

**Municipality of North Cowichan
Regular Council
AGENDA**

Wednesday, September 16, 2020, 1:30 p.m.
Electronically

Pages

1. CALL TO ORDER

This meeting, though electronic, is open to the public and all representations to Council form part of the public record. At this time, due to the COVID-19 Pandemic, public access to Council Chambers is not permitted, however, this meeting may be viewed on the District's lived stream webcast at www.northcowichan.ca/agendas.

2. APPROVAL OF AGENDA

Recommendation:

That Council adopt the agenda, as circulated [or as amended].

3. ADOPTION OF MINUTES

3.1 Regular Council meeting held September 2, 2020 for adoption

5 - 8

Recommendation:

That Council adopt the minutes of the Regular Council meeting held September 2, 2020.

4. MAYOR'S REPORT

5. DELEGATIONS AND PRESENTATIONS

5.1 Vancouver Island Vipassana Association (VIVA)

9 - 16

Purpose: To permit VIVA to present their request to Council for changing their tax exemption status for 2359 Calais Road to cover the entirety of lands, not just improvements.

6. PUBLIC INPUT

The Acting Mayor to acknowledge receipt of submissions circulated to Council prior to the meeting to Agenda@northcowichan.ca and state the agenda item the public input is in relation to on this agenda.

7. BYLAWS

7.1 Permissive Tax Exemption Request

17 - 38

Purpose: To consider the permissive tax exemption application submitted by Vancouver Island Vipassana Association, and to provide a summary of the Permissive Tax Exemption applications received for the 2021 assessment roll.

Recommendation:

That Council deny Vancouver Island Vipassana Association's request for a permissive tax exemption for the land portion of 2359 Calais Road and Wicks Road.

7.2 Zoning Amendment Application - ZB000126 - 934 Khenipsen Road

39 - 101

Purpose: To introduce Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798 so that Council may consider a site specific zoning amendment application to permit the use of a converted accessory building as a detached second dwelling.

Recommendation:

That Zoning Bylaw Amendment Application No. ZB000126, to permit a second dwelling at 934 Khenipsen Road (PID: 027-581-578), be denied.

8. REPORTS

8.1 Covid-19 Re-opening Plans for Cowichan Aquatic Centre

102 - 104

Purpose: To consider which services will be provided if Council authorizes the re-opening of the Cowichan Aquatic Centre.

Recommendation:

That Council directs staff to proceed with the re-opening of the Cowichan Aquatic Centre under its COVID-19 Restoration of Programs & Services Plan, specifically to allow for a phased-in resumption of services effective October 13, 2020.

8.2 Capital Grant Applications for the 2021 Budget

105 - 107

Purpose: To request Council authorization to apply for federal and provincial grant funding under the Investing in Canada Infrastructure and the Asset Management Grant programs.

Recommendation:

1. That Council authorize an application to the Investing in Canada Infrastructure Program under the Community, Culture and Recreation stream for the Crofton to Maple Bay Trail project for a project cost up to an estimated \$2 million.
2. That Council authorize an application to the Investing in Canada Infrastructure Program under the COVID-19 Resilience stream for replacement of the Fuller Lake Arena roof and the Cowichan Aquatic Centre roof up to an estimated \$2.4 million.
3. That Council authorize an application to the Federation of Canadian Municipalities' Municipal Asset Management Program for a grant of up to \$50,000 so that North Cowichan may continue with its next phase of asset management planning, which is to create Asset Management Plans for major facilities and buildings.

9. NOTICES OF MOTIONS

9.1 Notice of Motions submitted by Councillor Toporowski regarding the use of anticoagulant rodenticides

Purpose: To introduce Councillor Toporowski's motions:

1. *That Council recognizes the harmful impacts of anticoagulant rodenticide use and directs staff to prepare a report outlining options available to ban their use by, and in the Municipality of North Cowichan; and that staff communicate to the public the harmful impacts of anticoagulant rodenticide and the alternatives that are available.*
2. *That Council request that the Mayor write, on behalf of Council, to the Premier of British Columbia, appropriate ministers, and copying Members of the Legislative Assembly in the Cowichan Valley, requesting that the Province of British Columbia ban the use of anticoagulant rodenticides.*

which she intends to move so that they may be debated and considered by Council at the October 7, 2020 regular meeting.

10. UNFINISHED AND POSTPONED BUSINESS

11. NEW BUSINESS

11.1 Illegal Secondary Suites

108 - 108

Purpose: So that Councillor Manhas may move his motion he introduced and gave notice of on September 2, 2020.

Recommendation:

That Council direct staff to prepare a report identifying potential safety issues, and financial and liability impacts and/or risks to the municipality in relation to existing illegal secondary suites in North Cowichan.

11.2 Request for follow through on Climate Action

109 - 110

Purpose: For Council to consider a response to the request (letter) from various local citizens and organizations for an update on the specific actions and plans undertaken by the municipality to reduce carbon emissions in North Cowichan and get to net zero emissions by 2050.

12. QUESTION PERIOD

A 10-minute recess to be provided to give the public an opportunity to submit their questions by email to QP@northcowichan.ca regarding the business discussed at this meeting. Questions will be read out in the order they are received.

13. RISE AND REPORT

14. ADJOURNMENT

**Municipality of North Cowichan
Regular Council
MINUTES**

**September 2, 2020, 1:30 p.m.
Electronically**

Members Present Mayor Al Siebring
 Councillor Rob Douglas
 Councillor Christopher Justice
 Councillor Tek Manhas
 Councillor Kate Marsh
 Councillor Rosalie Sawrie
 Councillor Debra Toporowski

Staff Present Ted Swabey, Chief Administrative Officer (CAO)
 Sarah Nixon, Deputy Chief Administrative Officer (D/CAO)
 Mark Frame, General Manager, Financial and Protective Services
 David Conway, Director of Engineering
 Don Stewart, Director, Parks and Recreation
 Rob Conway, Director of Planning and Building
 George Farkas, Acting, Director of Human Resources
 Jason Birch, Chief Information Officer
 Megan Jordan, Manager, Communications and Public Engagement
 Michelle Martineau, Corporate Officer
 Shaun Mason, Municipal Forester
 Martin Drakeley, Manager, Fire and Bylaw Services
 Bent Nielsen, Engineering Technologist
 Chris Bear, Inspector, North Cowichan/Duncan RCMP

1. CALL TO ORDER

There being a quorum present, Mayor Siebring called the meeting to order at 1:30 p.m.

2. APPROVAL OF AGENDA

IT WAS MOVED AND SECONDED:
That Council adopt the agenda, as circulated.

CARRIED

3. ADOPTION OF MINUTES

3.1 Regular Council meeting held August 19, 2020 for adoption

3.2 Special Council meeting held August 26, 2020 for adoption

There were no errors or omissions noted on either set of minutes.

IT WAS MOVED AND SECONDED:

That Council adopt the minutes of the Regular Council meeting held August 19, 2020 and the Special Council meeting held August 26, 2020.

CARRIED

4. MAYOR'S REPORT

Mayor Siebring provided a verbal update on meetings and activities he recently attended.

5. DELEGATIONS AND PRESENTATIONS

5.1 Cowichan Housing Association

John Horn, Executive Director of the Cowichan Housing Association (CHA) addressed Council on how the Society could assist them in achieving their social housing objectives within their Strategic Plan. Mr. Horn provided an overview of the Housing Trust Fund, their housing research and information hub, strategic planning, capacity building, outreach, management and administration, and outlined the activities that a social planner could undertake that would complement the CHA's work. Mr. Horn responded to questions of Council and a copy of his presentation was included in the agenda.

Council took a brief recess at 2:02 p.m. to address technical issues related to livestreaming the meeting. The meeting resumed at 2:23 p.m., however, the meeting could not be livestreamed as technical issues were unable to be repaired at that time. Ministerial Order M192 authorized the meeting to proceed without the technology to accommodate the public to listen or watch the meeting. To be consistent with the Council resolution of July 15, 2020 regarding public transparency, the agenda and all relevant documents were published to the municipal website on Friday, August 27, 2020, members of the public had been provided an opportunity to submit their input on agenda items via email in advance of the meeting, and a copy of the [Webex] electronic meeting is to be uploaded to the municipal website for on-demand viewing.

6. PUBLIC INPUT

Council received one submission in relation to the agenda via email prior to the meeting regarding item 8.3. A summary of that submission was read out during the meeting.

7. BYLAWS

No items.

8. REPORTS

8.1 2021 Budget Public Engagement

IT WAS MOVED AND SECONDED:

That Council direct staff to:

1. Undertake an online communications campaign to inform the public about the 2021 budget and upcoming budget Committee of the Whole meetings.

2. Refer the issue of in-person, face-to-face, general community meetings to the Public Engagement and Communications Committee for consideration as part of the development of the Public Engagement Framework and Policy. CARRIED

8.2 Safer Community Update

IT WAS MOVED AND SECONDED:

That Council postpone the Safer Community Update to the September 16, 2020 regular Council meeting so that the public may observe the presentation. CARRIED

8.3 Leadership Development Opportunities

IT WAS MOVED AND SECONDED:

That staff be directed to research various training opportunities and coordinate a workshop at a future Committee of the Whole meeting so that Council can undertake a self-assessment of themselves as a decision-making body. CARRIED

IT WAS MOVED AND SECONDED:

That staff be directed to coordinate a Local Government and First Nations Relationships training session. CARRIED

9. NOTICES OF MOTIONS

9.1 Notice of Motion submitted by Councillor Manhas regarding existing illegal secondary suites

Councillor Manhas provided notice of the following motion that he will be moving at the September 16, 2020 regular Council meeting for Council's consideration:

"That Council direct staff to prepare a report identifying potential safety issues, and financial and liability impacts and/or risks to the municipality in relation to existing illegal secondary suites in North Cowichan".

10. UNFINISHED AND POSTPONED BUSINESS

No items.

11. NEW BUSINESS

No items.

12. QUESTION PERIOD

Due to the technical difficulties with livestreaming the meeting, there was no opportunity to invite the public to submit their questions at that time.

13. CLOSED SESSION

IT WAS MOVED AND SECONDED:

That Council close the September 2, 2020 Regular Council meeting at 3:35 p.m. to the public on the basis of the following sections of the *Community Charter*.

- 90(1)(c) labour relations or other employee relations;

- 90(1)(e) the acquisition, disposition or expropriation of land or improvements, which the council considers that disclosure could reasonably be expected to harm the interests of the municipality; and
 - 90(1)(m) which is a matter that, under another enactment, that being section 16(1)(a)(iii) of the *Freedom of Information and Protection of Privacy Act* regarding related to intergovernmental relations or negotiations with an aboriginal government
 - 90(2)(b) the consideration of information received and held in confidence relating to negotiations between the municipality and a provincial government or the federal government or both, or between a provincial government or the federal government or both and a third party.
- CARRIED

14. RISE AND REPORT

Council rose without report.

15. ADJOURNMENT

Council adjourned the meeting at 6:59 p.m. during the closed portion to reconvene electronically on Tuesday, September 8, 2020 at 5:00 p.m.

Council reconvened the meeting (still in) closed on September 8, 2020 at 5:08 p.m. and then rose without report adjourned the meeting at 6:51 p.m.

Certified by Corporate Officer

Signed by Mayor

DELEGATION APPLICATION for Virtual Meeting

Personal information is collected by the Municipality of North Cowichan under the authority of s.26(c) of the Freedom of Information and Protection of Privacy Act for the purposes of processing delegation requests. Should you have any questions about the collection of this personal information, please contact Information Management Officer, (250 746-3116; 7030 Trans-Canada Highway, Duncan, BC V9L 6A1.

Date: Sept 05/2020
 Name of Applicant: Steven Armstrong / Evie Chauncey On behalf of: Vancouver Island Vipassana Association
 Address: 2359 Calais Rd Duncan BC
 Email: steven.armstrong@dhamma.org Phone: _____

I/We request to appear electronically as a delegation before:

- Council Committee of the Whole Forestry Advisory Committee

Please provide a brief overview of your presentation, below, and attach a one-page (maximum) outline of your presentation.
Please be specific.

1. The Vancouver Island Vipassana Association (VIVA) teaches meditation in a Buddhist tradition, and offers a place of worship for Vipassana meditators.
2. Religious instruction provided.
3. Personal benefits of meditation.
4. Economic benefits to the community.
5. Courses taught in ten-day residential courses, for which are no charges for the courses - not even to cover the cost of food and accommodation. All funding comes from donations.
6. Opening of courses in October 2018, and number of attendees in 2018 and 2019.
7. How we have provided religious services during the pandemic.
8. Clarification about the fact that we are not asking for an additional exemption, but rather for land exemption, as all other religious organizations in North Cowichan have been granted.

Will you be requesting a grant or financial assistance? Yes No

I confirm that I have tested my ability to participate in a Webex Online meeting: Yes No

I would like a member of the North Cowichan IT team to connect with me to confirm my configuration: Yes No

Council and Committees welcome public comments, but as a courtesy to Council and Committees who deal with lengthy agendas, we request that you present your information clearly and concisely in ten minutes or less. All delegation applications along with supporting documentation and a copy of your presentation must be submitted for Council, Committee of the Whole or the Forestry Advisory Committee to legislativeservices@northcowichan.ca at least one week before the meeting is held. If the delegation consists of more than one person, please appoint one person to speak on behalf of your group.

To test your ability to participate in a Webex meeting, start a meeting at this site:
<https://www.webex.com/test-meeting.html>

Once you join the test meeting, use these instructions to test your webcam, speakers, and microphone:
<https://help.webex.com/en-us/bzq2s7/Test-Your-Speaker-and-Microphone-in-Webex-Meetings>

For Internal use only

Funding request (if any) reviewed by General Manager, Financial and Protective Services Yes

Request approved (date) _____ Date of Meeting _____

The Vancouver Island Vipassana Association (VIVA) teaches meditation in a Buddhist tradition, and offers a place of worship for Vipassana meditators.

There are many reasons why people come to our courses. Stress reduction is one of the most common reasons people try meditation. Countless studies have shown that meditation reduces stress. Meditation has also been scientifically proven to boost the immune system, lower blood pressure, relieve depression, increase productivity, and promote creative thinking. The benefits of meditation for anxiety and stress include reducing physical discomfort, putting things into perspective to make better decisions and coping with difficult situations.

However, we are not just offering therapy. We are offering religious instruction. One of the key characteristics of a religious organization is the focus on moral behavior. Participants in our courses are taught a technique of self-awareness in an atmosphere of morality and self-discipline. These qualities learned and developed over time benefits them in their daily lives and helps enormously with day to day life pressures.

We certainly are dealing with a very difficult situation worldwide with this pandemic. The tools of meditation can be extremely helpful deal with this complex and disruptive time.

Mindfulness, which has its roots in the teachings of the Buddha, can be a transformative practice for Buddhist and secular practitioners alike. Our courses are available to all ages and ethnicities. Besides courses offered for adults, there are courses designed specifically for children from 8 to 14 years and young adults from 14 to 18 years.

There are benefits both to individuals of all ages and backgrounds and to those aggregate of individuals making up the community of North Cowichan.

Of course there are economic benefits to the community. The Vipassana center in Merritt, which is fully functioning, has a \$300,000 annual budget, and obviously that spending on food and local services benefits the community. Each center is legally independent, and run by a board of volunteer trustees. Because there are only 4 similar centers in Canada, people historically have moved to be near a Vipassana center, which has resulted in increased house sales, and personal spending in the community.

The technique of Vipassana Meditation is taught at ten-day residential courses during which participants learn the basics of the method, and practice sufficiently to experience its beneficial results. There are no charges for the courses - not even to cover the cost of food and accommodation. All expenses are met by donations from people who, having completed a course and experienced the benefits of Vipassana, wish to give others the opportunity to also benefit.

We moved into our new Center on Sept 28, 2018 and opened to the public the following day, with 80 people in attendance over the 1st 2 days. We began offering residential courses, and also did a number of interior changes and installed emergency lighting and code upgrades. In 2019, courses were attended by 450 people and as many or more people were turned away for lack of space. 2020 saw very long wait lists until Covid 19 shut us down in March. We are reopening on a very small scale, in line with public health guidelines. We are offering two 3 day courses and one 10 day course, with very limited participants.

During Covid 19, we have provided continuing support for students. The place of worship, one of 2 Meditation Halls, is open around the clock for meditation to students, with clear distancing guidelines enforced. Regarding regular religious services, we were holding group sittings once a week, until Covid 19. We are now providing virtual group meditations. Teachers are available for questions about the student's meditation. Due to the difficult financial situations, our finances are in the red.

We are a religious organization providing our services broadly to all members of the public for free, and should be treated similarly to the other religious organizations in the community.

Respectfully, VIVA does not agree with municipal staff's characterization that we are seeking an "additional" tax exemption from the Municipality. Rather, we are asking Council to change our tax exemption status to cover the entirety of the Lands, instead of the previous exemption, which was for improvements. Nothing "additional" is being requested. We are simply requesting to receive the same exemption status as all other equivalent religious organizations in the Municipality, which is an exemption taxing the land. We do not want to experience religious discrimination.

A Permissive Tax Exemption, aligned with the other religious organizations in the Municipality, would permit us to continue to offer our distinctive and free programs in the Municipality, and would also likely permit us to expand our programs to meet our increasing demand.

9/8/2020

Barristers & Solicitors / Patent & Trade-mark Agents

Sent By E-mail

Municipality of North Cowichan
7030 Trans Canada Highway
Duncan, BC
V9L 6A1

Attention: Mayor and Council

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Our reference
1001118209

Dear Sirs and Mesdames:

Vancouver Island Vipassana Association (“VIVA”) – PID 002-526-620 2359 Calais Road, Duncan, BC and PID 001-608-609 Wicks Road, Duncan, BC (together, the “Lands”) – Municipality of North Cowichan (the “Municipality”) – Request for Permissive Tax Exemption

We are legal counsel for VIVA. We write further to our letter to Mark Frame at the Municipality, dated June 14, 2020. As we previously advised Mr. Frame, we have been retained by VIVA to assist with a review of their permissive tax exemption from the Municipality.

On July 15, 2020, Mr. Frame responded to our letter and confirmed that VIVA was entitled to submit a letter to Mayor and Council for their consideration at the August 19, 2020 Council meeting. In light of, among other things, municipal staff’s decision not to recommend the permissive tax exemption sought by VIVA, as well as some necessary clarifications to municipal staff’s recommendation to Council, we have been instructed to provide the within letter for consideration by Mayor and Council at the upcoming Council meeting.

As set out in VIVA’s permissive tax exemption application, VIVA is a non-profit association incorporated in 2006, which has had taxable charity status as a religious organization since 2008. Under VIVA’s constitution it serves both educational and religious purposes, including by establishing, maintaining and supporting a house of worship, with services conducted in accordance with the Theravada Buddhist faith, as well as through educating the public in the teachings of the Buddha, as taught by Mr. S.N. Goenka in the tradition of Sayagyi U Ba Khin. VIVA purchased the Lands in September 2018 from the Sisters of Poor Clare’s Monastery (who received a permissive tax exemption from the Municipality for the entirety of the Lands) with the intention of continuing to use the Lands as, among other things, a place of worship.

As a religious organization, VIVA seeks a permissive tax exemption consistent with the other religious organizations in the Municipality, which all receive exemptions for their land, not the improvements.

Respectfully, the comparable organizations used by municipal staff in its recommendation to Council are not equivalent to VIVA. In particular, municipal staff have compared VIVA’s tax exemption with the tax exemptions provided to the Maple Bay Yacht Club and the Mount Brenton Golf Course, noting that “both organizations provided a benefit to the community by providing subsidized opportunities for youth programs”.

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However, as set out in VIVA's permissive tax exemption application, VIVA does not charge members of the community for its courses, nor does it pay any of its teachers or other staff. Consistent with other religious organizations, VIVA relies exclusively on donations from its students, as well as volunteer staff. In short, this is not a recreational organization providing certain subsidized programs to specific members of the community. This is a religious organization providing its services broadly to all members of the public for free, and should be treated similarly to the other religious organizations in the community.

We further respectfully disagree with municipal staff's position that the churches receiving a full exemption from the Municipality are in any way distinguishable from VIVA. In particular, under subsection 220(1)(h) of the *Community Charter*, there is an automatic statutory exemption for a "building set apart for public worship, and the land on which the building stands". Setting aside the fact that VIVA's buildings on the Lands used for public worship should receive such a statutory exemption as a place of worship, section 220(1)(h) has also been construed narrowly by our Courts, which have concluded that this exemption refers only to the building itself and the "footprint of the building": *Trustees of Westwood Congregation of Jehovah's Witnesses v. City of Coquitlam*, 2006 BCSC 1208. The remaining lands and improvements surrounding a place of worship may also be exempted by a municipality, but such an exemption is discretionary under subsections 224(2)(f) and (g) of the *Community Charter*. In short, to the extent the lands surrounding churches and other places of worship are being exempted by the Municipality, this is a discretionary decision of Council (not an automatic statutory exemption), which should be applied consistently to all places of worship in the Municipality, including to VIVA and the Lands.

Respectfully, VIVA also does not agree with municipal staff's characterization that it is seeking an "additional" tax exemption from the Municipality. Rather, VIVA is asking Council to change its tax exemption status to cover the Lands, instead of the previous exemption provided to VIVA, which was for improvements only.

Nothing "additional" is being requested by VIVA. VIVA is simply requesting to receive the same exemption status as all other equivalent religious organizations in the Municipality.

VIVA submits that it meets the eligibility criteria under the Municipality's Permissive Tax Exemption Policy as a religious organization. A permissive tax exemption, aligned with the other religious organizations in the Municipality, would permit VIVA to continue to offer its distinctive and free programs in the Municipality, and would also likely permit VIVA to expand its programs to meet its increasing demand.

VIVA therefore respectfully requests that Council adopt an alternative option, which was not one of the recommendations presented by municipal staff in its recommendation to council, to amend the Municipality's Permissive Tax Exemption Bylaw to include a permissive tax exemption for the land owned by VIVA, and not for the improvements.

If you have any questions about the above, please contact the undersigned.

Yours very truly,

DRAFT

Nathan Lapper

NYL/tyt

cc: Mark Frame, Municipality of North Cowichan (by email)

June 26, 2020

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Our reference
1001118209

Dear Mr. Frame:

Vancouver Island Vipassana Association (“VIVA”) – PID 002-526-620 2359 Calais Road, Duncan, BC and PID 001-608-609 Wicks Road, Duncan, BC (together, the “Lands”) – Municipality of North Cowichan (the “Municipality”) – Request for Permissive Tax Exemption

We are legal counsel for VIVA. As set out below, we have been retained by VIVA to assist with a review of their permissive tax exemption from the Municipality. We are advised as follows.

VIVA is a non-profit association incorporated in 2006, which has had taxable charity status since 2008. Under VIVA’S constitution it serves both educational and religious purposes, including by establishing, maintaining and supporting a house of worship, with services conducted in accordance with the Theravada Buddhist faith, as well as through educating the public in the teachings of the Buddha, as taught by Mr. S.N. Goenka in the tradition of Sayagyi U Ba Khin. VIVA currently offers “Vipassana meditation” courses at their meditation centre at the Lands (the “Centre”), which generally range from one to ten days in length, with beginner courses being ten days.

The Centre is part of a worldwide network of meditation centres teaching the same technique. Each is a separate legal entity, but all teach in an identical manner. VIVA’s mission is to offer this meditation to as many people as possible. The Centre’s facilities and surrounding lands provide a special and unique place of worship for these teachings to be given. The Centre is one of only five such centres in Canada, and the only one on Vancouver Island.

VIVA aims to serve the Municipality and the community broadly, and its courses are available and open to the public regardless of one’s religious affiliation, or any other distinction. Almost 450 students attended VIVA’s courses at the Centre last year, with demand in the Municipality far outpacing availability. In short, VIVA serves an important, unique, and in-demand religious and educational community function in the Municipality.

VIVA purchased the Lands from the Sisters of Poor Clare’s Monastery (the “Monastery”) in September 2018. The Lands consist of two lots. The first lot is three and a half acres, which houses the main building, including all of the facilities, residences, kitchen, storage buildings, administrative office, meditation hall, and caretaker’s cabin. The second lot is a ten acre parcel of forest and ravine land adjacent to Richards Creek and Somenos

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Marsh. This area is also essential to VIVA's use of the Centre and the Lands, as it includes, among other things, two cabins used for accommodation, and walking trails used for exercise, meditation and quiet reflection.

When VIVA purchased the Lands in late September 2018, the deadline to apply to the Municipality for a permissive tax exemption for 2019 had already passed. At the time, VIVA had no experience with municipal tax exemptions and VIVA assumed that the full tax exemption received by the Monastery would be transferable to them as a result of, among other things, VIVA's similar use of the Lands, including for non-profit and religious uses. As a result, VIVA was not granted a permissive tax exemption for 2019, which caused them significant financial hardship. Further, although VIVA was able to apply for a permissive tax exemption for 2020, they were not familiar with this process, and were ultimately granted a three year exemption for only the improvements at the Lands, but not the Lands themselves.

VIVA is a non-profit organization and does not charge students for its courses, nor does it pay any of its teachers or other staff. VIVA relies exclusively on donations from its students, as well as volunteer staff. Although VIVA was able to purchase the Lands, in part, based on generous donations and the sale of their previous property, it continues to carry considerable debt. These financial concerns have been recently exacerbated by the ongoing public health crisis, which has caused VIVA to cease its operations at the Centre for the foreseeable future.

VIVA clearly meets multiple eligibility criteria under the Municipality's Permissive Tax Exemption Policy (the "Policy"), including serving both religious and educational purposes, as well as providing unique programs to all residents in the Municipality, including youth and seniors. A broader permissive tax exemption from the Municipality would permit VIVA to continue to offer these distinctive programs in the Municipality, and would likely also permit VIVA to expand its programs to meet its increasing demand.

VIVA's failure to obtain a permissive tax exemption from the Municipality for 2019, as well as its failure to obtain a broader permissive tax exemption for 2020, has had significant prejudicial effects on them and their ability to operate its unique and vital educational and religious programs at the Lands.

We therefore ask that the Municipality to provide VIVA with the following:

- (a) a retroactive permissive tax exemption for the improvements at the Lands for 2019-2020, as VIVA would have otherwise received this from the Municipality had it been able to apply for this exemption in September 2018, when it purchased the Lands; and
- (b) a permissive tax exemption for the entire Lands, including all improvements, for the period between 2021 and 2023, given that VIVA meets multiple eligibility criteria under the Policy, including the broad exemptions provided to religious institutions.

