
**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, NOVEMBER 13, 2007**

SUBJECT

MALAHAT OFFICIAL COMMUNITY PLAN AND REZONING AMENDMENT APPLICATION Z-07-07

PURPOSE

That the Land Use Committee consider an application to amend the Official Community Plan (OCP) for the Malahat (Bylaw No. 3228) and the Langford Electoral Area Zoning Bylaw (Bylaw No. 980) to re-designate and rezone the subject property, Lot 5, District Lot 45, Malahat District, Plan 30892 to permit a four-lot subdivision to legalize three non-conforming buildings.

BACKGROUND

The subject property is located on the Malahat, between the Trans Canada Highway and Finlayson Arm, on Aspen Road. The applicants property is 4.9 ha (12.2 acres) and is currently designated as Greenbelt 3 (GB3) zone. The applicant requests to be included within the settlement containment area of the Official Community Plan and re-designate the property to Settlement Residential 2 (SR-2) in the draft Malahat zoning bylaw, to allow a subdivision that would permit the three existing legal nonconforming residences on the property to conform to the zoning bylaw.

The GB3 zone permits only one single-family dwelling per lot and minimum lot size of 2 ha (4.9 acres). Originally, four dwellings were constructed on the property in the 1960s. Each was constructed prior to the adoption of the Langford Electoral Area Zoning Bylaw (Bylaw No. 980) in 1981. Since the adoption of the zoning bylaw, one of the dwellings has been destroyed by fire. The remaining three have been lived in continuously since the time of construction.

The applicants are aware of the draft Malahat Zoning bylaw that is currently being worked on by staff. The applicants would like to apply for the zone identified as Settlement Residential 2 (SR-2).

PLANNING ANALYSIS

As a legal non-conforming use, the three houses may remain on the property as long as the use is not discontinued for a period of 6 months, but they may not be rebuilt under circumstances of demolition or damage by natural events. Section 911 (8) of the *Local Government Act* states that if a structure or use is damaged or destroyed to the extent of 75% or more "of its value above its foundations it must not be repaired or reconstructed, except for a conforming use with accordance with the bylaw."

In the current GB3 zone, the applicant is not able to subdivide the property, as the minimum property size is 12 ha (29.6 acres). In the proposed Malahat zoning bylaw, which has not yet gone to first reading, the property was proposed to be zoned as the Rural Settlement (RS) zone. The minimum parcel size in the zoning is 4 ha (9.8 acres), and would only permit one dwelling per lot. In the proposed zoning bylaw the applicant would still not be able to subdivide the property. Rezoning of the property from GB3 to SR-2 would allow the three existing buildings to conform to the zoning bylaw as the lot size permitted is 1.0 ha (2.47 acres) as well as permit an additional lot for the owner of the dwelling that was lost due to a fire. In order to re-zone the property for SR-2, the Malahat Official Community Plan would also have to be amended to expand the settlement containment area.

The above mentioned property is adjacent to the existing settlement containment area boundary which could be expanded to maintain a contiguous boundary. The property is also adjacent to other properties proposed to be zoned SR-2, that are within the settlement area boundaries.

Prior to subdivision, the applicant will also be required to comply with other requirements under the *Local Government Act*. For subdivisions of 3 lots or more, a parkland dedication of 5% is required. The dedication may either be in land or money equal to the market value of the land. The applicant will also require approval from the Ministry of Transportation to ensure that the existing cul de sac on the property, which would be the roadway dedication, is appropriate to their roadway standards. The property also has a protected riparian area, under Development Permit Area No. 2 – Foreshore, Wetlands and Riparian Areas in the Malahat Official Community Plan. Prior to subdivision, the applicant will also need to apply for a development permit and hire a professional biologist to assess the riparian area.

ALTERNATIVES

1. Proceed with referral of the application and proposed bylaw amendments to the Malahat Official Community Plan and the Langford Electoral Area Zoning Bylaw to agencies for comment.
2. Deny the application and do not proceed with the referral.
3. Refer the application back to staff to be considered as part of the overall zoning bylaw review.

LEGISLATIVE IMPLICATIONS

Pursuant to Section 879 of the *Local Government Act*, an amendment to an Official Community Plan 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 Official Community Plan. Generally, the decision on which bodies are consulted must be recommended to the Board by the Committee and occur at the time the application is considered for approval and introduced as a proposed amendment bylaw at first reading. However, through Bylaw No. 3166 – A Bylaw to Establish the Juan de Fuca Land Use Committee, the Board delegated the authority under Section 879 to the Land Use Committee.

