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## REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE MEETING OF TUESDAY, NOVEMBER 16, 2021

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**SUBJECT**      **Zoning Amendment Application for Section 42, Otter District, Clark Road & Aythre Way (PID: 009-497-790)**

### **ISSUE SUMMARY**

The owner has applied to rezone a portion of the subject property to permit two dwelling units, agriculture, and an equestrian riding facility with an ancillary campground.

### **BACKGROUND**

The approximately 55 hectare (ha) subject property is located on Clark Road and Aythre Way in Otter Point (Appendix A). The property is designated as Rural Land in the Otter Point Official Community Plan (OCP), Bylaw No. 3891, and is zoned Forestry (AF) in the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 (Appendix B). The parcel is within the Otter Point Fire Protection Service Area and outside a community water service area. Portions of the property are designated as steep slope, sensitive ecosystems and watercourses and wetlands development permit areas in Bylaw No. 3819.

There is a single-family dwelling being constructed on the property under an active development permit (DP000291), and the land is the subject of an 8-lot subdivision application (SU000704) (Appendix C). The CRD Board recently provided a statement of concurrence for the location of a radio communication tower on a portion of the subject property (LP000021) as part of a provincially funded project being undertaken by Rogers Communications to expand cellular service from Sooke to Port Renfrew.

The owner has submitted an application to rezone an 11 ha portion of the property, proposed as Lot 2 in the subdivision application, to permit agriculture, an equestrian riding facility with ancillary campground, and a residential density of one one-family dwelling and one suite per 4 ha (Appendix D). Staff have prepared Bylaw No. 4422 for consideration (Appendix E).

At its meeting of June 15, 2021, the Juan de Fuca Land Use Committee recommended referral of the proposed bylaw to the Otter Point Advisory Planning Commission (APC), CRD departments, BC Hydro, District of Sooke, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR) Archaeology Branch and Water Protection Section, Island Health, Ministry of Agriculture, Ministry of Transportation & Infrastructure, Otter Point Fire Department, RCMP, Sooke School District #62, Sc'ianew and T'Sou-ke First Nations. Comments have been received and are included in Appendix F.

### **ALTERNATIVES**

#### *Alternative 1*

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

1. That the referral of proposed Bylaw No. 4422, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 152, 2021" directed by the Juan de Fuca Land Use Committee to the Otter Point Advisory Planning Commission; appropriate CRD departments; BC Hydro; District of Sooke; Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR) Archaeology Branch, Ecosystems Branch and Water Protection Section; Island Health; Ministry of Agriculture; Ministry of Transportation & Infrastructure; Otter Point Fire Department; RCMP; Sooke School District #62; and Sc'ianew and T'Sou-ke First Nations be

approved and the comments received;

2. That proposed Bylaw No. 4422, “Juan de Fuca Land Use Bylaw No, 1992, Amendment Bylaw No. 152, 2021” be introduced and read a first time and read a second time;
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 4422; and
4. That prior to adoption of proposed Bylaw No. 4422, the following conditions be met:
  - a. Submission of a Section 11 Approval under the *Water Sustainability Act* for Changes In or About a Stream and/or a Conditions & Impacts Report prepared by a Qualified Environmental Professional, as well as completion of any recommended restoration measures to the satisfaction of the Province and the CRD;
  - b. Approval of a frontage variance and development permit to authorize the subdivision of Section 42, Otter District.

#### *Alternative 2*

That the CRD Board not proceed with proposed Bylaw No. 4422.

#### *Alternative 3*

That the proposed Bylaw be referred back to staff more information based on Committee direction.

### **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 related to Part 14 of the *Local Government Act (LGA)*. The Otter Point APC considered the application at its meeting on July 6, 2021.

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.

A water licence is required for non-domestic groundwater use pursuant to the *Water Sustainability Act*. This approval is issued by the Province and is not a precondition for rezoning.

#### *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 Otter Point OCP area is consistent with the OCP, it does not proceed to the full CRD Board for a determination of consistency with the RGS. The proposed zoning amendment is consistent with the policies of the Otter Point OCP.

#### *Referral Comments*

Referrals were sent to 13 agencies, to CRD departments and to the Otter Point APC. Comments received are summarized below and included in Appendix F.

BC Hydro stated no issue as there is no right of way involved.

CRD Building Inspection will require building permits and approvals prior to the construction of any buildings or structures.

CRD Bylaw Enforcement recommended increased clarity regarding the regulations for campsite uses and densities, and that campsites have potential to result in nuisance complaints to CRD.

District of Sooke stated interests unaffected.

Island Health stated no objection provided the applicant complies with the *Drinking Water Protection Act/Regulation* and *Sewerage System Regulation*.

