

## Staff Report

Date: June 26, 2020  
To: Chief Administrative Officer  
From: James van Hemert, Consulting Planner  
Re: **Application for a Development Permit for Rem. Lot A, Plan VIP64669, District Lot 13, Cowichan Lake Land District**



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### APPLICATION

The applicant requests a ***Development Permit*** to allow for a subdivision comprising 47 residential lots and a strata lot on 6.85 ha.

### BACKGROUND

A Development Permit for this land is required in accordance with the Town of Lake Cowichan Official Community Plan (2019) and the BC Local Government Act. The relevant Development Permit Areas (DPA) are DPA 1-- Watercourse and Streamside Protection and DPA 2 –Natural Hazard Lands.

#### ***Development Permit***

The application, dated May 8, was received by the Town office on May 11.

A few points of clarification are important.

The application letter refers to Development Permit Area 2 –Natural Hazard Lands only, however, the land is subject also to Development Permit Area 1-- Watercourse and Streamside Protection.

The application erroneously notes that a Building Permit was issued. Instead, a 'construction' permit, or technically speaking, an application "to construct works within highway right-of-way" was approved on March 10, 2020, subject to "zoning requirements are met."

The application uses language that suggests the Town was delinquent in not advising the applicant in a timely fashion that a Development Permit was required:

*'The Town has now stated that a Development Permit is required for the subject development due to some steep slopes along a portion of the subdivision. These slopes are located adjacent to a protected environmentally sensitive area with no or very limited public access and the required retaining walls are all located on private property within the new development. '*

In fact, this requirement is no surprise: Town staff and the consulting planner have informed the applicant's representative in all face-to-face meetings held at the Town office since the fall of 2019 that a Development Permit was required.

The Town's requirement for a Development Permit has been stated in writing as a condition of 'preliminary lot layout' approval, is well publicized in all its Bylaws and is a requirement of the BC Local Government Act.

The Development Permit application is accompanied by a Development Variance Permit application to vary the maximum height of a retaining wall from the maximum height of 2 (two) metres per Zoning Bylaw Section 4.10. A separate staff report reviews and discusses the Development Variance Permit application.

### **Zoning**

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 (minimum lot size of 350 m<sup>2</sup>), duplexes (minimum lot size of 600 m<sup>2</sup>) and secondary suites.

### **Subdivision**

The subject property is in the process of **subdivision review** and approval and has received a 'preliminary lot layout' approval from the Approving Officer on March 8, 2020.

Relevant approval conditions include:

#### **3. Additional prerequisites**

- (iii) *Portions of the land affected by the development proposal is in one or more of the Development Permit Areas and is therefore subject to Development Permit application and approval before final approval for subdivision can be given.*
- (vii) *Requirements of the applicable zone district and the Subdivision, Works and Services Bylaw must be met.*

### **Construction permit**

The Town issued a construction permit 'to Construct Works within Highway Right-of-Way' on March 10, 2020, subject to 'zoning requirements are met.' The permit was re-issued on March 19, 2020 with the conditions "construct meet all permit issues" and "construction meets all MMCD standards."

Specifically, the description of the works are as follows:

- 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

**The permit is limited to works within (future) highway right-of-way and should not include any work outside of the right-of-way such as retaining walls.** The Town has informed the applicant in writing that construction of retaining walls over 2 metres in height should not proceed. The developer has verbally agreed to not construct retaining walls until the after a decision has been made on the development variance permit application.

## DESIGN PROPOSAL

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

The plan proposes 47 lots for single detached homes and a strata lot with a yet to be determined design layout.

In accordance with the zoning commitments, the proposal includes a minimum of 2.5 hectares of park and conservation land, which includes 4 wetlands, a children's playground, and a trail network. The trail network plan is currently under revision in order to connect the two cul-de-sacs and connect the development to public land to the west.

