



**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, JANUARY 16, 2018**

SUBJECT **Zoning and Official Community Plan Amendment Application for Block 1043, Malahat District – 3950 Goldstream Heights Drive**

ISSUE

To receive referral comments and to consider an amended application to rezone and designate a portion of the property to permit a licensed medical marihuana production facility.

BACKGROUND

The 32 ha subject property is located in the Malahat at 3950 Goldstream Heights Drive and is accessed by way of an easement over the properties to the north (Appendix 1). The subject property is zoned Greenbelt 2 (Gb2) in the Malahat Land Use Bylaw, 1981, Bylaw No. 980, and is adjacent to Gb2 zoned properties to the north and east, and to the Sooke Hills Wilderness Regional Park (SHWRP) to the west and south. The Gb2 zone permits a residence, agriculture and intensive agriculture, silviculture, dog boarding and breeding kennels, community care facilities, and accessory uses. The zone establishes a minimum lot size for subdivision of 12 ha.

The property is designated as Settlement Area in the Malahat Official Community Plan (OCP) Bylaw, 2012, Bylaw No. 3721. The property is also designated within the Steep Slopes, Sensitive Ecosystems and the Watercourses, Wetlands and Riparian Areas development permit (DP) areas. A DP was issued for the placement of a manufactured home and construction of an accessory building in 2011 (DP-01-11) and for additional site clearing and grading in 2016 (DP000235).

The Land Use Committee considered the original application to rezone the property for the purpose of developing a campground and licensed medical cannabis production facility at their meeting on July 18, 2017. At that time, the Land Use Committee recommended referral of the application to a public information meeting and to the following agencies:

BC Hydro	Halalt First Nation	Pauquachin First Nation
BC Parks	Health Canada	Penelakut Tribe
City of Langford	Island Health	RCMP
Cowichan Tribes	JdF Electoral Area Parks and	School District #79
Cowichan Valley Regional	Recreation Advisory Commission	Stz'uminus First Nation
District	Lake Cowichan First Nation	Te'Mexw Treaty
CRD Building Inspection	Lyackson First Nation	Association
CRD Integrated Water Services	Malahat First Nation	Tsawout First Nation
CRD Protective Services	Ministry of Transportation &	Tsartlip First Nation
CRD Regional Parks	Infrastructure	Tseycum First Nation

Comments were received from 13 agencies (Appendix 2). The application was considered at a public information meeting on September 7, 2017, (Appendix 3) and nine written submissions were received (Appendix 4).

In response to agency comments and to feedback gathered at the public information meeting, the applicant has submitted a modified development proposal. The amended proposal includes subdivision of the subject property into two separate lots, dedication of public road through the proposed northern property and to lands beyond, and rezoning the proposed southern parcel to allow intensive agriculture – medical marihuana production, in accordance with Health Canada's *Access to Cannabis for Medical Purposes Regulation (ACMPR)* (Appendix 5). Staff recommend that this amended application be re-referred to those agencies and departments that indicated their interests were affected by the earlier proposal.

ALTERNATIVES

Alternative 1

That the Juan de Fuca (JdF) Land Use Committee recommends to the Capital Regional District (CRD) Board:

1. a) That the referral of Bylaw Nos. 4196 and 4197, directed by the JdF Land Use Committee on July 18, 2017, to a public information meeting, BC Hydro, BC Parks, City of Langford, Cowichan Tribes, Cowichan Valley Regional District, CRD Building Inspection, CRD Integrated Water Services, CRD Protective Services, CRD Regional Parks, CRD Regional and Strategic Planning, Halalt First Nation, Health Canada, Island Health, JdF Electoral Area Parks and Recreation Advisory Commission, Lake Cowichan First Nation, Lyackson First Nation, Malahat First Nation, Ministry of Transportation & Infrastructure, Pauquachin First Nation, Penelakut Tribe, RCMP, School District #79, Stz'uminus First Nation, Te'Mexw Treaty Association, Tsawout First Nation, Tsartlip First Nation and Tseycum First Nation be approved and the comments be received; and
- b) That staff be directed to refer revised proposed Bylaw No. 4196, "Malahat Land Use Bylaw, 1981, Amendment Bylaw No 147, 2017" and proposed Bylaw No. 4197, "Malahat Official Community Plan, 2012, Amendment Bylaw No. 2, 2017" to a public information meeting and to the following agencies and departments for comment:

