

## **PUBLIC HEARING INFORMATION PACKAGE**

**Digital Version**

### **Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020 Bylaw No. 3798**

#### ***Public Hearing Notice & Draft Bylaw No. 3798***

1. Notice of Public Hearing for **June 15, 2022** at **6:00 p.m.**
2. Public Hearing Ad – 1<sup>st</sup> Notification – June 2, 2022
3. Public Hearing Ad – 2<sup>nd</sup> Notification – June 9, 2022
4. Bylaw No. 3798
5. Subject Property


#### ***Staff Reports***

1. Staff Report to September 16, 2020 Regular Council
2. Staff Report to November 18, 2020 Regular Council
3. Staff Report to April 5, 2022 Regular Council

#### ***Minutes***

1. Excerpt from September 16, 2020 Regular Minutes (Council Recommendation)
2. Excerpt from November 8, 2020 Regular Council Minutes (1<sup>st</sup> Reading)
3. Excerpt from April 5, 2022 Regular Council Minutes (2<sup>nd</sup> Reading)


#### ***Correspondence***

1. Letter dated April 3, 2020 from David Coulson Re: Development Rationale
  2. Email dated January 5, 2020 and Legal Opinions from Shawn Slade
  3. Letter dated January 26, 2020 from Shawn Slade
  4. Email and Letter dated September 15, 2020 from Shawn Slade
- 

***Public Comments Received after 2<sup>nd</sup> Reading of Bylaw and Prior to Public Hearing Notice***

1. Email and Letter dated April 12, 2022 from Chris and Kathy McLean – In Support
2. Email and Letter dated April 12, 2022 from Chris Richardson – In Support
3. Email and Letter dated April 13, 2022 from Julia Bendsten and Thomas Duke – In Support
4. Email and Letter dated April 18, 2022 from Dr. Goetz Schuerholz – In Support
5. Email and Letter dated April 19, 2022 from Jill and Jackson Ellis – In Support
6. Email and Letter dated April 20, 2022 from Deb Carfrae – In Support
7. Email and Letter dated April 22, 2022 from John and Carolyn Chalmers – In Support
8. Letter dated April 27, 2022 from Carol Hartwig with 16 Letters Support Attached
9. Email and Letter dated April 28, 2022 from Jan and Brian Phillips – In Support
10. Letter dated May 2, 2022 from Eric and Howard DeSilva – In Support

***Public Comments Received after Public Hearing Notice and Prior to Deadline***

1. Letter received June 2, 2022 from John Stroulger – In Support
  2. Email dated June 6, 2022 from Julie and Peter Morris – In Support
  3. Letter received June 7, 2022 from Phyllis Marshall and Loree Fulton – In Support
- 



# NOTICE OF PUBLIC HEARING

The Director of Planning and Building gives notice that a Public Hearing will be held at **6:00 p.m.** on **Wednesday, June 15, 2022** to allow Council to receive public input on Bylaw No. 3798 which proposes to amend "Zoning Bylaw 1997," No. 2950. As authorized by the *Local Government Act*, this hearing will be conducted by electronic means and members of the public will be provided an opportunity to be heard verbally or by submitting their comments in writing in advance of the hearing. This hearing will be conducted by video conference using the Cisco Webex platform, and though electronic, is open to the public and anyone wishing to participate may do so by joining the June 15, 2022 meeting using a computer, smartphone or tablet. Please visit [www.northcowichan.ca/virtualmeeting](http://www.northcowichan.ca/virtualmeeting) for instructions on how you can join this hearing and find the link to join. You may also view the hearing as it is streamed live by going to [www.northcowichan.ca/Agendas](http://www.northcowichan.ca/Agendas), and click on the 'View Live Stream' link. A copy of the recording will be made available after the hearing on North Cowichan's website for on-demand viewing.

**Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798** proposes to amend section 53 (4)(a) [density in the Rural Restricted Zone (A3)] of Zoning Bylaw 1997, No. 2950 by including the subject property in the list of properties permitted to have two residential buildings by adding the following text:

"Despite section 53 (4)(a) a maximum of 2 residential buildings, with a total combined maximum of 2 dwelling units, is permitted on (vii) 934 Khenipsen Road (PID: 027-581-578)".

The purpose of the proposed bylaw is to allow for a detached second dwelling on the subject property as outlined in bold on the map.

## Public Input

If you believe your interests in land will be affected by the proposed bylaw, you are encouraged to submit your comments in writing to Mayor and Council by **1:00 p.m.** on **Monday, June 13, 2022**, using any of the writing methods identified below. Comments may also be shared verbally during the Public Hearing, by following the instructions provided below.

### 1. In Writing:

Written submissions will be accepted by:

- Email to [publicmeetings@northcowichan.ca](mailto:publicmeetings@northcowichan.ca)
- Mail to Mayor and Council, Municipality of North Cowichan, 7030 Trans-Canada Highway, Duncan BC, V9L 6A1
- Fax to 250-746-3133
- In-Person deposited through the mail slot at the Municipal Hall, Main Entrance

### 2. Verbally:

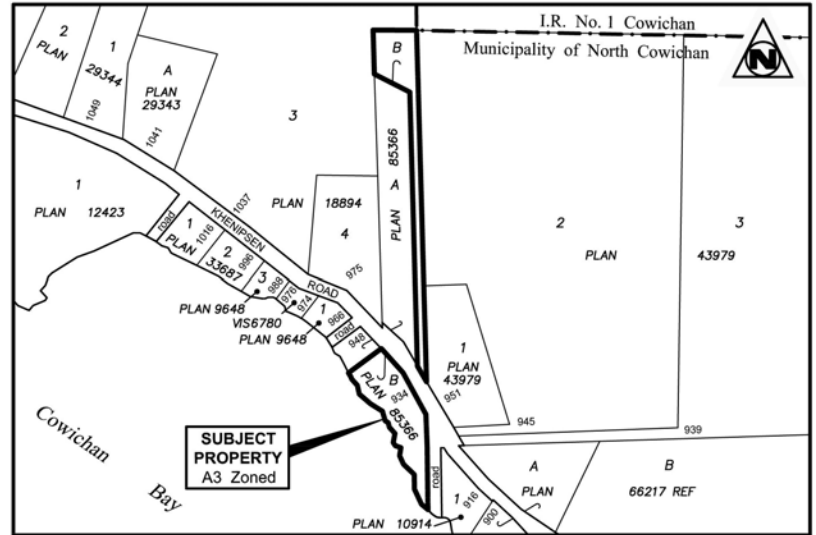
Details and instructions on how to participate verbally will be available at least one week prior to the Hearing at [www.northcowichan.ca/PublicHearings](http://www.northcowichan.ca/PublicHearings) and at our automated Public Hearing Info Line: 250-746-3264.

**PLEASE NOTE:** Submissions should reference the bylaw number and include your name and the civic address or legal description of the land affected by the proposal. Please be advised that all submissions, including the individual's name and address will form part of the public record and will be published on North Cowichan's website. Do not include any personal information in your submission that you do not wish to be disclosed, as submissions received are public documents and will not be redacted (with the exception of email addresses on electronic submissions, phone numbers and signatures). Any submission after the conclusion of the Public Hearing will not be accepted.

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A copy of the bylaw and related documents, including public comments received in writing, will be available to inspect online at [www.northcowichan.ca/PublicHearings](http://www.northcowichan.ca/PublicHearings) until the close of the Public Hearing.

Rob Conway, Director of Planning and Building



Personal information is collected by North Cowichan under the authority of s. 26 (c)

of the *Freedom of Information and Protection of Privacy Act* for the purpose of administering the Public Hearing.

Please direct any questions about personal information to North Cowichan's Privacy Officer by

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MUNICIPALITY OF  
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**June 2 and 9, 2022**

**(Newspaper Ads will be added to Information Package when published)**

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Duncan denies another bid for funding from COVID program

BY ROBERT BARRON

The City of Duncan has, again, denied an application for funding from its COVID-19 grant program.

At its meeting on May 2, council turned down a request for \$9,000 from the grant program from the Duncan Curling Club to help replace its ice plant.

In its application, the DCC said there was a catastrophic failure of the ice plant and it must be replaced, the compressor rebuilt and the building brought up to code, with costs expected to be approximately \$200,000.

The application said, in addition, that the impacts of COVID-19 restrictions at the DCC has taken a financial toll on the centre.

"To enable the DCC to survive, we are fund-raising and have raised over \$84,000 with additional events and fundraising continuing to happen," the application said.

"We are reaching out to the local business community and our membership for support, as well as applying for other grant opportunities. The grant funds [from the city] would be added to the fundraising and will be used to replace the ice plant."

But Coun. Tom Duncan said at the council meeting that the application doesn't fit the criteria of the COVID-19 grant program.

"[The DCC] isn't even in Duncan, and I imagine very few people actually use it," he said.

"I can't see how it would benefit the city as part of a COVID-19 restart to redo the ice plant up there so, regrettably, I have to put forward a motion to deny this request."

Only Coun. Jenni Capps voted to approve the application.

At the beginning of the pandemic in 2020, city council began the grant program that is intended to support residents and businesses that have been impacted by COVID-19 by leveraging other funding or encouraging "made in Duncan" concepts.

The city earmarked \$100,000 for the program, and there is a \$10,000 cap for each application.

So far, only four out of 15 applications have been approved by council, and the program still has \$54,400 in its coffers.

The applications that were denied were largely considered by council to not fit the criteria of the program, or didn't directly benefit the people or businesses in the city.

To be successful, the grant applications must support Duncan businesses, residents, or both impacted by COVID-19 or establish recovery programs; demonstrate that the organization has exhausted other potential opportunities for funding from local, provincial, and federal sources; and focus substantially on city businesses, residents, or both.

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The Broombusters Invasive Plant Society wants the province to officially label the invasive species Scotch broom as a noxious weed. (File photo)

Province asked to label Scotch broom as a noxious weed

BY ROBERT BARRON

The Broombusters Invasive Plant Society is kicking its long-standing campaign to fight the proliferation of Scotch broom on Vancouver Island up a notch.

The society is asking local governments to endorse a resolution that will be forwarded to the Union of B.C. Municipalities requesting that the UBCM call on the province to establish the invasive species Scotch broom as a noxious weed.

The society also wants the province to establish laws to mitigate its spread on lands controlled by Crown corporations and lands within provincial control.

In addition, the society is asking local governments to establish their own bylaws to categorize Scotch broom as a noxious weed, complete with regulations to mitigate its spread.

In a letter to the Municipality of North Cowichan, the society's executive director Joanne Sales said a study by the Invasive Species Council of BC concluded that Scotch broom is the invasive species that is causing the greatest harm to species at risk in the province.

She said Scotch broom is spreading over huge areas of B.C., and the infested areas will not return to forests, meadows or farms.

"While Broombuster volunteers are doing a great job of getting control of broom in the municipalities, there is a serious need for government bodies and representatives to take action, or we'll lose this fight about this dangerously aggressive invasive plant," Sales said.

"The situation will just continue to get worse without government action. We cannot leave this problem to our children."

In the letter, Sales singles out BC Hydro, a Crown corporation, and its practice of allowing Scotch broom to spread on the land occupied by its transmission lines on Vancouver Island.

As well as crowding out indigenous plant species, she said allowing a highly volatile invasive plant to grow densely over the extensive network of transmission lines from Campbell River to Victoria creates a dangerous pathway for wildfires to spread quickly across the Island.

"While BC Hydro recognizes broom is a fire hazard, it can be perceived that the company benefits from Scotch broom growing in the transmission lines because it prevents trees from growing," she said.

"The company acknowledges that it will continue to let Scotch broom spread freely because there is no pressure from government entities, and because broom is not classified as a noxious weed."





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 enacts the following:

**Title**

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

"Despite section 53 (4) (a), a maximum of 2 residential buildings, with a total combined maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578)."

\_\_\_\_\_  
READ a first time on the 18 day of November, 2020

READ a second time on the 5 day of April, 2022

This bylaw was advertised in the Cowichan Valley Citizen on the \_\_\_\_ day of \_\_\_\_\_, 2022 and the \_\_\_\_ day of \_\_\_\_\_, 2022 and the municipality's website and notice board on the \_\_\_\_ day of September, 2020.

CONSIDERED at a Public Hearing on

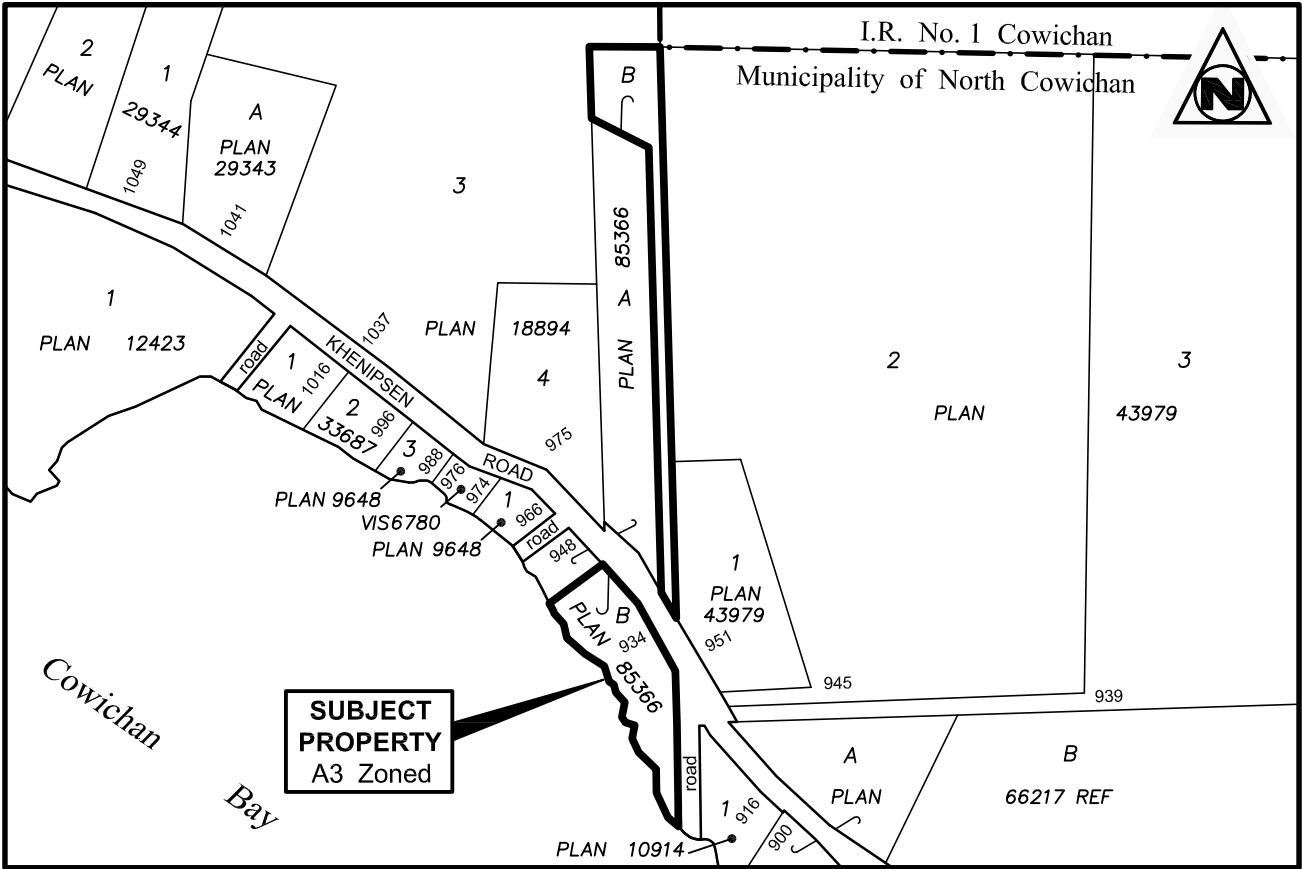
READ a third time on

COVENANT registered on

ADOPTED on


\_\_\_\_\_  
CORPORATE OFFICER

\_\_\_\_\_  
PRESIDING MEMBER



# **STAFF REPORTS**

# 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, coastlines<sup>14</sup> 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 92m<sup>2</sup> – 990.28ft<sup>2</sup> actual is 39m<sup>2</sup> – 420ft<sup>2</sup>) 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,

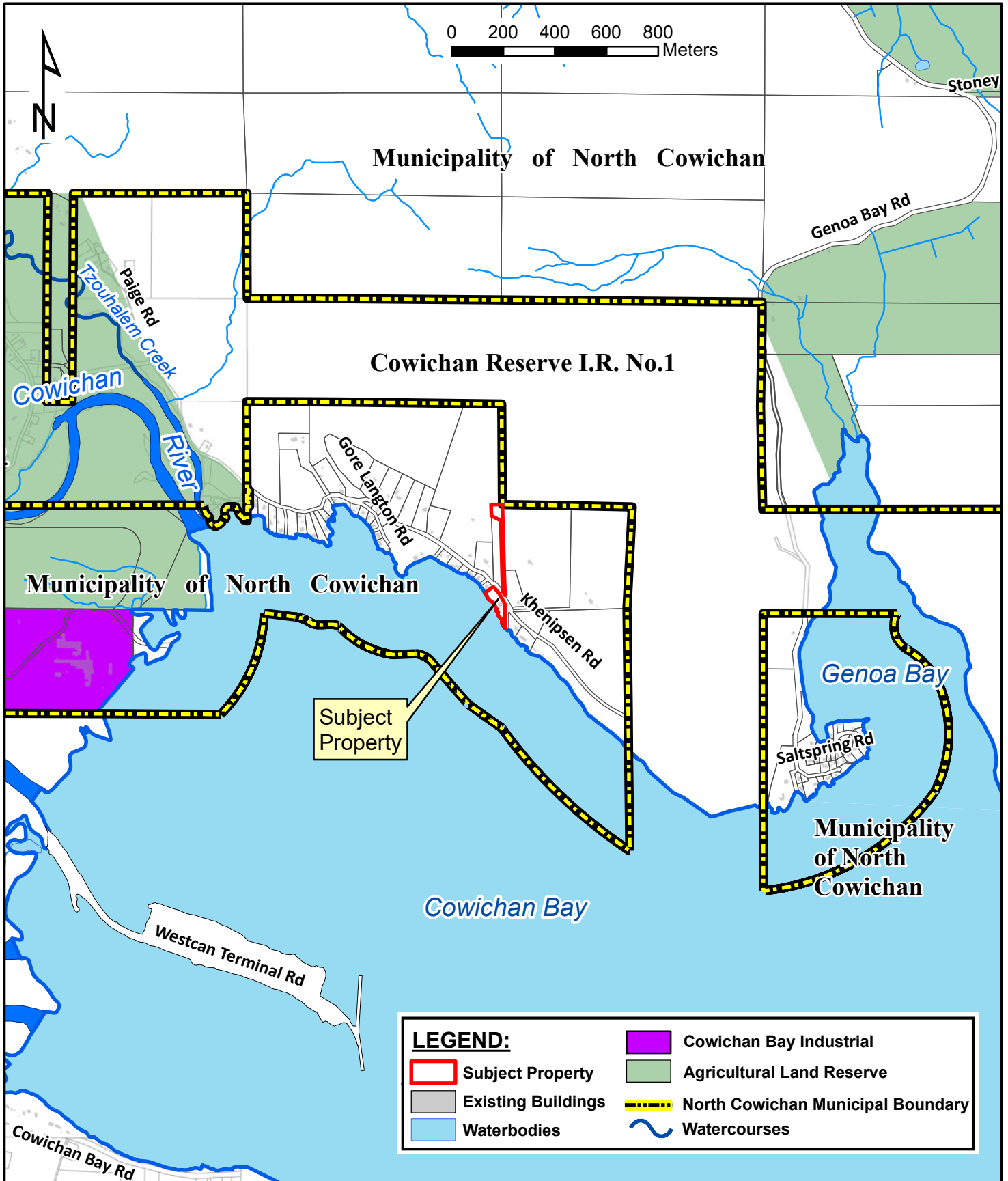
- b) that a Public Hearing be scheduled for Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798 and notification be issued following requirements of the Local Government

### **Recommendation**

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

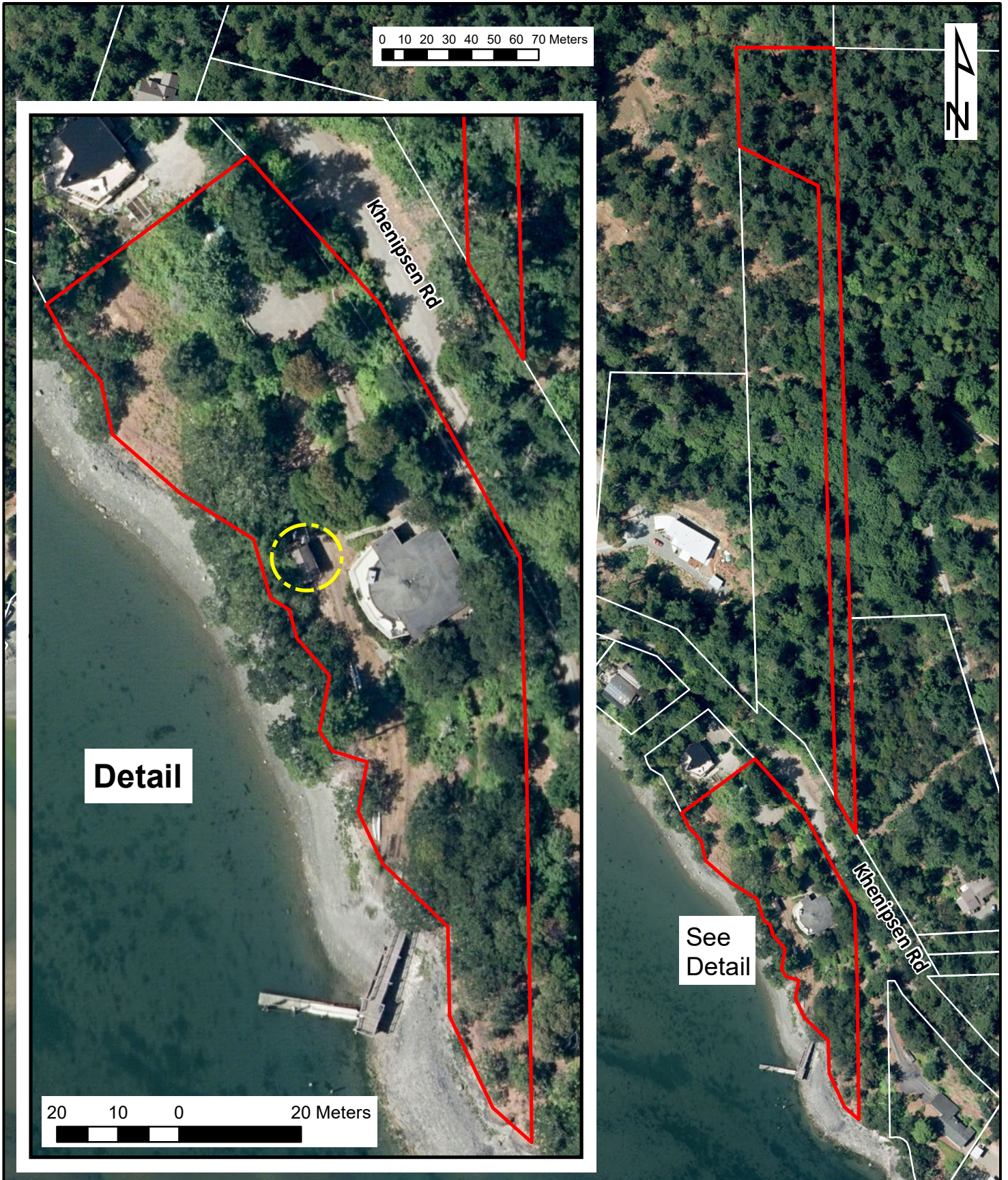
#### **Attachments:**

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)



	<b>LOCATION MAP</b>		DATE:	June 10, 2020
	934 Khenipsen Road		TYPE:	Zoning Amendment
			FILE#:	ZB000126





	<b>ORTHOPHOTO MAP</b>		DATE:	June 10, 2020
	(Orthophoto is from 2019 aerial photography)		TYPE:	Zoning Amendment
	934 Khenipsen Road		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  
Duncan, BC Canada  
V9L-3X4

dave.preikshot@northcowichan.ca

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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 - Demarchi 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	<a href="mailto:fire@northcowichan.ca">fire@northcowichan.ca</a>
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](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](mailto:mike.dunn@northcowichan.ca)  
T 250.746.3167  
F 250.746.3133

7030 Trans-Canada Highway  
Duncan, BC V9L 6A1 | Canada  
[www.northcowichan.ca](http://www.northcowichan.ca)

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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  
7030 Trans-Canada Highway  
Duncan, BC V9L 6A1 | Canada  
[www.northcowichan.ca](http://www.northcowichan.ca)

[glenn.morris@northcowichan.ca](mailto:glenn.morris@northcowichan.ca)

T 250.746.3118

F 250.746.3154

## 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 2<sup>nd</sup> detached dwelling.

Sincerely

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

Municipality of North Cowichan  
7030 Trans-Canada Highway  
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[glenn.morris@northcowichan.ca](mailto: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](mailto:Glenn.Morris@northcowichan.ca)>  
**Sent:** Tuesday, June 9, 2020 10:44 AM  
**To:** Lane Killick <[Lane.Killick@northcowichan.ca](mailto:Lane.Killick@northcowichan.ca)>; Rachel Hastings <[Rachel.Hastings@northcowichan.ca](mailto:Rachel.Hastings@northcowichan.ca)>; Michele Gill <[michele.gill@northcowichan.ca](mailto:michele.gill@northcowichan.ca)>; Dave Preikshot <[dave.preikshot@northcowichan.ca](mailto:dave.preikshot@northcowichan.ca)>; Fire <[fire@northcowichan.ca](mailto:fire@northcowichan.ca)>;



## **Onsite Sewerage System – Compliance Inspection Report**

Tuesday, March 31, 2020

TO: David Coulson  
5241 Koksilah Road.  
[coulsondesign@shaw.ca](mailto: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**

<b>Filing or original permit documentation</b>	<b>None submitted</b>
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
<b>As built drawing</b>	<b>No</b>
Operation & Maintenance Plan	Not required at time of install.
<b>Maintenance records</b>	<b>None submitted.</b>
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](mailto:info@septech.ca)





## ATTACHMENT 5

FB192985

LAND TITLE ACT  
**FORM C**  
 (Section 219.9)  
 Province of  
 British Columbia  
**GENERAL DOCUMENT**

16 JUL 2008 14 50

FB192985

(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 85366

ENTIRE

REGISTERED OWNER OF:

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

VIP 85366 CHARGE 00/07/16 14:51:30 01 VI 810971  
 \$132.30

PRIORITY AGREEMENT granting  
 Easement FB192985 priority over  
 Mortgage FA62783

Page 6, Para. 5

**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

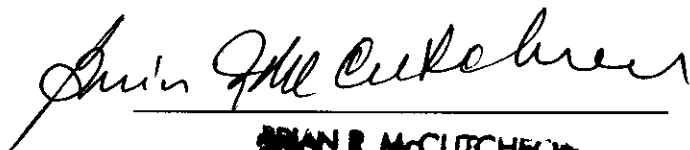
**7. ADDITIONAL OR MODIFIED TERMS:**

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.

