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DP-08-11 - ISIS LAND CORPORATION/HAWES

REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, NOVEMBER 19, 2013

SUBJECT **AMEND DEVELOPMENT PERMIT (DP-08-11) WITH 10% FRONTAGE EXEMPTION FOR BLOCK 352, MALAHAT DISTRICT, EXCEPT PART IN VIP84067 AND BLOCK 399 MALAHAT DISTRICT**

ISSUE

To amend a development permit issued for a proposed subdivision within the steep slopes and watercourses, wetland and riparian development permit area to include a sensitive ecosystem development permit and by including additional exemptions of Section 944 of the *Local Government Act (LGA)* 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 301.67 ha (745.45 ac) property is situated in the Malahat area and is bordered to the west and south by the Capital Regional District (CRD) Sooke Hills Wilderness Park Reserve, to the east by the E&N Railway right of way and to the north by rural residential properties (Appendix 1). The Trans Canada Trail alignment passes through both parcels. The property is split zoned Greenbelt 2 (Gb2) and Greenbelt 3 (Gb3) under the Malahat Zoning Bylaw No. 980.

At the June 21, 2011 Juan de Fuca Land Use Committee (LUC) meeting, the LUC considered a proposed subdivision layout for 86 residential lots and lands for the Trans Canada Trail and park (Appendix 2). The proposed subdivision met the requirements of the zoning; however, some lots required an exemption to Section 944 of the *LGA* to exempt the 10% frontage requirement. Portions of the property are within the steep slopes development permit area, and several parcels are subject to a riparian development permit area. The CRD Board at its meeting of July 13, 2011 approved the development permit with frontage exemption. However, subsequent to this meeting, it was noted that the property was also subject to a sensitive ecosystem development permit area as well. Consequently, the development permit needs to be amended to include the sensitive ecosystem development permit area for the 86 lot subdivision.

In addition, the applicant has submitted a subdivision plan of the site to create an initial 33 lots and revised the road layout to provide access to lands beyond (Appendix 3). Due to the creation of remnant parcels to be developed in subsequent subdivision phases, these lots require an exemption to Section 944 of the *LGA* to relax the 10% frontage requirement.

Regional Parks is working to complete the Trans Canada Trail through the region in 2016. The land owner is proposing to dedicate land for the Trans Canada Trail and park as shown on the proposed site plan through the Ministry of Transportation and Infrastructure subdivision approval process for the initial 33 lot subdivision.

ALTERNATIVES

- 1) That Steep Slopes, Watercourses, Wetlands and Riparian Areas development permit DP-08-11 for Block 352, Malahat District, Except Part in VIP84067 and Block 399 Malahat District, for the purposes of permitting an 86-lot subdivision, be amended to include the Sensitive Ecosystem Development Permit area and include approval for a frontage exemption for Remnant Lots 1 to 6.
- 2) Deny the development permit amendment and require that the parcels comply with Section 944 of the *Local Government Act*.
- 3) Refer the application back to staff for additional information.

INTER-DEPARTMENTAL IMPLICATIONS

In order for any structures to be built, building permits will be required, which will make specific reference to the conditions of the development permit and may require additional assessments. The building division will ensure the structure meets the requirements provided in this development permit and that the appropriate building permits are acquired.

LEGISLATIVE IMPLICATIONS

Section 944(1) of the *LGA* establishes minimum frontage requirements for parcels created by subdivision. Where local government has not established a minimum frontage requirement, the statutory minimum frontage requirement is 10% of the lot perimeter. A local government may exempt a parcel from the statutory minimum frontage under Section 944(2).

The Malahat Official Community Plan, Bylaw No. 3721, establishes development permit guidelines. The property is within the Steep Slopes, Sensitive Ecosystems, and Watercourses, Wetlands and Riparian Areas Development Permit areas; therefore, a development permit is required before the land may be subdivided or altered.

