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DP-10-12 WITH VARIANCE - LARKIN

**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE  
MEETING OF TUESDAY, JANUARY 15, 2013**

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**SUBJECT**     **DEVELOPMENT PERMIT WITH VARIANCE FOR THAT PART OF SECTION 86, SOOKE DISTRICT, LYING TO THE NORTH OF PLAN 623-R, EXCEPT PARCEL 'A' (DD 80053-I)**

**ISSUE**

A request has been made for a development permit with variance in order to address the steep slopes; watercourses, wetlands and riparian areas; and sensitive ecosystems development permit guidelines, as well as to reduce the required frontage of the proposed remainder lot from 10% of the lot perimeter to 4.3% of the lot perimeter, and to reduce the front yard setback of an existing cottage from 7.5 m to 4.0 m, for the purpose of allowing subdivision for a relative in accordance with Section 946 of the *Local Government Act (LGA)*.

**BACKGROUND**

The 5.97 ha property is located at 314 Becher Bay Road in East Sooke and is zoned Rural A in Juan de Fuca Land Use Bylaw No. 2040. The property is bounded by Rural A zoned properties to the north and south, East Sooke Park to the west, and Becher Bay Road to the east (Appendix 1).

The applicant has submitted a subdivision application (S-06-12) to create one additional lot (Appendices 2 and 3) under the provisions of Section 946 of the *LGA*. That section allows the Approving Officer to approve the subdivision, although Proposed Lot 1 does not meet the minimum lot size specified by the Rural A zone.

Since the property is partially designated as a Steep Slopes Development Permit Area (DPA), a Watercourses, Wetlands and Riparian Areas DPA, and a Sensitive Ecosystem DPA, the applicant must obtain approval of a development permit prior to final approval of subdivision. In addition, the applicant must also obtain approval of development variances to relax the frontage requirement specified by Bylaw No. 2040 from 10% of the lot perimeter to 4.3%, and reduce the required front yard setback in the Rural A zone for an existing cottage from 7.5 m to 4.0 m. With respect to the front yard setback variance, staff note that the Ministry of Transportation and Infrastructure (MoTI) has required that the applicant provide a 27.2 m road dedication in the area east of the cottage. This requirement has created the potential non-conforming siting.

**ALTERNATIVES**

- 1) Approve the Steep Slopes; Watercourses, Wetlands and Riparian Areas; and Sensitive Ecosystems development permit with variance to vary:
  - a. Juan de Fuca Land Use Bylaw No. 2040, Part 1, Section 3.10(4)(a), by relaxing the minimum frontage requirement from 10% of the perimeter of the remainder lot that fronts on a highway to 4.3% of the perimeter of the lot that fronts on a highway; and
  - b. Juan de Fuca Land Use Bylaw No. 2040, Part 2, Section 2.07(a), by relaxing the minimum front yard setback for the existing cottage from 7.5 m to 4.0 mfor the purpose of allowing a 2-lot subdivision under the *LGA*, Section 946.
- 2) Deny the development permit with variance, and require that the structure and subdivision layout comply with zoning requirements.
- 3) Refer the application back to staff for additional information.

### **LEGISLATIVE IMPLICATIONS**

The East Sooke Official Community Plan, Bylaw No. 3718, outlines development permit guidelines for achieving the objectives of the development permit areas. The subject property is partially designated a Steep Slopes DPA, Watercourses, Wetlands and Riparian Areas DPA and Sensitive Ecosystem DPA; therefore, a development permit is required.

The Juan de Fuca Land Use Bylaw, Bylaw No. 2040, specifies frontage requirements for subdivision and yard requirements for the Rural A zone. To vary these, a development variance permit is required.

### **PUBLIC CONSULTATION IMPLICATIONS**

Pursuant to the *LGA*, 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. Capital Regional District 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. In addition, it states that a notice of intent must be mailed to adjacent property owners within a distance of not more than 500 metres. Any responses received from the public will be presented at the January 15, 2013, Land Use Committee meeting.

### **LAND USE IMPLICATIONS**

#### Variances

The Juan de Fuca Land Use Bylaw, Bylaw No. 2040, establishes subdivision requirements and setback requirements for the Rural A zone. Part 1, Section 3.10(4)(a) states that, "Where a lot being created by a subdivision fronts on a highway, the minimum frontage on the highway shall be the greater of one tenth the perimeter of the lot that fronts on the highway." Since only 4.3% of the perimeter of the proposed remainder lot fronts on a highway, a development variance permit is required (proposed Lot 1 exceeds the bylaw requirement with respect to frontage). Staff note that access to the proposed remainder lot is via an existing driveway located within the "panhandle" portion of the lot. Since no changes will be made to that configuration as a result of subdivision, the reduced frontage requirement should have no impact on the subject or surrounding properties.