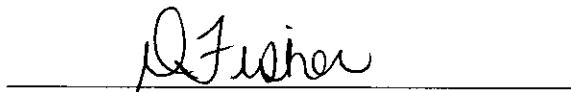
## Execution Date

Officer Signature(s)



**BRIAN R. McCUTCHEON**  
Barrister & Solicitor  
321 St. Julian Street  
DUNCAN, B.C. V9L 3B6

(as to both signatures)



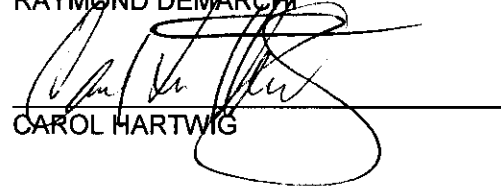
**DEBBY FISHER**  
Commissioner for taking Affidavits  
for British Columbia  
Island Savings Credit Union  
300 - 499 Canada Avenue  
Duncan, BC V9L 1T7

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.

Page 3 of 8 Pages

**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 17<sup>th</sup> 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

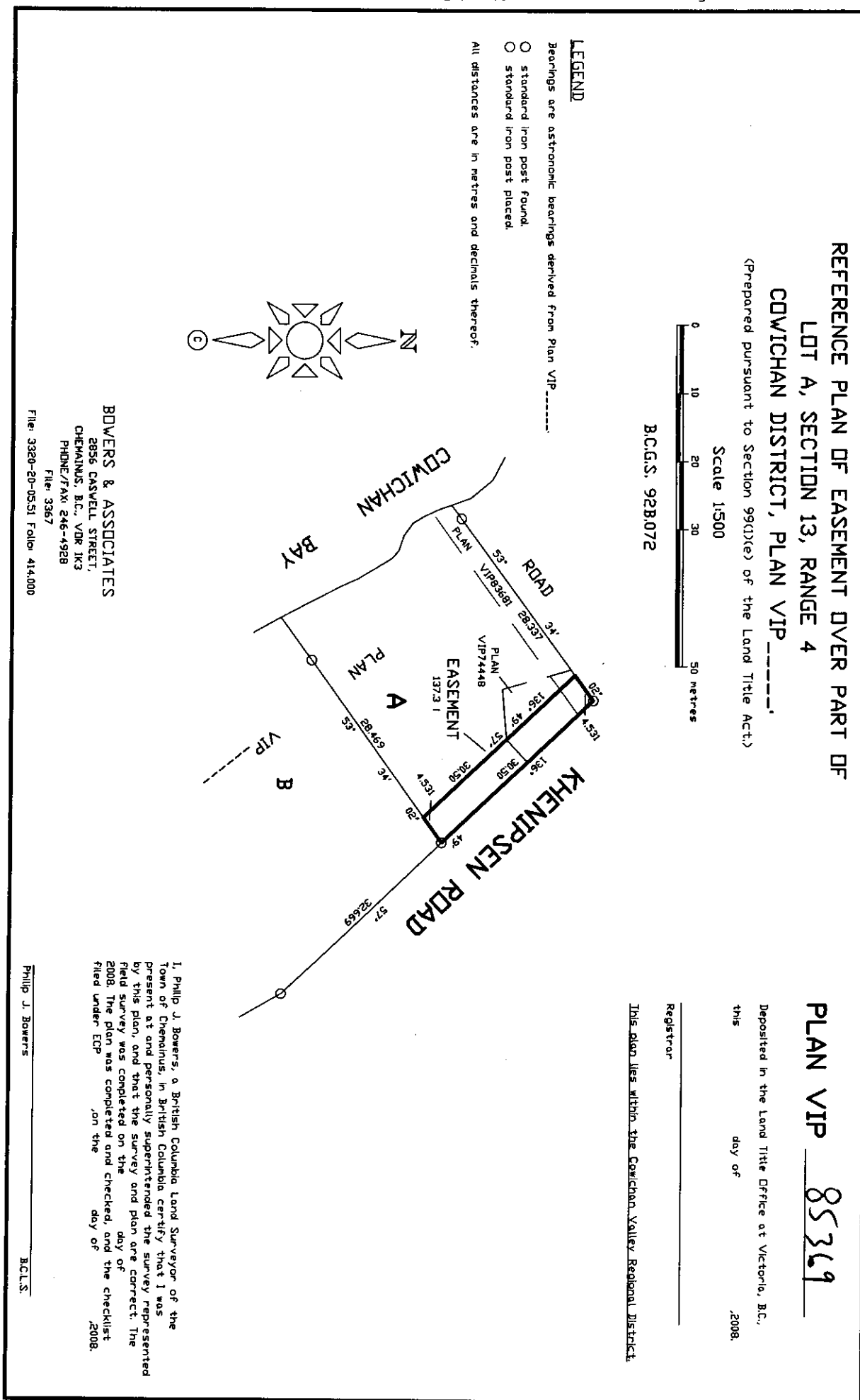
7. Where the expression Grantor or Grantee is used in their Agreement it shall be construed as meaning the plural, feminine, or body corporate or politic where the context of the parties so requires.

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

Schedule "A" attached.

SCHEDULE "A"

Page 8 of 8 Pages



END OF DOCUMENT



16 JUL 2008 14 50

FB192985

VIP85369

*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 85366

I enclose:

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

Dated the 14<sup>th</sup> day of July, 2008.

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

  
Signature

**DYE & DURHAM**

VIP85369

Our Ref: 205046

PLEASE REPLY TO DUNCAN OFFICE

February 20, 2020

**Shawn Slade**

[REDACTED] Duncan, BC V9L 5L3

**FIPPA s. 22(1)**

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



**FIPPA s. 22(1)**

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 itself<sup>1</sup>.

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<sup>1</sup> 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

[REDACTED]

**FIPPA s. 22(1)**

Duncan, BC V9L 5L3

**FIPPA s. 22(1)**

**Re: July 16, 2008 Easement on [REDACTED] . – FB192986**

---

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

Background Information

**FIPPA s. 22(1)**

You own property within the Municipality of North Cowichan with a residential address of [REDACTED] 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.

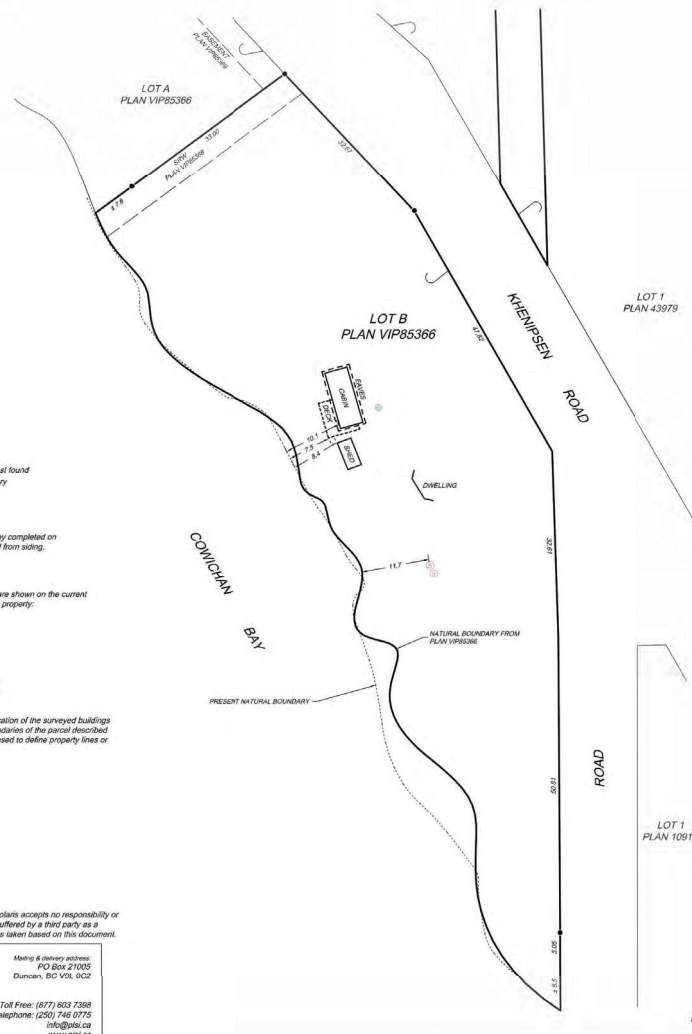
Yours truly,

***JOHNSTON FRANKLIN BISHOP***

A handwritten signature in black ink, appearing to read 'Greg R. Phillips', with a stylized, flowing script.

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

A photograph of a traditional Japanese wooden building, possibly a shrine or temple structure. The building features a raised wooden platform with a thatched roof and a white door. It is surrounded by trees and a path.



Date: 2020-03-26  
File: 1609-02 COULSON  
Drawing: 1609-02-local-C3D  
Layout: Site Plan

**SITE PLAN OF LOT B, SECTION 13, RANGE 4, COVICH CANYON, PLAN VIP83366.**

REGD MAP SHEET 828 072

THE INFORMATION ON THIS PLAN IS GIVEN IN ACCORDANCE WITH THE PROVISIONS OF THE REGD MAP ACT, 1962, AND THE REGD MAP RULES, 1962.

ALL INFORMATION IS TO BE TAKEN AS INDICATED AND NO LIABILITY IS ACCEPTED FOR ANY LOSS OR DAMAGE.

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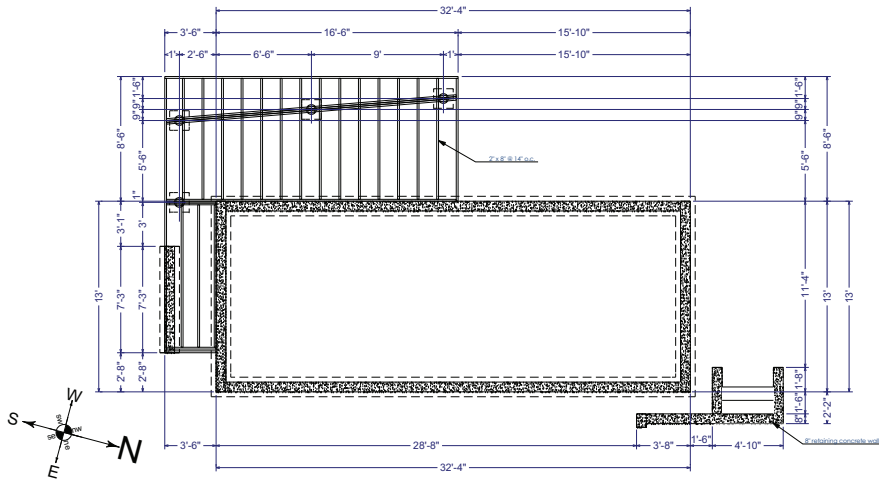
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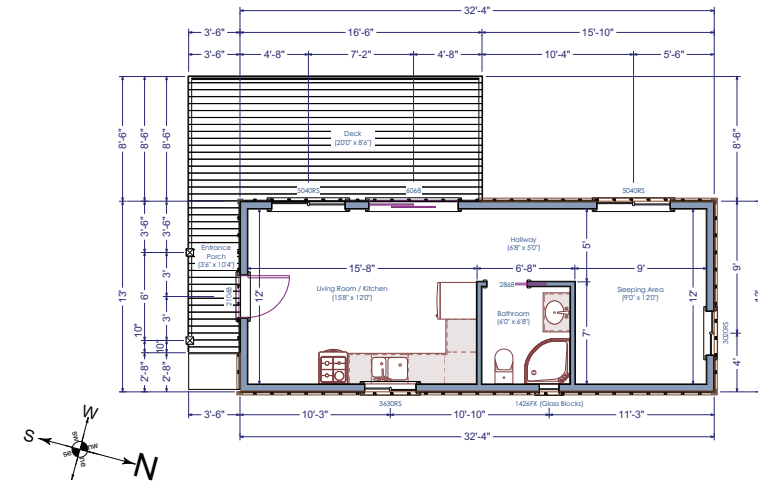
Owner Contact: Carol Hartwig & Raymond Demarchi  
clhartwig@shaw.ca

To the best of our knowledge these plans are shown to comply with current specifications and any changes made on these other plans are made at the owner's expense and responsibility. The contractor shall verify all dimensions and details of the construction and be solely responsible hereafter. This is a preliminary drawing and is not to be used for construction without the approval of the architect. The contractor shall verify all dimensions and details of the construction and be solely responsible hereafter. This is a preliminary drawing and is not to be used for construction without the approval of the architect.



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.)

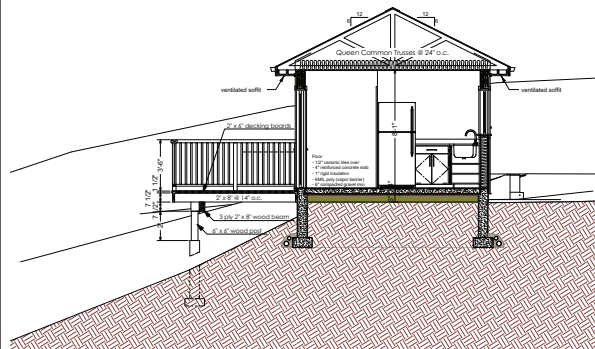
- round concrete columns Radius-4" w/ 15mm Re-Bar, min. 18" below grade
- 16" x 16" x 6" concrete footing (15mm Re-Bar) on solid undisturbed ground

### 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

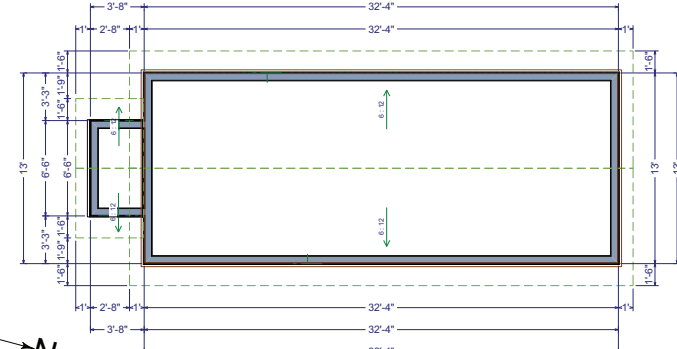
### ROOF

- 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.



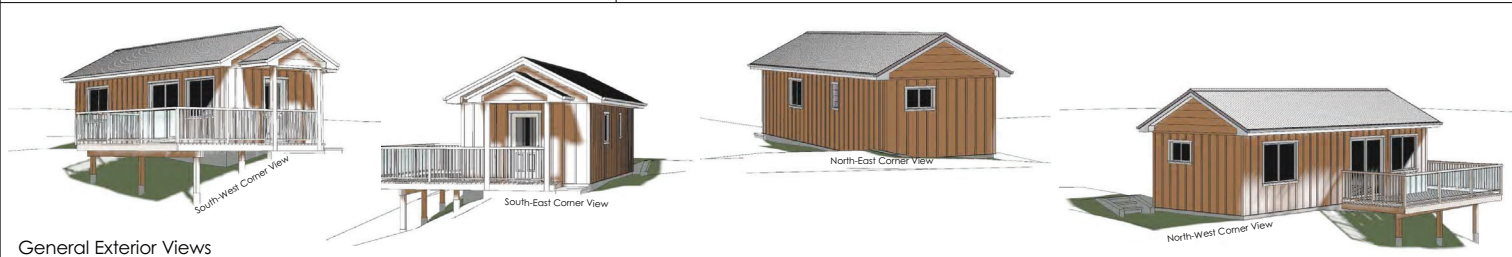
Section (typ.)

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



Roof Plan

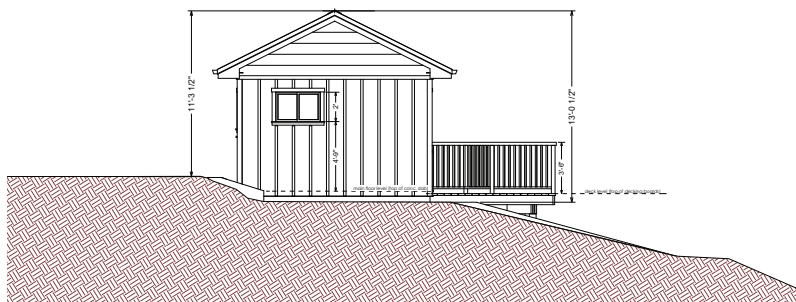
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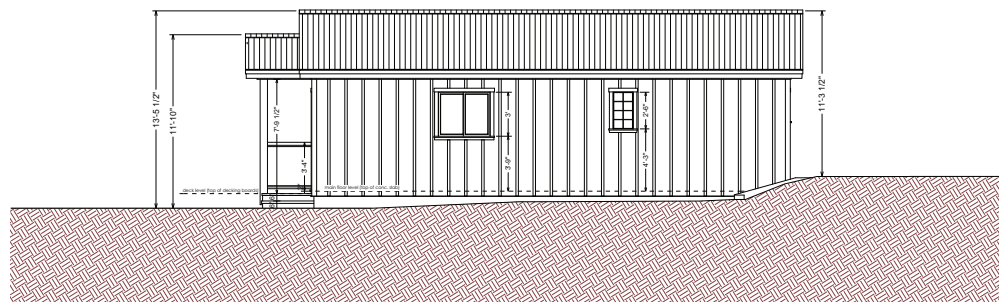
General Exterior Views



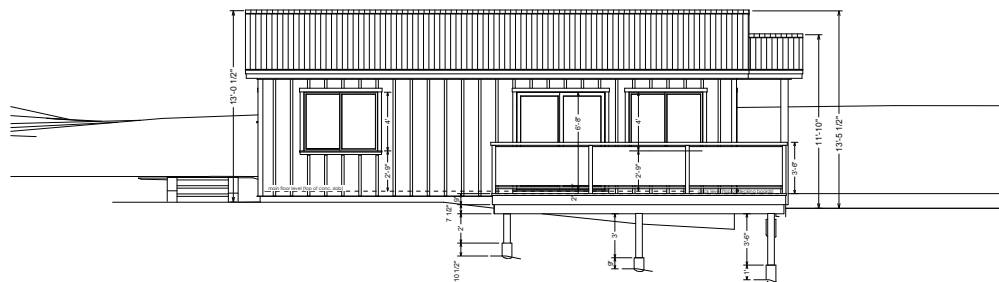
scale: 1/4" = 1'-0"



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



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



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

1. 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:
  - a. minimum 28-day compressive strength  $f'c = 25 \text{ MPa}$ , U.N.O.
2. The supplier is responsible for concrete delivery that meets the performance requirements stated above.
3. Concrete is to be suitable for the concrete finishes as specified by the design drawings and is to be the responsibility of the contractor.
4. Do not add water or plasticizers on site unless specified by the supplier.
5. Provide the following minimum concrete clear covers U.N.O.
  - a. Footings placed on soil or fill:
  - b. Placed beside normal, free draining soil or fill:
  - c. Against soils with sulfides, chlorides or saturated:
  - d. Slabs-on-grade:
  - e. Minimum clear cover U.N.O.
6. 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.
7. Splice length of rebar to be a minimum of 600 mm [24"] U.N.O.
8. Rebar placement to be within  $\pm 1/4"$  of the specified placement

1. 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:
  - a. minimum 28-day compressive strength  $f'c = 25 \text{ MPa}$
  - b. exterior foundation walls and footings to meet class F-2 performance
  - c. interior foundation walls, footings and slabs to meet class N performance
2. Foundations to be cast in place with tolerances not to exceed the following:
  - a. Footing width:  $-1"$  to  $+2"$
  - b. Footing depth:  $-1/2"$  to  $+10"$
  - c. wall thickness:  $\pm 1/4"$
  - d. concrete clear cover:  $\pm 1/4"$
3. Footings to be placed on a suitable subgrade with the specified frost protection.
4. 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.
5. Protection of adjacent structures is the responsibility of the contractor.
6. 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.
7. Footings are designed in accordance with limit states design.
8. Confirm service locations prior to placing footings as footings may need to be lowered to suit site services.
9. 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 hold-down anchorage.
10. All foundation walls are to be continuous from footing to floor system
11. Provide two 15M continuous at top of all foundation walls
12. Provide minimum 23M #3 keyway in all footings
13. Provide minimum two 15M continuous through footings
14. Unless specified otherwise, provide 15M @ 10' o/c each way at bottom of pad footings.

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

**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.

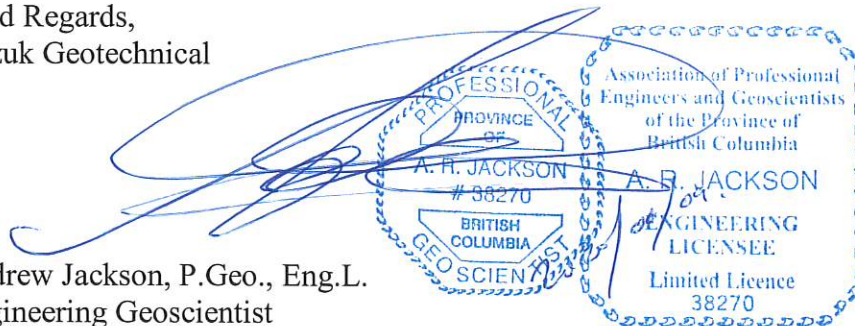
Based on discussions, you indicated that the majority of the building is thought to be bearing atop the bedrock, and as such, these areas would be stable. We consider that the upper portions of the slope may be subject to surficial creep and potential translational failure in the long term, or during 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 m<sup>2</sup> (990.28 ft<sup>2</sup>) 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 7<sup>th</sup>, 2020

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

By email to: [info@davidcoulsondesign.com](mailto: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.

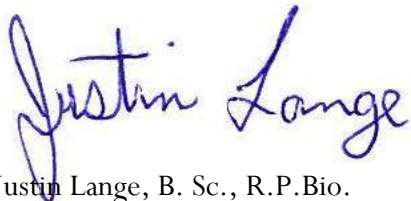
The sandy beach adjacent to the subject property will likely be used for spawning by other fish species such as surf smelt (*Hypomesus pretiosus*) and sand lance (*Ammodytes hexapterus*). It should be noted that these fish are particularly sensitive to changes along the foreshore (*i.e.*, foreshore hardening 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.



