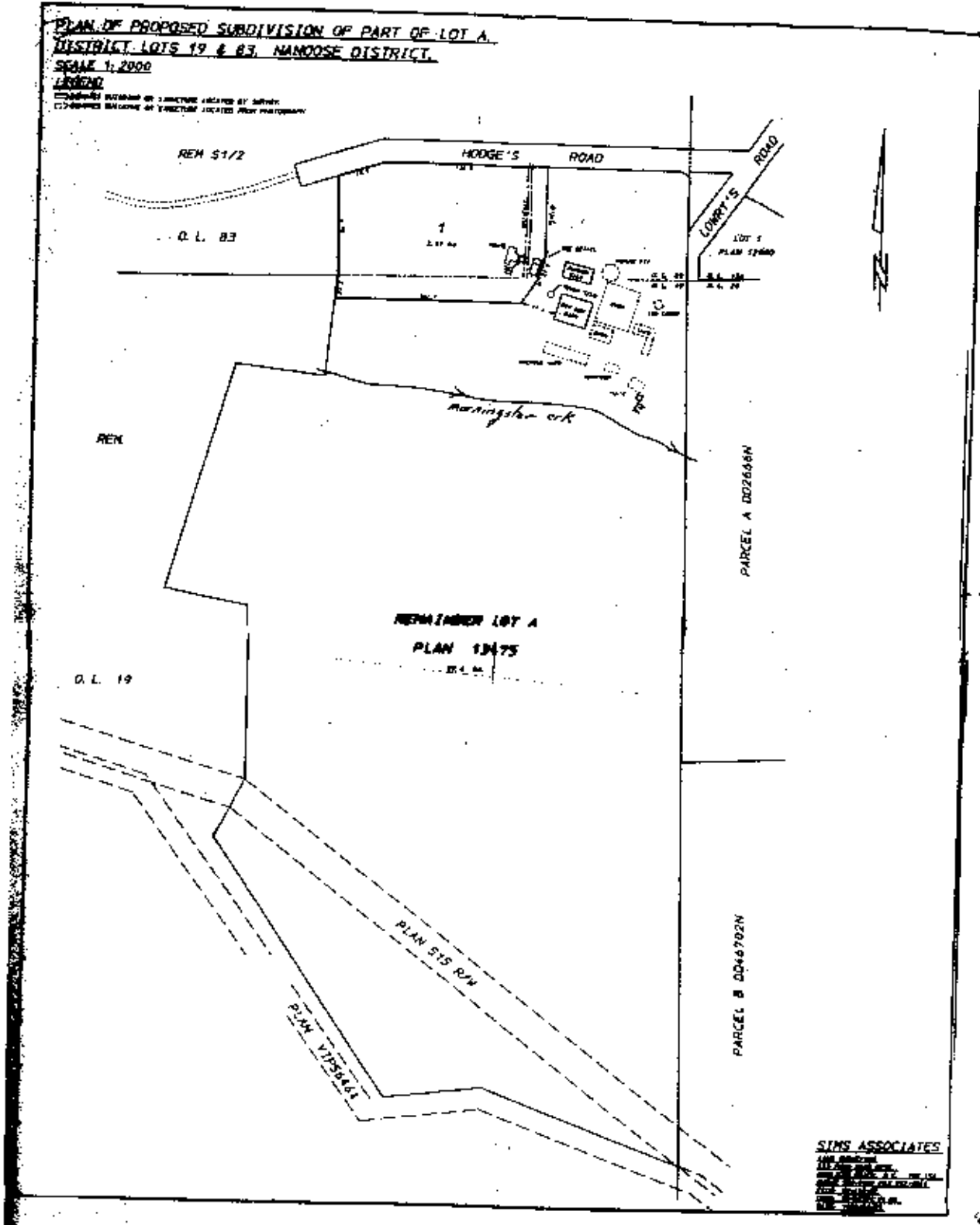
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CAO Concurrence

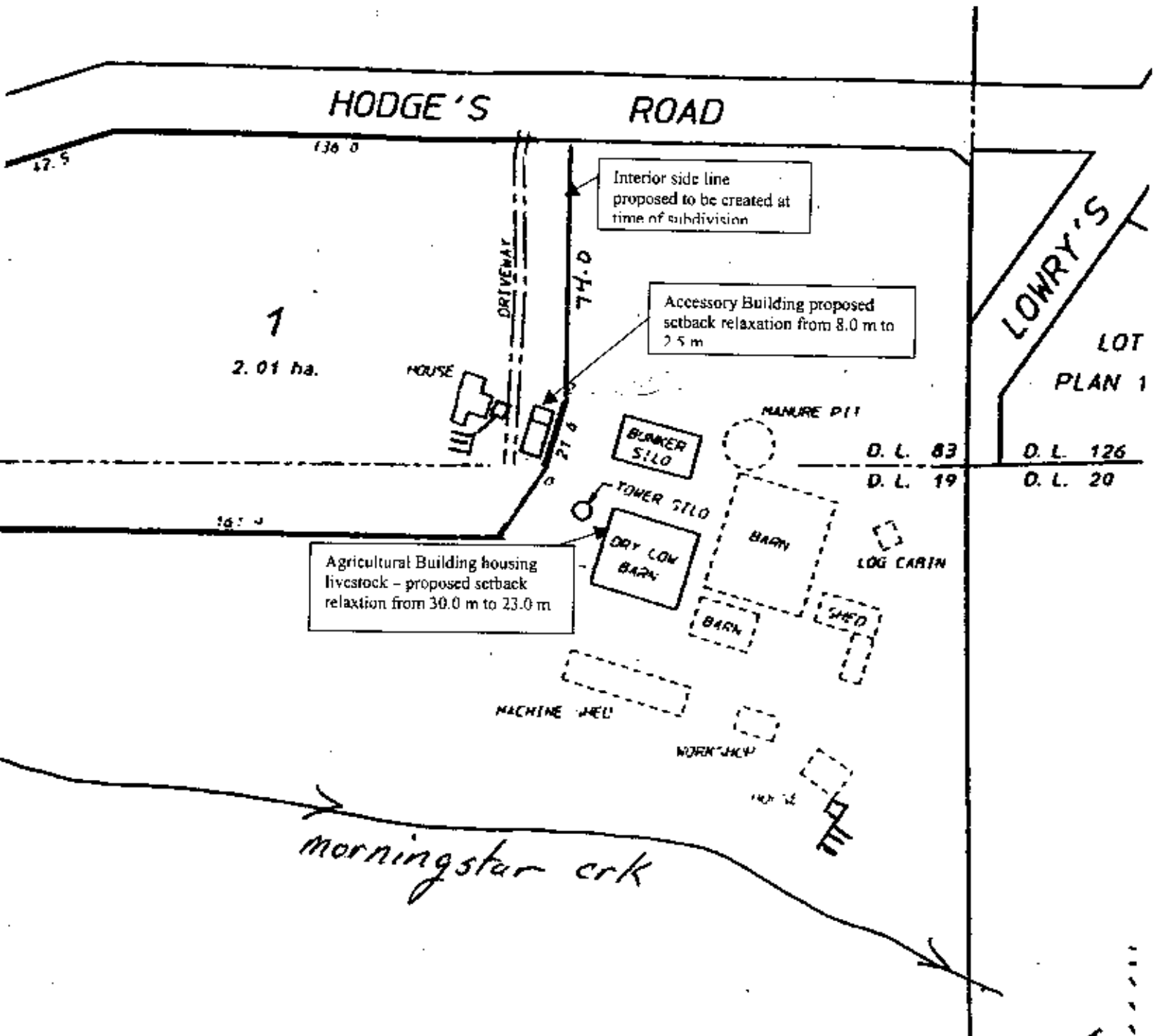
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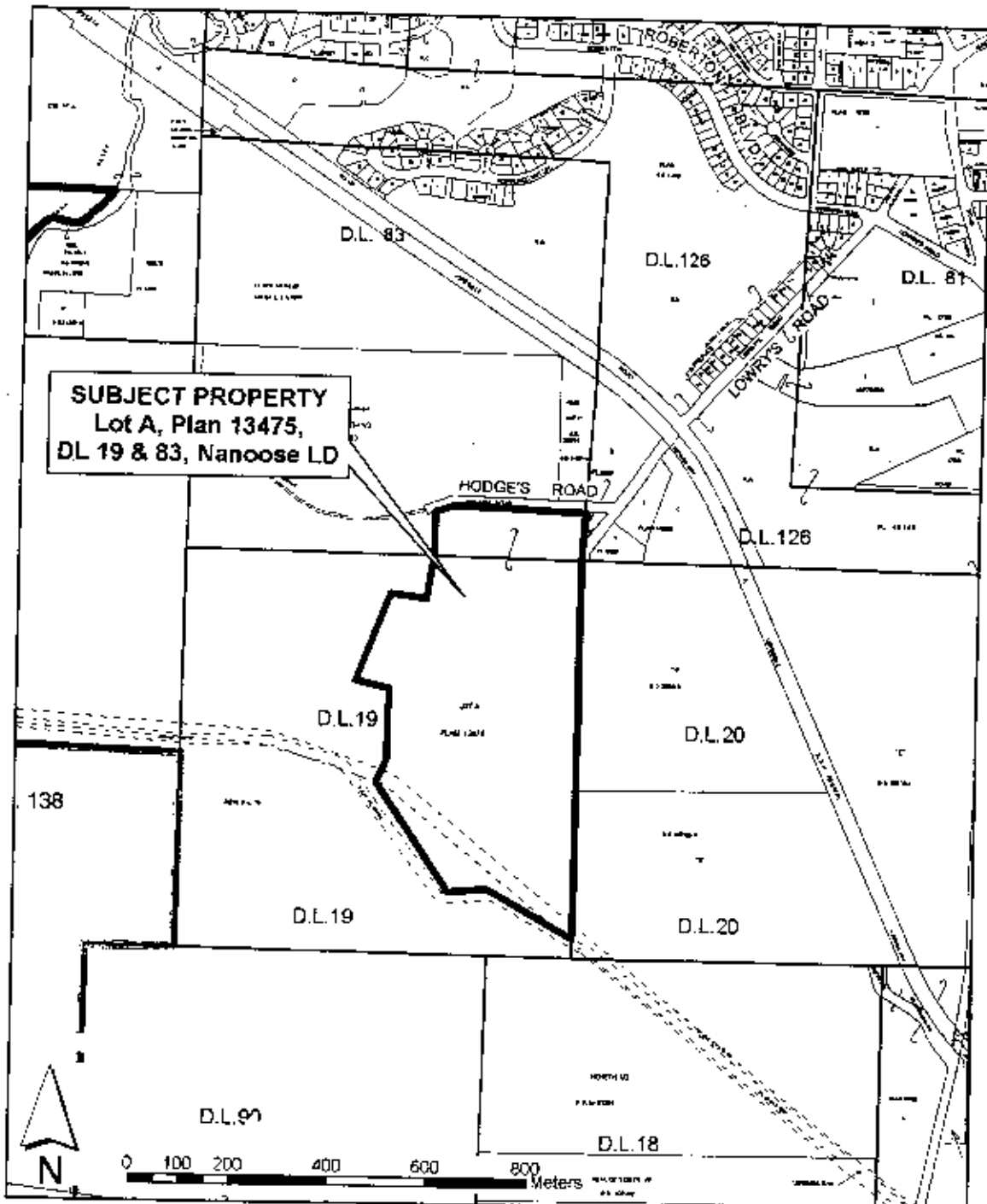
SCHEDULE NO. 1 (1 of 2)
Site Plan Showing Proposed Subdivision & Location of Existing Buildings
(as submitted by applicant)