Part 2, Section 2.07(a) of Bylaw 2040 specifies that, "Front yards shall be a minimum of 7.5 m." The parcel line deemed to be the front lot line for the remainder lot is that line abutting Becher Bay Road and lying closest to the cottage. Since the setback of the cottage from the proposed front lot line is 4.0 m, a development variance permit is required. It is noted that the encroachment is the result of increased road dedication taken by MoTI as a condition of subdivision. MoTI has provided comment indicating that they have no objection to the requested variance.

#### Development Permit

The subject property is partially designated as a Steep Slopes DP Area; a Watercourses, Wetlands and Riparian Areas DP Area; and a Sensitive Ecosystems DP Area (Attachment 2). Since the area in which activity associated with subdivision is located outside the Steep Slopes and the Watercourses, Wetlands and Riparian Areas DP Areas, no geotechnical report or Riparian Areas Assessment was required. Should the owner wish to build within one of those DP areas in the future, a development permit would be required at that time.

In order to address the Sensitive Ecosystems DP guidelines, the applicant has submitted a report from a Registered Professional Biologist (R.P.Bio.) (Appendix 4). The owner also submitted a previous report (Appendix 5) from the same R.P.Bio. which addressed the DP guidelines as they pertained to the construction of a dwelling in January, 2010, within the area of proposed Lot 1 (DP-01-10).

Staff note that primary purpose of the subdivision application is to provide separate, fee-simple legal title among family members to land around existing residences and accessory buildings. In addition, staff believe that the reductions to frontage and the front yard setback will have minimal impact on the enjoyment or use of neighbouring land. Therefore, given the location of the proposed subdivision outside the Steep Slopes and the Watercourses, Wetlands and Riparian Areas DPAs, and in light of the R.P.Bio.'s opinion that subdivision of the property will not change the on-site environmental conditions, staff recommend approval of the development permit with variances subject to the recommendations of the Enkon Environmental reports and subject to public notification.

### **CONCLUSION**

The applicant is requesting a Steep Slopes; Watercourses, Wetlands and Riparian Areas; and Sensitive Ecosystems Development Permit with Variance in order to allow subdivision for a relative in accordance with the LGA, Section 946. Staff note that the primary purpose of the subdivision application is to provide separate, fee-simple legal title among family members to land around existing residences and accessory buildings. In addition, staff believe that the reductions to frontage and the front yard setback will have minimal impact on the enjoyment or use of neighbouring land.

Since the area associated with the subdivision application does not fall within the Steep Slopes or Watercourses, Wetlands and Riparian Areas DPAs, a geotechnical engineer's report and a Riparian Areas Assessment were not required. However, the area to be subdivided is partially designated as Sensitive Ecosystems DPA. As such, reports prepared by a R.P.Bio. have been submitted in support of this application. In the November 27, 2012 report, the R.P.Bio. commented that the subdivision of the property would not change the environmental conditions on the site and that she had no objections to the proposal.

Given the above, staff recommend approval of the development permit with variances subject to the recommendations of the November 27, 2012 and January 18, 2010 Enkon Environmental reports and subject to public notification.

### **RECOMMENDATION**

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

1. That Steep Slopes; Watercourses, Wetlands and Riparian Areas; and Sensitive Ecosystems development permit DP-10-12 with Variance for That Part of Section 86, Sooke District, Lying to the North of Plan 623-R, Except Parcel 'A' (DD 80053-I) be approved subject to the following conditions:
  - a. That the proposed development comply with the Steep Slopes; Watercourses, Wetlands and Riparian Areas; and Sensitive Ecosystems Development Permit Guidelines outlined in the East Sooke Official Community Plan, Bylaw No. 3718; and
  - b. That the proposed development comply with the recommendations outlined in Enkon Environmental reports prepared by Susan Blundell, R.P.Bio., dated November 27, 2012, (Appendix 4), and January 18, 2010, (Appendix 5);
2. That Juan de Fuca Land Use Bylaw No. 2040, Part 1, Section 3.10(4)(a) be varied by relaxing the minimum frontage requirement for the proposed remainder lot from 10% of the perimeter of the lot that fronts on a highway to 4.3% of the perimeter of the lot that fronts on a highway, as shown on the Island Land Surveying plans dated October 26, 2012, and July 1, 2012 (Appendices 2 and 3); and

3. That Juan de Fuca Land Use Bylaw No. 2040, Part 2, Section 2.07(a) be varied by relaxing the minimum front yard setback requirement for the existing cottage from 7.5 m to 4.0 m, as shown on the Island Land Surveying plan dated October 26, 2012, (Appendix 2).