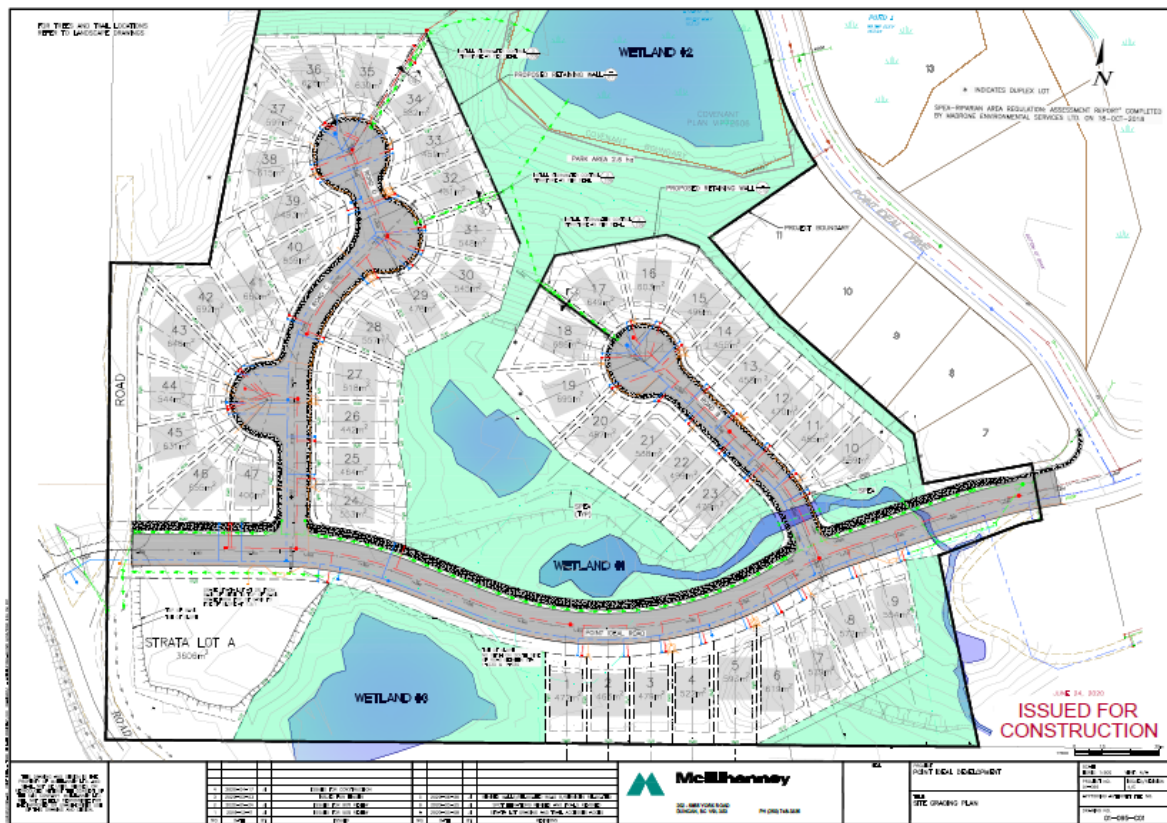


Figure 1 Point Ideal Subdivision Layout

## RIPARIAN AREAS REGULATIONS QUALIFIED PROFESSIONAL ASSESSMENT REPORT

The RAR –Qualified Environmental Professional (QEP)—Assessment Report, dated October 18, 2018, prepared by Madrone, identifies the SPEA and used a previous subdivision design as its reference.

The following recommendations should carry forward within conditions of approval of the development permit.

1. Prior to initiating any land clearing on the site, the SPEA boundaries must be marked on the ground with a form of fencing that will prevent inadvertent encroachment.

2. Once construction is complete a permanent form of SPEA delineation should be considered for the long-term protection of the SPEAs. In this particular case installing informative signage along the SPEAs that explains the sensitivity of riparian habitats and their importance to fish would be beneficial.