If the Municipality is not prepared to grant the above accommodations to VIVA without further consultation or information from VIVA, or without a formal application, then VIVA formally requests to have some members of its Board of Trustees appear as a delegation before Mayor and Council at the August Council meeting of the Municipality so that they might further explain their important works and their clear eligibility for a broader permissive tax exemption.

June 26, 2020



If you have any questions about the above, please contact the undersigned. Otherwise, we look forward to receiving your response, hopefully confirming VIVA's retroactive permissive tax exemption for 2019-2020 and broader exemption for 2021-2023. Given the time sensitive nature of this issue, we would appreciate a response on or before **July 16, 2020**.

Yours very truly,

A handwritten signature in black ink, appearing to be "NL", written over a light blue horizontal line.

Nathan Lapper

NYL/tyt

Report

| | | | |
|---------|--|-----------|---|
| Date | September 16, 2020 | File: | |
| To | Council | | |
| From | Mark Frame, General Manager, Financial & Protective Services | Endorsed: |  |
| Subject | Permissive Tax Exemption Request | | |

Purpose

To consider the permissive tax exemption application submitted by Vancouver Island Vipassana Association, and to provide a summary of the Permissive Tax Exemption applications received for the 2021 assessment roll.

Background

[Permissive Tax Exemption Bylaw 3519](#), which exempts 157 properties in North Cowichan expires at the end of 2023. The [policy](#) provides guidance on determining which properties Council may grant permissive tax exemptions to (see attached policy) when exercising its' authority under section 224 of the *Community Charter*. Although local governments have no discretion when it comes to properties that have received general statutory exemptions (see subsection 220(1)(h) of the *Community Charter*), eligibility for statutory tax exemptions is directly set through legislation and not at the discretion of a municipal council. These exemptions are directly applied to eligible properties by BC Assessment.

In 2019, the municipal tax revenue foregone as a result of permissive tax exemptions was \$402,000. For a property to be eligible for a permissive tax exemption in the 2021 taxation year, the property must be included in the schedule attached to [Permissive Tax Exemption Bylaw 3519](#) and provided to BC Assessment before October 31, 2020.

North Cowichan received one new application for permissive tax exemption for the 2021 taxation year from the Vancouver Island Vipassana Association (VIVA) for their property located at 2359 Calais Road and a property on Wicks Road. There is no physical address for the land on Wicks Road. VIVA purchased these properties in 2018 and applied for a permissive tax exemption for 2020 in August of 2019. Council granted a permissive tax exemption for the improvements only on the two properties. The value of that exemption was \$4,950.

VIVA is requesting an exemption for the land portion of the two properties, consistent with other religious organizations.

Discussion

Partial exemptions are consistent with exemptions provided to other non-profit groups. The two most recent non-profit exemptions to receive partial exemptions were the Maple Bay Yacht Club and Mount Breton Golf Club:

- **Maple Bay Yacht Club** received an exemption for 50% of the Class 8 – Rec Non-Profit portion of their assessment, and none of the Class 6 – Business assessment. The value of the exemption for 2020 was \$3,600.
- **Mount Brenton Golf Course** received an exemption of 50% of the Class 8 – Rec Non-Profit portion of their assessment, and none of the Class 6 – Business assessment. The value of exemption for 2020 was \$7,000.

Partial exemptions are meant to balance the benefit to the community provided by the organization. Both the Maple Bay Yacht Club and the Mount Brenton Golf Course are non-profits operating for the benefit of their members. Council felt that both organizations provided a benefit to the community by providing subsidized opportunities for youth programs.

A permissive tax exemption may be provided under subsection 224 (2) a) of the *Community Charter*:

for the lands and improvements:

- i) *must be owned by a charitable, philanthropic or other not for profit corporation, and*
- ii) *council considers are used for a purpose that directly relates to the purpose of the corporation*

In addition, the permissive tax exemption must meet Council's Permissive Tax Exemption Policy's eligibility requirements. In this case, the VIVA application meets the eligibility under criteria 4 c) for "*properties providing athletic or recreation programs or facilities for public use.*" This was the basis that staff recommended the application for a partial exemption for 2020 and continues to recommend a partial exemption in 2021.

VIVA has requested that they be granted an exemption consistent with other organizations in the municipality with religious charitable status.

Through correspondence, VIVA has stated their position that refusal to grant their request for exemption is inconsistent with how the Municipality treats all other religious charitable status organizations in North Cowichan under the Permissive Tax Exemption Bylaw.

After careful review, staff have concluded that, despite VIVA's position, the recommendation before Council to deny VIVA's request for a 2021 permissive tax exemption for the land portion of 2359 Calais Road and property on Wicks Road, is wholly consistent with the Permissive Tax Exemption Bylaw, and consistent with the *Community Charter* subsections addressing permissive tax exemptions.

Subsection 220 (1) h) of the *Community Charter* exempts churches from taxation to the extent indicated, which states:

"a building set apart for public worship, and the land on which the building stands, if title to the land is registered in the name of (i) the religious organization using the building, (ii) trustees for the use of that organization, or (iii) a religious organization granting a lease of the building and land to be used solely for public worship."

The churches and other places of worship listed in the Property Tax Exemption Bylaw receive a statutory exemption under the *Community Charter*. The Municipality provides a permissive tax exemption for those lands and improvements which are not statutorily exempt, under subsections 224 (2) f) and g);

- f) *in relation to property that is exempt under section 220 (1) (h) [buildings for public worship],*
 - (i) *an area of land surrounding the exempt building,*
 - (ii) *a hall that the council considers is necessary to the exempt building and the land on which the hall stands, and*
 - (iii) *an area of land surrounding a hall that is exempt under subparagraph (ii);*
- g) *land or improvements used or occupied by a religious organization, as tenant or licensee, for the purpose of public worship or for the purposes of a hall that the council considers is necessary to land or improvements so used or occupied.*

Until the property owned by VIVA is reclassified by BC Assessment as a place of worship (similar to those which VIVA have cited in their letters to staff and Mayor and Council), it is not exempt under subsection 220 (1) (h) of the *Community Charter*. Council may not apply the permissive tax exemption under section 224 (2) (f). That "general statutory exemption" requirement is also tied to the eligibility criteria for church exemptions under Council's Permissive Tax Exemption Policy, giving churches priority for exemptions for "*church halls and surrounding lands considered necessary to statutorily exempt churches*". The Council policy contemplates giving additional permissive exemption to statutorily exempt churches.

Options

Option 1 (Recommended Option): Deny Vancouver Island Vipassana Association's request for a permissive tax exemption for the land portion of 2359 Calais Road and Wicks Road.

Option 2: Amend the Permissive Tax Exemption Bylaw to include a full permissive tax exemption for all land and improvements owned by Vancouver Island Vipassana Association at 2359 Calais Rd.

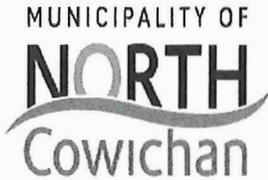
Implications

Increasing the permissive tax exemption to include both land and improvements would cost the Municipality District an additional \$7,900 per year in lost revenues. There is also the potential for lost revenue if a full permissive tax exemption is provided and other non-profit organizations, currently receiving partial exemptions, follow suit and make similar requests.

Recommendation

That Council deny Vancouver Island Vipassana Association's request for a permissive tax exemption for the land portion of 2359 Calais Road and Wicks Road.

Attachments: Permissive Tax Exemption Application
 Permissive Tax Exemption Policy
 Norton Rose Fulbright letter dated June 26, 2020
 Norton Rose Fulbright letter dated August 18, 2020



7030 Trans Canada Highway
 Duncan BC V9L 6A1, Canada
www.northcowichan.ca
 T 250.746.3100
 F.250.746.3133

PERMISSIVE TAX EXEMPTION APPLICATION

SECTION 1 – APPLICANT INFORMATION

| | |
|---|---|
| Organization Name: Vancouver Island Vipassana Association | |
| Are you registered under the BC Societies Act? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Are you a registered charity? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Mailing Address: 2359 Calais Road, Duncan, V9L 5V5, Canada | |
| Contact Person: Steve Armstrong | |
| Email Address: ^{Steven} steve .armstrong@dhamma.org | Phone Number: 250 749 4499 |
| Name and Phone number of two other officials in the organization | |
| Name: Patricia Williams | Name: Mohadese Aghasi |
| Title President | Title Treasurer |
| Phone Home: [REDACTED] Sec 22(1) FOIPPA | Phone Home: [REDACTED] Sec 22(1) FOIPPA |
| Phone Work: | Phone Work: |

SECTION 2 – ORGANIZATION INFORMATION

| |
|---|
| Please provide a brief description of the goals and objectives of the organization: |
| Please see attached notes section 2 a) |
| What charitable, philanthropic, athletic or recreational service does your organization provide to the community? |
| Please see attached notes Section 2 b) |

SECTION 3 – PROPERTY INFORMATION (REGISTRATION, PRINCIPAL USE)

| |
|---|
| The lands are registered in the name of: |
| Please see attached notes section 3 a) |
| What is the principal use of the property (including all buildings and/or land) |
| Please see attached notes section 3 b) |

Please provide details of all other activities on your property including: 1) who uses your facilities or services; 2) whether fees are charged to users; and 3) the percent of time your property is used for each type of use.

Please see attached notes Section 3 c)

Is any part of the building or of the property used or rented by commercial or private individuals or by any group other than your organization? If so, please specify the occupant and use.

NO

To what extent are the buildings or property accessible to the public?

Please see attached notes section 3 d)

SECTION 4 – OTHER INFORMATION

Other information which may be pertinent to your application

Please see other information and cover letter

SECTION 5 SUPPORTING DOCUMENTATION CHECK LIST (ATTACHE COPIES TO APPLICATION)

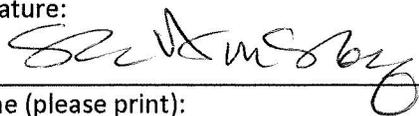
Please attach the following:

| | | | |
|-------------------------------------|--|-------------------------------------|---|
| <input checked="" type="checkbox"/> | most recent annual financial statement | <input checked="" type="checkbox"/> | copy of property title |
| <input checked="" type="checkbox"/> | constitution | <input checked="" type="checkbox"/> | site sketch plan showing buildings & uses |

SECTION 6 – DECLARATION

I hereby certify that I have read the Municipality of North Cowichan's Permissive Tax Exemption Policy (available at on our website <http://www.northcowichan.ca/EN/main/departments/finance.html>), that the application complies with its requirements, and that the information contained in the application is complete and correct. **If there is a change in the status of your organization the Municipality of North Cowichan must be notified.**

Signature:



Date:

July 29 / 2020

Name (please print):

Steven Armstrong

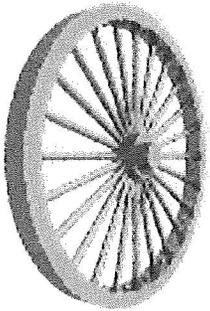
Date:

July 29 / 2020

Print Form

NOTE: In accordance with Municipal Council's July 3, 2013, policy, application forms must be received by North Cowichan before August 1st.

Note: Personal information is collected by the Municipality of North Cowichan under the authority of section 26 (a) & (c) of the Freedom of Information and Protection of Privacy Act for the purpose of processing and administering property tax exemption requests. Should you have any questions about the collection of this personal information, please contact the Deputy Director.



Vancouver Island Vipassana Association
Dhamma Modana

2359 Calais Road, Duncan, BC, V9L5V5

Tel: 1.250.749.4499

Email: info@modana.dhamma.org

www.modana.dhamma.org

Canadian Registered Charity # 84166 1127 RR0001

Mark Frame

Municipality of North Cowichan

7030 Trans-Canada Highway,

Duncan, BC, V9L 6A1,

Canada

Re: Vancouver Island Vipassana Association Permissive Tax application

Dear Mr. Frame

Please find enclosed a new PTE application from VIVA for 2020-2023.

Representatives for VIVA consulted with Nathan Lapper of Norton Rose Fulbright Law Firm for guidance and help with this matter from a legal standpoint however we understand that we initially were asking for more than could be granted in retrospect. Therefore we have amended our request.

We decided to put our answers on a separate word document due to the error which occurred in August 2019's application, which was incomplete. The attachment includes answers to questions in Sections 2, 3 & 4 and VIVA's financial statement for 2019.

We appreciate that a decision was made, as per letter dated November 28, 2019, to grant VIVA tax exemption on 2359 Calais Rd and lot A Wicks Rd for Improvements only for 2020-2023.

Going forward into 2021-2023, we are requesting that this new application be given consideration based on our explanation in Section 4 of the PTE. An exemption on the lands would be a big help financially.

When VIVA purchased the Lands in late September 2018, the deadline to apply to the Municipality for a permissive tax exemption for 2019 had already passed. At the time, VIVA had no experience with municipal tax exemptions and VIVA assumed that the full tax exemption received by the Monastery would be transferable to them as a result of, among other things, VIVA's similar use of the Lands, including for non-profit and religious uses.

As a result, VIVA was not granted a permissive tax exemption for 2019, which caused us significant financial hardship. Further, although VIVA was able to apply for a permissive tax exemption for 2020-2023, they were not familiar with this process, and were ultimately granted a three year exemption for only the improvements at the Lands, but not the Lands themselves.

VIVA's failure to obtain a permissive tax exemption from the Municipality for 2019, as well as its failure to obtain a broader permissive tax exemption for 2020-2023, has had significant prejudicial effects on us and our ability to operate the unique and vital educational and religious programs at the Lands.

VIVA clearly meets multiple eligibility criteria under the Municipality's Permissive Tax Exemption Policy, including serving both religious and educational purposes, as well as providing unique programs to all residents in the Municipality, including youth and seniors. A broader permissive tax exemption from the Municipality would permit VIVA to continue to offer these distinctive programs in the Municipality, and would likely also permit VIVA to expand its programs to meet its increasing demand.

We very much appreciate your time and consideration of this application.

Yours sincerely

A handwritten signature in black ink, appearing to read "Steve Armstrong", with a stylized flourish at the end.

Steve Armstrong

Permissive Tax application

Section 2. Organization Information

- a) Vancouver Island Vipassana Association (VIVA) is a non-profit association incorporated in 2006, which has had taxable charity status since 2008. Under VIVA'S constitution it serves both educational and religious purposes, including by establishing, maintaining and supporting a house of worship, with services conducted in accordance with the Theravadan Buddhist faith, as well as through educating the public in the teachings of Buddha, as taught by Mr. S.N. Goenka in the tradition of Sayagyi U Ba Khin. VIVA currently offers 'Vipassana meditation' courses at the centre Lands, which generally range from one to ten days in length, with beginner courses usually being ten days.
- b) The Centre is part of a worldwide network of meditation centres teaching the same technique. Each is a separate legal entity but all teach in the identical manner.

VIVA's mission is to offer this technique to as many people as possible.

The Centre's facilities and surrounding lands provide a unique and special place of worship for these teachings to be given. The centre is one of only 5 such centres in Canada, and the only one on Vancouver Island.

Section 3.

Property Information

- a) Lands are registered in the name of Vancouver Island Vipassana Association.

Principle Use

- b) VIVA purchased the Lands from the Sisters of Poor Clare's Monastery in September 2018. The Lands consist of two lots. The first lot is three and a half acres, which houses the main building, including the meditation hall, residences, kitchen, storage buildings, administrative office, and caretaker's cabin. The second lot is a ten acre parcel of forest and ravine land adjacent to Richard's creek and Somenos Marsh. This area is also essential to VIVA's use of the Lands, as it includes, among other things, two cabins used for accommodation and walking trails used for exercise, meditation and quiet reflection.
- c) VIVA offers, to the general public by way of an application process, a unique and vital educational and religious program at the Lands. VIVA is a non-profit organization and does not charge students for its courses, nor does it pay any of

its teachers or other staff. VIVA relies exclusively on donations from its students and other benefactors, as well as volunteer staff.

Although VIVA was able to purchase the Lands, in part, based on generous donations, it continues to carry considerable debt. These financial concerns have been recently exacerbated by the ongoing public health crisis.

d) VIVA aims to serve the Municipality and the community broadly, and its courses are available and open to the public regardless of one's religious affiliation, or any other distinction. Applicants are admitted by way of an application process. Almost 450 students attended VIVA's courses at the centre last year, with demand in the Municipality far outpacing availability. In short, VIVA serves an important, unique, and in-demand religious and educational community function in the Municipality.

Section 4.

We request that we be granted an exemption that is consistent with all of the other organizations in the municipality with a religious charitable status.

All other religious organizations have the land exempted, while we only have the improvements exempted.

We request that we have our land exempted, so that the municipality is treating each organization consistently and fairly.

140.1 Vancouver Island Vipassana Association 6474.000 2359 Calais Rd
Improvements Only 2020-2023 140.2 Vancouver Island Vipassana Association
6355.000 Wicks Rd **Improvements Only** 2020-2023

All other religious organizations-all 12 of them-have a similar exemption to each other:

5 Anglican Synod Diocese of BC (St. Peter's Anglican Church) 362.000 5795
& 5825 Church Rd **All land & halls around exempt building** 2014-2023

6 Anglican Synod Diocese of BC (St. Peter's Anglican Church) 1.000 5800 Church
Rd **All land & halls around exempt building** 2014-2023

7 BC Corporation of the Seventh -Day Adventist Church (Duncan) 1881.000 3441
Gibbins Rd **All land & halls around exempt building** 2014-2023

21 Canadian Baptists of Western Canada (Calvary Baptist Church Society) 16487.000
3318 River Rd **All land & halls around exempt building**

37 Christian Science Society, Duncan 6503.000 6118 Lane Rd **All land & halls
around exempt building**

- 46 Cowichan Valley Church of the Nazarene 2310.000 3036 Sherman Rd All land & halls around exempt building
- 133 The Church of Jesus Christ of Latterday Saints 477.000 1815 Tzouhalem Rd All land & halls around exempt building
- 134.1 The Oasis Church Society 5038-012 3540 Auchinachie Rd All land surrounding exempt building
- 135 The Pentecostal Assemblies of Canada (Chemainus Tabernacle) 15592.000 9471 Chemainus Rd All land & halls around exempt building
- 136 The Trustees of the Chemainus/Crofton Pastoral Charge of the United Church of Canada (Chemainus) 15646.000 9814 Willow St All land & halls around exempt building 2014-2023
- 138 Trinity Evangelical Lutheran Church 1572.001 2704 James St All land & halls around exempt building
- 140 Vancouver Island Sikh Cultural Society (Sikh Temple, Duncan) 830.000 3210 Sherman Rd All land & halls around exempt building.

VANCOUVER ISLAND VIPASSANA ASSOCIATION
FINANCIAL STATEMENTS
DECEMBER 31, 2019

Notice to Reader

Balance Sheet

Statement of Operations and Surplus

Notes to Financial Statements

NOTICE TO READER

We have compiled the balance sheet of VANCOUVER ISLAND VIPASSANA ASSOCIATION as at DECEMBER 31, 2019 and the statement of operations and surplus for the year then ended from information provided by the society. We have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information. Readers are cautioned that these statements may not be appropriate for their purposes.

Accutax Professional Accountants

Per:

J. Mitchell, I.C.I.A.

Sooke, B.C.

July 20, 2020

VANCOUVER ISLAND VIPASSANA ASSOCIATION

BALANCE SHEET - DECEMBER 31, 2019

ASSETS

| | <u>2019</u> | <u>2018</u> | <u>2017</u> |
|-------------------------------|-------------------------|-------------------------|-------------------------|
| | \$ | \$ | \$ |
| Current | | | |
| Cash | 493,098 | 1,578,492 | 20,487 |
| Accounts receivable | 2,300 | 17,137 | 6,386 |
| Prepaid expenses | 17,126 | 4,460 | - |
| | <u>512,524</u> | <u>1,600,089</u> | <u>26,873</u> |
| Capital (Note 2) | | | |
| Duncan property | 1,501,085 | 1,501,085 | - |
| Land | - | - | 897,056 |
| Buildings | - | - | 408,484 |
| Equipment | 31,753 | 3,759 | 2,812 |
| Vehicle | - | - | 3,500 |
| | <u>1,532,838</u> | <u>1,504,844</u> | <u>1,311,852</u> |
| Less accumulated amortization | 4,145 | 743 | 4,732 |
| | <u>1,528,693</u> | <u>1,504,101</u> | <u>1,307,120</u> |
| | <u>2,041,217</u> | <u>3,104,190</u> | <u>1,333,993</u> |

LIABILITIES AND SURPLUS

| | | | |
|-------------------------------|-------------------------|-------------------------|-------------------------|
| Current | | | |
| Accounts payable and accruals | - | - | 487 |
| Notes payable | 898,630 | 2,008,368 | 10,000 |
| | <u>898,630</u> | <u>2,008,368</u> | <u>10,487</u> |
| Surplus | <u>1,142,587</u> | <u>1,095,822</u> | <u>1,323,506</u> |
| | <u>2,041,217</u> | <u>3,104,190</u> | <u>1,333,993</u> |

UNAUDITED - SEE NOTICE TO READER

VANCOUVER ISLAND VIPASSANA ASSOCIATION

STATEMENT OF OPERATIONS AND SURPLUS

YEAR ENDED DECEMBER 31, 2019

| | <u>2019</u> | <u>2018</u> | <u>2017</u> |
|--|-------------------------|-------------------------|-------------------------|
| | \$ | \$ | \$ |
| Revenue | | | |
| Donations | 199,424 | 178,679 | 119,906 |
| Interest and other | 10,265 | 4,292 | 110 |
| | <u>209,689</u> | <u>182,971</u> | <u>120,016</u> |
| Expenses | | | |
| Administration | 19,383 | 14,991 | 5,018 |
| Amortization | 3,402 | 743 | 342 |
| Insurance | 20,382 | 4,227 | 5,919 |
| Interest | 17,269 | - | - |
| Loss on sale of property | - | 335,069 | - |
| Meditation centre | 32,466 | 32,857 | 9,701 |
| Meditation program | 56,367 | 13,853 | 600 |
| Property taxes | 11,372 | 6,441 | 5,287 |
| Vehicle | 2,283 | 2,474 | 2,304 |
| | <u>162,924</u> | <u>410,655</u> | <u>29,171</u> |
| Increase (Decrease) in Revenue over Expenses | 46,765 | (227,684) | 90,845 |
| Surplus at Beginning of Year | <u>1,095,822</u> | <u>1,323,506</u> | <u>1,232,661</u> |
| Surplus at End of Year | <u><u>1,142,587</u></u> | <u><u>1,095,822</u></u> | <u><u>1,323,506</u></u> |

UNAUDITED - SEE NOTICE TO READER

VANCOUVER ISLAND VIPASSANA ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
YEAR ENDED DECEMBER 31, 2019

1. ORGANIZATION

The Vancouver Island Vipassana Association was incorporated without share capital under the B.C. Society Act on July 25, 2006 and has approved registered charity status under the Income Tax Act (Canada).

The Society operates programs in meditation, not only for its members, but also for the general public in the tradition of U BA KHIN.

2. CAPITAL ASSETS

(a) Capital assets are recorded at cost.

(b) Amortization has been provided for in the accounts on the declining balance method at the following rates:

| | | |
|-----------|---|-------------------------|
| Vehicle | - | 30% |
| Equipment | - | 20% |
| Buildings | - | 0% (under construction) |

One-half rates are applied in the acquisition year.

UNAUDITED - SEE NOTICE TO READER

COUNCIL POLICY:
PERMISSIVE TAX EXEMPTION POLICY



Council Approval Date: July 3, 2013

Department: Finance

Amended:

1. PURPOSE

The purpose of this policy is to provide guidance to Council to determine which properties to grant permissive tax exemptions to.

2. SCOPE

Council uses its authority to grant permissive tax exemptions as a way to fulfill its municipal purposes according to section 7 of the Community Charter:

"The purposes of a municipality include:

- a) providing for good government of its community,
- b) providing for services, laws and other matters for community benefit,
- c) providing for stewardship of the public assets of its community, and
- d) fostering the economic, social and environmental well-being of its community."

Council's primary consideration of whether to grant a permissive tax exemption will be the benefit that the organization offers to the community. The organization must fulfill some basic need or otherwise improve the quality of life for North Cowichan residents.

3. PROCESS

Council will consider applications for permissive tax exemptions annually. Each year, staff will contact all organizations with expiring exemptions to invite them to reapply. Completed application forms must be received by North Cowichan before August 1. Staff will review the applications for completeness and eligibility and present Council with a summary report of the applications for its review in September. To comply with the requirements of procedural fairness, Council will provide applicants with an adequate opportunity to be heard in respect of their applications for exemptions, and will provide reasons to an applicant if it refuses to grant an exemption, or decides to discontinue an exemption. After Council considers the applicants and their input, Council will direct staff which properties to include in the bylaw. Staff will then draft the bylaw for Council consideration. After 3rd reading, but before adoption, staff will publish notice of Council's intention to adopt the bylaw. Following adoption, staff will send the bylaw to BC Assessment.

4. ELIGIBILITY CRITERIA

Eligibility criteria for permissive tax exemptions are set out in the Community Charter. Priority will be given to:

- a) lands surrounding exempt churches, hospitals, and private schools,

- b) church halls and surrounding lands considered necessary to statutorily exempt churches,
- c) properties providing athletic or recreational programs or facilities for public use,
- d) properties that provide services to youths, seniors, and special needs groups,
- e) heritage properties that build community character,
- f) properties used publicly for arts and culture programs or facilities,
- g) properties used to provide public services under a formal partnership with the Municipality,
- h) ecologically sensitive areas designated within the Official Community Plan,
- i) other properties available for public use that benefit the general public.

5. DURATION OF EXEMPTION

Council will consider exemptions for periods up to 10 years, after which time Council must reconsider whether to continue to offer the exemptions. Council may at any time reconsider and amend its permissive tax exemption bylaw. Any changes will take effect for the following tax year.

6. EXTENT AND CONDITIONS

Council may exempt only a portion of the land or improvements in the following circumstances:

- a) a portion of the land or improvement is used by the private sector and does not meet Council's eligibility criteria;
- b) the applicant already receives a grant-in-aid or other benefit from the Municipality;
- c) Council wishes to limit the total of all permissive tax exemptions granted.