Original Signed

Iain Lawrence  
Planner

Original Signed

June Klassen, MCIP  
Manager, Local Area Planning  
Concurrence

Original Signed

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

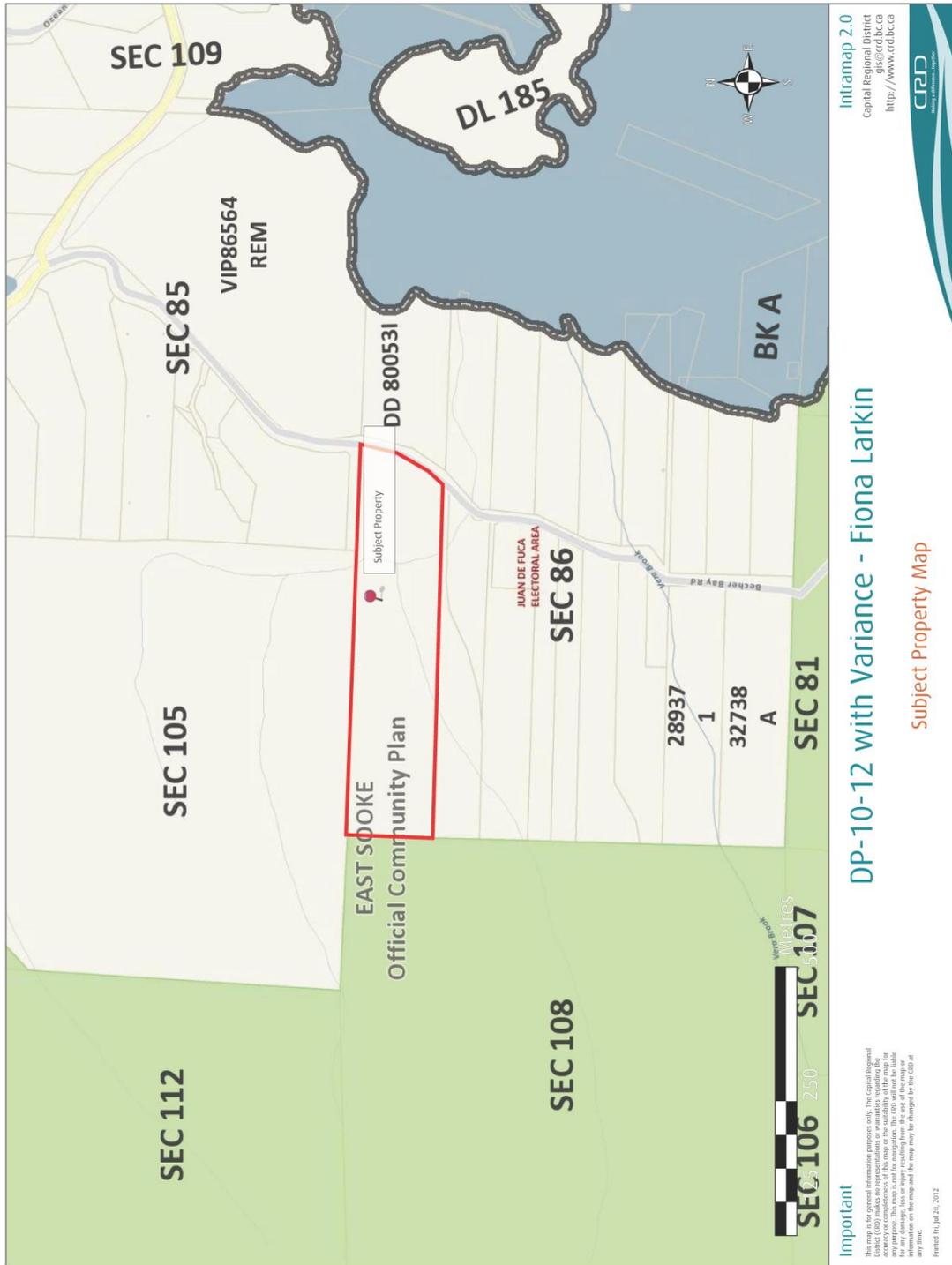
Original Signed

Kelly Daniels  
Chief Administrative Officer  
Concurrence

Appendices

1. Subject Property Map
2. Island Land Surveying Proposed Plan of Subdivision (revised), dated October 26, 2012
3. Island Land Surveying Proposed Plan of Subdivision, dated July 1, 2012
4. Enkon Environmental report prepared by Susan Blundell, R.P.Bio., dated November 27, 2012
5. Enkon Environmental report prepared by Susan Blundell, R.P.Bio., dated January 18, 2012

Appendix 1: Subject Property Map







Appendix 4: Environmental Report, November 27, 2012



**ENKON**  
ENVIRONMENTAL

Suite 310 - 730 View Street  
Victoria, B.C., Canada  
V8W 3Y7  
Phone: (250) 480-7103  
Fax: (250) 480-7141  
E-mail: [enkon@enkon.com](mailto:enkon@enkon.com)

November 27, 2012

Our file no.: 1496-001

CRD Juan de Fuca Electoral Area  
2-6868 West Coast Road  
Sooke, B.C.  
V9B 2X8  
Attention: Mr. Iain Lawrence, Planner

Dear Mr. Lawrence

**RE: 316 BECHER BAY ROAD – FOLLOW-UP REGARDING PROPOSED  
PLAN TO SUBDIVIDE**

**BACKGROUND**

In January 2010 Paul and Fiona Larkin proposed to construct a new residence at 312 Becher Bay Road, Sooke, B.C. (PID 001-979-698). Based on the East Sooke OCP Map No. 3c a portion of the proposed development area was located within Development Permit Area No. 4, Sensitive Ecosystems and therefore ENKON Environmental Ltd. completed an environmental overview assessment of the property.

