



**REPORT TO JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, JANUARY 20, 2015**

SUBJECT **PROPOSED AMENDMENTS TO THE MALAHAT LAND USE BYLAW, 1981, BYLAW NO. 980 (AMENDMENT BYLAW NO. 3960)**

ISSUE

An amendment to the Malahat Land Use Bylaw is proposed to revise the bylaw map to incorporate the Chatham and Discovery Islands which were inadvertently deleted, and to delete the zoning from the First Nation and Crown lands.

BACKGROUND

At their meeting on September 16, 2014 the Juan de Fuca Land Use Committee considered an amendment to the Malahat Land Use Bylaw, Bylaw No. 980 to revise the bylaw map to incorporate the Chatham and Discovery Islands and to delete the zoning from the First Nation and Crown lands (Appendix 1). At their meeting on October 8, 2014, the Capital Regional District (CRD) Board approved referring proposed amendment Bylaw No. 3960 to BC Parks, Fisheries and Oceans Canada, District of Oak Bay, Corporation of the District of Saanich, Islands Trust, Ministry of Transportation and Infrastructure, School District #79 and Songhees First Nation.

Referrals were sent on October 9, 2014 and responses have been received from the Ministry of Forest, Lands and Natural Resource Operations (FLNRO), Islands Trust, Ministry of Transportation and Infrastructure (MoTI), School District #79 and Songhees First Nation (Appendix 2).

ALTERNATIVES

That the Land Use Committee recommends to the CRD Board that:

- 1 a) Proposed Bylaw No. 3960, "Malahat Land Use Bylaw, 1981, Amendment Bylaw No. 145, 2014", as included in Appendix 1, be introduced and read a first time and read a second time; and
- b) That in accordance with the provisions of Section 890 and 891 of the *Local Government Act*, the Director for the Juan de Fuca Electoral Area, or the Alternate Director, be delegated authority to hold a public hearing with respect to Bylaw No. 3960.
- 2) Recommend that the CRD Board not proceed with proposed Bylaw No. 3960.
- 3) Request more information be provided by staff.

LEGISLATIVE IMPLICATIONS

Pursuant to Section 879 of the *Local Government Act (LGA)*, an amendment to a zoning bylaw requires that the local government provide one or more opportunities for consultation it considers appropriate to the persons, organizations and authorities the local government considers may be affected by the adoption, repeal or amendment of a zoning bylaw.

Pursuant to Section 881 of the *LGA*, a proposed amendment to a zoning bylaw must be referred to the school district. Where an amendment or new land use and subdivision bylaw will apply to land within 800 m of a controlled access highway, the bylaw must be referred to the MoTI.

PUBLIC CONSULTATION IMPLICATIONS

Should the amendment to the Malahat Land Use Bylaw, Bylaw No. 980, proceed, it will be considered pursuant to the bylaw amendment process outlined in the Juan de Fuca Electoral Area Development Procedures Bylaw, Bylaw No. 3110. A public hearing pursuant to Section 890 of the *LGA* would be required subsequent to the amendments passing second reading by the CRD Board. A notice of the proposed bylaw amendment will be advertised in the local paper and on the website.

REGIONAL GROWTH STRATEGY AND OFFICIAL COMMUNITY PLAN IMPLICATIONS

The Chatham and Discovery Islands are not included within the Malahat Official Community Plan, Bylaw No. 3721. These islands are addressed in the Regional Growth Strategy (RGS) and are designated as Rural/Rural Residential and Capital Green Lands. The proposed bylaw amendments do not change the use of the lands and therefore should not impact the RGS.