Council may consider whether to impose conditions on the exempted land or improvements such as:

- a) Registration of a covenant restricting use of the property; or
- b) Execution of an agreement committing the applicant to
 - continue a specific service or program,
 - provide lands or facilities for public use during certain times,
 - provide use of lands or facilities to certain groups free of charge or at reduced rates,
 - disclose any material increases in the organization's revenue.

Council may impose penalties on an exempted organization for knowingly breaching the conditions of exemption. The penalties may include: revoking an exemption with notice, disqualifying any future application for exemption for a specific time period, or requiring repayment of monies equal to the foregone tax revenue.

June 26, 2020

Sent By Registered Mail
Sent By E-mail (mark.frame@northcowichan.ca)

Mark Frame
Municipality of North Cowichan
7030 Trans Canada Highway
Duncan, BC
V9L 6A1

Norton Rose Fulbright Canada LLP
1800 - 510 West Georgia Street
Vancouver, BC V6B 0M3 CANADA

F: +1 604.641.4949
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Nathan Lapper
+1 604.641.4958
nathan.lapper@nortonrosefulbright.com

Assistant
+1 604.641.4567
tammy.tam@nortonrosefulbright.com

Our reference
1001118209

Dear Mr. Frame:

Vancouver Island Vipassana Association (“VIVA”) – PID 002-526-620 2359 Calais Road, Duncan, BC and PID 001-608-609 Wicks Road, Duncan, BC (together, the “Lands”) – Municipality of North Cowichan (the “Municipality”) – Request for Permissive Tax Exemption

We are legal counsel for VIVA. As set out below, we have been retained by VIVA to assist with a review of their permissive tax exemption from the Municipality. We are advised as follows.

VIVA is a non-profit association incorporated in 2006, which has had taxable charity status since 2008. Under VIVA'S constitution it serves both educational and religious purposes, including by establishing, maintaining and supporting a house of worship, with services conducted in accordance with the Theravada Buddhist faith, as well as through educating the public in the teachings of the Buddha, as taught by Mr. S.N. Goenka in the tradition of Sayagyi U Ba Khin. VIVA currently offers “Vipassana meditation” courses at their meditation centre at the Lands (the “Centre”), which generally range from one to ten days in length, with beginner courses being ten days.

The Centre is part of a worldwide network of meditation centres teaching the same technique. Each is a separate legal entity, but all teach in an identical manner. VIVA's mission is to offer this meditation to as many people as possible. The Centre's facilities and surrounding lands provide a special and unique place of worship for these teachings to be given. The Centre is one of only five such centres in Canada, and the only one on Vancouver Island.

VIVA aims to serve the Municipality and the community broadly, and its courses are available and open to the public regardless of one's religious affiliation, or any other distinction. Almost 450 students attended VIVA's courses at the Centre last year, with demand in the Municipality far outpacing availability. In short, VIVA serves an important, unique, and in-demand religious and educational community function in the Municipality.

VIVA purchased the Lands from the Sisters of Poor Clare's Monastery (the “Monastery”) in September 2018. The Lands consist of two lots. The first lot is three and a half acres, which houses the main building, including all of the facilities, residences, kitchen, storage buildings, administrative office, meditation hall, and caretaker's cabin. The second lot is a ten acre parcel of forest and ravine land adjacent to Richards Creek and Somenos

CAN_DMS: \133996356\1

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Marsh. This area is also essential to VIVA's use of the Centre and the Lands, as it includes, among other things, two cabins used for accommodation, and walking trails used for exercise, meditation and quiet reflection.

When VIVA purchased the Lands in late September 2018, the deadline to apply to the Municipality for a permissive tax exemption for 2019 had already passed. At the time, VIVA had no experience with municipal tax exemptions and VIVA assumed that the full tax exemption received by the Monastery would be transferable to them as a result of, among other things, VIVA's similar use of the Lands, including for non-profit and religious uses. As a result, VIVA was not granted a permissive tax exemption for 2019, which caused them significant financial hardship. Further, although VIVA was able to apply for a permissive tax exemption for 2020, they were not familiar with this process, and were ultimately granted a three year exemption for only the improvements at the Lands, but not the Lands themselves.

VIVA is a non-profit organization and does not charge students for its courses, nor does it pay any of its teachers or other staff. VIVA relies exclusively on donations from its students, as well as volunteer staff. Although VIVA was able to purchase the Lands, in part, based on generous donations and the sale of their previous property, it continues to carry considerable debt. These financial concerns have been recently exacerbated by the ongoing public health crisis, which has caused VIVA to cease its operations at the Centre for the foreseeable future.

VIVA clearly meets multiple eligibility criteria under the Municipality's Permissive Tax Exemption Policy (the "Policy"), including serving both religious and educational purposes, as well as providing unique programs to all residents in the Municipality, including youth and seniors. A broader permissive tax exemption from the Municipality would permit VIVA to continue to offer these distinctive programs in the Municipality, and would likely also permit VIVA to expand its programs to meet its increasing demand.

VIVA's failure to obtain a permissive tax exemption from the Municipality for 2019, as well as its failure to obtain a broader permissive tax exemption for 2020, has had significant prejudicial effects on them and their ability to operate its unique and vital educational and religious programs at the Lands.

We therefore ask that the Municipality to provide VIVA with the following:

- (a) a retroactive permissive tax exemption for the improvements at the Lands for 2019-2020, as VIVA would have otherwise received this from the Municipality had it been able to apply for this exemption in September 2018, when it purchased the Lands; and
- (b) a permissive tax exemption for the entire Lands, including all improvements, for the period between 2021 and 2023, given that VIVA meets multiple eligibility criteria under the Policy, including the broad exemptions provided to religious institutions.

If the Municipality is not prepared to grant the above accommodations to VIVA without further consultation or information from VIVA, or without a formal application, then VIVA formally requests to have some members of its Board of Trustees appear as a delegation before Mayor and Council at the August Council meeting of the Municipality so that they might further explain their important works and their clear eligibility for a broader permissive tax exemption.

June 26, 2020



If you have any questions about the above, please contact the undersigned. Otherwise, we look forward to receiving your response, hopefully confirming VIVA's retroactive permissive tax exemption for 2019-2020 and broader exemption for 2021-2023. Given the time sensitive nature of this issue, we would appreciate a response on or before **July 16, 2020**.

Yours very truly,

A handwritten signature in black ink, appearing to be "NL", written over a white background.

Nathan Lapper

NYL/tyt

August 18, 2020

Norton Rose Fulbright Canada LLP
1800 - 510 West Georgia Street
Vancouver, BC V6B 0M3 CANADA

Sent By E-mail

F: +1 604.641.4949
nortonrosefulbright.com

Municipality of North Cowichan
7030 Trans Canada Highway
Duncan, BC
V9L 6A1

Nathan Lapper
+1 604.641.4958
nathan.lapper@nortonrosefulbright.com

Attention: Mayor and Council

Assistant
+1 604.641.4567
tammy.tam@nortonrosefulbright.com

Our reference
100118209

Dear Sirs and Mesdames:

Vancouver Island Vipassana Association (“VIVA”) – PID 002-526-620 2359 Calais Road, Duncan, BC and PID 001-608-609 Wicks Road, Duncan, BC (together, the “Lands”) – Municipality of North Cowichan (the “Municipality”) – Request for Permissive Tax Exemption

We are legal counsel for VIVA. We write further to our letter to Mark Frame at the Municipality, dated June 26, 2020. As we previously advised Mr. Frame, we have been retained by VIVA to assist with a review of their permissive tax exemption from the Municipality.

On July 15, 2020, Mr. Frame responded to our letter and confirmed that VIVA was entitled to submit a letter to Mayor and Council for their consideration at the August 19, 2020 Council meeting. In light of, among other things, municipal staff’s decision not to recommend the permissive tax exemption sought by VIVA, as well as some necessary clarifications to municipal staff’s recommendation to Council, we have been instructed to provide the within letter for consideration by Mayor and Council at the upcoming Council meeting.

As set out in VIVA’s permissive tax exemption application, VIVA is a non-profit association incorporated in 2006, which has had taxable charity status as a religious organization since 2008. Under VIVA’s constitution it serves both educational and religious purposes, including by establishing, maintaining and supporting a house of worship, with services conducted in accordance with the Theravada Buddhist faith, as well as through educating the public in the teachings of the Buddha, as taught by Mr. S.N. Goenka in the tradition of Sayagyi U Ba Khin. VIVA purchased the Lands in September 2018 from the Sisters of Poor Clare’s Monastery (who received a permissive tax exemption from the Municipality for the entirety of the Lands) with the intention of continuing to use the Lands as, among other things, a place of worship.

As a religious organization, VIVA seeks a permissive tax exemption consistent with the other religious organizations in the Municipality, which all receive exemptions for their land, not the improvements.

Respectfully, the comparable organizations used by municipal staff in its recommendation to Council are not equivalent to VIVA. In particular, municipal staff have compared VIVA’s tax exemption with the tax exemptions provided to the Maple Bay Yacht Club and the Mount Brenton Golf Course, noting that “both organizations provided a benefit to the community by providing subsidized opportunities for youth programs”.

CAN_DMS: \134943548\1

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However, as set out in VIVA's permissive tax exemption application, VIVA does not charge members of the community for its courses, nor does it pay any of its teachers or other staff. Consistent with other religious organizations, VIVA relies exclusively on donations from its students, as well as volunteer staff. In short, this is not a recreational organization providing certain subsidized programs to specific members of the community. This is a religious organization providing its services broadly to all members of the public for free, and should be treated similarly to the other religious organizations in the community.

We further respectfully disagree with municipal staff's position that the churches receiving a full exemption from the Municipality are in any way distinguishable from VIVA. In particular, under subsection 220(1)(h) of the *Community Charter*, there is an automatic statutory exemption for a "building set apart for public worship, and the land on which the building stands". Setting aside the fact that VIVA's buildings on the Lands used for public worship should receive such a statutory exemption as a place of worship, section 220(1)(h) has also been construed narrowly by our Courts, which have concluded that this exemption refers only to the building itself and the "footprint of the building": *Trustees of Westwood Congregation of Jehovah's Witnesses v. City of Coquitlam*, 2006 BCSC 1208. The remaining lands and improvements surrounding a place of worship may also be exempted by a municipality, but such an exemption is discretionary under subsections 224(2)(f) and (g) of the *Community Charter*. In short, to the extent the lands surrounding churches and other places of worship are being exempted by the Municipality, this is a discretionary decision of Council (not an automatic statutory exemption), which should be applied consistently to all places of worship in the Municipality, including to VIVA and the Lands.

Respectfully, VIVA also does not agree with municipal staff's characterization that it is seeking an "additional" tax exemption from the Municipality. Rather, VIVA is asking Council to change its tax exemption status to cover the Lands, instead of the previous exemption provided to VIVA, which was for improvements only.

Nothing "additional" is being requested by VIVA. VIVA is simply requesting to receive the same exemption status as all other equivalent religious organizations in the Municipality.

VIVA submits that it meets the eligibility criteria under the Municipality's Permissive Tax Exemption Policy as a religious organization. A permissive tax exemption, aligned with the other religious organizations in the Municipality, would permit VIVA to continue to offer its distinctive and free programs in the Municipality, and would also likely permit VIVA to expand its programs to meet its increasing demand.

As set out in VIVA's permissive tax exemption application, VIVA respectfully requests that Council adopt an alternative option, which was not one of the recommendations presented by municipal staff in its recommendation to Council, to amend the Municipality's Permissive Tax Exemption Bylaw to include a permissive tax exemption for the land owned by VIVA, and not for the improvements.

If you have any questions about the above, please contact the undersigned.

Yours very truly,

A handwritten signature in black ink, appearing to read "NL" followed by a flourish.

Nathan Lapper

NYL/tyt

cc: Mark Frame, Municipality of North Cowichan (by email)

Report

| | | |
|---------|---|---|
| Date | September 16, 2020 | Prospero No. ZB000126 |
| To | Council | Folio No. 00401-200 |
| From | Glenn Morris, Development Planning Coordinator | File No. 3360-20 19.24 |
| Subject | Zoning Bylaw Amendment Application No. ZB000126 (934 Khenipsen Rd.) – Proposed Detached Second Dwelling Use | Endorsed:  |

Purpose

To introduce Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798, so that Council may consider a site-specific zoning amendment application to permit the use of a converted accessory building as a detached second dwelling.

Background

The subject application requests an amendment to Zoning Bylaw 2950 to permit a second detached dwelling at 934 Khenipsen Road (the “subject property”). The application was submitted in response to bylaw enforcement action initiated by the Municipality in response to a complaint. To resolve the bylaw violation, David Coulson Design Ltd. (“the applicant”) has submitted a zoning amendment application on behalf of the property owners that, if approved, would grant land-use approval for the second dwelling.

The subject property is .98ha (2.43 acre) in size (Attachments 1 and 2) and is zoned Rural Restricted Zone (A3). In addition to the second dwelling, there is also a principal single-family dwelling on the property.

Land Use Context

North: Rural Residential / Cowichan Tribes Land
 South: Cowichan Bay / Estuary
 East: Rural Residential Lands
 West: Cowichan Bay / Estuary / Rural Residential Lands

Discussion

Proposal

The applicant is proposing a site-specific amendment to the Zoning Bylaw that would amend the Rural Restricted Zone (A3) to permit a detached second dwelling unit on the subject property.

Official Community Plan Policy

The following OCP policies are considered relevant to this application:

Policy 2.2.1.1 *The Municipality will avoid allowing any work in sensitive areas. Community growth, development and redevelopment will be directed to areas with the least environmental sensitivity.*

- Policy 2.2.1.2 *a) The Municipality will preserve sensitive ecosystems in a natural condition and keep them free of development and human activity to the maximum extent possible.*
- Policy 2.2.1.6 *The Municipality recognizes and will protect the unique and special characteristics of ocean foreshores and other waterfront areas.*
- Policy 2.2.3.1 *a) The Municipality will discourage development in areas with natural hazards. Floodplains, interface fire areas, coastlines¹⁴ and steep slopes over 20% are deemed to be hazardous for development, and are designated as Development Permit Areas under the Local Government Act (Section 919.1(1)). All hazard lands are subject to the Development Permit Area Guidelines (DPA- 4). See Map 8.*
- Policy 2.4.4.4 *Recognize distinct needs of neighbourhoods and areas along the waterfront. a) The Municipality will protect the natural values of the Cowichan estuary and Cowichan Bay foreshore.*

OCP policy strongly discourages development activity or disturbance and density increases in environmentally sensitive areas, particularly ocean and foreshore areas and the Cowichan Estuary or areas susceptible to natural hazards such as wildfire, flooding or steep slopes.

Building Permit

The Municipality has no record confirming the extent of works conducted or whether the improvements meet the Provincial Building Code requirement as there was no building permit issued for the accessory building conversion. Should the zoning amendment be approved, a building permit to convert the accessory structure will be required to be in compliance with the BC Building Code.

Wastewater Disposal System Investigation

A wastewater septic tank and pump chamber servicing the converted accessory building has been constructed without permits, tied into the existing wastewater tank and distribution box and dispersal field for the single-family dwelling, and is in a location prohibited under North Cowichan DPA3 guidelines, approximately 10m from the property line abutting the natural boundary of Cowichan Bay (Attachments 4 and 6).

The dispersal field is also damaged (partially plugged), which is resulting in the overflow of concentrated untreated effluent from the distribution box into the environment. Several wastewater system components have been flagged as being undersized relative to industry standards (Attachment 4 and 6). This application has been referred to Island Health for comment and guidance on the placement, design and maintenance of the current wastewater treatment system.

Council Second Dwelling Rural Lands Policy

The subject property does comply with policy guidelines in terms of size of the second dwelling (limitation 92m² – 990.28ft² actual is 39m² – 420ft²) and with the limitation on parcel size where no municipal water or sewer exists (limitation 1ha – 2.5acres actual is 1ha – 2.5acres – Attachment 8).

Development Permit Areas / Archaeological Potential

The converted accessory building on the subject property is within the sensitive shoreline area, and within 10m of the natural boundary of Cowichan Bay and is therefore subject to Development Permit Area 3 - Natural Environment. Natural hazards also exist here in the form of steep slopes and extreme wildfire risk under Development Permit Area 4 DPA4 – Natural Hazards.

The shoreline and upland property have a high potential for archaeological value with marked provincial archaeological sites identified in the area.

Access Easement FB192986

Access to the subject property is over a private easement on an adjacent property. The easement on the applicant's title identifies conditions of use for pedestrian and vehicle access (over 948 Khenipsen to and from 934 Khenipsen) for each landowner party to the agreement and the conditions to which they are subject. The conditions may not be changed unilaterally, and any dispute that is not amicably resolved between parties must be addressed through the courts.

This access easement is now a point of contention between the property owners of 934 and 948 Khenipsen. The issues are over the terms of the easement through an alleged change in easement conditions (the number of dwellings on 934 Khenipsen) and the observed increase in traffic (stated by the landowner for 948 Khenipsen) over his property for access to the subject parcel. Each party to the easement has consulted and submitted legal opinions from their respective legal counsel to the Municipality (Attachment 5).

The Municipality is not a party to the access easement. As the easement is a private agreement, the Municipality has no legal jurisdiction or obligation to resolve issues arising from a dispute of the easement or enforcing the easement itself. The issue remains in dispute at the time of the writing of this report.

Environmental Report (Madrone Environmental Services)

The report prepared by Madrone Environmental Services indicates that no fully intact ecosystems are located on the property, and those remaining are fragmented due to human disturbance. While acknowledging that no native plants were removed in the largely internal works conducted on the accessory building conversion, the native plants on-site are being outcompeted for space by invasive plants in several areas, for example, laurel, English ivy, Himalayan blackberry and broom. This outcome is typical of disturbed lands (Attachment 9).

The biologist goes on to conclude that: *"To improve the historically disturbed nature of the property and improve upon the biological function of the marine foreshore zone, enhancement is encouraged – a prescription for enhancement through the planting of native shrubs and removal of invasive vegetation,"* can be provided to the applicant

Geotechnical Engineering Report (Ryzuk Geotechnical Engineering & Materials Testing)

The geotechnical engineer retained to assess the converted accessory building (second dwelling) has observed twisting of the roof spine of the building and differential movement of the structure toward the shoreline slope (part of the converted accessory building is moving – the other not) (Attachment 7).

In summary, the reporting engineer states that in the face of upper slope surficial creep or seismic events, *"The building itself may or may not hold up in such an occurrence – potential detachment of deck from building"* and recommends that the foundations be extended and secured to bedrock. No commitment to undertake these repairs or confirmation that the repairs are possible has been received from the applicant.

Internal Staff Referral Responses

This application was referred to municipal departments. Those departments that provided comments on the application registered no comment or concerns except for Fire Services and the Building and Engineering departments (Attachment 3).

- **Fire Services** identified concerns over the inherent wildfire risk on the property.
- **Building** indicated that a building permit informed by a professional geotechnical engineer will be required to address the existing converted accessory building construction.
- **Engineering/Environmental Services** provided comment on the Madrone Environmental report submitted by the applicant and recommended that the landowner be obligated to:
 - improve the historically disturbed nature of the property;
 - improve upon the biological function of the marine foreshore zone;
 - enhance through the planting of native shrubs; and,
 - remove invasive vegetation.

Staff have not received any commitment in the report submission from the homeowner to carry out the attached recommendations.

Communications and Engagement

Should Council give first and second reading to Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798, a public hearing will be conducted to provide the public with an opportunity to submit input. Neighbouring properties within a 60m radius of the subject property will be notified of this application, and advertisements will be placed in the local newspaper, as required by the *Local Government Act*.

Summary & Conclusion

Although this application is compliant with Council's policy for Second Dwellings on Rural Lands, there are several unresolved issues associated with it. These include:

- **Official Community Plan** – The policy does not support any disturbance of land or an increase in residential density in environmentally sensitive areas.
- **Archaeology** – Marked archaeological sites exist in this area. Land alterations, including wastewater

system repairs, could unearth archaeological artifacts, in which case the *Heritage Conservation Act* would apply.

- **Geotechnical Engineering Report** (Ryzuk Geotechnical Engineering & Materials Testing) – The geotechnical engineer retained by the homeowner has observed signs of the building twisting, inadequate roof water drainage and incomplete foundations (Attachment 7).
- **Environmental Report** (Madrone Environmental Services) – The biologist recommends invasive species removal and remediation/replanting with native plants to improve the biological function of the site (Attachment 9). No commitment from the homeowner has been submitted with this application to do this.
- **Internal Referral Staff Comment** – Please note wildfire risk, the requirement for a building permit, invasive plant removal and native planting install as recommendations to Council (Attachment 3).
- **Easement** - The subject property does not have direct access to a public road and instead relies on a private access easement over an adjacent property. Increasing the intensity of use on the property by authorizing a second dwelling will likely aggravate the existing conflict with the neighbouring property owner over the easement.
- **Building Code** – Building upgrades necessary to bring the structure into compliance with the BC Building Code could be substantial and costly. The applicant has not provided documentation outlining how the conversion would be done or if it is even feasible without extensive demolition and reconstruction. Approval of the zoning amendment application will not resolve building compliance issues, and there is no assurance that the building compliance issues will be resolved if the zoning amendment bylaw is adopted.
- **Environmentally Sensitive Area** – The second dwelling is proposed on a site that is deemed environmentally sensitive due to the proximity to the ocean and is on the edge of a slope that may be unstable. Applicable development permit guidelines do not support this location.
- **Wastewater Disposal System** – The application does not describe how the non-compliant wastewater treatment system will be remedied or how upgrades would be applied to protect environment.

For these reasons, staff have recommended that the application be denied. Should the application be denied, the detached dwelling unit would be required to be decommissioned and it would be limited accessory residential use only.

Options

The following options are presented for Council's consideration:

Option 1 (Recommended):

That Zoning Bylaw Amendment Application No. ZB000126, to permit a second dwelling at 934 Khenipsen Road (PID: 027-581-578) be denied.

Option 2:

- a) That Council give first and second reading to Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798; and,

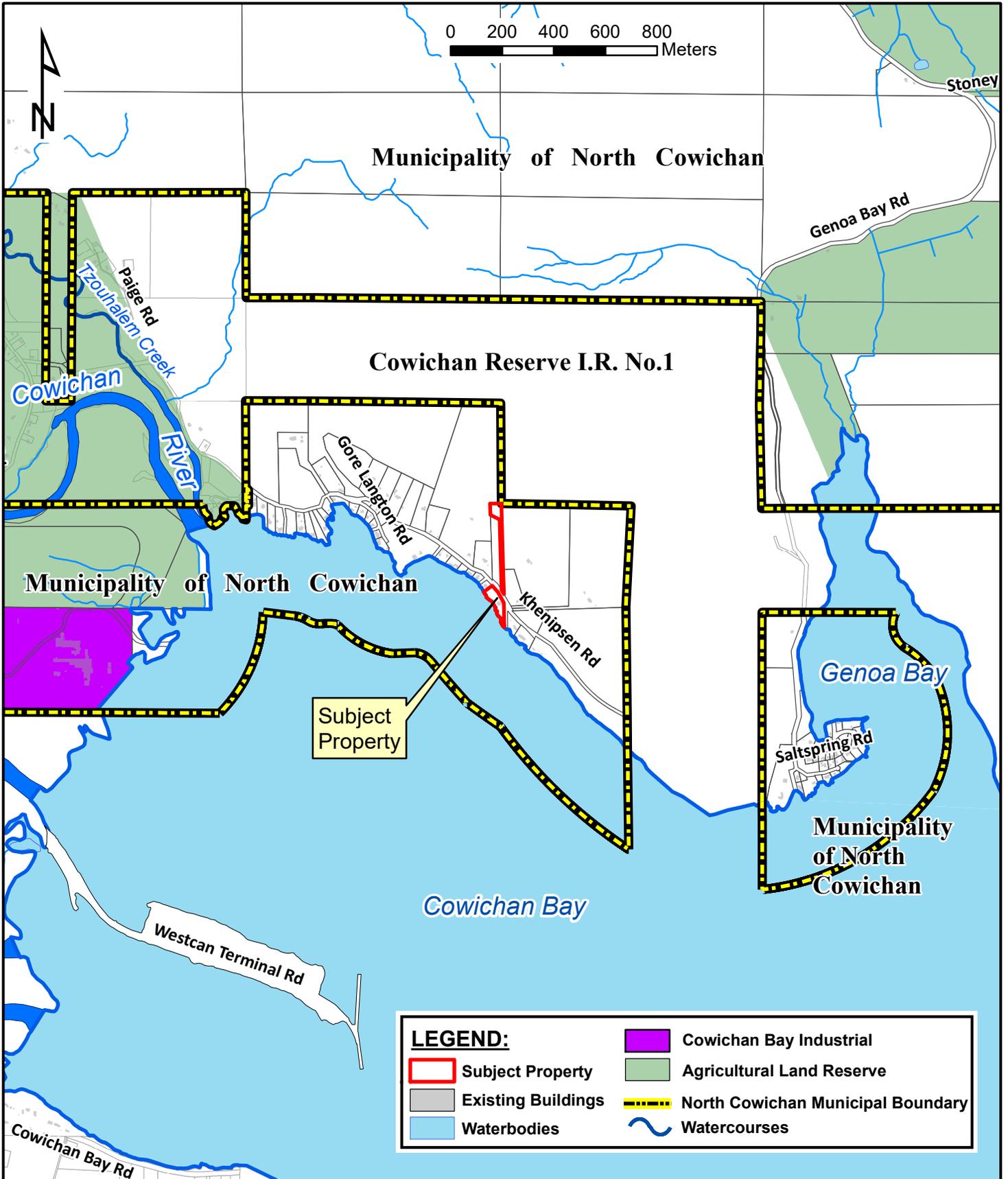
- b) that a Public Hearing be scheduled for Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798 and notification be issued following requirements of the Local Government

Recommendation

That Zoning Bylaw Amendment Application No. ZB000126, to permit a second dwelling at 934 Khenipsen Road (PID: 027-581-578), be denied.

