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## REPORT TO THE LAND USE COMMITTEE MEETING OF TUESDAY, JULY 20, 2021

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**SUBJECT**     **Outdoor Recreation Bylaw Amendments**

### **ISSUE SUMMARY**

To consider an amendment to the Land Use Bylaw for the Rural Resource Lands Bylaw No. 3602 and to the Juan de Fuca Land Use Bylaw No. 2040 to delete the *outdoor recreation* definition and permitted use from Bylaw Nos. 2040 and 3602, and to expand the scope of uses permitted in all zones in Bylaw No. 3602 to include a number of outdoor recreation uses.

### **BACKGROUND**

The Land Use Bylaw for the Rural Resource Lands, Bylaw No. 3602, was adopted in 2010 and established the Resource Land (RL) zone, Rural Resource Lands (RRL) zone and Resource Land – Meteorological Tower (RL-MT) zone. These zones all permit *outdoor recreation* as a permitted use. In response to inquiries regarding the scope of permitted *outdoor recreation* uses in Bylaw No. 3602, the definition for the use was amended in 2015 by Bylaw No. 3958 in order to clarify those activities that are permitted under the definition. The definition in Bylaw No. 3602 currently reads as follows:

OUTDOOR RECREATION means a recreational activity undertaken where the outdoor setting and landscape and the density of recreational users are not significant elements in the activity; excludes tourist lodges and cabins, marinas, recreational vehicle sites, resorts, and drive-in campgrounds.

The Juan de Fuca Land Use Bylaw No. 2040 was amended in 2013 by Bylaw No. 3759 to zone lands in Shirley and Jordan River that were previously regulated by the Juan de Fuca Subdivision Bylaw No. 189 and had no associated land use regulations. As part of the amendment, the Resource Land (RL) zone was added and included the following definition of *outdoor recreation*:

OUTDOOR RECREATION means a recreational activity undertaken where the outdoor setting and landscape is a significant element in the activity, and the density of recreational users is not a significant element and includes: parks, trails, open space, playing fields, playgrounds, and low-impact wilderness camping.

Bylaw No. 2040 was further amended in 2018 to add the Restricted Development – Flood Hazard Area (RD-1) zone, which also permits *outdoor recreation*, but specifically excludes overnight camping.

Staff have continued to receive inquiries regarding the scope of permitted *outdoor recreation* uses on land zoned RL in both the Bylaw No. 2040 and Bylaw No. 3602 areas. In particular, proponents have requested clarification as to what constitutes “low-impact wilderness camping” in order to determine the feasibility of developing campgrounds. As written, the bylaws have no controls for regulating the density, servicing, accessory buildings or siting for such operations.

The *outdoor recreation* definitions continue to pose challenges for interpretation and may result in unintended forms of development. Therefore, staff have prepared Bylaw Nos. 4412 and 4413 to delete the *outdoor recreation* definition and all related references to the term (Appendix A and B).

At its meeting of May 18, 2021, the Juan de Fuca Land Use Committee recommended referral of the proposed bylaws to the Shirley/Jordan River Advisory Planning Commission (APC), CRD departments, T'Sou-ke First Nation and Pacheedaht First Nation for comment. Comments received are included in Appendix C.

## **ALTERNATIVES**

### *Alternative 1:*

The Land Use Committee recommends to the Capital Regional District (CRD) Board:

1. That the referral of proposed Bylaw No. 4412, "Land Use Bylaw for the Rural Resources Lands, Bylaw No. 1, 2009, Amendment Bylaw No. 8, 2021" and proposed Bylaw No. 4413, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 151, 2021" directed by the Juan de Fuca Land Use Committee to the Shirley/Jordan River Advisory Planning Commission, CRD departments, T'Sou-ke First Nation and Pacheedaht First Nation be approved and the comments received;
2. That proposed Bylaw No. 4412, "Land Use Bylaw for the Rural Resources Lands, Bylaw No. 1, 2009, Amendment Bylaw No. 8, 2021" be introduced and read a first time and read a second time;
3. That proposed Bylaw No. 4413, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 151, 2021" be introduced and read a first time and read a second time;
4. That in accordance with the provisions of section 469 of the *Local Government Act*, the Director for the Juan de Fuca Electoral Area, or Alternate Director, be delegated authority to hold a Public Hearing with respect to Bylaw No. 4412 and Bylaw No. 4413.

### *Alternative 2:*

That proposed Bylaw Nos. 4412 and 4413 not proceed.

### *Alternative 3:*

That more information be provided by staff.