PLANNING ANALYSIS

The Chatham Islands including Chatham, Vantreight and Strongtide Islands (Chatham Islands IR #4) and a portion of Discovery Island (Discovery Island IR #3) are Songhees First Nation Reserve Lands. The remainder of Section 1, Discovery Island is a provincial park, "Discovery Island Marine Park". In addition, Lot A, Section 1, Discovery Island, Victoria District, Plan VIP65904 is Department of Fisheries and Oceans Lighthouse property. The Great Chain Island and Islets, Jemmy Jones Island and Alpha Islet are designated as a provincial ecological reserve, the "Oak Bay Islands Ecological Reserve". Only a small area (PID: 009-379-461, that Part of Section 1, Discovery Island, Victoria District, as shown outlined in red on Plan 1315 OS) remains private land (Appendix 3).

All of the islands were zoned Rural A1 under Bylaw No. 980. However, local government bylaws do not apply to First Nation lands or to provincial or federal Crown lands. The proposed bylaw amendment will retain the Rural A1 zoning on the private parcel only (Appendix 3). As the proposed amendment retains the zoning on the private parcel which is a very small portion of Discovery Island, and the zoning never applied to the First Nation and Crown lands, there are no actual changes to the existing situation.

MoTI has no objections to the proposed amendments, and Islands Trust, FLNRO and School District No. #79 indicated their interests were unaffected. The Songhees First Nation indicated that the proposed amendment will have a positive impact on the Songhees' connection to the land and to the water, to their rights in the short or long term, to their ability to harvest traditional foods, to their ability to create policies to guarantee Songhees systems of land and resource tenure and contribute to relationship building.

As there were no objections from referral agencies and the Songhees First Nation indicates a positive impact to the proposed amendments, staff recommends that the bylaw proceed to first and second readings and on to public hearing.

CONCLUSION

The purpose of this bylaw amendment is to amend the Malahat Land Use Bylaw, Bylaw No. 980 by revising the bylaw map to incorporate the Chatham and Discovery Islands and deleting the zoning from the First Nation and Crown lands. The amendment does not change the existing zoning on the private parcel. Staff recommends that the bylaw proceed to first and second readings and on to public hearing.

RECOMMENDATION

That the Land Use Committee recommends to the CRD Board that:

- 1 a) Proposed Bylaw No. 3960, "Malahat Land Use Bylaw, 1981, Amendment Bylaw No. 145, 2014", as included in Appendix 1, be introduced and read a first time and read a second time; and
- b) That in accordance with the provisions of Section 890 and 891 of the *Local Government Act*, the Director for the Juan de Fuca Electoral Area, or the Alternate Director, be delegated authority to hold a public hearing with respect to Bylaw No. 3960.

****ORIGINAL SIGNED****

June Klassen, MCIP, RPP
Manager, Local Area Planning

Kevin Lorette, P.Eng., MBA
General Manager,
Planning and Protective Services
Concurrence

Robert Lapham, MCIP, RPP
Chief Administrative Officer
Concurrence

Appendices:

1. Proposed Bylaw No. 3960
2. Referral Responses
3. Private Land

**CAPITAL REGIONAL DISTRICT
BYLAW NO. 3960**

**A BYLAW TO AMEND
BYLAW NO. 980, "MALAHAT LAND USE BYLAW, 1981"**

The Regional Board of the Capital Regional District, in open meeting assembled, enacts as follows:

1. Bylaw No. 980 being the "Malahat Land Use Bylaw, 1981" is hereby amended:

A. RURAL A1 ZONE

- a) Amend the Rural A1 zone by deleting the zone from the Songhees First Nation Reserve Lands on Chatham Islands (Chatham IR #4) and a portion of Discovery Island (Discovery Island IR #3);
- b) Amend the Rural A1 zone by deleting the zone from the Department of Fisheries and Oceans Lighthouse property on Discovery Island Lot A, Section 1, Discovery Island, Victoria District, Plan VIP65904; and
- c) Amend the Rural A1 zone by deleting the zone from the islands within BC Parks Oak Bay Ecological Reserve (Jemmy Jones Island, Great Chain Island, the Chain Islets and Alpha Islet) and Discovery Island Marine Park (remainder Section 1, Discovery Island).