Attachments:

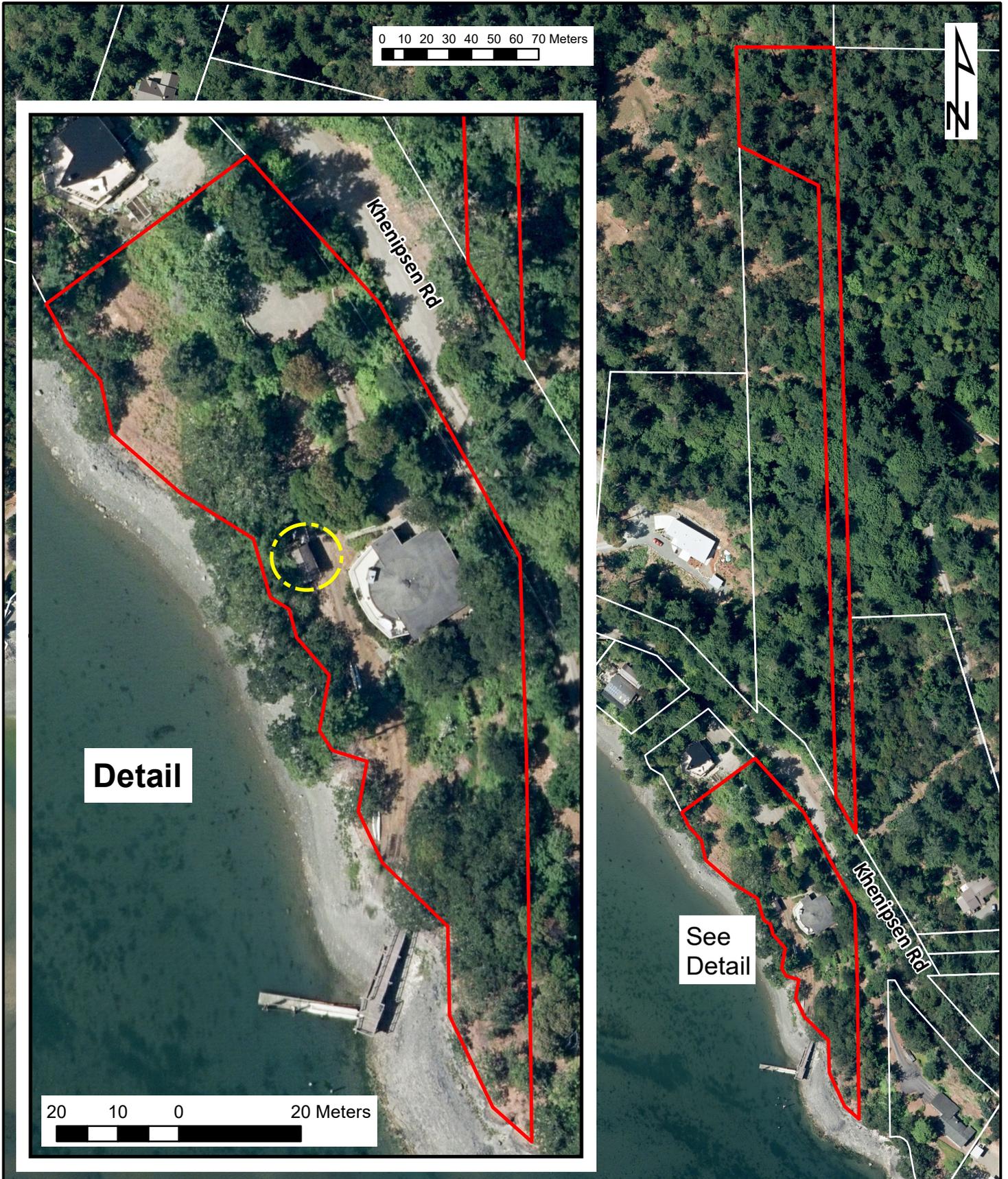
1. Location Map
2. Orthophoto
3. Internal Referral Responses
4. Septic Compliance Inspection Report
5. Access Easement and Legal Opinions
6. As Build Plan Set
7. Ryzuk Geotechnical Report
8. Second Dwelling Rural Lands Policy
9. Madrone Environmental Report
10. Zoning Map (background information only)
11. Development Rationale (background information only)
12. Template Wildfire Interface Protection Covenant (background information only)
13. Site Photos (background information only)
14. Rural Restricted A3 Zone (background information only)
15. Draft Bylaw No. 3798 (background information only)



LOCATION MAP

934 Khenipsen Road

| | |
|--------|------------------|
| DATE: | June 10, 2020 |
| TYPE: | Zoning Amendment |
| FILE#: | ZB000126 |



Detail

See Detail



ORTHO PHOTO MAP
(Orthophoto is from 2019 aerial photography)
934 Khenipsen Road

| | |
|--------|------------------|
| DATE: | June 10, 2020 |
| TYPE: | Zoning Amendment |
| FILE#: | ZB000126 |

Glenn Morris

From: Dave Preikshot
Sent: Tuesday, June 9, 2020 2:08 PM
To: Glenn Morris; Lane Killick; Rachel Hastings; Michele Gill; Fire; Bent Nielsen; GIShelpdesk; Shawn Cator; Don Stewart; Rob Conway
Subject: RE: ZB000126 - 934 Khenipsen Road - Demarchi and Hartwig - 2nd Dwelling
Categories: APPLICATIONS

Colleagues,

The author of the Madrone Report, Justin Lange, is a fisheries biologist who is well regarded by his peers in the environmental assessment community. His report makes the following statements:

“Renovations associated with converting the existing workshop into a livable cottage were minimal and the pre-existing building footprint was not expanded.”

“Based on the small scale of the project there was no need to incorporate any heavy machinery - all work was completed by manual labour.”

“...in my professional opinion there were no negative impacts to any ecological attributes...”

These statements allow me to conclude that there are no environmental concerns with the work done. However, Mr. Lange also states that:

“To help improve the historically disturbed nature of the property and improve upon the biological function of the marine foreshore zone, enhancement is encouraged. I will be able to provide a detailed prescription for enhancement through the planting of native shrubs and removal of invasive vegetation if required.”

Given this last statement I would note that in the application letter written by Mr. Coulson on behalf of the property owners the following statement is made:

“This application, although late in coming, represents the type of housing that should be strongly encouraged in the municipality...”

Mr. Coulson makes reference to aspects of the property that would be deemed as favorable to environmental considerations , e.g., new septic system, generous setbacks, and public access to the beach. I would therefore like to point out that Mr. Lane’s report states that although the work on the property does not degrade the local environment *any further* the local environment was already compromised by development and invasive species. I therefore suggest that if the intent of the property owners is to help enhance the local ecosystem and environment they follow up on Mr. Lange’s recommendations to:

- help improve the historically disturbed nature of the property,
- improve upon the biological function of the marine foreshore zone,
- enhancement through the planting of native shrubs, and
- removal of invasive vegetation.

Dave

Dave Preikshot, PhD, RPBio
 Senior Environmental Specialist
 Engineering Department

Municipality of North Cowichan
7030 Trans-Canada Highway
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From: Glenn Morris <Glenn.Morris@northcowichan.ca>

Sent: June 9, 2020 10:44 AM

To: [Redacted]
<mi...>
Ben...
<sh...>
<ro...>

Subject: ZB000126 - 934 Khenipsen Road - Demarcni and Hartwig - 2nd Dwelling

This referral has been sent for the following purposes and review by the following people:

| | |
|--------------------|--|
| Building | Lane Killick |
| Bylaw | Rachel Hastings |
| Engineering | Michele Gill, Dr. Dave Preikshot |
| Fire Services | fire@northcowichan.ca |
| GIS Mapping | Bent Nielsen, GIShelpdesk |
| Operations | Shawn Cator |
| Parks & Recreation | Don Stewart |
| Planning | Rob Conway, Glenn Morris |

Please provide your comments by **June 23, 2020 to Glenn Morris. The development drawings have been attached for your information, review and comments.**

TO ACCESS OTHER REFERENCE MATERIALS/DOCUMENTS please click on the attached link to PROSPERO FOLDER ZB000126 and go to the Attachments Tab.

Prospero File Number: ZB000126
Civic Address: 934 Khenipsen Road
Legal Description: Lot B, VIP85366
Folio Number: 00401-200
PID: 027-581-578

PROPOSAL

The applicant is applying to Council to permit the use of a second detached dwelling unit on the A3 zoned parcel through a converted accessory building to dwelling unit.

Glenn Morris

From: Mike Dunn
Sent: Wednesday, June 24, 2020 8:37 AM
To: Glenn Morris
Subject: RE: ZB000126 - 934 Khenipsen Road - Demarchi and Hartwig - 2nd Dwelling

Hi Glenn,

After reviewing the property and its location considering the lack of fire hydrants close by I would suggest the owners take measures to Fire Smart their property. This would include using class A fire rated roofing if not already in place and being aware of how landscaping might affect their homes survivability in the event of a wildfire. I have attached the latest publication from Fire Smart BC.

https://firesmartbc.ca/wp-content/uploads/2019/09/FireSmart_Booklet_web-Updated.pdf

If you require any additional information please let me know.

Regards,

Mike Dunn, LAFC
Bylaw Compliance Officer
Fire & Bylaw Services | Financial & Protective Services
Municipality of North Cowichan
mike.dunn@northcowichan.ca
T 250.746.3167
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Glenn Morris

From: Lane Killick
Sent: Friday, August 7, 2020 1:07 PM
To: Glenn Morris
Subject: RE: ZB000126 - 934 Khenipsen Road - Demarchi and Hartwig - 2nd Dwelling

Hi Glenn, due to the slope that the building is sited, it will be imperative that a geotechnical engineer provide a sealed letter and review that will state that the proposed building is safe and suitable for the intended use as a dwelling, or C occupancy. A building permit will be required and there will be an onsite review required and any upgrades that the inspector deems necessary will have to be completed to obtain a final occupancy approval.

Thanks for the opportunity to respond.

Lane

From: Glenn Morris <Glenn.Morris@northcowichan.ca>
Sent: Friday, August 7, 2020 11:15 AM
To: Lane Killick <Lane.Killick@northcowichan.ca>
Cc: Rob Conway <rob.conway@northcowichan.ca>
Subject: FW: ZB000126 - 934 Khenipsen Road - Demarchi and Hartwig - 2nd Dwelling

Hi Lane,

I do not know if you commented on this zoning amendment application. Would you issue a building permit should Council approve the use for the existing converted cottage? Geotech report indicates half the building is heading down slope, the deck posts are subsiding and rotating and may separate from the building with any more movement and the septic system has no permits is undersized and failing = potential health hazard.

Let me know thanks.

Sincerely

Glenn Morris, B.Sc, MCIP, RPP
Development Planning Coordinator
PLANNING DEPARTMENT

Municipality of North Cowichan
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glenn.morris@northcowichan.ca

T 250.746.3118
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Glenn Morris

From: Glenn Morris
Sent: Wednesday, June 10, 2020 1:57 PM
To: Rachel Hastings
Subject: RE: ZB000126 - 934 Khenipsen Road - Demarchi and Hartwig - 2nd Dwelling

Categories: APPLICATIONS

Thanks Rachel,

Yes, we will move through the use proposal and staff recommendation with Council and see what the decision is on the 2nd detached dwelling.

Sincerely

Glenn Morris, B.Sc, MCIP, RPP
Development Planning Coordinator
PLANNING DEPARTMENT

Municipality of North Cowichan
7030 Trans-Canada Highway
Duncan, BC V9L 6A1 | Canada
www.northcowichan.ca
glenn.morris@northcowichan.ca
T 250.746.3118
F 250.746.3154

From: Rachel Hastings <Rachel.Hastings@northcowichan.ca>
Sent: Tuesday, June 9, 2020 10:53 AM
To: Glenn Morris <Glenn.Morris@northcowichan.ca>; Lane Killick <Lane.Killick@northcowichan.ca>; Michele Gill <michele.gill@northcowichan.ca>; Dave Preikshot <dave.preikshot@northcowichan.ca>; Fire <fire@northcowichan.ca>; Bent Nielsen <Bent.Nielsen@northcowichan.ca>; GIShelpdesk <GIShelpdesk@northcowichan.ca>; Shawn Cator <shawn.cator@northcowichan.ca>; Don Stewart <Don.Stewart@northcowichan.ca>; Rob Conway <rob.conway@northcowichan.ca>
Subject: RE: ZB000126 - 934 Khenipsen Road - Demarchi and Hartwig - 2nd Dwelling

Bylaw has no concerns with this application. Please note that this application is a result of a compliance file and we will need to be notified if the applicants are unsuccessful.

Thank you

From: Glenn Morris <Glenn.Morris@northcowichan.ca>
Sent: Tuesday, June 9, 2020 10:44 AM
To: Lane Killick <Lane.Killick@northcowichan.ca>; Rachel Hastings <Rachel.Hastings@northcowichan.ca>; Michele Gill <michele.gill@northcowichan.ca>; Dave Preikshot <dave.preikshot@northcowichan.ca>; Fire <fire@northcowichan.ca>;

SEPTTECH

COMPLETE SEPTIC SERVICES

Onsite Sewerage System – Compliance Inspection Report

Tuesday, March 31, 2020

TO: David Coulson
5241 Koksilah Road.
coulsondesign@shaw.ca 250-715-8425

RE: Inspection of onsite system @ Khensipsen Road - 934

At your request, I attended this property to carry out a performance inspection of the onsite sewage system serving the home with the aim of determining it's condition, location, operation and suitability for your needs.

As a Registered Onsite Wastewater Practitioner through ASTTBC, an inspector is required to meet or exceed these requirements and undertake this work in the best interests of the client always. Also included with the report is a thorough list of all required maintenance and recommended improvements or repairs.

System Records

| | |
|---|----------------------------------|
| Filing or original permit documentation | None submitted |
| Certification or authorization to operate | N/a |
| Daily design flow (liters per day) | 1,700 |
| Number of bedrooms on original permit | N/a |
| Actual number of bedrooms Main house & suite | 2 & 1 |
| As built drawing | No |
| Operation & Maintenance Plan | Not required at time of install. |
| Maintenance records | None submitted. |
| Current occupancy | 2 |
| Land title or survey of property | No |
| MLS or property listing submitted/obtained | n/a |

Type of sewerage system

The property has a main home with 2-bedrooms and a separate 1-bedroom suite that each have regular strength wastewater flows. The onsite sewerage treatment system is Type 1 treatment with septic tanks and pumps that transfer to a gravity dispersal system.

Evaluation of System Components and Performance

Main house

Septic Tank

1. Located beside the house under wooden covers.
2. There is an original concrete tank installed.
3. Three concrete lids provide access to the inlet, center hatch and outlet side of the tank.
4. **The inlet side was very plugged and we needed to remove a large amount of built up grease and phosphate from laundry use over the years.**
5. The operating level observed in the center and outlet hatch is normal.
6. The tank's capacity is approximately 2,700 liters.
7. Flow passes to a pump chamber beside this tank.

Pump chamber

1. The pump chamber beside the tank collects the flow and directs it to the distribution box.
2. This tank also collects flow from the septic tank below that is for the cottage.
3. The pump and electrical plug into a receptacle beside the tank access.
4. Both the float and pump are functioning.

Cottage

Septic tank & Pump Chamber

1. Located on the bottom terrace.
2. The tank has two green plastic lids to surface.
3. **An issue is present with the pump and the tank was completely flooded when we initially removed the lids.**
4. It appears there is an issue with the GFI receptacle the pump plugs into. We reset the breaker and were able to activate the pump and lower the level.
5. The tank has two compartments and the pump is in the second, smaller compartment.
 - 5.1. **With the pump activated, we noticed the entire volume of the tank was being lowered instead of the pump side being solid.**
 - 5.2. **This does not allow for clearer effluent to pass over to the pump chamber and instead, the pump is moving higher strength wastewater to dispersal field.**

Distribution Box & Dispersal Field

1. **The dispersal field is shared between the two dwellings.**

2. The distribution box is located directly beside the house under a cover – essentially built into the stairs.
3. We used our pipe camera but were only able to pass out through a meter or two of the pipes.
4. The condition we observed was flooded pipes.
5. With the pump activated, flow enters the d-box and the level rises well above the outflow pipes and very slowly drains down.

Summary of system Performance & Compliance

Flow is passing through the system but it is not functioning as would be intended by original design.

1. There is a flow variation that is causing all the effluent to pass out through a very small area.
 - a. The rationale for all onsite sewerage systems is to have the effluent pass out through a large amount of soil for proper treatment and pathogen and removal.
2. The proximity of the d-box to the house's foundation walls is not acceptable.
3. The lower septic tank and pump chamber combo is pumping higher strength effluent up to the second pump chamber and then on to the common dispersal field.
4. The component sizing has a variance over 50% of today's requirements of the Standard Practice Manual (Version 3) set forth under the Sewerage System Regulations (May, 2004).

No effluent breakouts or surfacing effluent was noticed during the inspection.

Next Steps & Recommendations

1. Engage a Registered Onsite Wastewater Practitioner with the designation 'Planner' to assist with a site assessment and to help design a work proposal and budget that will be a long term solution for the property's wastewater treatment.

Please contact our office for any additional information.

Thanks,

Brad Beals
ROWP: Planner – Installer – Private Inspector
250-746-0706 office
info@septech.ca



ATTACHMENT 5

FB192985

16 JUL 2008 14 50

FB192985

LAND TITLE ACT

FORM C

(Section 219.9)

Province of

British Columbia

GENERAL DOCUMENT

(This area for Land Title Office use)

Page 1 of 8 pages

1. APPLICATION:

Orchard & Company, 321 St. Julian Street, Duncan, British Columbia V9L 3S5 CLIENT NO. 10264
Telephone: (250) 746-5899 Fax: (250) 748-3518
File: 24651/brm (Access)

DYE & DURHAM

Signature of Applicant, Solicitor or Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION OF LAND: *

(PID)

(LEGAL DESCRIPTION)

LOT A, SECTION 13, RANGE 4, COWICHAN DISTRICT, PLAN VIP 85366

3. NATURE OF INTEREST:

DESCRIPTION

DOCUMENT REFERENCE
(Page and Paragraph)

PERSON ENTITLED TO INTEREST

EASEMENT as shown outlined
in black on Reference Plan of
Easement VIP 85369

ENTIRE

REGISTERED OWNER OF:

PID: _____ Lot B, Section 13,
Range 4, Cowichan District, Plan

PRIORITY AGREEMENT granting
Easement FB192985 priority over
Mortgage FA62783

Page 6, Para. 5

VIP 85366
08/07/16 14:51:30 01 VI

CHARGE

810971
\$132.30

4. TERMS: (Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms

D.F. No.

(a) Express Charge Terms

Annexed as Part 2

(c) Release

There is no Part 2 to this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):

RAYMOND DEMARCHI and CAROL HARTWIG, as Joint Tenants
ISLAND SAVINGS CREDIT UNION, as to Priority Agreement

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

RAYMOND DEMARCHI, Resource Consultant, and CAROL HARTWIG, Resource Consultant, both of 934
Khenipsen Road, Duncan, British Columbia V9L 5L3, as Joint Tenants.

LAND TITLE ACT

FORM C

(Section 219.9)

Province of

British Columbia

GENERAL DOCUMENT

(The area for Land Title Office use)

Page 2 of 8 pages

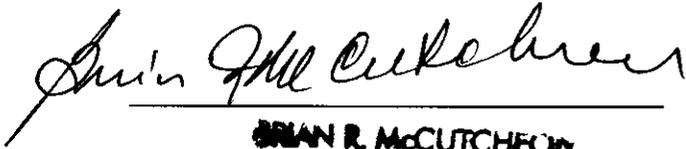
7. ADDITIONAL OR MODIFIED TERMS:

NONE

8. EXECUTION(S): ** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, of any.

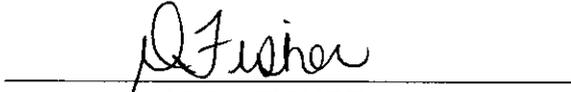
Execution Date

Officer Signature(s)



BRIAN R. McCUTCHEON
Barrister & Solicitor
321 St. Julian Street
DUNCAN, B.C. V9L 3B5

(as to both signatures)



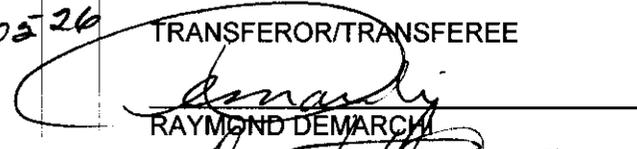
DEBBY FISHER
Commissioner for taking Affidavits
for British Columbia
Island Savings Credit Union
300 - 499 Canada Avenue
Duncan, BC V9L 1T7

Y M D

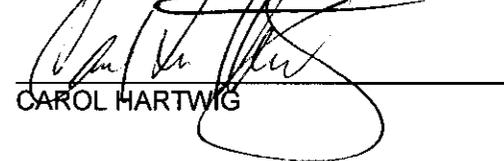
08 05 26

Party(ies) Signature(s)

TRANSFEROR/TRANSFEEE



RAYMOND DEMARCHI



CAROL HARTWIG

08 06 09

ISLAND SAVINGS CREDIT UNION
by its authorized signatory(s) as to
Priority Agreement



Print Name:

Jackie Scott



Print Name:

Daneve Fitzgerald

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

TERMS OF INSTRUMENT - PART 2

THIS EASEMENT AGREEMENT dated the _____ day of _____, 2008.

BETWEEN:

RAYMOND DEMARCHI, Resource Consultant,
CAROL HARTWIG, Resource Consultant,
of 934 Khenipsen Road, Duncan,
British Columbia V9L 5L3

(hereinafter jointly called the "Grantor")

OF THE FIRST PART

AND:

RAYMOND DEMARCHI, Resource Consultant,
CAROL HARTWIG, Resource Consultant,
of 934 Khenipsen Road, Duncan,
British Columbia V9L 5L3

(hereinafter jointly called the "Grantee")

OF THE SECOND PART

WHEREAS:

A. The Grantor is the registered owner, as joint tenants, of an Estate in Fee Simple of all and singular that certain parcel or tract of land and premises situate, lying and being in the Municipality of North Cowichan, in the Province of British Columbia, and being more particularly known and described as:

Parcel Identifier: _____

Lot A, Section 13, Range 4, Cowichan District, Plan VIP 85366,
(hereinafter called the "Servient Tenement")

B. The Grantee is the registered owner, as joint tenants, of an estate in Fee Simple of all and singular that certain parcel or tract of land and premises situate, lying and being in the Municipality of North Cowichan, in the Province of British Columbia and more particularly known and described as:

Parcel Identifier: _____

Lot B, Section 13, Range 4, Cowichan District, Plan VIP 85366,
(hereinafter called the "Dominant Tenement")

C. The Grantee has requested the Grantor to grant and the Grantor has agreed to grant unto the Grantee an easement for the benefit of Lot B, being the Dominant Tenement, for the purposes herein described, to enter, use, go upon, return, pass and repass, on, over and across that part of the Servient Tenement (hereinafter called the "**Easement Area**") shown outlined in black on Reference Plan of Easement prepared by Philip Bower, B.C.L.S., and completed on the 17th day of April, 2008 and filed under ECP80297 on April 29, 2008, and deposited in the Victoria Land Title Office concurrently herewith under Plan VIP 85369, a copy of which is attached hereto as "Schedule "A",

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the sum of ONE (\$1.00) DOLLAR now paid by the Grantee to the Grantor, the receipt whereof is hereby acknowledged, the Grantor does hereby grant, convey and confirm unto the Grantee, as owner for the time being of the Dominant Tenement, their successors in title, servants, agents, tenants, invitees and licencees and all parties claiming through them, the full, free and uninterrupted right, license, liberty, easement, privilege and permission at all times and from time to time on the Easement Area described aforesaid with or without machinery, vehicle, animals and motor vehicles hereafter for the following purposes and on the following terms and conditions agreed to by the Grantor and Grantee:

1. To enter upon and pass and repass over the Easement Area for the purposes of ingress and egress to the Dominant Tenement and with pedestrian and vehicle traffic, for the purposes of meeting the reasonable needs of the single family residential dwelling located upon the Dominant Tenement.
2. The Grantor covenants and agrees:
 - a) not to place or erect any improvements, structures, or artificial surfaces on the Easement Area in such position as to interfere with the purposes and privileges aforesaid, nor will the Grantor house any livestock or animals on the Easement Area;
 - b) to maintain and keep the Easement Area in good repair and not do any act or thing, or knowingly suffer or permit any act or thing to be done to the Easement Area which will interfere with access to the Dominant Tenement.

- c) not to erect any buildings or structures or place any excavation or obstructions on the Easement Area that will interfere with access to the Dominant Tenement;
 - d) not to plant any trees or other growth on the said Easement Area that would in any way interfere with access to the Dominant Tenement.
3. The Grantee covenants and agrees:
- a) to do or cause others to do as little damage to the Easement Area as is reasonably possible in exercising access;
 - b) to make good at their own expense all damage or disturbance which may be caused to the Easement Area in the exercise of their rights under this Agreement;
 - c) to indemnify and save harmless and keep the Grantor indemnified against all actions, claims or demands, including legal costs and expenses actually incurred, that may be brought or made against the Grantor, by reason of anything done by the Grantee in the exercise of the rights hereby granted.
4. It is mutually understood, agreed and declared by and between the parties hereto that:
- a) their Agreement shall be construed as running with the land, but that no part of the fee of the soil of the Easement Area as hereinafter described shall pass to or be vested in the Grantee under or by these presents;
 - b) the Grantor from time to time and at all times upon every reasonable request and at the cost and charges of the Grantee shall do and execute or cause to be made, done or executed all such further and other lawful acts, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the Grantee, their successors and assigns, of the rights, licences, liberties, easements, privileges and permissions hereby granted;

- c) in the event that an alternate access is constructed by the Grantee to service the Dominant Tenement, this Agreement and the rights of the parties shall terminate and cease absolutely.

5. CONSENT AND PRIORITY AGREEMENT

ISLAND SAVINGS CREDIT UNION (the "Chargeholder") is the holder of a mortgage registered against the lands legally described in Item 2 of Part 1 of the Form C to which this Agreement is attached (the "Covenant"), and which mortgage is registered in the Victoria Land Title Office under instrument number FA62783.

This Consent and Priority Agreement is evidence that in consideration of payment to it of \$1.00 by the Transferee described in item 6 of Part 1 of the Form C to which this Agreement is attached (the "Transferee"), the Chargeholder agrees with the Transferee as follows:

- (a) The Chargeholder consents to the granting and registration of the Covenant and the Chargeholder agrees that the Covenant binds its interest in and to the Lands;
- (b) The Chargeholder grants to the Transferee priority for the Covenant over the Chargeholder's right, title and interest in and to the Lands and the Chargeholder postpones the Charges, and all of its right, title and interest thereunder, to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

As evidence of its agreement with the Transferee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

6. THIS INDENTURE and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Page 7 of 8 Pages

7. Where the expression Grantor or Grantee is used in their Agreement it shall be construed as meaning the plural, feminine, or body corporate or politic where the context of the parties so requires.

