

## Staff Report

Date: February 9, 2021  
To: Chief Administrative Officer  
From: James van Hemert, Consulting Planner  
Re: **Application for a Development Variance Permit for Rem. Lot A, Plan VIP64669, District Lot 13, Cowichan Lake Land District**



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### APPLICATION:

The applicant requests a ***Development Variance Permit*** to:

- 1) immediately withdraw the Stop Work Order of November 6, 2020 to allow construction to proceed; and
- 2) allow construction to proceed in accordance with the engineering design and stormwater management plan, which was approved by the Town in March 2020.

### BACKGROUND

The subject property received ***rezoning approval*** by the Town Council on January 22, 2019 for increased density and flexibility. The new zone district is R-1-B Single Family and Duplex Urban Residential Zone and allows for smaller lots, duplexes and secondary suites.

The Town granted a ***Development Variance Permit*** on June 30, 2020 for a variance to the Zoning Bylaw No. 935-2013, Section 4.10 'Fences and Retaining Walls', to vary the 2.0 metre maximum height of a retaining wall and fence. Additional height for retaining walls of between 2 and 5 metres was granted for Lots 15-18, and 31-34. Approval was granted for an additional 1.2 metres for a transparent chain link fence for lots 15-18 and 31-34.

A ***Stormwater Management Plan*** was prepared by McElhanney engineering consultants on December 6, 2019. It is this plan that is associated with the March 10 construction permit noted in the following text. The applicant purports this plan to be in accordance with the Town's Subdivision, Works & Services Bylaw standards for stormwater management. The plan specifically references a piped stormwater system (more details in the Discussion section following).

The subject property is in the process of roadway and infrastructure construction in accordance with a '***preliminary lot layout***' approval from the Approving Officer received on March 8, 2020.

At the time of ***Preliminary Lot Layout Approval*** the Town's Public Works

Department was in receipt of **50% completion construction drawings** that included 'in street' underground stormwater drainage facilities as part of the overall stormwater management infrastructure.

The Town issued a **construction permit 'to Construct Works within Highway Right-of-Way'** on March 10, 2020, subject to 'zoning requirements are met."

Specifically, the works permitted are:

- 1) Clearing and removal of vegetation;
- 2) Rough grading;
- 3) Construction of retaining walls
- 4) Installation of underground services (water, sewer and lot services)
- 5) Construction of roads
- 6) Installation of electric and streetlighting

Conditions of the construction permit included:

1. Construct (ion) meet (s) all permit issues.
2. Construction meets all MMCD standards.

A **Sediment Control and Erosion Plan** was prepared by Corvidae Environmental.

As construction began in May of 2020 problems arose with sediment control and erosion. While issues were addressed as they arose, new issues continually arose through the fall when the Town issued a **Stop Work Order** on November 6, 2020.

In response to the Stop Work Order the applicant engaged Madrone Environmental Services to evaluate the **erosion and sediment control**. A detailed **memo** prepared on November 13<sup>th</sup>, 2020 highlights the issues and identified remedies.

The erosion polluted several fish bearing watercourses and lakes and prompted the Town to engage the services of a biologist to study the extent of the problem.

### **SUBDIVISION LAYOUT**

The layout of the subdivision, its street pattern and current names, lot configuration, wetlands, and environmentally protected areas is illustrated in Figure 1.