B. SCHEDULE "B" ZONING MAP

Amend Schedule "B" by deleting the map titled "Malahat Land Use Bylaw, 1981, Bylaw No. 980, Map 1: Malahat Zoning" and replacing with the new map titled "Malahat Land Use Bylaw, 980, Map 1: Malahat Zoning" as shown on Schedule "B" attached to and forming part of this bylaw.

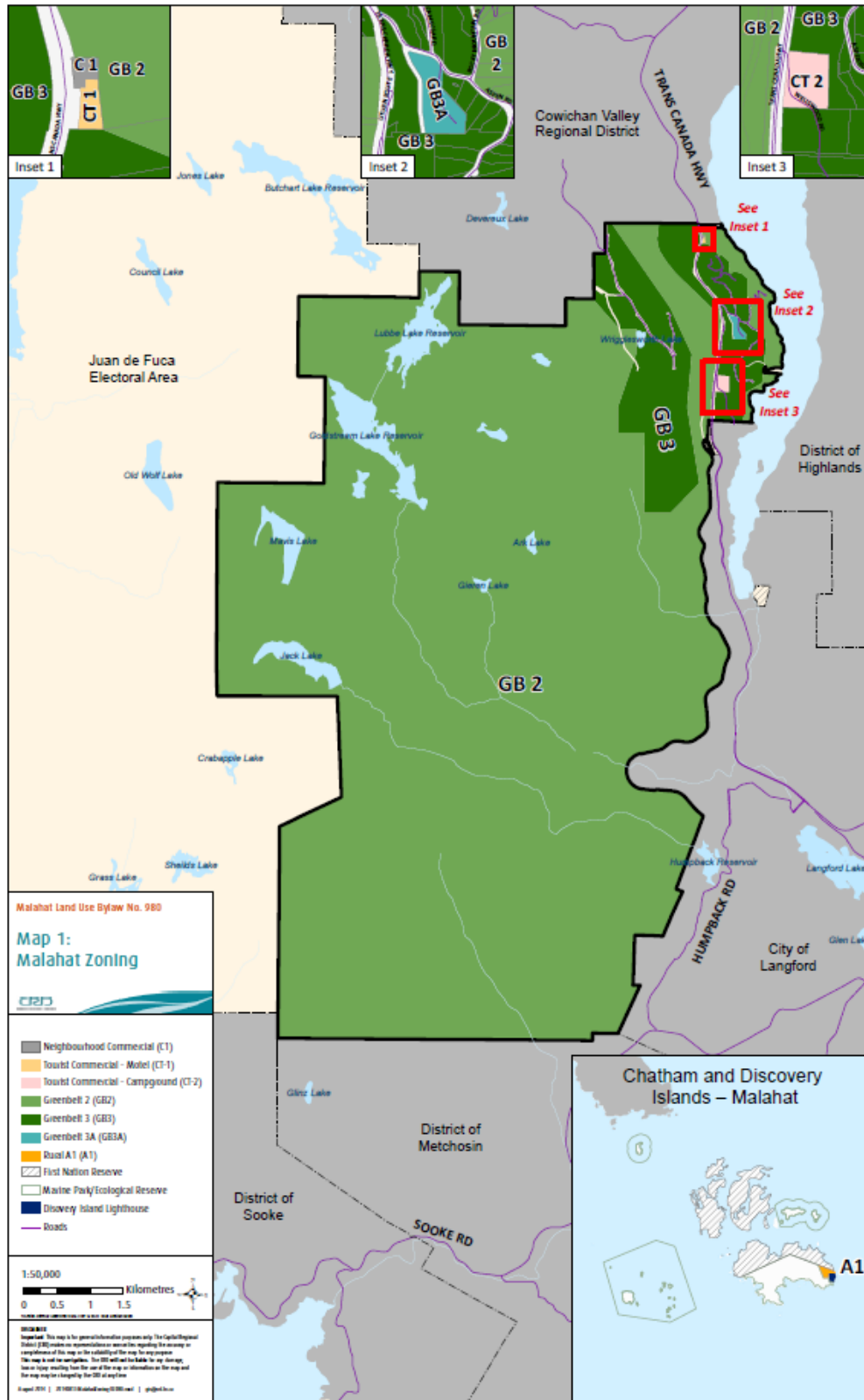
2. This bylaw may be cited as Bylaw No. 3960, "Malahat Land Use Bylaw, 1981, Amendment Bylaw No. 145, 2014".