Ministry of Agriculture indicated support for the proposal provided that agriculture is permitted.

Ministry of Forests, Lands, Natural Resources and Rural Development (FLNR) provided the following comments:

Archaeology Branch provided information about the requirements to protect archaeological sites under the *Heritage Conservation Act*.

Ecosystems Branch commented that the *Riparian Areas Protection Regulation* applies to watercourses on the property and that a Conditions and Impacts report prepared by a Qualified Environmental Professional (QEP) should be completed that provides measures on how the Streamside Protection and Enhancement Areas will be protected from encroachment to facilitate the re-establishment of riparian vegetation in areas cleared during past forest harvesting activities. Stream crossings require approval under the *Water Sustainability Act*.

Water Protection Section provided the following information:

- Aquifer 606, the primary source of water for the subject property, has very low productivity and available water to provide for the proposed development is likely to be limited.
- A water licence is required under the *Water Sustainability Act* for non-domestic water use.
- As Aquifer 606 is highly vulnerable to contaminants, sources of nutrient and bacterial contamination such as animal grazing areas, paddocks and locations of manure storage, should be set back at least 30 m from wells and surface water sources in accordance with the *Public Health Act* and *Health Hazard Regulation*, as well as the Code of Practice for Agricultural Environmental Management.
- Development plans should clearly map and identify all water courses and the applicants should be advised of regulatory requirements affecting the development, including access over and setbacks to watercourses.

Ministry of Transportation & Infrastructure stated no objection.

Otter Point Fire Department provided comment advising that Covenant CA6074834 requires installation of a 14,000 imperial gallon tank for water storage dedicated for firefighting purposes, and that access to all buildings be constructed and maintained for firefighting purposes.

RCMP stated no comment.

Sooke School District #62 stated no concern.

The Otter Point APC met on July 6, 2021, to consider the application. Ten members of the public were in attendance. One letter of support and six letters in opposition to the proposal were received. The Otter Point APC moved the following motion:

**MOVED** by Sid Jorna, **SECONDED** by Anne Miller that the Otter Point Advisory Planning Commission report to the Juan de Fuca Land Use Committee that it recommends:

- closer review of the Agriculture 2 Zone (AG-2) to limit impact of equestrian and campsite uses
- closer review of the Agriculture 2 Zone (AG-2) to review the scope of agricultural use
- more information on the community's hydrology

**CARRIED**

### **LAND USE IMPLICATIONS**

The Otter Point OCP, Bylaw No. 3819, designates the subject property as Rural Lands. The primary use for the Rural Lands policy area is to protect renewable resources such as agriculture and forestry. OCP policies are supportive of development proposals where the development has minimal impact on existing features, surface runoff is controlled, depletion and contamination of wells is prevented, and vegetation is retained. In consideration of an application for rezoning, community support is more likely where it can be demonstrated that community values and features can be protected as outlined in section 4.2.1(6) of the Otter Point OCP.

The property is zoned AF in Bylaw No. 2040, which permits silviculture, residential and ancillary uses (Appendix B). The applicant is requesting rezoning of an 11 ha portion of the property, proposed as Lot 2 in a concurrent subdivision application to permit, silviculture, agriculture, an equestrian riding facility and ancillary campground, and a residential density of one dwelling and suite per 4 ha of land (Appendix D). Staff have drafted a new Agriculture 2 (AG-2) zone to reflect the applicant's proposal. Proposed Bylaw No. 4422 is included as Appendix E for consideration and has been revised to more clearly regulate the equestrian and campground uses and densities.

A new definition for *equestrian facility* is proposed as follows:

EQUESTRIAN RIDING FACILITY means the use of land, buildings and structures to keep, breed, raise, train and ride horses, and may include ancillary boarding stables, riding lessons, tours, veterinary clinic and animal hospital; excludes racetracks and events that must be licenced by the BC Racing Commission, competitions, fairs and festivals.

The proposed AG-2 zone proposes a 10 ha minimum parcel size for subdivision and a residential density of one dwelling plus a secondary suite or detached accessory suite per 4 ha of land, which is consistent with the Rural Lands designation and the density permitted under the existing AF zone. A floor area ratio of 0.0085 is proposed for all buildings used for agriculture, farming and equestrian riding facilities, which equates to approximately 935 m<sup>2</sup> on 11 ha of land.

The applicant proposes that camping spaces be permitted for temporary accommodation of the travelling public in conjunction with the other permitted uses outlined in the AG-2 zone, and particularly the equestrian facility. The Rural Lands designation does not explicitly support commercial tourist accommodation, so consideration of such use would need to be of a minor scale and ancillary to the primary renewable resource function of the land in order to be consistent with the OCP policy direction. Bylaw No. 4422 includes a proposed density of one camping space per 2 ha as an accessory use. A total of five camping spaces would be permitted in the 11 ha area.