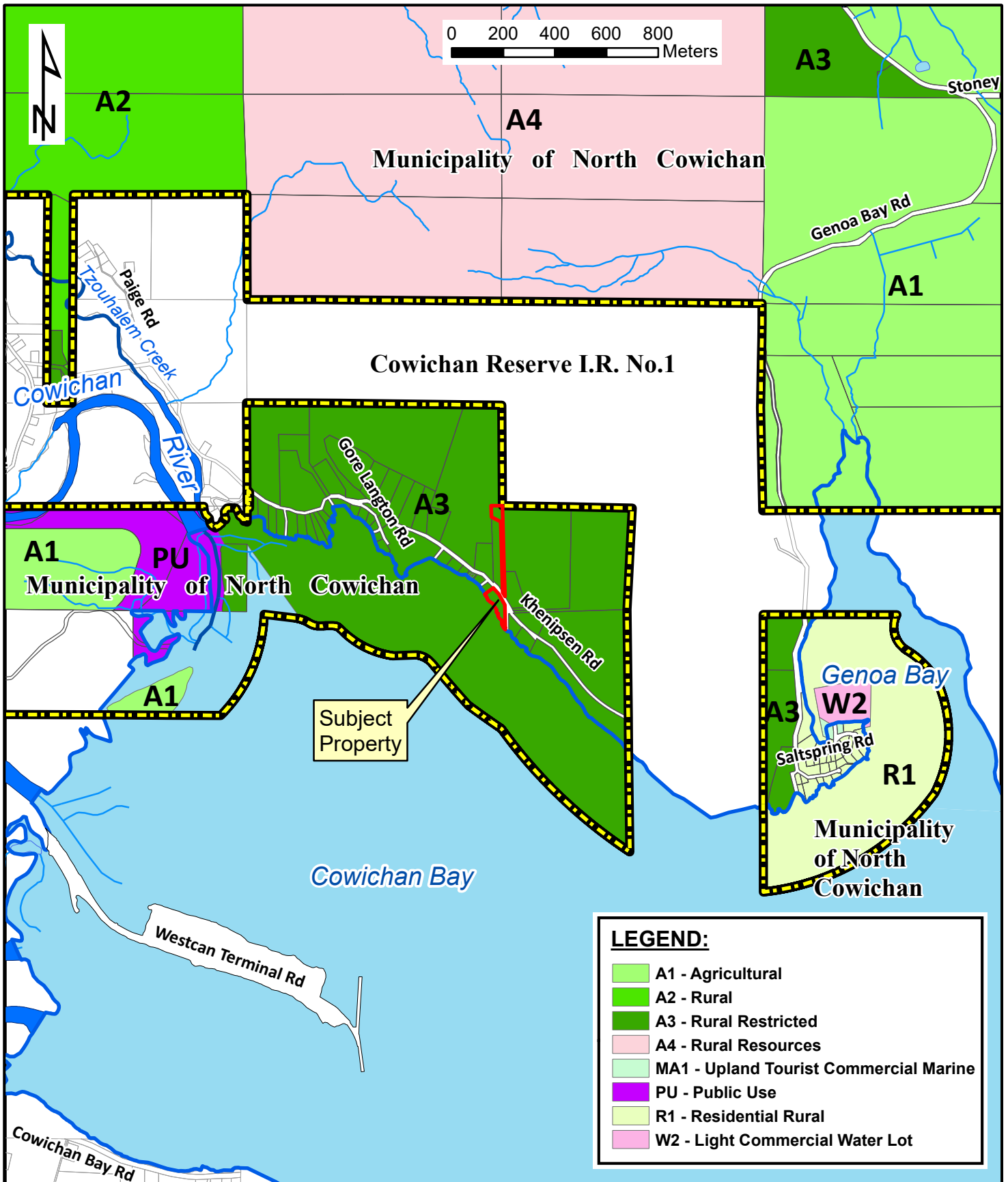


Above and Below: The newly renovated cottage and woodshed. The woodshed does not represent a new structure as it was constructed when the property was first developed. As part of the renovation process, construction activities were only carried out on the cottage and were confined to the pre-existing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



	<b>ZONING MAP</b>		DATE:	June 10, 2020
	934 Khenipsen Road		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 2<sup>nd</sup> 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.

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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



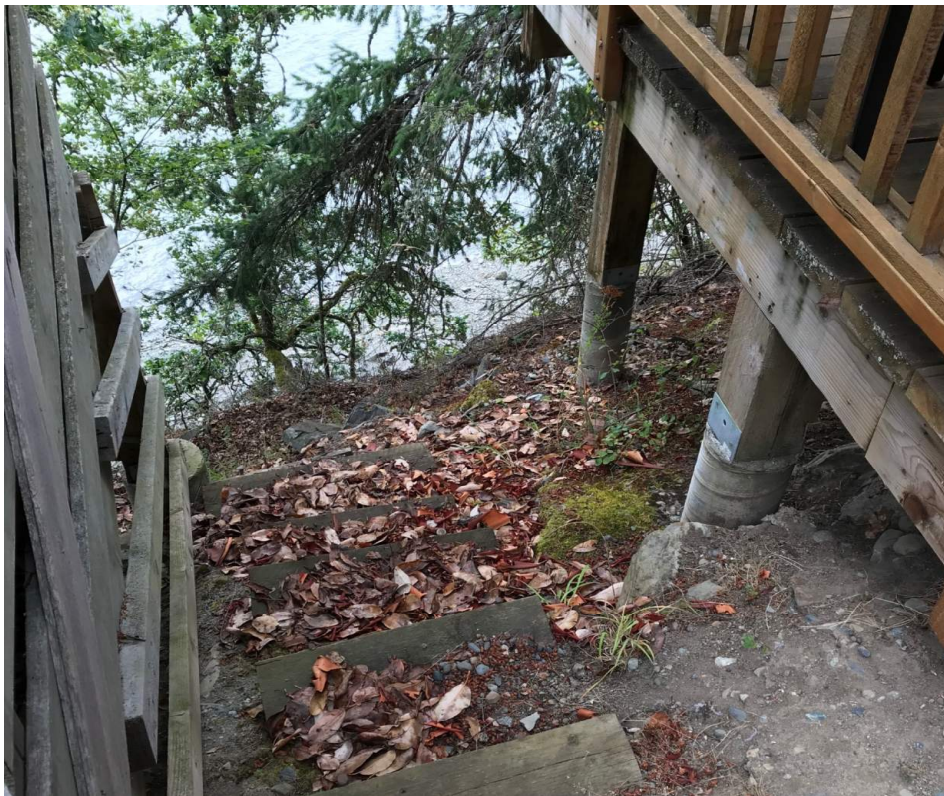


Facing north - wood shed and cottage placement on steep west slope



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 m<sup>2</sup> (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 m<sup>2</sup> (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 m<sup>2</sup> (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	November 18, 2020	Prospero File: ZB000126
To	Council	
From	Glenn Morris, Development Planning Coordinator	Endorsed: 
Subject	Zoning Bylaw Amendment Application No. ZB000126 (934 Khenipsen Rd.) – Proposed Detached Second Dwelling Use - Update	

## Purpose

To review with Council the new information submitted by the applicant at the September 16, 2020, Regular Council meeting and the potential provision of an alternate location for the second dwelling.

## Background

On September 16, 2020, at the Regular Council the following motion was passed:

That the application (Zoning Amendment Application - ZB000126) be referred back to staff to review the new information as submitted and that staff work with the applicant to identify whether an alternative location for the suite can occur and report back to Council.

## Discussion

### Alternative second dwelling location

The applicant was asked to consider Council's suggestion of an alternate location for a second dwelling which could be supported by OCP Policy and Development Permit guidelines. The applicant has advised that the intention of the application is to legalize the location of the existing second dwelling and that he wishes the application to be considered as submitted.

### Vancouver Island Health Authority

A response to the application referral to the Vancouver Island Health Authority (VIHA) was received by staff on September 18, 2020. VIHA concluded from their review of the Registered Onsite Wastewater Practitioners' (ROWP) report that the applicant's current wastewater treatment system constitutes a health hazard. The system must be replaced (Attachment 1).

The applicant was informed that the applicable development permit guidelines require the replacement wastewater system to be located outside of the Development Permit Area extending 30 m from the natural boundary of Cowichan Bay. Through consultation on the design of the replacement wastewater system with the ROWP of record (replacement design), staff have determined one and possibly two replacement tanks must be installed within the Development Permit Area adjacent to the principal dwelling to meet industry standards. This design can be supported by staff provided that the replacement distribution and dispersal fields are located on the upper portion of the applicant's property (north side of Khenipsen Road – similar arrangement to neighbouring property to the west), which will move a substantial portion of the wastewater system out of the sensitive environmental area and away from the natural boundary of Cowichan Bay.

New information submitted by the applicant

**Structural Engineer's Report – Buepoint Consulting Ltd.**

The applicant submitted a report prepared by a structural engineer retained by the applicant to review the second dwelling's structural condition on September 23, 2020. The report indicates past structural settlement/movement evidence, but no indications of further settlement noted in the trim and finishes, which are believed to have been installed in 2013. The original structure is believed to have been constructed in 1979, but there are no building permit records on file to confirm this.

**"The end pier (read - deck) is at a bit of an angle tilted slightly downhill. The building does have some dips and rolls in the floor and noticeable curves in the roof but all of the 2013 finishes are intact."**

The Engineer concludes:

**"With the exception of minor remedial work for the angled deck pier, we believe the structure to be in good structural shape and expect it to perform as intended for the foreseeable future."**

The structural engineer further states that he has not performed any "testing or invasive review" of the second dwelling and "does not guarantee or warranty all aspects of the condition of the building or its compliance to present building codes." His report confirms earlier findings by the applicant's geotechnical engineer (Ryzuk) of evidence of the building's past movement through twisting of the roof spine. He stated:

**"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 bedrock."**

The Chief Building Inspector reviewed the reports from the structural and geotechnical engineers (Attachment 2) and provided the following comments regarding the process for addressing Building Bylaw violations should the zoning amendment application be approved:

- A second geotechnical engineer's report is required to determine what work (including design, supervision and completion), if any, is required to confirm the building (second dwelling) is safe and suitable for the intended use as a dwelling.
  - Should the geotechnical report not confirm that the siting for the second dwelling is safe and suitable, application for a building permit to bring the dwelling into compliance with the Building Code will not be possible and either a notice on property title confirming that the structure was converted to a dwelling without a permit and inspections will be recommended to Council, or the dwelling should be decommissioned;
  - Should the applicant commit to providing a second geotechnical report, and that report confirms the siting is safe and suitable for the intended purpose, the standard building

permit process would then apply. To comply with the current Building Code, alterations to the building would likely be required, including fully exposing the interior of the structure (removal of wall coverings) to view vapour barriers, insulation, and plumbing in addition to confirming industry standards for roof venting, air barriers and other applicable requirements;

- A review of the building by a licensed electrician is required to ensure electrical safety is met and to correct any deficiencies found. Final electrical permit information will be required to be submitted to the Building Department;
- If the above requirement (building permit) is not undertaken or completed by the applicant, registration of a Section 57 (*Community Charter*) notice on property title would be recommended by the Chief Building Inspector to Council, confirming that the structure was not constructed with a building permit in order to provide notice to future property owners and address liability concerns on the part of the Municipality. In this scenario, additional inspections would be required by the Municipal Building Inspector to confirm minimum life safety components (including bedroom window egress, smoke and CO<sup>2</sup> alarms, and general ventilation) are in place and functioning as intended.

#### **Additional submission items:**

The applicant also submitted the following additional items between September 16 and 18, 2020 – listed below (Attachment 3):

- A sketch plan proposing an alternate parking and access location for the subject property from Khenipsen Road;
- Paperwork submitted to VIHA for a replacement wastewater treatment system to be located within the Development Permit area adjacent to the natural boundary of Cowichan Bay;
- A legal opinion addressed to the landowner concerning the Easement Access; and,
- An invoice for trimming of an Arbutus Tree.

#### **Summary**

The applicant's additional information does not change the issues and concerns staff identified with the application in the September 16, 2020 staff report (Attachment 4). These include:

- **Official Community Plan** – OCP policy does not support land disturbance or an increase in residential density in environmentally sensitive areas.
- **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.

- **Easement** - The subject property does not directly access 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. Approval of the zoning amendment application will not resolve building compliance issues. There is no assurance that the applicant will resolve the building compliance issues if the bylaw's zoning amendment is adopted.
- **Wastewater Disposal System** –The applicant is proposing replacing the existing system to service both the principal dwelling and second dwelling. The system's location is within 30 metres of the ocean, which is contrary to applicable development permit guidelines for the protection of environmentally sensitive areas.

## Options

### 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 in accordance with requirements of the *Local Government Act*.

## 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. VIHA Email Health Hazard
2. Structural Engineer Report
3. Additional Submission Items from Applicant
4. September 16, 2020, Regular Council Staff Report



**Glenn Morris**

---

**From:** Parayno, Alicia <Alicia.Parayno@VIHA.CA>  
**Sent:** Friday, September 18, 2020 12:39 PM  
**To:** Glenn Morris  
**Cc:** Rob Conway  
**Subject:** FW: ZB000126 - VIHA Referral re: Wastewater Treatment System - 2nd Dwelling Proposal Zoning Amendment

Hello Glenn,

Alison forwarded me the referral as I am the area health inspector. I've been meaning to send an update. We visited the site on Sept 3. Though we did not see any sewage surfacing at the time, the compliance inspection report completed by a Registered Onsite Wastewater Practitioner (ROWP) was enough to form the opinion as a health officer that the existing sewerage system is a health hazard. Since my conversation with Ray at that time and after following up with the ROWP that they are working with – a sewerage system filing has been submitted in accordance with the BC Sewerage System Regulation. I spoke with their ROWP and it is my understanding that construction of the proposed sewerage system should happen ~next month, which is reasonable and understandable. Ultimately, this would have been the action our office would have required anyway. Therefore, given this understanding we are satisfied with the course of action and will not be taking any further action at this time. Our office will be awaiting the Letter of Confirmation from the ROWP once the works is completed.

Kind regards,

**Alicia Parayno, CPHI(C)**  
 Environmental Health Officer  
 4<sup>th</sup> Floor, 238 Government Street  
 Duncan, BC V9L 1A5  
 Phone: 250.737.2010 ext. 42022  
 Fax: 250.737.2008  
[alicia.parayno@viha.ca](mailto:alicia.parayno@viha.ca)



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**From:** Gardner, Jennifer (Alison) <[Jennifer.Gardner@viha.ca](mailto:Jennifer.Gardner@viha.ca)>  
**Sent:** Wednesday, September 02, 2020 8:40 AM  
**To:** Parayno, Alicia <[Alicia.Parayno@VIHA.CA](mailto:Alicia.Parayno@VIHA.CA)>  
**Subject:** FW: ZB000126 - VIHA Referral re: Wastewater Treatment System - 2nd Dwelling Proposal Zoning Amendment

Here it is ☺

---

**From:** Glenn Morris <[Glenn.Morris@northcowichan.ca](mailto:Glenn.Morris@northcowichan.ca)>

**Sent:** Tuesday, September 01, 2020 4:14 PM

**To:** Gardner, Jennifer (Alison) <[Jennifer.Gardner@viha.ca](mailto:Jennifer.Gardner@viha.ca)>

**Cc:** Rob Conway <[rob.conway@northcowichan.ca](mailto:rob.conway@northcowichan.ca)>

**Subject:** ZB000126 - VIHA Referral re: Wastewater Treatment System - 2nd Dwelling Proposal Zoning Amendment

Hi Alison,

I appreciate your guidance on submitting this referral to you as it relates to the existing wastewater treatment system described in the attached investigative report prepared by Brad Beals of Septech (attached).

Also included is a sketch indicating the approximate location of the wastewater system on the property and the general arrangement of structures and access points on the property.

We will advise Council of our referral to VIHA and that we await any further information and findings as a result.

Any questions, let me know.

Thank you

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](http://www.northcowichan.ca)

[glenn.morris@northcowichan.ca](mailto:glenn.morris@northcowichan.ca)

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(778) 400-1790  
engineering@buepoint.com

4740 Appaloosa Way,  
Duncan, BC V9L 6J1

203-737 Goldstream Ave.  
Victoria, BC V9B 2X4

7-512 Sharpe St, New  
Westminster, BC V3M 4R2

## STRUCTURAL REPORT

Location: 934 Khenipsen Road, Duncan, BC

Project #: 11399

Date: 2020.09.18

David Coulson contacted buepoint consulting regarding the structural evaluation of a residence prior to renovation at the above noted address. A site visit was conducted in the afternoon of September 18th, 2019.

### **Observations**

As the site visit was limited to a cursory review, no testing or invasive review was performed at this time. buepoint consulting does not guarantee or warranty all aspects of the condition of the building or its compliance to present building codes. Recommendations for structural remediation are provided based on the findings of this structural review. The contractor is responsible to comply with all safety regulations on-site prior to any upgrades or de-construction of the subject property.

The existing structure was built in 1979 as a garage and refinished as a cottage in 2013 (Figure 1). The exterior concrete and building appear to be stable and concrete finishes do not appear to have issues. The exterior original concrete stairs have no cracking (Figure 2). New deck on the ocean side is built on concrete piers (Figure 3) that do not appear to have significant depth into grade but appear generally stable. The end pier is at a bit of an angle tilted slightly downhill. The building does have some dips and rolls in the floor and noticeable curves in the roof but all of the 2013 finishes are intact. The sliding door has been obviously finished around

the settled shape of the building since it can be seen that the trim is angled in relation to the roof (Figure 4). All the doors and windows function properly.

### **Conclusions and Recommendations**

The uneven nature of the building is most likely due to settlement during or shortly following original construction. All the current finishes have been finished around the deflected and settled nature of this building. The original foundation work (including exterior stairs) all indicate that the structure is performing well on this hill side. The deck pier that is tilted downhill indicates that it has moved since originally formed (it is unlikely to have been formed at that angle) but there is not enough history to know whether it is now in a stable position or if bearing there may continue to deteriorate. However, that deck pier could easily be replaced or the base of the wood post could be braced back to the solid building foundation to lock it into place.

With the exception of minor remedial work for the angled deck pier, we believe the structure to be in good structural shape and expect it to perform as intended for the foreseeable future.

Feel free to contact buepoint consulting ltd. for any further questions or clarifications.

Regards,



Mark Buesink, P.Eng

**buepoint consulting ltd.**

(778) 400 1790



This document is a printed copy from  
a digitally signed and sealed original.

## Appendix - Photos of Residence



Figure 1a - Cottage side elevation



Figure 1b: Cottage front elevation





Figure 2 - Exterior concrete stairs

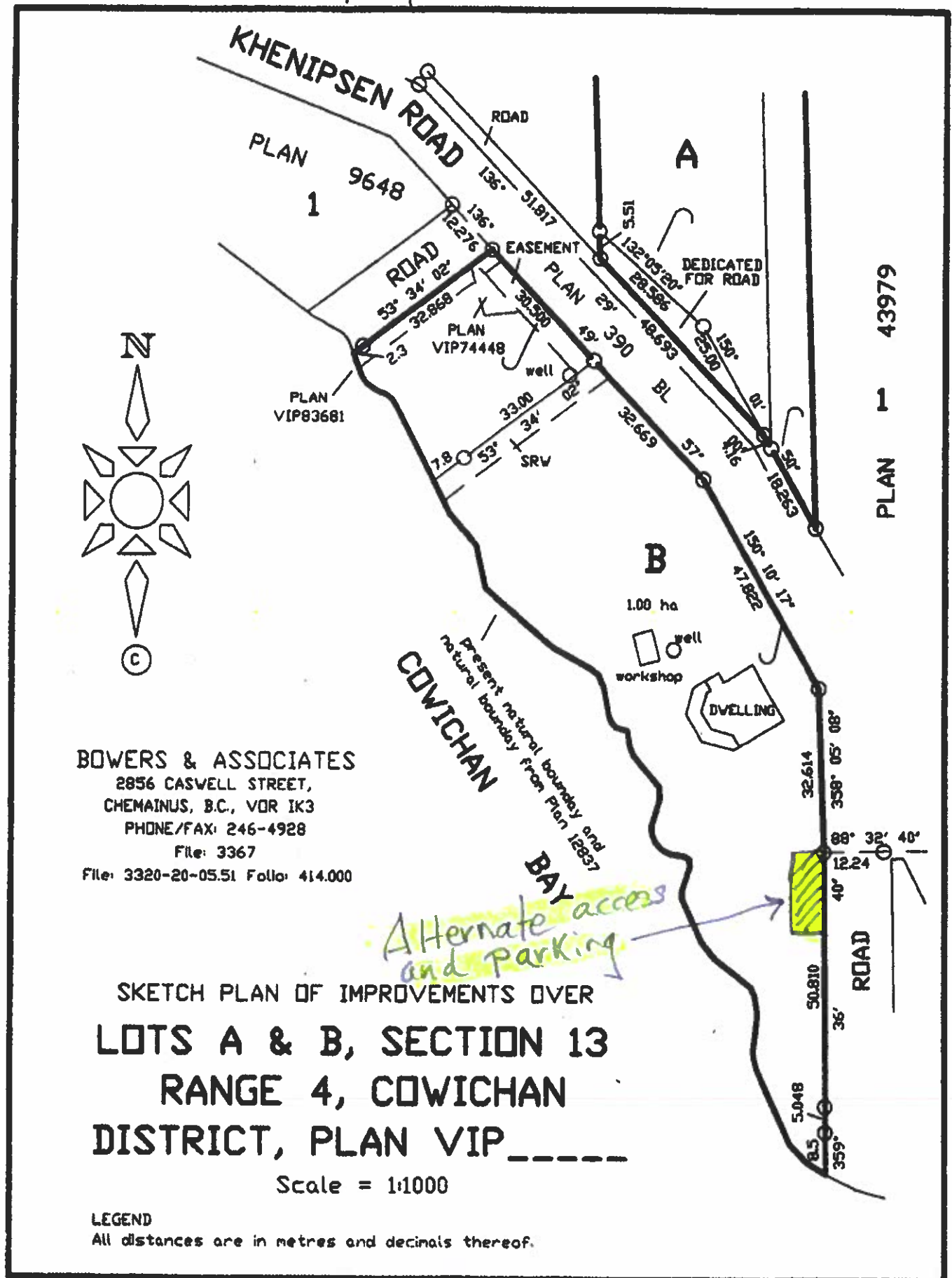


Figure 3 - Deck built on concrete piers



Figure 4 - Sliding door trim angled in relation to the roof







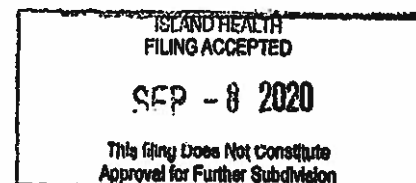
# RECORD OF SEWERAGE SYSTEM

		Filing # (OFFICE USE ONLY)		DC20/159	
1. Property Information	<input checked="" type="checkbox"/> New Construction <input type="checkbox"/> Alteration <input type="checkbox"/> Repair <input type="checkbox"/> Amendment – Original Filing #				
	Tax Assessment Roll # 00401-200			PID # 027-581-578	
	Legal Description (Plan, Lot, District Lot, Block Numbers) Lot B, Section 13, Range 4, Cowichan District				
	Street (Civic) Address or General Location 934 Khenipsen Road			City Duncan	
2. Owner Information	Name of Legal Owner		Mailing Address 934 Khenipsen Road		
	Phone	City Duncan	Prov BC	Postal Code V9L 5L3	
3. Authorized Person Information	Name of Authorized Person Henry Van Hell		Mailing Address 2944 Jackson road		
	Phone	City Duncan	Prov BC	Postal Code V9L 6N7	
	Registration # OW0012		Email		
4. Structure Information	Sewerage System Will Serve:				
	<input checked="" type="checkbox"/> Single Family Dwelling <input checked="" type="checkbox"/> Other Structure (specify) <u>+ cottage</u> <input type="checkbox"/> Other Dwelling (specify) _____				
The sewerage system is designed for an estimated minimum daily domestic sewage flow of (check one)					
<input checked="" type="checkbox"/> Less than or equal to 9,100 litres <input type="checkbox"/> More than 9,100 litres but less than 22,700 litres					
5. Site Information	Depth of native soil to seasonal high water table or restrictive layer (cm) <u>80+</u>		Information respecting the type, depth and porosity of the soil is attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
	GPS Location of System (decimal degrees) Latitude <u>48.762816</u> Longitude <u>-123.616365</u>				
	Horizontal Accuracy (m) <u>10</u>		<input checked="" type="checkbox"/> Recreational GPS <input type="checkbox"/> Differential GPS		
6. Drinking Water Protection	Will the sewerage system be located less than 30 m from a well? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
	If yes, attach a professional's report and specify the intended distance _____ (m) Distance of proposed sewerage system to the closest body of surface water <u>&gt; 30</u> (m)				
7. System Information	Sewerage treatment method <input type="checkbox"/> Type 1 <input checked="" type="checkbox"/> Type 2 <input type="checkbox"/> Type 3				
8. Legal or Regulatory Considerations	<input checked="" type="checkbox"/> Construction of the proposed sewerage system will not conflict with legal instruments registered on the property.		Is this filing submitted as the result of an order from the Health Authority? <input type="checkbox"/> Yes (attach a copy of the order) <input checked="" type="checkbox"/> No		
9. Plot Plan and Specifications	Plot Plan (to scale) and specifications are attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
	<input checked="" type="checkbox"/> The plans and specifications are consistent with Standard Practice Source of Standard Practice: <input checked="" type="checkbox"/> Ministry of Health Standard Practice Manual <input type="checkbox"/> Other				
10. Authorized Person's Signature	Signature		OFFICE USE ONLY		
	Date <u>July 16/2020</u>		Filing Accepted Date <u>Sept. 8/2020</u> Receipt Number <u>#247208</u>		

ENVIROSEPT LTD.