SCHEDULE NO. 1 (2 of 2)
Enlarged Site Plan Showing Proposed Subdivision & Location of Existing Buildings
(as submitted by applicant)



ATTACHMENT NO. 1
SUBJECT PROPERTY LOCATION





REGIONAL DISTRICT OF NANAIMO			
MAY 15 2003			
CHAIR		GMCrs	
CAO		GMDS	
GMCrs		GMES	
EAP			
DATE:		May 13, 2003	

MEMORANDUM

TO: Pamela Shaw
Manager of Community Planning

FROM: Keeva Kehler
Planner

FILE: 3360-30-TXT0301

SUBJECT: Aquaculture - Official Community Plan and Zoning Amendments Issues & Public Consultation Framework

PURPOSE

To provide an overview of the potential amendments to the RDN's zoning bylaws (Bylaw No. 500, 1987 and Bylaw No. 1285, 2002) and further, to identify potential policy amendments in all Official Community Plans. This report also provides an outline for a public consultation process to address aquaculture and zoning/OCP amendment issues in the RDN.

BACKGROUND

At its Regular Board meeting held on November 5, 2002, the Regional Board passed the following resolution:

*MOVED Director Stanhope, SECONDED Director Westbroek, that staff prepare a report on the protection and control of the foreshore through the zoning process.
CARRIED*

The resolution was prompted by the Province's recent decision to lift the moratorium on aquaculture development on BC's coastline and to institute changes to Provincial legislation with respect to shellfish aquaculture tenure applications. A number of RDN residents have expressed concern about the potential impacts of unchecked aquaculture development along the marine foreshore.

Staff prepared a report dated January 17, 2003 for the Board's consideration outlining some of the implications of removing aquaculture as a permitted use from the Water 1 zone, Rural zones (1 to 9) and Resource Management zones (1 to 5, 7 to 9).

At its Electoral Area Planning Committee (EAPC) meeting held on January 28, 2003, the EAPC passed a resolution directing staff to prepare a public consultation process to address the issue of aquaculture in the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987", "Regional District of Nanaimo Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002" and all Official Community Plans.

This proposed Public Consultation Strategy is attached for the Board's consideration. Briefly, the strategy recommends that staff draft proposed land use options (as outlined in this report) then refer these proposed options to a wide range of interested parties and the public for discussion. A series of public meetings will also be held to obtain citizen comments. Following the consultation process, amendment bylaws will be drafted and presented to the Board for consideration. Should the amendments proceed, a formal public hearing(s) would be required, as would formal referrals (required by legislation and RDN Board policy). It is anticipated that the bylaw amendments could be considered for adoption in October 2003 (see Attachment No. 1 - Proposed Consultation Strategy).

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General information pertaining to shellfish aquaculture development in the RDN is attached in the Backgrounder (see Attachment No. 2). It should be noted that this report does not discuss the potential impacts of finfish aquaculture (i.e. salmon farming) along the RDN coastline as Ministry and industry sources have indicated there is no potential for the development of such facilities at this time.

ALTERNATIVES

1. Receive the staff report for information and endorse the proposed Consultation Strategy.
2. Provide further direction to staff.

OFFICIAL COMMUNITY PLAN (OCP) IMPLICATIONS

An OCP provides guidance and direction for the future development of lands in a community. The introduction of intensive agricultural uses into an area may have implications for the neighbouring residents. Some of the potential issues with respect to intensive agricultural uses, such as land-based aquaculture, include septic and waste disposal, water use, noise, odour and increased traffic flows.

Staff recommends that a standard policy with respect to shellfish aquaculture development across the RDN be established and added to each OCP to provide guidance to citizens and industry (See Attachment No. 3). The policy statement could include a list of criteria to be considered prior to accepting a rezoning proposal for an aquaculture operation.

Schedule No. 1 provides an overview of the Official Community Plan (OCP) designations with respect to current agriculture and aquaculture policies in the RDN. The OCPs for Electoral Area 'A' and Electoral Area 'D' (Lantzville) include statements that do not support the development of aquaculture facilities in the plan areas. The OCPs for Electoral Area 'E' and Electoral Area 'H' are supportive of aquaculture in certain circumstances and subject to conditions. The remaining OCP documents are silent on aquaculture development.

Agriculture is generally strongly supported in all OCPs. Land based aquaculture facilities could be considered a form of intensive agriculture. Some OCPs recognize that it may be necessary to create a buffer between intensive agricultural uses and traditional less intensive uses in rural areas. Although the development of such facilities is not expected in the immediate future due to financial constraints and large site area requirements, the aquaculture industry is experiencing rapid changes in technology that may make land based aquaculture a feasible economic activity in the future. Researchers are investigating the potential for farming new species, which may have higher market values that would justify the large capital expense of a land-based facility.

As part of this process, the communities should also consider the potential issues associated with aquaculture operations in fresh water lakes and rivers in the RDN.

The residents of each plan area should consider whether there are opportunities for aquatic shellfish and land based aquaculture development including facilities on inland watercourses in their respective regions. Following public consultation, a standard policy for aquatic and land based aquaculture operations can be developed and added to all OCP documents. In the event that a rezoning application is submitted to the RDN, the policies in the OCP will be consulted and will provide guidance to the applicant and staff with respect to the proposal.

ZONING IMPLICATIONS

The "RDN Land Use and Subdivision Bylaw No. 500, 1987" and "Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002" do not contain a comprehensive zone for aquatic or land based aquaculture. The current zoning permits aquaculture in conjunction with other resource uses. A number of marine shellfish aquaculture operations are presently in operation in the WA1 zone. These operations are generally clustered in the Nanoo Harbour and Deep Bay areas.

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Bay Harbour. There are at least two land-based facilities in the RDN. One is located in the Cedar area and grows oysters, clams and mussels from seed for sale to local growers. This facility also conducts research on land-based finfish farming techniques. Another land-based facility is located in the Qualicum area and also conducts research on aquaculture technology and cultivation of new species. A number of land-based facilities exist on rural parcels throughout the region. Staff have contacted the Ministry of Agriculture in an attempt to obtain a complete list of aquaculture operators in the region; this information is not yet available.

Marine Aquaculture Zoning Implications

According to the available data, there are specific coastal locations where aquaculture development and expansion are more likely to occur based on site suitability and physical capability for shellfish aquaculture. The Public Consultation Strategy requests that the community consider the following options:

- a. Remove 'aquaculture' as a permitted use in the zoning bylaw for all areas on the RDN coastline and afford existing operations legal non-conforming status. This would allow existing operations to continue at their current levels of intensity, but would require a rezoning application for all new tenures or expansion of existing operations. This option allows the community to assess each application for expansion or new facilities on a site-specific basis through the rezoning process. General policies set out in OCPs would provide guidance for the community, industry and staff during the rezoning process.
- b. Zone existing operations as conforming with new zones reflecting the actual use or a range of uses consistent with the capability of the existing operation, but remove aquaculture as a permitted use in the zoning bylaw for all other areas.
- c. Zone specific coastal sites that exhibit high capability and suitability characteristics for shellfish development to permit the aquaculture use outright. This would provide greater certainty for leaseholders and upland owners. Shellfish aquaculture facilities require specific infrastructure as part of their normal operations and the aquaculture zone could contain appropriate regulations to meet the needs of normal aquaculture facilities. A specific aquaculture zone could be tailored to better suit the needs of the shellfish growers along the coast with respect to the maximum permitted height of structures, lease area coverage and setback issues.

Land Based Aquaculture Zoning Implications

It is proposed that the zoning for RU1 - 9 and RM1-5, 7-9 and CD10 (pursuant to the RDN's Land Use and Subdivision Bylaw No. 500, 1987) be reviewed with respect to removing aquaculture as a permitted use. The zoning for Forestry/ Resource 1 (FR1) (pursuant to the RDN's Electoral Area 'F' Zoning and Land Use Bylaw No. 1285, 2002) currently includes 'farm use' as a permitted principal use. This currently allows for the development of land-based aquaculture without any community input. If the community determines that aquaculture is a desirable economic activity for the region, a new zone for land-based aquaculture could be established and suitable areas could be designated for the use.