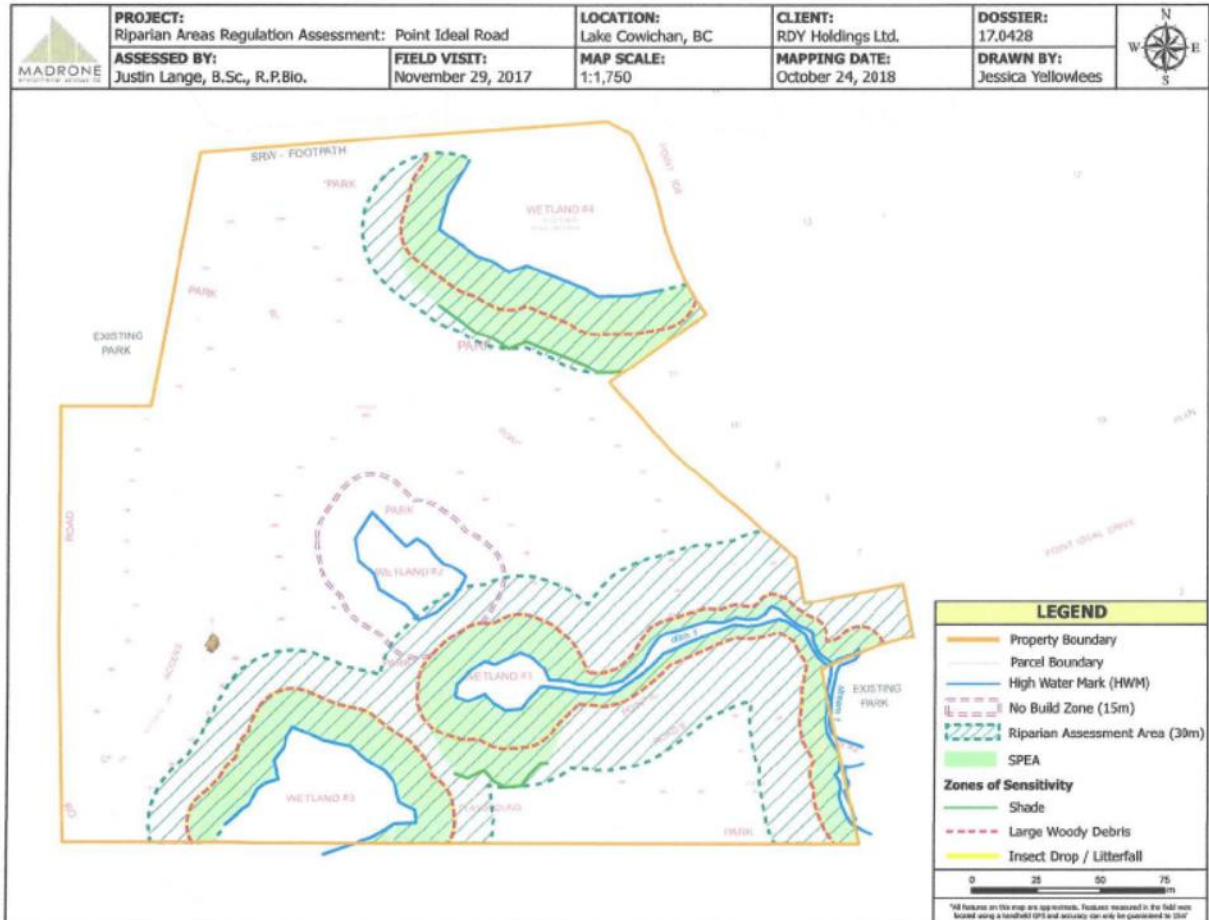


Figure 2 Riparian Assessment Area & SPEA

The current subdivision plan introduces an incursion into the SPEA with a collector status roadway between Wetland #1 and Wetland #3. The civil engineer for the project, Jon Irving, notes the following:

*We have discussed this information with the QEP at Madrone and the main pieces of information are as follows:*

*The preparation of a revised RAR report is not necessary at this time – approval of plans and crossings can be addressed with the Town and through Section 11 Notifications*

- *Point Ideal Drive has been designed and is to be constructed over the footprint of a previously constructed road which fell in SPEA boundaries, which is noted in the RAR report – the QEP has been made aware of this throughout the design process and has no objection to this methodology.*

## **TOWN BYLAW REVIEW & ANALYSIS**

### **I. Official Community Plan**

#### **Development Permit Area 1 –Watercourse and Streamside Protection**

Selected relevant guidelines (Section 6.2.4) are cited below, with a brief comment on the extent to which the proposal satisfies the guideline.

