



**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, APRIL 16, 2019**

SUBJECT **Temporary Use Permit for Lot 4, Section 47, Otter District, Plan 23769 –
7822 Tugwell Road**

ISSUE

A request has been made for a temporary use permit to allow a federally licensed micro-cannabis cultivation facility in the Rural Residential 2 (RR-2) zone.

BACKGROUND

The subject property is currently zoned Rural Residential 2 (RR-2) in the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, and is adjacent to other RR-2 zoned properties to the east and west, Tugwell Road to the south, and a Rural A zoned property and DeMamiel Creek to the north (Appendix 1). The parcel is designated as Settlement Area One (SA1) and is partly designated as a Steep Slopes and a Riparian Development Permit Area (DPA) in the Official Community Plan (OCP) for Otter Point, Bylaw No. 3819.

There is an existing single-family dwelling on the property that was constructed in 1978, and a Board of Variance approval (BV000348) was granted for the siting of farm building in 2002. The property is approximately 0.8 ha and is serviced by on-site septic and a groundwater well. There are no encumbrances on title.

The legalization of cannabis came into effect in October 2018. The *Cannabis Act and Regulation* establish multiple licence categories for cannabis cultivation, nursery, processing, analytical testing and sale for medical purposes. In response to an industry demand for smaller-scale, 'craft' cannabis products, federal licence categories for micro-cultivation and micro-processing have been established. All federal license holders are required to obtain local government land use approval.

The applicant has provided information about the proposal to establish a licenced micro-cultivation operation on the property (Appendix 2). The property would either need to be rezoned or the owner issued a temporary use permit to allow the proposed use. The owner has applied for a temporary use permit to authorize the facility on a trial basis. The impacts on the surrounding neighbourhood and community during the term of the permit could be considered as part of an application to rezone the property and allow the use on a long-term basis.

At its meeting on January 15, 2019, the Juan de Fuca Land Use Committee directed staff to proceed with referral of the application to the Otter Point Advisory Planning Commission (APC) and to agencies for comment. Referral comments are included in Appendix 3.

Staff have prepared temporary use permit TP000010 (Appendix 4) for consideration.

ALTERNATIVES

Alternative 1:

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

- a) That the referral of Temporary Use Permit TP000010, directed by the Juan de Fuca Land Use Committee on January 15, 2019, to the Otter Point Advisory Planning Commission, BC Hydro, District of Sooke, Island Health, the Archaeology Branch and Groundwater Protection Branch of Ministry of Forests Lands Natural Resource Operations and Rural Development, Ministry of Transportation and Infrastructure, RCMP, T'Sou-ke First Nation and appropriate CRD departments be approved and the comments received;

- b) That Temporary Use Permit TP000010, to allow a federally licensed micro-cannabis cultivation facility in the Rural Residential 2 (RR-2) zone, on Lot 4, Section 47, Otter District, Plan 23769, be approved; and
- c) That a covenant be registered prior to issuance of the permit pursuant to Section 219 of the *Land Title Act* to permit the temporary use for the period of the permit. The covenant shall also include an agreement by the owner to indemnify and save harmless the CRD against all costs and expenses incurred by the CRD, in default by the owner, in the conversion, demolition or removal of the temporary use, and/or legal costs incurred in pursuing such legal remedies as the CRD sees fit.

Alternative 2:

That the agency referral comments and public submissions be received, and that Temporary Use Permit TP000010 be denied.

Alternative 3:

That more information be provided by staff.

LEGISLATIVE IMPLICATIONS

Section 492 of the *Local Government Act (LGA)* authorizes local government to issue temporary use permits within areas designated by the Official Community Plan (OCP). Temporary use permits may be issued throughout the Otter Point OCP area as outlined in Bylaw No. 3819 and in accordance with Sections 493 to 497 of the *LGA*.

PUBLIC CONSULTATION IMPLICATIONS

CRD Bylaw No. 3885, Juan de Fuca Development Applications Procedures Bylaw, states that a notice of intent must be mailed to the owners and occupants of land adjacent to the site under consideration within a distance of not more than 500 m.

If a local government proposes to pass a resolution to issue a temporary use permit, it must also give notice in accordance with Section 494 of the *LGA*. A public notice of intent to issue temporary use permit TP000010 will be published in the Sooke News Mirror prior to the CRD Board meeting at which the resolution to issue the permit will be considered.

REFERRAL COMMENTS

Referrals were sent on January 16, 2019, to eight agencies, the Otter Point APC and to appropriate CRD departments. Comments are noted below and included in Appendix 3.

BC Hydro stated no objection and that the applicant should contact BC Hydro regarding updates to electrical service.

CRD Bylaw Services advised that, with the proposed conditions and controls in place, there are no significant concerns regarding the temporary use permit.

District of Sooke stated no objection to the proposal.

Island Health stated attention should be given to: odour control for health implications; compliance with *Drinking Water Protection Act/Regulation* and *Sewerage System Regulation*; and the public health approach to non-medical cannabis statement from the Office of the Chief Medical Health Officer.

Ministry of Forests Lands Natural Resource Operations and Rural Development – Archaeology Branch stated there are no known archaeological sites recorded on the subject property but there is always a possibility for unrecorded sites to exist. Archaeological sites are protected under the *Heritage Conservation Act* and must not be altered or damaged without a permit.

Ministry of Transportation and Infrastructure (MoTI) stated no objection and recommended a commercial access permit be obtained to ensure all activities of the business are provided with safe and adequate access onto Tugwell Road.