**SITE CONDITIONS**

It was noted that the area proposed for the house location was not forested and had remained cleared for approximately 15 years. Vegetation in this area consisted of exclusively herbaceous species, both indigenous and introduced. Species observed during the survey includes bittercress (*Cardamine* sp.), miner's lettuce (*Claytonia lanceolata*), bur-chervil (*Anthriscus caucalis*) and foxglove (*Digitalis purpurea*). An old unpaved road was located at the eastern edge of the cleared area and lead to Becher Bay Road. This road had been upgraded to function as a driveway in preparation for the house construction. The septic field site was located to the west of the house site in an area that has been mostly cleared. Vegetation located to the north and south of the proposed house site was comprised of Douglas-fir, arbutus, shore pine and western redcedar.

Due to the timing of the survey a comprehensive rare plant and animal survey was not conducted. No rare plants or animals were observed during site survey and there are no records of rarities occurring on the site.

Mr. Iain Lawrence  
November 27, 2012  
Page 2



According to the Sensitive Ecosystems Inventory mapping a portion of the proposed building site was located within Polygon CO971D-R1. This polygon has been identified as a conifer dominated second growth forest (SG:co) polygon encompassing 41.22 ha. SG:co polygons are described as large stands of conifer-dominated forest between 60 and 100 years old with less than 15% deciduous trees.

Based on site observations it was determined that the proposed house site was located within an area identified as a forested general biodiversity polygon but did not meet the ecosystem criteria and therefore should be excluded from the polygon.

#### RECOMMENDATIONS

It is my understanding that all works proposed have been completed on site as originally proposed with no further disturbance into Polygon CO971D-R1. Site conditions shown in the Capital Regional District's (CRD) Natural Areas Atlas (2012 air photos) show the same development footprint as was previously observed by ENKON in January 2010.

Ms. Larkin has informed me that she and her husband intend to legally subdivide the property at 316 Becher Bay Road and that the CRD requires comment from ENKON regarding the environmental impacts of this action. I do not feel that the subdivision of this property will change the environmental conditions on site and therefore have no objections to this proposal.

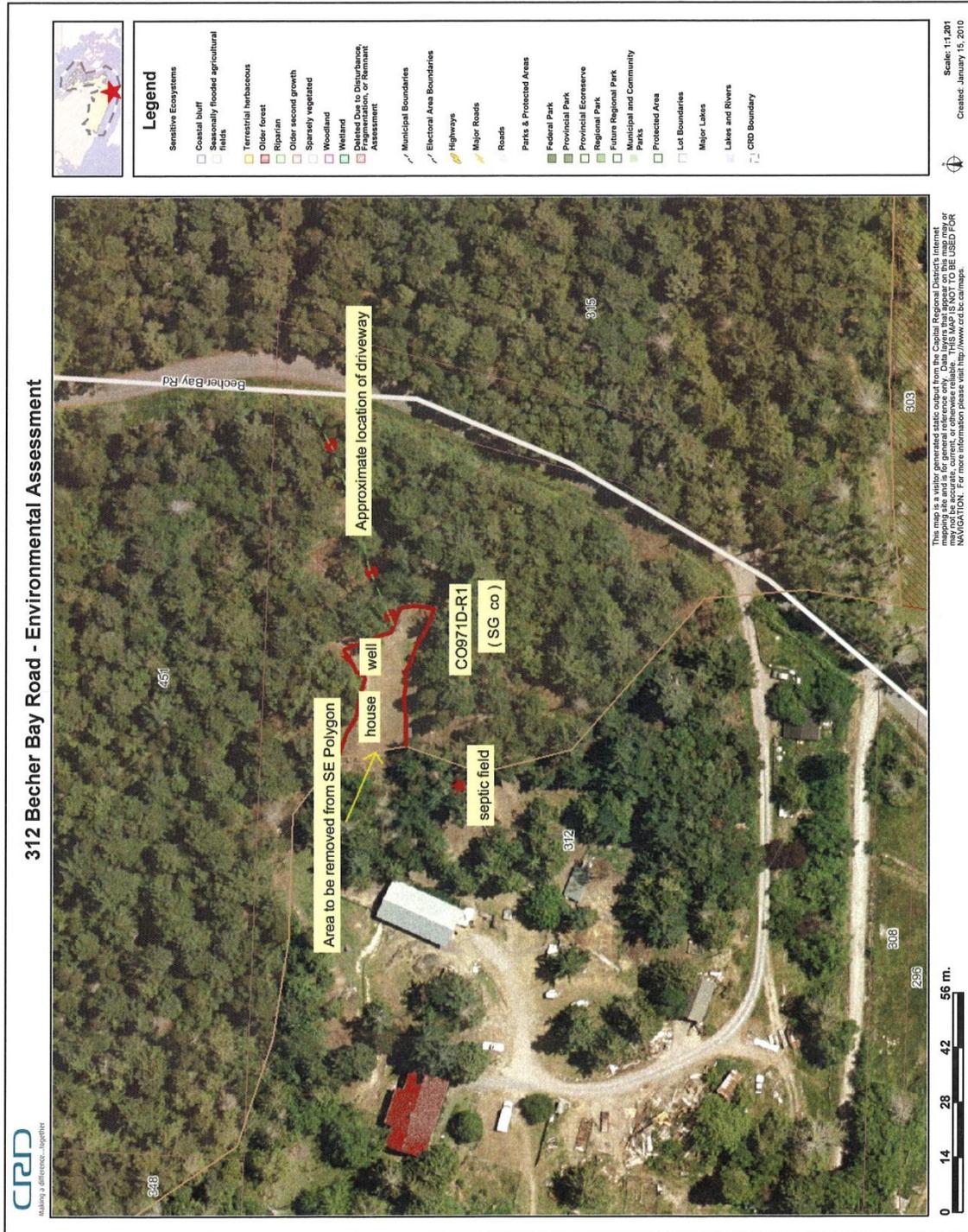
I hope that this information is helpful to you. Should you have any questions please do not hesitate to contact me at (250) 480-7103.