The Public Consultation Strategy requests that the public and referral agencies consider whether it would be desirable to create a specific land use zone that would permit land based aquaculture facilities throughout the RDN, including facilities on freshwater lakes and rivers.

LEGAL IMPLICATIONS

Pursuant to the *Local Government Act*, if a proposal alters the permitted use or density of an area, the local government must notify the public of the proposed amendment and hold a public hearing on the issue. In this case, the RDN will have to hold a number of public information meetings prior to the hearing to discuss the potential implications with the public and other stakeholders.

PUBLIC CONSULTATION IMPLICATIONS

The proposed amendments contained in this report are intended to initiate public and agency discussion and are subject to change depending on the feedback received throughout the consultation phase. Comments have already been received with respect to the visual impacts of shellfish operations in Nanoose Bay and Deep Bay. Concerns have been expressed with respect to increased densities of shellfish farms and the effects of expansion on upland property owners' land values. The public consultation process will provide an opportunity for the landowners and the shellfish growers to discuss the impacts of development and expansion of the industry with a view to mitigating these impacts.

Although Land and Water BC (LWBC), the agency responsible for issuing tenure leases to shellfish operators, notifies the public of new tenure applications, concerns have been expressed with this consultation process. If a shellfish operator applies to expand the operation and increase densities on an existing lease area, the proposal is not usually referred to the public for comment. If upland owners initially support the development of a small scale, passive shellfish operation in front of their properties, they will not always be consulted prior to any proposed expansion of the tenure area or increased density within the tenure boundary. According to Ministry representatives, the intent of many operators is to start off with a small-scale operation and gradually expand over time. The OCP policy and guidelines could address the issue of consultation with upland owners prior to making any changes to existing operations.

FINANCIAL IMPLICATIONS

As outlined in *Attachment No. 1*, the financial costs associated with the public consultation process are primarily attributable to the public meetings. 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, 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 2003 Budget for the Development Services Department

VOTING

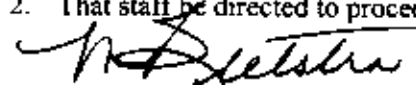
Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY/ CONCLUSIONS

This report provides an overview of the potential amendments to the RDN's zoning bylaws (Bylaw No. 500, 1987 and Bylaw No. 1285, 2002) and further, identifies potential policy amendments to all Official Community Plans. This report also provides an outline for a public consultation process to address aquaculture and zoning/OCP amendment issues in the RDN. The issues associated with shellfish aquaculture are explored in the Background. It is recommended that, given the potential for expansion of the aquaculture industry, the Board proceed with the public consultation process and consider amendments to the RDN's zoning bylaws and official community plans.

RECOMMENDATIONS

1. That the staff report on Aquaculture and potential amendments to RDN bylaws be received for information.
2. That staff be directed to proceed with the Public Consultation Strategy as outlined in Attachment No. 1.


per _____
Report Writer



Manager Concurrence



General Manager Concurrence



CAO Concurrence

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**Schedule No. 1
Excerpts from RDN Official Community Plans
Referencing Aquaculture/Agriculture**

1. ***Electoral Area 'A' OCP - Adopted 2001***

Electoral Area 'A' OCP contains properties that will be affected by the proposed land use bylaw amendments for both land and aquatic areas. The entire foreshore is zoned WA1 which currently permits marine aquaculture uses. This plan area also contains a site-specific zone called the South Wellington Comprehensive Development Zone (CD10), which permits aquaculture on properties greater than 5,000m² in area. It is proposed that land-based aquaculture be removed from all non-ALR parcels in the RDN where it is currently permitted.

Electoral Area 'A' contains parcels that are designated RU1, RU2, RU4, RU7, RU9, RM1, RM2, RM4, RM5, RM7 and RM9. All non-ALR parcels in these zones will be affected by the proposed amendments.

OCP Policy Statements

- Section 2 – Protecting Rural Integrity – The policy sections for Rural Lands and Rural Resource Lands discuss reducing potential conflicts between residential development and agriculture uses.
- Section 3 – Protecting the Natural Environment contains the following statement with respect to aquaculture:
"Due to the sensitive nature of the marine zone and the minimal rates of water exchange in Stuart Channel, the RDN will only support the siting of aquaculture farms along the coastline if an RDN Board approved public consultation process has been completed and the community supports such uses."
- Section 5 – Creating a Vibrant and Sustainable Economy - Resource activities discusses policies with respect to economic development in the RDN.

Opportunities and Implications

At the time of adoption, the community in Electoral Area 'A' indicated the desire to initiate a land use bylaw to prohibit the siting of aquaculture farms along the coastline. The implementation of this action was deemed to be a short-term goal in the plan. The proposed amendments to the Electoral Area 'A' OCP provide the opportunity for the RDN and other interested parties to investigate the impacts of the proposed land use bylaw amendment in more detail.

The data obtained from the Provincial government indicates that there are some potential sites where shellfish aquaculture could be developed along the coast of the plan area.

2. ***Electoral Area 'C' Arrowsmith Benson – Cranberry Bright OCP - Adopted 1999***

The Electoral Area 'C' OCP does not contain any marine watercourses, but the plan area will be affected by the proposed changes to the RU1-9 and RM1-5, 7-9 zones. Electoral Area 'C' contains properties that are designated RU1, RU4, RU6, RU7, RU9, RM1, RM4, RM5 and RM9.

OCP Policy Statements

- Goal 3 – Protecting Rural Integrity – Traditional rural uses are supported in the plan area. The OCP also discusses minimizing conflict between rural residential and resource activities.

Rural properties in this plan area tend to be non-ALR parcels but are characterized by their rural and agricultural uses. The plan supports minimizing conflict between residential and agricultural development, aquaculture and natural resource extraction uses.

Lands designated Resource in the plan area tend to be located within the ALR or FLR and are characterized by larger parcel sizes.

- Goal 4 – Protecting the Natural Environment – Environmentally sensitive areas are protected in the plan area through the use of Watercourse or Sensitive Ecosystem Development Permit Areas.
- Goal 6 – Create a Vibrant and Sustainable Economy – Agriculture is recognized as an important economic activity in the plan area. Traditional land based aquaculture operations are supported in the OCP.

Opportunities and Implications

At the time of adoption, the issue of land based aquaculture facilities was not considered in the plan area. The recent changes to the Agricultural Land Commission Act have initiated discussion of land based aquaculture facilities in the RDN. The proposed land use bylaw amendments would affect non-ALR properties only. The issue of riparian or freshwater aquaculture development has also not yet been explored in the plan area.

3. ***Electoral Area 'D' – East Wellington – Pleasant Valley OCP – Adopted 1998***

Electoral Area 'D' – East Wellington – Pleasant Valley OCP does not contain marine watercourses, and will therefore only be affected by the proposed amendments to the land use bylaw for the RU1 – 9 and RM1-5, 7-9 zones.

The East Wellington – Pleasant Valley OCP contains properties designated as RU1, RU2, RM1, RM2, RM4, RM6 and RM9.

OCP Policy Statements

- Section 3.1 – Agriculture Policies – Action No. 2 supports a broad range of agricultural activities on agricultural lands both within and outside of the ALR. It is recognized in this section that the regulation of intensive agricultural operations on non-ALR land may be necessary.
- Section 4.2 – Rural Policies – Action No. 4 states that permitted uses within the Rural designation shall be limited to traditional rural activities, including those associated with normal agriculture and silviculture practices.
- Section 4.3 – Rural Residential Policies – Action No. 3 states that permitted uses within the Rural Residential designation shall be limited to traditional rural activities and passive recreation.

Opportunities and Implications

At the time the plan was adopted, land based aquaculture facilities were not considered to be an issue. The recent amendments to the *Agricultural Land Commission Act* have prompted discussion with respect to the development of land based aquaculture facilities in the area. The plan area does not contain marine watercourses so the only option for aquaculture development is on land or on inland freshwater lakes and rivers. Only those properties located outside the ALR will be affected by the proposed amendments.

4. ***Electoral Area 'D' – Lantzville OCP – Adopted in 1995***

OCP Policy Statements

The incorporation of Lantzville will affect a major portion of this plan area. The current Lantzville OCP does not support commercial aquaculture development along the foreshore of the plan area. No amendment of this section is required to amend the WA1 zoning along the plan area's coastline.

The Lantzville OCP contains properties that are designated RU1 and RM1.

- Section 3 – Natural Resource Management – Agriculture Policy No. 4 recognizes the need to regulate intensive agriculture while encouraging and supporting broad based agricultural activities.

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Opportunities and Implications

The proposed amendments to the WA1 zone are supported by the Lantzville OCP. The proposed amendments to remove land based aquaculture as a permitted use for RU1 -9 and RM1-5, 7-9 zones will affect only the non-ALR parcels in the plan area.

5. **Electoral Area 'E' – Nanoose Bay OCP** – Adopted 1998

OCP Policy Statements

Nanoose Harbour is one of the sites recognized by Ministry and industry representatives as having excellent potential for shellfish aquaculture development. There are a number of existing shellfish leases in Nanoose Harbour and the potential for expansion of aquaculture uses in this area exists.

The Nanoose Bay OCP contains properties that are designated RU5 and RM3.