READ A FIRST TIME	THIS	DAY OF	2014
READ A SECOND TIME	THIS	DAY OF	2014
READ A THIRD TIME	THIS	DAY OF	2014
APPROVED by the Minister of Transportation and Infrastructure			
	THIS	DAY OF	2014
ADOPTED	THIS	DAY OF	2014

CHAIR

CORPORATE OFFICER

Schedule "B" – Map 1: Malahat Zoning



Wendy Miller

From: Evanoff, Ryan TRAN:EX <Ryan.Evanoff@gov.bc.ca>
Sent: Wednesday, October 15, 2014 1:09 PM
To: Wendy Miller
Subject: RE: Proposed Bylaw No. 3960 - CRD Referral

Wendy,

Please accept this email as an official response to your referral below, Ministry file **2014-05075**.

The Ministry has no objections to the Land Use Bylaw amendment as presented and has no additional requirements for approval.

Any certified bylaw forms that require Ministry signoff for this bylaw may be forwarded to this office, care of myself, at your convenience.

If you require any additional documentation please feel free to contact myself directly.

Thank you,

RYAN EVANOFF | SENIOR DISTRICT DEVELOPMENT TECHNICIAN | BC MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE | VANCOUVER ISLAND DISTRICT |

240-4460 CHATTERTON WAY, VICTORIA, BC V8X 5J2

T: 250.952.4495 | F: 250.952.4508

WEBSITE FOR DEVELOPMENT APPROVALS:

www.th.gov.bc.ca/Development_Approvals/home.htm | MINISTRY WEBSITE: <http://tranbc.ca/>

Wendy Miller

From: Wendy Miller
Sent: Tuesday, November 04, 2014 11:22 AM
To: Wendy Miller
Subject: Proposed Bylaw No. 3960 - CRD Referral

From: Monroe Grobe [<mailto:mgrobe@sd79.bc.ca>]
Sent: Monday, November 03, 2014 1:02 PM
To: Wendy Miller
Subject: Re: Proposed Bylaw No. 3960 - CRD Referral

Good afternoon Wendy,

Thank you for the opportunity to review and respond to this revision. The interests of School District No79 (Cowichan Valley) are unaffected by this proposal.

Sincerely,

Monroe

Monroe Grobe
Director of Operations
School District No79 (Cowichan Valley)
2557 Beverly Street
Duncan, BC V9L 2X3
250-748-0338



SONGHEES FIRST NATION - LAND AND WATER REFERRAL CHECKLIST

Type of Referral: Bylaw Amendment **SFN File #:** CRD Bylaw Amendment (Oct 2014)
Referred from: CRD **Their File No:** Proposed Bylaw 3960 **Reviewed by:** Local Government Services
Date Received: October 9, 2014 **Date of the Review:** Nov 4, 2014

REQUIRED INFORMATION - Clear identification on a map about the location of the site to which this referral applies. A report or map showing the following information was provided;

- | | | | |
|--|-------------|-------------|---------------------|
| 1/. Bio-Physical inventory: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 2/. Floodplain or watershed area: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 3/. Contour lines: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 4/. Physical and legal access points: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 5/. Water or sewer line information: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 6/. Past uses of the site: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 7/. Any hazardous materials currently or historically located on site: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 8/. Storm water information: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 9/. Roads adjacent to the site: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 10/. Landslide or potential land slip areas: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 11/. Potential wildfire areas: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 12/. Adjacent land uses: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 13/. Archaeological information: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |
| 14/. Environmentally sensitive areas: | <u> </u> | <u> </u> | <u> X </u>
n/a |
| | Yes | No | |

DECISION MAKING CHECKLIST: (this section consists of two parts)

A/. How does the proposed activity affect any of the following?