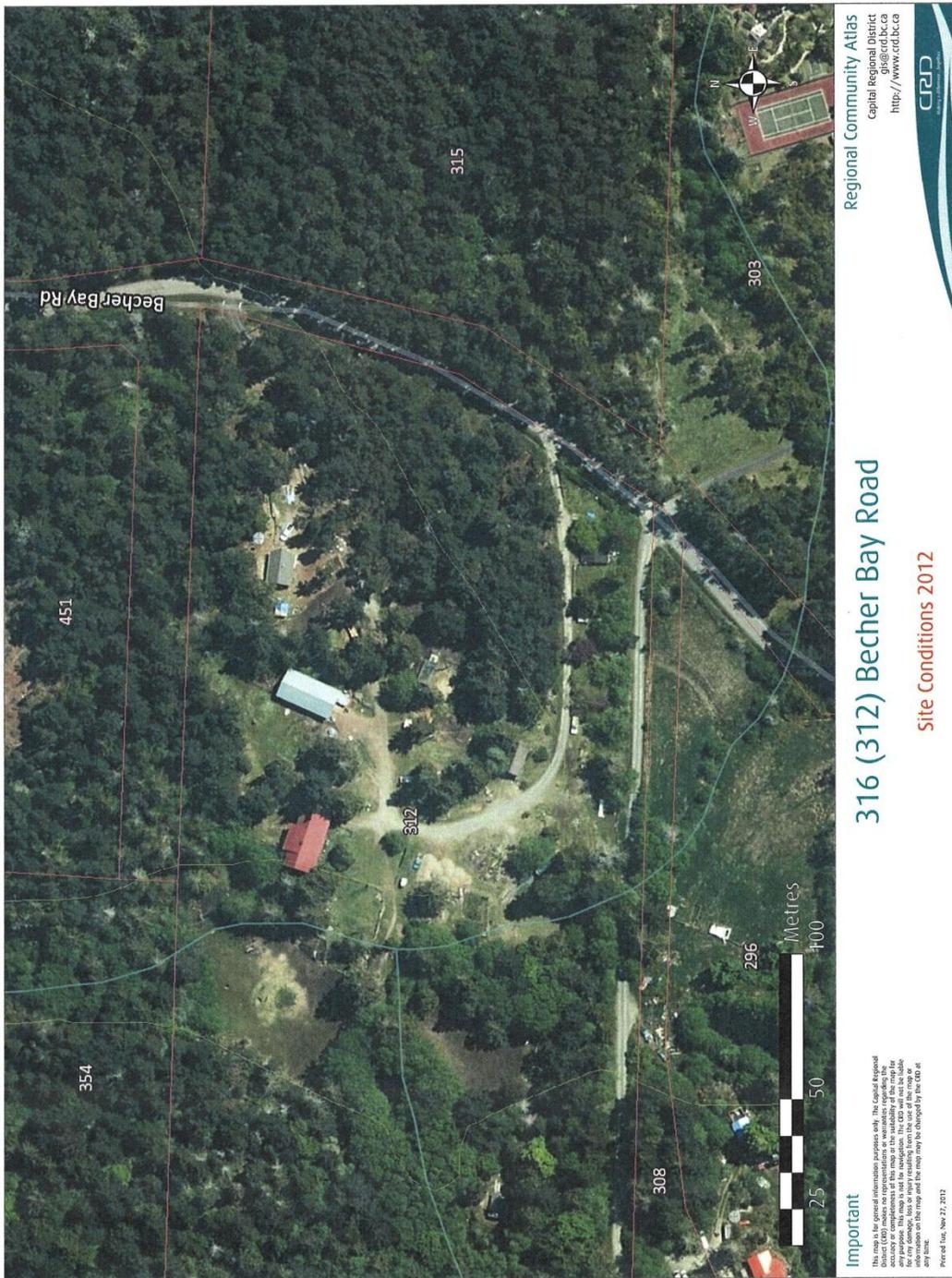
Yours truly,

A handwritten signature in cursive script that reads "Susan Blundell".