Specific consideration must be given to referring the proposed amendment to the 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 881 of the *Local Government Act*, a proposed amendment to an Official Community Plan must also be referred to the School District. Where an amendment or new land use and subdivision bylaw will apply to land within 500 metres of a controlled access highway, the bylaw must be referred to the Ministry of Transportation for approval. The presence of the stream on the property necessitate that the application be referred to DFO and the Ministry of the Environment for comment. BC Hydro will also be asked for comment as the land is subject to a BC Hydro right-of-way.

Consultation under the above noted sections of the *Local Government Act* must occur prior to the requirement under Section 882 (3) (d) to hold a public hearing as part of the amendment process.

PUBLIC CONSULTATION IMPLICATIONS

The CRD's Bylaw No. 3110, Fees and Procedures Bylaw, states that the Board at any time may refer an application to an agency or organization for their comment. However, despite the decision of the Board to refer or not refer an application to an agency or organization for their comment, the referral requirements as set out in the *Local Government Act* must be met for the bylaw to be valid.

The Malahat Advisory Planning Commission is an elected body that is established to make recommendations to the Land Use Committee on land use planning matters referred to them relating to Part 26 of the *Local Government Act* in the Malahat area. Therefore, based on the established purpose of these Committees, it would be advisable to refer applications or amendments to Official Community

Plans to these bodies. Advisory Planning Commissions typically receive applications prior to consideration by Committees as their role is to provide advisory recommendations.

If the application proceeds, a public hearing will be required subsequent to the amendments passing second reading by the Capital Regional District Board which will be advertised in the local paper and on the website. Properties within 500 m of the subject property will be sent a notice of the proposed bylaw amendments.

REGIONAL GROWTH STRATEGY IMPLICATIONS

In the evaluation of Official Community Plan and zoning amendments consideration must be given to the Capital Regional District's Regional Growth Strategy policy. The application will be referred to the CRD Regional Planning for comment on possible implications.

SUMMARY/CONCLUSIONS

The applicant has applied for an amendment to the Malahat Official Community Plan (Bylaw No. 3228) and the Langford Electoral Area Zoning Bylaw (Bylaw No. 980). The applicant is proposing the creation of a zone to permit a 4-lot subdivision to allow three existing legal non conforming structures on the property to become conforming uses, as well as permit the creation of an additional lot. As legal non-conforming uses, the structures may exist on the property as long as they are in use, but may not be rebuilt if they are damaged or destroyed.

The proposal to subdivide the property requires an expansion of the settlement containment area, and a rezoning from Greenbelt 3 (GB3) to a proposed zone entitled Settlement Residential 2 (SR-2). The property is contiguous with both the boundary to the settlement containment area, and the proposed SR-2 zone in the draft of the Malahat zoning bylaw however the draft zoning bylaw currently proposes that the property be zoned Rural Settlement (RS) zone which would not permit any further subdivision. Staff recommends that the Committee consider referring the proposal to public agencies for comment.

RECOMMENDATION

That the Land Use Committee recommend that staff be directed to refer the November 13, 2007 staff report to the following agencies for comment:

Ministry of the Environment
Malahat Advisory Planning Commission
Department of Fisheries and Oceans
Ministry of Highways
Malahat First Nation
School District #62

Malahat Fire Department
CRD Regional Planning Division
BC Hydro
JDF EA Park's Commission
RCMP
Cowichan Valley Regional District
District of Langford

Kris Nichols, MCIP
Manager Local Area Planning

Robert Lapham, MCIP
General Manager,
Planning & Protective Services
Concurrence

Attachments:

1. Proposed Zone
2. Location
3. Site Plan

Excerpt taken from Draft Malahat Zoning Bylaw

Settlement Residential 2 (SR-2)

Except as otherwise permitted in this bylaw, lot averaging is prohibited in all zones.

Permitted Uses

1. The following uses and no others are permitted in an SR-2 zone:

- (a) Dwelling Unit.

Permitted accessory uses and buildings on any parcel include the following:

- (b) Home-based business;
- (c) Bed and Breakfast;
- (d) Secondary suite; and
- (e) Accessory buildings and structures ancillary to a permitted use.

Regulations

2. On a parcel of land located in an SR-2 zone:

Minimum Parcel Size for Subdivision purposes:

- (a) The minimum parcel size is 1 Ha. (2.47 acres);
- (b) For Section 946(4) of the *Local Government Act* purposes, the minimum parcel size is 1 Ha. (2.47 acres).

Density Provisions

- (c) One of the following types of dwelling units is allowed on a parcel of land:
 - (i) One (1) dwelling unit; or
 - (i) One (1) two-household dwelling unit.