SEWERAGE SYSTEM DESIGN NOTES AND SUMMARY SPECIFICATIONS

Design	934 Khenipsen Road	Sunday, June 28, 2020
Revision	Rev. 0	Client: Owner
Notes	System selection and design based primarily on SPM V3 (September 2014) and supporting rationale and calculations (on file). See references for other sources of standard practice utilized.	
Introduction and objectives	<p>The owner intends construction of a repair sewerage system for an existing house and cottage to replace an existing dispersal system located below a garden, and Envirosept has been retained by the client to provide a design of the sewerage system.</p> <p>Objective of this report is to provide a suitable design for a Sewerage System including dispersal area on this site to serve the use defined below. Preliminary site and soil evaluation was carried out by Henry Vanriel RO/VP (site and soil evaluation summarized below, details on file) and serves as the basis for this design. See also plans (R0).</p> <p>Prior to and during installation, the designer may approve design changes. The designer and installer will prepare as-built drawings and specifications to confirm these changes.</p> <p>Unspecified or contradictory installation details should be confirmed with Envirosept (the designer). Certain items must be confirmed with Envirosept prior to or at installation or may be redesigned during installation by Envirosept; these are noted in these specifications or in the plans.</p> <p>For general installation, maintenance, monitoring and operation practice the installation is to follow the SPM V3.</p>	
Domestic water supply well setback	<p>Owner reports, survey plan and site evaluation did not identify any water wells within 30 m of proposed new sewerage system components.</p> <p>Ministry of Health policy allows for continued use of existing tanks installed within 30 m of water wells in a repair situation. All new components are to be installed outside the 30 m setback, and the existing tanks setbacks to wells must meet the previous 16 m setback standard for tanks to wells under the SDR and SPM V1 and V2.</p> <p>Prior to installation, the installer is to confirm that no domestic water supply wells are located within 30 m of any proposed new sewerage system component. If a well is found closer than this specified distance, the designer is to be informed and construction is to cease until instructions are provided.</p> <p>To manage risk from existing tanks, these tanks are to be inspected and watering limited as part of the repair, with upgrades as needed (e.g. sealed in pits).</p>	
Preliminary design	This is a preliminary design, and may be revised prior to or during system installation.	
Attached	<p>Drawings:</p> <p>Roof setting sheet for pump chamber.</p>	
Lot legal and GPS	Lot 8, Section 13, Range 4, Cowichan Districts, Plan VIP85366	
PID	027-581-578	<p>Easements or Covenants?</p> <p>Title on file, Easements and covenants on file. Owner indicates that no easements or covenants affect system placement in the proposed location.</p>
Development permit or environmentally sensitive areas	Any and all development permissions necessary for construction of the sewerage system and for connected facilities are the responsibility of the owner.	
Owners	R. Demarche and C. Hartwig	
Lot area (Acres)	2.5	Address: 934 Khenipsen Road, Duncan





# SYSTEM SELECTION

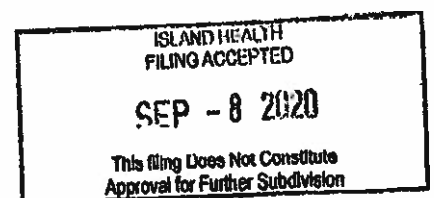
Item	Value	Constraint, opportunity, result	Solution and rationale
<b>Site, soils and site use</b>			
Use (existing and planned)	Type of use	Single family dwelling	As declared by owner, declaration on file. 2 bedroom house plus small 1 bedroom cottage.
	Number of bedrooms	2	
	Floor area (sq.m)	186	As declared by owner, declaration on file, for house. Cottage 390 sqft. Floor area
DDF Table II-8 (L/day)	Bedrooms and area	1000	
DDF other (L/day)		500	Seasonal cottage, 1 bedroom, based on Table II-9 using minimum 2 person occupancy for 1 bedroom house per table.
Effluent strength		Normal residential	No garburators, large tubs or water filter/softener bedwosh water to flow to the system.
Chosen DDF (L/day)		1500	ADF = 750 L/day on a weekly average basis.
Soil texture (<2 mm fraction)	Silty Clay Loam	Clay Loam, Sandy Clay Loam, Silty Clay Loam	Worst case soil, per TP2
Structure	Angular Blocky		
Structure grade	Strong		Table II-4.
Consistence	Soft		
Coarse fragment %	0	No HLR adjustment	s. III-4.1.2.2
Coarse fragment type	Gravel		
Different soil for LLR?	No		
Other soil notes			Surficial soils Loam and Sandy Loam, Favorable structure and consistence category. Selected soil type is worst case observed for the area.
Ks or Perc to be used?			
Ks (mm/day)		450	Note range of values very wide, risk of macropore flow in strongly structured SiCL soil results in recommendation for micro timed dosing.
Soil depth (cm)			Worst case, TP2
Slope %			10 to 12% slope through potential bed area, steepens in receiving area.
Temperature	Moderate Post War		High elevation site
Net positive evapotranspiration, mm/yr?	0	No ET, ETA, Exposure	Table II-6, Farmwest
Rainfall, mm/year	1039	No HLR adjustment	s. III-4.1.4. North Cowichan (Duncan Forestry Station), Environment Canada
<b>System selection and loading rates</b>			
Soil constraints?	Table II-5	Type 1 VS > soil depth Type 2 VS > soil depth	Not suitable for gravity distribution
	Table II-6	Gravels beds allowed in areas with slope up to 15%	SDD OK
	Table II-7 notes	No further constraints	Risk of macropore flow.
Soil depth and VS options, distribution and dosing options	Type 1, gravity dist.	Type 1 VS > soil depth	Not suitable for gravity distribution
	Type 1 or 2 pressure dist., micro timed dose, Table II-16	Native soil 45 cm Total 55 cm	Type 2 selected, for selection of simplest solution which will result in narrow bed (to address site slope and available area) and to allow inclusion of a nitrogen removal method necessary as part of custom horizontal separation to the ocean. Selected Type 2 treatment plant will provide effective nitrogen removal, reducing risk of impact on receiving area.
	Type 1 or 2 SDD, micro timed dose, Table II-17	Native soil 45 cm	SDD selected to address land shape and reduce impact on trees and landscaping. Dispersal to native soil selected as native soil depth adequate. Type 2 treatment favors use of SDD.
	Selected option	Native soil 60 cm min.	Based on 20 cm trench depth for SDD installation (15 to 20 cm depth recommended)
Horizontal separation constraints?	Water supply well	> 30 m to dispersal area and tanks	Meets SPM and SSR standards
	Permanent fresh water	> 30 m to all components	Meets SPM standards. Note 30 m SPEA to permanent fresh water (see plan).
	Ocean to dispersal area and risk of breakout to dispersal area	> 6 m	SPM standard 15m for ocean, 7.5 m for breakout. Custom, performance based, HS rationale (based on consideration of performance in treatment and in design VS) by Ian Ralston Eng.L on file. VS established as surrogate for performance monitoring, see below for VS monitoring requirement. Direct monitoring of treatment plant N removal performance also specified.
	Other separations	Meet SPM standards	
HLR for Type 2 or sand media system basal area (mm/day)	Table II-22:	25	
	Table II-23:	40	
	Adjusted:	25	Adjustment for coarse fragment content and or rainfall not necessary
	Selected HLR:	25	
	SDD HLR:	17.5	
Minimum system contour length	VS for LLR (cm)	60	Minimum
	Table II-26	Use LLR tables	
	Table II-27 (L/day/m)	30	
	Table II-28 (L/day/m)	30	

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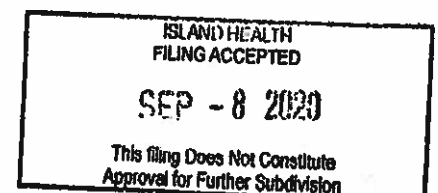
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	Tabular LLR (L/daym)	50	
	Selected LLR (L/daym)	50	HLR conservative in relation to measured permeability
	Min. length, m	30	
Length constraint?	Max. contour length available (m)	35	
	Bed length for AIS (m)	30	
Dispersal area size options	Native soil, SDD Type 2 AIS (square metres)	85.7	

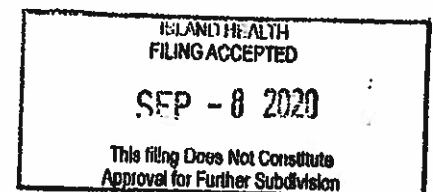


Dispersal area sizing and system summary (further system selection rationale on file)			
Dispersal area sizing	Subsurface Drip Bed, Type 2	In native soils	Hydraulic design on file.
	Effective width of dripline (m)	0.6	
	Bed length (m)	30	100 ft per lateral
	Number of runs of dripline	5	5 laterals each with one run
	Line spacing (m)	0.6	0.3 m emitter spacing specified to reduce HAR per emitter and so improve performance.
	Resultant HLR (mm/day)	17	Maximum.
	Number of laterals	5	
	Length of dripline, total (m)	151.5	
	ft.	497	500 ft. target.
	Vertical separation @ dose		Section drawing not included as system profile is simple, with dripline in native soils. VS is based on worst case soil depth, greater VS is expected based on proposed system placement.
Other considerations	Native soil (cm)	60	Minimum target. VS monitoring to be in place, with minimum VS of 30 cm at all times to meet requirements of custom VS/HS rationale and SPM standards bests.
	Total constructed (cm)	60	VS for monitoring minimum 30 cm per SPM standards rationale.
System summary	Chosen septic tank size (L)	To be confirmed	
	Minimum septic tank size (L)	4500	For Type 1 system, minimum total.
	Treatment	Septic tank and effluent filter followed by Type 2 treatment	Existing septic tanks to be assessed and re-used if usable, with suitable upgrades. Treatment method with improved N removal as part of custom HS rationale.
	Flow equalization	Micro timer dosing with strict flow equalization	No overflow above BDF.
	Dispersal	500 to native soils	With sand media amendment if necessitated by conditions during installation.
Summary of site use and capability constraints addressed by specified system		See notes above. Simplest system to meet site capability constraints and to avoid impact on trees and landscaping.	



## SPECIFICATIONS

Stormwater from site and house	All stormwater flows, including that from perimeter drains, gutters and hardscape areas, are to be diverted away from the tank and field areas.
Collection system	Pre installed sewers to be re used, installer may camera check the sewers to address risk of infiltration.
Primary treatment	See drawings for inspection and re use of existing tanks, if existing tanks are not reusable the designer will specify replacement tanks.
Secondary treatment	Bionest BN400 in Dans Precast 1100 IG tank. With 120 V recirculation pump and recirculation in tank. Bionest panel to be mounted with Geoflow panel. Set recirculation at 10 min per hour initial setting. Blower in SDD headworks box (drain box, blower to be located to avoid drips from lid of box), locate blower above treatment tank lid elevation and ensure piping slopes down from blower to tank. Install 0-5 psi pressure gage at blower outlet to permit monitoring. Ensure tank is adequately vented via existing tanks, sewers and plumbing, or install dedicated carbon vent filter.
Dosing tank	Dans Precast 600 IG, low profile, single compartment. Ensure tank area is adequately drained to prevent flotation of tanks. Install dosing tank to allow surcharge to treatment tank (minimize fall tank to tank). Vent inlet riser of dosing tank to outlet riser of treatment tank using 2" Sch40 PVC pipe. Seal pipe penetrations with grommets.
Tank installation, new tanks.	All tanks with risers to grade, slope ground away from risers. Fully compact under or otherwise support all pipe connections. Place septic tank on min. 10 cm thickness of pea gravel. Compact fill around tank. Backfill to be permeable material that will retain permeability after compaction, reject birdseye is one option. Install drainage to protect tank area, ensure drainage will reliably maintain water table at tank base or maximum 10" above tank base. Install tanks to allow surcharge from pump chamber to treatment tank (minimize fall tank to tank) to allow for increased alarm reserve volume.
Tank access	Tank to be provided with sealed risers to min. 5 cm above finished grade. Riser with sealed lids. Cast 24" Orenco riser bases (adapter rings) into tank lid, no concrete lip inside. Riser pipe 24" UltraRib, lids TuffTite or Polylok HD secured with stainless steel screws. Attach riser pipe to Orenco bases with PL Premium adhesive and 4 of stainless steel #10 screws from the inside of the riser out through the adapter ring.
Tank watertight testing.	All tanks to be watertight tested before or after installation. Follow the SPM V2 procedure and report test results to the designer.
Dosing system	Pump Myers 10MD05121 (0.5 HP, 120VAC) installed vertically on base of tank. See schematic drawing. Pump control by timed dosing, 4 float control with SJE Rhombus Sensor Floats (20SWENO), externally weighted. Support floats on site built pipe bracket attached to riser. Control panel Geoflow GEO151MAUT (simplex, timed dose). If panel is mounted on post at tanks, protect from rain with a small roof. All electrical work to BC Electrical Code. Pump discharge and electrical connection via riser, seal pipe penetration with grommet. Electrical connections through SJE Rhombus 2.5" cord seal assembly and hub.
Float settings	See attached float setting worksheet. Confirm panel settings with designer at commissioning.
Piping installation	All piping installation to meet SPM standards and Plastic Pipe and Fittings Association guidelines.
Trench scarification and cover soil	Due to soil type it is critical that dripline trenches are excavated only when soil is dry, and that trench base and sides are scarified by using a Garden Weasel or other pre approved method that involves a picking action. Trench depth below existing grade 15 cm minimum 20 cm maximum. Where native soil is lost during trenching, scarify dripline trenches and combine native soil with pre approved fine sand media or cover soil to meet SPM standards, ensure minimum settled depth over dripline 20 cm. Do not install dripline in media or cover soil without scarifying trenches.
Primary monitoring provisions	OM plan to establish the following monitoring requirements: - Monitoring of treated effluent at sampling port at drip headworks to meet 10/10 mg/L median and 45/45 mg/L max. BOD and TSS. - Monitoring of treated effluent at sampling port at drip headworks to meet <20 mg/L median total nitrogen - Monitoring of VS to meet 60 cm normal and 30 cm acute minimum



## REFERENCES

The following documents were the principal sources of reference for standard practice in this design.

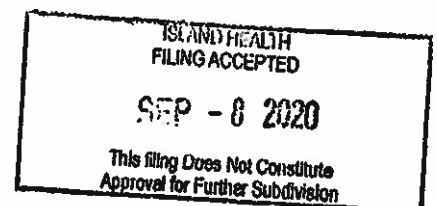
The BC SEWERAGE SYSTEM STANDARD PRACTICE MANUAL Version 2, September 2014, Ian Rablton, advised by Ministry of Health, And supporting rationale documentation and calculations (on file).

The BC SEWERAGE SYSTEM STANDARD PRACTICE MANUAL Version 2, 21st September 2007, Ian Rablton, advised by Ministry of Health, Population Health and Wellness Health Protection.

LEAK, EDC, 1995, Wastewater engineering design for sewerage works, Technical.

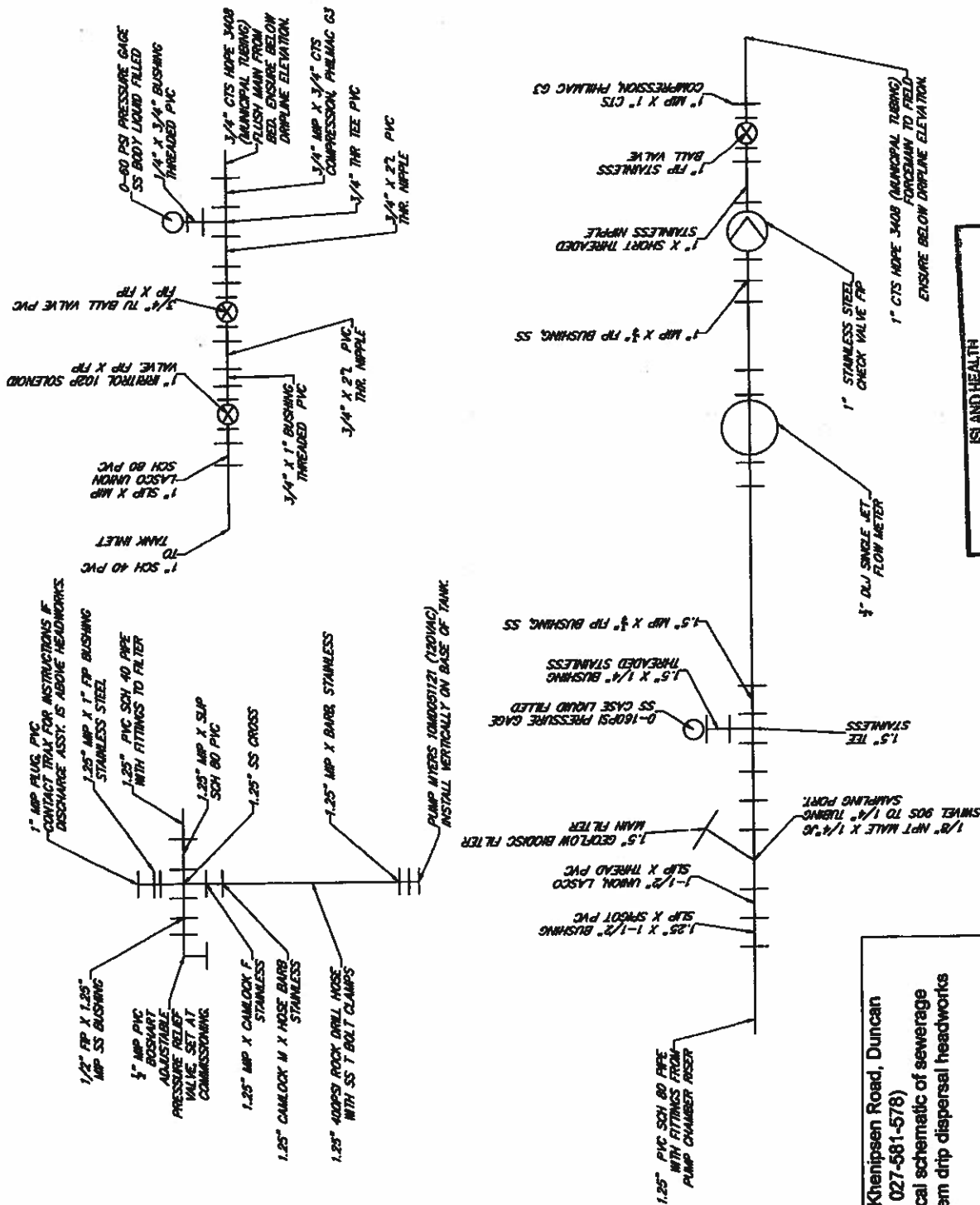
Design Guidance for Large Subsurface Wastewater Treatment Systems 0.5133, Minnesota Pollution Control Agency, Version: 03-08-2005.

Custom HS for separation to ocean and or treatment was developed by Ian Rablton Eng. In accordance with ECSC guidelines and following SPM rationale basis and performance objectives. On file.





**SCHEMATIC OF HEADWORKS (TYP) (NTS)**



Filter and ancillaries plus flush line connection are installed in valve box at pump chamber (see plan for approximate location). Valve box with pea gravel base on drainage sand connecting to tank area drain.

Ensure headworks below dripline elevation.

Blowdisc filter installed with filter body facing up.

Ensure flush and close forcemains are below dripline elevation to prevent drain down to field, or refer to designer for specification.

Take flush return line through side of inlet riser on top of trash tank. Install union plus a 90 with MIP x slip adapter. Direct flow onto inside of inlet tee.

Set pressure relief valve at commissioning, approximate setpoint 75 psi.

Ensure forcemains and manifolds are not affected by settling of sand media or other fill.

Pump discharge assy. specified with hose to manage risk of movement of pump in plastic tank.

All unspecified PVC fittings Schedule 80. Stainless to stainless joints may be made using Loctite 560.

Blowest blower may be installed in headworks valve box, ensure not below drips from lid.

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NOTES:

Confirm with designer at final layout.

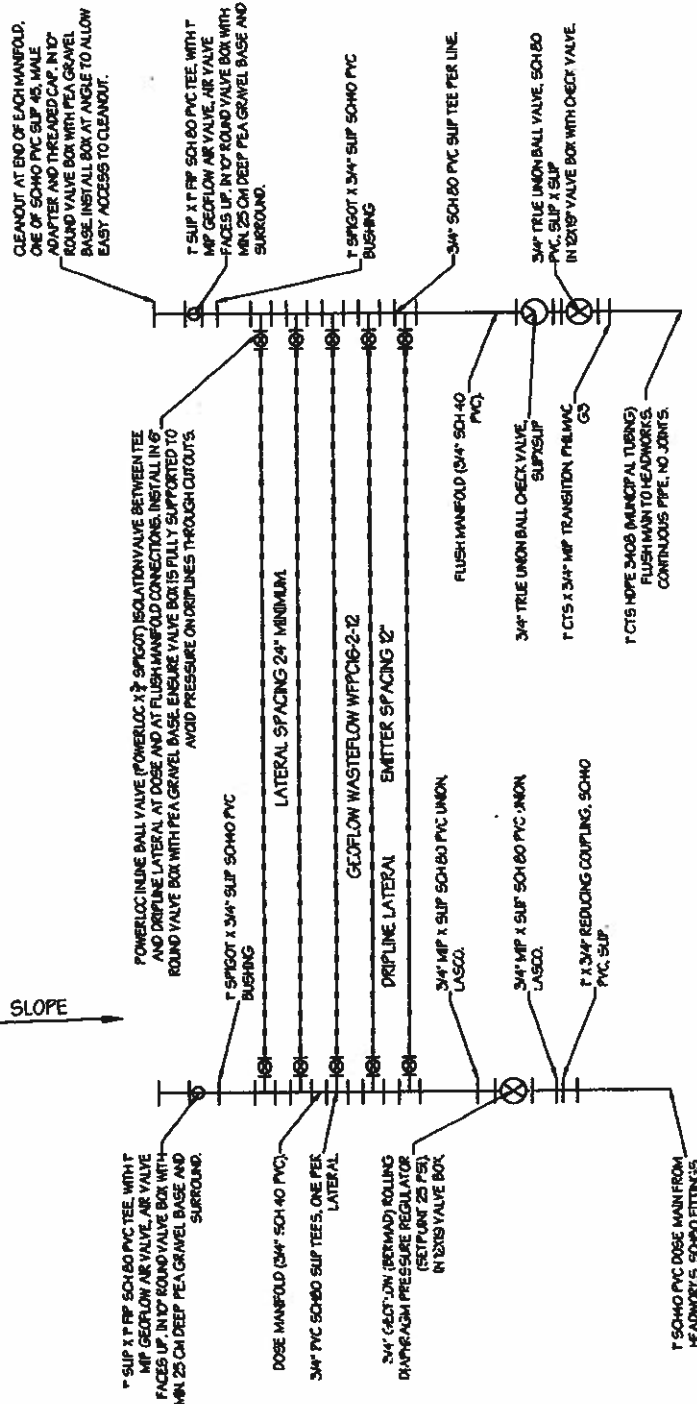
934 Khenipsen Road, Duncan  
(PID 027-581-578)  
Typical schematic of sewerage  
system drip dispersal headworks

Drawn by IPR for Enviroscop

20 June 2020 RO

C - SCHEMATIC OF 5 LATERAL DRIFTFIELD BED (TYP)

NTS



NOTE

- Typical layout with 5 laterals with one run each. Run length nominal 30 m (300 ft total dripline length) Run spacing 60cm (24") minimum. All connectors Geoflow Lockup or approved equal.
- Confirm longer laterals and other configuration changes with designer. Do not alter pipe sizes or equipment specifications without pre-approval by designer.
- Manifolds and force mains shown schematically for clarity only.
- All unspecified PVC fittings Sch 80.
- Ensure force mains and manifolds fully supported to avoid differential settlement issues at manifolds. Valve bases and manifolds may be protected by covering with select native soil fill.
- 50' installed level from dose to flush manifold. Run to slope across bed parallel to ground surface. Manifolds to be installed with air valves at highest point. Air valves installed in 10" round or common 12 x 15" valve box with pea gravel base.
- Pressure regulator, and flush isolation valves in 12 x 19" valve boxes with pea gravel sump.
- Dose and flush mains to be installed below dripline elevation. If this is not practical, contact the designer for revised specifications.
- Protect field area to prevent vehicle traffic on the dispersed area. During vegetation establishment it may be necessary to utilize erosion control matting and to use temporary fencing to prevent damage by deer.

NOTES:  
Confirm with designer at final layout.

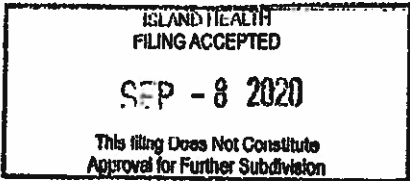
834 Khenippen Road, Duncan  
(PID 027-581-578)  
Typical schematic of sewerage  
system drip dispersal distribution  
system.

Drawn by IPR for Envirosept.  
28 June 2020 RD

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Layout shown is schematic and does not show all details of proposed site use. Layout must be approved by the designer prior to construction.

See specifications and design notes (PD) for details.

**Designer must be retained to field review construction and may make changes to the design based on observed conditions. See design notes.**

**TANKS:**

**See specifications**

Existing tanks are within 30 m of well, however based on Ministry of Health policy continued use of this tank as part of a repair system is allowable. All new tanks and dispersal components are to be over 30 m to the well.

**Existing tanks:** One at house, one for cottage as shown. To be inspected and if suitable, re used. Tanks to be watertight tested and tank lid joint to be watertight. Contact designer for revised specification of one or both tanks are not re usable. Ensure tank lids, access and effluent filters meet SPM standards, confirm effluent filter specification after inspection. Tank lid replacement may be necessary.