- Section 3.3 – Rural Lands Policies – Action No. 5 discusses the permitted uses of rural lands. The uses shall be limited to rural, rural residential and uses accessory to rural and rural residential uses.
- Section 3.4 – Resource Lands Policies – Action No. 5 discusses the permitted uses for Resource lands in the plan area. Agriculture, forestry, natural resource harvesting, extraction, primary processing, historic, natural and archaeological sites, campgrounds and recreational uses are supported by the plan.
- Section 4.3 – Coastal Zone – Development Activated No. 8 discusses commercial leases within Nanoose Harbour. It should be noted that there are a number of existing shellfish leases in Nanoose Harbour (five actives shellfish leases were in operation at the time of writing the report). This section requests that senior government agencies consider the impacts of all lease agreements in Nanoose Harbour prior to approving additional leases.
- Section 6.4 – Agriculture Policy – Action No.7 states that the regulation of intensive agricultural operations shall be supported on non-ALR lands.

Opportunities and Implications

The Provincial government and the shellfish industry have identified certain marine locations within Electoral Area 'E,' specifically Nanoose Harbour, as having high capability and suitability ratings for shellfish aquaculture. The citizens of Nanoose Bay should consider whether they wish to see these areas retained for aquaculture uses, or if they wish to remove aquaculture as a permitted use from the Harbour, designating the existing operations as legal non-conforming. All expansions to existing tenures and new tenures would then be subject to the rezoning process.

6. **Electoral Area 'F' OCP** – Adopted in 1999

OCP Policy Statements

Electoral Area 'F' does not contain any marine watercourses and the majority of ALR lands are located within the Agriculture 1 (A-1) zones. The A-1 zone permits uses considered to be 'farm uses' by the Agricultural Land Commission. After November 1, 2002, the RDN cannot prohibit the development of land based aquaculture facilities on ALR lands. Rural Residential lands in Area 'F' do not permit agricultural activity. Forestry (FLR) lands in the plan area are the only lands not in the ALR that are currently zoned to permit the development of a land based aquaculture facility.

- Section 3 – Natural Resources – Forests Policies – the Forest Land Reserve Act is no longer regulating the use of FLR land. The permitted uses are restricted only by the zoning regulations. Farm use is permitted in the FR-1 zone and the issue of land-based aquaculture is not specifically addressed in the zoning or in the OCP.

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Opportunities and Implications

The "Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002 governs land use in Electoral Area 'F'. Electoral Area 'F' contains some large resource parcels where a land based aquaculture facility could potentially locate. There are also a number of significant watercourses in the plan area that could be potentially be utilized for freshwater aquaculture. Establishing standard policies for aquaculture development in the plan area will allow the community in Electoral Area 'F' to evaluate a proposal for an aquaculture facility on a site-specific basis through the rezoning process.

7. Electoral Area 'G' – French Creek OCP – Adopted in 1998

OCP Policy Statements

The French Creek OCP plan area contains coastal areas and significant tracts of rural and resource lands. The proposed amendments to the WA1 zone are consistent with the objectives established in Section 2.5 Coastal Zone Management of the OCP.

The French Creek OCP contains properties that are designated RU1, RU2 and RU3.

- The plan area encourages the development of farm activities on productive agricultural lands.
- Section 7.3 – Agriculture Policies – Action No. 3 identifies the types of agricultural activities that are supported in the plan area. Livestock and horticultural uses of a farm and the processing, production, distribution and sale of agricultural products grown on the farm are supported by the plan. The plan recognizes that certain intensive agricultural operations may give rise to conflict with adjacent uses or the environment and requires that such uses be conducted in accordance with recognized codes of practice, standards and environmental guidelines. However, the issue of land-based aquaculture is not specifically addressed.

Opportunities and Implications

The French Creek OCP clearly recognizes the importance of agricultural activity in the plan area. Discussions with the BC Shellfish Growers Association and Ministry of Agriculture, Food and Fisheries representatives have indicated that there is limited capability along the coastline between Nanoose Harbour and Bowser for shellfish aquaculture development. The coastline in this area is too exposed and there are significant resource conflicts that may preclude the area from aquaculture development. A large portion of the plan area is designated for Rural or Resource Management uses, but from a preliminary look at the Electoral Area map, it appears that a large portion of the Rural and Resource lands are within the ALR and therefore will not be affected by the proposed changes.

8. Electoral Area 'G' – Englishman River OCP – Adopted in 1990

OCP Policy Statements

The Englishman River OCP area contains areas designated for Rural and Resource uses. There are a number of large blocks of relatively undeveloped land in the plan area that are not in the ALR. Most of this land is currently forested and would be affected by the proposed amendment to the RU1 and RM1 zones. The coastline consists mostly of residential lots along Craig Bay Estates and a protected area along the estuary of the Englishman River. Industry and Ministry representatives have indicated that this portion of the RDN coastline is not suitable for commercial shellfish aquaculture.

- Section 3.1 – Agriculture – Farmland is a relatively minor component of the plan area, but the plan area contains parcels that are designated for farm and resource uses. Most of the land that is actively being farmed in the plan area is located within the Agricultural Land Reserve (ALR). The RDN prohibits the use of ALR parcels for land based aquaculture facilities.
- Section 4.1 – Resource Management – Policy No. 3 outlines the permitted uses for lands within a Resource Management designation. The permitted uses are generally limited to activities associated

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with natural resource harvesting, extraction and outdoor recreation. This section states that the Regional Board may differentiate amongst permitted uses where it is deemed appropriate to separate more intensive resource uses from traditional less intensive rural uses. Aquaculture is not specifically addressed, but would be considered an intensive resource use.

- Section 4.2 – Rural – Policy no. 3 lists the permitted uses for Rural lands. The uses are generally limited traditional rural activities and passive recreation. The Regional Board may differentiate amongst permitted uses within a rural designation where it is deemed appropriate to separate more intensive rural uses from traditional less intensive uses.

Opportunities and Implications

At the time of adoption of the Englishman River OCP, the issues surrounding land-based aquaculture were not considered. Intensive resource uses such as land based aquaculture facilities can pose potential land use conflict issues. By removing outright permission for intensive agricultural uses from non-ALR parcels, the RDN and local community will have the ability to evaluate intensive agricultural proposals on a site-specific basis through the rezoning process.

9. ***Electoral Area 'H' - Shaw Hill – Deep Bay OCP*** – Adopted in 1996
The Shaw Hill – Deep Bay OCP is currently undergoing a review process and public consultation with the community has already been initiated. It is anticipated that aquaculture will be dealt with under this OCP review process. The plan area covers Deep Bay, which has been identified as a highly suitable location for shellfish aquaculture, by both the Provincial government and the shellfish industry. Deep Bay contains numerous existing shellfish aquaculture leases and forms part of the Baynes Sound Aquaculture Action Plan area. It is recommended that the current OCP review process be used to determine the policies and objectives for aquaculture development in this plan area.

Attachment No. 1
Proposed Consultation Strategy for the Review of Aquaculture Regulations in the
RDN's Zoning Bylaws and Official Community Plans

Proposed Consultation Strategy
for Aquaculture and Zoning Bylaw Amendments to the
Official Community Plans for Electoral Area's 'A', 'C', 'D', 'E', '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 amend the permitted uses for the Water 1 (WA1) zone, the Rural 1 to 9 (RU1 - 9) zones, Resource Management 1 to 5 and 7 to 9 (RM1-5, 7-9) and the South Wellington Comprehensive Development (CD10) zones within the Electoral Areas A, C, D, E, G and H Official Community Plan areas. The permitted uses for the Forestry/ Resource 1 (FR1) zone in the Electoral Area 'F' Official Community Plan area will also be reviewed. It is proposed that the OCPs in all areas will be amended to provide a definition and policy statements for aquaculture use in the plan areas.

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 outlined below outlines a means for assessing the impact that the removal of aquaculture as a permitted use from the Water 1, Rural and Resource Management (except RM6) and FR-1 designations will have on aquatic and terrestrial leaseholders, landowners of properties adjacent to the marine foreshore, landowners of properties in rural areas, community groups, industry, provincial agencies and local governments.

Goals of the Consultation Strategy

The overall goal of the Consultation Strategy is to respond to community concerns voiced to the RDN Board regarding the potential future use of the marine foreshore for aquaculture development and expansion. Comments have been received expressing concern that the unchecked expansion of aquaculture along the RDN coastline may have adverse impacts on the riparian rights and property values of upland property owners, tourism, aquatic recreation opportunities, wild shellfish areas and sensitive beach habitats. The issue of land based aquaculture development should also be considered in conjunction with the marine aquaculture issues.

A second, but equally important goal is to ensure that all interested individuals, organizations, and agencies with an interest in aquaculture and intensive agricultural uses are meaningfully and adequately consulted on the proposed change to the nine Official Community Plans that address aquaculture and agricultural uses.

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 future use of the marine foreshore and rural lands for aquaculture throughout the various Official Community Plan areas.

Method

In response to comments received from the public, RDN Municipalities and other Vancouver Island Municipalities, the RDN Board has directed staff to investigate the impacts of amending the Official Community Plans with respect to the definitions and policies pertaining to aquaculture and intensive land based agriculture throughout the region.