8. This Agreement will be interpreted according to the laws of the Province of British Columbia.

Schedule "A" attached.

SCHEDULE "A"

REFERENCE PLAN OF EASEMENT OVER PART OF

LOT A, SECTION 13, RANGE 4

COWICHAN DISTRICT, PLAN VIP -----

<Prepared pursuant to Section 99(1)(e) of the Land Title Act.>

Scale 1:500



B.C.G.S. 92B072

PLAN VIP 85369

Deposited in the Land Title Office at Victoria, B.C.,
this _____ day of _____, 2008.

Registrar

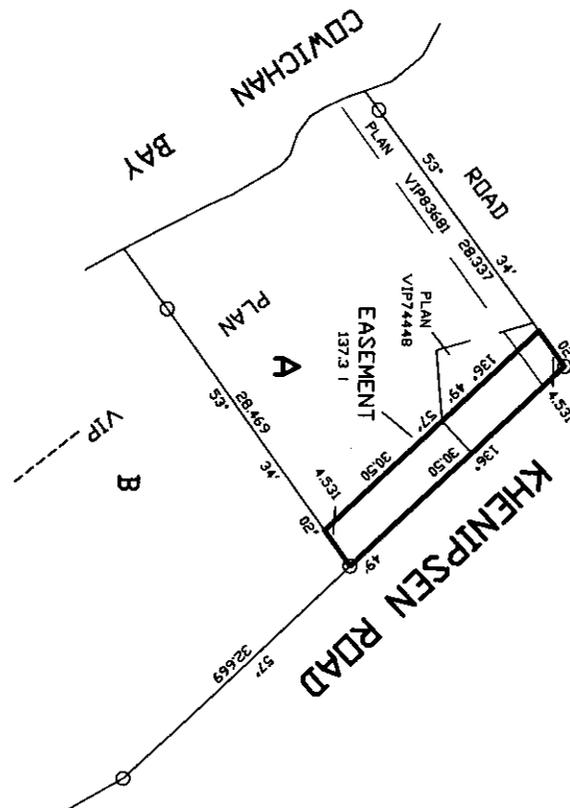
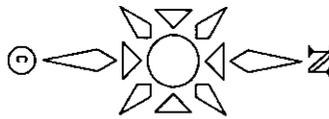
This plan lies within the Cowichan Valley Regional District.

LEGEND

Bearings are astronomic bearings derived from Plan VIP-----

- standard iron post found
- standard iron post placed

All distances are in metres and decimals thereof.



BDWERS & ASSOCIATES

2856 CASWELL STREET,
CHEMUNUS, B.C. V0R 1K3
PHONE/FAX: 246-4928

File: 3367
File: 3320-20-0551 Folio 414.000

I, Philip J. Bowers, a British Columbia Land Surveyor of the Town of Chemunus, in British Columbia certify that I was present at and personally supervised the survey represented by this plan, and that the survey and plan are correct. The field survey was completed on the _____ day of _____, 2008. The plan was completed and checked, and the checklist filed under ECP _____ on the _____ day of _____, 2008.

Philip J. Bowers

B.C.L.S.

END OF DOCUMENT

16 JUL 2008 14 50

FB192985

VIP 85369

Plan @ \$55

**LAND TITLE ACT
FORM 11 (a)
(Section 99 (1)(e))**

**APPLICATION FOR DEPOSIT OF REFERENCE EXPLANATORY
PLAN (CHARGE)**

I, Brian R. McCutcheon, 321 St. Julian Street, Duncan, B.C., Solicitor, apply on behalf of Raymond Demarchi, Research Consultant, and Carol Hartwig, Research Consultant, both of 934 Khenipsen Road, Duncan, British Columbia, to deposit a reference plan of Easement over part of:

PID: _____ Lot A, Section 13, Range 4, Cowichan District, Plan
VIP 85360

I enclose:

- 1. The reference plan.
- 2. The reproductions of the plan required by section 67(u).
- 3. Fees of ~~\$55~~.00

Dated the *14th* day of July, 2008.

GM 08/07/16 14:50:55 01 VI 810971
PLANS \$55.00


Signature

DYE & DURHAM

VIP 85369

Our Ref: 205046

PLEASE REPLY TO DUNCAN OFFICE

February 20, 2020

Shawn Slade
948 Khenipsen Road
Duncan, BC V9L 5L3

Dear Sir:

Re: Access to Easement

As you are aware, we act for Carol Hartwig and Ray Demarchi.

Our clients report that you have delivered two letters in the past weeks stating that they are not "abiding by the terms of the access easement" that exists across your property. Upon review of these letters we note that you state the following:

- That the alleged failure to abide by the terms of the access easement has been ongoing for several years, and
- that your issue with the use of the easement arises not from the actual use of the easement but as a result of the "relationship" that you have with our clients.

We enclose copies of your letters for reference.

We are writing to state that any further correspondence that you may wish to send in regard to this matter should be directed to our office.

It is our view that our clients' current use of the easement falls within the allowable use under the wording of the easement. If you choose to wrongfully interfere with our clients' use of the easement, which also includes use by others whom they welcome on to their property, we anticipate receiving instructions to take appropriate legal steps to address that wrongful interference.

We trust that you will find the above satisfactory and anticipate that there will be no further issues in regard to the use of the easement.

Yours truly,
**JOHNS SOUTHWARD GLAZIER
WALTON & MARGETTS LLP**

Per: Patricia D. Blair*

PDB:lw
*denotes law corporation
Encl.

LACROIX LAW

#2 177 Fourth St.
Duncan, British Columbia V9L
5J8

Gary LaCroix
Andrew LaCroix
Janelle LaCroix
Steven F. Leichter
Derek Jackson, assoc. counsel

T 250 746 8585
F 250 746 8559

April 30, 2020

Shawn Slade
948 Khenipsen Road
Duncan BC

Dear Mr. Slade

RE: Use of easement by occupants of secondary dwelling

You have asked us to provide you with an opinion on whether having both a primary dwelling and separate secondary dwelling on the neighbouring property are entitled to use the easement which crosses your property.

Factual assumptions

Our opinion is premised on the following facts:

1. You are the legal owner of property legally described as PID 004-664-558, Lot A, Section 13 Range 4 Cowichan District, Plan VIP 85366 (the "Property"). The Property is subject to an easement which provides road access to the neighbouring property which is otherwise landlocked for vehicle traffic.
2. The easement agreement, which is registered under charge number FBI92986 (the "Easement"), provides as follows:

...the Grantor does hereby grant, convey and confirm unto the Grantee...full, free and uninterrupted right, license, liberty, easement, privilege and permission at all times and from time to time on the Easement Area described aforesaid with or without machinery, vehicle, animals and motor vehicles hereafter

for the following purposes and on the following terms and conditions agreed to by the Grantor and Grantee:

1. To enter upon and repass over the Easement area for the purposes of ingress and egress to the Dominant Tenement and with pedestrian and vehicle traffic, for the purposes of meeting the reasonable needs of the single family residential dwelling located upon the Dominant Tenement. [Emphasis added]

3. Your property was originally part of a parcel which was subdivided into what is now your property (the "Grantee") known at law as the servient tenement and the neighbouring property, referred to as the "Grantee" and known in law as the dominant tenement.
4. Since the property was subdivided and the Easement was registered, the neighbour constructed a cottage, which is used as a rental (the "Cottage"). The current neighbour is applying to the Municipality of North Cowichan to alter the zoning for that parcel so that they can legally rent out and maintain the Cottage.
5. The Easement is the only road access to the neighbouring property and is used by both the residents of the primary residential dwelling and the Cottage.

Issue

6. The legal issue which arises from this is whether the neighbour's use of the Easement as an access for the residents of the Cottage conforms with the Easement agreement. For reasons which follow, our view is that this use does not conform with the Easement agreement.

Law

7. An easement grants rights to the dominant tenement holder (in this case the Neighbour) which must be interpreted in accordance with the plain meaning of the grant - which is the wording of the Easement agreement cited above. Reference to extrinsic evidence can be referred to by the court when construing the meaning of an easement agreement, but only in circumstances where there is ambiguity in the language itself¹.

¹ see: *McCorquodale v. Baranti Developments Ltd.*, 2015 BCCA 133

Analysis and Opinion

8. In our opinion, the Easement has created a specific restriction of use by using the words, “for the purposes of meeting the reasonable needs of the single family residential dwelling located upon the Dominant Tenement” to modify the more general language describing the Easement rights. Those words have the effect of limiting the use of the Easement and it seems plain that the reason those words were added was to limit the amount of traffic which the owners of the servient tenement (in this case you) would have to contend with. In other words, the dominant tenement holder is presumed to have a single dwelling on the neighbouring property and it is for the occupants of that dwelling (referred to as **the** single family dwelling) that the Easement was intended to service.
9. Adding the Cottage does, then, exceed the use to which the Easement may be lawfully put because the residents of the Cottage do not live in the “the single family dwelling” on the property and it is unlikely that their use of the Easement relates to the “reasonable needs” of that dwelling. It creates, rather, an excessive burden on the use of the Easement which the drafter of the Easement was specifically trying to avoid and which puts more traffic onto the Easement, to your detriment. At law any use of an easement which exceeds the use contemplated in the grant of easement constitutes an unlawful trespass.
10. For this reason, our view is that a rezoning of the neighbouring property would create a conflict, whereby the neighbours would have the lawful right to keep a second dwelling, but the residents of that dwelling would not be entitled to access the dwelling by using the Easement, absent an amendment of the Easement agreement, or the creation of a second vehicle access to the Cottage separate from the Easement.
11. Breach of the Easement gives rise to a legal right to bring proceedings in Supreme Court to obtain injunctive relief to prevent the continued breach.

We hope this is of some assistance and we are happy to discuss at any time

Yours Truly,

Andrew G. LaCroix

210 - 3260 Norwell Drive
Nanaimo, B.C. V9T 1X5
Phone: 250-756-3823
Fax: 250-756-6188
www.jfbllaw.ca



Blair J. Franklin, LL.B. *
Marsha E.A. Bishop, LL.B. *
Greg R. Phillips, B.A., LL.B. *
Stuart G. Cappus, B.A., J.D.
Trina R. Brubaker, B.A., J.D.
Simon M. Irving, B. Sc., J.D.
Alexa Zimmer, Articled Student
* denotes law corporation

May 1, 2020

Shawn Slade
948 Khenipsen Rd.
Duncan, BC V9L 5L3

Re: July 16, 2008 Easement on 948 Khenipsen Rd. – FB192986

You have asked me to provide a legal opinion about the above-noted easement.

Background Information

You own property within the Municipality of North Cowichan with a residential address of 948 Khenipsen Road (the “Slade Property”).

Your property is encumbered by an easement which, in short, provides driveway access for the benefit of a neighbouring property at 934 Khenipsen Road, owned by Raymond Demarchi and Carol Hartwig (the “Demarchi Property”).

My understanding is that the Demarchi Property contains two dwellings. One dwelling is the residence of Mr. Demarchi and Ms. Hartwig. There is a separate, standalone dwelling that is presently occupied by a tenant. The occupants of both buildings are currently making use of the driveway to access their respective dwellings.

This easement was registered on title on or about July 16, 2008. Under the terms of the easement, your property is the Servient Tenement and the Demarchi Property is the Dominant Tenement. A copy is attached. I note that the easement was originally drafted and registered on title by Mr. Demarchi and Ms. Hartwig.

I have been asked to provide an opinion, based on the information you provided as well as my own review of the easement and title document, about use of the easement and whether its terms are presently being complied with. In short, it is my opinion that they are not and the present use of the easement by a separate residential dwelling exceeds the original scope.

Breach of Terms of Easement

The easement provides for pedestrian and vehicle access “for the purposes of meeting the reasonable needs of the single family residential dwelling located upon the Dominant Tenement [emphasis added].”

The meaning of “single family residential dwelling” is plain, but for clarity the District of North Cowichan *Zoning Bylaw 1997 No. 2950 (Consolidation)* provides a specific definition of “single-family dwelling”:

“single-family dwelling” means any building, consisting of one dwelling unit, used or intended to be used as the residence of one family, but does not include manufactured homes;

You have advised me that there is, in fact, more than one occupied residential dwelling upon the Demarchi property. The terms of the easement are very clear – it exists to provide access to the single family residential dwelling.

The use of the easement by a separate family residential dwelling is not saved by the words “reasonable needs”. Typically language like this is inserted into easements to allow for modest changes in use over time, but that use still needs to be connected to the underlying scope. To put it more simply: if the easement was intended to allow access for multiple dwellings, it would have been drafted in a way to permit that.

In summary, it is my opinion is that the use of the driveway by the residents of multiple properties exceeds the scope of the easement.

Yours truly,

JOHNSTON FRANKLIN BISHOP



Per: Greg R. Phillips
Direct email: gp@jfbllaw.ca
GRP/ao

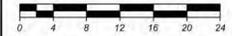
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ATTACHMENT 6

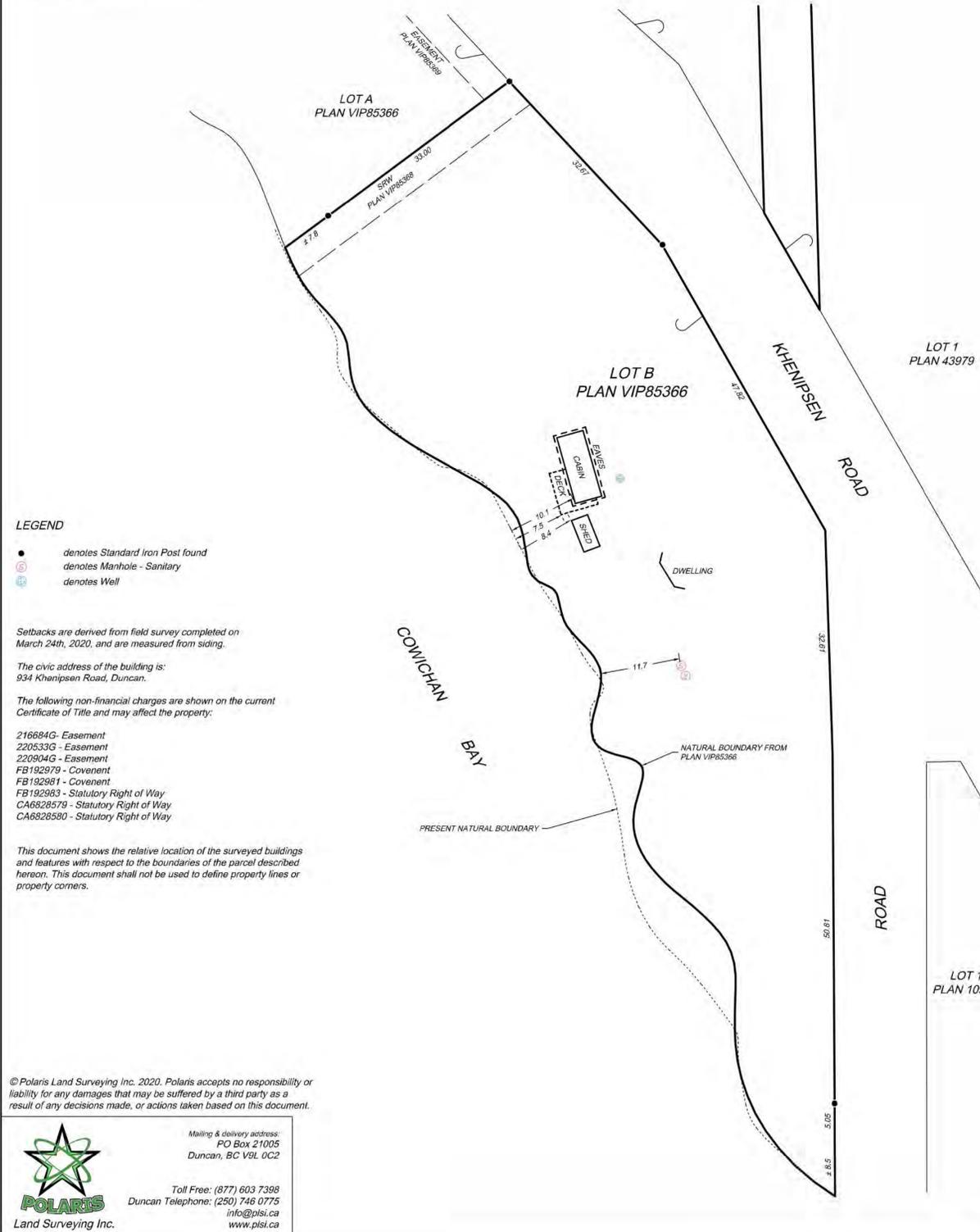
SITE PLAN OF LOT B, SECTION 13, RANGE 4, COWICHAN DISTRICT, PLAN VIP85366.

BCGS MAP SHEET 92B.072



The intended plot size of this plan is 432mm in width by 559mm in height (C-Size) when plotted at a scale of 1:400.

All distances are in metres and decimals thereof, unless otherwise noted.



- LEGEND**
- denotes Standard Iron Post found
 - Ⓢ denotes Manhole - Sanitary
 - Ⓜ denotes Well

Setbacks are derived from field survey completed on March 24th, 2020, and are measured from siding.

The civic address of the building is: 934 Khenipsen Road, Duncan.

The following non-financial charges are shown on the current Certificate of Title and may affect the property:

- 216694G - Easement
- 220533G - Easement
- 220904G - Easement
- FB192979 - Covenant
- FB192981 - Covenant
- FB192983 - Statutory Right of Way
- CA6828579 - Statutory Right of Way
- CA6828580 - Statutory Right of Way

This document shows the relative location of the surveyed buildings and features with respect to the boundaries of the parcel described herein. This document shall not be used to define property lines or property corners.

© Polaris Land Surveying Inc. 2020. Polaris accepts no responsibility or liability for any damages that may be suffered by a third party as a result of any decisions made, or actions taken based on this document.

POLARIS
Land Surveying Inc.

Mailing & delivery address:
PO Box 21005
Duncan, BC V9L 0C2

Toll Free: (877) 603 7398
Duncan Telephone: (250) 746 0775
info@plsi.ca
www.plsi.ca

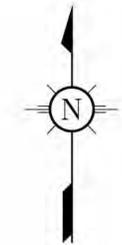
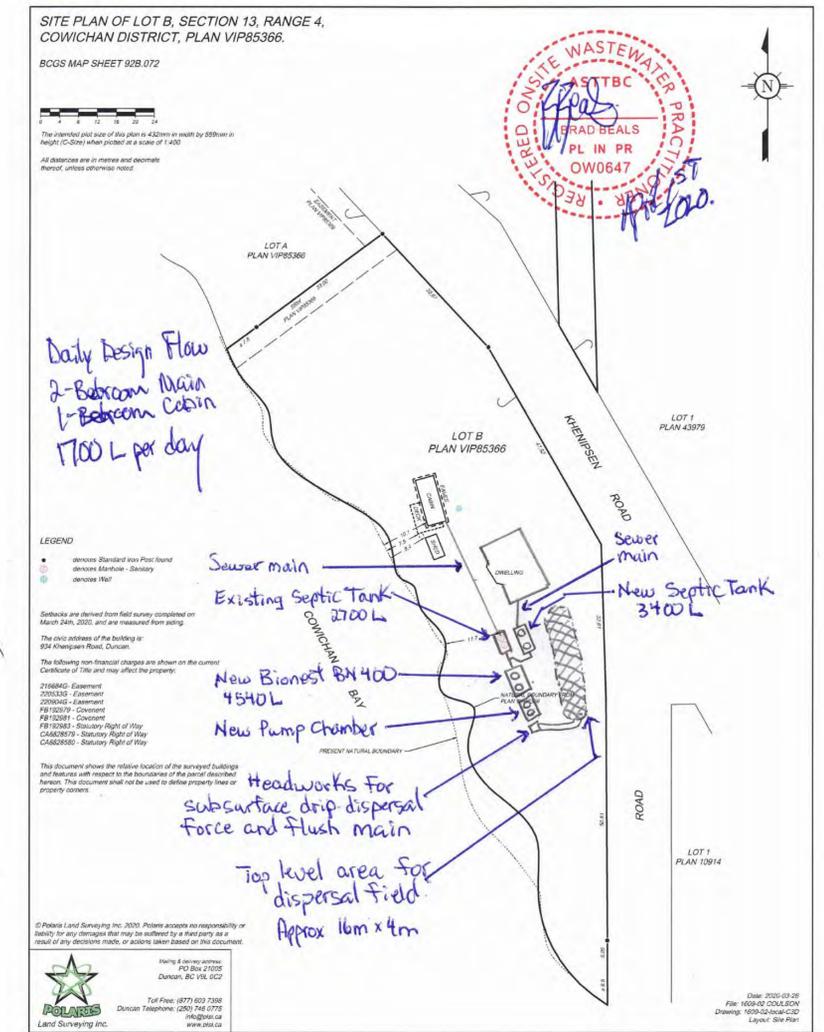


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- A1.-** Site Plan, Legal & General Views
- A2.-** Foundation, Main Floor & Roof Plans + Typ. Section
- A3.-** South - South-East Elevation, West - South-West Elevation, North - North-West Elevation, East - North-East Elevation



PROJECT DESCRIPTION:
Verify & Document Existing Secondary Residential Building, "The Cabin"
~ 420 sq.ft. living area
(1Bedroom, 1Bathroom and an open Kitchen + Dining + Living Room)

Project Address: 934 Khenipsen Rd., Duncan, B.C., V9L 5L3
Legal Description: Lot B, Plan VIP85366, Section 13, Range 4, Comiaken District PID: 027-581-578 Municipality of North Cowichan, Zone: A3
Owner Contact: Carol Hartwig & Raymond Demarchi
chartwig@shaw.ca

SHEET
A1

Scale: as shown
4/2/2020

Design: Cesar E. Cristea / David Coulson
Drawn: Cesar E. Cristea
Technical & structural: Cesar E. Cristea
Verified: David Coulson

Carol Hartwig & Raymond Demarchi
934 Khenipsen Rd., Duncan, B.C.

DAVID COULSON DESIGN LTD.
contemporary interiors, custom furnishing & millwork, specializing in heritage restoration, construction design, specialized construction, construction safety

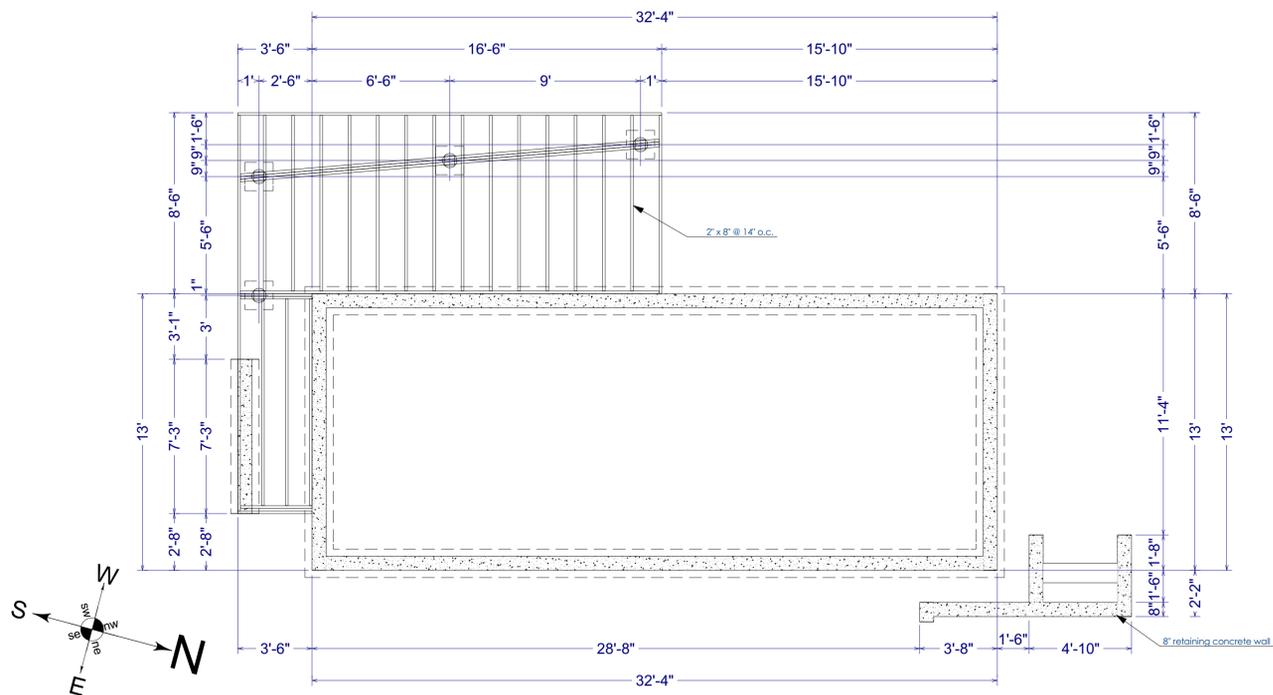
CSABC
Bar CSBC Certified
Construction Safety Association of B.C.

