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REPORT TO THE CAPITAL REGIONAL DISTRICT BOARD MEETING OF WEDNESDAY, OCTOBER 14, 2020

SUBJECT **Public Hearing Report on Bylaw No. 4316, “Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 147, 2019” and Bylaw No. 4317, “Otter Point Official Community Plan Bylaw No. 1, 2014, Amendment Bylaw No. 2, 2019”**

ISSUE SUMMARY

To receive the Reports of the Public Hearings held September 21, 2020, for proposed Bylaws No. 4316 and 4317, and to consider Bylaw Nos. 4316 and 4317 for third reading.

BACKGROUND

At its meeting of August 12, 2020, the Capital Regional District (CRD) Board gave first and second reading to Bylaw No. 4316, “Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 147, 2019” and Bylaw No. 4317, “Otter Point Official Community Plan Bylaw No. 1, 2014, Amendment Bylaw No. 2, 2019” and passed a resolution to delegate authority to the Regional Director to hold a public hearing with respect to Bylaw Nos. 4316 and 4317.

Bylaw No. 4316 (Appendix A) will amend Bylaw No. 2040, “Juan de Fuca Land Use Bylaw, 1992”, by deleting That Part of Section 17, Otter District, Lying East of Otter Point Road, Except Parcel C (DD43782I) And Except Parts in Plans 3054 And 17721 from the Rural A (A) zone, and adding to the Rural Residential 2 (RR-2) zone, for the purpose of permitting six rural residential parcels, and by deleting from the Rural A (A) zone, and adding to a new Industrial Sawmill (M-3) zone, for the purpose of permitting one parcel for an industrial sawmill operation.

Bylaw No. 4317 (Appendix B) will amend Bylaw No. 3819, “Otter Point Official Community Plan Bylaw No. 1, 2014, Amendment Bylaw No. 2, 2019” by adding portions of That Part of Section 17, Otter District, Lying East of Otter Point Road, Except Parcel C (DD43782I) And Except Parts in Plan 3054 And 17721 to the Watercourses and Wetlands Development Permit Area and to the Commercial & Industrial Development Permit Area for the purpose of designating portions of the property as Watercourses & Wetland Areas and Commercial & Industrial development permit areas.

On September 21, 2020, public hearings were held for Bylaw Nos. 4316 and 4317. There were five people in attendance at each of the hearings. Four members of the public stated concern regarding Bylaw No. 4316 relative to the sawmill’s hours of operation, noise levels, fire hazard and waste management measures, lighting, and impact on adjacent wells. Two written submissions were received regarding Bylaw No. 4316. The first submission stated non-support for the rezoning proposal. The second submission stated concern regarding the proposal’s impact on the King Creek watershed and support for protection and remediation of aquatic areas on the subject property. No written submissions or comments were received regarding Bylaw No. 4317. The Reports of the Public Hearing are attached (Appendices A and B).

ALTERNATIVES

Alternative 1

- a) That the minutes that form the Reports of the Public Hearing for Bylaw No. 4316, “Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 147, 2019” and Bylaw No. 4317, “Otter Point Official Community Plan Bylaw No. 1, 2014, Amendment Bylaw No. 2, 2019”, which are certified as a fair and accurate summary of the representations that were made at the public hearings held on September 21, 2020, for Bylaw Nos. 4316 and 4317, be received; and
- b) That Bylaw Nos. 4316 and 4317 be read a third time.
- c) That adoption of Bylaw Nos. 4316 and 4317 be withheld pending:
 - i. Confirmation from a Qualified Environmental Professional that the vegetative screening requirements in the M-3 zone and the recommendations for restoration of the riparian area outlined in the Conditions and Impacts report prepared by Corvidae Environmental Consulting Inc., dated February 2020, have been implemented;
 - ii. Registration of a covenant on title pursuant to Section 219 of the *Land Title Act* in favour of the CRD requiring that the fire protection works related to the sawmill operation, described in the letter from the Otter Point Volunteer Fire Department dated January 30, 2020, be installed and conveyed to CRD prior to subdivision or further building construction.