## **IMPLICATIONS**

### *Legislative*

Should the *outdoor recreation* use be removed from Bylaws 2040 and 3602 as a permitted use, lawful outdoor recreation facilities operating prior to adoption of the amending bylaws would be considered legal non-conforming (i.e. grandfathered), and would be allowed to continue in accordance with Section 528 of the *Local Government Act (LGA)*.

The Advisory Planning Commissions (APCs) were established to make recommendations to the Land Use Committee on land use planning matters referred to them relating to Part 14 of the *LGA*. The Shirley/Jordan River APC considered the proposed bylaws at its meeting June 7, 2021. There is no APC established for the Rural Resource Lands.

Should the proposed bylaw amendments proceed and be granted second reading by the CRD Board, public hearings pursuant to Part 14, Division 3 of the *LGA* will be required. In accordance with Section 466(7) of the *LGA*, since more than 10 parcels owned by 10 or more persons are the subject of the bylaw, individual property owners will not be directly notified; however, the public hearings on the proposed bylaw amendments will be advertised in the local paper and on the CRD website.

### *Regional Growth Strategy*

Section 445 of the LGA requires that all bylaws adopted by a regional district board after the board has adopted a Regional Growth Strategy (RGS) be consistent with the RGS. Since the proposal includes an amendment to the Land Use Bylaw for the Rural Resource Lands, the bylaw will be considered by the Planning and Protective Services Committee and the CRD Board for a determination of consistency with the RGS prior to first reading. This procedure is consistent with the Board's Juan de Fuca Development Application RGS Consistency Policy, 2012. Juan de Fuca Planning staff are of the opinion that the proposed amendments are consistent with the RGS.

### *Referral Comments*

Referrals were sent to the Shirley/Jordan River APC, CRD departments, T'Sou-ke First Nation and Pacheedaht First Nation. Comments received are summarized below and included in Appendix C.

The Shirley/Jordan River APC met on June 7, 2021, to consider the application. Five members of the public were in attendance. The Shirley/Jordan River APC moved the following motions:

**MOVED** by Vivi Curutchet, **SECONDED** by Melody Kimmel that the APC recommends to the LUC that it supports the uses permitted in all zones as prescribed by the Juan de Fuca Land Use Bylaw, Bylaw No. 2040. **CARRIED**

**MOVED** by Vivi Curutchet, **SECONDED** by Melody Kimmel that the APC recommends to the LUC that it supports amending the uses permitted in all zones as prescribed by the Land Use Bylaw for the Rural Resource Lands, Bylaw No. 3602, to include parks, hiking trails, horse trails and bicycle paths. **CARRIED**

**MOVED** by Fiona McDannold, **SECONDED** by Melody Kimmel that the APC recommends to the LUC that it supports deleting the outdoor recreation definition and permitted use from the Land Use Bylaw for the Rural Resource Lands, Bylaw No. 3602, and from the Juan de Fuca Land Use Bylaw, Bylaw No. 2040, to support review of site specific proposals. **CARRIED**

CRD Regional & Strategic Planning provided comment to indicate that consideration of consistency with the Regional Growth Strategy is required.

CRD Bylaw Enforcement provided comment indicating support for the proposed bylaws.

CRD Protective Services provided comment advising that CRD Open Fire Bylaw 3452 applies within Fire Protection Areas only, and that CRD would not have the ability to restrict fire use in these areas. Areas outside a fire protection area default to Provincial jurisdiction for fire regulation. CRD Protective Services stated no objection to the proposed bylaws.

Juan de Fuca Planning staff and Pacheedaht First Nation staff discussed the proposed amendments on April 16, 2021, prior to initial consideration by the Land Use Committee, and on June 16, 2021, during the referral period. Pacheedaht staff supported the amendments and expressed concern regarding widespread, unregulated camping.

### *Land Use*

The policies in the Official Community Plan (OCP) for the Rural Resource Lands, Bylaw No. 3591, support uses including outdoor recreation; tourism, including agri-tourism; and parks and wilderness activities.

The Shirley-Jordan River OCP, Bylaw No. 4001, designates lands zoned RL and RD-1 in Bylaw No. 2040 as either Coastal Upland or Renewable Resource. The Coastal Uplands policies support consideration of low-impact recreation and low-impact tourism uses if lands are removed from the Private Managed Forest Land program. Lands designated Renewable Resource in Bylaw No. 4001 are intended to support forestry and resource use.

Outdoor recreation opportunities in the Rural Resource Lands and in Shirley-Jordan River OCP areas are valued by local residents and by the region. Formal recreation sites and trails in the area, such as Tanksy, Avatar Grove, Lizard and Fairy Lakes, and the Kludahk Trail, are managed by the Province and are not subject to local government zoning. There are also many informal outdoor recreation opportunities occurring on Crown, forestry and private lands, such as hunting, fishing, off-road motorcycling, and hiking. The commercial tourism sector relies considerably on access to parks, trails and wilderness areas. As such, the scope of outdoor recreation in the Resource Lands and Shirley-Jordan River areas is broad and not easily captured in one definition.