Otter Point APC considered the application on March 5, 2019, and two members of the public were present at the meeting. Commission members discussed the proposal and heard from the applicant and a member of the public. Issues identified included odour control, security, screening, light pollution, impacts to DeMamie Creek from runoff, compost practices, water recycling and design. The APC made the following motion:

MOVED by Bud Gibbons, **SECONDED** by Sid Jorna that the Otter Point APC supports Temporary Use Permit TP000010 with additional permit conditions supporting protecting DeMamie Creek from runoff related to the proposed operation and supporting the use of ground oriented lighting. **CARRIED**

PLANNING ANALYSIS

The subject property is designated Settlement Area One (SA1) under the Otter Point OCP, Bylaw No. 3819. In accordance with Section 4.1(b), the designation supports industrial uses on lands zoned industrial, as well as temporary industrial uses with a valid temporary use permit on non-industrial zoned lands. The designation also supports home based business uses that are compatible with the community's character, including having minimal traffic, parking, noise or nuisance impacts.

The Otter Point OCP directs that the following should be considered during the evaluation of a temporary use permit application:

- The use must be clearly temporary or seasonal in nature
- The use should be compatible with adjacent uses
- The potential impact of the proposed use on the natural environment
- The intensity of the proposed use
- The opportunity to conduct the proposed use on other land in the Plan area
- Remedial measures to mitigate any impact to the natural environment.

The applicant is requesting a temporary use permit for a licenced cannabis micro-cultivation operation on the subject property. Micro-cultivation licences issued by Health Canada permit a maximum cultivation area of 200 m², in which all cannabis plants must be contained. Such licences allow for cannabis possession, cultivation, propagation, harvesting, testing and authorized sales via shipping. The applicant is proposing the facility on a trial basis to determine feasibility and market demand for the product. A temporary use permit can be renewed once and rezoning would be required to permit the use long-term.

The adjacent uses are rural, rural residential and vacant agricultural. The proposed micro-cultivation facility is not anticipated to alter the residential character of the area as the subject property is fenced and private. Conditions of the permit have been included that require vegetative buffers and screening of the property. The proposed setbacks from the property lines for the facility are similar to what is required for agricultural buildings. Nuisance odour, light and noise will be restricted in a similar fashion to home based business regulations. Traffic and visitation to the property is also to be kept to a minimum and no retail sales are permitted from the facility. The applicant is requested to obtain a commercial access permit from the MoTI.

The applicant proposes to construct a building for micro-cultivation outside of the DP areas. There is an existing groundwater well on the property that may require a provincial licence under the *Water Sustainability Act* if it is used for the proposed business. Alternatively, the applicant has proposed purchasing trucked water to supply the operation and to utilize water recycling wherever possible. The capacity of the septic system and electrical power will be evaluated as part of the building permit process, with upgrades conducted as required. A condition has been added to the permit to restrict

any impacts from runoff to DeMamiel Creek. Therefore, staff do not anticipate any negative impact to the environment as a result of this use.

In comparison with the federally licensed industrial-scale standard cultivation facilities, the scale of the micro-cultivation facility is more in keeping with a rural residential home based business. There are strict federal requirements for professional production practices including pest control, air filtration, sanitation, quality assurance, product disposal, packaging and labelling. Licence holders undergo security clearance reviews and are required to maintain records of individuals on site. Physical security measures are also required for micro-cultivation facilities that prevent unauthorized access and create a physical barrier around the site. The applicant proposes that these measures can be implemented while maintaining the rural residential character of the property.

Other than industrial zoned properties within the Sooke Business Park in Otter Point, no other land in the Juan de Fuca has been zoned to permit micro-cultivation of cannabis. The proposed facility is intended to be smaller in size than standard cultivation facilities and may not warrant occupying industrial zoned land. Since this is the first micro-cultivation operation to be proposed on rural residential land in the Juan de Fuca and the full range of impacts are not yet understood, staff recommend that the use be authorized through a temporary use permit, which can be revoked upon contravention of the conditions of the permit and reviewed after a three year term.

Staff have prepared proposed Temporary Use Permit TP000010 to permit cannabis micro-cultivation, in accordance with the *Cannabis Act*, on the subject property ancillary to the primary residential use. The permit stipulates conditions to require that the micro-cultivation use to be screened from the road and adjacent properties, to limit traffic flow, to establish 15 m setbacks, and measures to protect DeMamiel Creek, restrict nuisances and maintain the residential character. Any buildings or structures required for the use will need to be removed or converted upon expiration of the permit. Staff recommend that temporary use permit TP000010 be approved, subject to public notification.

CONCLUSION

The application for temporary use permit TP000010 to authorize a licenced cannabis micro-cultivation facility is in keeping with the Otter Point OCP policies. Should further expansion of the business be requested in the future, the applicant would need to either request an amendment to this permit or find appropriately zoned land.

Staff recommend that the referral of the application be approved; that the public submissions and referral comments be received; and that temporary use permit TP000010 be approved subject to public notification.

RECOMMENDATION

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

- a) That the referral of Temporary Use Permit TP000010, directed by the Juan de Fuca Land Use Committee on January 15, 2019, to the Otter Point Advisory Planning Commission, BC Hydro, District of Sooke, Island Health, the Archaeology Branch and Groundwater Protection Branch of Ministry of Forests Lands Natural Resource Operations and Rural Development, Ministry of Transportation and Infrastructure, RCMP, T'Sou-ke First Nation and appropriate CRD departments be approved and the comments received;
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Submitted by:	Emma Taylor, MA, MCIP, RPP, Planner
Concurrence:	Iain Lawrence, MCIP, RPP, Manager, Local Area Planning
Concurrence:	Kevin Lorette, P.Eng., MBA, General Manager, Planning & Protective Services
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

ET:wm

Attachments:

- Appendix 1. Subject Property Map
- Appendix 2. Applicant's Proposal
- Appendix 3. Referral Comments
- Appendix 4. Temporary Use Permit TP000010