CHBA
A proud member
Canadian Home Builders Association

DAVID COULSON DESIGN LTD.
CUSTOM BUILDER

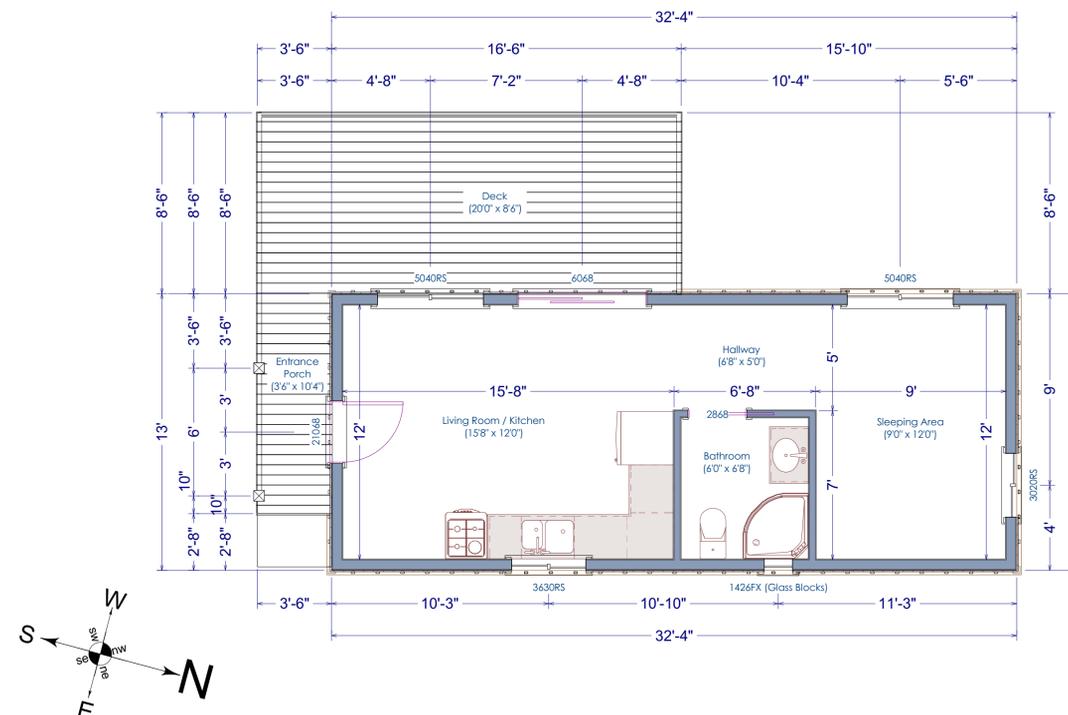
5377 Miller Road, Duncan, B.C. V9L 6R2
Tel/Fax (250) 746-5332 Email: davidcoulson@shaw.ca
Website: davidcoulsondesign.com

To the best of our knowledge these plans are drawn to comply with owner's specifications and any changes made on them after prints are made will be done at the owner's expense and responsibility. The contractor shall verify all dimensions and enclosed drawing. "David Coulson Design Ltd." is not liable for errors once construction has begun if contractor/builder is someone other than "David Coulson Design Ltd.". While every effort has been made in the preparation of this plan to avoid mistakes, "David Coulson Design Ltd." can not guarantee against human error. The contractor of the job must check all dimensions and other details prior to construction and be solely responsible thereafter.



Foundation Plan

scale: 1/4" = 1'-0"



Main Floor Plan

scale: 1/4" = 1'-0"

BUILDING INFORMATION

FOUNDATION WALL ON FOOTING

- concrete foundation walls min. 8"x36" (15mm Re-Bar)
- 8"x16" rectangular concrete strip footing (15mm Re-Bar) on undisturbed ground
- min. 18" below grade

DRAINAGE SYSTEM

- 4" perf. PVC
- 3" solid R.W.L.
- W/ 6" D.R. top & side
- below int. Slab HT.
- with landscape cloth over

FOUNDATION POST FOOTING (typ.)

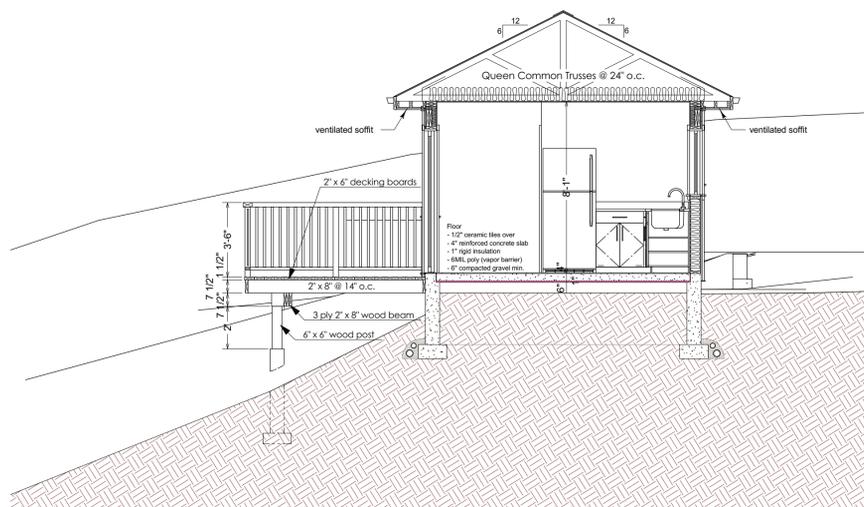
- round concrete columns Radius-4" w/ 15mm Re-Bar, min. 18" below grade
- 16" x 16" x 6" concrete footing (15mm Re-Bar) on solid undisturbed ground

EXTERIOR WALL ENVELOPE

- 1/2" gypsum drywall over 6MIL V.P.
- 2x6 insulated frame @ 16"O.C.
- R20 batt-insul.
- 1/2" ply sheathing wrapped with wall paper
- Board & Batten Wood Siding

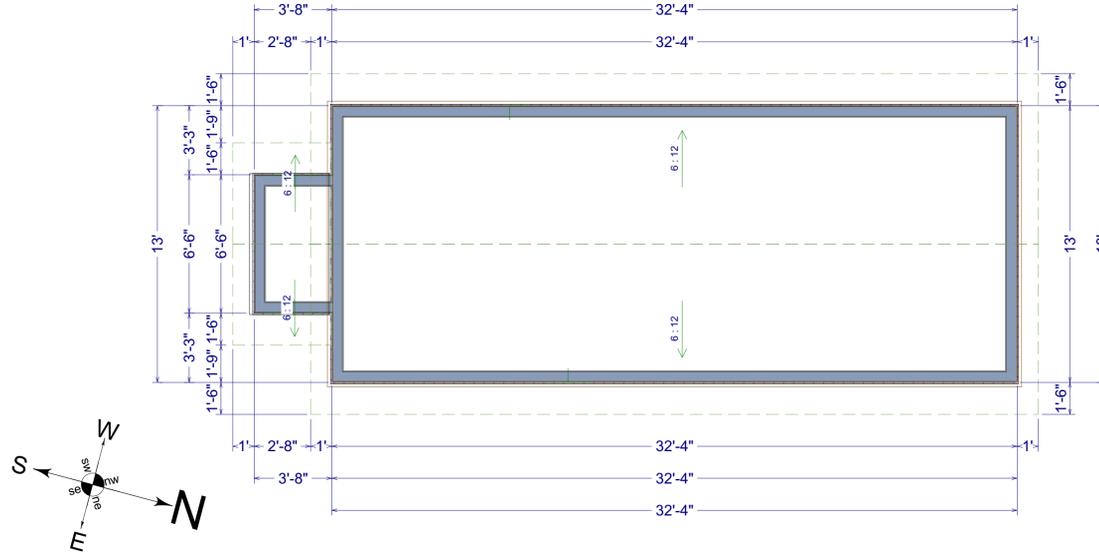
ROOF

- Standing Seam Metal Roofing, Brown Color (client choice)
- roof membrane
- 1/2" ply sheathing
- Queen Common Trusses @ 24" o.c.
- min. R40 insulation
- Venting to code (1/300 minimum)
- 1/2" Gypsum Drywall over 6MIL V.P.



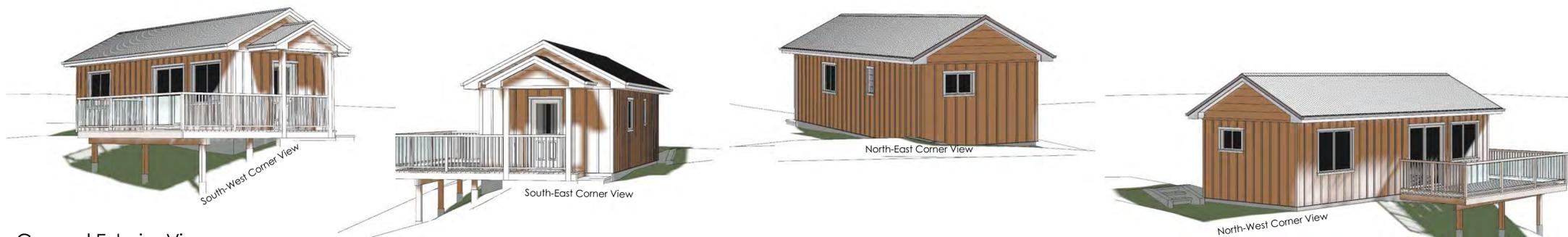
Section (typ.)

scale: 1/4" = 1'-0"



Roof Plan

scale: 1/4" = 1'-0"



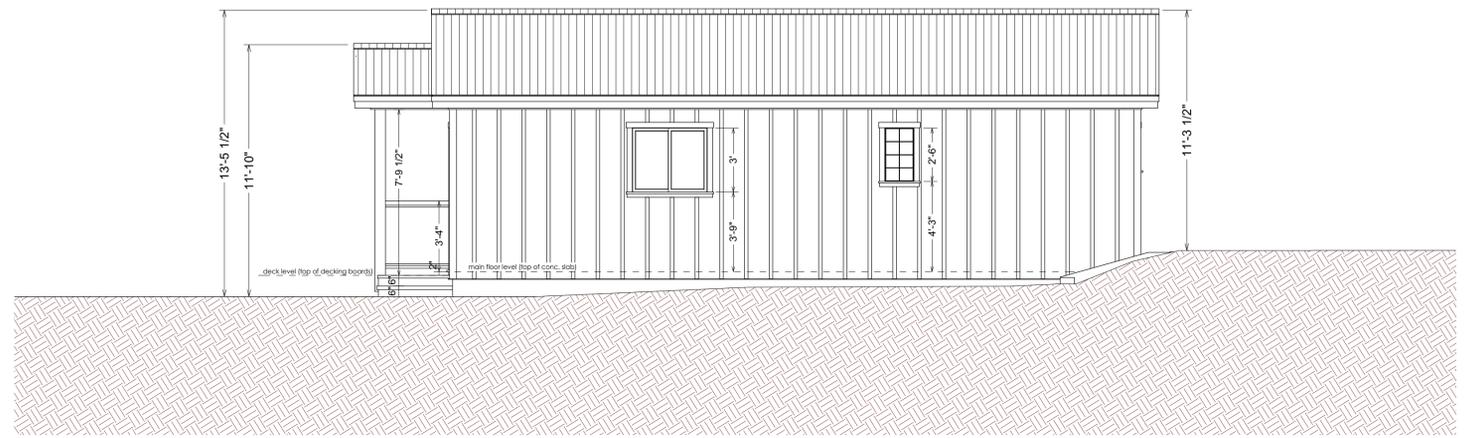
General Exterior Views

To the best of our knowledge these plans are drawn to comply with owner's specifications and any changes made on them after prints are made will be done at the owner's expense and responsibility. The contractor shall verify all dimensions and enclosed drawing. "David Coulson Design Ltd." is not liable for errors once construction has begun if contractor/builder is someone other than "David Coulson Design Ltd.". While every effort has been made in the preparation of this plans to avoid mistakes, "David Coulson Design Ltd." can not guarantee against human error. The contractor of the job must check all dimensions and other details prior to construction and be solely responsible thereafter.



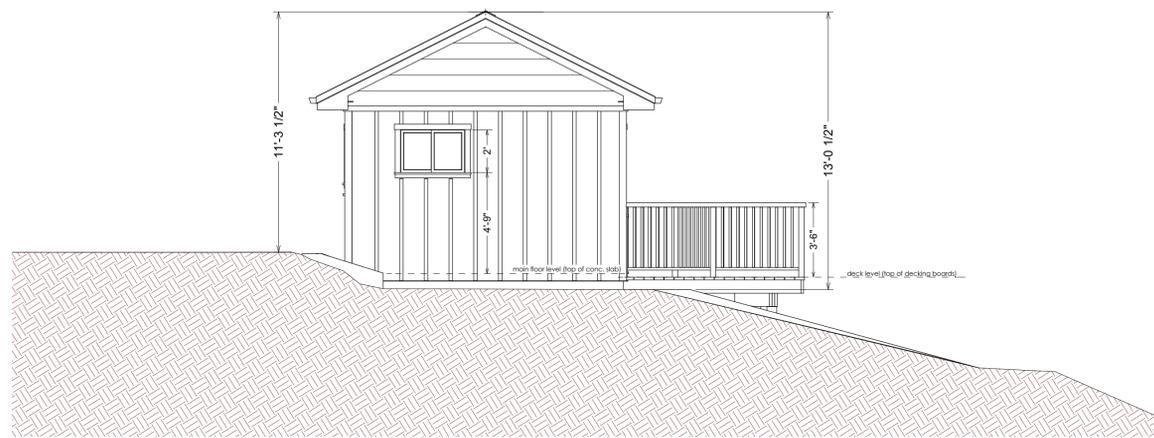
South - South-East Elevation

scale: 1/4" = 1'- 0"



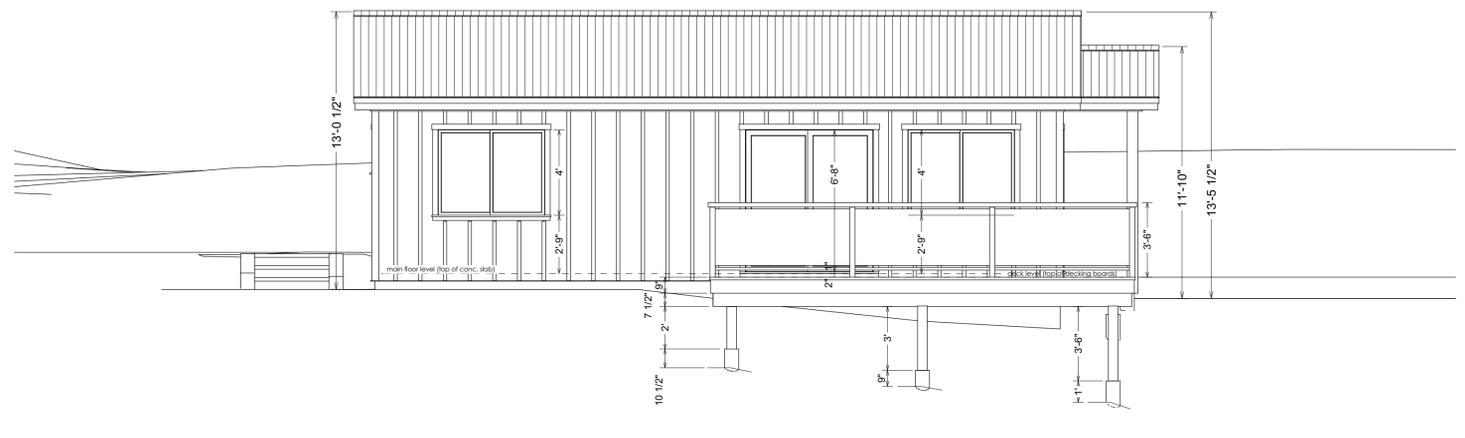
East - North-East Elevation

scale: 1/4" = 1'- 0"



North - North-West Elevation

scale: 1/4" = 1'- 0"



West - South-West Elevation

scale: 1/4" = 1'- 0"

CONCRETE

- All concrete is to be as per the supplier's specifications to meet the following requirements in accordance with CSA 23.1/23.2 and CSA 23.3:
 - minimum 28-day compressive strength $f'c = 25$ MPa, U.N.O.
- The supplier is responsible for concrete delivery that meets the performance requirements stated above.
- Concrete is to be suitable for the concrete finishes as specified by the design drawings and is to be the responsibility of the contractor.
- Do not add water or plasticizers on site unless specified by the supplier.
- Provide the following minimum concrete clear covers U.N.O.
 - Footings placed on soil or fill:
 - Placed beside normal, free draining soil or fill:
 - Against soils with sulfides, chlorides or saturated:
 - Slabs-on-grade:
 - Minimum clear cover U.N.O.
- Rebar to have a minimum yield strength of 300 MPa for 10M bar and 400 MPa for all larger bar with a maximum of 500 MPa as per CSA 23.3 and CSA G30.18.
- Splice length of rebar to be a minimum of 600 mm (24") U.N.O.
- Rebar placement to be within $\pm 1/4"$ of the specified placement

FOUNDATIONS

- All concrete for foundations is to be as per the supplier's specifications to meet the following requirements in accordance with CSA 23.1/23.2 and CSA 23.3:
 - minimum 28-day compressive strength $f'c = 25$ MPa
 - exterior foundation walls and footings to meet class F-2 performance
 - interior foundation walls, footings and slabs to meet class N performance
- Foundations to be cast in place with tolerances not to exceed the following:
 - Footing width: -1" to +2"
 - Footing depth: -1/2" to +10"
 - wall thickness: $\pm 1/4"$
 - concrete clear cover: $\pm 1/4"$
- Footings to be placed on a suitable subgrade with the specified frost protection.
- It is the contractor's responsibility to verify that the soil conditions are suitable for the foundations as per these drawings by engaging a qualified geotechnical engineer to confirm the soil bearing capacity and usefulness.
- Protection of adjacent structures is the responsibility of the contractor.
- All foundations to be located as per these structural drawings. Where specific notes aren't provided, the foundations are to be centered under the support from above.
- Footings are designed in accordance with limit states design.
- Confirm service locations prior to placing footings as footings may need to be lowered to suit site services.
- Dowels are to be placed prior to concrete pour unless approval to do otherwise has been obtained from HCL. Templates should be used to set column or holddown anchorage.
- All foundation walls are to be continuous from footing to floor system
- Provide two 15M continuous at top of all foundation walls
- Provide minimum 2x3 keyway in all footings
- Provide minimum two 15M continuous through footings
- Unless specified otherwise, provide 15M @ 10" o/c each way at bottom of pad footings.

ROUGH CARPENTRY

- All wood framing is to conform with CSA O86.
- Wire nails, spikes and staples are to be fabricated in accordance with CSA 19111
- Framing lumber is to be SPF #2 or better U.N.O.
- Engineered Wood Beams to have shop drawings submitted with full specifications.
- All floors and roofs are considered to be diaphragms and must be built with the following:
 - All floor sheathing is to be 3/4" plywood glued and nailed to framing
 - perimeter nailing of sheets to be 2-1/2" nails at 6" o/c
 - intermediate nailing of sheets to be 2-1/2" nails at 12" o/c
 - All roof sheathing is to be 1/2" plywood nailed to the framing:
 - perimeter nailing of sheets to be 2-1/2" nails at 6" o/c
 - intermediate nailing of sheets to be 2-1/2" nails at 12" o/c
 - T&G decking is permitted to act as a diaphragm in lieu of sheathing if it is oriented at 45° to the framing.
- U.N.O. walls are considered to provide lateral restraint and are constructed with:
 - 1/2" Plywood sheathing or better
 - 2-1/2" nails at 6" o/c around perimeter of each panel
 - 2-1/2" nails at 12" o/c for intermediate panel framing
 - 2x6 studs at 16" o/c
- Provide double top plates on all load bearing walls. Lap splice top plates with a minimum of 12-3" nails and 24" overlap.
- Provide a suitable post base connector and post cap connector for all free standing posts. Verify suitability of connector with Engineer before installation.
- All lintels are to be placed directly above openings.
- Birdsmouth's in joists are not to exceed noted size or 1/4 depth of member.
- All posts are to be continuous with blocking in floor systems or posts below to match post right down to the foundation. Larger posts may be specified at lower levels.
- Provide double bottom plates for all walls on floors with concrete topping.

SHEET
A3

Scale: as shown
4/2/2020

Design: Ceasar E. Cristea / David Coulson
Drawn: Ceasar E. Cristea
Technical & structural:
Verified: David Coulson

Carol Hartwig & Raymond Demarchi
934 Khenipsen Rd., Duncan, B.C.



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Website: davidcoulsondesign.com



RYZUK GEOTECHNICAL

Engineering & Materials Testing

28 Crease Avenue, Victoria, BC, V8Z 1S3 Tel: 250-475-3131 Fax: 250-475-3611 www.ryzuk.com

July 9, 2020
File No: 3770-10

David Coulson Design Ltd.
5372 Miller Rd
Duncan, BC
V9L 6R2

Attn: David Coulson (by e-mail: coulsondesign@shaw.ca)

Dear Sir,

Re: Geotechnical Assessment of Existing Cottage
934 Khenipsen Road – Duncan, BC

As requested, we visited the referenced site recently to review the geotechnical conditions within the area of the existing cottage. We understand that the structures are located within a Development Permit Area, per the North Cowichan Official Community Charter (OCP) and that geotechnical review has been directed in this regard. Our associated observations, comments, and recommendations are contained herein. Our work has been carried out in accordance with, and is subject to, the attached Terms of Engagement. We confirm that the Municipality of North Cowichan is an authorized user of this report and may rely on this information when considering the approval.

The site is located along the north shore of Cowichan Bay at the toe of the slope of Mount Tzouhalem. The building is located within the western portion of the property, at the crest of the slope which descends down to the shoreline. The slope is an overall measure of approximately 9 m above the beach level, with the upper portion inclined at approximately 35 to 45 degrees from horizontal, while the lower portions are sub vertical. The existing structure we understand has been there for approximately three decades, however, the cottage has been recently renovated and improvements have been made to the surrounding deck. The cottage structure is oriented along the slope crest and the foundations for the deck are located within the slope itself.

Bedrock was exposed within the lower vertical portions of the slope, extending up approximately 3.5 m. The bedrock comprises metamorphic formation with pervasive cleavage oriented at a shallow angle dipping into the slope, with an accompanying sub-rhomboidal joint network. We anticipate the upper portions of the slope vegetated with mature trees may comprise a veneer of topsoil as well as colluvial materials and bedrock is anticipated to be shallow.

The roofline of the building was noted to deviate from the horizontal over the length which suggests that differential movement of the building has potentially occurred. We also identified the deck posts appeared to have undergone some settlement and minor rotation. The deck posts bearing on the slope do not appear to be founded on bedrock and this was also the case for the curtain wall along the building side of the deck. We also noted that the collected drainage from the building was directed to a pipe discharging within the slope adjacent to the building.

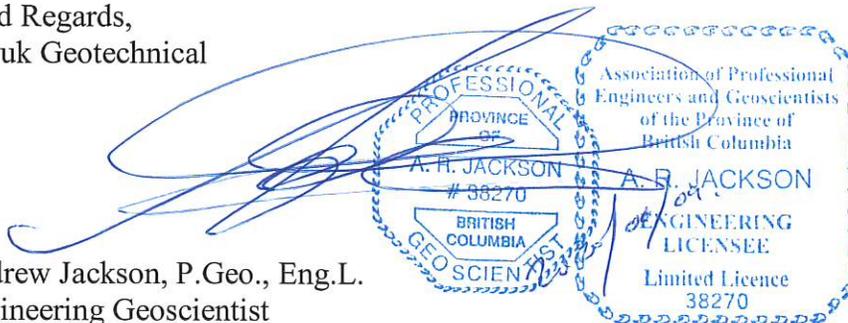
Based on discussions, you indicated that the majority of the building is thought to be bearing atop the bedrock, and as such, these areas would be stable. We consider that the upper portions of the slope may be subject to surficial creep and potential translational failure in the long term, or during a seismic occurrence. This would likely have the result of significant deformation and potential detachment of the deck structure from the building due to movement of the slope. The building itself may or may not hold up in such an occurrence, but this would be controlled by the amount of the building which is bearing on the bedrock.

In order to mitigate the risk of deformation of the structure due to slope instability in the long term we recommend that the foundations be extended/secured to bedrock in all locations. Furthermore all collected drainage from the roof should be directed to the shoreline by a secured durable solid walled pipe.

We trust the preceding is suitable for your current requirements. Please contact us with any questions or concerns.

Kind Regards,
Ryzuk Geotechnical

Andrew Jackson, P.Geo., Eng.L.
Engineering Geoscientist



Attached - Terms of Engagement



TERMS OF ENGAGEMENT

1 GENERAL

- 1.1 Ryzuk Geotechnical (the Consultant) shall render the Services, as specified in the agreed Scope of Services, to the Client for this Project in accordance with the following terms of engagement. The Services, and any other associated documents, records or data, shall be carried out and/or prepared in accordance with generally accepted engineering practices in the location where the Services were performed. No other warranty, expressed or implied, is made. The Consultant may, at its discretion and at any stage, engage sub-consultants to perform all or any part of the Services.
- 1.2 Ryzuk Geotechnical is a wholly owned subsidiary of C. N. Ryzuk & Associates Ltd.

2 COMPENSATION

- 2.1 All charges will be payable in Canadian Dollars. Invoices are issued on a monthly basis. Payment is due within 30 days of invoice without hold back. Interest on overdue accounts is 24% per annum. Collection action will commence if invoices are not settled within 90 days.
- 2.2 Our Services may be engaged on a Fixed Fee basis or hourly rate as per our Fee Schedule. When Services are provided in accordance with our Fee Schedule, the rates for our Services will be marginally adjusted annually in January and the Client agrees to the adjusted rate.

3 REPRESENTATIVES

- 3.1 Each party shall designate a representative who is authorized to act on behalf of that party and receive notices under this Agreement.

4 TERMINATION

- 4.1 Either party may terminate this engagement without cause upon thirty (30) days' notice in writing. On termination by either party under this paragraph, the Client shall forthwith pay to the Consultant its Charges for the Services performed, including all expenses and other charges incurred by the Consultant for this Project.
- 4.2 If either party breaches this engagement, the non-defaulting party may terminate this engagement after giving seven (7) days' notice to remedy the breach. On termination by the Consultant under this paragraph, the Client shall forthwith pay to the Consultant its Charges for the Services performed to the date of termination, including all fees and charges for this Project.

5 ENVIRONMENTAL

- 5.1 The Consultant's field investigation, laboratory testing and engineering recommendations will not address or evaluate pollution of soil or pollution of groundwater. The Consultant will cooperate with the Client's environmental consultant during the field work phase of the investigation.

6 PROFESSIONAL RESPONSIBILITY

- 6.1 In performing the Services, the Consultant will provide and exercise the standard of care, skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the Services contemplated in this engagement at the time when and the location in which the Services were performed.



7 INSURANCE

7.1 Ryzuk Geotechnical is covered by Professional Indemnity Insurance as follows:

1. \$ 3,000,000 each and every claim
2. \$ 5,000,000 aggregate
3. \$ 5,000,000 commercial/general liability coverage

7.2 Notwithstanding the provision of insurance coverage by the Client, the Engineer hereby agrees to indemnify and save harmless the Client, its successor(s), assign(s) and authorizes representative(s) and each of them from and against losses, claims, damages, actions, and causes of action, (collectively referred to as "Claims") that the Client may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Engineer or their Subconsultant(s), servant(s), agent(s) or employee(s) under this Agreement, excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or the negligent acts of the Client, its other consultant(s), assign(s) and authorized representative(s) or any other persons.