Alternative 2

That the minutes that form the Reports of the Public Hearing for Bylaw Nos. 4316 and 4317, which are certified as a fair and accurate summary of the representations that were made at the public hearings held on September 21, 2020 for Bylaw No. 4316, “Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 147, 2019” and Bylaw No. 4317, “Otter Point Official Community Plan Bylaw No. 1, 2014, Amendment Bylaw No. 2, 2019”, be received.

IMPLICATIONS

Legislative Implications

A site profile has been submitted to the Ministry of Environment & Climate Change Strategy (ENV) in accordance with the *Environmental Management Act* and *Contaminated Sites Regulation*. A regional district must not approve a development application with respect to a site where a site profile is required until such time a release is granted pursuant to Section 557 of the *Local Government Act (LGA)*. A release has been granted by the Ministry of Environment for rezoning, but further site investigation is required as part of subdivision approval.

The sawmill operation requires a Waste Discharge Authorization pursuant to the *Environmental Management Act* and a groundwater licence pursuant to the *Water Sustainability Act*. These approvals are issued by the Province and are not a precondition for rezoning.

Regional Growth Strategy Implications

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. Since the proposal includes an amendment to the Otter Point OCP, the bylaws were considered by the Planning and Protective Services Committee at its meeting of September 16, 2020. The CRD Board will consider the bylaws for a determination of consistency with the RGS prior to the bylaws being considered for adoption at its meeting of October 14, 2020.

The proposed OCP amendments update development permit area maps to designate additional parts of the subject property for protection of the natural environment and to establish objectives for the form and character of industrial development. Enhancing measures for protection of the natural environment is an objective of the Regional Growth Strategy.

Referral Process Implications

Bylaw Nos. 4316 and 4317 were referred to external agencies, the Otter Point Advisory Planning Commission, the Juan de Fuca (JdF) Electoral Area (EA) Parks and Recreation Advisory Commission and CRD departments in July 2019. Referral comments were returned and the CRD Board gave first and second readings to Bylaw Nos. 4316 and 4317 at its meeting on August 12, 2020.

Land Use Implications

Proposed Bylaw No. 4317 amends the Otter Point OCP by adding to the Watercourses and Wetland Areas DPA for protection of an unmapped watercourse, and adding to the Commercial and Industrial Areas DPA in order to establish objectives for the form and character of the proposed industrial development.

In consideration of an application for rezoning, Section 4.1.1(4) of the Otter Point OCP states that proposals should demonstrate that community values and features can be protected subject to an assessment of the suitability of the land for the proposed use, no depletion or contamination of groundwater, appropriate scale and rural character, demonstrated protection of sensitive features and land significant to the region or community, use of 'green' building techniques, and measures to mitigate impact of development. Further, Section 4.1.1(11) outlines considerations for mixed use development, including: form and character compatibility; adequate parking and traffic flow; protection and separation of residential areas.

Environmental constraints: As part of this application, an Environmental Assessment report was submitted by Corvidae Environmental Consulting. The report identifies the location of a watercourse on the property and recommends environmental protection measures. In response to recent unauthorized clearing within the riparian area, a Conditions and Impacts report was provided that proposed replanting native species in the riparian area. Staff recommend that a Qualified Environmental Professional (QEP) verify that this work is completed prior to adoption of the bylaws.