Cowichan Tribes	CRD Aboriginal Initiatives	Malahat First Nation
Cowichan Valley Regional District	CRD Regional Planning	MFLNRORD
CRD Integrated Water Services	Island Health	MoTI
CRD Regional Parks	JdF EA Parks & Recreation	School District #79
CRD Protective Services	Advisory Commission	Westshore RCMP

2. That the CRD Board not proceed with proposed Bylaw Nos. 4196 and 4197.
3. That more information be provided by staff.

LEGISLATIVE IMPLICATIONS

Pursuant to Section 475 of the *Local Government Act (LGA)*, an amendment to an OCP requires that local governments provide one or more opportunities for consultation it considers appropriate to persons, organizations and authorities the local government considers may be affected by the adoption, repeal or amendment of an OCP.

Specific consideration must be given to referring the proposed amendment to adjacent regional districts or municipalities, and First Nations. Consideration should also be given to referring the proposed amendment to improvement districts and applicable provincial and federal agencies. Pursuant to Section 476 of the *LGA*, a proposed amendment to an OCP must also be referred to the School District. Where an amendment or new land use and subdivision bylaw will apply to land within 800 m of a controlled access highway, the bylaw must be referred to the Ministry of Transportation and Infrastructure.

Consultation under the above noted sections of the *LGA* must occur prior to the requirement under Section 477 to hold a public hearing as part of the amendment process. In this case, the comments will be received prior to proceeding to first reading of the bylaw.

PUBLIC CONSULTATION IMPLICATIONS

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*; however, no APC has been established for the Malahat. Staff propose holding a second public information meeting to obtain public comments on proposed Bylaw No. 4196 and Bylaw No. 4197.

REGIONAL GROWTH STRATEGY AND OFFICIAL COMMUNITY PLAN IMPLICATIONS

The subject property is designated within the Rural/Rural Residential policy area in the Regional Growth Strategy (RGS), 2003, Bylaw No. 2952. This policy area includes land designated in OCPs for rural and rural residential purposes, as well as small pockets of commercial and industrial land uses. Section 445 of the *LGA* requires that all bylaws adopted by a regional district board and all services undertaken by a regional district after the board has adopted an RGS be consistent with the RGS.

The Juan de Fuca Development Procedures Bylaw, 2003, Bylaw No. 3110, establishes an OCP amendment process that requires that proposed amendment Bylaw No. 4197 be referred to the full CRD Board for a determination of consistency with the RGS prior to first reading of the bylaw.

The Malahat OCP designates the subject property as Settlement Area, which signifies that the predominant land use is for residential purposes and supports additional uses including neighbourhood commercial and tourism development activities. Whereas a campground would be considered tourism development, a medical marihuana production facility does not meet the intent of what constitutes a neighbourhood commercial use. Since development must be consistent with the policies and objectives of the Malahat OCP, an amendment to the Settlement Area designation is required as the proposed use is more industrial in nature.

The Malahat OCP establishes objectives for the form and character of commercial development and designates Commercial DP areas. An amendment would be required to add industrial development to the DP designation and include a portion of the subject property on Map 5d.

The subject property is designated as a Development Approval Information area in the Malahat OCP. Information related to the environment, groundwater, traffic, community services or local infrastructure can be requested from the applicant as part of the rezoning process. Bylaw No. 3031 outlines the CRD's authority to request additional information. At this time, no additional information has been requested.

REFERRAL COMMENTS

Referrals were sent to agencies on July 19, 2017. The **City of Langford** and **Cowichan Valley Regional District** responded to advise that either their interests were unaffected by the proposal rezoning, or that they had no objections or requirements for approval.

First Nations Comments

Cowichan Tribes responded to request an environmental impact assessment and mapping of the property in order to be in a position to provide comment on the proposal.