**New treatment tank, 1100 IG Dams Precast, 96" square tank with inlet invert at 42" Bloniest BN400 treatment system.**

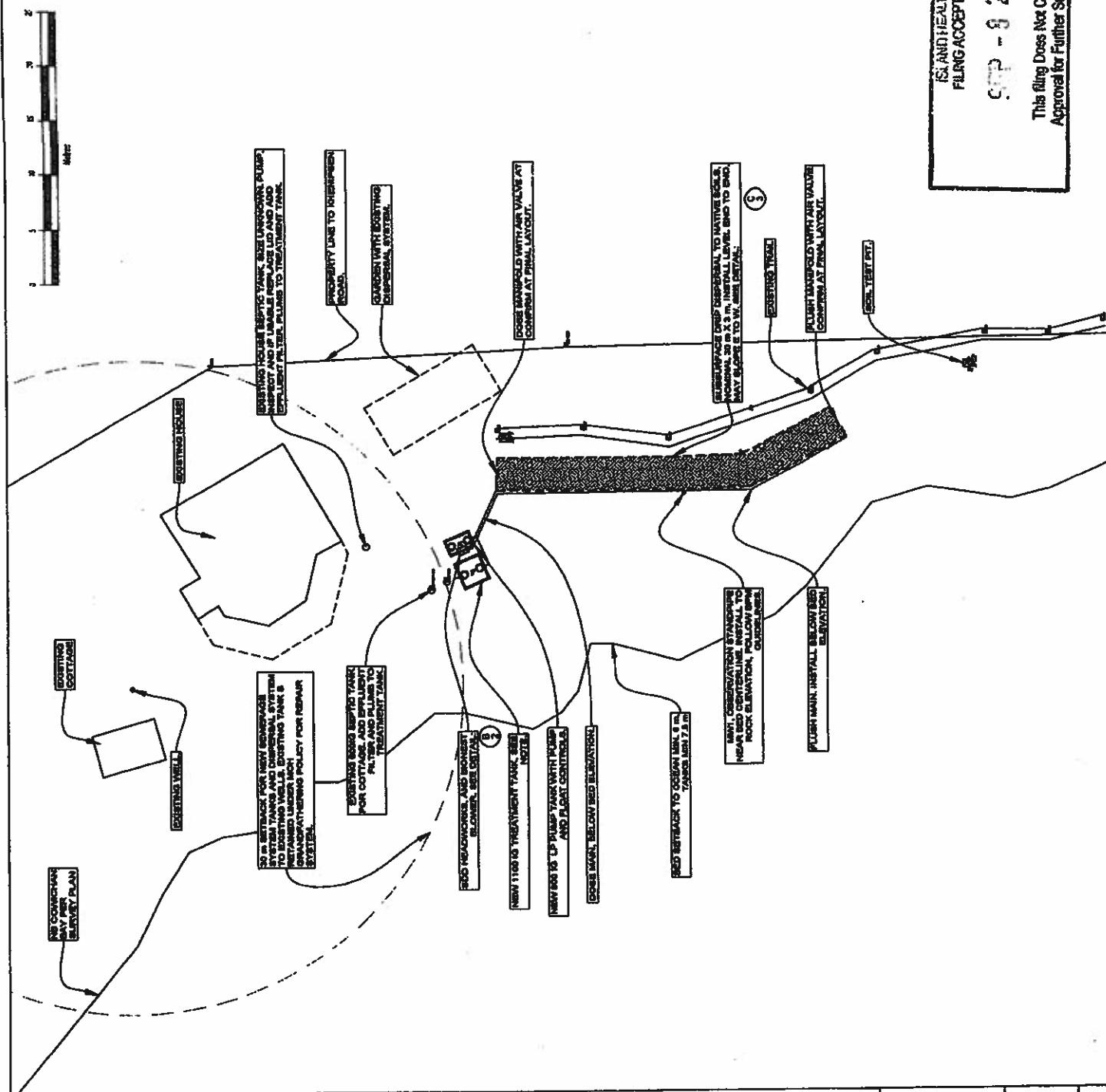
New pump tank, Shallow profile 600 IG, 60" w x 96" L, inlet elevation 40" from outside base.

9334 Khenipsen Road, Duncan  
(PID 027-581-578)  
General arrangement of sewerage  
system showing part of lot.

Drawn by IPR for Envirocept. Based on Bowers and Assoc. lot survey plan, and approximate field measurements.

28 June 2020 R0

Page 1 of 3

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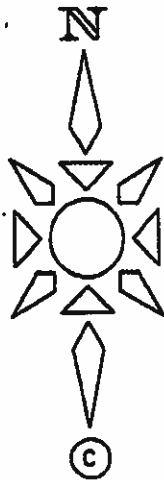
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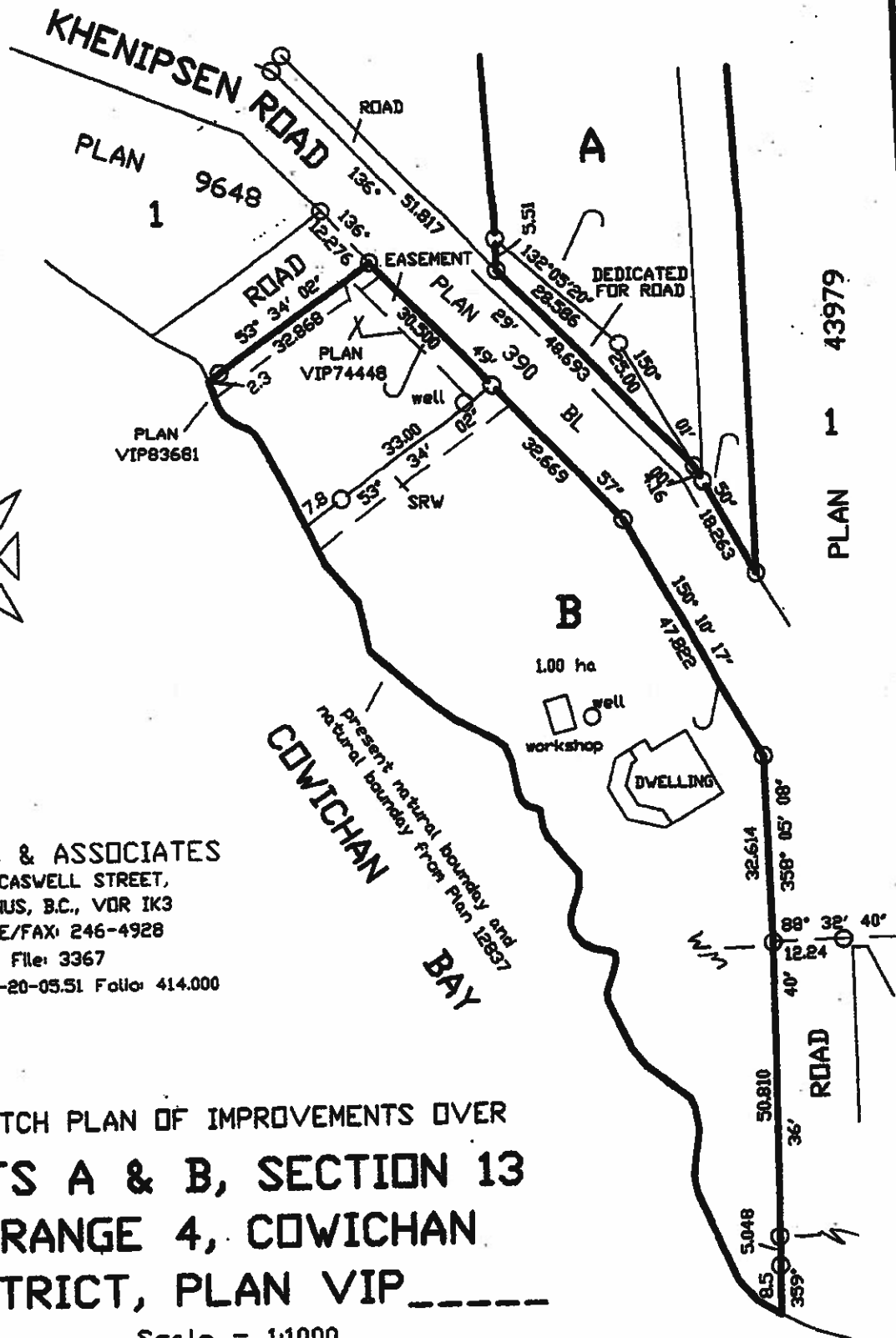
**BOWERS & ASSOCIATES**  
2856 CASWELL STREET,  
CHEMAINUS, B.C., V0R 1K3  
PHONE/FAX: 246-4928  
File: 3367  
File: 3320-20-05.51 Folio: 414.000

**SKETCH PLAN OF IMPROVEMENTS OVER  
LOTS A & B, SECTION 13  
RANGE 4, COWICHAN  
DISTRICT, PLAN VIP\_\_\_\_\_**

Scale = 1:1000

**LEGEND**

All distances are in metres and decimals thereof.





## Property Owner's Declaration

### Property Information

Legal description Lot B, Section 13, Range 4  
COWICHAN DISTRICT PLAN VIP85366

Common Address 934 Khenipson Road  
Duncan, B.C. V9L 5L3 Lot Size: 2.5 hectares/acres  
STREET NUMBER/STREET NAME CITY / PROVINCE / POSTAL CODE

### Property Tax Information:

P.I.D. # 027-581-578 Folio. # 00401-200  
TAX ASSESSMENT ROLL NUMBER

### Owner Information

Legal owner's name

Owner's mailing address

CITY / PROVINCE / POSTAL CODE

Owner's Phone

Work:

Residence:

### Building Information

Type of Facility (check one): ☒ Residence ☒ Other (describe) Cottage

Size of Building:	Residence Living Area	
	FEET <sup>2</sup>	M <sup>2</sup>
Basement	<u>900sq'</u>	
Main floor	<u>1100sq'</u>	
2nd Floor		
3rd Floor		
Total area	<u>2000sq'</u>	

Other Facility (Total Area)	
FEET <sup>2</sup>	M <sup>2</sup>
<u>390sq'</u>	

# of bedrooms	<u>2</u>
---------------	----------

1700 sq' garage

1 bedroom

Total 3 bedrooms.

ISLAND HEALTH  
FILING ACCEPTED

SEP - 8 2020

This filing Does Not Constitute  
Approval for Further Subdivision

### Planned Uses

1. If the basement is unfinished, what is its intended use? office + spare room
2. Does the basement have plumbing or electrical provisions to add a separate living suite? ☐ Yes ☒ No
3. Do you plan on having a Bed and Breakfast or suite? ☐ Yes ☒ No  
If yes, please provide details: \_\_\_\_\_
4. Do you plan on having an in-sink garbage disposal unit? ☐ Yes ☒ No
5. Do you plan on having a water softener? ☐ Yes ☒ No

### Other Information

Do or will you have a well? ☒ Yes ☐ No

If No, source of domestic drinking water is: \_\_\_\_\_

If Yes, what is its location: Adjacent to cottage

Location of neighbouring wells: wells are located 100 ft. & 125 ft. away

Are there any covenants or easements on property? ☒ Yes ☐ No

### Items to be Provided by Owner

The following items are to be provided by the Owner prior to the start of a site assessment and the Owner agrees herein to supply them at their expense:

1. Plans and specifications of building, site access and landscaping plans.
2. Plot plan or lot survey
3. Signed contract to authorize planner to begin work
4. Land Title's Search results
5. Reference plans and terms of any covenants or easements
6. Location of all existing services.
7. Copies of any/all registered covenants or easements

### Declaration Statement

I/We, the undersigned declare that I/we are legal owners of the above described property and the information given above is true and accurate for the purpose of planning, designing, constructing and maintaining a Sewerage System for said property, and that any changes, alterations or amendment to this above information will be provided to the "authorized person," as defined in the B.C. Health Act, Sewerage System Regulation 324/2004, in writing immediately prior to any installation of a sewerage system.

Signature of Owner(s)

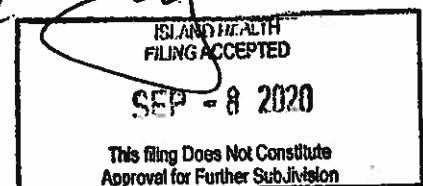
Date of Declaration: May 7, 2020

Raymond A. Demarchi  
PRINT NAME

SIGNATURE

Carol Lee Hartwig  
PRINT NAME

SIGNATURE



# 1 Location: 100 ft. deep Slope: 10°-12°  
 Handwritten: Handwritten Resistant to weathering  
 Handwritten: very hard

From	To	Colour	USDA Texture (s,l,cl,c)	Rocks (gr,cb,sl, v=very)	Coarse Gravel (%)	Structure		USDA Consistence	Density (t.c.d) Consistency (vs.s,l,h,vh)	Rocks		Mottles			Moisture (S,W,M,D)
						Type (gran, blocky, platy, wedge, prism, column, s.g., mass)	Grade (0,1,2,3)			Quant (t.c.m)	Size (f,m,c)	Depth	Quant (f.c.m)	Contrast (F,D,P)	
0	10	Black	L	gr	5	blocky	3	L	S	M S	S	<del>0</del>	<del>0</del>	<del>0</del>	D
10	90	0 Brown	SL	gr	5	blocky	3	L	S	M S	S	<del>0</del>	<del>0</del>	<del>0</del>	D
Hand dug depth is unknown															

# 2

Location:

Elevation:

Slope:

From	To	Colour	USDA Texture	Rocks	Coarse Gravel (%)	Structure		USDA Consistence	Density Consistency	Rocks		Mottles			Moisture
						Type	Grade			Quant	Size	Depth	Quant	Contrast	
0	15	black	L	gr	5	blocky	3	L	S	M S	S	<del>0</del>	<del>0</del>	<del>0</del>	D
15	81	brown	SL	gr	3	blocky	3	L	S	S BMK	S	<del>0</del>	<del>0</del>	<del>0</del>	D

ISLAND HEALTH  
 FILING ACCEPTED  
 000 - 8 2020  
 This filing Does Not Constitute  
 Approval for Further Subdivision

Bold Headings: Apply only to cohesive soils (silt or clay). Coarse gravel is > 19 mm (0.75 in).

File: Khenyzen Rd

Date: May 07/2020

MEMORANDUM	
<b>To:</b> PDB	<b>From:</b> CDJ
<b>Client:</b> Demarchi & Hartwig	<b>File:</b> 205046
<b>Re:</b> Interpretation of Easement	<b>Date:</b> April 9, 2020

## ISSUES:

1. Does the wording of the easement registered on title on Lot A restrict our client's use of the property on Lot B?
2. Is there a risk that the owner of Lot A could apply to have the easement cancelled as a result in the change in the use of Lot B?
3. Is the owner of Lot A able to restrict the use of the easement to the purposes stated in the original grant?
4. If the owner is wrongfully restricting access to Lot B, what is the remedy?

## SHORT ANSWERS

1. *Does the wording of the easement registered on title on Lot A restrict our client's use of the property on Lot B?*

No.

The instrument is an easement; not a restrictive covenant. A restrictive covenant is a burden to land whereas an easement is positive in nature. Since this is an easement for the benefit of our client's land, it cannot be used as an instrument to restrict the number of buildings on our client's land.

At law there is a distinction between a positive and negative easement. A positive easement gives the owner the right to do a positive act on another's land (i.e. drive a car). A negative easement imposes a restriction on the use an owner may make of his or her land. The registrar endorses a negative easement as a restrictive covenant. This is quite clearly a positive easement.

Even if the easement were to be interpreted as a restrictive covenant, which is highly unlikely, our clients would be able to apply to modify the restrictive covenant to allow additional buildings to be constructed on the lot. When determining if there should be a

modification to a restrictive covenant, the courts will consider whether a restrictive covenant impedes the land owners reasonable use of the land without any practical benefit to others, as seems to be the case here.

As the easement is positive in nature, it does not impose any obligations on the use of our client's property. Our client is at liberty to build and rezone their property without restriction from the owner of the adjoining lot.

**2. *Is there a risk that the owner of Lot A could apply to have the easement cancelled as a result in the change in the use of Lot B?***

No.

In order to cancel or modify an easement, the registered owner of Lot A will have to satisfy the test set out in section 35 of the *Property Law Act*. This is a difficult test to meet as it requires the petitioner to show that there has been a change in the character of the land or neighbourhood that renders the easement obsolete. The petitioner must prove one of four criteria:

- (a) the petitioner's use is impeded by the easement without benefit to others;
- (b) the persons who have benefit of the easement have expressly or impliedly agreed that the easement be modified or cancelled;
- (c) the modification will not injure the person entitled to the benefit of the registered charge or interest; or
- (d) the easement registered on title is invalid or unenforceable;

The case law is clear that in order to be successful, the petitioner must present sufficient, detailed evidence of prejudice to the servient tenant for the court to conclude that the prejudice outweighs the rights of the dominant tenant. The court will not cancel an easement on the grounds that it is obsolete where the easement still serves a purpose, or in the absence of evidence that the easement impedes the reasonable use of the land by the petitioners: *Kasch v. Goyan*, (1992), 87 D.L.R. (4<sup>th</sup>) 123 (B.C.S.C). In this case it is highly unlikely that this test will be met given the extreme prejudice to our client.

**3. *Is the owner of Lot A able to restrict the use of the easement to the purposes stated in the original grant?***

Not likely.

The case law is clear that where an easement grants a right of way, with no express restriction on use, an increase in use is not objectionable as long as the increase in use is contemplated at the time the easement was granted. The issue here is that the easement is restricted to the "reasonable use of a single family dwelling". Where an



easement restricts use and use is extended beyond the dominant tenement's legal use the court may grant an injunction restraining the use.

## CASE LAW

Where an easement is created by an express grant, the extent of the easement is determined by the wording of the instrument creating the easement considered in the context and circumstances that existed when the easement was created. If the use of the easement remains of the same general nature, even if there is an increased burden on the servient owner by virtue of more frequent use, the more frequent use can reasonably be said to be within the contemplation of the parties at the time of the grant: **1637063 Ontario Inc. (c.o.b. Markham Road Medical Centre) v. Markham (City)**, 2019 ONSC 7511.

This was also stated at para 3 of **Almel Inc. v. Halton Condominium Corporation No. 77**, [1997] O.J. No. 824:

Where a right of way has been created by express grant, the scope of permissible use depends on the words used. The circumstances existing at the time of the grant may also be looked at to construe the nature and extent of the rights conveyed. see *Laurie v. Bowen*, 1952 CanLII 10 (SCC), [1953] 1 S.C.R. 49. In the case of a general grant, as here, the permissible use is not limited to the original use. Although the owner of the dominant tenement cannot alter the type of use of the right of way beyond its original scope, the burden on the servient tenement can be reasonably increased so long as the use is of the same general nature, and it can reasonably be said to have been in the contemplation of the parties at the time of the grant.

To make this determination, the court will consider:

- (1) whether the grant of the easement was limited to the particular purpose; and
- (2) whether the change in the use of the land increased the burden on the servient tenement.

In **Temple Kol Ami v. Elm Thornhill Woods Inc.**, 2008 O.J. No. 2286 the court stated

The use of a right-of-way must be within the terms of the grant or accustomed use (in the case of a right acquired by implied grant, implied reservation or prescription), and it must be reasonable. As a general rule the use of a right of way depends on the nature of the servient land and the purposes for which the right-of-way is intended to be used. If the grant of a right-of-way is not limited to a particular purpose, or if a way has been used for several purposes, a general right-of-way may be inferred. However, this will not be the case where the evidence shows intended use for particular purposes only.

There are certain general limitations on the use of a right-of-way:

- a. a right-of-way to one property does not include a right-of-way to a place beyond that property.
- b. the owner of the dominant tenement is restricted to the legitimate use of the right; and
- c. the burden on the owner of the servient tenement cannot, without their consent, be increased beyond the terms of the grant or, where the right of way based on implied or prescriptive rights, beyond accustomed use.

At para 49 the court states:

Can the initial grant be read to contemplate the possibility of a change in the nature of the use of the easement, or are the rights frozen at the time of the grant? Naturally, the grantee is not entitled to increase the burden on the servient land beyond the rights initially conveyed, but may have been contemplated or taken as implied that the easement's use would change over time. If so, an apparent increase in the burden can be a valid use of the initial right. For example, in *Laurie v. Winch* [[1953] 1 S.C.R. 49], farmland (the dominant tenement) was subdivided into residential lots. The easement, which was granted as a perpetual right of way over a slender lot near the farm, was split into a larger number of easements, each of these being attached to each new lot. The Supreme Court of Canada treated this diffusion as valid. There was nothing to suggest that it was contemplated that the lands would always be for agricultural purposes, or that changes in the use of the dominant lands would affect the continued use of the easement.

In Halsbury's Laws of England at p. 26, the law is stated:

The nature and extent of an easement created by express grant primarily depend upon the wording of the instrument. In construing a grant of an easement regard must be had to the circumstances existing at the time of its execution; for the extent of the easement is ascertainable by the circumstances existing at the time of the grant and known to the parties or within the reasonable contemplation of the parties at the time of the grant, and is limited to those circumstances. Consequently, if those circumstances are subsequently altered so that there is a radical change in the character or identity of the user or of the dominant tenement, the altered user cannot be justified. However, a mere increase in user is unobjectionable, and thus the dominant owner will not necessarily be limited to the precise circumstances actually in existence at the time of the grant. The distinction is between a mere increase in user and a user of a different kind or for a different purpose, evolution or mutation.

In *Stella Psarakis Medicine Professional Corporation v. Gonnissen*, 2015 ONSC 25, the court states at paras 29-30:

29 As referred to in the discussion regarding the scope of an easement, its usage is contextual, reasonably and objectively contemplated. A mere increase in usage is distinguishable from a use of a different kind or for a different purpose. The latter can be of such a magnitude that the rights of the servient tenement to use this land is substantially interfered with and is beyond the scope of the right of way (Granfield v. Cowichan Valley Regional District [1996] B.C.J. No. 261; 71 B.C.A.C. 81, at paras. 45, Malden Farms v. Nicholson, [1955] O.J. No. 616; 3 D.L.R. (2d) 236.

30 "Overburdening" a right of way by a dominant tenement is closely akin to non-contemplated or excessive use. It is a usage which is destructive of or impairs the use by the servient tenement.

In our case the stated purpose of the easement at the time of grant was for to provide access for vehicle and pedestrian traffic to pass and repass for the purposes of meeting the "reasonable needs of the single family residential dwelling located on the Dominant Tenement". Arguably, this is a mere increase in usage and it is distinguishable from a use of a different kind or of a different purpose. There is some uncertainty as there is a limitation in easement for the purpose of the reasonable needs of a single family residential dwelling. I could not find a case dealing with this restriction specifically. Overall the court will look to whether the usage of easement is contextual, reasonably and objectively contemplated at the time the grant was entered into. Since our client granted the easement to themselves in this case, it would be relatively easy to establish that they contemplated the potential construction of a second residence.

#### ***4. What is the remedy for unreasonable interference with a dominant tenement's easement rights?***

The law is clear that the servient tenant must not deal with the dominant tenant in a manner that would render the easement over it incapable of being enjoyed or more difficult to enjoy. This would include any measures that would restrict our client's use of the easement, and would include the use of the easement by guests and other residents of the property.

A wrongful interference with an easement, including any obstruction of the easement, constitutes a nuisance. A nuisance is an injury done to a person in possession of property whereby their enjoyment of the land is adversely affected and may entitle our client to damages. Our client may also be able to apply for injunctive relief.

To be actionable, interference with an easement or right of way must substantially interfere with the dominant tenement owner's ability to use the right of way for the

purposes identified in the grant. There is no actionable interference with a right of way if it can be substantially and practically exercised for the purposes identified in the grant as conveniently after as before the occurrence of the alleged obstruction.

## **CASE LAW**

***Temple Kol Ami v. Elm Thornhill Woods Inc.*, 2008 O.J. No. 2286**

- the easement granted right of way to a property, the purpose of the easement was to allow access to a synagogue. The synagogue was never constructed. Condominiums were built instead.
- In this case the easement never stated that it was to be provided to the patrons but to provide access to the property generally.
- The respondent argued that the easement was extinguished because of the change in use of the property. The respondent also argued that the change in use of the easement increased the scope of the easement without their consent.
- The trial judge and the court of appeal dismissed this argument.
- At paragraph 48 the court states:

The use of a right-of-way must be within the terms of the grant or accustomed use (in the case of a right acquired by implied grant, implied reservation or prescription), and it must be reasonable. As a general rule the use of a right of way depends on the nature of the servient land and the purposes for which the right-of-way is intended to be used. If the grant of a right-of-way is not limited to a particular purpose, or if a way has been used for several purposes, a general right-of-way may be inferred. However, this will not be the case where the evidence shows intended use for particular purposes only.

There are certain general limitations on the use of a right-of-way:

- d. a right-of-way to one property does not include a right-of-way to a place beyond that property.
  - e. the owner of the dominant tenement is restricted to the legitimate use of the right; and
  - f. the burden on the owner of the servient tenement cannot, without their consent, be increased beyond the terms of the grant or, where the right of way based on implied or prescriptive rights, beyond accustomed use.
- At para 49 the court states that a prime consideration in construing the breadth of an easement is the purpose for which the grant was initially made. The court goes on to say:

Can the initial grant be ready to contemplate the possibility of a change in the nature of the use of the easement, or are the rights frozen at the time of the grant? Naturally, the grantee is not entitled to increase the burden on

the servient land beyond the rights initially conveyed, but may have been contemplated or taken as implied that the easement's use would change over time. If so, an apparent increase in the burden can be a valid use of the initial right. For example, in *Laurie v. Winch* [[1953] 1 S.C.R. 49], farmland (the dominant tenement) was subdivided into residential lots. The easement, which was granted as a perpetual right of way over a slender lot near the farm, was split into a larger number of easements, each of these being attached to each new lot. The Supreme Court of Canada treated this diffusion as valid. There was nothing to suggest that it was contemplated that the lands would always be for agricultural purposes, or that changes in the use of the dominant lands would affect the continued use of the easement.

- In this case the court found that the purpose of the easement was to provide access to the lot, and that the use was not intended to be limited to patrons of the synagogue. The respondent failed to show that there was a substantial increase in the burden by the change in the use.

**1637063 Ontario Inc (cob Markham Road Medical Centre) v Markham (City), 2019 ONSC 7511**

- plaintiff is a medical centre sought declaratory relief regarding an easement
- use of an easement for traffic and pedestrians to access the clinic
- the court found that the petitioner was entitled to every reasonable use of the easement for the purposes stated in the grant.
- The purpose of the easement was to grant access for vehicle and pedestrian traffic to the medical clinic
- The court gave declaratory relief that the easement could be used for vehicular traffic.