Susan Blundell, M.Sc., R.P.Bio.  
Manager of Environmental Services

Attachments: Figures 1 & 2





Appendix 5: Environmental Report, January 18, 2010

RECEIVED

JAN 19 2010

E.A. LAND USE PLANNING



**ENKON**  
ENVIRONMENTAL

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V8W 3Y7  
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E-mail: [enkon@enkon.com](mailto:enkon@enkon.com)

January 18, 2010

Our file no.: 1496-001

CRD Juan de Fuca Electoral Area  
2-6868 West Coast Road  
Sooke, B.C.  
V9B 2X8  
Attention: Ms. Bronwyn Sawyer, Planning Assistant

Dear Ms. Sawyer

**RE: 316 BECHER BAY ROAD – ENVIRONMENTAL ASSESSMENT OF  
THE PROPOSED BUILDING SITE**

**BACKGROUND**

Paul and Fiona Larkin are proposing to construct a new residence at 314 Becher Bay Road, Sooke, B.C. (PID 001-979-698). Based on the East Sooke OCP Map No. 3c a portion of the proposed development area is located within Development Permit Area No. 4, Sensitive Ecosystems. As such, ENKON Environmental Ltd. was asked by the proponents to complete an environmental overview assessment of the property.

**METHODS**

Prior to the site investigation ENKON completed a preliminary examination of the property using 2007 air photos, the Natural Areas Atlas ([http://maps.crd.bc.ca/imf/imf.jsp?site=public\\_crdviewer](http://maps.crd.bc.ca/imf/imf.jsp?site=public_crdviewer)) and the Mapped Known Locations of Species and Ecological Communities at Risk (<http://www.env.gov.bc.ca/atrisk/ims.htm>). ENKON conducted a site survey on January 13, 2010. ENKON met with the property owners and were given a tour of the development site. The vegetation adjacent to the proposed development site was also examined.

**SITE CONDITIONS**

Based on discussions with the land owners it is ENKON's understanding that the eastern portion of the property was developed in the 1970's with a house, barn and several small outbuildings and that the land has been used for farming and livestock grazing over the past 35 years.

Ms. Bronwyn Sawyer  
January 18, 2010  
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ENVIRONMENTAL

Currently the area proposed for the house location is not forested and has remained cleared for approximately 15 years and was originally intended to be a riding ring for horses. Vegetation in this area consists of exclusively herbaceous species, both indigenous and introduced. Species observed during the survey includes bittercress (*Cardamine* sp.), miner's lettuce (*Claytonia lanceolata*), bur-chervil (*Anthriscus caucalis*) and foxglove (*Digitalis purpurea*). An old unpaved road is located at the eastern edge of the cleared area and leads to Becher Bay Road. Anecdotal information indicates that the road was established in approximately 1910 and was actively used up until the 1950's. This road has been upgraded to function as a driveway in preparation for the house construction. The septic field site is located to the west of the house site in an area that has been mostly cleared. Vegetation located to the north and south of the proposed house site is comprised of Douglas-fir, arbutus, shore pine and western redcedar. The understory is extremely sparse and consists of juvenile western redcedar, licorice fern, miner's lettuce, pelt lichen, reindeer lichen and Oregon beaked moss.

Due to the timing of the survey a comprehensive rare plant and animal survey was not conducted. No rare plants or animals were observed during site survey and there are no records of rarities occurring on the site.

A large diameter (110 cm DBH) Douglas-fir was observed to the south of the proposed building site. This tree appears to be a remnant older growth tree and was likely not harvested due to a significant curve in the trunk.

No cavity nests or stick nests were observed during the site assessment but wildlife observations were limited due to the timing of the field assessment.

According to the Sensitive Ecosystems Inventory mapping a portion of the proposed building site is located within Polygon CO97ID-R1. This polygon is identified as conifer dominated second growth forest (SG:co) polygon which encompasses 41.22 ha. SG:co polygons are described as large stands of conifer-dominated forest between 60 and 100 years old with less than 15% deciduous trees. All older second growth forests have been influenced by logging or other human disturbance since settlement of Vancouver Island and the Gulf Islands began in the middle of the 19<sup>th</sup> century. These ecosystems are not considered sensitive; rather they have been mapped as general biodiversity polygons because of their importance to the area's biodiversity.

#### RECOMMENDATIONS

The proposed house location is located within an area identified as a forested general biodiversity polygon but does not meet the ecosystem criteria. This area is cleared and as such should be excluded from the polygon. The proposed septic

Ms. Bronwyn Sawyer  
January 18, 2010  
Page 3

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field is located to the west of the SG:co polygon. The driveway is located within the polygon boundaries but has existed as a roadway for approximately 100 years.