The broad scope of what may be permitted as *outdoor recreation* in the bylaws is problematic as there are no regulatory measures to control density, servicing, access or other associated infrastructure. Such implications were not fully contemplated when the definitions were added to the bylaws and staff suggest that such uses are best addressed through submission of a zoning amendment application and public consultation. Therefore, staff propose deleting the definitions of *outdoor recreation* and all references to the term from Bylaw No. 2040 and Bylaw No. 3602.

Deleting the term from the bylaws is not intended to minimize the significance of these lands for outdoor recreation by the regional population; rather, it is an approach that aims to protect the lands from undesired development and allow for site-specific approvals and public consultation. Proposals for outdoor recreation activities that include low-impact or wilderness camping could be considered on a site-by-site basis through a zoning amendment application initiated by individual land owners, in accordance with the policies of the applicable OCP.

Parks, hiking trails, horse trails and bicycle paths are uses permitted in all zones within Bylaw No 2040, as stated in Part 2, Section 4.15(d). In Bylaw No. 3602, Part 2, section 2.4, the following uses are permitted in all zones: ecological reserves, fish and wildlife habitat, fish hatchery on lots greater than 4 ha, parks, watershed protection and erosion control. While the uses permitted in all zones in Bylaw No. 2040 include limited outdoor recreation uses, the uses in Bylaw No. 3602 are strictly environmental protection uses. The Shirley/Jordan River APC supports expanding the uses permitted in all zones in Bylaw No. 3602 to include “parks, hiking trails, horse trails and bicycle paths” as a means of supporting limited outdoor recreation uses. Proposed Bylaw No. 4412 has been revised to include this amendment.

Based on the referral comments received and the policies of the Rural Resource Lands and Shirley-Jordan River OCPs, staff recommend that Bylaw Nos. 4412 and 4413 be introduced, read a first and a second time, and that a public hearing be held.

## **CONCLUSION**

*Outdoor recreation* is a permitted use in the Resource Land (RL) and Restricted Development – Flood Hazard (RD-1) zones in the Juan de Fuca Land Use Bylaw No. 2040 and in the Resource Land (RL), Rural Resource Land (RRL) and Resource Land – Meteorological Tower (RL-MT) zones in the Land Use Bylaw for the Rural Resource Lands Bylaw No. 3602. There are no regulatory measures to limit the density of *outdoor recreation* uses or structures in the bylaws. Staff recommend that specific proposals for outdoor recreation uses be addressed through submission of individual zoning amendment applications and public consultation on a site-specific basis, that the definitions and related references to the term be deleted from the bylaws and that

uses permitted in all zoned in Bylaw No. 3602 be expanded to include parks, hiking trails, horse trails and bicycle paths. Staff have prepared proposed Bylaw No. 4412 and 4413 and recommend receipt of referral comments, first and second reading and advancement to public hearing.

### **RECOMMENDATION**

The Land Use Committee recommends to the Capital Regional District (CRD) Board:

1. That the referral of proposed Bylaw No. 4412, "Land Use Bylaw for the Rural Resources Lands, Bylaw No. 1, 2009, Amendment Bylaw No. 8, 2021" and proposed Bylaw No. 4413, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 151, 2021" directed by the Juan de Fuca Land Use Committee to the Shirley/Jordan River Advisory Planning Commission, CRD departments, T'Sou-ke First Nation and Pacheedaht First Nation be approved and the comments received;
2. That proposed Bylaw No. 4412, "Land Use Bylaw for the Rural Resources Lands, Bylaw No. 1, 2009, Amendment Bylaw No. 8, 2021" be introduced and read a first time and read a second time;
3. That proposed Bylaw No. 4413, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 151, 2021" be introduced and read a first time and read a second time;
4. That in accordance with the provisions of section 469 of the *Local Government Act*, the Director for the Juan de Fuca Electoral Area, or Alternate Director, be delegated authority to hold a Public Hearing with respect to Bylaw No. 4412 and Bylaw No. 4413.

Submitted by:	Iain Lawrence, MCIP, RPP, Manager Juan de Fuca Community Planning
Concurrence:	Kevin Lorette, P.Eng., MBA, General Manager, Planning & Protective Services
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

### **ATTACHMENTS**

- Appendix A: Proposed Bylaw No. 4412
- Appendix B: Proposed Bylaw No. 4413
- Appendix C: Referral Comments