Malahat First Nation objected to the application due to the proposed volume of groundwater use, lack of aquifer data, aboriginal claim to water rights and title, lack of an environmental impact assessment, compliance with *ACMPR*, traffic impacts, and the present availability of appropriately-zoned land for a campground within the region.

Agency Comments

Island Health recommended adherence to *ACMPR* licencing requirements for medical marihuana production, the establishment of buffers between proposed uses, incorporation of accessible design standards, and that environmental protection be implemented through the development permit conditions. Island Health has regulatory requirements for aspects of the proposal related to food premises, recreational water (pools and hot tubs), water supply systems, and sewerage. Island Health also stated positive comment for the health benefits proposed by the development of multi-use trails and recreation facilities.

Ministry of Forests, Lands and Natural Resource Operations responded to request that the property retain the existing development permit area designations and the environmental covenant FB0423199. Recommendations support completion of a detailed biological inventory, for incorporating the Province's Development with Care guidelines, and maintaining stormwater discharge rates and water quality.

Ministry of Transportation & Infrastructure outlined conditions including completion of a Traffic Impact Assessment, construction of a commercial access via a publicly dedicated road or identification of an alternative access.

Westshore RCMP relayed concerns regarding response time to access the property, limited staff resources, and potential for increased traffic accidents. Clarification was requested regarding consumption of liquor in the campground, the medical marihuana production facility and compatibility of uses.

CRD Comments

CRD Integrated Water Services did not support the proposal and indicated three main concerns including potential for wildfire, potential for unauthorized recreation access into the adjacent park and water supply area, and potential for increased staff resources.

CRD Protective Services stated concern about lack of a secondary means of ingress/egress, fire protection, and safe storage of combustible materials.

CRD Regional Parks did not support the application due to concerns about unauthorized access into the regional park, risk of wildfire, increased visitation to Wrigglesworth Community Park, potential negative aesthetic impacts from proposed amusement facilities, and compatibility of medical marihuana production with adjacent uses.

CRD Regional and Strategic Planning did not identify any implications from a RGS policy perspective as the proposal does not impact subdivision and development levels, there are opportunities for requiring buffers between the proposed development and adjacent uses, and there are no proposed extensions of water or sewer services.

JdF Electoral Area Parks and Recreation Advisory Commission considered the application at their meeting of September 12, 2017, and indicated support for the proposed development. The Commission noted that there is a lack of RV campground facilities on southern Vancouver Island, that campgrounds can be designed to incorporate the natural environment, that there is an interest to connect Wrigglesworth Park to Sooke Hills Wilderness Trail/The Great Trail, and questioned the compatibility of uses and feasibility of commercial access to the property by easement.

Public Comments

A public information meeting was held on September 7, 2017, with approximately 40 members of the public in attendance (Appendix 3). Staff and the applicant responded to questions from the public regarding fire protection and emergency access, campground design, traffic impacts, economic impacts for community, environmental protection including soil deposit, and licensing requirements for a medical marihuana production facility. Concerns were expressed about notification procedures and that another public information meeting should be held. Nine written submissions were received at the meeting from members of the public (Appendix 4).

PLANNING ANALYSIS

In response to concerns raised about the original campground proposal during the referral process, specifically regarding fire protection, traffic impacts, protection of capital water supply and park lands, and compatibility of uses, the applicant has submitted a modified proposal for a licenced medical marihuana production facility on a 12 ha portion of the property (Appendix 5). Staff have prepared Bylaw No 4196, which establishes a new Industrial – Medical Marihuana Production (M4) zone that permits a dwelling unit and one medical marihuana production facility. Staff have also prepared a new

proposed Bylaw No. 4197 that adds intensive agriculture – medical marihuana production as a supported use under the Settlement Area land use designation specifically for the subject property, and that designates the property as a Commercial and Industrial DP area (Appendices 6 and 7).

The current terminology in Bylaw No. 980 references the now repealed *Marihuana for Medical Purposes Regulations (MMPR)*. Under the *Interpretation Act*, when an enactment replaces an old enactment, reference to the old enactment must be construed as a reference to the new enactment. Staff recommend revisiting the bylaw terminology at such time as all Juan de Fuca land use bylaws are reviewed.

