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REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE MEETING OF TUESDAY, NOVEMBER 18, 2025

SUBJECT Development Variance Permit and Floodplain Exemption for Lot 3, Section 15, Otter District, Plan 11437, except Parcel A (DD33503W) – 3139 Otter Point Road

ISSUE SUMMARY

A request has been made for a development variance permit to reduce the yard setbacks of the Rural (A) zone to address the undue hardship designation under the *Riparian Areas Protection Regulation (RAPR)*; and for a floodplain exemption in order to construct a single-family dwelling within the floodplain setbacks specified by Part 5 of the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040.

BACKGROUND

The .059 ha subject property is located at the corner of Otter Point and Young Lake Roads in Otter Point and is zoned Rural (A) under the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 (Appendix A). All abutting parcels are also zoned Rural (A). At the time the application was submitted, the parcel was vacant; however, a fence was recently constructed along the Otter Point Road frontage and excavation work has commenced in contravention of the requirement for authorization under a development permit.

Since portions of the parcel are designated as Steep Slopes and Watercourses and Wetlands Areas development permit areas, a development permit for land alteration and construction of a dwelling is required; however, the landowner must first request a variance to reduce the restricted area of the site from the local government to meet the conditions of undue hardship under the *RAPR*. The applicants have requested variances to reduce all yard setback requirements to 4.5 m save for the rear yard designation (Appendix B).

The floodplain regulations, as outlined in Part 5, Section 2.0 (2)(a) of Bylaw No. 2040, specify that the floodplain setback is 30 m from the natural boundary of DeMamie Creek. Since the entire west side of the property, which includes the proposed building site (Appendix C), is located within 30 m of DeMamie Creek, a floodplain setback exemption is required pursuant to Section 524(7)(b) of the *Local Government Act (LGA)* and Part 5 of Bylaw No. 2040. In support of the exemption, a geotechnical engineer's report has been submitted (Appendix D).

ALTERNATIVES

Alternative 1

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

That Development Variance Permit and Floodplain Exemption DV000093 to authorize the siting of a proposed dwelling on Lot 3, Section 15, Otter District, Plan 11437, except Parcel A (DD33503W) be approved as follows:

1. Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Schedule A, Part 2:
 - a) Section 2.07(a) is varied by reducing the front yard setback requirement from 7.5 m to 4.5 m;
 - b) Section 2.07(b) is varied by reducing the side yard setback requirement from 6 m to 4.5 m; and
 - c) Section 2.07(c) is varied by reducing the flanking yard setback requirement from 6 m CTS to 4.5 m.

2. Pursuant to Section 524 of the *Local Government Act*, the floodplain setback for DeMamiel Creek specified by Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Schedule A, Part 5, Section 2(a) is reduced from 30 m from the natural boundary to 11 m from the crest of the slope above the western side of the creek as shown in the geotechnical report certified by Shane Moore, P.Geo., dated July 15, 2025, revised July 30, 2025, subject to the following:
 - a) That the professional geotechnical engineer's report certified by Shane Moore, P.Geo., dated July 15, 2025, revised July 30, 2025, be secured via a restrictive covenant registered on title pursuant to section 524(8)(c) of the *Local Government Act*;
 - b) That development of the property comply with the recommendations outlined in the professional engineer's report certified by Shane Moore, P.Geo., dated July 15, 2025, revised July 30, 2025; and
 - c) That the building setbacks be verified by BCLS survey prior to completion of the building permit.

Alternative 2

That the Development Variance Permit and Floodplain Exemption DV000093 be denied.

IMPLICATIONS

Legislative Implications

Section 524 of the *LGA* authorizes local governments to designate areas as floodplains and to specify flood levels, setbacks and other related provisions. Part 5 of Bylaw No. 2040 outlines requirements for floodplain management. A local government may exempt a person from the floodplain requirement pursuant to Section 524(7) of the *LGA*.

The Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Section 2.07 specifies yard setback requirements for the Rural (A) zone. In order to meet the conditions of undue hardship under the *RAPR*, a variance is required to authorize the siting of the proposed dwelling in the front and flanking setbacks.

Public Consultation Implications

There is no statutory or bylaw requirement to notify members of the public about a request for a floodplain exemption.

Pursuant to Section 499 of the *LGA*, if a local government is proposing to pass a resolution to issue a development variance permit it must give notice to each resident/tenant within a given distance as specified by bylaw. Juan de Fuca Development Fees and Procedures Bylaw No. 3885, states that the Board at any time may refer an application to an agency or organization for their comment. In addition, it states that a notice of intent must be mailed to adjacent property owners within a distance of not more than 500 metres. JdF Community Planning will provide notice accordingly. Any responses received from the public will be circulated to the Land Use Committee in advance of its November 18, 2025, meeting.

Land Use Implications

The parcel was originally created by subdivision in 1956, prior to the implementation of zoning, development permit areas and the *Riparian Areas Protection Regulation*. The parcel is roughly bisected by DeMamiel Creek and there is currently no means of access to the eastern portion of the lot. The western portion has historically been accessed by a driveway from Otter Point Road to the south.

The parcel is now partially designated as Steep Slopes and Watercourses and Wetlands development permit areas by the Otter Point Official Community Plan, Bylaw No. 3819. The Watercourses and Wetlands Areas DP corresponds with the Riparian Assessment Area defined by the *RAPR* and severely restricts the building envelope on the property. To meet the conditions of undue hardship that may be considered by the Province under the *RAPR*, the local government must first consider a variance to shift the building envelope away from the watercourse. Once the variances have been considered, the Provincial riparian assessment report review and CRD development permit approval process can be completed.