Height

- (d) No principal building or structure shall exceed 11 metres (36 ft.) in height.

Setbacks

- (e) Except as otherwise specifically permitted in this bylaw, no building or structure shall be located within:
 - (i) 7.5 metres (24.6 ft.) of a front parcel line;
 - (ii) 7.5 metres (24.6 ft.) of a side parcel line; and
 - (ii) 10 metres (32.8 ft.) of a rear parcel line.

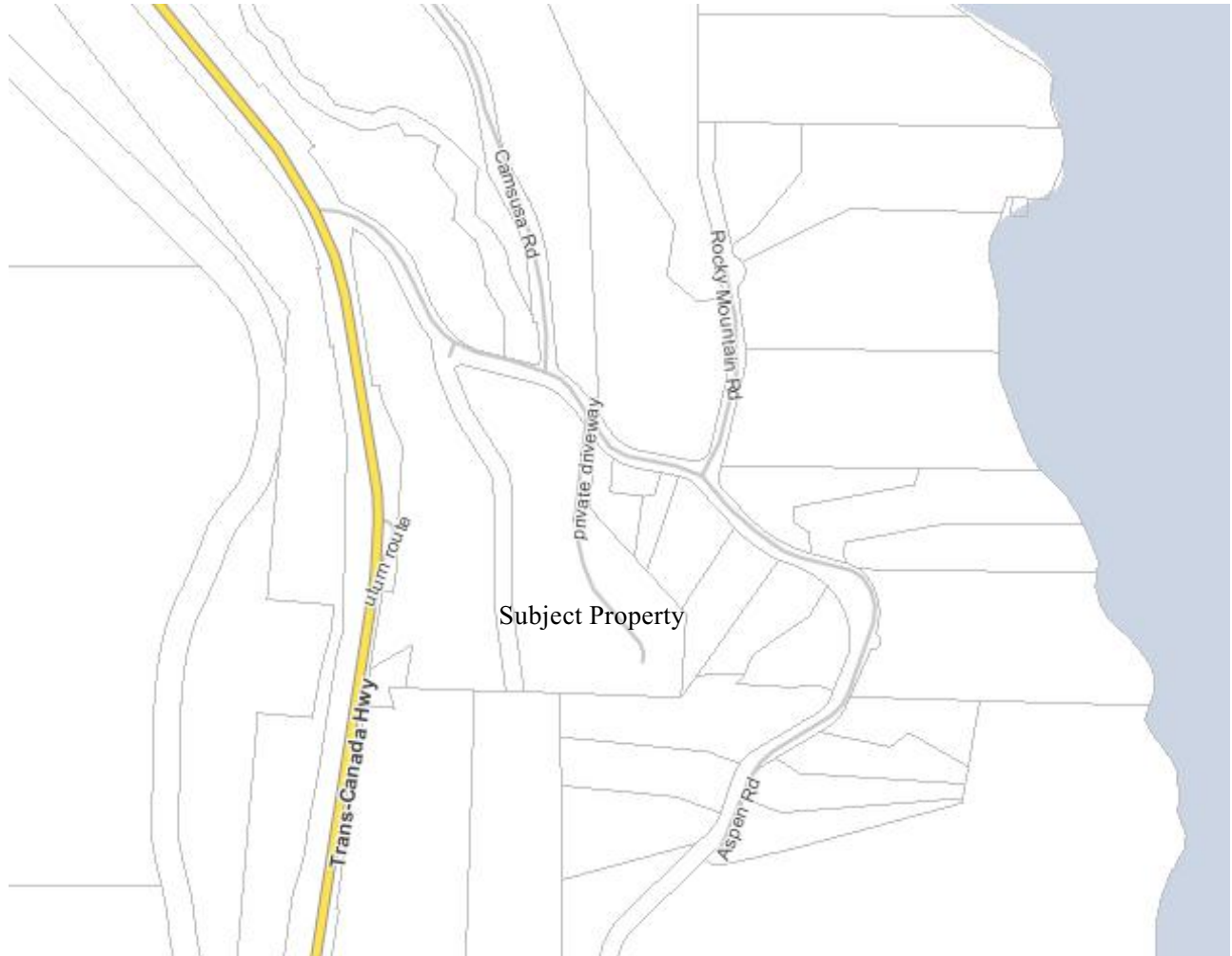
Parcel Area Coverage

- (f) The maximum permitted coverage of all buildings and structures on any parcel shall not exceed twenty-five percent (25%)

Additional Requirements

- (g) Refer to Part xx, General Land Use Zoning Regulations for provisions that apply to all zones.

Attachment 2: Location



Attachment 3: Site Plan