- 1) No development shall occur within a Streamside Protection and Enhancement Area (SPEA) except for the following:
  - b) works authorized by the Department of Fisheries and Oceans or a regulation under the Fisheries Act (Canada); and
  - c) works and activities that comply with the laws, regulations and best management practices of the Water Act, for example bank repairs, stormwater outfalls, road crossings, footbridges and pipeline crossings.
  
- 4) Additional measures may also be required depending on the degree of potential impacts of the development on the SPEA and the condition of the SPEA including, but not limited to (NOTE: alpha numeric ordering slightly altered to reflect appropriate indents):
  - a) planting of native vegetation and removal of invasive non-native vegetation within the SPEA in accordance with an approved restoration plan;
  - b) maintaining hydrologic characteristics that emulate the pre-development state of land:
    - i. minimize impervious surfaces;
    - ii. return the stormwater runoff from impervious surfaces of the development in accordance with the Water Balance Model adopted by the Province;
  - e) environmental monitoring during the construction phase;
  - f) developing and implementing a soil erosion and sediment control plan as part of site design and construction to prevent the discharge of sediment laden water into the watercourse;
  - g) protecting the root zones of trees located within the SPEA and those identified for retention outside the SPEA during construction;
  - h) installation of a permanent fence to demarcate the SPEA;
  - i) abating windthrow hazard outside the SPEA;
  - j) registering of a conservation covenant over the SPEA; and
  - k) dedication of the watercourse to the Town of Lake Cowichan.

### ***Commentary***

Town bylaws address maintaining hydrologic characteristics that emulate the pre-development state of the land, notably the Subdivision Works and Improvements Bylaw.

The installation of a permanent fence to demarcate the SPEA is important and should be reflected in the conservation covenant.

## **Development Permit Area 2 Natural Hazard Lands**

### **6.3.6 Steep Slopes Guidelines**

1) Significant excavation or filling to accommodate buildings or structures or to alter existing slopes shall not be undertaken, nor shall any building or structure be erected, constructed or placed in areas subject to bank instability or potential damage from bank instability. To avoid areas subject to unstable slopes, buildings and structures shall be sited in accordance with building setbacks and other requirements as determined by a geotechnical engineer registered as a Professional Engineer in British Columbia.

2) All lands shown on Map 4 Natural Hazard Lands Development Permit Area (DPA 2) with slopes of greater than 10% shall be subject to slope stability studies to determine where hazardous conditions exist prior to any development being permitted. These studies shall include but not be limited to identifying areas of slope equal to or greater than 30%, areas of springs and seepage and organic soils, the 200-year flood plain, and any areas with a high-water table, and other studies as required. Reports shall be prepared, signed and sealed by a qualified practising engineer, licensed to practise in British Columbia. If fish habitat areas are potentially affected by proposed development, Council shall require a report prepared by a qualified fish biologist specifying how the proposal will meet all applicable Federal and Provincial regulations.

### **6.3.7 Exemptions**

1) No exemptions from the requirements of a Development Permit for flood plains and steep slopes may be granted by Council.

### **Supporting Study**

The application is supported by an opinion from Ryzuk Geotechnical, dated November 26, 2018. It does acknowledge that "site preparation for the proposed subdivision would include removal of the existing vegetation topsoil and fills to expose native topsoil, followed by an extensive cut and fill earthworks program." The report acknowledges earth buildup of up to 11 m above existing grade.

Further, with respect to slope stability, the report states:

Areas where slope gradient exceeded 30% were assessed for indications of instability and groundwater seepage to determine if hazardous conditions exist. Based on a visual assessment of the surface conditions, slopes within native soils were stable in the current state with no observed indication of seepage or potential for surficial or global slope instability.