REVIEW CRITERIA	POSITIVE IMPACT	NEGATIVE IMPACT	NOT APPLICABLE	FURTHER STUDIES NEEDED
Songhees' connection to the land?	X			
Songhees' connection to the water?	X			
Songhees' Rights in the short or long-term?	X			
Songhees First Nation's Sovereignty (self-reliance, capital assets and/or authority)?			X	
Songhees' capacity in education, skills, and overall knowledge?			X	
The growth and sustainability of plants, seeds, wildlife and any other traditional foods?			X	
The sustainability of fish and marine life and any other aquatic foods?			X	
Songhees' ability to harvest traditional foods?	X			
Songhees' ability to create policies to guarantee Songhees systems of land and resource tenure?	X			

B/ Will the proposed activity add to or detract from any of the following?

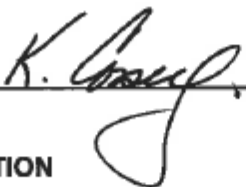
REVIEW CRITERIA	POSITIVE IMPACT	NEGATIVE IMPACT	NOT APPLICABLE	FURTHER STUDIES NEEDED
The overall development of the Songhees community?			X	
Songhees' culture (traditions, stories, history, values and language)?			X	
The basic needs of shelter, clothing or social assistance?			X	
The basic need of food and/or the Songhees' traditional way of producing and gathering it?			X	
The basic need for health?			X	
Employment or training for Songhees' members (internships, apprenticeships, mentorships)?			X	
Involvement of youth in Songhees Nation affairs?			X	
Involvement of Elders and other Band members in Songhees Nation affairs?			X	
Relationship building such as development of strategic or business partnerships?	X			
Other issues (List)				

Range of consultation required (Tick appropriate box):

- Minor:** Weak, little or no impact. Agency to inform and hear from Songhees.
- Moderate:** Impacts will moderately affect Songhees rights as identified by Songhees – therefore there must be discussions on eliminating or minimizing the impacts, as agreed to by Songhees. Compensation may be required.
- Deep:** Impacts will seriously affect or interfere with Songhees rights and title, therefore there must be no development allowed at this time. Extensive discussions and negotiations for joint decision-making and/or compensation are required.

OVERALL RECOMMENDATION:

Council can support this amendment, as our interests are unaffected

Reviewer's Signature: 

Title: Director of Local
Government Services

ADMINISTRATIVE SECTION

Additional studies and/or assessments required:

- Archaeological assessment
- Rights and Title legal review
- Fisheries report
- Biological review
- Cumulative Impacts analysis
- Socio-Economic analysis
- Other - _____

Notes:

The basis of aboriginal rights and title, are derived from two key points:

- 1/. Having lived in, occupied and or used a certain area for thousands of years, in what today has become British Columbia and Canada. This was achieved with the creation of distinct societies, the development of a certain way of life and the development and use of a governing system.
- 2/. The special relationship that exists with the land, in that it has defined one's identity, rights and responsibilities.

These rights are not granted through any mechanism of either the provincial or federal crown. These rights exist in perpetuity.


Chief Ron Sam's signature

N/A at this time
Councillor's signature

Contact Information: Songhees First Nation
1100 Admirals Road
Victoria, BC V9A 2P6
Phone: (250) 386 1043 (ext 208) Fax: (250) 386 4161
E-mail: ken.cossey@songheesnation.com

Status: Filed

Doc #: VIP131505

RCVD: 1998-02-03 RQST: 2014-06-16 13:09.04

Plan 1315 O.S.

