



**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, SEPTEMBER 18, 2012**

**SUBJECT DEVELOPMENT VARIANCE PERMIT FOR LOT 3, SECTION 130 AND 131,
 SOOKE DISTRICT, PLAN VIP73608 EXCEPT THAT PART IN PLAN VIP76869**

ISSUE

The purpose of this report is to consider a development variance permit application to vary Part 1, Section 3.10(4)(a) of the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 to relax the requirement that the minimum frontage of a lot shall be one-tenth of the perimeter of the lot that fronts on the highway.

BACKGROUND

The subject property is located at 706 Cains Way in East Sooke (Appendix 1). The property is approximately 9.8 ha in size and is designated as Settlement Area in the East Sooke Official Community Plan Bylaw No. 3353. The desired parcel size for residential development in the Settlement Area should consist of parcels greater than 2 ha. The property is zoned Rural Residential 6 (RR-6) which has a minimum lot size for subdivision purposes of 1 ha.

The property is designated a Steep Slopes, Sensitive Ecosystem and Watercourses, Wetlands and Riparian development permit areas; however, the proposed subdivision is outside the Steep Slopes and Sensitive Ecosystems development permit areas and therefore a development permit is not required. While the subdivision boundary does bisect the Watercourses, Wetlands and Riparian development permit area, the area is protected by a conservation covenant (EW47311) which already protects the area from development. Therefore, a Watercourses, Wetlands and Riparian development permit is not required.

The property is located in the Wilderness Mountain water service area and includes the Wilfred reservoir, a small man-made lake that is the primary water source for the CRD Wilderness Mountain water service. The Capital Regional District (CRD) holds a water license for this purpose, owns two dams, a pump house and related works under a statutory right-of-way, and jointly holds a conservation covenant (EW47311 & EW47312) on the land with the Habitat Acquisition Trust (HAT) and The Land Conservancy (TLC). The covenants preclude subdivision without the consent of the covenant holders.

A previous application on this property to create a two-lot subdivision (S-14-05) was submitted; however, a development variance permit to relax the 10% minimum frontage requirement was denied in 2006. The current development variance permit application is required in support of a more recent subdivision application (S-07-10).

The applicant initially proposed to subdivide the property into three parcels, including two 1 ha parcels and the 7.8 ha remainder which included the Wilfred reservoir and most of its tributary area and all of the CRD Integrated Water Services assets. The applicant had proposed to donate the remainder to the CRD. However, the applicant has revised his subdivision plan and is proposing a boundary adjustment with the adjacent parcel Lot C, Section 130, Sooke District, Plan VIP76869 (Appendix 2).

Existing Lot C, Section 130, Sooke District, Plan VIP76869 was granted a waiver of the 10% minimum road frontage requirement on a highway as part of the subdivision process (S-23-03).

Existing Lot 3 does not comply with Part 1, Section 3.10(4)(a) of the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 and does not meet the 10% minimum frontage requirement. Although there are no changes proposed to the road frontage of Lot 3, the proposed boundary

adjustment will result in a minor increase the perimeter of Lot 3 thereby increasing the frontage deficiency. Therefore, as part of the applicant's subdivision approval, any lot not meeting the 10% minimum frontage requirement must receive approval from the local government pursuant to Section 944 of the *Local Government Act*, and in this case, a development variance permit as the 10% minimum frontage is required by Bylaw 2040.

In those situations where a relaxation is acceptable to the local government, the Provincial Approving Officer (Ministry of Transportation and Infrastructure) must be advised of the approval before the subdivision can be approved. In evaluating whether an exemption is justified, the following technical criteria are normally considered:

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

ALTERNATIVES

- 1) Approve the development variance permit to relax the 10% frontage requirement;
- 2) Deny the development variance permit.

PLANNING ANALYSIS

As noted the proposed subdivision will alter the lot boundaries between Lot C and the Lot 3 and does not affect the frontage or access to either parcel. Therefore, the evaluation criteria do not apply. A variance is required simply as a result of the minor increase to the perimeter of Lot 3.

Should the covenant holders support the proposed subdivision, the title for parcel receiving the additional lands (Lot C) will continue to be subject to the conservation covenants to protect the watershed.

The subdivision is a boundary adjustment between Lot 3 and Lot C, and does not create any new lots; does not result in a change to access or frontage for either existing parcel; and will maintain the existing conservation covenants to protect the watershed. As the proposed subdivision affects internal lot boundaries only and will not impact adjacent neighbours or affect the watershed, staff recommends approval of the development variance permit subject to public notification and consideration of comments received from neighboring property owners by the Land Use Committee.

LEGISLATIVE IMPLICATIONS

In addition to the requirement to meet the 10% frontage requirement in Bylaw 2040, Section 944 of the *Local Government Act*, 'Parcel frontage on Highway' states that where a lot fronts on a road or highway, the minimum frontage on a road must be the greater of either 10% of the perimeter of the lot or the minimum frontage that the local government may provide by bylaw. A local government may exempt specific parcels from this statutory (or bylaw) minimum frontage requirement. In addition, a local government may delegate these powers to an Approving Officer. The CRD Board has not delegated its powers to the Provincial Approving Officer and,

therefore, the applicant must receive an exemption from the requirements of Section 944 before the proposed subdivision can be considered for approval.

