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**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, JULY 19, 2022**

SUBJECT **Zoning Amendment Application for Lots A-H, and J and K, District Lot 87,
Renfrew District, Plan EPP31225 – Kirby Creek Road**

ISSUE SUMMARY

Property owners on Kirby Creek Road have submitted a joint application to amend Bylaw No. 2040 by rezoning the subject properties from Forestry (AF) to Rural 2 (RU2) for the purpose of agricultural activities.

BACKGROUND

The ten (10) subject properties are located on Kirby Creek Road in Shirley and include Lots A-H, and J and K in Plan EPP31225, all of which are approximately 4 hectares (ha) in area (Appendix A), and were created through a subdivision in 2015 (Plan EPP31225). Portions of the properties are located within the steep slope, sensitive ecosystems and riparian development permit areas. While the properties are located within the Shirley Fire Protection Area, they are not located within a community water service area.

Residential uses within the subdivision have become well established and a majority of the landowners are expressing an interest in pursuing agricultural activities that are aligned with the community's rural character and Official Community Plan (OCP) policies. The properties are currently zoned Forestry (AF) in Bylaw No. 2040 (Appendix B) and designated as Coastal Upland in the Shirley-Jordan River OCP, Bylaw No. 4001. Agricultural uses are not a permitted use within the AF zone. As a result, the owners of these 10 properties have submitted an application to amend Bylaw No. 2040 to change the zoning of the subject properties from Forestry (AF) to Rural 2 (RU2) for the purpose of permitting agricultural uses and farm buildings (Appendix C). Staff have prepared Bylaw No. 4464 for consideration (Appendix D).

At its meeting of February 15, 2022, the Juan de Fuca Land Use Committee recommended referral of the proposed bylaw to the Shirley/Jordan River Advisory Planning Commission (APC), CRD departments, BC Hydro, District of Sooke, Island Health, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR), FLNR - Archaeology Branch, FLNR - Water Protection Section, Ministry of Agriculture, Ministry of Transportation & Infrastructure, RCMP, Shirley Fire Department, Sooke School District #62, and Pacheedaht and T'Sou-ke First Nations. Comments have been received and are included in Appendix E.

ALTERNATIVES

Alternative 1

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

1. That the referral of proposed Bylaw No. 4464, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 155, 2022", to the Shirley/Jordan River Advisory Planning Commission, appropriate CRD departments, BC Hydro, District of Sooke, FLNR - Archaeology Branch, FLNR - Ministry of Forests, Lands, Natural Resource Operations and Rural Development, FLNR - Water Protection Section, Island Health, Ministry of Agriculture, Ministry of Transportation & Infrastructure, RCMP, Shirley Fire Department, Sooke School District #62, Pacheedaht First Nation and T'Sou-ke First Nation be approved and the comments received;
2. That proposed Bylaw No. 4464 be introduced and read a first time and read a second time; and

3. 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. 4464.

Alternative 2

That the CRD Board not proceed with proposed Bylaw No. 4464.

IMPLICATIONS

Legislative

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 *Local Government Act (LGA)*. The Shirley/Jordan River APC considered the application at its meeting on March 15, 2022.

Should the proposal proceed, a public hearing pursuant to Part 14, Division 3 of the *LGA* will be required subsequent to the amendment passing second reading by the CRD Board. Property owners within 500 m of the subject property will be sent notice of the proposed bylaw amendment and a public hearing 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. In accordance with CRD policy, where a zoning bylaw amendment that applies to land within the Shirley – Jordan River OCP area is consistent with the OCP, it does not proceed to the full CRD Board for a determination of consistency with the RGS. Staff are of the opinion that the proposed amendment is consistent with the policies of the Shirley – Jordan River OCP.

Referral Comments

Referrals were sent to 13 agencies and CRD departments, and to the Shirley/Jordan APC. Comments received are summarized below and included in Appendix E.

BC Hydro stated they have no issue with the proposed bylaw to rezone the ten properties.

District of Sooke stated that their interests are unaffected by the proposed bylaw amendment.

FLNR - Archaeology Branch stated that there are no known archaeological sites recorded on any of the properties and archaeological potential modelling for the area does not indicate a high potential for previously unidentified archaeological sites to be found on the subject property. Should any suspected archaeological deposits be encountered during land alterations on the property, all work must be halted and the Archaeology Branch contacted.