PUBLIC CONSULTATION IMPLICATIONS

There is no requirement for public consultation if a local government is considering a statutory exemption pursuant to Section 944 of the *LGA*. There is also no requirement to notify residents/tenants under the Capital Regional District Bylaw No. 3110, Fees and Procedures Bylaw for a statutory exemption or a development permit application. However, to ensure community interests are considered, each resident/tenant within 500 m of the subject property received notice of the requested development permit amendment with frontage exemption. Responses received from the public are included in the November 19, 2013 Land Use Committee supplementary agenda.

LAND USE IMPLICATIONS

Development Permit Areas

The subject property is bisected by steep slopes, watercourses, wetland and riparian and sensitive ecosystem development permit areas. The applicant has submitted a report from a Geotechnical Engineer addressing the steep slopes development permit guidelines, and a Riparian Area Assessment (RAR) addressing the watercourses, wetland and riparian development permit area guidelines. The CRD Board has issued DP-08-11 relating to the steep slopes and watercourses, wetland and riparian development permit area guidelines.

With respect to the sensitive ecosystem development permit area, the applicant has submitted a report from the Qualified Environmental Professional (QEP) (Appendix 4). The QEP has noted that approximately 85% of the property has been logged recently and that the property is in the early stages of recovery. Further, the QEP states that there are no significant sensitive ecosystems on the property outside of the riparian areas along Arbutus Creek that require designation and special protection. The sensitive ecosystem habitats associated with Arbutus Creek are adequately protected with the previously established Streamside Protection and Enhancement Area (SPEA) identified in the RAR report.

Frontage Exemption

The CRD Board approved the frontage exemption for several lots identified in the original 86-lot subdivision (Appendix 2). As only a portion of the property is being proposed for subdivision at this time, frontage exemptions are required for large remnant parcels which will be further subdivided in the future. Therefore, frontage exemptions are now required for Remnant Lots 1 to 6 (Appendix 3).

In cases where a frontage relaxation is acceptable to the local government, the provincial Approving Officer must be advised of the approval before a subdivision can be finalized. In evaluating whether an exemption from Section 944 is justified, the following technical criteria are considered:

- Will reducing the frontage eliminate future subdivision potential of the lot and of 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 exemption reduce road network and access options?

With regards to future subdivision potential, staff notes that the six large remnant parcels will be subdivided in subsequent applications. With regards to the impact on neighbouring residents, existing residences along Goldstream Heights Road north of the subject property will be generally impacted by the subdivision and the granting of six frontage exemptions will not increase the impacts. However, the individual concerns of local residents may be determined as a result of public notification. The proposed frontage exemptions will not produce awkward lot configurations as the remnant parcels are an interim lot configuration pending future subdivision applications. Further, the proposed subdivision has been designed to address the topography, riparian areas, and steep slopes. The future subdivision of the remnant lots will also address the future road configuration.

Staff recommend approval of the amendment to the DP-08-11 to include reference to the sensitive ecosystem development permit area and frontage exemption for the six remnant parcels subject to public notification.

CONCLUSION

The proposed subdivision was issued a development permit with frontage exemptions in 2011. An amendment to the development permit is requested to include the sensitive ecosystem development permit area. The property is to be developed in stages and the initial proposal creates remnant parcels that require frontage exemptions. Therefore, staff recommends approval of the development permit amendment and 10% frontage exemptions, 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 development permit DP-08-11 for Block 352, Malahat District, Except Part in VIP84067 and Block 399 Malahat District, for the purposes of permitting a 86-lot subdivision, as shown on the Tentative Subdivision Plan, prepared by Bazett Land Surveying Inc., dated 2011 (Appendix 2), be amended to include the Sensitive Ecosystem Development Permit area subject to the following conditions:
 - a. That the proposed development comply with the Steep Slopes, Watercourses, Wetlands and Riparian Areas, and Sensitive Ecosystem Development Permit Guidelines outlined in the Malahat Official Community Plan, Bylaw No. 3721;
 - b. That the proposed development comply with the recommendations outlined in the geological reports prepared by Thurber Engineering Ltd dated October 18, 2010, and April 18, 2011, and the qualified environmental professional's report prepared by P.A. Harder and Associates dated March 31, 2011;
 - c. That the SPEA as shown on the Tentative Subdivision Plan, prepared by Bazett Land Surveying Inc., dated October 10, 2013 (Appendix 3), be secured by restrictive covenant as part of the subdivision approval process;