Land clearing within riparian areas was conducted by previous property owners in contravention of Development Permit DP000176 (Reference File: DP-29-11). Staff have requested a Conditions and Impacts report prepared by a QEP from the present owner; however, Provincial staff have advised that an approval under Section 11 of the *Water Sustainability Act* for Changes In and About a Stream may also be required. Staff recommend that any remediation measures recommended by the QEP or specified in a Section 11 approval be completed prior to adoption of the Bylaw. Future development and land alteration, including subdivision works, in designated

development permit areas will require a development permit and relevant professional reports including a *Riparian Areas Protection Regulation* (RAPR) report.

Referral comments indicate concern for lack of information about existing watercourses on the property and availability of water to support the proposed development. The applicant has provided a preliminary report prepared by a Qualified Professional Hydrogeologist that provides an outline of the hydrogeological setting, a review of existing water wells and groundwater quality, and well locations for the proposed subdivision (Appendix G). A licence will be required for non-domestic groundwater use that will involve additional hydrogeological review by provincial staff. This analysis is not a precondition for zoning and would be required at such time as the use is undertaken.

APC discussion included consideration of public trails to support the proposed equestrian riding facility use and the equestrian community generally. Policies in the Otter Point OCP express interest in additional trail networks throughout the community and state that applications for rezoning are more likely to be supported where it can be demonstrated that community values and features can be protected as an amenity. The subject property has historically been a gateway for the public to access trail networks on Crown and resource lands. Areas of Crown Land that transect the subject property to the north and that are located between the property and Otter Point Road to the south, could offer opportunity to expand trail connectivity; however, applications to the Province would need to consider First Nations' territorial interests and ongoing treaty processes.

Should the rezoning of proposed Lot 2 be supported, staff recommend that the AG-2 zone boundary be aligned with the final parcel boundaries of the proposed subdivision so that no split-zoned parcels will be created. Therefore, staff recommend that adoption of the rezoning be withheld pending issuance of a frontage variance and development permit to authorize subdivision.

Based on the information provided by the applicant, the policies of the Otter Point OCP, and referral comments, staff have revised the proposed Bylaw No. 4422 and recommend that the CRD Board consider first and second reading of the bylaw and direct that a public hearing be held.

## **CONCLUSION**

The purpose of this zoning bylaw amendment application is to rezone an 11 ha portion of the subject property from Forestry (AF) to a new Agricultural 2 (AG-2) zone to permit agriculture, an equestrian riding facility with an ancillary campground, and two dwelling units with up to either two secondary suites or two detached accessory suites. Staff have prepared proposed Bylaw No. 4422 and recommend receipt of referral comments from the Otter Point Advisory Planning Commission, First Nations, CRD departments and agencies; that the Board consider first and second reading of proposed Bylaw No. 4422; and that the Bylaw proceed to public hearing. Final adoption of the Bylaw should be withheld pending submission of a Conditions & Impacts Report and completion of any recommended restoration measures, and approval of a development permit with variance to authorize the subdivision.

## **RECOMMENDATION**

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

1. That the referral of proposed Bylaw No. 4422, “Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 152, 2021” directed by the Juan de Fuca Land Use Committee to the Otter Point Advisory Planning Commission; appropriate CRD departments; BC Hydro; District of Sooke; Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR) Archaeology Branch, Ecosystems Branch and Water Protection Section; Island Health; Ministry of Agriculture; Ministry of Transportation & Infrastructure; Otter Point Fire Department; RCMP; Sooke School District #62; and Sc’ianew and T’Sou-ke First Nations be approved and the comments received;
2. That proposed Bylaw No. 4422, “Juan de Fuca Land Use Bylaw No, 1992, Amendment Bylaw No. 152, 2021” be introduced and read a first time and read a second time;
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  - b. Approval of a frontage variance and development permit to authorize the subdivision of Section 42, Otter District.

Submitted by:	Iain Lawrence, RPP, MCIP, Manager, Juan de Fuca Community Planning
Concurrence:	Kevin Lorette, P.Eng., MBA, General Manager, Planning & Protective Services
Concurrence:	Robert Lapham, RPP, MCIP, Chief Administrative Officer

## **ATTACHMENTS**

- Appendix A: Subject Property  
Appendix B: Forestry AF Zone  
Appendix C: Subdivision Plan  
Appendix D: Proposed Development  
Appendix E: Bylaw No. 4422  
Appendix F: Referral Comments  
Appendix G: Hydrogeology Report