Water supply and sewage disposal: Section 5.6 of the Otter Point OCP states that the OCP designates 51% of the Plan area as Rural Lands to allow for low density development, that all subdivision applications must include proof of sufficient potable water from individual drilled wells as determined by a Qualified Professional, and that all development should protect groundwater sources and not deplete or contaminate existing wells. The proposed rezoning includes rural residential parcels that are located within the Settlement Area 2 land use designation. This designation is intended for rural residential development and supports industrial activity. Should the rezoning be approved, the new parcels will require proof of potable water in the amount of 1,400 litres per day per lot in accordance with Part 6, Section 6.02 of Bylaw No. 2040, as part of the subdivision process. Members of the public expressed concern that groundwater supplies are scarce in the area and that many wells run dry. To partially address this broader concern, the CRD recently installed a bulk drinking water station on Otter Point Road in Sooke. Additional measures to conserve groundwater could include incorporating rainwater capture systems in new buildings or installing storage tanks at the time of building construction. Finally, the proposed rezoning does not increase the density of residential development permitted by the existing Rural A zone.

The *Water Sustainability Act* requires non-domestic users of groundwater to obtain a licence; therefore, the sawmill operation will require a provincial water licence.

Island Health provided comment to state that subdivisions must comply with the *Drinking Water Protection Act/Regulation* and *Sewerage System Regulation*. These regulations pertain to domestic water supply systems and domestic sewage, and not to the industrial component of the proposed development. Discharge associated with the sawmill operation may require provincial authorization under the *Environmental Management Act*. The applicant has initiated the authorization process with the Province.

Scale of development: The subject property is designated as Settlement Area 2, which supports a desired average parcel area for residential development of one ha with a minimum parcel area of 0.8 ha. Proposed Bylaw No. 4316 rezones a portion of the property to the RR-2 zone, which allows an average lot size of one ha and permits residential, agricultural and home based business uses, with a density of one dwelling unit plus either a secondary suite or a detached accessory suite. This is in keeping with the OCP policies.

An economic development objective of the Otter Point OCP supports accommodating limited industrial and commercial development with a focus on the Sooke Business Park. The subject property is in the vicinity of the Sooke Business Park and the sawmill use predates CRD zoning bylaws.

Protection of natural features: Proposed Bylaw No. 4317 will add the unmapped watercourse to the Riparian development permit area and require that any future encroachment within this area be authorized by permit. The reports prepared by Corvidae Environmental Consulting Inc. outline recommendations to protect or restore natural features on the site. Due to the historical industrial use, there is a contaminated sites review underway. The Ministry of Environment, which is the authority having jurisdiction, has granted a release for rezoning; however, subdivision approval will be withheld until a final determination is made.

Access to the proposed sawmill operation is across the watercourse at the eastern edge of the property on the existing Tenbury Road allowance. Industrial access and road dedication will be determined by TRAN and secured at time of subdivision. Works in and about a stream require provincial notification under Section 11 of the *Water Sustainability Act*. A development permit will be required as part of subdivision.

Adequate setbacks and vegetated buffers: Proposed Bylaw No. 4316 includes requirements to implement natural vegetative buffers to screen the proposed industrial use from adjacent roads and rural residential properties. Staff recommend that a Qualified Professional confirm these buffers are implemented prior to adoption of the proposed bylaws.

Protection of land considered regionally or locally significant: Section 5.1(15) of the Otter Point OCP identifies high potential park and trail opportunities including a desire to establish an inter-connected network of trails through the Plan area. The JdF Community Parks division currently holds a Licence of Occupation over the Weiland Road right-of-way for future construction of a multi-use trail extending from William Simmons Memorial Park to Kemp Lake Road, but the right of way terminates at the subject property. The JdF EA PRAC recommended establishment of a trail for continuation of Weiland Road. TRAN has requested dedication of Weiland Road along the southern portion of the property, which would allow the network to be completed.

Subdivisions that create three or more lots, where the smallest lot is less than 2 ha in size, are required to provide park dedication pursuant to Section 510 of the *LGA*. Future consideration of statutory park dedication would occur as part of the subdivision process should the rezoning be supported.