FLNR – Ecosystem Biologist stated that Kirby Creek Road crosses a stream that is a tributary to Kirby Creek, which is fish-bearing and that the road crossing and existing driveways were paved, and ponds created without approvals as required under the *Water Sustainability Act (WSA)*. The Biologist recommended that if the ponds contain water that is coming from a groundwater source or is being diverted from a stream, or if the water held in the ponds is being used for non-domestic purposes (i.e., agricultural or livestock), a licence is required in accordance with the *WSA*. It was also recommended that the CRD offset the construction of any unauthorized ponds by planting native riparian plants around them. It was recommended unauthorized ponds not be removed since local amphibian populations may have begun using them for breeding. It was further recommended that any development on lots containing streams require a *Riparian Areas Protection Regulation (RAPR)* assessment by a Qualified Environmental Professional to determine the Streamside Protection and Enhancement Area (SPEA) where no disturbance may occur, and that property owners be reminded that any required vegetation clearing be minimized and occur outside the nesting period from March 1 to August 31 to reduce impacts on all bird

species. Any disturbances to nesting birds would be a violation of the provincial *Wildlife Act* and possibly the federal *Migratory Birds Convention Act*.

FLNR - Water Protection Section stated that of the wells drilled on the subject area lots, four are in Aquifer 606 bedrock, which is known to have a very low productivity, and in particular, to wells constructed at higher elevation. Due to the presence of a shallow overburden, the aquifer is also classified as having an overall high vulnerability to contaminants introduced at the land surface. Animal grazing areas, paddocks and locations of manure storage can be a source of nutrients, and setbacks of these contaminant sources from wells and surface water sources is required in accordance with *Health Hazard Regulation* of the *Public Health Act*. It was further stated that a tributary to Kirby Creek flows through the subject area (Lots G, H and J, as well as D-F) and that there are indications of a tributary stream on Lots D, E and F not noted on the subdivision plan. A qualified environmental professional is required to assess building plans to ensure development is compliant with the *RAPR*. Applicants are to be advised of regulatory requirements that could affect development and siting considerations. Applicants are also advised of the requirement for a water licence for surface water and for non-domestic groundwater use in accordance with the *WSA*.

Ministry of Agriculture stated Ministry staff support the rezoning application given that, if approved, agriculture and farm buildings will be permitted on the subject properties.

Ministry of Transportation & Infrastructure stated no objection to the proposed rezoning.

Pacheedaht First Nation provided verbal confirmation that the Nation's interests are unaffected by this application.

RCMP stated that they have no comments to add to this application.

Shirley Fire Department stated that they have no concerns.

The Shirley/Jordan River APC met on March 15, 2022, to consider the application, with approximately eleven members of the public in attendance. The Shirley/Jordan River APC moved the following motion:

MOVED by Fiona McDannold, **SECONDED** by Emily Anderson that the APC recommends to the LUC that it supports the rezoning application.

CARRIED

Land Use

The Shirley-Jordan River OCP, Bylaw No. 4001, designates the subject properties as Coastal Upland. The primary use for the Coastal Upland policy area is to support the continued use of these lands for forestry. Single-family residential and agriculture are also supported in this designation provided the density does not exceed one parcel per 4 ha and one dwelling per parcel. The AF zone permits silviculture and residential uses reflective of the historical use of the lands as working forests. The RU2 zone is considered consistent with the uses and density supported by the Coastal Upland designation and allows for the scale of agricultural activities desired by the applicants. The RU2 zone permits agriculture, farm buildings and residential uses. Density is restricted through a minimum lot size of 4 ha, and an allowance of one dwelling and one suite per parcel (Appendix C). This is in keeping with the density permitted by the AF zone. The RU2 zone incorporates specific definitions for the proposed uses, as follows:

Agriculture means the growing, rearing, producing or harvesting agricultural crops or livestock; apiculture; horticulture; silviculture; the use and storage of associated farm machinery, implements and agricultural supplies; includes the ancillary sale, storage and processing on a parcel of the primary products harvested, reared or produced on that parcel; excludes intensive agriculture, intensive agriculture – medical marihuana, licenced cannabis production

pursuant to the Cannabis Act, kennels, aquaculture, growing of mushrooms within a building and the permanent confinement of livestock or animals of any kind within a building.