Due to the nature of this amendment, the RDN Board has considered the potential impacts of amending the permitted uses contained within the WA1, RUI-9, RM1-5 and RM7-9, CD10 and FR-1 designations and referrals will be sent to the following agencies, organizations, local governments, community groups, and individuals:

- Agricultural Land Commission;
- BC Shellfish Growers Association;
- BC Shellfish Producers operating in the RDN;
- Canadian Aquaculture Industry Alliance;
- Chamber of Commerce;
- City of Nanaimo;
- City of Parksville;
- Cowichan Valley Regional District;
- David Suzuki Foundation;
- District 68 School Board;
- District 69 School Board;
- Fanny Bay Oyster Company;
- Fisheries and Oceans Canada;
- Islands Trust;
- Land and Water BC Inc.;
- Lasqueti Shellfish Growers' Association;
- Malaspina College, Center for Shellfish Research;
- Ministry of Agriculture Food and Fisheries;
- Ministry of Community, Aboriginal and Women's Services;
- Ministry of Sustainable Resource Management;
- Ministry of Water, Land and Air Protection;
- Nanoose (Snaw-naw-as) First Nation;
- Qualicum First Nation;
- Regional District of Alberni-Clayoquot;
- Regional District of Comox-Strathcona;
- Residents Associations in various Electoral Areas;
- Snuneymuxw First Nation;
- Town of Qualicum Beach;
- Vancouver Island Economic Development Association;
- Vancouver Island Real Estate Board;

Contact with members of the public or other agencies will be provided through:

- on-going advertisements and information; and
- a public hearing(s) on the proposed amendments.

Outcomes and Products

The intent of consultation process is first, to effectively engage all interested parties to assess the impact and appropriateness of amending the WA1, RU1-9, RM1-5, 7-9, CD10 and FR-1 zones to remove aquaculture as a permitted use throughout the Regional District of Nanaimo and second, to meet all regulatory requirements established by the *Local Government Act*.

Projected Schedule

Date 2003	Action
June 10	<ul style="list-style-type: none"> ▪ Report to RDN Board on approval of public consultation plan
June	<ul style="list-style-type: none"> ▪ Referrals to government agencies, industry associations, adjacent municipalities and regional districts
June	<ul style="list-style-type: none"> ▪ Advertise issue and comment sheet in area newspapers Post issue and comment sheet on RDN Website
July/August	<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 2004	<ul style="list-style-type: none"> ▪ Report to RDN Board requesting consideration of 4th reading and adoption (pending receipt of approval from Ministry of Community, Aboriginal and Women's Services)

Resources

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

Budget

Staff time budgeted as part of regular work program in 2002 Development Services Department Budget. Total cost of mapping services, public information meeting, public hearing, mailings, advertising, and meeting room rentals 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 Background

According to information provided by the Ministry of Sustainable Resource Management (MSRM), the Ministry of Agriculture, Food and Fisheries (MAFF) and shellfish industry representatives, there are a limited number of areas along the RDN coastline that are suitable for shellfish aquaculture development (see Attachments No. 4, 5 and 6). The information received from Ministry representatives indicates that there are no opportunities for finfish development along the RDN's coastline due to physical constraints such as ocean temperatures and severe storm events.

Aquaculture is presently a permitted use in all WA1 zones along the RDN coastline. The definition for aquaculture pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" is "the cultivation, rearing and harvesting of aquatic organisms on land or in the water, but specifically excludes seafood processing." The zoning does not currently distinguish between shellfish and finfish aquaculture operations, or between passive beach culture and active cultivation.

Shellfish aquaculture is significantly different from finfish aquaculture and has distinct land use requirements. The most common species cultivated in the ocean adjacent to the RDN are Manila clams, Pacific oysters and Japanese scallops. Other species being cultivated include mussels and geoducks. Research is ongoing to determine the viability of other species such as spot prawn, sea cucumber and abalone.

Raft culture is a common shellfish aquaculture method used in the RDN. This involves cultivating oysters in trays below a floating wooden raft out in the ocean. Approximately 8 trays are stacked on top of one another and suspended from the rafts on individual ropes. Each raft could have 11 stacks suspended from it at one time for a total of 88 trays. Although the trays are not visible below the ocean, the rafts can be seen from the shore. Occasionally, unused trays are stored on top of the rafts, which could lead to potential visual impacts for waterfront property owners.

String culture methods are also used in RDN waters, which involves setting the shellfish seed on long strands of polypropylene ropes and suspending these from floating buoys. The buoys are often visible from land. Using darker colours for the buoys within the tenure may reduce the visual impact from the shore. For safety reasons, brightly coloured buoys are often used to denote the tenure boundaries. Aquaculture operations also use plastic pipes to grow the shellfish to suitable sizes, which can be reused once the product is harvested.

Some shellfish operators use Floating Upwelling Systems or FLUPSYS to contain the juvenile shellfish prior to placing them in the trays to reach mature size. FLUPSYS are similar to floating decks with plastic bins below the water level. A paddle wheel at one end generates a flow of water through the bins containing the juvenile shellfish. The main impact with these devices would be visual, although there may be some noise impacts when the winches are used to lift the bins. The juvenile fish feed on the plankton that naturally occurs in the water. According to shellfish operators, it is not possible to supplement the feed of the shellfish. One of the main concerns with finfish operations is contamination of the ocean from feed containing antibiotics or chemicals. Shellfish operations do not generate pollution from feedstuffs.

Improvements in technology have led to increases in efficiency for the shellfish industry, but have also resulted in a heavier reliance on equipment and machinery. The increasingly industrial nature of some shellfish operations results in greater noise impacts for adjacent landowners. Shellfish operators must work with seasonal shifts in tides which dictate that harvesting and other activities may have to be conducted during night time hours. Lights are used for practical and safety purposes during nighttime activities.

LEGISLATIVE REQUIREMENTS

Shellfish aquaculture operations that have a valid licence under the *Fisheries Act* are considered farm operations under the *Farm Practices Protection Act* (FPPA) and the *Local Government Act*. Under the FPPA, a farm operation is exempt from certain local government bylaws and cannot be the subject of an injunction if the requirements of the FPPA are met (i.e. if the operator is utilising "normal farm practices"). Section 903(5) of the *Local Government Act* limits the

PAGE 14

ability of local governments to restrict or prohibit farm activities without receiving permission from the Minister responsible for the FPPA, in this case the Minister of Agriculture, Food and Fisheries (MAFF). The proposed amendments to the zoning bylaws may require approval from the Minister.

Farm operations are exempt from certain categories of regional district land use regulations including bylaws regulating the discharge of firearms, noise and animal nuisance bylaws. A farmer must not be prevented from conducting a farm operation by an injunction or other court order. For an operation to benefit from the statutory provision the following conditions must be met:

- The operation must be conducted in accordance with "normal farm practices";
- The operation must be conducted in, on or over land that is in an Agricultural Land Reserve, or as permitted by licence issued under the *Fisheries Act*;
- The operation must not be conducted in contravention of land use regulations, including zoning regulations under the *Local Government Act*.

The RDN has the authority to regulate the siting, dimensions, size and use of buildings and structures within a particular zone without those restrictions being prohibitive. There is no case law to date that examines what "normal farm practice" is for the shellfish aquaculture industry. The Farm Practices Board is required to make decisions concerning "normal farm practice" when citizens complain about farm nuisances. To date, the Farm Practices Board has not made any decisions with respect to the shellfish aquaculture industry.

The shellfish industry has developed a Code of Practice in conjunction with the Province to provide guidance to growers and establish minimum environmental and operating standards. The Code of Practice attempts to address some of the issues that may result in land use conflicts between shellfish operators and upland owners. It is anticipated that the Code will become a Land Use Regulation associated with the shellfish aquaculture license. It is anticipated that the new regulations will be in force by the end of April 2003. It is also anticipated that the Code will be used as a reference to determine acceptable 'normal' aquaculture practices in the future.

Given that the FPPA exempts certain aspects of farm operations (that operate according to normal farm practices) from zoning regulations, and that aquaculture is currently a permitted use in certain RDN zones, it is recommended that the RDN attempt to harmonize possible amendments to the location of zones and zoning restrictions with the needs of the industry to avoid conflict with the regulations in the future. However, the process of evaluating the needs of the industry should also give consideration to the potential impact on property owners, the natural environment and other regional interests as identified by the public. These interests will be considered as part of the consultation process.

ECONOMIC IMPLICATIONS

Although most of the aquacultural activities in the RDN are conducted in the marine environment, current information suggests that the shellfish industry in BC is undergoing technological changes that may make land based aquaculture more feasible. It is also expected that the industry will be expanding its product base to include a wider range of species, some of which may be more suited to land based facilities. Therefore, it would be timely to consider amendments to RDN Bylaws as outlined in the attached Consultation Strategy, to minimize any potential negative impacts resulting from expanded aquaculture activities.

According to the Ministry of Sustainable Resource Management (MSRM), the BC shellfish industry produced \$66 million in economic output in 2001 and created a total of 956 jobs. Concentration of the shellfish industry occurs in the Baynes Sound region, a portion of which is located in the RDN. Many of the economic benefits generated by the shellfish industry remain in the local coastal community. Industry's projections for the next five years are very optimistic and it is anticipated that the shellfish industry will double in size by 2007. According to the "Shellfish Industry Economic Impact Analysis" published by the Vancouver Island Economic Development Association (VIEDA) in December 2002, 78% of spending on operating costs and capital is done in the local community of Vancouver Island.

The economic output for the southeast Vancouver Island region, which includes Nanaimo, Ladysmith and Duncan, is expected to increase from \$15.2 million to \$30.3 million in the next five years. It is anticipated that the number of people employed will increase from 203 to 460 in this five-year period. Forty-seven (47) shellfish positions exist in this region at the time of publication of the economic impact analysis.

In summary, the shellfish industry currently provides a significant economic benefit to a number of coastal communities on Vancouver Island. It is anticipated that the industry will be expanding in the short term, which will create more direct and indirect jobs and provide a multiplier effect in the local economy. There may be some areas in the region that could be successfully developed for marine based aquaculture with minimal land use conflicts.