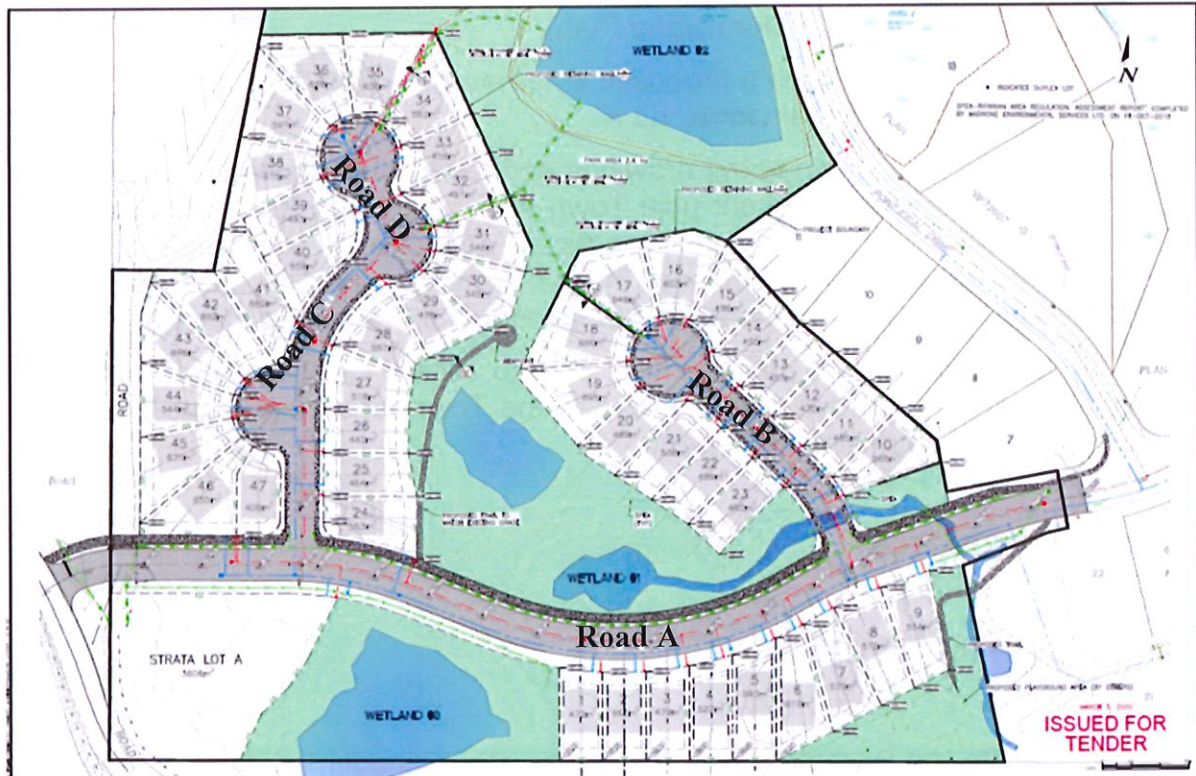


Figure 1 Point Ideal Subdivision Layout

## DISCUSSION

The application comprises two requests: 1) withdrawing a 'stop work' order and 2) permit construction to proceed in accordance with the engineering design and stormwater management plan, which was approved by the Town in March 2020.

### **Stop Work Order**

The Town administration maintains that this is not a matter subject to a Development Variance request and therefore not a matter on which Council may decide.

***The applicant claimed that construction is in accordance with the engineering plans and associated stormwater management plan approved by the Town in March 2020***

The central issue is the nature of the stormwater system design. The applicant claims they may construct without any in-ground stormwater pipe network, including within the roadways and connections to buildings.

The 50% completion engineering drawings, dated December 11, 2019, identify an in-ground piped stormwater system. This is consistent with the stormwater management plan of December 6, 2019 which is predicated on piped stormwater system. Specifically, the plan states:

***” It has been assumed the lots will be 50% impervious and that **all lots will connect directly to the storm drain system.**”*** (p. 6 Technical

Memo, Point Ideal Stormwater Plan)

Further, the plan discusses a proposed small storm system for Road C and D and a proposed storm main for Road A.

Based on the 50% engineering drawings and its accompanying December 6 2019 stormwater management plan Town staff reasonably concluded that a piped network of stormwater facilities would constitute a component of the overall infrastructure program and, in fact, were essential in satisfying the Subdivision, Works and Services Bylaw standards for rainwater management.

No updated stormwater management plan to reflect the withdrawal from a piped stormwater system was provided to the Town for review at the time of the request for a construction permit.

**RECOMMENDATION**

**Option 1**

1. Deny the request.

**Option 2**

1. Update the December 6, 2019 Stormwater management Plan to reflect infrastructure as constructed.
2. At the applicant's expense the Town engage at its sole discretion an independent professional engineer to:
  - a. review the analysis and conclusions of the Point Ideal Stormwater Plan prepared by McElhanney on December 6, 2019 and its update to reflect current conditions and level of construction. The conclusions should be considered in light of current site conditions and any alterations made during construction;
  - b. undertake a site visit and interviews with Town staff;
  - c. identify any modifications to the stormwater plan, including, but not limited to underground street and building site infrastructure; and
  - d. identify specific issues and management techniques for long term maintenance of exposed constructed rock and natural swales.



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