Farm Building means a structure which does not contain a residential occupancy and is: i) associated with and located on land devoted to the practice of farming; and ii) used essentially for the housing of agricultural crops or equipment or livestock including storage and processing of agricultural products produced on site; but excludes abattoirs, indoor equestrian riding arenas, and buildings for the permanent confinement of livestock or animals of any kind.

Past proposals to amend the AF zone to permit agriculture have been considered by the CRD Board. Bylaw No. 4179 proposed to add agriculture as a permitted use on all lands zoned AF, but was withdrawn in 2018 in favour of considering zoning amendments to allow agriculture on a case-by-case basis. A site specific rezoning of a split zoned Rural A and AF parcel in Shirley to a new Rural 2 (RU2) zone was completed in 2019 (Bylaw No. 4259). Staff consider the RU2 zone appropriate for properties in the 4 ha range that have been removed from forestry programs, have established rural residential uses, and wish to conduct agricultural activities.

Procedures and Future Development

The proposed bylaw was sent to 13 agencies and CRD departments, and to the Shirley/Jordan River APC. The comments received have been reviewed by staff in conjunction with proposed Bylaw No. 4464.

Staff note that the Ministry of Transportation and Infrastructure approves subdivision layout and road construction and that the CRD has no jurisdiction to require works around road culverts or within the road right-of-way. In addition, there are existing frameworks in place that address development and land alteration adjacent to watercourses, including provincial regulation and local government permitting.

The RU2 zone requires agricultural setbacks, however, additional setbacks stated in provincial regulation would also apply. Land alteration and building construction in areas that are designated as development permit areas will require a development permit, which may also require a professional report prior to issuance, and in particular, development within a riparian development permit area would require a *RAPR* report and approval through the provincial Riparian Areas Regulation Notification System (RARNS). Additional tools such as performance securities may be used to ensure that restoration requirements and buffer areas around wetlands or watercourses are appropriately maintained.

Property owners are advised of requirements under the *WSA* for water licensing; requirements under the *Environmental Management Act: Code of Practice for Agricultural Environmental Management* for setbacks; recommendations that native plant species be planted and maintained around any existing unauthorized ponds; as well as requirements of the *Public Health Act* for setbacks, permits for drinking water and sewerage.

Based on the information provided by the applicant, referral comments received and the policies of the Shirley – Jordan River OCP, staff recommend that proposed Bylaw No. 4464 be introduced, read a first and a second time, and that a public hearing be held.

CONCLUSION

The purpose of this zoning bylaw amendment application is to rezone ten (10) subject properties on Kirby Creek Road from the Forestry (AF) zone to the Rural 2 (RU2) zone for the purpose of permitting agriculture and farm buildings. Staff have prepared proposed Bylaw No. 4464 and recommend receipt of referral comments, first and second reading, and advancement to public hearing.

RECOMMENDATION

Alternative 1

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

1. That the referral of proposed Bylaw No. 4464, “Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 155, 2022”, to the Shirley/Jordan River Advisory Planning Commission, appropriate CRD departments, BC Hydro, District of Sooke, FLNR - Archaeology Branch, FLNR - Ministry of Forests, Lands, Natural Resource Operations and Rural Development, FLNR - Water Protection Section, Island Health, Ministry of Agriculture, Ministry of Transportation & Infrastructure, RCMP, Shirley Fire Department, Sooke School District #62, Pacheedaht First Nation and T’Sou-ke First Nation be approved and the comments received.
2. That proposed Bylaw No. 4464 be introduced and read a first time and read a second time; and;
3. 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. 4464.

Submitted by:	Iain Lawrence, RPP,MCIP, Senior Manager, Juan de Fuca Community Planning
Concurrence:	Kevin Lorette, P.Eng., MBA, Acting Chief Administrative Officer

ATTACHMENTS

- Appendix A: Subject Properties
- Appendix B: Current Zoning – Forestry AF Zone
- Appendix C: Proposed Zoning – Rural RU2 Zone
- Appendix D: Proposed Bylaw No. 4464
- Appendix E: Referral Comments