ENVIRONMENTAL IMPLICATIONS

Recent media attention has focused on the potential environmental threats associated with the salmon aquaculture industry, namely the Broughton Archipelago aquaculture operations and the increase in numbers of sea lice in this area. It should be noted that shellfish aquaculture does not generate the same environmental concerns associated with as salmon aquaculture practices. Shellfish operators do not artificially supplement the feed of their cultivated stocks, nor do they add any antibiotics to the products. Shellfish feed on the naturally occurring plankton that is present in the marine environment. Even land based shellfish operations must harvest the plankton from the ocean to feed their stocks. Escapement and genetic mixing of wild and farmed stocks are not an issue with shellfish operations. Similarly, there have been no concerns expressed with respect to the spread of disease from farmed shellfish to wild species.

However, a number of potential environmental impacts are associated with shellfish aquaculture development. Sedimentation may occur under the oyster culture rafts, which may impact benthic creatures and benthic environments below the rafts. It has been suggested by MAFF scientists that the sediment that falls from rafts is very fine and disperses over a wide area minimizing impact on the sea floor directly below an aquaculture operation. Shellfish are sometimes cleaned on site at the time of harvesting. Debris resulting from harvesting practices can lead to smothering of benthic organisms if it is improperly discharged onto the sea floor.

Shellfish aquaculture activities have the potential to generate pollution of adjacent beaches and foreshore areas if waste materials, such as oil, sewage, chemicals, predator netting, and polypropylene strands are not properly managed. If proper measures are not followed to adequately manage wastewater, garbage and other debris from an operation, there could be negative impacts on the foreshore and on marine species.

Compacting of beach areas may occur due to machinery and vehicles traversing the foreshore to reach aquaculture operations. The potential effect of the compaction of the foreshore on sand lance, smelt and other beach spawning creatures is not fully known. Increased activity on the foreshore may increase the potential for fuel or oil spills on the beach area.

In order to reduce loss of shellfish product to natural predators, aquaculture operators may install predator netting on the foreshore. Scientific studies are being conducted to determine the exact impacts of the predator netting on the feeding habits of shore birds. There is some evidence to suggest that the shore birds still forage and spend time in areas where predator netting exists in the Baynes Sound area.

The health of wild stocks can be impacted if aquaculture activities introduce pests or diseases into wild beach areas. Special care must be taken when harvesting wild seed or placing cultured stocks on beach areas for hardening.

LAND USE IMPLICATIONS

Although the impacts of shellfish aquaculture operations are different to those generated by salmon aquaculture, some potential impacts still exist. The most obvious concern for adjacent waterfront landowners is the effects on view corridors from their properties. Shellfish aquaculture requires a certain level of infrastructure to operate. The most common objects from the shore along the RDN coastline include shellfish rafts, buoys, trays and FLUPSYS. As

the industry grows and technology improves, the visual impacts may increase. Some shellfish operations require accessory storage buildings for nets, fuel, and equipment. Some property owners feel that their view is negatively impacted by the aquaculture activities and structures.

Shellfish farmers use equipment and machinery to conduct their business. The equipment may generate noise impacts for upland owners. As the industry becomes more efficient and intensifies, the noise levels may also rise. Due to the requirement to work at night the noise levels generated by boats, machinery and vocal communication may adversely affect adjacent upland owners.

The requirement for shellfish operators to work at night results in a need to install sufficient lighting to conduct the operations in a safe environment. The lights may affect upland owners.

If a shellfish operation is managed correctly and in accordance with the *Waste Management Act* and *Canadian Environmental Protection Act (CEPA)* odour should not be an issue. However, there may be an odour associated with washing and drying equipment to remove biofouling. Biofouling occurs over time when shellfish equipment accumulates a layer of natural marine organisms from being suspended in the ocean water. If equipment is not properly cleaned before it is stored, odours can occur.

Concerns have been raised by landowners with respect to access to deep water from their properties if an aquaculture lease is issued adjacent to their lot. Land and Water BC (LWBC) has a mandate to protect the riparian rights of waterfront property owners. Waterfront property owners are entitled to access to deep water in a navigable craft of reasonable size from every point along the foreshore directly in front of the property.

Shellfish operations are required to mark their tenure boundaries in accordance with the Canadian Coast Guard guidelines to maintain safe navigation around the farms. In areas where recreational boating is common it is important that boaters have access to the foreshore in an emergency situation. Concerns have been expressed with respect to increased densities of aquaculture leases occupying long stretches of foreshore preventing easy access to the shore. LWBC respects the public's right to access the foreshore. However, aquaculturalists have a right to restrict public access across the tenure boundary once a license of occupation has been issued.

SUMMARY

At present, aquaculture is permitted along the entire coastline. The zoning bylaw does not distinguish between various types of aquaculture development or intensity levels. Shellfish aquaculture is the primary form of aquaculture along the coast of the RDN and the intensity of use varies from tenure to tenure. A number of raft and string culture facilities are currently in operation in Nanoose Harbour and Deep Bay Harbour. The majority of the remaining coastal areas are not suitable for shellfish development at the moment, but due to the rapid improvements in technology and research into expanded species, more coastal areas may be capable of supporting aquaculture in the future.

Land and Water BC, the Ministry of Sustainable Resource Management and the Ministry of Agriculture, Food and Fisheries are the main provincial agencies with jurisdiction over shellfish tenures and licensing. Any amendments that remove an agricultural use from a property may require the approval of the Minister of Agriculture, Food and Fisheries prior to adoption at the local government level. The *Farm Practices Protection (Right to Farm) Act* provides protection for agricultural operations, including aquaculture from nuisance complaints under certain local government bylaws, provided the operations use 'normal' farm practices.

Shellfish aquaculture generates significant economic benefits to coastal communities. The industry provides year round permanent employment in remote coastal areas where resource decline has led to increasing out migration and high unemployment levels. The majority of economic multipliers and generated by the industry directly benefit the local communities themselves or nearby communities on Vancouver Island. The industry is expected to increase dramatically over the next five years increasing the potential economic benefits for the region.

A number of potential environmental impacts are associated with shellfish aquaculture development. These include, but are not limited to, increased sedimentation levels below rafts, pollution of adjacent beaches and foreshore areas, compaction of beach substrate material, impacts on birds and other predators from predator netting, potential impacts on wild stocks. The shellfish Code of Practice attempts to address these environmental impacts and minimize the effects of shellfish aquaculture on the environment. In order for shellfish aquaculture to operate, the ocean water must be very clean and free of pollutants such as fecal bacteria. It is in the best interest of shellfish growers to protect the environment in which they operate.

Potential land use conflicts may arise between upland owners and marine shellfish aquaculture. Shellfish aquaculture operations may generate light, noise, odour and visual impacts for upland owners. Access to deep water from ocean front properties has been cited as an issue for some landowners. Concerns have been expressed with respect to potential impacts on recreational and commercial fishing vessels in waters that contain shellfish tenure areas.

In light of these issues, the RDN is initiating discussion on the optimal land use policies to mitigate the potential impacts of the shellfish industry on other resource users while providing economic opportunities for the industry in the region.

Attachment No. 4
Proposed OCP Policies on Aquaculture Development

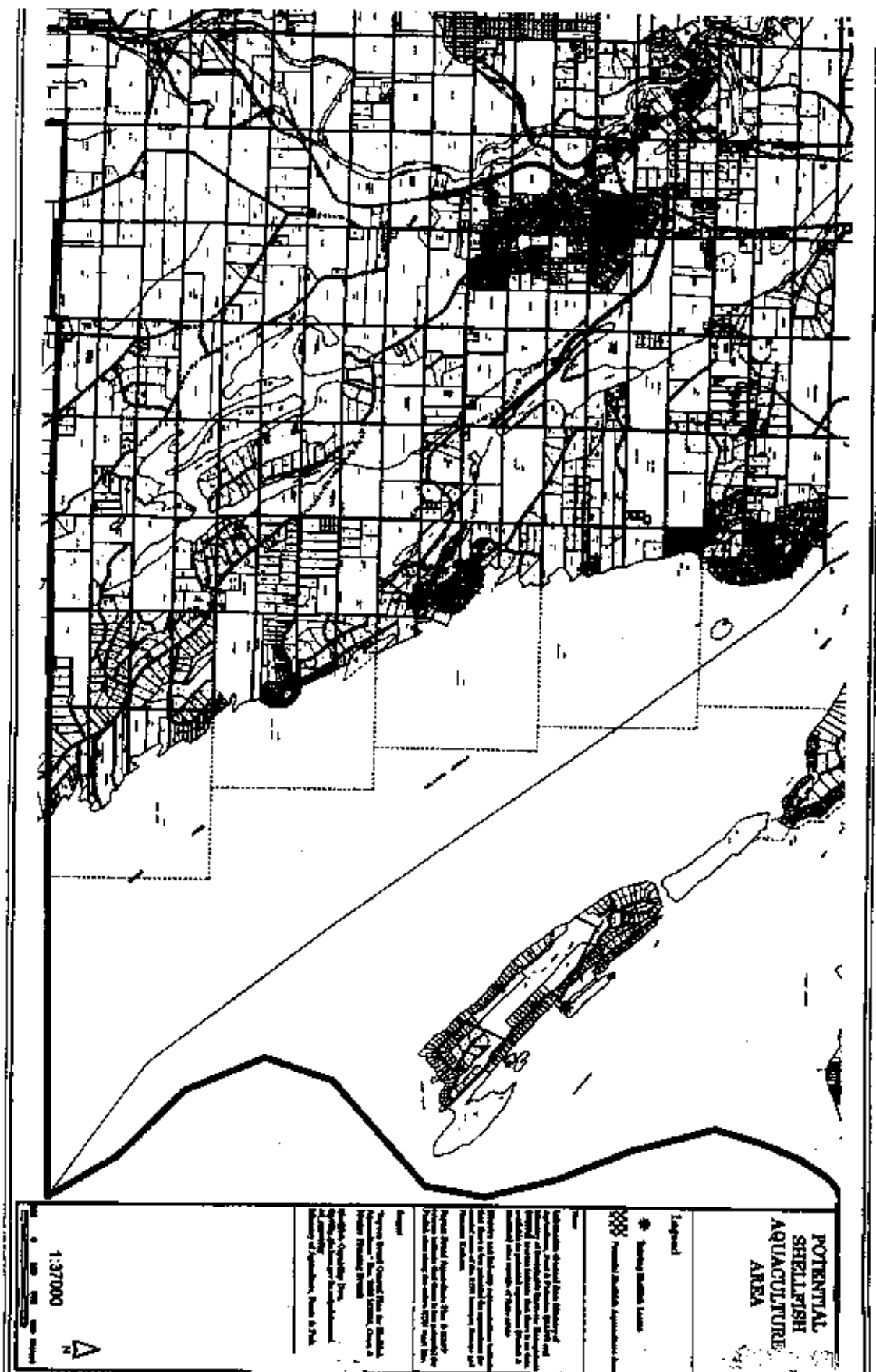
It is proposed that the following policy statements be added to all OCP documents:

- **Marine Aquaculture**
Due to the sensitive nature of the marine zone and the foreshore areas, the RDN will only support the siting of marine shellfish aquaculture leases along the coast if an RDN approved public consultation process has been completed and the community supports the use.