- d. That the geological reports prepared by Thurber Engineering Ltd. dated October 18, 2010, and April 18, 2011, be secured by restrictive covenant as part of the subdivision approval process;
 - e. That the Trans Canada Trail right of way and related park area as shown on the Tentative Subdivision Plan, prepared by Bazett Land Surveying Inc., dated October 10, 2013 (Appendix 3), be transferred to the CRD as part of the subdivision approval process, and
2. That the request for an exemption from Section 944(1)(a) of the *Local Government Act* for the proposed lots highlighted on the Tentative Subdivision Plan prepared by Bazett Land Surveying Inc., dated 2011 (Appendix 2) and the Remnant Lots 1 to 6, as shown on the Tentative Subdivision Plan, prepared by Bazett Land Surveying Inc., dated October 10, 2013 (Appendix 3), for Block 352 , Malahat District, Except Part in VIP84067 and Block 399 Malahat District, be approved.

****ORIGINAL SIGNED****

June Klassen, MCIP, RPP
Manager, Local Area Planning

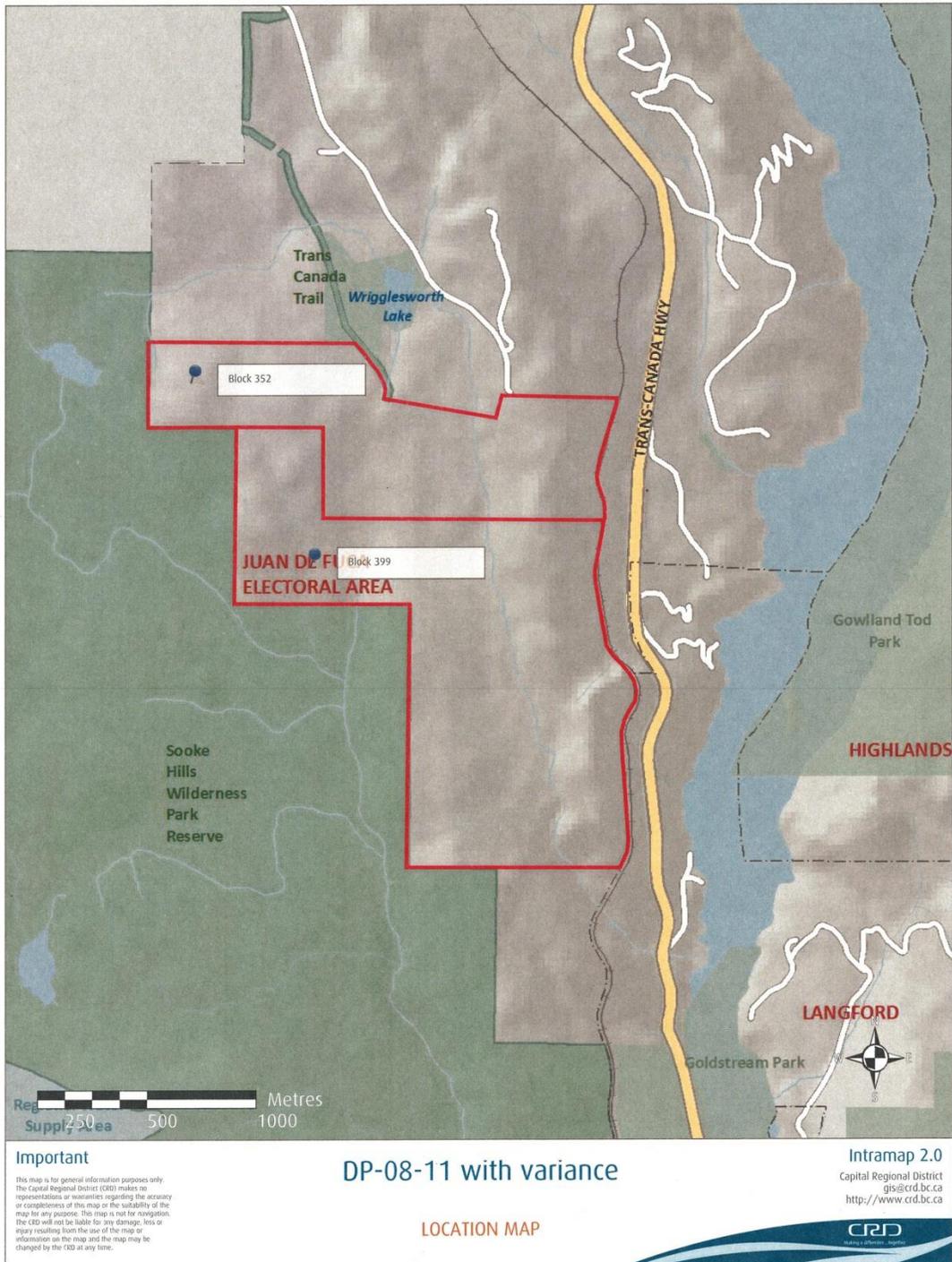
Maurice Rachwalski, PhD
Acting General Manager
Planning and Protective Services
Concurrence