Variances:

The Juan de Fuca Land Use Bylaw specifies that in the Rural (A) zone, front yards shall be provided of not less than 7.5 m in width, side yards shall be not less than 6 m, and flanking yards shall not be less than 6 m CTS (clear to sky). Since the dwelling is also proposed to be located 4.5 m from the front and flanking yards to allow for the 11 m setback from the crest of the slope recommended by the engineers, a variance approval is required.

The extent of all proposed works will be reviewed during the development permit and building permit process by JdF Planning staff to confirm compliance with the requirements of the zone and other applicable land use regulations. Since the proposed siting of the dwelling is adjacent to roads and not the neighboring parcels, the variance is not anticipated to substantially alter the use and enjoyment of adjacent land. The application was referred to the Ministry of Transportation and Transit and no comments were received. Approval from the Ministry is not required unless a structure is proposed to be located less than 4.5 m from the road right-of-way.

Floodplain Exemption:

The floodplain regulations in Part 5, Section 2.0 (2)(e) of Bylaw No. 2040, specify a minimum setback of 30 m from the natural boundary of DeMamie Creek. This encompasses most of the western portion of the property.

The Engineers' assessment submitted as a requirement of the floodplain exemption request stated that their analysis was based on a 2 m by 10 m dwelling identified on the 3D Geomatics Land Survey Drawing, dated May 14, 2025 (Appendix B). At this time, the final building design has not been confirmed with Planning or Building Inspection staff. Staff highlight that the dwelling will be required to meet the standards of Part 9 of the *BC Building Code*.

The Engineers modelled a building site in the southwest corner of the property, setback 11 m from the slope crest and 4.5 m from property lines. The Report confirmed that the proposed building location was safe from geological hazards and suitable for the use intended provided that the recommendations outlined in the report are implemented. This meets the requirements of Section 524(7)(b) of the *LGA*. Therefore, a floodplain exemption could be granted subject to the conditions outlined in the Report, the Report being secured via a restrictive covenant, and verification of the building foundation location by a BC Land Surveyor.

Should the variances and floodplain exemption be approved, the applicant will be required to:

- Register a covenant on the title of the property securing the Geotechnical Report.
- Obtain approval from the Province for a Riparian Areas Assessment Report prepared by a Qualified Environmental Professional (QEP).
- Obtain approval for a Development Permit.
- Obtain approval for a Building Permit.

A draft of Development Variance Permit and Floodplain Exemption DV000093 is attached as Appendix E for consideration.

CONCLUSION

The applicant has requested a development variance permit and floodplain exemption to reduce the yard setback requirements of the Rural (A) zone and to reduce the floodplain setback from DeMamiel Creek to meet *RAPR* undue hardship criteria for the purpose of constructing a dwelling. A report, certified by a qualified professional specified a safe building area for a 2 m by 10 m dwelling located 11 m from the crest of the slope above the creek, subject to the recommendations of the report. Development Variance Permit and Floodplain Exemption DV000093 has been prepared for consideration. If the Permit is approved by the Board, the Corporate Officer will proceed to issue the Permit and register a Notice of Permit on Title.

RECOMMENDATION

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

That Development Variance Permit and Floodplain Exemption DV000093 to authorize the siting of a proposed dwelling on Lot 3, Section 15, Otter District, Plan 11437, except Parcel A (DD33503W) be approved as follows:

1. Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Schedule A, Part 2:
 - a) Section 2.07(a) is varied by reducing the front yard setback requirement from 7.5 m to 4.5 m;
 - b) Section 2.07(b) is varied by reducing the side yard setback requirement from 6 m to 4.5 m; and
 - c) Section 2.07(c) is varied by reducing the flanking yard setback requirement from 6 m CTS to 4.5 m.
2. Pursuant to Section 524 of the *Local Government Act*, the floodplain setback for DeMamiel Creek specified by Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Schedule A, Part 5, Section 2(a) is reduced from 30 m from the natural boundary to 11 m from the crest of the slope above the western side of the creek as shown in the geotechnical report certified by Shane Moore, P.Geo., dated July 15, 2025, revised July 30, 2025, subject to the following:
 - a) That the professional geotechnical engineer's report certified by Shane Moore, P.Geo., dated July 15, 2025, revised July 30, 2025, be secured via a restrictive covenant registered on title pursuant to section 524(8)(c) of the *Local Government Act*;
 - b) That development of the property comply with the recommendations outlined in the professional engineer's report certified by Shane Moore, P.Geo., dated July 15, 2025, revised July 30, 2025; and
 - c) That the building setbacks be verified by BCLS survey prior to completion of the building permit.

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| Submitted by: | Iain Lawrence, MCIP, RPP, Senior Manager, JdF Administration |
| Concurrence: | Stephen Henderson, MBA, P.G.Dip.Eng., B.Sc., General Manager, Electoral Area Services |
| Concurrence: | Ted Robbins, B.Sc., C. Tech, Chief Administrative Officer |

ATTACHMENTS

Appendix A: Subject Property Map
Appendix B: Site Plan - Yard Setback Variance Requests
Appendix C: Geotechnical Report Site Plan (Safe Building Area and Floodplain Exemption)
Appendix D: Geotechnical Report
Appendix E: Permit DV000093