- **Freshwater Aquaculture**
Due to the sensitive nature of the freshwater rivers, lakes and watercourses of the region and the potential land use conflicts between adjacent uses and the environment that may arise from freshwater aquaculture development, the RDN will only support the siting of aquaculture facilities if an RDN approved public consultation process has been completed and the community supports the use.

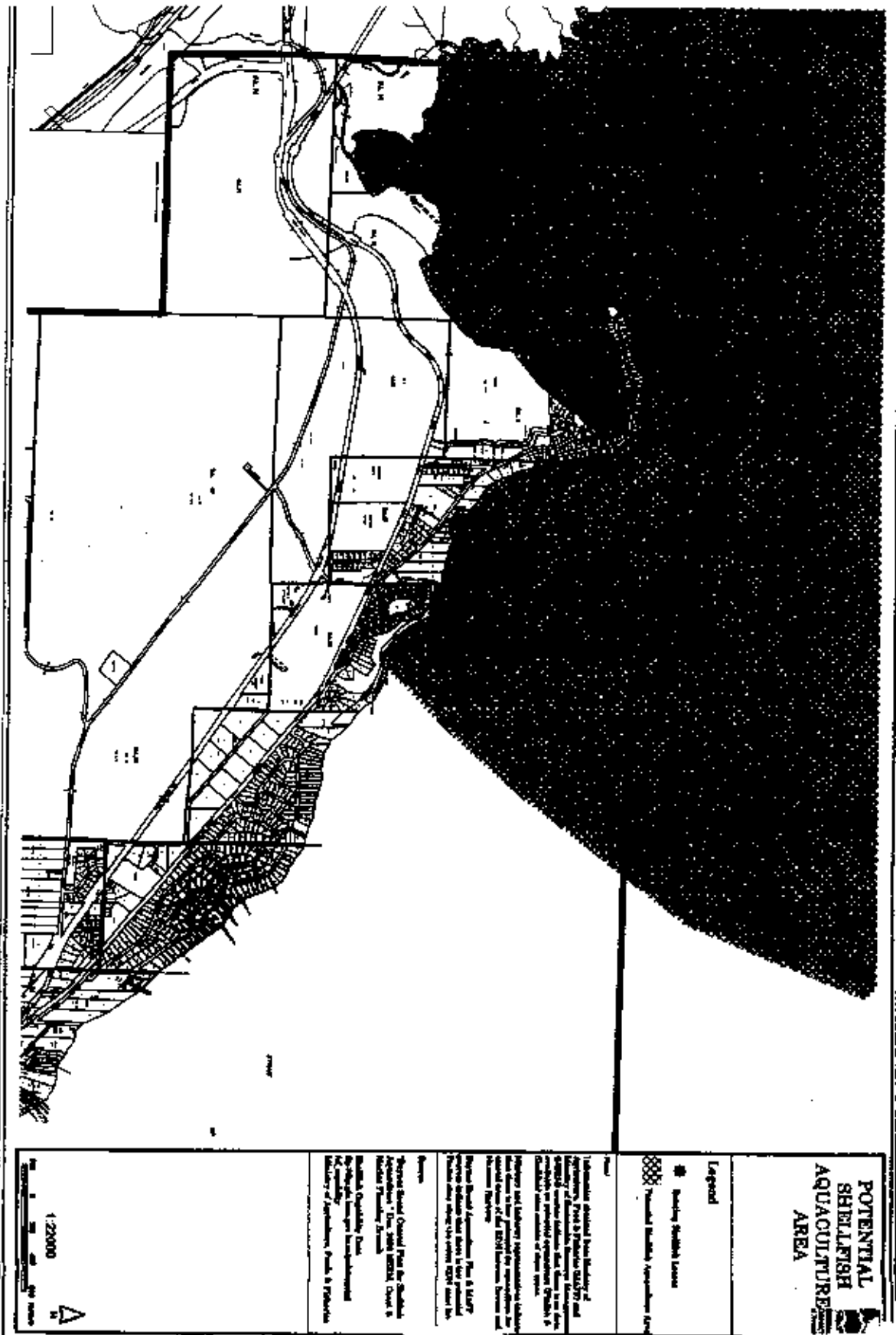
- **Land Based Aquaculture**
Due to the potential land use conflicts between adjacent uses and the environment that may arise from intensive agricultural operations such as land based aquaculture, the RDN will only support the development of such operations if an RDN approved public consultation process has been completed and the community supports such uses.

Attachment No. 6 Electoral Area 'A' Potential and Existing Shellfish Tenures



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Attachment No. 7
Electoral Area 'H' Potential and Existing Shellfish Tenures





REGIONAL DISTRICT OF NANAIMO			
MAY 16 2003			
CHAIR		GMCrs	
CAO		GMDS	
GMGms		GMES	
EAP		DATE:	
		FILE:	

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: May 16, 2003

FROM: Geoff Garbutt
Senior Planner

FILE: 3360 30 0307

SUBJECT: Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2000
'Finetuning' Project - Terms of Reference and Public Consultation Strategy

PURPOSE

To consider a Terms of Reference and Public Consultation Strategy for a 'finetuning' exercise for the Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2000.

BACKGROUND

As part of the work program for 2003, the Board approved a 'finetuning' of the Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002. As the Board may recall, the Electoral Area F Zoning and Subdivision Bylaw was the result of a 14-month planning process involving public consultation with residents, property owners, stakeholders and government agencies. This Bylaw followed the adoption of the first ever Official Community Plan for the Area in 1999. Both Bylaws recognized the unique characteristics of the communities that make up the Plan Area and the mix of land uses.

At the time of the adoption of the Zoning Bylaw, the Board made a commitment to revisit the Bylaw to ensure that Bylaw zoned existing land uses (as of date of the adoption of the Bylaw) as conforming, to the fullest extent that was reasonable and possible, subject to the criteria contained in the Electoral Area F Official Community Plan, No. 1152, 1999. Given that the Bylaw was compiled from recognizing existing uses on individual properties (as declared by property owners and inventoried by staff), it was anticipated that there would be instances where landowners did not participate in the process or where properties had been inadvertently overlooked in the Zoning Bylaw. Since the adoption of the Zoning Bylaw, approximately 25 landowners have approached the RDN regarding uses on their properties that existed at the time of the adoption of the Zoning Bylaw but were not specifically recognized in the Bylaw. Should the Board proceed with this finetuning, it is expected that there will be more omissions identified in the Bylaw. The finetuning exercise also represents an opportunity to clarify some of the definitions in the Bylaw and make minor corrections where required to ensure the Bylaw fully aligns with the Official Community Plan and the Region's Growth Management Plan.

The purpose of the Terms of Reference and Consultation Strategy is to provide the Board with an approach for consulting with the public, interest groups and agencies on proposals to amend Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002. The Terms of Reference for this project and the Public Consultation Strategy is attached for the Board's consideration (see Attachment No. 1).

ALTERNATIVES

1. To receive the staff report and approve the Terms of Reference and Public Consultation Strategy for the Electoral Area 'F' Finetuning Project.
2. To amend the Terms of Reference and Public Consultation Strategy, then direct staff to proceed with the Electoral Area 'F' Finetuning Project.
3. To not proceed with the Electoral Area 'F' Finetuning Project at this time.

GROWTH MANAGEMENT PLAN/OFFICIAL COMMUNITY PLAN IMPLICATIONS

The Zoning Bylaw sets out general land use categories to implement the Growth Management Plan (GMP) policies and zoning classifications to mirror the OCP land use designations; it also directs more intense residential, commercial and industrial development to the Village Centres and Rural Separation Boundaries and balances the rural integrity of the area by restricting the density and scope of development in the rural and rural residential portions of the community.

The finetuning exercise is generally expected to result in proposed changes that are in compliance with the OCP and GMP. However, it is possible that the reconsideration of existing uses on some properties may result in a recommended amendment to the OCP; in these instances, it is recommended that the zoning and OCP amendment applications proceed concurrently but separate from the finetuning review, as the OCP amendment applications will require referrals to other agencies and would likely slow the process for the finetuning applications.

ZONING IMPLICATIONS

A number of key issue areas identified by the public, adjacent municipalities and government agencies in the drafting of the Zoning Bylaw remain important to citizens in the area and region. These issues include:

- *Groundwater Protection and Industrial Land Use*

During the consultation process, adjacent municipalities and residents raised the issue of groundwater protection and the potential impact that industrial uses may have on recharge areas. To address these concerns, three industrial zones were created and regulations protecting from groundwater contamination were drafted. All requests to amend the existing Bylaw will be evaluated against the original Bylaw criteria for the industrial zones to ensure potential impacts from recognizing existing land uses are mitigated to the greatest degree possible.