Robert Lapham, MCIP, RPP
Chief Administrative Officer
Concurrence

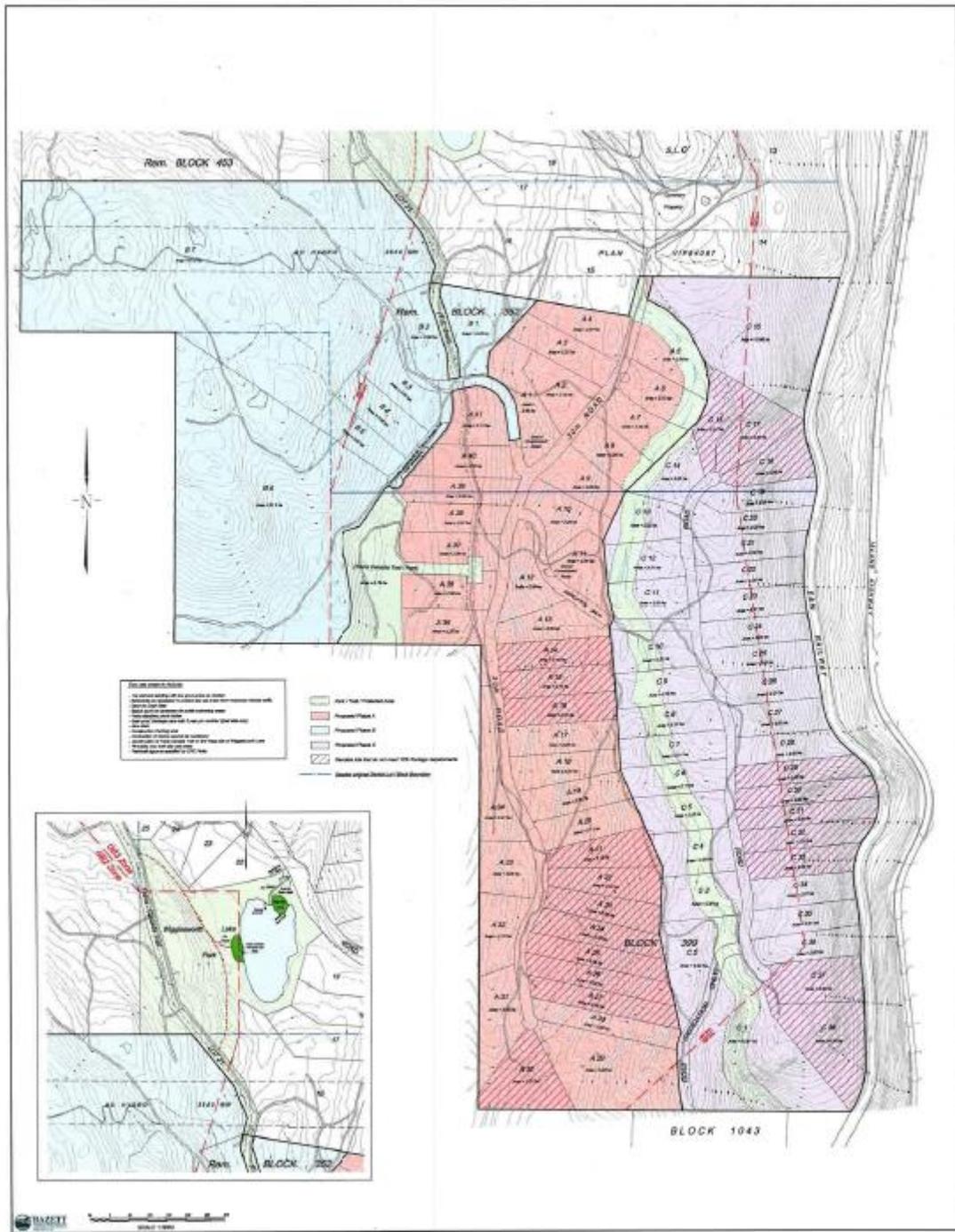
Appendices:

1. Location Map
2. Proposed Subdivision Plan, 2011
3. Proposed Subdivision Plan, 2013
4. PA Harder and Associates Report Dated September 26, 2013

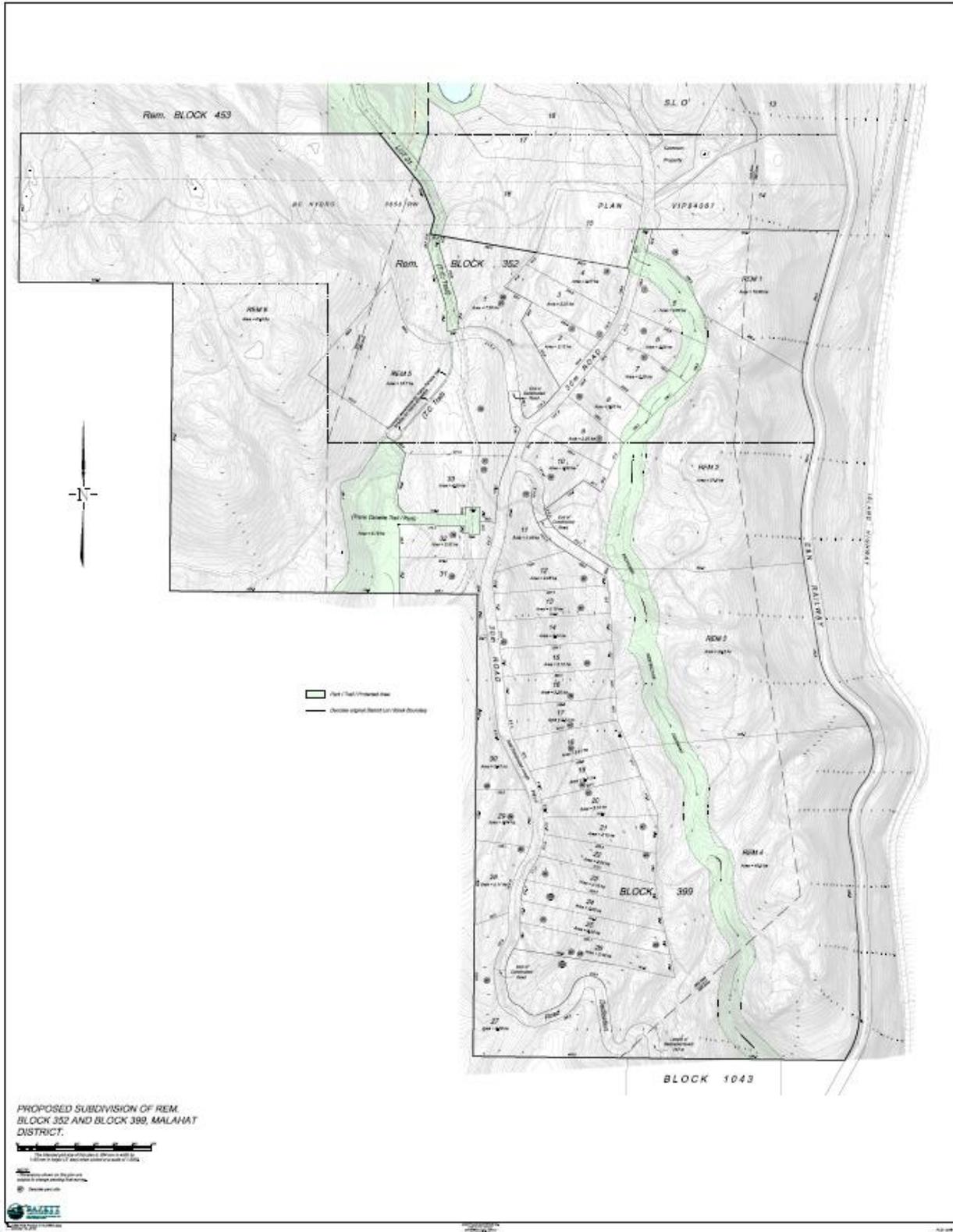
Appendix 1 – Location Map



Appendix 2 – Proposed Subdivision Plan 2011



Appendix 3 – Proposed Subdivision Plan 2013



3-22-08

P. A. HARDER AND ASSOCIATES LTD.
Environmental Consultants
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September 26, 2013

Ms. June Klassen
Capital Regional District
PO Box 283
#2 6868 West Coast Road
Sooke, BC
V9Z 0S9

Dear Ms. Klassen:

RE: Assessment of Goldstream Heights Development Site in relation to the Malahat Sensitive Ecosystems Guidelines

At the request of Mr. Devin Hawes I have reviewed our initial RAR Report on the proposed Goldstream Heights property development and undertaken another site inspection to address potential issues related to the ***Malahat Sensitive Ecosystem Guidelines***.

In recent years approximately 85% of the property has been logged. The site in the earlier stages of recovery from past logging activity. A comprehensive description of surface drainage characteristics, existing vegetation conditions, fish and wildlife habitat values and wetland and sensitive Ecosystem areas is presented in the RAR Report on file with the BC Ministry of Environment.

The most significant sensitive ecosystem component is found along the undisturbed floodplain area of Arbutus Creek. These areas are currently protected within the SPEA boundaries established under the Riparian Areas Regulation. No wetland areas were identified on the Goldstream Heights property outside of the Arbutus Creek SPEA boundaries.

Although the proposed road layout has been changed slightly since the previous environmental assessment work was done, the proposed changes do not have any potential impact on stream crossings and/or sensitive ecosystem areas.

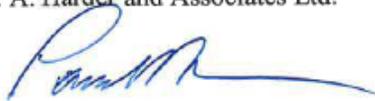
It is my opinion that there are no significant sensitive ecosystems on the property outside of the riparian areas along Arbutus Creek that require designation and special protection. The sensitive

ecosystem habitats associated with Arbutus Creek are adequately protected with the previously established SPEA for the proposed development area.

Please contact the undersigned if you have any questions on this assessment or would like any additional information on the site.

Sincerely,

P. A. Harder and Associates Ltd.

A handwritten signature in blue ink, appearing to read 'P. A. Harder', with a long horizontal flourish extending to the right.

P. A. Harder, R. P. Bio.

cc. Mr. Devin Hawes