***Almel Inc v Halton Condominium Corp No 77*, [1997] OJ No 824**

- The respondent had a service station with an easement that provided access across the petitioner's land
- The respondent wanted to add a car wash station and the petitioner argued this would increase the burden of the easement (i.e. cars turning around in the easement)
- that as there was nothing in the easement restricting the respondent from using the right of way in the manner proposed
- The intention was to use the right of way as an ingress, egress, and the proposed change in the business did not bring about a change in the use of the right of way.
- While the addition of the car wash would increase the burden on the servient tenement, because it would be used more frequently, the intended use remained



the same in its general nature, and can reasonably said to have been within the contemplation of the parties at the time of the grant.

***West High Development Ltd v Veeraraghaven*, 2011 ONSC 1177,**

- Right of way granting access to a residential property
- The respondents sought to renovate their property to include a parking area by the residence
- The petitioner argued the right of way was for pedestrian use only, the respondents argued it was for vehicular traffic and could be used by the respondents, tenants, and occupants of the residence.
- The court determined that the easement could be used for vehicular access to the property.

***Korisanszky v. Richardson*, 2008 BCSC 1480,**

- the petitioner sought a declaration the easement had come to an end.
- the dominant tenement had a duplex, had the lot subdivided into a strata lot
- the easement granted the respondents the unrestricted right to access to the easement for the full use and enjoyment of the dominant tenement. The easement also explicitly stated that the easement was not severable and shall only be enjoyed as long as the lands were occupied as one tenement.
- the issue was whether the subdivision increased the burden on the easement, in this case the court found that the subdivision did.
- The respondents were able to seek a "new" easement pursuant to s.36(2) of the *Property Law Act* and to compensate the petitioners for the new easement.

***Donald et al v. Friesen et al* (1990), 72 O.R. (2d) 205**

- the District Court of Ontario determined that a change in use by the dominant owner from the time of acquisition in 1979 (essentially as private land) to the development of a quarry on this land by 1990, which resulted in an increase in traffic of up to 5-7 cars per day and up to about 10 cars per day on weekends in the summer months, was a lawful use.

**Crown ArborCare**

Box 265  
Chemainus BC V0R 1K0  
(250)715-5523  
ryanthe Arborist@yahoo.ca  
GST/HST Registration No.: 80395 3322  
BW0001



# INVOICE

**BILL TO**

Ray Demarchi  
Khenipsen Rd.  
Cowichan Bay BC


**INVOICE #** 1629**DATE** 09/03/2020**DUE DATE** 10/03/2020**TERMS** Net 30

ACTIVITY	QTY	RATE	TAX	AMOUNT
Arborist Services	5.50	140.00	GST	770.00
Arbutus prune				
SUBTOTAL				770.00
GST @ 5%				38.50
TOTAL				808.50
BALANCE DUE				<b>\$808.50</b>

**TAX SUMMARY**

	RATE	TAX	NET
GST @ 5%		38.50	770.00

# 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, coastlines<sup>14</sup> 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 92m<sup>2</sup> – 990.28ft<sup>2</sup> actual is 39m<sup>2</sup> – 420ft<sup>2</sup>) 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)

# Report

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Date	April 5, 2022	File:	ZB000126
Subject	Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798 for second reading		

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## PURPOSE

To review the additional information submitted by the applicant, as requested by Council, prior to considering second reading of Zoning Amendment Bylaw No. 3798 to permit the use of a second dwelling (converted accessory building) at 934 Khenipsen Road.

## BACKGROUND

Council adopted the following resolution at its September 16, 2020 regular meeting:

THAT the application (Zoning Amendment Application - ZB000126) be referred back to staff to review the new information as submitted and that staff work with the applicant to identify whether an alternative location for the suite can occur and report back to Council.

The new information material submitted to staff by the applicant for review was provided in the November 18, 2020 Council Report on page 60 (Attachment 1 - see section **Additional submission items**).

Council adopted the following resolution, in response to the applicant's desire to proceed with the original location, at its November 18, 2020 regular meeting:

THAT Council give first reading to Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798;

AND THAT before Council considers second reading the applicants provide the municipality with the following information:

1. a plan for ensuring the adequate safety of the building in the event of a seismic event through a second geotechnical report.
2. a plan for adequately dealing with the wastewater problems which ensures the system meets environmental and health standards.
3. a statement about whether the applicants' intent is to: i) complete all the necessary steps to obtain a building permit and undertake required alterations or ii) undergo a basic life safety review and accept a notice on title.

The applicant submitted the following 4 items listed below (a – d) in response to Council's request:

- a) A report prepared by Ryzuk Geotechnical Engineering & Materials Testing which provides professional recommendations on mitigating "the risk of catastrophic failure for the building should the slope be subject to future instability" dated March 26, 2021 (Attachment 2);

- b) A sealed Schedule B Assurance of Professional Design and Commitment for Field Review statement (see Attachment 3) and Structural Design plan for grade beam and underpinned columns plan from Buepoint Consulting - Mark Buesink, the structural engineer dated May 21, 2021 (Attachment 4);
- c) A notarized letter from the property owner confirming intent to apply for a building permit and follow through with the necessary repairs (undertake required alterations) to the structure dated December 10, 2021 (Attachment 5); and
- d) A copy of a septic filing prepared by Henry Van Hell (Registered Onsite Wastewater Practitioner – ROWP) submitted to Island Health. A copy of this filing was received with the original application (Island Health accepted stamp September 8, 2020 is placed on filing – see Attachment 1, pages 70 – 84, numbering on bottom right) and prior to Council's November 18, 2020 request for the listed items above (a - c).

## DISCUSSION

### Building Permit

The Chief Building Inspector completed a review of the Buesink Structural repair plan, Schedule B of the Ryzuk Geotechnical report. This information provides a plan for the structural fix of the building to be incorporated into a building permit.

Further, additional review by a professional architect will not be required by the building inspector due to the small scale and simple design of the structure (a building permit was not issued for the conversion of the accessory building to a dwelling). Additional information may be required when the building permit application is received and processed.

### Development Permit

Prior to issuance of a building permit, issuance of a development permit (informing the structural repair and wastewater treatment system fix) incorporating to be determined environmental protection measures, the geotechnical report and structural repair plan will be necessary.

### Analysis

The four items (a – d) referenced above address the November 18, 2020 request by Council for additional information and provides a path for the applicant to complete conversion of the accessory structure to a dwelling unit.

Summarizing the circumstances which are relevant to this application, we considered the following:

- **Official Community Plan** – OCP policy does not support the disturbance of land or an increase in residential density in environmentally sensitive areas.
- **Geotechnical Engineering Report** (Ryzuk Geotechnical Engineering) – The Geotechnical Engineer retained by the homeowner confirms that local underpinning could be extended to bear atop dense



soils "in order to mitigate the risk of catastrophic failure of the building should the slope be subject to future instability". In the opinion of the Geotechnical Engineer this would provide time for occupants to egress the building safely despite the potential that the building may be rendered un-serviceable through such an event (Attachment 2).

- **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 may aggravate the existing conflict with the neighbouring property owner over the easement (Attachment 6).
- **Building Code** – The foundation repair plan (Attachment 4) and Schedule B (Attachment 3) provided by the Structural Engineer (Buepoint Consulting Ltd.) have been submitted and are attached to this report. As noted, the Chief Building Inspector has confirmed that he may issue a building permit on the basis of this information.
- **Wastewater Disposal System** –The ROWP hired by the applicant has submitted a septic filing to Island Health encompassing repair and upgrades to the existing wastewater treatment system within the Development Permit Area (which services the existing principal dwelling and the second dwelling under consideration through this application).

The location of the present wastewater treatment system is within 30 metres of the natural boundary of the ocean and contrary to applicable development permit guidelines for the protection of environmentally sensitive areas.

Staff in consultation with the ROWP considered relocating several main elements of the wastewater treatment system across Khenipsen Road and away from the natural boundary to the east (a portion of the applicant's property is separated by Khenipsen Road). The detrimental impact to the property in terms of removing mature trees and native vegetation on steep slopes in order to accommodate a new wastewater system site and access road is on balance a negative outcome as opposed to supporting repairs and upgrades to the existing wastewater system in its current location within the Development Permit Area.

Repair to the wastewater system will be necessary under a development permit regardless of whether the request for the use of a second dwelling is authorized by Council through this bylaw.

Adoption of this zoning amendment bylaw is not recommended for the reasons provided above and in previous staff reports (Attachment 1). Should Council ultimately approve the second dwelling use, a process to repair the building foundation and the wastewater treatment system servicing the principal and proposed second dwelling has been determined.

## OPTIONS

1. **(Recommended Option)** THAT Zoning Bylaw Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798 be abandoned.
2. (Alternate Option)
  - a) THAT Council give 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 in accordance with requirements of the *Local Government Act*.

## IMPLICATIONS

In deliberating support for second reading of this bylaw, Council may wish to consider the messaging, intended or not, to those contemplating a similar path to construct a second dwelling on their property contrary to development permit area guidelines and prior to obtaining permits necessary to ensure compliance with the British Columbia Building Code and Municipal bylaws.

A neighbouring property owner contends that the shared vehicle access driveway and supporting private easement registered on title does not extend to providing access to an additional dwelling unit on the applicant's property (Attachment 6). The applicant and the neighbour have both sought independent legal advice resulting in opposing views over the intent of the easement. Approval of this application may exacerbate the dispute between neighbours in this regard.

Should Council choose to deny the application, the accessory building must be decommissioned as a dwelling unit and application for a development permit made for repair of the existing wastewater treatment system which services the principal dwelling.

## RECOMMENDATION

THAT Zoning Bylaw Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798 be abandoned.

Report prepared by:

*Glenn Morris*

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Glenn Morris  
Development Planning Coordinator

Report reviewed by:




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Rob Conway  
Director, Planning and Building

## Approved to be forwarded to Council:




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Ted Swabey  
Chief Administrative Officer

## Attachment(s):

1. Prior Council Reports
2. Ryzuk Geotechnical Report
3. Structural Schedule B
4. Structural Repair Plan
5. Notarized Letter

6. Access Easement Document and Legal Opinions
7. Bylaw No. 3798

# Report

Date	November 18, 2020	Prospero File: ZB000126
To	Council	
From	Glenn Morris, Development Planning Coordinator	Endorsed: 
Subject	Zoning Bylaw Amendment Application No. ZB000126 (934 Khenipsen Rd.) – Proposed Detached Second Dwelling Use - Update	

## Purpose

To review with Council the new information submitted by the applicant at the September 16, 2020, Regular Council meeting and the potential provision of an alternate location for the second dwelling.

## Background

On September 16, 2020, at the Regular Council the following motion was passed:

That the application (Zoning Amendment Application - ZB000126) be referred back to staff to review the new information as submitted and that staff work with the applicant to identify whether an alternative location for the suite can occur and report back to Council.

## Discussion

### Alternative second dwelling location

The applicant was asked to consider Council's suggestion of an alternate location for a second dwelling which could be supported by OCP Policy and Development Permit guidelines. The applicant has advised that the intention of the application is to legalize the location of the existing second dwelling and that he wishes the application to be considered as submitted.

### Vancouver Island Health Authority

A response to the application referral to the Vancouver Island Health Authority (VIHA) was received by staff on September 18, 2020. VIHA concluded from their review of the Registered Onsite Wastewater Practitioners' (ROWP) report that the applicant's current wastewater treatment system constitutes a health hazard. The system must be replaced (Attachment 1).

The applicant was informed that the applicable development permit guidelines require the replacement wastewater system to be located outside of the Development Permit Area extending 30 m from the natural boundary of Cowichan Bay. Through consultation on the design of the replacement wastewater system with the ROWP of record (replacement design), staff have determined one and possibly two replacement tanks must be installed within the Development Permit Area adjacent to the principal dwelling to meet industry standards. This design can be supported by staff provided that the replacement distribution and dispersal fields are located on the upper portion of the applicant's property (north side of Khenipsen Road – similar arrangement to neighbouring property to the west), which will move a substantial portion of the wastewater system out of the sensitive environmental area and away from the natural boundary of Cowichan Bay.

New information submitted by the applicant

**Structural Engineer's Report – Buepoint Consulting Ltd.**

The applicant submitted a report prepared by a structural engineer retained by the applicant to review the second dwelling's structural condition on September 23, 2020. The report indicates past structural settlement/movement evidence, but no indications of further settlement noted in the trim and finishes, which are believed to have been installed in 2013. The original structure is believed to have been constructed in 1979, but there are no building permit records on file to confirm this.

**"The end pier (read - deck) is at a bit of an angle tilted slightly downhill. The building does have some dips and rolls in the floor and noticeable curves in the roof but all of the 2013 finishes are intact."**

The Engineer concludes:

**"With the exception of minor remedial work for the angled deck pier, we believe the structure to be in good structural shape and expect it to perform as intended for the foreseeable future."**

The structural engineer further states that he has not performed any "testing or invasive review" of the second dwelling and "does not guarantee or warranty all aspects of the condition of the building or its compliance to present building codes." His report confirms earlier findings by the applicant's geotechnical engineer (Ryzuk) of evidence of the building's past movement through twisting of the roof spine. He stated:

**"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 bedrock."**

The Chief Building Inspector reviewed the reports from the structural and geotechnical engineers (Attachment 2) and provided the following comments regarding the process for addressing Building Bylaw violations should the zoning amendment application be approved:

- A second geotechnical engineer's report is required to determine what work (including design, supervision and completion), if any, is required to confirm the building (second dwelling) is safe and suitable for the intended use as a dwelling.
  - Should the geotechnical report not confirm that the siting for the second dwelling is safe and suitable, application for a building permit to bring the dwelling into compliance with the Building Code will not be possible and either a notice on property title confirming that the structure was converted to a dwelling without a permit and inspections will be recommended to Council, or the dwelling should be decommissioned;
  - Should the applicant commit to providing a second geotechnical report, and that report confirms the siting is safe and suitable for the intended purpose, the standard building



permit process would then apply. To comply with the current Building Code, alterations to the building would likely be required, including fully exposing the interior of the structure (removal of wall coverings) to view vapour barriers, insulation, and plumbing in addition to confirming industry standards for roof venting, air barriers and other applicable requirements;

- A review of the building by a licensed electrician is required to ensure electrical safety is met and to correct any deficiencies found. Final electrical permit information will be required to be submitted to the Building Department;
- If the above requirement (building permit) is not undertaken or completed by the applicant, registration of a Section 57 (*Community Charter*) notice on property title would be recommended by the Chief Building Inspector to Council, confirming that the structure was not constructed with a building permit in order to provide notice to future property owners and address liability concerns on the part of the Municipality. In this scenario, additional inspections would be required by the Municipal Building Inspector to confirm minimum life safety components (including bedroom window egress, smoke and CO<sup>2</sup> alarms, and general ventilation) are in place and functioning as intended.

#### **Additional submission items:**

The applicant also submitted the following additional items between September 16 and 18, 2020 – listed below (Attachment 3):

- A sketch plan proposing an alternate parking and access location for the subject property from Khenipsen Road;
- Paperwork submitted to VIHA for a replacement wastewater treatment system to be located within the Development Permit area adjacent to the natural boundary of Cowichan Bay;
- A legal opinion addressed to the landowner concerning the Easement Access; and,
- An invoice for trimming of an Arbutus Tree.

#### **Summary**

The applicant's additional information does not change the issues and concerns staff identified with the application in the September 16, 2020 staff report (Attachment 4). These include:

- **Official Community Plan** – OCP policy does not support land disturbance or an increase in residential density in environmentally sensitive areas.
- **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.

- **Easement** - The subject property does not directly access 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. Approval of the zoning amendment application will not resolve building compliance issues. There is no assurance that the applicant will resolve the building compliance issues if the bylaw's zoning amendment is adopted.
- **Wastewater Disposal System** –The applicant is proposing replacing the existing system to service both the principal dwelling and second dwelling. The system's location is within 30 metres of the ocean, which is contrary to applicable development permit guidelines for the protection of environmentally sensitive areas.

## Options

### 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 in accordance with requirements of the *Local Government Act*.

## 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. VIHA Email Health Hazard
2. Structural Engineer Report
3. Additional Submission Items from Applicant
4. September 16, 2020, Regular Council Staff Report

**Glenn Morris**

---

**From:** Parayno, Alicia <Alicia.Parayno@VIHA.CA>  
**Sent:** Friday, September 18, 2020 12:39 PM  
**To:** Glenn Morris  
**Cc:** Rob Conway  
**Subject:** FW: ZB000126 - VIHA Referral re: Wastewater Treatment System - 2nd Dwelling Proposal Zoning Amendment

Hello Glenn,

Alison forwarded me the referral as I am the area health inspector. I've been meaning to send an update. We visited the site on Sept 3. Though we did not see any sewage surfacing at the time, the compliance inspection report completed by a Registered Onsite Wastewater Practitioner (ROWP) was enough to form the opinion as a health officer that the **existing sewerage system is a health hazard**. Since my conversation with Ray at that time and after following up with the ROWP that they are working with – a sewerage system filing has been submitted in accordance with the BC Sewerage System Regulation. I spoke with their ROWP and it is my understanding that construction of the proposed sewerage system should happen ~next month, which is reasonable and understandable. Ultimately, this would have been the action our office would have required anyway. Therefore, given this understanding we are satisfied with the course of action and will not be taking any further action at this time. Our office will be awaiting the Letter of Confirmation from the ROWP once the works is completed.

Kind regards,

**Alicia Parayno, CPHI(C)**  
 Environmental Health Officer  
 4<sup>th</sup> Floor, 238 Government Street  
 Duncan, BC V9L 1A5  
 Phone: 250.737.2010 ext. 42022  
 Fax: 250.737.2008  
[alicia.parayno@viha.ca](mailto:alicia.parayno@viha.ca)



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**From:** Gardner, Jennifer (Alison) <[Jennifer.Gardner@viha.ca](mailto:Jennifer.Gardner@viha.ca)>  
**Sent:** Wednesday, September 02, 2020 8:40 AM  
**To:** Parayno, Alicia <[Alicia.Parayno@VIHA.CA](mailto:Alicia.Parayno@VIHA.CA)>  
**Subject:** FW: ZB000126 - VIHA Referral re: Wastewater Treatment System - 2nd Dwelling Proposal Zoning Amendment

Here it is ☺

---

**From:** Glenn Morris <[Glenn.Morris@northcowichan.ca](mailto:Glenn.Morris@northcowichan.ca)>

**Sent:** Tuesday, September 01, 2020 4:14 PM

**To:** Gardner, Jennifer (Alison) <[Jennifer.Gardner@viha.ca](mailto:Jennifer.Gardner@viha.ca)>

**Cc:** Rob Conway <[rob.conway@northcowichan.ca](mailto:rob.conway@northcowichan.ca)>

**Subject:** ZB000126 - VIHA Referral re: Wastewater Treatment System - 2nd Dwelling Proposal Zoning Amendment

Hi Alison,

I appreciate your guidance on submitting this referral to you as it relates to the existing wastewater treatment system described in the attached investigative report prepared by Brad Beals of Septech (attached).

Also included is a sketch indicating the approximate location of the wastewater system on the property and the general arrangement of structures and access points on the property.

We will advise Council of our referral to VIHA and that we await any further information and findings as a result.

Any questions, let me know.

Thank you

Sincerely

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

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4740 Appaloosa Way,  
Duncan, BC V9L 6J1

203-737 Goldstream Ave.  
Victoria, BC V9B 2X4

7-512 Sharpe St, New  
Westminster, BC V3M 4R2

## STRUCTURAL REPORT

Location: 934 Khenipsen Road, Duncan, BC

Project #: 11399

Date: 2020.09.18

David Coulson contacted buepoint consulting regarding the structural evaluation of a residence prior to renovation at the above noted address. A site visit was conducted in the afternoon of September 18th, 2019.

### **Observations**

As the site visit was limited to a cursory review, no testing or invasive review was performed at this time. buepoint consulting does not guarantee or warranty all aspects of the condition of the building or its compliance to present building codes. Recommendations for structural remediation are provided based on the findings of this structural review. The contractor is responsible to comply with all safety regulations on-site prior to any upgrades or de-construction of the subject property.

The existing structure was built in 1979 as a garage and refinished as a cottage in 2013 (Figure 1). The exterior concrete and building appear to be stable and concrete finishes do not appear to have issues. The exterior original concrete stairs have no cracking (Figure 2). New deck on the ocean side is built on concrete piers (Figure 3) that do not appear to have significant depth into grade but appear generally stable. The end pier is at a bit of an angle tilted slightly downhill. The building does have some dips and rolls in the floor and noticeable curves in the roof but all of the 2013 finishes are intact. The sliding door has been obviously finished around

the settled shape of the building since it can be seen that the trim is angled in relation to the roof (Figure 4). All the doors and windows function properly.

### **Conclusions and Recommendations**

The uneven nature of the building is most likely due to settlement during or shortly following original construction. All the current finishes have been finished around the deflected and settled nature of this building. The original foundation work (including exterior stairs) all indicate that the structure is performing well on this hill side. The deck pier that is tilted downhill indicates that it has moved since originally formed (it is unlikely to have been formed at that angle) but there is not enough history to know whether it is now in a stable position or if bearing there may continue to deteriorate. However, that deck pier could easily be replaced or the base of the wood post could be braced back to the solid building foundation to lock it into place.

With the exception of minor remedial work for the angled deck pier, we believe the structure to be in good structural shape and expect it to perform as intended for the foreseeable future.

Feel free to contact buepoint consulting ltd. for any further questions or clarifications.

Regards,



Mark Buesink, P.Eng

**buepoint consulting ltd.**

(778) 400 1790



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a digitally signed and sealed original.



## Appendix - Photos of Residence



Figure 1a - Cottage side elevation



Figure 1b: Cottage front elevation





Figure 2 - Exterior concrete stairs



Figure 3 - Deck built on concrete piers



Figure 4 - Sliding door trim angled in relation to the roof







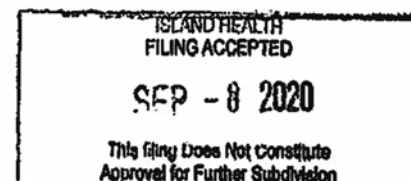
# RECORD OF SEWERAGE SYSTEM

		Filing # (OFFICE USE ONLY)		DC20/159	
1. Property Information	<input checked="" type="checkbox"/> New Construction		<input type="checkbox"/> Alteration		<input type="checkbox"/> Repair
	<input type="checkbox"/> Amendment – Original Filing #				
	Tax Assessment Roll # 00401-200			PID # 027-581-578	
	Legal Description (Plan, Lot, District Lot, Block Numbers) Lot B, Section 13, Range 4, Cowichan District				
Street (Civic) Address or General Location 934 Khenipsen Road			City Duncan		
2. Owner Information	Name of Legal Owner		Mailing Address 934 Khenipsen Road		
	Phone	City Duncan	Prov BC	Postal Code V9L 5L3	
3. Authorized Person Information	Name of Authorized Person Henry Van Hell		Mailing Address 2944 Jackson road		
	Phone	City Duncan	Prov BC	Postal Code V9L 6N7	
	Registration # OW0012	Email			
4. Structure Information	Sewerage System Will Serve: <input checked="" type="checkbox"/> Single Family Dwelling <input checked="" type="checkbox"/> Other Structure (specify) <u>+ cottage</u> <input type="checkbox"/> Other Dwelling (specify) _____				
	The sewerage system is designed for an estimated minimum daily domestic sewage flow of (check one) <input checked="" type="checkbox"/> Less than or equal to 9,100 litres <input type="checkbox"/> More than 9,100 litres but less than 22,700 litres				
5. Site Information	Depth of native soil to seasonal high water table or restrictive layer (cm) <u>80+</u>		Information respecting the type, depth and porosity of the soil is attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
	GPS Location of System (decimal degrees) Latitude <u>48.762816</u> Longitude <u>-123.616365</u>				
	Horizontal Accuracy (m) <u>10</u>		<input checked="" type="checkbox"/> Recreational GPS <input type="checkbox"/> Differential GPS		
6. Drinking Water Protection	Will the sewerage system be located less than 30 m from a well? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
	If yes, attach a professional's report and specify the intended distance _____ (m) Distance of proposed sewerage system to the closest body of surface water <u>&gt; 30</u> (m)				
7. System Information	Sewerage treatment method <input type="checkbox"/> Type 1 <input checked="" type="checkbox"/> Type 2 <input type="checkbox"/> Type 3				
8. Legal or Regulatory Considerations	<input checked="" type="checkbox"/> Construction of the proposed sewerage system will not conflict with legal instruments registered on the property.		Is this filing submitted as the result of an order from the Health Authority? <input type="checkbox"/> Yes (attach a copy of the order) <input checked="" type="checkbox"/> No		
9. Plot Plan and Specifications	Plot Plan (to scale) and specifications are attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
	<input checked="" type="checkbox"/> The plans and specifications are consistent with Standard Practice Source of Standard Practice: <input checked="" type="checkbox"/> Ministry of Health Standard Practice Manual <input type="checkbox"/> Other				
10. Authorized Person's Signature	Signature		OFFICE USE ONLY		
	Date July 16/2020		Filing Accepted Date <u>Sept. 8/2020</u> Receipt Number <u>#247208</u>		

ENVIROSEPT LTD.