PUBLIC CONSULTATION IMPLICATIONS

Pursuant to the *Local Government Act*, Section 922(4), 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. CRD Bylaw No. 3110, Fees and Procedures Bylaw, states that the CRD 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 adjacent property owners within a distance of not more than 500 m. Any responses received from the public will be presented at the Land Use Committee meeting on September 18, 2012.

CONCLUSION

As noted the proposed subdivision will alter the lot boundaries between Lot C and the Lot 3 and does not affect the frontage or access to either parcel. Further the proposed subdivision does not create any new lots and will maintain the existing conservation covenants to protect the watershed. Therefore, staff recommends approval of the development variance permit subject to public notification and consideration of comments received from neighboring property owners by the Land Use Committee

RECOMMENDATION

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

1. That the Development Variance Permit (VAR-05-10) for Lot 3, Sections 130 and 131, Sooke District, Plan VIP73608 except that part in Plan VIP76869, to relax the requirement for one tenth perimeter frontage, be approved.

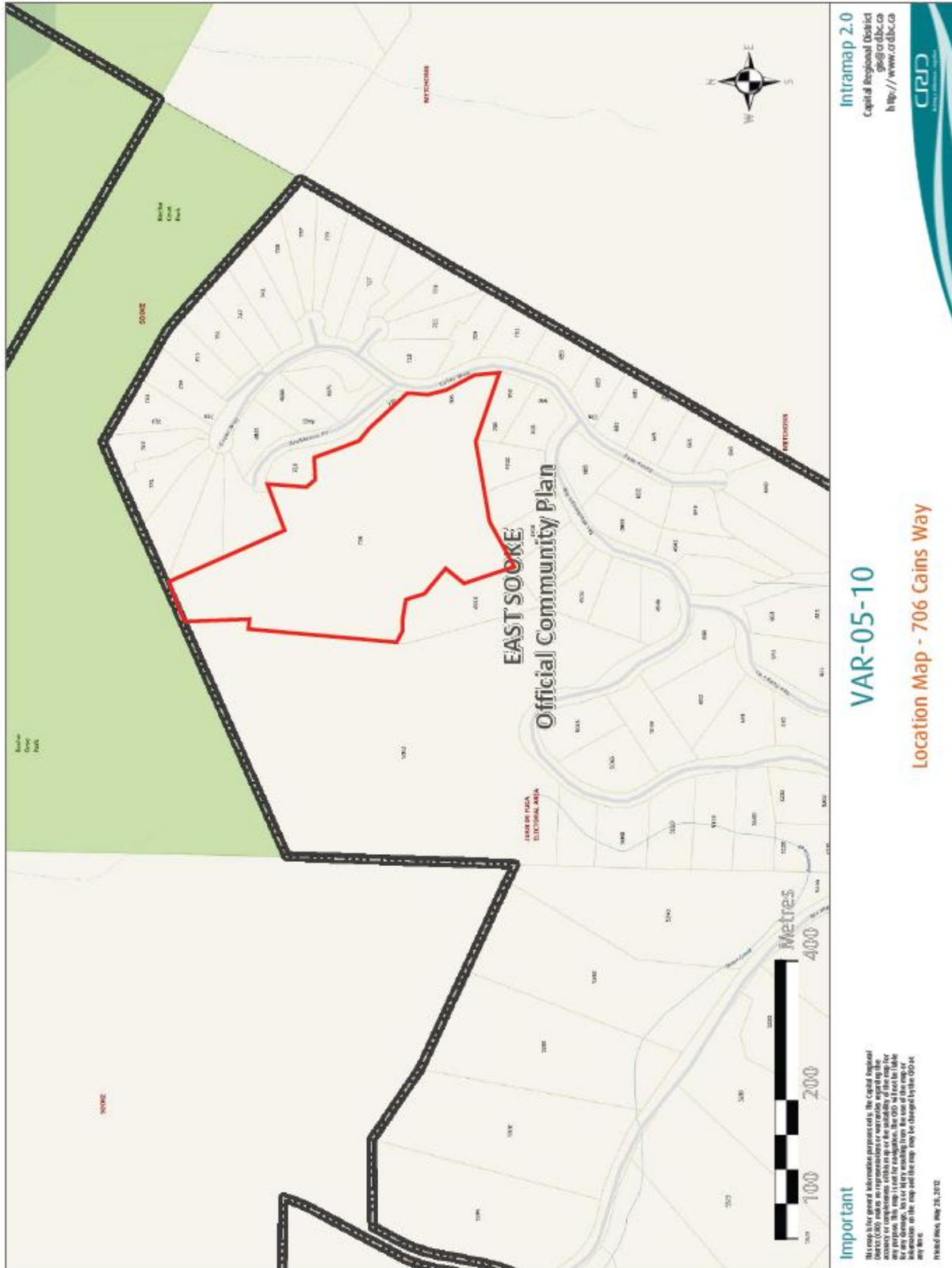
Original Signed
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Robert Lapham, MCIP
General Manager, Planning and Protective
Concurrence

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Kelly Daniels
Chief Administrative Officer
Concurrence

- Appendix:
1. Location Map
 2. Proposed Subdivision Plan

Appendix 1: Location Map



Appendix 2: Proposed Subdivision Plan