Health Canada's requirements for commercial producers of cannabis under the *ACMPR* include licensing, security measures, client registration, and production practices, packaging, shipping, labelling, and record-keeping. Applicants must provide notice to local government, local fire authority and local police as part of their application for a producer's license. Health Canada requires confirmation from local governments that appropriate land use zoning is in place.

Access to the subject property is from the north along Goldstream Heights Drive, currently by way of easement. Residential construction in the Goldstream Heights subdivision is ongoing, with an additional 84 lots currently being developed. Impacts on roads and the residential character of the community are considered minimal with respect to the medical cannabis production facility. The *ACMPR* imposes security measures that restrict only authorized personnel from accessing the site, all products are shipped securely by courier, and on-site retail sales are not permitted. Therefore, traffic volumes should not be affected by the proposed rezoning. Health and safety measures will be implemented through Health Canada's requirements, as well as through the building permit process. The proposed facility is separated from residential properties and is not accessible from adjacent land. Staff recommend referring the proposal to Cowichan Valley Regional District, CRD Protective Services, Island Health, the Ministry of Transportation and Infrastructure, and Westshore RCMP for comment.

The subject property is adjacent to the SHWRP to the west and south and is in the vicinity of the Greater Victoria Drinking Water Supply Area and Wigglesworth Lake Community Park. Any heightened concerns about spread of wildfire and unauthorized access to these areas should now be alleviated as the campground use is no longer being pursued. Threats to the environment from the indoor production of medical cannabis are addressed through the strict measures imposed by the *ACMPR*, including air filtration, control of pests and contaminants, equipment and sanitation. Staff recommend referral of the proposal to CRD Integrated Water Services, CRD Regional Parks, and to the Juan de Fuca Electoral Area Parks and Recreation Advisory Commission for further comment.

Much of the site is designated as a DP area for hazardous conditions and environmental protection. Covenant FB0423199 was registered on title in 2011 securing an environmental report that identifies environmentally sensitive habitats and species on the property including Arbutus Creek and an unnamed creek that flow south through the property. A development permit will be required as part of the rezoning process which will include further review of the site by qualified professionals. Additional information could be requested regarding hydrological impacts of the medical cannabis production facility. Staff recommend referral of the amended proposal to Cowichan Tribes, Malahat First Nation, CRD Aboriginal Initiatives and the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (MFLNRORD).

Staff also recommend that a second public information meeting be held to review the revised proposal.

CONCLUSION

The initial application to rezone and re-designate the property has been modified in response to concerns outlined by referral agencies and the public. The current application is for subdivision of the subject property into two separate lots, and rezoning the proposed southern parcel to allow intensive agriculture – medical marihuana production. Staff recommend that the referral comments be received and the amended application be referred to agencies and a second public information meeting.

RECOMMENDATIONS

That the Juan de Fuca (JdF) Land Use Committee recommends to the Capital Regional District Board that:

- a) That the referral of Bylaw Nos. 4196 and 4197 directed by the JdF Land Use Committee on July 18, 2017, to a public information meeting, BC Hydro, BC Parks, City of Langford, Cowichan Tribes, Cowichan Valley Regional District, CRD Building Inspection, CRD Integrated Water Services, CRD Protective Services, CRD Regional Parks, CRD Regional and Strategic Planning, Halalt First Nation, Health Canada, Island Health, JdF Electoral Area Parks and Recreation Advisory Commission, Lake Cowichan First Nation, Lyackson First Nation, Malahat First Nation, Ministry of Transportation & Infrastructure, Pauquachin First Nation, Penelakut Tribe, RCMP, School District #79, Stz'uminus First Nation, Te'Mexw Treaty Association, Tsawout First Nation, Tsartlip First Nation and Tseycum First Nation be approved and the comments be received;
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CRD Protective Services	Advisory Commission	Westshore RCMP

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ET:wm

Appendices:

1. Subject Property
2. Referral Comments
3. Public Information Meeting Notes
4. Development Proposal
5. Public Comments
6. Proposed Bylaw No. 4197
7. Proposed Bylaw No. 4196