SEWERAGE SYSTEM DESIGN NOTES AND SUMMARY SPECIFICATIONS

Design	934 Khenipsen Road	Sunday, June 28, 2020
Revision	Rev. 0	Client: Owner
Notes	System selection and design based primarily on SPM V3 (September 2014) and supporting rationale and calculations (on file). See references for other sources of standard practice utilized.	
Introduction and objectives	<p>The owner intends construction of a repair sewerage system for an existing house and cottage to replace an existing dispersal system located below a garden, and Envirosept has been retained by the client to provide a design of this sewerage system.</p> <p>Objective of this report is to provide a suitable design for a Sewerage System including dispersal area on this site to serve the use defined below. Preliminary site and soil evaluation was carried out by Henry Verheul RO/VP (site and soil evaluation summarized below, details on file) and serves as the basis for this design. See also plans (R0).</p> <p>Prior to and during installation, the designer may approve design changes. The designer and installer will prepare as-built drawings and specifications to confirm these changes.</p> <p>Unspecified or contradictory installation details should be confirmed with Envirosept (the designer). Certain items must be confirmed with Envirosept prior to or at installation or may be redesigned during installation by Envirosept; these are noted in these specifications or in the plans.</p> <p>For general installation, maintenance, monitoring and operation practice the instruction is to follow the SPM V3.</p>	
Domestic water supply well setback	<p>Owner reports, survey plan and site evaluation did not identify any water wells within 30 m of proposed new sewerage system components. Ministry of Health policy allows for continued use of existing tanks installed within 30 m of water wells in a repair situation. All new components are to be installed outside the 30 m setback, and the existing tanks setbacks to wells must meet the previous 16 m setback standard for tanks to wells under the SDR and SPM V1 and V2.</p> <p>Prior to installation, the installer is to confirm that no domestic water supply wells are located within 30 m of any proposed new sewerage system component. If a well is found closer than this specified distance, the designer is to be informed and construction is to cease until instructions are provided.</p> <p>To manage risk from existing tanks, these tanks are to be inspected and watering tested as part of the repair, with upgrades as needed (e.g. sealed in tanks).</p>	
Preliminary design	This is a preliminary design, and may be revised prior to or during system installation.	
Attached	<p>Drawings:</p> <p>Plan setting shows for pump chamber.</p>	
Lot legal and GPS	Lot 8, Section 13, Range 4, Cowichan Districts, Plan VIP85366	
PID	027-581-578	<p>Easements or Covenants?</p> <p>Title on file, Easements and covenants on file. Owner indicates that no easements or covenants affect system placement in the proposed location.</p>
Development permit or environmentally sensitive areas	Any and all development permissions necessary for construction of the sewerage system and for connected facilities are the responsibility of the owner.	
Owners	R. Demarche and C. Hartwig	
Lot area (Acres)	2.5	Address: 934 Khenipsen Road, Duncan





# SYSTEM SELECTION

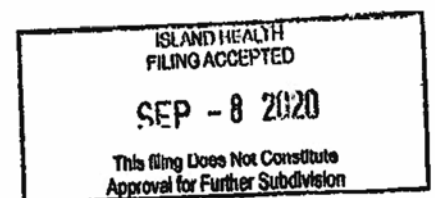
Item	Value	Constraint, opportunity, result	Solution and rationale
<b>Site, soils and site use</b>			
Use (existing and planned)	Type of use	Single family dwelling	As declared by owner, declaration on file. 2 bedroom house plus small 1 bedroom cottage.
	Number of bedrooms	2	
	Floor area (sq.m)	186	As declared by owner, declaration on file, for house. Cottage 390 sqft. Floor area
DDF Table II-8 (L/day)	Bedrooms and area	1000	
DDF other (L/day)		500	Seasonal cottage, 1 bedroom, based on Table II-9 using minimum 2 person occupancy for 1 bedroom house per table.
Effluent strength		Normal residential	No garburators, large tubs or water filter/softener bedwashed water to flow to the system.
Chosen DDF (L/day)		1500	ADF = 750 L/day on a weekly average basis.
Soil texture (<2 mm fraction)	Silty Clay Loam	Clay Loam, Sandy Clay Loam, Silty Clay Loam	Worst case soil, per TP2
Structure	Angular Blocky		
Structure grade	Sticky		
Consistence	Soft		Table II-4.
Coarse fragment %	Gravel	No HLR adjustment	s. III-4.1.2.2
Coarse fragment type	Gravel		
Different soil for LLR?	No		
Other soil notes			Surficial soils Loam and Sandy Loam, Favorable structure and consistence category. Selected soil type is worst case observed for the area.
Ks or Perc to be used?			
Ks (mm/day)		450	Note range of values very wide, risk of macropore flow in strongly structured SiCL soil results in recommendation for micro timed dosing.
Soil depth (cm)			Worst case, TP2
Slope %			10 to 12% slope through potential bed area, steepens in receiving area.
Temperature	Moderate Fresh H2O		High elevation site
Net positive evapotranspiration, mm/yr?		No ET, ETA, Laplace	Table II-6, Farmwest
Rainfall, mm/year	1039	No HLR adjustment	s. III-4.1.4. North Cowichan (Duncan Forestry Station), Environment Canada
<b>System selection and loading rates</b>			
Soil constraints?	Table II-5	Type 1 VS > soil depth Type 2 VS > soil depth	Not suitable for gravity distribution
	Table II-6	Seepage beds allowed in bed with slope up to 15%	SDD OK
	Table II-7 notes	No further constraints	Risk of macropore flow.
Soil depth and VS options, distribution and dosing options	Type 1, gravity dist.	Type 1 VS > soil depth	Not suitable for gravity distribution
	Type 1 or 2 pressure dist., micro timed dose, Table II-16	Native soil 45 cm Total 55 cm	Type 2 selected, for selection of simplest solution which will result in narrow bed (to address site slope and available area) and to allow inclusion of a nitrogen removal method necessary as part of custom horizontal separation to the ocean. Selected Type 2 treatment plant will provide effective nitrogen removal, reducing risk of impact on receiving area.
	Type 1 or 2 SDD, micro timed dose, Table II-17	Native soil 45 cm	SDD selected to address land shape and reduce impact on trees and landscaping. Dispersal to native soil selected as native soil depth adequate. Type 2 treatment favors use of SDD.
	Selected option	Native soil 60 cm min.	Based on 20 cm trench depth for SDD installation (15 to 20 cm depth recommended)
Horizontal separation constraints?	Water supply well	> 30 m to dispersal area and tanks	Meets SPM and SSR standards
	Permanent fresh water	> 30 m to all components	Meets SPM standards. Note 30 m SPEA to permanent fresh water (see plan).
	Ocean to dispersal area and risk of breakout to dispersal area	> 6 m	SPM standard 15m for ocean, 7.5 m for breakout. Custom, performance based, HS rationale (based on consideration of performance in treatment and in design VS) by Ian Ralston Eng.L on file. VS established as surrogate for performance monitoring, see below for VS monitoring requirement. Direct monitoring of treatment plant N removal performance also specified.
	Other separations	Meet SPM standards	
HLR for Type 2 or sand media system basal area (mm/day)	Table II-22:	25	
	Table II-23:	40	
	Adjusted:	25	Adjustment for coarse fragment content and or rainfall not necessary
	Selected HLR:	25	
	SDD HLR:	17.5	
Minimum system contour	VS for LLR (cm)	60	Minimum
	Table II-25	Use LLR tables	
	Table II-27 (L/day/m)		
	Table II-28 (L/day/m)		

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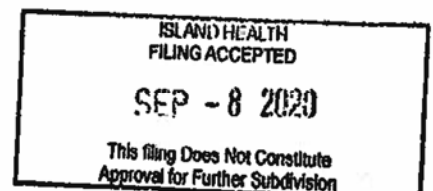
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	Tabular LLR (L/daym)	50	
	Selected LLR (L/daym)	50	HLR conservative in relation to measured permeability
	Min. length, m	30	
Length constraint?	Max. contour length available (m)	95	
	Bed length for AIS (m)	30	
Dispersal area size options	Native soil, SDD Type 2 AIS (square metres)	85.7	

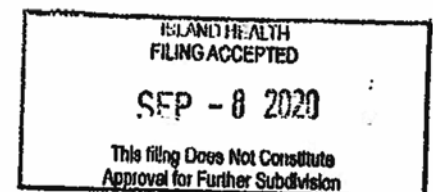


Dispersal area sizing and system summary (further system selection rationale on file)			
Dispersal area sizing	Subsurface Drip Bed, Type 2	In native soils	Hydraulic design on file.
	Effective width of dripline (m)	0.6	
	Bed length (m)	30	100 ft per lateral
	Number of runs of dripline	5	5 laterals each with one run
	Line spacing (m)	0.6	0.3 m emitter spacing specified to reduce HAR per emitter and so improve performance.
	Resultant HLR (mm/day)	17	Maximum.
	Number of laterals	5	
	Length of dripline, total (m)	151.5	
	ft.	497	500 ft. target.
	Vertical separation @ dose		Section drawing not included as system profile is simple, with dripline in native soils. VS is based on worst case soil depth, greater VS is expected based on proposed system placement.
Other considerations	Native soil (cm)	60	Minimum target. VS monitoring to be in place, with minimum VS of 30 cm at all times to meet requirements of custom VS/HS rationale and SPM standards basis.
	Total constructed (cm)	60	VS for monitoring minimum 30 cm per SPM standards rationale.
System summary	Chosen septic tank size (L)	To be confirmed	
	Minimum septic tank size (L)	4500	For Type 1 system, minimum total.
	Treatment	Septic tank and effluent filter followed by Type 2 treatment	Existing septic tanks to be assessed and re-used if suitable, with suitable upgrades. Treatment to be followed with improved H. removal as part of custom HS rationale.
	Flow equalization	Micro filtered dosing with strict flow equalization	No overflow above BDF.
	Dispersal	500 to native soils	With land build environment if necessitated by conditions during installation.
Summary of site use and capability constraints addressed by specified system		See notes above. Simplest system to meet site capability constraints and to avoid impact on trees and landscaping.	



## SPECIFICATIONS

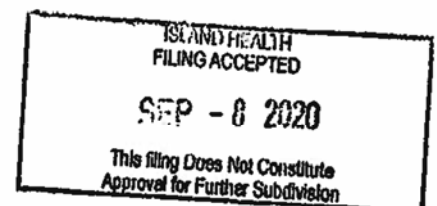
Stormwater from site and house	All stormwater flows, including that from perimeter drains, gutters and hardscape areas, are to be diverted away from the tank and field areas.
Collection system	Pre installed sewers to be re used, installer may camera check the sewers to address risk of infiltration.
Primary treatment	See drawings for inspection and re use of existing tanks, if existing tanks are not reusable the designer will specify replacement tanks.
Secondary treatment	Bionest BN400 in Dens Precast 1100 IG tank. With 120 V recirculation pump and recirculation in tank. Bionest panel to be mounted with Geoflow panel. Set recirculation at 10 min per hour initial setting. Blower in SDD headworks box (drain box, blower to be located to avoid drips from lid of box), locate blower above treatment tank lid elevation and ensure piping slopes down from blower to tank. Install 0-5 psi pressure gage at blower outlet to permit monitoring. Ensure tank is adequately vented via existing tanks, sewers and plumbing, or install dedicated carbon vent filter.
Dosing tank	Dens Precast 600 IG, low profile, single compartment. Ensure tank area is adequately drained to prevent flotation of tanks. Install dosing tank to allow surcharge to treatment tank (minimize fall tank to tank). Vent inlet riser of dosing tank to outlet riser of treatment tank using 2" Sch40 PVC pipe. Seal pipe penetrations with grommets.
Tank installation, new tanks.	All tanks with risers to grade, slope ground away from risers. Fully compact under or otherwise support all pipe connections. Place septic tank on min. 10 cm thickness of pea gravel. Compact fill around tank. Backfill to be permeable material that will retain permeability after compaction, reject birdseye is one option. Install drainage to protect tank area, ensure drainage will reliably maintain water table at tank base or maximum 10" above tank base. Install tanks to allow surcharge from pump chamber to treatment tank (minimize fall tank to tank) to allow for increased alarm reserve volume.
Tank access	Tank to be provided with sealed risers to min. 5 cm above finished grade. Riser with sealed lids. Cast 24" Orenco riser bases (adapter rings) into tank lid, no concrete lip inside. Riser pipe 24" UltraRib, lids TuffTite or Polylok HD secured with stainless steel screws. Attach riser pipe to Orenco bases with PL Premium adhesive and 4 of stainless steel #10 screws from the inside of the riser out through the adapter ring.
Tank watertight testing.	All tanks to be watertight tested before or after installation. Follow the SPM V2 procedure and report test results to the designer.
Dosing system	Pump Myers 10MD05121 (0.5 HP, 120VAC) installed vertically on base of tank. See schematic drawing. Pump control by timed dosing, 4 float control with SJE Rhombus Sensor Floats (20SWENO), externally weighted. Support floats on site built pipe bracket attached to riser. Control panel Geoflow GEO151MAUT (simplex, timed dose). If panel is mounted on post at tanks, protect from rain with a small roof. All electrical work to BC Electrical Code. Pump discharge and electrical connection via riser, seal pipe penetration with grommet. Electrical connections through SJE Rhombus 2.5" cord seal assembly and hub.
Float settings	See attached float setting worksheet. Confirm panel settings with designer at commissioning.
Piping installation	All piping installation to meet SPM standards and Plastic Pipe and Fittings Association guidelines.
Trench scarification and cover soil	Due to soil type it is critical that dripline trenches are excavated only when soil is dry, and that trench base and sides are scarified by using a Garden Weasel or other pre approved method that involves a picking action. Trench depth below existing grade 15 cm minimum 20 cm maximum. Where native soil is lost during trenching, scarify dripline trenches and combine native soil with pre approved fine sand media or cover soil to meet SPM standards, ensure minimum settled depth over dripline 20 cm. Do not install dripline in media or cover soil without scarifying trenches.
Primary monitoring provisions	OM plan to establish the following monitoring requirements: - Monitoring of treated effluent at sampling port at drip headworks to meet 10/10 mg/L median and 45/45 mg/L max. BOD and TSS. - Monitoring of treated effluent at sampling port at drip headworks to meet <20 mg/L median total nitrogen - Monitoring of VS to meet 60 cm normal and 30 cm acute minimum



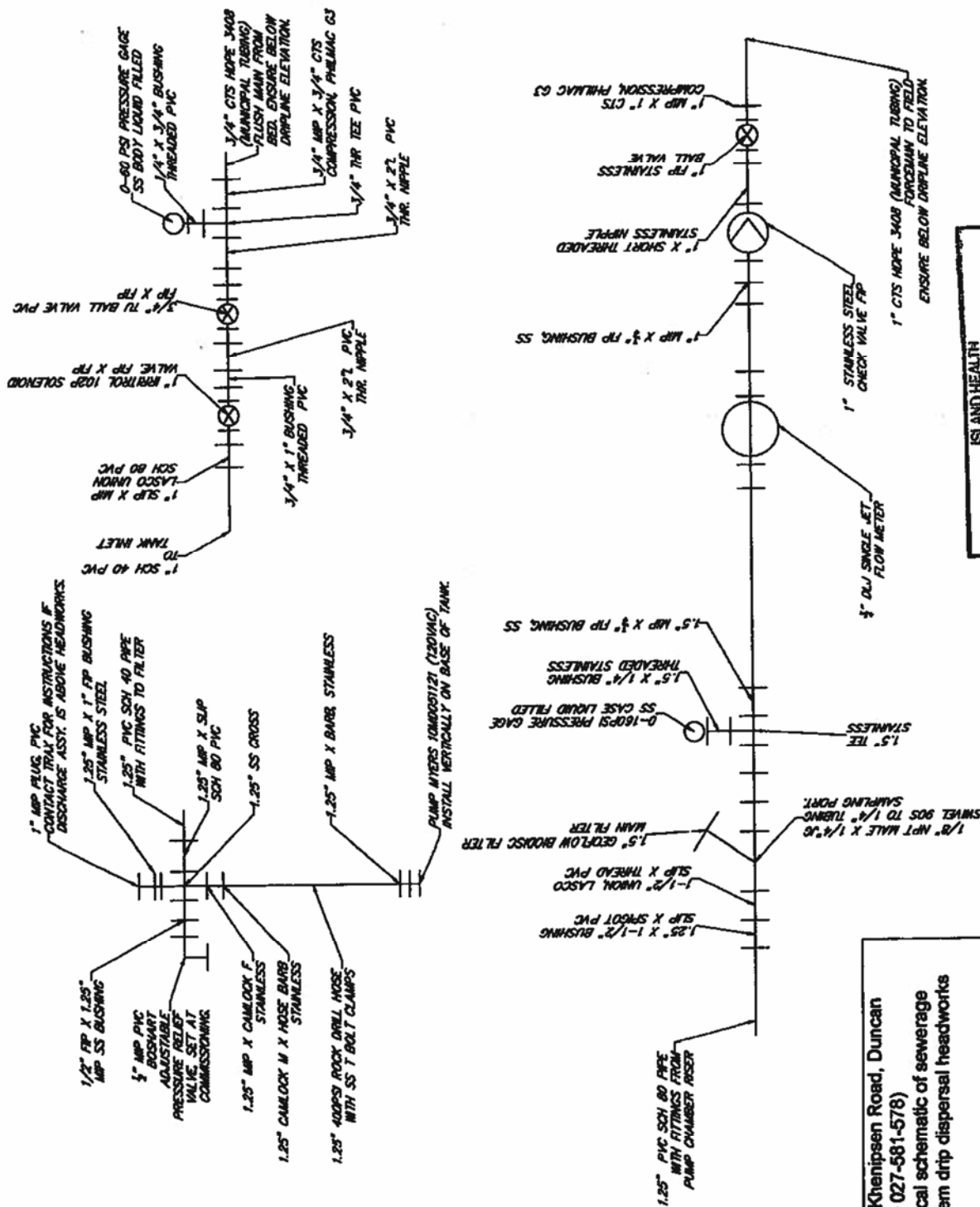
## REFERENCES

The following documents were the principal sources of reference for standard practice in this design:

- The IJC SEWERAGE SYSTEM STANDARD PRACTICE MANUAL Version 2, September 2014, Ian Ralston, submitted to Ministry of Health, And supporting rationale documentation and calculations (on file).
- The IJC SEWERAGE SYSTEM STANDARD PRACTICE MANUAL Version 2, 21st September 2007, Ian Ralston, issued by Ministry of Health, Population Health and Wellness Health Protection Unit, EJC, 1995, Wastewater engineering design for unsewered areas, Technical Design Guidance for Large Subsurface Wastewater Treatment Systems 0.5133, Minnesota Pollution Control Agency, Version: 03-08-2003.
- Custom HS for separation to ocean and or freshwater was developed by Ian Ralston Eng. In accordance with ECBC guidelines and following SPM rationale basis and performance objectives. On file.



SCHEMATIC OF HEADWORKS (TYP) (NTS)



Filter and ancillaries plus flush line connection are installed in valve box at pump chamber (see plan for approximate location). Valve box with pea gravel base on drainage sand connecting to tank area drain.

Ensure headworks below dripline elevation.

Blodisc filter installed with filter body facing up.

Ensure flush and close forcemains are below dripline elevation to prevent drain down to field, or refer to designer for specification.

Take flush return line through side of inlet riser on top of trash tank. Install union plus a 90 with MIP x slip adapter. Direct flow onto inside of inlet tank.

Set pressure relief valve at commissioning, approximate setpoint 75 psi.

Ensure forcemains and manifolds are not affected by settling of sand media or other fill.

Pump discharge assy. specified with hose to manage risk of movement of pump in plastic tank.

All unspecified PVC fittings Schedule 80. Stainless to stainless joints may be made using Loctite 560.

Blonest blower may be installed in headworks valve box, ensure not below dips from lid.

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NOTES:

Confirm with designer at final layout.

934 Khenipsen Road, Duncan  
(PID 027-581-578)  
Typical schematic of sewerage  
system drip dispersal headworks

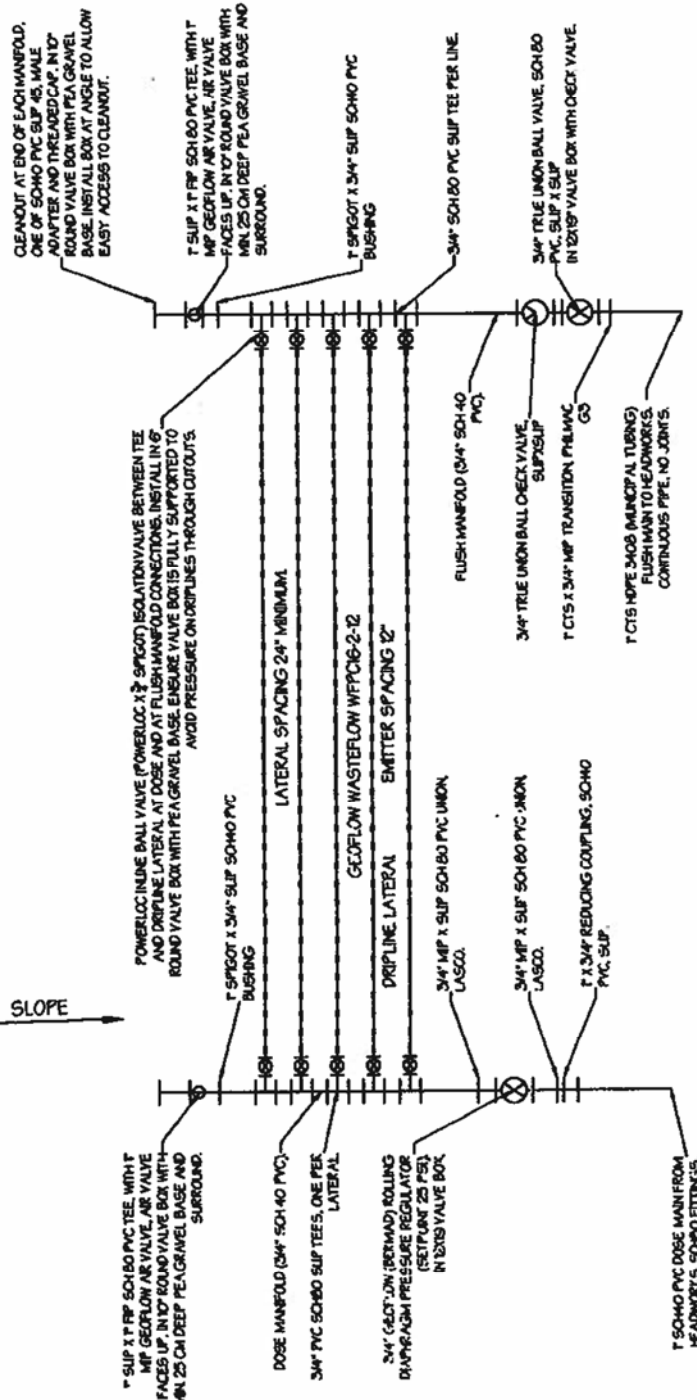
Drawn by IPR for Enviroscop

28 June 2020 RO



C - SCHEMATIC OF 5 LATERAL DRIPFIELD BED (TYP)

NTS



**NOTE**

Typical layout with 5 laterals with one run each. Run length nominal 30 m (300 ft total drip line length) Run spacing 60m (24") minimum. All connectors Geoflow Lockstep or approved equal.

Confirm longer laterals and other configuration changes with designer. Do not alter pipe sizes or equipment specifications without pre-approval by designer.

Manifolds and forams shown schematically for clarity only.

All unspecified PVC fittings Sch 40.

Ensure forams and manifolds fully supported to avoid differential settlement issues at manifolds. Valve bases and manifolds may be protected by covering with select native soil fill.

5/8" installed level from base to flush manifold. But to slope across bed parallel to ground surface. Manifolds to be installed with air valves at highest point. Air valves installed in 10" round or common 12 x 15" valve box, with two gravel bases.

Pressure regulator, and flush isolation valves in 12 x 19" valve boxes with two gravel sump.

Dose and flush mains to be installed below drip line elevation. If this is not practical, contact the designer for revised specifications.

