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REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE MEETING OF TUESDAY, JULY 21, 2020

SUBJECT **Development Permit with Variance for Lot 2, District Lot 39, Malahat District, Plan 23012**

ISSUE SUMMARY

A request has been made for a development permit with variance to address the Sensitive Ecosystem Development Permit (DP) guidelines and to reduce the requirement that 10% of the parcel perimeter fronts onto a highway, for the purpose of creating a 2-lot subdivision in the Forestry (AF) zone.

BACKGROUND

The 4.25 ha property is located at 2727 Anderson Road in Otter Point and is zoned Forestry (AF) under Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 (Appendix A). The parcel is split by Anderson Road, the dedicated portion of which ends at the mid-point of the western parcel. An undedicated, graded road continues north to Rural Resource Lands areas beyond. The portion on the west side of the road has an area of 1.3 ha and is bounded by AF zoned properties to the east and west. The portion on the east side of the road has an area of 2.62 ha and is bounded by a Rural A parcel to the south and AF zoned properties to the north and east.

A building on the western portion of the parcel, used as a mechanic shop for the logging industry, was removed in 2008 via demolition permit (JD08-013), although the concrete foundation remains. There are currently no structures on this section of the parcel. The eastern portion of the parcel has a recently constructed single-family dwelling and detached garage accessed via driveway from Anderson Road.

The applicant has submitted an application for a 2-lot subdivision to create two parcels smaller than the 4 ha minimum required by the zone in accordance with Bylaw No. 2040, Section 3.10 (6b), which authorizes the Approving Officer to approve a subdivision split into parts by a road (Appendix B). The property is designated as a Sensitive Ecosystem development permit area; therefore, a development permit is required. The plans propose a reduction of the minimum road frontage requirement for proposed Lot A from 10% to 9.5% of the perimeter, therefore, the owner is requesting a variance.

The BC Ministry of Environment and Climate Change Strategy (BC ENV) has reporting and investigation requirements for sites that may have had previous industrial activities and are the subject of current applications for development. Upon receipt of information regarding historical uses on the parcel from JdF Community Planning, the applicant engaged in the site profile process as required by the *Environmental Management Act*. Based on the location of the proposed development in relation to the potentially contaminated site, the Province approved a release request on May 6, 2020, and confirmed that the CRD may consider the Development Permit with Variance to authorize subdivision for the purpose of constructing a single family dwelling and related services.

ALTERNATIVES

Alternative 1

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

That Development Permit with Variance DV000071 for Lot 2, District Lot 39, Malahat District, Plan 23012 to authorize a 2-lot subdivision in a Sensitive Ecosystems Development Permit Area, and to vary Juan de Fuca Land Use Bylaw No. 2040, Part 2, Section 3.10(4) by reducing the minimum road frontage requirement from 10% (79.9 m) to 9.5% (76.4 m) for the purpose of authorizing a 2-lot subdivision, be approved.

Alternative 2

That Development Permit with Variance DV000071 be denied.

Alternative 3

That the application be referred back to staff for additional information.

IMPLICATIONS

Legislative Implications

Section 40 of the *Environmental Management Act* requires that a person must provide a site profile in accordance with the *Contaminated Sites Regulation* to local government when that person applies for a development permit or a development variance permit for land that the person knows was used for industrial activity. Further review of the site may be required by the Province based on the information provided in the site profile. Where further review by the Province is required, local government may not approve an application until the conditions under Section 557 of the *Act* have been satisfied or a release has been granted from the Province. A release was issued by the Province in relation to this development permit with variance request on May 6, 2020.

The Otter Point Official Community Plan, Bylaw No. 3819, designates development permit areas (DPAs) and outlines development permit guidelines (Appendix C). The property is located within the Sensitive Ecosystem DPA; therefore, a development permit is required for subdivision. CRD Delegation of Development Permit Approval Authority Bylaw, 2009, Bylaw No. 3462, gives the General Manager, Planning and Protective Services, the power to issue a development permit; however, the delegated authority does not include development permits that require a variance, as stated in Section 5(a) of the bylaw.

The Juan de Fuca Land Use Bylaw No. 2040, Part 2, Section 3.10(4), specifies that road frontage shall be a minimum of 10% of the perimeter of a parcel. Since proposed Lot A does not meet this requirement, a variance is required in order to permit the subdivision.

Public Consultation Implications

Pursuant to Section 499 of the *Local Government Act*, 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 the owners of property located within a distance of 500 metres of the subject property. Any responses received from the public will be presented at the July 21, 2020, Land Use Committee meeting. There is no legislative requirement for public consultation if a local government is considering the issuance of a development permit.

Land Use Implications

Development Permit:

The owner has submitted an environmental assessment report prepared by Julie Budgen, RP.Bio., of Corvidae Environmental Consulting Inc., dated May, 2018, to address the Sensitive Ecosystem DP guidelines for the proposed development (Appendix D). The report provided an assessment of the environmental conditions found at the site, described potential impacts of the proposed development and provided recommendations on the suitability of the site for the proposed development.

The report confirms that the western portion of the property contains a stand of mature forest, but the location of the previously demolished structure has now overgrown with invasive species. The Biologist recommended removal of invasive species and siting any proposed buildings in these locations; protecting the mature forest and flagging the area prior to construction, sediment and control measures to be in place during development, and replanting the cleared areas with native species. The Biologist anticipates short term environmental impacts as a result of the development.

Variance:

The Juan de Fuca Land Use Bylaw requires that where a lot being created by a subdivision fronts on a highway, the minimum frontage on the highway shall be one-tenth of the perimeter of the lot. Proposed Lot B meets this requirement; however, proposed Lot A requires 79.9 m of frontage, but is proposed to only have 76.4 m (9.5%).

In evaluating whether a frontage exemption is justified, the following technical criteria are normally considered:

- How does it relate to the topography of the area?
- Does it create any environmental impacts?
- Will reducing the frontage produce an awkward lot configuration?
- Will reducing the frontage eliminate future subdivision potential of the lot and of lots beyond?
- Will the exemption reduce road network and access options?
- Does the proposed reduction disturb existing residences?

The proposed subdivision layout is not expected to affect the environment, road network, or neighboring properties and will improve access options; the Ministry of Transportation and Infrastructure requires that a portion of proposed Lot B be dedicated to expand Anderson Road to the north.

Development Permit with Variance DV000071 has been prepared for consideration to grant a variance to reduce the minimum frontage requirement from 10% to 9.5%, and to authorize a 2-lot subdivision (Appendix E). Any residents that may be affected by the proposal will have an opportunity to come forward with their comments through the public notification process. Staff recommend approval of the development permit with variance subject to public notification.

CONCLUSION

The applicant has requested a development permit with variance for the purpose of authorizing a 2-lot subdivision for a parcel split by a road. The proposed variance is to reduce the minimum frontage requirement for proposed Lot A from 10% to 9.5%. Since there will be minimal impact to the sensitive ecosystem development permit area, staff recommend approval of the development permit with variance subject to public notification. 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

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

That Development Permit with Variance DV000071 for Lot 2, District Lot 39, Malahat District, Plan 23012 to authorize a 2-lot subdivision in a Sensitive Ecosystems Development Permit Area, and to vary Juan de Fuca Land Use Bylaw No. 2040, Part 2, Section 3.10(4) by reducing the minimum road frontage requirement from 10% (79.9 m) to 9.5% (76.4 m) for the purpose of authorizing a 2-lot subdivision, be approved.

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: Subject Property Map

Appendix B: Proposed Subdivision Plan

Appendix C: Development Permit Guidelines

Appendix D: Environmental Assessment

Appendix E: Permit DV000071