ENKON does not feel that the development of the house, septic field and driveway will have any negative effects on the receiving environment flanking the site. The following mitigative strategies should be followed in order to ensure protection of the natural vegetation immediately adjacent to the development:

- Limiting clearing to the minimum area required for construction boundaries and surround areas that are to be protected during the construction phase of the project with snow fencing or flagging;
- Install 'Sensitive Ecosystem Protection' signs;
- Take all measures necessary to prevent the activities such as storage of materials or equipment, stockpiling of soil or excavated materials, burning, excavation or trenching, or cutting of roots or branches within the sensitive ecosystem protection areas.
- Control the introduction or spread of invasive species;
- Prevent wildlife disturbance (especially nesting or breeding areas);
- Maintain hydrologic regime;
- No tree clearing should take place during bird nesting and rearing (April through August).

I hope that this information is helpful to you. Should you have any questions please do not hesitate to contact me at (250) 480-7103.

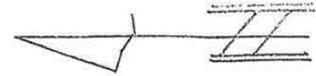
Yours truly,



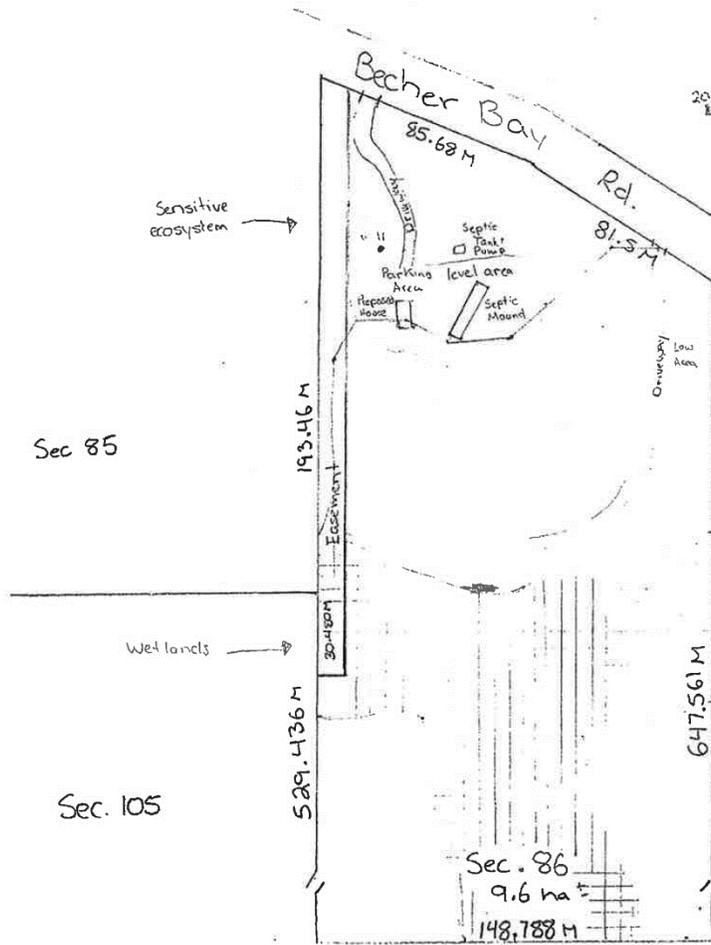
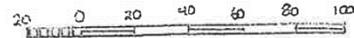
Susan Blundell, M.Sc., R.P.Bio.  
Manager of Environmental Services

Attachments: Figures 1 & 2  
photoplates

# Site Plan for Larkin



Scale- 1:2000



Circled Area  
is relatively level  
and has good  
draining soil.