Use of 'green' building techniques: Bylaw No. 4317 designates part of the property as a Commercial and Industrial DPA to regulate form and character in accordance with the DP guidelines. A development permit will be required for construction of any sawmill buildings or structures. The CRD Building Inspection Division advises that a Registered Professional will be required to be involved in certain aspects of the construction and that the applicant is advised to work with the CRD to resolve any outstanding building permits. The Commercial and Industrial Development Permit Guidelines include the desire for ground-oriented lighting in order to limit light-pollution and maintain dark skies in rural areas.

Works, services or community benefits to mitigate the impact of development: The need for fire protection measures was raised during the referral process. The Otter Point Volunteer Fire Department has proposed that the applicant install water supply in the form of tanks (60,000 ga)

to aid fire protection for the industrial sawmill use and the community. Staff recommend a covenant be registered on the title of the property that requires the installation of the works by the applicant and access to the system by the fire department prior to subdivision or further building construction.

Concerns were raised at the APC meeting regarding noise and nuisances from the existing sawmill operation and increased intensity of the proposed uses. Concerns with increased traffic were also raised at the APC resulting from the number of employees and commercial trucks. CRD Bylaw Enforcement has noted that nuisance-related complaints are likely to increase with an expansion of the sawmill operation in close proximity to residences. However, the applicant's planned upgrades include moving the sawmill indoors and switching from combustion engine saws to electric saws. These measures are anticipated to reduce the disturbance generated by noise. The Noise Bylaw for the Juan de Fuca Electoral Area restricts the unloading of vehicles and construction noise to between the hours of 7:00 am and 7:00 pm. The applicant has indicated that the hours of operation at the mill are between 8:00 am and 4:00 pm on weekdays with activity generally limited to wood sales on Saturday. Long-term compliance with the zone regulations would be determined by CRD Bylaw Enforcement on a complaint-driven basis.

CONCLUSION

Public hearings were held on September 21, 2020, for Bylaw No. 4316 "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 138, 2018" and Bylaw No. 4317. The minutes are attached as the Reports of the Public Hearing.

There were five people in attendance at each of the hearings. Four members of the public stated concern regarding Bylaw No. 4316 relative to the sawmill's hours of operation, noise levels, fire hazard management measures, lighting, and impact on adjacent wells. Two written submissions were received regarding Bylaw No. 4316. The first submission stated non-support for the rezoning proposal. The second submission stated concern regarding the proposal's impact on the King Creek watershed and support for protection and remediation of aquatic areas on the subject property. No written submissions or comments were received regarding Bylaw No. 4317.

Staff recommend Alternative 1 to receive the minutes and for the proposed bylaws to be given third reading and that adoption of the bylaws be withheld subject to confirmation from a Qualified Environmental Professional that screening and restoration measures are implemented and subject to registration of a covenant requiring fire protection works prior to subdivision or further building construction.

RECOMMENDATIONS

- a) That the minutes that form the Reports of the Public Hearing for Bylaw No. 4316, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 147, 2019" and Bylaw No. 4317, "Otter Point Official Community Plan Bylaw No. 1, 2014, Amendment Bylaw No. 2, 2019", which are certified as a fair and accurate summary of the representations that were made at the public hearings held on September 21, 2020, for Bylaw Nos. 4316 and 4317, be received; and
- b) That Bylaw Nos. 4316 and 4317 be read a third time.
- c) That adoption of Bylaw Nos. 4316 and 4317 be withheld pending:
 - i. Confirmation from a Qualified Environmental Professional that the vegetative screening requirements in the M-3 zone and the recommendations for restoration of the riparian area outlined in the Conditions and Impacts report prepared by Corvidae Environmental Consulting Inc., dated February 2020, have been implemented;
 - ii. Registration of a covenant on title pursuant to Section 219 of the *Land Title Act* in favour of the CRD requiring that the fire protection works related to the sawmill operation, described in the letter from the Otter Point Volunteer Fire Department dated January 30, 2020, be installed and conveyed to CRD prior to subdivision or further building construction.

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: Proposed Bylaw No. 4316

Appendix B: Proposed Bylaw No. 4317

Appendix C: Reports of the Public Hearing September 21, 2020