- *Comprehensive Development Zones*

The current Bylaw contains 11 Comprehensive Development (CD) zones that were established to recognize the unique uses on a specific parcel (and each applies to only one parcel). It is anticipated that several new CD zones may need to be created for existing land uses not currently recognized in the Zoning Bylaw. As with the previous CD zones, consideration will be given to drafting regulations that limit the incompatibility of the use with surrounding parcels.

▪ **Zoning regulations in the Agricultural Land Reserve (ALR)**

Approximately 20% of the land base in Electoral Area 'F' is located in the ALR. The Zoning Bylaw zones these lands A-1; the lands are subject to existing ALR regulations and the zoning supports the legislation that already exists to protect land uses on these properties. Again, it is anticipated that any amendments to the Zoning Bylaw will fit this criteria and all uses recognized in the Zoning Bylaw will comply with the standard regulations or special permissions of the Commissions.

PUBLIC CONSULTATION IMPLICATIONS

It is expected that there will be considerable interest in the finetuning project; staff have already received approximately 25 requests for zoning reconsiderations from area landowners. The Consultation Strategy proposes a series of direct and bulk mailouts, recommends a site office be opened, and staff availability for on-site meetings in addition to the public hearing. It is intended that the consultation process be open and transparent and will build on public consensus to ensure that any amendments to the current Bylaw remain consistent with the community's vision of their area.

LEGAL IMPLICATIONS

The Zoning Bylaw is a regulatory bylaw establishes permitted uses, site regulations and subdivision standards for individual parcels of land. It should be noted that, despite the adoption of the bylaw and the proposed finetuning exercise, certain existing uses be remain as nonconforming uses due to potential inconsistencies with the Growth Management Plan, OCP, or other legislation. It is expected that the finetuning exercise will reduce the number of parcels that currently contain non-conforming uses.

FINANCIAL IMPLICATIONS

Costs related to this project are included in the RDN 2003 Electoral Area Community Planning Budget. As there are no Community Planning Grant monies available from the Ministry of Community, Aboriginal and Women's Services, no funds beyond those budgeted for will be used in the finetuning of the Zoning Bylaw. Total cost of mapping services, public information meeting, public hearing, mailings, advertising, and rentals estimated at approximately \$10,000.00.

VOTING

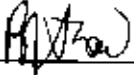
Electoral Area Directors - one vote, except Electoral Area 'B'

SUMMARY/ CONCLUSIONS

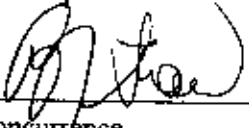
As part of the work program for 2003, the Board has approved a 'finetuning' of the Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002. At the time of the adoption of the Zoning Bylaw, a commitment to revisit the Bylaw within one year was made to ensure that any omissions in the Bylaw would be addressed. The attached Terms of Reference and Consultation Strategy outline a process for proceeding with this finetuning exercise.

RECOMMENDATIONS

1. That the staff report on the Electoral Area 'F' Zoning Bylaw Finetuning Project be received.
2. That Electoral Area 'F' Zoning Bylaw Finetuning Project Terms of Reference and Consultation Strategy (Attachment No. 1) be endorsed by the Board.


for 

Report Writer

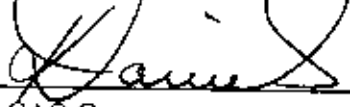


Manager Concurrence

COMMENTS:



General Manager Concurrence



CAO Concurrence

**Proposed Terms of Reference and Consultation Strategy
for Amendments to the
Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285, 2002**

Background

Following a 12 month, comprehensive public consultation process, the Board of the Regional District of Nanaimo adopted Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285 in June of 2002. When this Bylaw was adopted the Board of the Regional District of Nanaimo recognized that, as a new bylaw, minor adjustments would be required to address issues related to the regulations outlined in the Bylaw. In addition, the Board also recognized that there would be some property owners that may not have participated in the consultation process and the adoption of the bylaw would create a non-conforming land use issue on their property.

In order to address these factors, a 'finetuning' exercise has been proposed to amend the bylaw to incorporate required regulatory changes and to recognize to the fullest extent that is reasonably possible, legally sited uses that were in place in Electoral Area 'F' prior to the adoption of the new Zoning Bylaw.

Goals and Objectives

The primary goal of the Electoral Area 'F' Zoning Bylaw finetuning process is to amend the existing Bylaw to reflect good planning practice, the regulatory requirements of the *Local Government Act*, to directly engage area landowners that have uses that are currently non-conforming as a result of the adoption of the new zoning bylaw for Electoral Area 'F', and recognize those uses that were legally sited and in place prior to the adoption of the Zoning Bylaw. The secondary goal of the Electoral Area 'F' Zoning Bylaw finetuning Process is to raise public awareness with respect to the bylaw and inform the general public about the regulations outlined in the bylaw and collect feedback and input on the regulations and implementation of the bylaw.

As outlined in the Electoral Area 'F' Official Community Plan, the zoning bylaw when implemented in Area F would avoid creating non-conforming land uses wherever possible and recognize all existing uses provided that the OCP criteria could be met. These criteria are:

1. Is there an adequate and approved means of sewage disposal?
2. Is the use legally sited and conforming to the requirements of the jurisdictions that have authority over the lands or use addressed?
3. Is the use compatible with the surrounding properties and the character of the area?
4. Does the use have a negative impact on groundwater, surface water or the natural environment?

Method

The process to draft and adopt the Electoral Area 'F' Zoning Bylaw generated a great deal of interest in the community as area residents were directly engaged using a combination of flyers, public information meetings, stakeholder meetings and 'face to face' contact at the local site office. Given the fact that zoning regulations have a direct impact on individual property owners, the consultation strategy to adopt the Zoning Bylaw was focused on individual property owners. The same focus will remain with the Area F Finetuning Process and the goal is to inform and engage the widest public audience as the proposed amendment bylaw progresses to Public Hearing and adoption.

Contact with members of the public or other agencies will be provided through:

- direct mailouts to landowners and bulk mailouts to area residents;
- ongoing newspaper and web advertisements and information;
- an area site office; and
- a public hearing on the proposed amendment.

Outcomes and Products

The intent of the Electoral Area F Zoning Bylaw Finetuning Process is to propose amendments to the current Zoning Bylaw that reflects the diversity of the land uses in Electoral Area F, directly engage the public to receive input and feedback on the existing bylaw and recognize all legally sited uses that meet the OCP criteria and were in place when the Zoning Bylaw was adopted in June of 2002.

Schedule

Date	Action
May 2003	<ul style="list-style-type: none"> ▪ Report to EAPC receive and endorse Area F Finetuning Terms of Reference and Consultation Process
June 2003	<ul style="list-style-type: none"> ▪ Report to RDN Board endorse Area F Finetuning Terms of Reference and Consultation Process
June 2003	<ul style="list-style-type: none"> ▪ Direct Mail Newsletter to all property owners in Area F - provide overview of zoning bylaw, explain Finetuning Process and solicit input from landowners that require Site Specific Zoning ▪ Advertise Area F Finetuning Process in local Newspapers and on RDN Website ▪ Staff meet with landowners to collect information on properties for Finetuning
July 2003	<ul style="list-style-type: none"> ▪ Bulk Mail 2nd Newsletter to all properties in Area F - explain Finetuning Process and solicit input from landowners that require Site Specific Zoning ▪ Advertise Area F Finetuning Process in local Newspapers and on RDN Website ▪ Staff meet with landowners to collect information on properties for Finetuning
August 2003	<ul style="list-style-type: none"> ▪ Bulk Mail 3rd Newsletter to all properties in Area F - explain Finetuning Process, solicit input from landowners that require Site Specific Zoning, advertise RDN Site Office opening in September ▪ Advertise Area F Finetuning Process and Site Office in local Newspapers and on RDN Website ▪ Staff meet with landowners to collect information on properties for Finetuning
September 2003	<ul style="list-style-type: none"> ▪ Open Area F Site Office - Site Office used to consult and inform public about the Area F Zoning Bylaw, collect input on required bylaw amendments ▪ Staff meet with landowners to collect information on properties for Finetuning

September 2003	<ul style="list-style-type: none"> ▪ Bulk Mail 4th Newsletter to all properties in Area F - outline input receive from public and proposed bylaw amendments
Fall 2003	<ul style="list-style-type: none"> ▪ Report to Electoral Area Planning Committee on public input and proposed bylaw amendments; recommending 1st and 2nd reading for Proposed Amendment Bylaw
Late Fall 2003	<ul style="list-style-type: none"> ▪ Report to RDN Board on public input and proposed bylaw amendments; recommending 1st and 2nd reading for Proposed Amendment Bylaw
Late Fall 2003	<ul style="list-style-type: none"> ▪ Public Hearing held pursuant to Sections 890 and 892 of the <i>Local Government Act</i>
Late 2003/Early 2004	<ul style="list-style-type: none"> ▪ Report to RDN Board on Public Hearing and requesting consideration of 3rd reading for Amendment Bylaw
Late 2003/Early 2004	<ul style="list-style-type: none"> ▪ Referral to Ministry of Transportation requesting approval of Amendment Bylaw
Late 2003/Early 2004	<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 Transportation</i>)

Resources

Existing staff resources will: administer all components of the consultation and bylaw amendment process including, graphics, mapping, the public information meeting and public hearing processes. It is expected that this project will take 8 months to complete

Budget

Staff time budgeted as part of regular work program in 2003 Development Services Department Budget. Total cost of mapping services, public information meeting, public hearing, mailings, advertising, and rentals estimated at approximately \$10,000.00.

Monitoring and Evaluation

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