This information  
is correct to the  
best of my knowledge

*Fiona Larkin*

Prepared by  
Fiona Larkin  
Jan 6<sup>th</sup> 2010

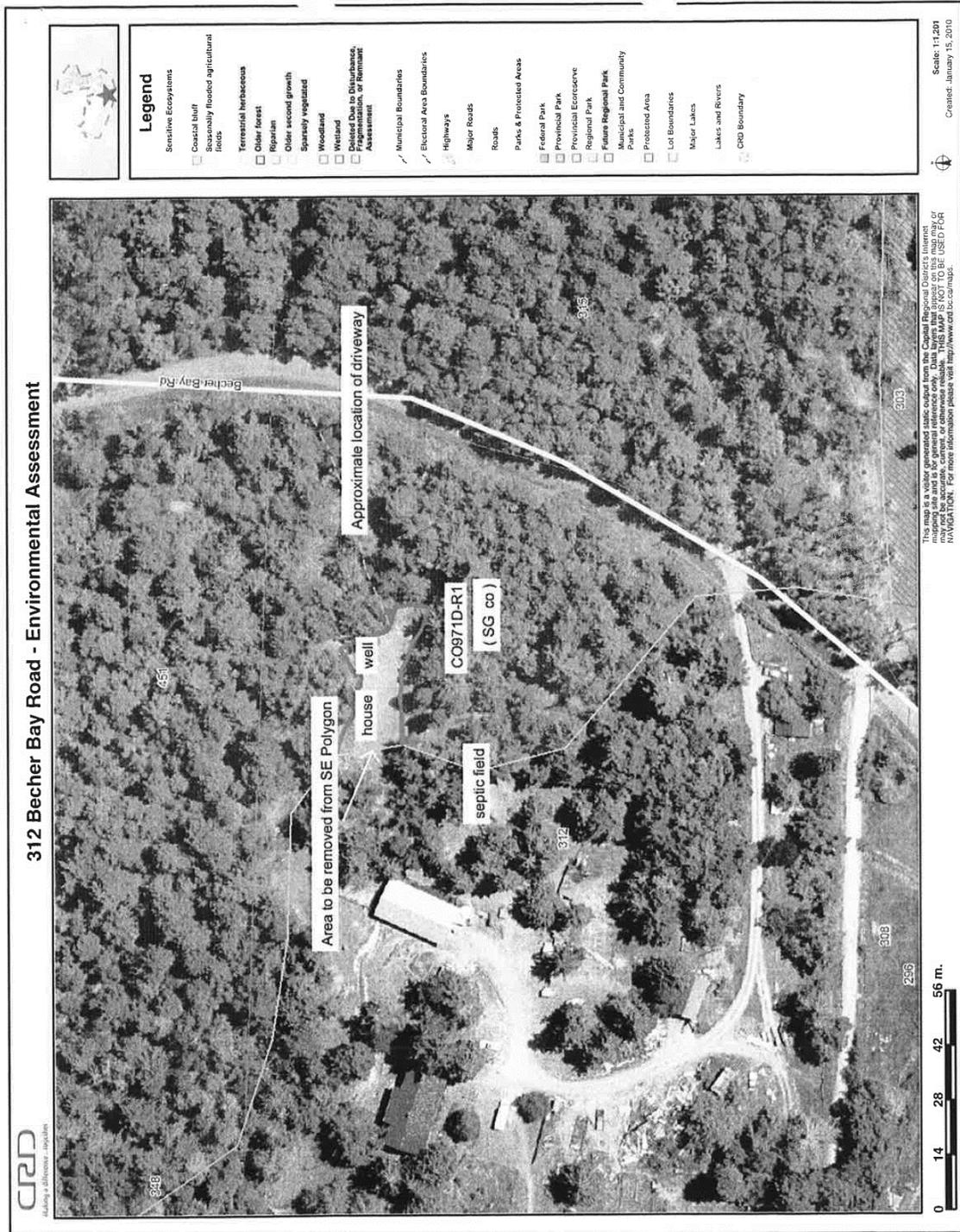




Plate 1: Proposed house location



Plate 2: Proposed septic field location



Plate 3: Looking east down driveway to  
Becher Bay Road

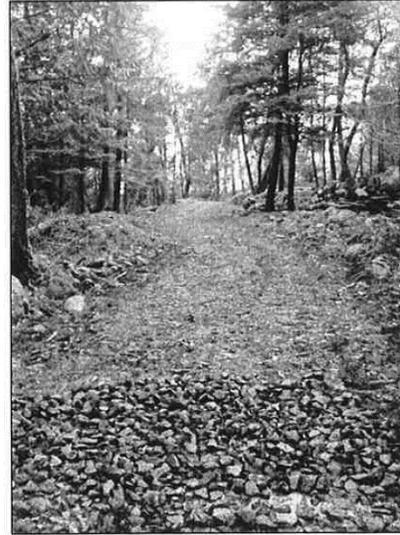


Plate 4: Looking up driveway



Plate 5: Large diameter Douglas-fir in adjacent woodland

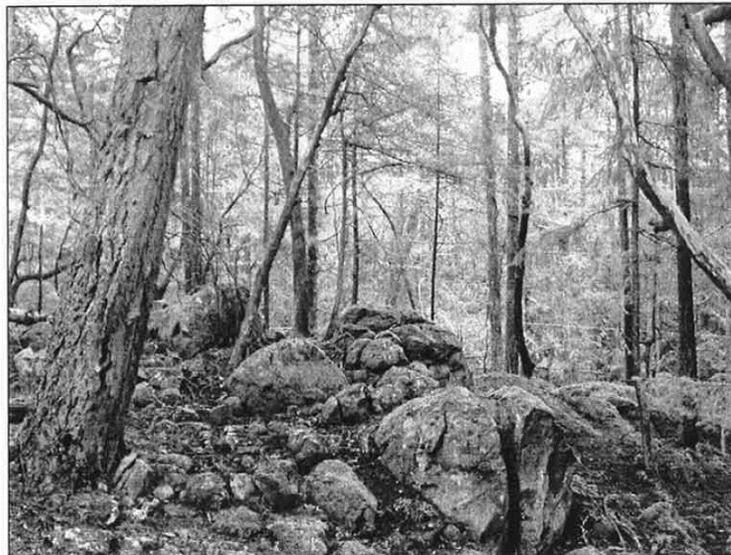


Plate 6: Vegetation typically occurring in adjacent woodland