8 LIMITATION OF LIABILITY

8.1 The Consultant shall not be responsible for:

1. the failure of a contractor, retained by the Client, to perform the work required for the Project in accordance with the applicable contract documents;
2. the design of or defects in equipment supplied or provided by the Client for incorporation into the Project;
3. any cross-contamination resulting from subsurface investigations;
4. any Project decisions made by the Client if the decisions were made without the advice of the Consultant or contrary to or inconsistent with the Consultant's advice;
5. any consequential loss, injury or damages suffered by the Client, including but not limited to loss of use, earnings and business interruption;
6. the unauthorized distribution of any confidential document or report prepared by or on behalf of the consultant for the exclusive use of the Client
7. Subsurface structures and utilities

8.2 The Consultant will make all reasonable efforts prior to and during subsurface site investigations to minimize the risk of damaging any subsurface utilities/mains. If, in the unlikely event that damage is incurred where utilities were unmarked and/or undetected, the Consultant will not be held responsible for damages to the site or surrounding areas, utilities/mains or drilling equipment or the cost of any repairs.

8.3 The total amount of all claims the Client may have against the Consultant or any present or former partner, executive officer, director, stockholder or employee thereof under this engagement, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the amount of any professional liability insurance the Consultant may have available for such claims. Where the Engineer is a corporation or partnership, the Client and Consultants of the Client will limit any claim they may have to the corporation or partnership, without liability on the part of any officer, director, member, employee, or agent of such corporation or partnership.

8.4 No claim may be brought against the Consultant in contract or tort more than two (2) years after the date of discovery of such defect.

9 INDEMNIFICATION FOR KNOWN RISKS

9.1 In the course of our work, we will advise Client of Project risks including vibration, settlement, dewatering, damages associated with construction activity involving earthworks, heavy equipment, excavation, drilling, blasting, trucking and those actions associated with construction of the Project.

9.2 To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, the Consultant and Consultant's officers, directors, partners, employees, agents, or any of them, shall not be liable to the Client or

anyone claiming by, through, or under the Client for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, or warranties, express or implied, of the Consultant or Consultant's officers, directors, partners, employees, agents, or any of them, provided that such described risks are within the tolerances that we advise.

10 DOCUMENTS AND REPORTING

- 10.1 All of the documents prepared by the Consultant or on behalf of the Consultant in connection with the Project are instruments of service for the execution of the Project. The Consultant retains the property and copyright in these documents, whether the Project is executed or not. These documents may not be used on any other project without the prior written agreement of the Consultant.
- 10.2 The documents have been prepared specifically for the Project, and are applicable only in the case where there has been no physical alteration to, or deviation from any of the information provided to the Consultant by the Client or agents of the Client. The Client may, in light of such alterations or deviations, request that the Consultant review and revise these documents.
- 10.3 The identification and classification as to the extent, properties or type of soils or other materials at the Project site has been based upon investigation and interpretation consistent with the accepted standard of care in the engineering consulting practice in the location where the Services were performed. Due to the nature of geotechnical engineering, there is an inherent risk that some conditions will not be detected at the Project site, and that actual subsurface conditions may vary considerably from investigation points. The Client must be aware of, and accept this risk, as must any other party making use of any documents prepared by the Consultant regarding the Project.
- 10.4 Any conclusions and recommendations provided within any document prepared by the Consultant for the Client has been based on the investigative information undertaken by the Consultant, and any additional information provided to the Consultant by the Client or agents of the Client. The Consultant accepts no responsibility for any associated deficiency or inaccuracy as the result of a miss-statement or receipt of fraudulent information.

11 JOBSITE SAFETY AND CONTROL

- 11.1 The Client acknowledges that control of the jobsite lies solely with the Client, his agents or contractors. The presence of the Consultant's personnel on the site does not relieve the Client, his agents or contractors from their responsibilities for site safety. Accordingly, the Client must endeavor to inform the Consultant of all hazardous or otherwise dangerous conditions at the Project site of which the Client is aware.
- 11.2 The client must acknowledge that during the course of a geotechnical investigation, it is possible that a previously unknown hazard may be discovered. In this event, the Client recognizes that such a hazard may result in the necessity to undertake procedures which ensure the safety and protection of personnel and/or the environment. The Client shall be responsible for payment of any additional expenses incurred as a result of such discoveries, and recognizes that under certain circumstances, discovery of hazardous conditions or elements requires that regulatory agencies must be informed. The Client shall not bring about any action or dispute against the Consultant as a result of such notification.

12 FIELD SERVICES

- 12.1 Where applicable, field services recommended for the Project are the minimum necessary, in the sole discretion of the Consultant, to observe whether the work or a contractor retained by the Client is being carried out in general conformity with the intent of the Services. Any reduction from the level of services recommended will result in the Consultant providing qualified certifications for the work.

13 DISPUTE RESOLUTION

- 13.1 If requested in writing by either the Client or the Consultant, the Client and the Consultant shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) calendar days with the mediator, the dispute shall be referred to and finally resolved by arbitration under the rules of the arbitrator appointed by agreement of the parties or by reference to a Judge of the British Columbia Court.

14 CONFIDENTIALITY

- 14.1 During the period of this Agreement, the Consultant shall not use or disclose any Confidential Information to any third parties. The Consultant will only use Confidential Information for the sole purpose of carrying out the service(s) agreed upon unless withholding such information would present a risk to the safety, health and welfare of the public, the protection of the environment, or health and safety within the workplace. Access to the Client's Confidential Information will be restricted to employees who need the information to perform work duties. The Consultant may share photos of the project without disclosing any information not already made public unless the Client refuses consent of photos shared on social media. Unless already made public, the Consultant will not share owner or site address information on social media or with outside parties.

Council asked questions of the Director of Planning and Building and heard that should Council approve the recommended policy, site specific applications for second dwellings would still need Council approval as a Zoning Amendment is still required.

Councillor Douglas left the meeting at 2:42 p.m. and returned at 2:45 p.m.

It was moved and seconded:

That Council direct staff to review all future site specific applications for second dwellings, including second residences and detached suites, in the context of existing OCP Policy; and

That all future site specific applications for second dwellings, outside the Urban Containment Boundary, be reviewed with respect to the following criteria:

- a. That size of the proposed second dwelling be restricted by covenant to 92 m² (990.28 ft²) or less;
- b. That subdivision be restricted by covenant to prevent subdivision including strata subdivision;
- c. That the size of the parcel be a minimum of; and
 - i. 1 ha (2.5 acres) where no Municipal sewer or water exists;
 - ii. 0.4 ha (1 acre) where no Municipal sewer exists;
 - iii. 0.2 ha (0.5 acres) where Municipal water and sewer exist; and
- d. That siting of second dwellings on agricultural lands be established and restricted by covenant to preserve agricultural land.

CARRIED

8.3 Construction of New Crofton Water Storage Reservoir

It was moved and seconded:

That Council direct staff to:

1. Prepare an agreement with the developer for the reservoir project that includes:
 - a. a \$700,000 contribution by North Cowichan from the one time Gas Tax funds,
 - b. the developer's delivery of a turnkey project that includes complete construction of the "ultimate" design reservoir, and
 - c. a termination clause that sets out the Agreement will be terminated immediately, with terms null and void, if construction has not substantially started within 24 months of execution of the Agreement; and
2. Research and prepare a latecomer charge agreement in favour of North Cowichan for future recovery of the appropriate portion of North Cowichan's contribution from future benefitting areas.

CARRIED

Council took a 15 minute recess at 3:05 p.m. and resumed the meeting at 3:20 p.m.

April 7th, 2020

David Coulson – David Coulson Design Ltd.
5372 Miller Road
Duncan, BC V9L 6R2

By email to: info@davidcoulsondesign.com

Dear Mr. Coulson,

Re: Overview Ecological Impact Assessment - 934 Khenipsen Road, Cowichan Bay, BC

Introduction

It is my understanding that an application for development is being submitted to the Municipality of North Cowichan (MNC) for the purpose of amending the current rezoning of the property located at 934 Khenipsen Road (PID: 027-581-578). An amendment is required as the property owners recently converted an existing workshop into a cottage and the goal is to become compliant in having multiple dwellings on the property. Because the building renovation occurred within 30 m of the natural boundary (high water mark – HWM) of the ocean, MNC Bylaws under Development Permit Area-3 (DPA-3 Natural Environment) have been triggered. To ensure that all DPA-3 requirements are satisfied and in order to gain approval for the proposed rezoning, the MNC requested that a Qualified Environmental Professional (QEP) be retained to conduct an assessment. You have enlisted my assistance to provide guidance and complete an overview Ecological Impact Assessment (EIA) in order to satisfy the DPA-3 Bylaw requirements.

Field Assessment

On April 1, 2020, the field portion of the assessment was conducted. While on site, the main objective was to determine if the recent construction activities had the potential to or had impacted upon rare, sensitive ecosystems and/or plant assemblages. As part of the

assessment it was also necessary to account for potential impacts to wildlife habitat values and the biological function of the foreshore riparian zone.

General Site Description

The subject property is located on the northern shore of Cowichan Bay, approximately 6.5 km southeast of the Town of Duncan. The site is approximately 37 m wide by 150 m long and represents a developed residential lot that is continually exposed to anthropogenic influences. From Khenipsen Road, an access road runs southeast through the north-central portion of the property and ends at the existing house. Approximately 15-20 m from the road start point, a secondary road extends further south past the renovated cottage and stops adjacent to an existing pier and dock. An existing woodshed also exists adjacent to the southern edge of the newly renovated cottage.

Based on the fact the property is developed and has been historically disturbed, there are no fully intact ecosystems that are considered rare or sensitive. The ecosystems that do exist are fragmented. Native tree species observed onsite include Douglas fir (*Pseudotsuga menziesii*), Garry oak (*Quercus garryana*), bigleaf maple (*Acer macrophyllum*) and arbutus (*Arbutus menziesii*). The shrub layer consists of oceanspray (*Holodiscus discolor*), Nootka rose (*Rosa nutkana*), dull Oregon-grape (*Mahonia nervosa*), Indian-plum (*Oemleria cerasiformis*) and common snowberry (*Symphoricarpos albus*). Herb and moss species observed growing onsite consisted of swordfern (*Polystichum munitum*), grasses (*Poa spp.*) and Oregon beaked moss (*Kindbergia oregana*).

As expected with a developed site, invasive plant growth also exists, particularly adjacent to the access road and along the slope leading to the foreshore. Species noted included daphne laurel (*Daphne laureola*), English ivy (*Hedera helix*), Himalayan blackberry (*Rubus armeniacus*), English holly (*Ilex aquifolium*) and Scotch broom (*Cytisus scoparius*). Although native vegetation was also observed on site, the invasive plant species appeared to be out-competing native species in several locations of the property.

A bedrock shelf delineates the interface between the slope and intertidal zone along the length of the property at the foreshore. The intertidal zone consists of a gently sloping cobble and sand beach. The property faces towards the south and is exposed to strong south-easterly winds.

Renovation Activities

Renovations associated with converting the existing workshop into a livable cottage were minimal and the pre-existing building footprint was not expanded. The structure is near the slope that leads down to the foreshore and the roadway that provides access to the dock and pier. Although the outside of the building was updated with new material, most of the work consisted of interior carpentry updates. Based on the small scale of the project there was no need to incorporate any heavy machinery - all work was completed by manual labour.

Discussion

After having conducted the assessment, it was noted that intact rare and sensitive ecosystems are non-existent in the vicinity of the recent development zone. However, it was noted that the site is positioned adjacent to sensitive marine and estuarine habitat. The subject property is located on the northern shore of Cowichan Bay, which represents important fish habitat. The shallow intertidal area and sheltered embayment provides foraging opportunities for various fish species, in particular juvenile salmonids. It should also be noted that the Cowichan River estuary is located approximately 1.0 km west of the property, which reinforces the sensitivity of this marine habitat. Estuarine habitats are extremely important due to the fact they serve as the transitional zone between freshwater and marine ecosystems for anadromous salmonids. Juvenile fish take the opportunity to feed in the estuary prior to moving further out into the marine environment. When adult salmonids return to spawn, estuaries are typically used as “staging” areas prior to specimens moving upriver to complete spawning.

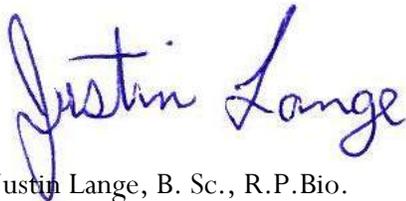
The sandy beach adjacent to the subject property will likely be used for spawning by other fish species such as surf smelt (*Hypomesus pretiosus*) and sand lance (*Ammodytes hexapterus*). It should be noted that these fish are particularly sensitive to changes along the foreshore (*i.e.*, foreshore hardening or vegetation removal) as spawning can occur very close to high tide lines. In addition, the habitat of the embayment may provide suitable substrate for various species of shellfish (*i.e.*, bivalves).

Although construction occurred within 10 m of the marine foreshore, in my professional opinion there were no negative impacts to any ecological attributes. There was no removal of foreshore riparian vegetation as the building footprint was not expanded upon. All the new construction was confined to the existing building footprint.

In recognition of the sensitivity of the foreshore habitat and adjacent estuarine ecosystem, it is important that no new development activities (beyond existing disturbed footprints) are initiated. To help improve the historically disturbed nature of the property and improve upon the biological function of the marine foreshore zone, enhancement is encouraged. I will be able to provide a detailed prescription for enhancement through the planting of native shrubs and removal of invasive vegetation if required. Functioning marine foreshore zones not only provide benefits to fish and wildlife, but also provide essential ecosystem services to humans. These ecosystem services include, but are not limited to erosion protection, air temperature regulation (e.g. shading and wind buffering) and provision of clean water. Functioning ecosystems invariably lead to financial benefits to property owners.

I appreciate your diligence in contacting me regarding the zoning amendment process and if there are any questions related to this overview EIA, please feel free to contact the undersigned.

Sincerely,



Justin Lange, B. Sc., R.P.Bio.
Aquatic/Terrestrial Biologist.





APPENDIX A

SITE PHOTOS



Looking southeast at the access road and newly renovated cottage. These two development footprints were constructed when the property was originally developed.



Looking south at the lower-most section of the access road, which leads to the foreshore and dock infrastructure. The docks also represent existing features and are not considered new development footprints.

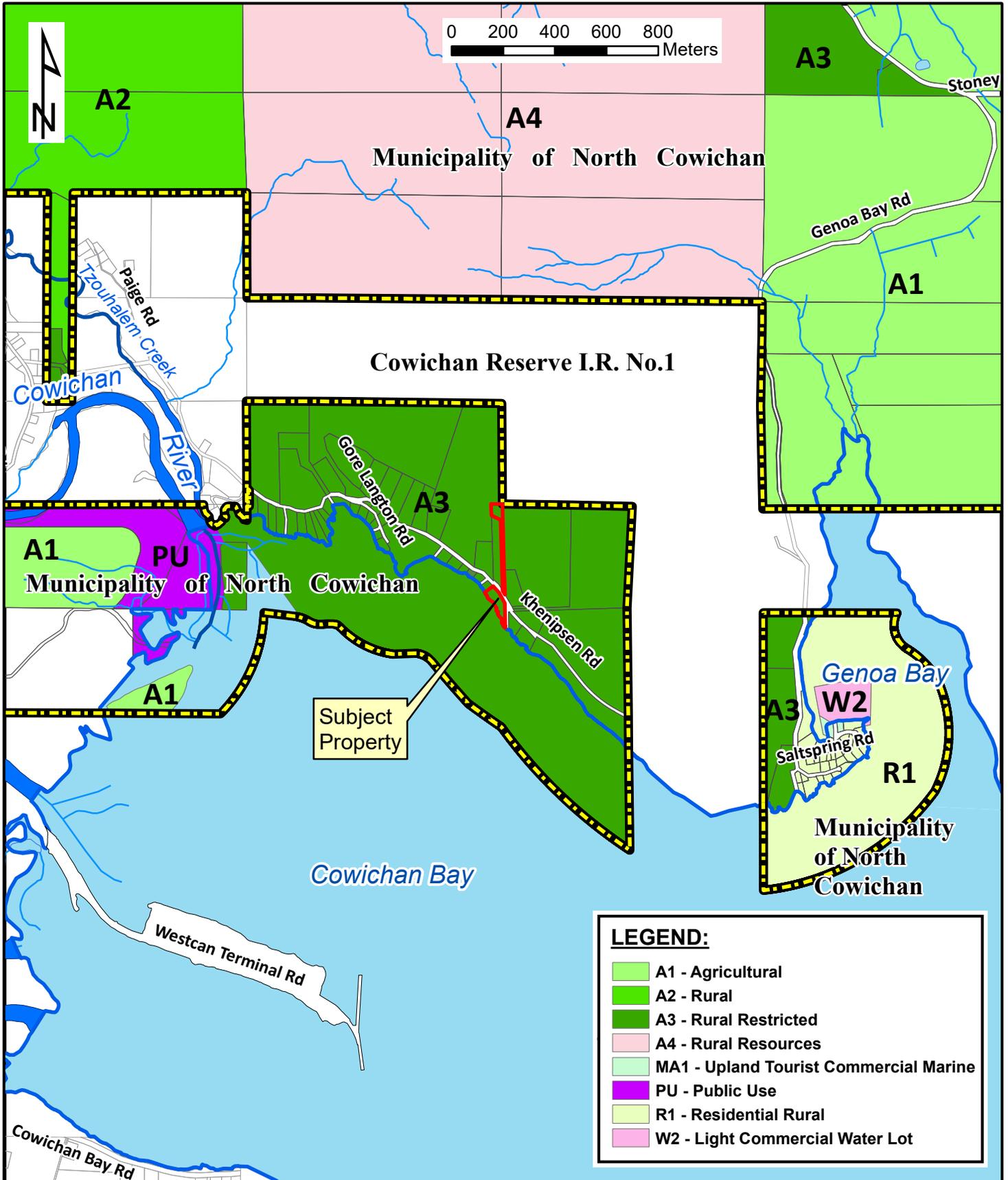


Above and Below: The newly renovated cottage and woodshed. The woodshed does not represent a new structure as it was constructed when the property was first developed. As part of the renovation process, construction activities were only carried out on the cottage and were confined to the pre-existing footprint.





A photo showing the portion of the property that is located immediately west of the existing cottage. There has been no new disturbance to the landscape as a result of the cottage renovation.



LEGEND:

| | |
|--|--|
| | A1 - Agricultural |
| | A2 - Rural |
| | A3 - Rural Restricted |
| | A4 - Rural Resources |
| | MA1 - Upland Tourist Commercial Marine |
| | PU - Public Use |
| | R1 - Residential Rural |
| | W2 - Light Commercial Water Lot |



| | |
|--------------------|--|
| ZONING MAP | |
| 934 Khenipsen Road | |

| | |
|--------|------------------|
| DATE: | June 10, 2020 |
| TYPE: | Zoning Amendment |
| FILE#: | ZB000126 |

DAVID COULSON DESIGN LTD.



A proud member of Canada Green Building Council

Caroline von Schilling, MSc, MCIP, RPP
Development Planner
Municipality of North Cowichan

April 3, 2020

Reference: ZB000126, Zoning Amendment to Allow Non Compliant 2nd Dwelling

Dear Caroline:

As appointed agent for Carol Hartwig and Ray Demarchie, I have been instructed to submit a **Zoning Amendment** application to the existing A3 property at 934 Khenipsen Road to allow for the use of an existing small ancillary structure originally built in 1979 and updated in 2013 for residential use.

We have closely examined the self contained one bedroom structure and it appears to meet all building standards at the time of its renovation. It is certainly not practical to apply Home Warranty and rainscreen elements to this small structure at this time. All foundations are poured to existing bedrock and all other building details are adequate and clearly illustrated in the enclosed plans. After over forty years of being in this location, there are no signs of movement or instability to date. An environmental assessment carried out by Madrone Environmental Services will also note that this structure shows no impact on the adjacent riparian zone.

A waste management report is attached which suggests updates to the septic system. My clients are in support of making these updates if this application is successful. This is a good opportunity therefore to see this system modernized for future use and for future density that is sadly in short supply in our region.

This property at 2.5 acres easily accommodates such housing and should the opportunity arise, possibly more if applied for in the future. There are generous setbacks to neighbours and good access compared to most properties along this creative waterfront community.

This application, although late in coming, represents the type of housing that should be strongly encouraged in the municipality and in the region. As long standing taxpayers, my clients will be making a fair investment in this application process and therefore have contributed well to the municipality in this process.

I urge you to all consider and approve this request at this time.

Sincerely

David Coulson

TERMS OF INSTRUMENT - PART 2

THIS COVENANT is made pursuant to Section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250

BETWEEN:

PROPERTY OWNER, Profession
Address of Property
Duncan, B.C. Postal Code

(the "Transferor")

AND:

THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN
7030 Trans Canada Highway, P.O. Box 278
Duncan, B.C. V9L 6A1

(the "Transferee")

WHEREAS:

- A. The Transferor is the registered owner of land located in the territorial area of the Transferee and legally known and described as:

Parcel Identifier 000-000-000
Legal Description(s)

(the "Land")

- B. The Transferee is a municipality incorporated and operating pursuant to the provisions of the *Community Charter*, S.B.C. 2003, c.26 and the *Local Government Act*, R.S.B.C. 1996, c.323 and preceding legislation thereto;
- C. Section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250, provides that a covenant of a negative or positive nature in respect of the use of the lands, to restrict building on the land, and to preserve amenities, may be registered as a charge against title to the land in favour of a municipality.
- D. The Transferor has agreed to grant this Covenant to ensure that the use and development of the Land proceeds in a manner set out herein.

NOW THEREFORE, in consideration of the sum of \$1.00 paid by the Transferee to the Transferor, the receipt and sufficiency of which is hereby acknowledged by the parties, the Transferor covenants and agrees with the Transferee pursuant to Section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250, as follows:

Restrictions on Use

1. The Land must not be used, nor any building or structure constructed, placed or sited on the Land, except in accordance with this Covenant.

2. No building or structure must be constructed on the Land unless the following requirements are met:
 - (a) all roofing materials and insulation requirements meet class “B” fire rating requirements specified in the current British Columbia Building Code;
 - (b) all eaves, attics, roof vents and openings under floors are screened using 3 millimetre, non-combustible wire mesh;
 - (c) all vent assemblies use fire shutters or baffles;
 - (d) all windows are tempered or double-glazed; and
 - (e) all chimneys and wood-burning appliances have approved spark arrestors.
3. A zone must be established and maintained on the Land, extending 10 metres perpendicularly distant from and parallel to the perimeter of any building or structure on the Land, or to the legal boundary of the Land, whichever distance is less, hereafter referred to as the FIRE HAZARD FUEL REMOVAL ZONE. Within the FIRE HAZARD FUEL REMOVAL ZONE, the Transferor must:
 - (a) not use or install bark mulch or coniferous trees; and
 - (b) eliminate all coniferous trees, underbrush, dead limbs and debris piles by chipping and removal or burning in accordance with the Transferee’s Fire Protection Bylaw No. 3340, as amended.
4. A zone must be established and maintained on the Land, extending 20 metres perpendicularly distant from and parallel to the outer boundary of the FIRE HAZARD FUEL REMOVAL ZONE, or to the legal boundary of the property, whichever distance is less, hereafter referred to as the FIRE HAZARD FUEL REDUCED ZONE. Within the FIRE HAZARD FUEL REDUCED ZONE, the Transferor must:
 - (a) remove trees with a diameter at chest height of 10 centimetres or less;
 - (b) retain tree stumps;
 - (c) remove highly combustible bush and undergrowth; and
 - (d) remove dead trees.
5. Notwithstanding anything in clause 3 or in clause 4 herein, any actions required of the Transferor within a FIRE HAZARD FUEL REMOVAL ZONE or FIRE HAZARD FUEL REDUCED ZONE that extends into a Development Permit Area for the Natural Environment must only proceed in the Development Permit Area for the Natural Environment if the Transferor is granted approval in writing from the Transferee.
6. Any debris resulting from clearing of the Land to facilitate use and development of the Land must be disposed of by chipping and removal.

Withholding Building Permits

7. The Transferor agrees that the Transferee may withhold the approval of a building permit for any proposed construction which does not comply with any provision of this Covenant.

Inspection

8. The Transferee, including its officers, employees and agents may inspect the Land or any building or structure on the Land, to determine whether the provisions of this Covenant are being or have been complied with.

Enforcement Remedy of the Transferee

9. If the Transferee believes that the Transferor is in breach of any term or terms of this Covenant:
 - (a) the Transferee may serve the Transferor with written notice setting out particulars of the breach; and following service of the said notice;
 - (b) the Transferor must immediately or within any time period specified by the said notice, remedy the breach or make arrangements deemed satisfactory by the Transferee to remedy the breach.

If the Transferor does not remedy a breach as specified in clause 9 herein, the Transferee is entitled to enter the Land and remedy the breach at the sole cost of the Transferor.

Notice

10. Whenever provision is made for notice to be given to the Transferor pursuant to this agreement, notice is deemed to have been given when delivered personally to the Transferor, or to an officer or director of the Transferor, or when mailed by prepaid registered mail to the registered and records office of the Transferor, on the fourth day following the date of mailing. Notice to the Transferee is deemed to have been given when delivered personally to the business office of the Transferee, or when mailed by prepaid registered mail to the postal address of the Transferee, on the fourth day following the date of mailing.

Non Enforcement

11. Notwithstanding the provisions of clause 9 and clause 10 herein, the Transferee is under no obligation to enforce any provision of this Covenant.

Indemnity

12. The Transferor must indemnify and save harmless at all times the Transferee, its officers, employees, contractors and agents from and against any proceeding, claim or demand which may be made in relation to restrictions imposed by this agreement or in relation to any obligation required to be performed under this agreement. This indemnity applies to any act or omission occurring while the Transferor is an owner of the Land, notwithstanding that the Transferor may have ceased to be an owner of the Land, and must survive the discharge of this Covenant from title to the Land in relation to acts or omissions occurring before such discharge.

Performance at Cost of Transferor

13. Unless otherwise expressly provided for herein, whenever the Transferor requests something to be done, or is obliged or required to do or cause to be done any act, matter or thing, such act, matter or thing must be done by the Transferor at its sole expense.

Interest in Land and Enurement

14. This Covenant must charge the Land pursuant to Section 219 of the *Land Title Act* and the burden of all covenants herein must run with the Land and charge the Land and every parcel into which the Land may be subdivided.
15. This Covenant enures to the benefit of and is binding upon the parties hereto and their respective successors, heirs, administrators and assigns.
16. No liability for any breach of this Covenant occurring after a person has ceased to be an owner of the Land, or any parcel into which the land may be subdivided, must attach to that person.