### ***Commentary***

The geotechnical opinion cited above predates the current subdivision application and redesign and does not consider the specific design of retaining walls now proposed.

For the purpose of a development permit within the DPA 2 Natural Hazard Lands, the application as presented satisfies the guidelines, provided the design of any retaining walls and building foundations are signed off by a qualified, practicing engineer.

Approval of a development permit does not grant approval for a variance beyond the 2 metre maximum height of retaining walls per Zoning Bylaw Section 4.10, nor does

it grant approval for any building construction.

## **Zoning Bylaw**

### **Height of retaining walls**

Town's Zoning Bylaw No. 935-02913, Section 4.10 limits fences and retaining walls to no more than 2 metres, except for light industrial zones.

#### ***Commentary***

The subdivision proposes retaining walls in excess of two (2) metres. Over the past two (2) decades the Town has consistently applied the maximum two (2) metres rule for all fences and retaining walls –or combination thereof –for all residential development.

A Development Variance Permit application to vary the maximum height of a retaining wall is being processed concurrently.

The development permit may be approved, irrespective of the status of the Development Variance Permit.

### **SUBJECT PROPERTY AND NEIGHBOURING PROPERTY CHARACTERISTICS**

The subject land is surrounded on the north and east by existing residential development of the Point Ideal neighbourhood. This includes a wetland conservation area and east-west trail that leads to the beach and Lakeview Campground.

The western edge of the site adjoins the Lakeview Campground and road access to the beach.

The southern edge of the site is adjacent to the Town boundary and adjoins forested land owned by Timber West.

### **APPLICATION REVIEW PROCESS & NEIGHBORING PROPERTY OWNERS CONCERNS**

Written notice of the applications was provided to all neighboring property owners on Monday, June 15<sup>th</sup>, 2020.

The Town has received an email from a resident (Peter Patsula), April 1 and also prior to that date a face to face meeting was held at the Town Office. Concerns raised include the following:

1. Retaining wall height (too high)
2. Consider lowering Road B (proposed behind existing homes on west side of Point Ideal Drive)
3. The 'eye sore' nature of retaining wall height and houses that sit atop
4. Concerned with neighbourhood aesthetics— 'high density look'

### **DISCUSSION**

This development permit request as presented and associated conditions of approval, if approved, does not grant the applicant permission to construct retaining walls as proposed. Retaining walls would remain limited to a maximum height of two (2) metres.

A Development Variance Permit is necessary for any height of a retaining wall above two metres.

**RECOMMENDATION & APPROVAL CONDITIONS**

Staff recommend approval of a Development Permit, subject to conditions as described below.

That a Development Permit for land described as Rem. Lot A, Plan VIP64669, District Lot 13, Cowichan Lake Land District be approved with the following conditions:

- 1) Development must comply with all Town Bylaws, specifically including, but not limited to:
  - a. Zoning Bylaw
  - b. Subdivision, Works, & Services Bylaw
- 2) That development proceeds to the satisfaction of the Town in accordance with the recommendations of the Riparian Areas Regulations (RAR) –Qualified Environmental Professional (QEP)—Assessment Report as originally prepared by Justin Lange of Madrone Environmental Services on October 18, 2018 and in accordance with Section 11 of the Water Sustainability Act.
- 3) The Stream Protection and Enhancement Area (SPEA) shall be subject to a conservation covenant.
- 4) Prior to initiating any land clearing on the site, the SPEA boundaries must be marked on the ground with a form of fencing that will prevent inadvertent encroachment.
- 5) Once construction is complete a permanent form of SPEA delineation, such as a split rail fence, shall be installed for the long-term protection of the SPEAs.
- 6) At regular intervals, the installation of informative signage along the SPEAs to explains the sensitivity of riparian habitats and their importance to fish.
- 7) Approval of this Development Permit does not constitute approval of a Building Permit and any required sign permits.



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James van Hemert, MCIP, RPP  
Consulting Planner

CAO's Comments:

Based on the analysis evidenced in the above report, the CAO supports the recommendation provided.