Amendment and Waiver

17. No amendment or waiver of any provision in this Covenant is valid unless it is made in writing and executed by the Transferor and the Transferee.

Discharge of Covenant

18. This Covenant must be of no force and effect if the Transferee declares in writing that the Covenant is to be discharged from title to the Land.

Severability

19. All provisions of this Covenant are to be construed as independent covenants and should any provision thereof be held invalid by a Court of competent jurisdiction, that portion must be severed, and the invalidity or unenforceability of such provision must not affect the validity of the remainder, which is to remain binding upon the parties and remain a charge upon the Land.

Time of the Essence

20. Time is of the essence of this agreement.

Further Acts

21. The Transferor covenants and agrees to do and cause to be done all things, and to execute and cause to be executed all plans, documents and other instruments which may be necessary to give proper effect to this Covenant.

No Exemption From Jurisdiction

22. Nothing in this Covenant exempts the Transferor or the Land from any statutory requirement or from the ordinary jurisdiction of the municipal council of the Transferee, including its bylaws, permits, regulations and orders.

23. The construction of any works or services required to be provided by this Covenant must not confer any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or any other fee or charge of whatever nature, except as statutorily required.

Interpretation

24. Wherever the singular or masculine is used herein, the same must be construed as meaning the plural or the feminine or the body corporate or politic where the context so requires.

Entire Agreement

25. This Covenant constitutes the entire agreement between the parties, and the Transferee has made no representations, warranties, guaranties, promises, covenants or agreements to or with the Transferor in relation to the subject matter of this Covenant other than those expressed in writing herein.

Priority Agreement

26. The Transferor must, at the expense of the Transferor, do or cause to be done all actions reasonably necessary to grant priority to this agreement over all financial charges and encumbrances which may have been registered against the title to the Land save and except those specifically approved in writing by the Transferee or that are in favour of the Transferee.

Execution

27. As evidence of its agreement to be bound by the above terms, the Transferor has executed and delivered this Covenant by executing the *Land Title Act* Form C to which this Covenant is attached and which forms part of this agreement.
28. The Transferor agrees to do everything necessary at its own expense to ensure that this Covenant, and the interests it creates, is registered against title to the Land, with priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Covenant at the appropriate Land Title Office.
29. By executing and delivering this agreement, each of the parties intends to create both a contract, and a deed and covenant executed and delivered under seal.

Director of Planning and Building for
The Corporation of the District of North Cowichan



Facing south - cottage - foreshore and steep slope to west (right of cottage)



Facing north - woodshed to west cottage in foreground and single family dwelling to the (east - right of photo)



Facing south - cottage close up - note wood siding



Facing north - wood shed and cottage placement on steep west slope



Facing north underside of woodshed and cottage deck on steep slope to west



Facing west steep drop to foreshore between woodshed and cottage entrance and deck



Facing west and down to foreshore on steep slope before woodshed

Rural Restricted Zone (A3)**Permitted Uses**

- 53 (1) The permitted uses for the A3 zone are as follows:
- Agriculture
 - Agricultural Storage
 - Assisted Living
 - Bed and Breakfast
 - Community Care Facility
 - Greenhouse
 - Home-based Business
 - Modular Home
 - Single-Family Dwelling
 - Supportive Housing
 - Temporary Mobile Home (subject to the Temporary Mobile Home Permit Bylaw) [BL3754]
 - Two-Family Dwelling [BL3302, BL3367]

Minimum Lot Size

- (2) The minimum permitted lot size for the A3 zone is 8,000 m² (1.98 acres).

Minimum Frontage

- (3) The minimum permitted frontage for the A3 zone is 60.0 m (196.85').

Density

- (4) The maximum permitted density for the A3 zone is as follows:
- (a) The number of residential buildings shall not exceed one.
 - (b) Despite the foregoing, the placement of a Temporary Mobile Home may also be permitted subject to the Temporary Mobile Home Permit Bylaw. [BL3754]
 - (c) Despite section 53 (4) (a), a maximum of 2 residential buildings, with a total combined maximum of 2 dwelling units, are permitted on
 - (i) 5404 Gore Langton Road (PID: 005-177-740),
 - (ii) 3368 Henry Road (PID: 006-660-819),
 - (iii) 3788 Winget Place (PID: 018-498-451),
 - (iv) 5353 Gore Langton Road (PID: 004-756-517), and
 - (v) 3248 Gibbins Road (PID: 028-738-071).
 - (d) Despite paragraph (a), a maximum of 2 residential buildings, with a total combined maximum of 2 dwelling units, are permitted on 4011 Cambrai Road (PID: 016-212-169) provided that one of the residential buildings does not exceed 145 m² (1,560 sq. ft.) in gross floor area. [BL3644; BL3680; BL3692; BL3703; BL3757]

Maximum Lot Coverage

- (5) The maximum permitted lot coverage of the A3 zone is 30% of the lot area.

Minimum Setbacks

- (6) The minimum permitted setbacks for the A3 zone are as follows:
- (a) Single-Family Dwellings and Two-Family Dwellings
 - Yard, Front, 6.0 m (19.68')
 - Yard, Side, 3.0 m (9.84')
 - Yard, Rear, 8.0 m (26.25')

- (b) All Other Principal Buildings
 - Yard, Front, 25 m (82.02')
 - Yard, Side, 15 m (49.21')
 - Yard, Rear, 15 m (49.21') [BL3767]
- (c) Accessory Buildings and Structures (Excluding Fences)
 - Yard, Front, 8.0 m (26.25')
 - Yard, Side, 3.0 m (9.84')
 - Yard, Rear, 8.0 m (26.25')
- (d) Temporary Mobile Homes
 - To be sited in accordance with the provisions of the Temporary Mobile Home Permit Bylaw. [BL3754]

Maximum Building Height

- (7) (a) The maximum permitted building height for buildings, containing one or more dwelling units, within the A3 zone is 9 m (29.53').
- (b) Despite the foregoing, the heights of other farm buildings are subject to the provisions of the ACNBC Farm Building Code 1995.

Conditions of Use

- (8) The conditions of use for the A3 zone are as follows:
 - (a) No fences over 1.2 m (4.00') in height are permitted in the required yards, front.
 - (b) No fences over 2.0 m (6.56') in height are permitted in the required yards, side or rear.
 - (c) In no situation shall a fence be greater than 2.0 m (6.56') in height.
 - (d) Bed and breakfast uses may have no more than six sleeping units.
 - (e) Limited farm sale of agricultural products may be sold directly to the public provided that:
 - (i) minimum of 50% of the agricultural products offered for sale are produced on the land;
 - (ii) the covered retail sales area does not exceed 100 m² (1076.4 sq. ft.); and
 - (iii) the retail sales are clearly ancillary to the farm use. [BL3083]
 - (f) [Repealed. BL3367]
 - (g) Assisted Living, Supportive Housing, and Community Care Facilities may be permitted provided that
 - (i) the number of residents does not exceed ten, including resident staff,
 - (ii) the use is within a single-family dwelling unit only, which for clarity does not include a two-family dwelling,
 - (iii) approval from the Agricultural Land Commission is obtained, where the property is within the Agricultural Land Reserve, and
 - (iv) valid health permits for septic systems or on-site wastewater treatment systems are obtained. [BL3302]
 - (h) Despite section 53 (1) "accessory dwelling unit, coach house" is a permitted use on 3331 Henry Road. [BL3535]



The Corporation of the District of North Cowichan

**Zoning Amendment Bylaw
(Second Dwelling – 934 Khenipsen Road), 2020**

Bylaw 3798

The Council of The Corporation of The District of North Cowichan in open meeting assembled enacts as follows:

Title

1. This Bylaw may be cited as "Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020", No. 3798.
2. Section 53 (4) (c) of Zoning Bylaw 1997, No. 2950, is amended by adding the following new subsection:

"(vi) 934 Khenipsen Road (PID: 027-581-578)."

READ a first time on the ___ day of _____, 2020

READ a second time on the ___ day of _____, 2020

This bylaw was advertised in the Cowichan Valley Citizen on the ___ day of _____, 2020 and the ___ day of _____, 2020 and the municipality's website and notice board on the ___ day of September, 2020.

CONSIDERED at a Public Hearing on

READ a third time on

ADOPTED on

CORPORATE OFFICER

PRESIDING MEMBER

Report

| | | |
|---------|--|---|
| Date | September 16, 2020 | File: |
| To | Council | |
| From | Jason Blood, Manager, Recreation | Endorsed:  |
| Subject | COVID-19 Re-Opening Plan for Cowichan Aquatic Centre | |

Purpose

To consider which services will be provided if Council authorizes the re-opening of the Cowichan Aquatic Centre.

Background

All North Cowichan recreation centres were closed to the public, effective on March 16, 2020 at 4:30 pm, in response to the COVID-19 pandemic. Since that time, Fuller Lake Arena re-opened following Council's approval of the facility's COVID-19 Re-Opening Plan on August 19, 2020. While the Aquatic Centre has remained closed since the onset of the pandemic, the regular annual maintenance tasks have been completed in conjunction with the 2020 Renovation Capital Project scheduled for this year. The renovation work commenced on June 3, 2020, and the facility is anticipated to re-open to the public for many services, subject to Council approval and applicable COVID-19 restrictions, on October 13, 2020.

Discussion

Historically, the Cowichan Aquatic Centre operates an average of 15 hours per day each year, with an annual 3-week closure for facility maintenance.

Listed below are some key analytics in relation to the facility's operations:

- Historical operation
 - Monthly average attendance levels (23,000-25,000 patrons)
 - Revenue of approximately \$1.5 million per year, or \$125,000 per month
 - Expenses of approximately \$3.9 million per year, or \$325,000 per month
 - Operational cost recovery rate of 39.5% (2019)

The COVID-19 pandemic has greatly impacted the model under which aquatic facilities can operate. New and enhanced safety equipment and protocols, increased sanitization of surfaces, and greatly decreased attendance numbers have all been included in the re-opening plan to meet all current Provincial Health Orders and industry guidelines.

| | Revenue | Expenditure | Deficit | Change from 2019 | Recovery Rate |
|----------------|-----------------|-----------------|-----------------|------------------|---------------|
| 2019 Actual | \$ 1,541,369.00 | \$ 3,902,611.00 | \$ 2,361,242.00 | | 39.50% |
| 2020 Projected | \$ 450,000.00 | \$ 3,075,000.00 | \$ 2,625,000.00 | \$ 263,758.00 | 14.63% |
| 2021 Projected | \$ 530,180.00 | \$ 3,400,000.00 | \$ 2,869,820.00 | \$ 508,578.00 | 15.59% |

- Present COVID-19 restrictions and current cost estimates
 - Anticipated monthly attendance levels reduced to approximately 5,000 patrons
 - Anticipated revenue is expected to be reduced by \$750,000- \$900,000 to the end of 2020
 - Anticipated expenditures are expected to be reduced by \$375,000- \$475,000 to the end of 2020
 - An updated operational cost recovery rate of 14.63% is projected for 2020
- 2021 implications

If the current status of the pandemic continues and all restrictions remain in place for 2021, the following impacts are anticipated to the Cowichan Aquatic Centre operations:

 - Increased operational deficit of approximately \$508,000 is anticipated
 - Anticipated operational cost recovery rate is approximately 15.5%

The Cowichan Aquatic Centre Re-Opening Plan is designed to put safety first, while supporting a broad section of our community with the resumption of recreation activities. The facility is part of the community lifestyle and provides alternative recreational opportunities for its citizens. The proposed re-opening plan is consistent with similar Vancouver Island facilities, as well as facilities throughout the province. Excitement from the community regarding the Cowichan Aquatic Centre renovation project has been steadily increasing, with staff receiving daily inquiries from the public.

The ability to permit small group access for pre-booked pool or gym activities will support local cohorts, groups, and partners as follows:

- Providing access to Leisure Access Pass holders, Seniors, Adults, and Families
- Providing training support to sport organizations
- Allowing small group bookings to School District partners
- Providing continued employment for permanent staff
- Supporting community partners (e.g. Island Health, rehabilitation services)
- Introducing active lifestyles through partners (e.g. Prescription for Exercise)

Options

- Option 1: Proceed with Cowichan Aquatic Centre Re-Opening Plans**
(This is the staff recommended option)

RECOMMENDED MOTION: That Council directs staff to proceed with the re-opening of the Cowichan Aquatic Centre under its COVID-19 Restoration of Programs & Services Plan, specifically:

- To allow for a phased-in resumption of services effective October 13, 2020
- To support the COVID-19 restrictions outlined for facility usage

Option 2: Proceed with Cowichan Aquatic Centre Re-Opening Plans for dryland fitness area only (no natatorium access)

(This option limits the numbers of people accessing the facility and reduces operating costs, but does not support any access to aquatic users or user groups, and does not fully align with regional partners)

OPTION 2 MOTION: That Council directs staff to proceed with the re-opening of Cowichan Aquatic Centre under its COVID-19 Restoration of Programs & Services Plan but limits the re-opening specifically to the use of dryland fitness areas.

Option 3: Do not proceed with Cowichan Aquatic Centre Re-Opening Plans

(This option does not align with regional partners in service delivery)

OPTION 3 MOTION: That Council orders that the Cowichan Aquatic Centre is to continue to remain closed.

Implications

Financial. An increased deficit of up to \$450,000 is anticipated for 2020 and up to \$508,000 for 2021 for the recommended option, whereas option 2 would potentially be up to \$275,000 for 2020 and \$290,000 for 2021. The potential financial loss under option 3 through refund of passes / access cards would be approximately \$325,500 (Membership Pass Value = \$191,500 and 10x Pass Value = \$134,000).

Personnel. The recommended option would see a full return to work of permanent staff for the facility, whereas option 2 would only realize a partial return and option 3 would require minimal staff in order to sustain building safety.

Social. The recommended option would provide the greatest recreation opportunity to the public with access levels reduced by approximately 20,000 persons per month. Option 2 would reduce that public access by an additional 2,000 persons per month.

Recommendation

That Council directs staff to proceed with the re-opening of the Cowichan Aquatic Centre under its COVID-19 Restoration of Programs & Services Plan, specifically to allow for a phased-in resumption of services effective October 13, 2020.

Report

| | | |
|---------|--|---|
| Date | September 16, 2020 | File: |
| To | Council | |
| From | Mark Frame, General Manager, Financial and Protective Services | Endorsed:  |
| Subject | Capital Grant Applications for the 2021 Budget | |

Purpose

To request Council authorization to apply for federal and provincial grant funding under the Investing in Canada Infrastructure and the Asset Management Grant programs.

Background

Council began preliminary 2021 budget discussions at the June 9, 2020 Committee of the Whole (CoW) meeting. The staff presentation detailed how the reductions to the 2020 Budget had reduced general capital far below sustainable levels and recommended a "Recovery Budget" option for 2021 – 2025 Budgets. One strategy was to minimize the impact of the reduction of tax-supported capital by reworking the 2020 Capital Expenditure Program to focus on projects that are eligible for grants:

- **Roads program** - Focus 2020 design on projects that can be constructed in 2021.
- **Parks and Trail Master Plan Implementation** – Focus on trail building.
- **Facilities** – Focus on engineering large projects that could be covered by refurbishment grants, such as the Fuller Lake Arena roof, Fuller Lake Arena domestic hot water, and the Cowichan Aquatic Centre roof.

Council endorsed the CoW meeting recommendation at the June 17, 2020, Council meeting by adopting the following motion:

7.7 2021 Budget Direction [excerpt from the June 17, 2020, regular Council meeting minutes]

IT WAS MOVED AND SECONDED:

1. That staff be directed to prepare the 2021-2025 budget based on the 'Recovery Budget' option outlined in the General Manager, Financial and Protective Services' 2020 - 2025 Budget Direction PowerPoint Presentation dated June 9, 2020.
2. That staff, in preparing the 2021 Capital and Operating Budget, will include consideration of a recovery plan that is oriented to:
 - (1) Developing projects, and finding resources to work on, improving our natural assets and green infrastructure and achieving our climate related mitigation, adaptation resiliency goals; and which
 - (2) Provide both short and longer term employment opportunities for those sectors of society that have been particularly impacted by the pandemic shut down to support the local Cowichan economy; and
 - (3) That is "agile" in the sense of anticipating possible second waves of infection and economic shutdown, and which recognizes the uncertainty of the immediate future.

CARRIED

Discussion

The intake deadline for submitting applications to the Investing in Canada Infrastructure Program (ICIP) under the Community, Culture and Recreation stream is October 1, 2020. The development of the Crofton to Maple Bay trail through the forest reserve would be eligible and is intended to be a multi-year project with overall funding of approximately \$2 million. Eligible projects can receive up to 73% of the project costs, if successful. The remaining eligible project costs, ineligible project costs, and cost overruns are the responsibility of the local government. Previously the funding for implementing the trails portion of the Parks and Trails Master Plan came from the Forest Legacy Fund and property taxes, but is currently unfunded and continued funding is unknown pending the outcome of the Municipal Forestry Reserve review and public engagement currently underway. This project was identified as a Short Term Goal as part of the [Parks and Trails Master Plan](#). Further, the proposed project increases connection between two North Cowichan local areas with a walkable trail, also suitable for biking and equestrian use, making it consistent with Council's recent acknowledgement of a climate emergency and the 2018-2022 Council Strategic Plan priority to "maintain multi-modal transportation."

The federal government has announced a new intake stream under the ICIP for COVID-19 Resilience, which has an expected deadline for applications in the fall of 2021. This is a temporary program; 10% of the existing CIP is being adapted to respond to COVID-19. The program is aimed at projects that can be completed in 2021, with funding up to 80% of eligible project costs. Projects that would be eligible under this stream include retrofits, repairs and upgrades for municipal buildings. North Cowichan has two substantial roof replacement projects scheduled for the Fuller Lake Arena [main roof] at a budgeted cost of \$800,000 in 2021 and the Cowichan Aquatic Centre [roof] budgeted for \$1.6 million in 2022. Staff is proposing that Council bundle these projects together for 2021 as the detailed cost estimates and engineering work has been completed, and they will be ready for grant submission this fall with construction in 2021.

The final grant application staff is proposing for Council consideration is the Federation of Canadian Municipalities' (FCM) Municipal Asset Management Program. This program provides up to 80% of eligible project costs, with a limit of \$50,000. This grant would allow North Cowichan to continue with its asset management planning. To date, the Municipality has focused on linear assets. The next phase would be to create asset management plans for major facilities and buildings.

It is expected that additional programs will roll out this fall, and staff will continue to look for grant opportunities to reduce the Municipality's need to use taxpayer dollars for capital projects. Staff have explored the ICIP Green Infrastructure fund stream, in particular the increased energy efficiency of buildings. The program precludes municipal halls, which is where we are budgeting a large HVAC replacement. As this program has an extended application period, staff will continue to research this program for other eligible projects.

Options

Option 1 (Recommended) : Support grant applications for all three projects identified.

- That Council authorize an application to the Investing in Canada Infrastructure Program under the Community, Culture and Recreation stream for the Crofton to Maple Bay Trail project for a project cost up to an estimated \$2 million.
- That Council authorize an application to the Investing in Canada Infrastructure Program under the COVID-19 Resilience stream for replacement of the Fuller Lake Arena roof and the Cowichan Aquatic Centre roof up to an estimated \$2.4 million.
- That Council authorize an application to the Federation of Canadian Municipalities' Municipal Asset Management Program for a grant of up to \$50,000 so that North Cowichan may continue with its next phase of asset management planning, which is to create Asset Management Plans for major facilities and buildings.

Option 2: Support a grant application for one or more of the projects identified.

Implications

Successful grant applications would leverage the tax supported portion of the Capital Expenditure Plan and adjust capital spending to more sustainable year over year levels.

The Municipality has the funds available to cover its portion for the projects identified:

- Reserve Funds would be used for the Cowichan Aquatic Centre and Fuller Lake Arena roofs;
- The Parks Capital Budget is sufficient to cover the municipal multi-year portion of the Crofton to Maple Bay trail, by prioritizing this trail; and,
- The base general government budget is sufficient for the municipal portion of the asset management grant.

Recommendations

1. That Council authorize an application to the Investing in Canada Infrastructure Program under the Community, Culture and Recreation stream for the Crofton to Maple Bay Trail project for a project cost up to an estimated \$2 million.
2. That Council authorize an application to the Investing in Canada Infrastructure Program under the COVID-19 Resilience stream for replacement of the Fuller Lake Arena roof and the Cowichan Aquatic Centre roof up to an estimated \$2.4 million.
3. That Council authorize an application to the Federation of Canadian Municipalities' Municipal Asset Management Program for a grant of up to \$50,000 so that North Cowichan may continue with its next phase of asset management planning, which is to create Asset Management Plans for major facilities and buildings.

Council Member Motion

Notice given on: Wednesday, September 2, 2020

Meeting Date Wednesday, September 16, 2020
From Councillor Manhas
Subject Illegal Secondary Suites

Background

There are about 1500 to 2500 illegal suites currently in North Cowichan and this number may be low as it is an estimate based on talking to people. Given the current pandemic we are in, it would be unfair to move individuals and families out of these suites that in some cases have lived there for many years. However we need to know the potential liability and financial risks to the municipality.

Landlords also need to know if they legalize their suites what are the anticipated costs and what are the benefits to legalizing and risks not to do so.

I believe there was a motion many years ago to legalize all suites in North Cowichan but the uptake to do so was very small.

Given the fact that the rental vacancy rate in North Cowichan is less than 1% according to CMHC these suites are very much needed to attract and retain potential employees for our employers.

Secondary rental suites fit in with our strategic plan as they are generally more affordable than apartments and condos. Some people prefer to stay in basement or secondary suites as they feel more comfortable and part of a family.

Recommendation

That Council direct staff to prepare a report identifying potential safety issues, and financial and liability impacts and/or risks to the municipality in relation to existing illegal secondary suites in North Cowichan.

Attachment(s):

A Request to Local Government - Follow Through on Climate Action

August 16, 2020

Mayor and Council
Municipality of North Cowichan
7030 Trans-Canada Hwy,
Duncan, BC, V9L 6A1

Dear Mayor and Council:

Thank you for your ongoing efforts to deal with the COVID-19 emergency. At times of crisis the public relies on its institutions for support and leadership. Your efforts have helped us weather and hopefully contain this particular storm.

In the face of COVID-19 it's understandable that our attention is focused on the virus and its implications. All of us in our own ways have been forced to focus and adapt. Likewise, your government has needed to prioritize responding to this emergency.

Yet other crises continue to accelerate, including the climate crisis. Now that the virus is more under control here, we believe this is the time to catch up. Last year we were heartened that three out of five local governments declared or acknowledged the climate emergency, with the other two also making statements of support.

Today we are writing to ask for an update about how your government proposes to turn that statement into action. What are your specific plans to reduce emissions across your local jurisdiction out in the community? What actions have you initiated in the past year? How will your government help us get to net zero emissions by 2050 in the Cowichan/Ladysmith region?

The format of that update is up to you, but we ask that it be in writing and widely available to the public so that local citizens can both be informed and able to make an evaluation about progress.

Thank you again for your leadership.

Yours sincerely,

BC Government and Service Employees Union – Brian Gardiner
BC Farms and Food – Larry Kimmett
Botanical Bliss Herb Farm – Robin Round
Chemainus United Church – John Silins
Coast Salish Journey – Herb Rice
Council of Canadians, Cowichan Chapter – Laurel Circle
Cowichan Biodiesel Co-op – Stephanie Cerins
Cowichan Carbon Busters – Peter Nix
Cowichan District Teachers' Association- BCTF Local 65 – Naomi Nilsson, Pres

Cowichan Energy Alternatives – Brian Roberts
Cowichan Estuary Nature Centre Society – Amy Clinton-Baker, Coordinator
Cowichan Estuary Restoration and Conservation Society – Goetz Schuerholz
Cowichan Lake and River Stewardship Society - Ken Traynor, Pres
Cowichan Station Area Association – Hilary Else, Pres
Cowichan Stewardship Roundtable – Parker Jefferson and Genevieve Singleton
Cowichan Valley Earth Guardians – Katia Bannister
Cowichan Valley Naturalists Society – Gail Mitchell, Co-Chair
Cowichan Women’s Health Collective – Bev Suderman, Chair
Cowichan Woodwork – Gordon Smith
Drillwell Enterprises – Shawn Slade
Duncan United Church – Rev. Keith Simmons
Eight & a Half Acres – Sharon Chapman
Euphoric Juicery, Duncan – Lori Ridley
Flor and Canto Popsicles – Cowichan Bay – Natasha Ayers
For Our Kids – Cowichan – Galen Armstrong
Friends of the Cowichan – Joe Saysell
Glenora Farm – Ita Wegman Association – Tara Batho
Heart Song Flutes, Lake Cowichan – Rommy Verlaan
Ixim Food Inc – Michelle Paez
Juniper Community Solution, Cobble Hill – Kathy Code
Lila Music Centre – Cari Burdett
Matraea Centre – Kate Koyote
A Memorable Gift, Duncan – Tina Short
Michelle Rose Community Supported Fishery – Cowichan Bay – Guy Johnston
Ol’ MacDonald Farm – Cam MacDonald
One Cowichan Educational Society – Jane Kilthei
Polster Environmental Services – David Polster and Genevieve Singleton
Quamichan Lake Neighborhood Association – Marilyn Palmer
Sacred Mountain Studio – Nan Goodship and Peter Spohn
Saint Peters Anglican Church – Rev MJ Lewis
Save Our Holmes Society, Youbou – Karen Deck, Pres
Shawl Farm – Rupert Koyote
Shawnigan Basin Society – Dave Munday and Shirley Astleford
Shawnigan Lake School- Sara Blair
Silk and Stone – Loni Duncan
Somenos Marsh Wildlife Society – Paul Fletcher
Sweet Maggie’s Farm – Teri Young
Sylvan United Church – Tom Baxter, Council Chair
Transition Cowichan – Sandy McPherson
Unifor Local 1138 – Travis Gregson, Pres
Vancouver Island Providence Community Association – Tracy Parow, ED
Viridian Energy Cooperative – Don Skerik and Kuan-Jian Foo
Volunteer Cowichan – Mary Lynne Weberg, Chair
Where Do We Stand – Rob Fullerton
Wildflower Natural Health, Ladysmith – Marilyn Swallow