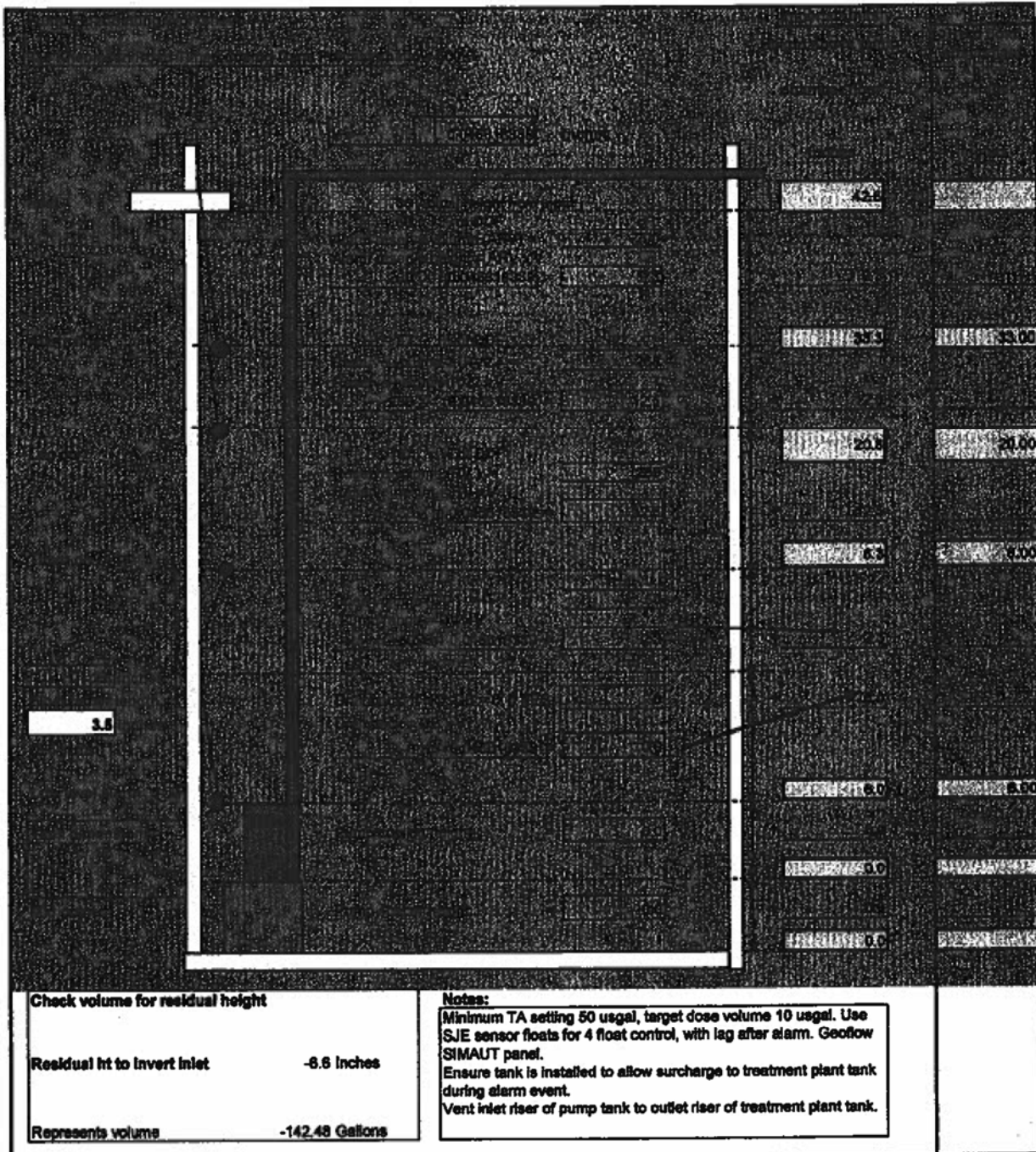
Protect field area to prevent vehicle traffic on the dispersed area. During vegetation establishment it may be necessary to utilize erosion control matting, and to use temporary fencing to prevent damage by deer.

934 Khenipsen Road, Duncan  
(PID 027-581-578)  
Typical schematic of sewerage  
system drip dispersal distribution  
system.

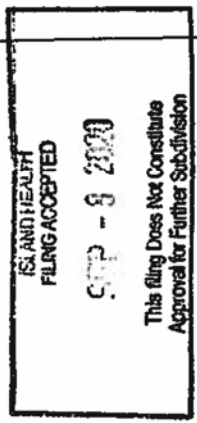
**NOTES:**  
Confirm with designer at final layout.

Drawn by IPR for Envirosept.  
28 June 2020 RD

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Page 1 of 3

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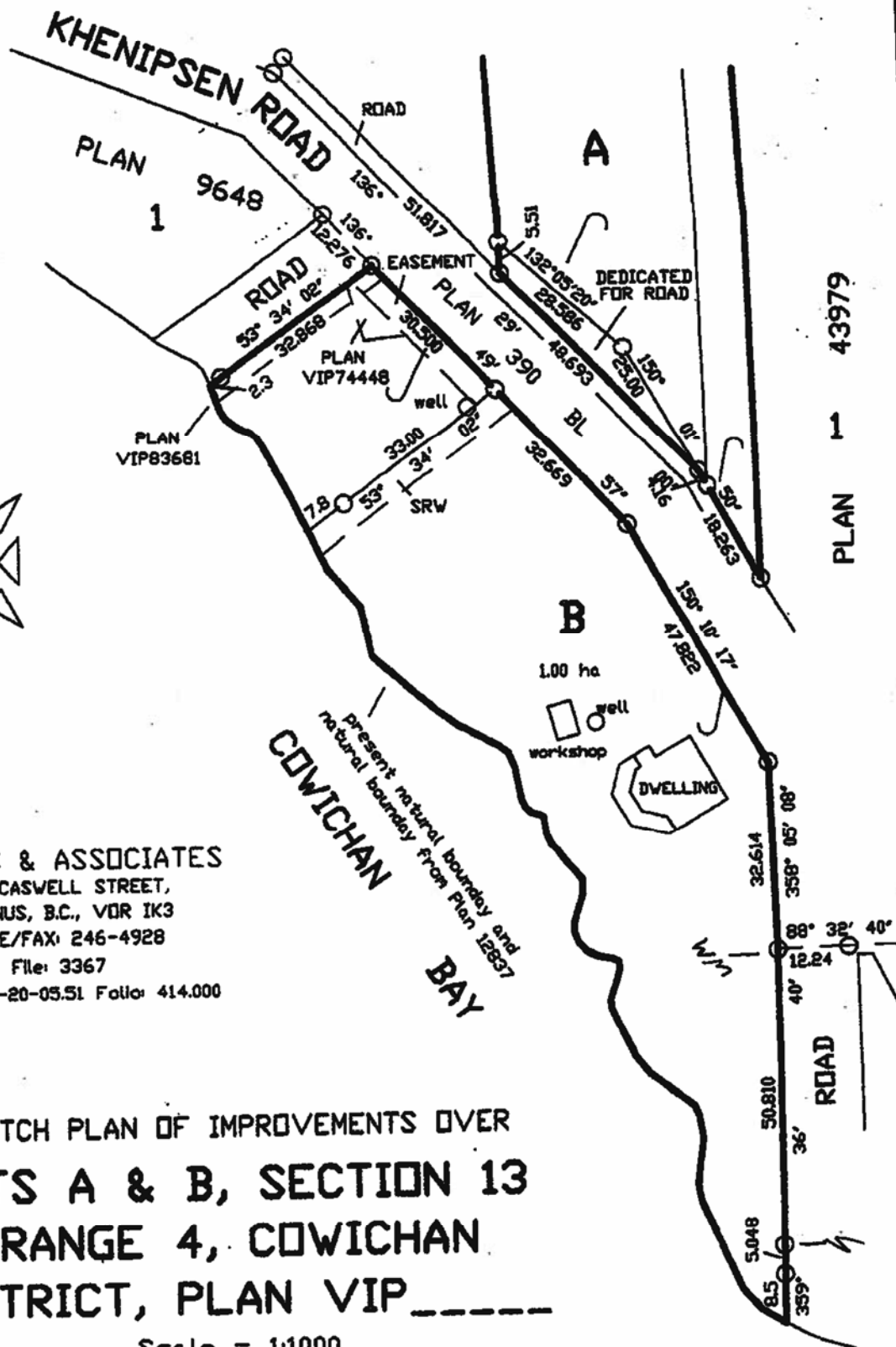
**BOWERS & ASSOCIATES**  
2856 CASWELL STREET,  
CHEMAINUS, B.C., V0R 1K3  
PHONE/FAX: 246-4928  
File: 3367  
File: 3320-20-05.51 Folio: 414.000

**SKETCH PLAN OF IMPROVEMENTS OVER  
LOTS A & B, SECTION 13  
RANGE 4, COWICHAN  
DISTRICT, PLAN VIP\_\_\_\_\_**

Scale = 1:1000

**LEGEND**

All distances are in metres and decimals thereof.



## Property Owner's Declaration

### Property Information

Legal description Lot B, Section 13, Range 4  
COWICHAN DISTRICT PLAN VIP85366  
Common Address 934 Khenipson Road  
Duncan, BC V9L 5L3 Lot Size: 2.5 hectares/ acres  
STREET NUMBER/STREET NAME CITY / PROVINCE / POSTAL CODE

### Property Tax Information:

P.I.D. # 027-581-578 Folio. # 00401-200  
TAX ASSESSMENT ROLL NUMBER

### Owner Information

Legal owner's name

Owner's mailing address

CITY / PROVINCE / POSTAL CODE

Owner's Phone

Work:

Residence:

### Building Information

Type of Facility (check one): ☒ Residence ☒ Other (describe) Cottage

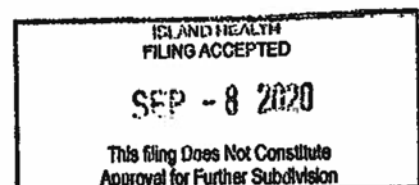
Size of Building:	Residence Living Area	
	FEET <sup>2</sup>	M <sup>2</sup>
Basement	900sq'	
Main floor	1100sq'	
2nd Floor		
3rd Floor		
Total area	2000sq'	

Other Facility (Total Area)	
FEET <sup>2</sup>	M <sup>2</sup>
390sq'	

# of bedrooms	2
---------------	---

1 bedroom

Total 3 bedrooms.



### Planned Uses

1. If the basement is unfinished, what is its intended use? office + spare room
2. Does the basement have plumbing or electrical provisions to add a separate living suite? ☐ Yes ☒ No
3. Do you plan on having a Bed and Breakfast or suite? ☐ Yes ☒ No  
If yes, please provide details: \_\_\_\_\_
4. Do you plan on having an in-sink garbage disposal unit? ☐ Yes ☒ No
5. Do you plan on having a water softener? ☐ Yes ☒ No

### Other Information

Do or will you have a well? ☒ Yes ☐ No

If No, source of domestic drinking water is: \_\_\_\_\_

If Yes, what is its location: Adjacent to cottage

Location of neighbouring wells: wells are located 100 ft. & 125 ft. away

Are there any covenants or easements on property? ☒ Yes ☐ No

### Items to be Provided by Owner

The following items are to be provided by the Owner prior to the start of a site assessment and the Owner agrees herein to supply them at their expense:

1. Plans and specifications of building, site access and landscaping plans.
2. Plot plan or lot survey
3. Signed contract to authorize planner to begin work
4. Land Title's Search results
5. Reference plans and terms of any covenants or easements
6. Location of all existing services.
7. Copies of any/all registered covenants or easements

### Declaration Statement

I/We, the undersigned declare that I/we are legal owners of the above described property and the information given above is true and accurate for the purpose of planning, designing, constructing and maintaining a Sewerage System for said property, and that any changes, alterations or amendment to this above information will be provided to the "authorized person," as defined in the B.C. Health Act, Sewerage System Regulation 324/2004, in writing immediately prior to any installation of a sewerage system.

Signature of Owner(s)

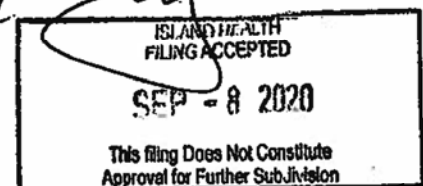
Date of Declaration: May 7, 2020

Raymond A. Demarchi  
PRINT NAME

SIGNATURE

Carol Lee Hartwig  
PRINT NAME

SIGNATURE





Handwritten notes: *Handwritten text, possibly "Handwritten text, possibly" and "Handwritten text, possibly"*

Slope: 10% 12%

Elevation:

Location:

From	To	Colour	USDA Texture (s,l,sl,c)	Rocks (gr,cb,sl,v=very)	Coarse Gravel (%)	Structure		USDA Consistence	Density (l,c,d) Consistency (vs.s,l,h,vh)	Rocks		Mottles			Moisture (S,W,M,D)
						Type (gran, blocky, platy, wedge, prism, column, s.g., mass)	Grade (0,1,2,3)			Quant (f.c.m)	Size (f.m,c)	Depth	Quant (f.c.m)	Contrast (F,D,P)	
0	10	Black	L	gr	5	blocky	3	L	S	M	S	0	0	0	0
10	90	0 Brown	SL	gr	5	blocky	3	L	S	M	S	0	0	0	0
Hand dug depth is unknown															

Location:										Elevation:				Slope:	
From	To	Colour	USDA Texture	Rocks	Coarse Gravel (%)	Structure		USDA Consistence	Density Consistency	Rocks		Mottles			Moisture
						Type	Grade			Quant	Size	Depth From	To	Quant	
0	15	black	L	gr	5	blocky	3	L	S	M	S	<del>0</del>	<del>0</del>	<del>0</del>	D
15	81	brown	SL	gr	3	blocky	3	L	S	S	BMK	<del>0</del>	<del>0</del>	<del>0</del>	D

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Bold Headings: Apply only to cohesive soils (silt or clay). Coarse gravel is > 19 mm (0.75 in).

File: Khenyzen Rd

Date: May 07/2020

MEMORANDUM	
<b>To:</b> PDB	<b>From:</b> CDJ
<b>Client:</b> Demarchi & Hartwig	<b>File:</b> 205046
<b>Re:</b> Interpretation of Easement	<b>Date:</b> April 9, 2020

## ISSUES:

1. Does the wording of the easement registered on title on Lot A restrict our client's use of the property on Lot B?
2. Is there a risk that the owner of Lot A could apply to have the easement cancelled as a result in the change in the use of Lot B?
3. Is the owner of Lot A able to restrict the use of the easement to the purposes stated in the original grant?
4. If the owner is wrongfully restricting access to Lot B, what is the remedy?

## SHORT ANSWERS

1. *Does the wording of the easement registered on title on Lot A restrict our client's use of the property on Lot B?*

No.

The instrument is an easement; not a restrictive covenant. A restrictive covenant is a burden to land whereas an easement is positive in nature. Since this is an easement for the benefit of our client's land, it cannot be used as an instrument to restrict the number of buildings on our client's land.

At law there is a distinction between a positive and negative easement. A positive easement gives the owner the right to do a positive act on another's land (i.e. drive a car). A negative easement imposes a restriction on the use an owner may make of his or her land. The registrar endorses a negative easement as a restrictive covenant. This is quite clearly a positive easement.

Even if the easement were to be interpreted as a restrictive covenant, which is highly unlikely, our clients would be able to apply to modify the restrictive covenant to allow additional buildings to be constructed on the lot. When determining if there should be a

modification to a restrictive covenant, the courts will consider whether a restrictive covenant impedes the land owners reasonable use of the land without any practical benefit to others, as seems to be the case here.

As the easement is positive in nature, it does not impose any obligations on the use of our client's property. Our client is at liberty to build and rezone their property without restriction from the owner of the adjoining lot.

**2. Is there a risk that the owner of Lot A could apply to have the easement cancelled as a result in the change in the use of Lot B?**

No.

In order to cancel or modify an easement, the registered owner of Lot A will have to satisfy the test set out in section 35 of the *Property Law Act*. This is a difficult test to meet as it requires the petitioner to show that there has been a change in the character of the land or neighbourhood that renders the easement obsolete. The petitioner must prove one of four criteria:

- (a) the petitioner's use is impeded by the easement without benefit to others;
- (b) the persons who have benefit of the easement have expressly or impliedly agreed that the easement be modified or cancelled;
- (c) the modification will not injure the person entitled to the benefit of the registered charge or interest; or
- (d) the easement registered on title is invalid or unenforceable;

The case law is clear that in order to be successful, the petitioner must present sufficient, detailed evidence of prejudice to the servient tenant for the court to conclude that the prejudice outweighs the rights of the dominant tenant. The court will not cancel an easement on the grounds that it is obsolete where the easement still serves a purpose, or in the absence of evidence that the easement impedes the reasonable use of the land by the petitioners: *Kasch v. Goyan*, (1992), 87 D.L.R. (4<sup>th</sup>) 123 (B.C.S.C). In this case it is highly unlikely that this test will be met given the extreme prejudice to our client.

**3. Is the owner of Lot A able to restrict the use of the easement to the purposes stated in the original grant?**

Not likely.

The case law is clear that where an easement grants a right of way, with no express restriction on use, an increase in use is not objectionable as long as the increase in use is contemplated at the time the easement was granted. The issue here is that the easement is restricted to the "reasonable use of a single family dwelling". Where an

easement restricts use and use is extended beyond the dominant tenement's legal use the court may grant an injunction restraining the use.

## CASE LAW

Where an easement is created by an express grant, the extent of the easement is determined by the wording of the instrument creating the easement considered in the context and circumstances that existed when the easement was created. If the use of the easement remains of the same general nature, even if there is an increased burden on the servient owner by virtue of more frequent use, the more frequent use can reasonably be said to be within the contemplation of the parties at the time of the grant: **1637063 Ontario Inc. (c.o.b. Markham Road Medical Centre) v. Markham (City)**, 2019 ONSC 7511.

This was also stated at para 3 of *Almel Inc. v. Halton Condominium Corporation No. 77*, [1997] O.J. No. 824:

Where a right of way has been created by express grant, the scope of permissible use depends on the words used. The circumstances existing at the time of the grant may also be looked at to construe the nature and extent of the rights conveyed. see *Laurie v. Bowen*, 1952 CanLII 10 (SCC), [1953] 1 S.C.R. 49. In the case of a general grant, as here, the permissible use is not limited to the original use. Although the owner of the dominant tenement cannot alter the type of use of the right of way beyond its original scope, the burden on the servient tenement can be reasonably increased so long as the use is of the same general nature, and it can reasonably be said to have been in the contemplation of the parties at the time of the grant.

To make this determination, the court will consider:

- (1) whether the grant of the easement was limited to the particular purpose; and
- (2) whether the change in the use of the land increased the burden on the servient tenement.

In *Temple Kol Ami v. Elm Thornhill Woods Inc.*, 2008 O.J. No. 2286 the court stated

The use of a right-of-way must be within the terms of the grant or accustomed use (in the case of a right acquired by implied grant, implied reservation or prescription), and it must be reasonable. As a general rule the use of a right of way depends on the nature of the servient land and the purposes for which the right-of-way is intended to be used. If the grant of a right-of-way is not limited to a particular purpose, or if a way has been used for several purposes, a general right-of-way may be inferred. However, this will not be the case where the evidence shows intended use for particular purposes only.



There are certain general limitations on the use of a right-of-way:

- a. a right-of-way to one property does not include a right-of-way to a place beyond that property.
- b. the owner of the dominant tenement is restricted to the legitimate use of the right; and
- c. the burden on the owner of the servient tenement cannot, without their consent, be increased beyond the terms of the grant or, where the right of way based on implied or prescriptive rights, beyond accustomed use.

At para 49 the court states:

Can the initial grant be read to contemplate the possibility of a change in the nature of the use of the easement, or are the rights frozen at the time of the grant? Naturally, the grantee is not entitled to increase the burden on the servient land beyond the rights initially conveyed, but may have been contemplated or taken as implied that the easement's use would change over time. If so, an apparent increase in the burden can be a valid use of the initial right. For example, in *Laurie v. Winch* [[1953] 1 S.C.R. 49], farmland (the dominant tenement) was subdivided into residential lots. The easement, which was granted as a perpetual right of way over a slender lot near the farm, was split into a larger number of easements, each of these being attached to each new lot. The Supreme Court of Canada treated this diffusion as valid. There was nothing to suggest that it was contemplated that the lands would always be for agricultural purposes, or that changes in the use of the dominant lands would affect the continued use of the easement.

In Halsbury's Laws of England at p. 26, the law is stated:

The nature and extent of an easement created by express grant primarily depend upon the wording of the instrument. In construing a grant of an easement regard must be had to the circumstances existing at the time of its execution; for the extent of the easement is ascertainable by the circumstances existing at the time of the grant and known to the parties or within the reasonable contemplation of the parties at the time of the grant, and is limited to those circumstances. Consequently, if those circumstances are subsequently altered so that there is a radical change in the character or identity of the user or of the dominant tenement, the altered user cannot be justified. However, a mere increase in user is unobjectionable, and thus the dominant owner will not necessarily be limited to the precise circumstances actually in existence at the time of the grant. The distinction is between a mere increase in user and a user of a different kind or for a different purpose, evolution or mutation.

In *Stella Psarakis Medicine Professional Corporation v. Gonnissen*, 2015 ONSC 25, the court states at paras 29-30:

29 As referred to in the discussion regarding the scope of an easement, its usage is contextual, reasonably and objectively contemplated. A mere increase in usage is distinguishable from a use of a different kind or for a different purpose. The latter can be of such a magnitude that the rights of the servient tenement to use this land is substantially interfered with and is beyond the scope of the right of way (Granfield v. Cowichan Valley Regional District [1996] B.C.J. No. 261; 71 B.C.A.C. 81, at paras. 45, Malden Farms v. Nicholson, [1955] O.J. No. 616; 3 D.L.R. (2d) 236.

30 "Overburdening" a right of way by a dominant tenement is closely akin to non-contemplated or excessive use. It is a usage which is destructive of or impairs the use by the servient tenement.

In our case the stated purpose of the easement at the time of grant was for to provide access for vehicle and pedestrian traffic to pass and repass for the purposes of meeting the "reasonable needs of the single family residential dwelling located on the Dominant Tenement". Arguably, this is a mere increase in usage and it is distinguishable from a use of a different kind or of a different purpose. There is some uncertainty as there is a limitation in easement for the purpose of the reasonable needs of a single family residential dwelling. I could not find a case dealing with this restriction specifically. Overall the court will look to whether the usage of easement is contextual, reasonably and objectively contemplated at the time the grant was entered into. Since our client granted the easement to themselves in this case, it would be relatively easy to establish that they contemplated the potential construction of a second residence.

#### ***4. What is the remedy for unreasonable interference with a dominant tenement's easement rights?***

The law is clear that the servient tenant must not deal with the dominant tenant in a manner that would render the easement over it incapable of being enjoyed or more difficult to enjoy. This would include any measures that would restrict our client's use of the easement, and would include the use of the easement by guests and other residents of the property.

A wrongful interference with an easement, including any obstruction of the easement, constitutes a nuisance. A nuisance is an injury done to a person in possession of property whereby their enjoyment of the land is adversely affected and may entitle our client to damages. Our client may also be able to apply for injunctive relief.

To be actionable, interference with an easement or right of way must substantially interfere with the dominant tenement owner's ability to use the right of way for the



purposes identified in the grant. There is no actionable interference with a right of way if it can be substantially and practically exercised for the purposes identified in the grant as conveniently after as before the occurrence of the alleged obstruction.

## CASE LAW

***Temple Kol Ami v. Elm Thornhill Woods Inc.*, 2008 O.J. No. 2286**

- the easement granted right of way to a property, the purpose of the easement was to allow access to a synagogue. The synagogue was never constructed. Condominiums were built instead.
- In this case the easement never stated that it was to be provided to the patrons but to provide access to the property generally.
- The respondent argued that the easement was extinguished because of the change in use of the property. The respondent also argued that the change in use of the easement increased the scope of the easement without their consent.
- The trial judge and the court of appeal dismissed this argument.
- At paragraph 48 the court states:

The use of a right-of-way must be within the terms of the grant or accustomed use (in the case of a right acquired by implied grant, implied reservation or prescription), and it must be reasonable. As a general rule the use of a right of way depends on the nature of the servient land and the purposes for which the right-of-way is intended to be used. If the grant of a right-of-way is not limited to a particular purpose, or if a way has been used for several purposes, a general right-of-way may be inferred. However, this will not be the case where the evidence shows intended use for particular purposes only.

There are certain general limitations on the use of a right-of-way:

- d. a right-of-way to one property does not include a right-of-way to a place beyond that property.
  - e. the owner of the dominant tenement is restricted to the legitimate use of the right; and
  - f. the burden on the owner of the servient tenement cannot, without their consent, be increased beyond the terms of the grant or, where the right of way based on implied or prescriptive rights, beyond accustomed use.
- At para 49 the court states that a prime consideration in construing the breadth of an easement is the purpose for which the grant was initially made. The court goes on to say:

Can the initial grant be ready to contemplate the possibility of a change in the nature of the use of the easement, or are the rights frozen at the time of the grant? Naturally, the grantee is not entitled to increase the burden on

the servient land beyond the rights initially conveyed, but may have been contemplated or taken as implied that the easement's use would change over time. If so, an apparent increase in the burden can be a valid use of the initial right. For example, in *Laurie v. Winch* [[1953] 1 S.C.R. 49], farmland (the dominant tenement) was subdivided into residential lots. The easement, which was granted as a perpetual right of way over a slender lot near the farm, was split into a larger number of easements, each of these being attached to each new lot. The Supreme Court of Canada treated this diffusion as valid. There was nothing to suggest that it was contemplated that the lands would always be for agricultural purposes, or that changes in the use of the dominant lands would affect the continued use of the easement.

- In this case the court found that the purpose of the easement was to provide access to the lot, and that the use was not intended to be limited to patrons of the synagogue. The respondent failed to show that there was a substantial increase in the burden by the change in the use.

**1637063 Ontario Inc (cob Markham Road Medical Centre) v Markham (City), 2019 ONSC 7511**

- plaintiff is a medical centre sought declaratory relief regarding an easement
- use of an easement for traffic and pedestrians to access the clinic
- the court found that the petitioner was entitled to every reasonable use of the easement for the purposes stated in the grant.
- The purpose of the easement was to grant access for vehicle and pedestrian traffic to the medical clinic
- The court gave declaratory relief that the easement could be used for vehicular traffic.

***Almel Inc v Halton Condominium Corp No 77*, [1997] OJ No 824**

- The respondent had a service station with an easement that provided access across the petitioner's land
- The respondent wanted to add a car wash station and the petitioner argued this would increase the burden of the easement (i.e. cars turning around in the easement)
- that as there was nothing in the easement restricting the respondent from using the right of way in the manner proposed
- The intention was to use the right of way as an ingress, egress, and the proposed change in the business did not bring about a change in the use of the right of way.
- While the addition of the car wash would increase the burden on the servient tenement, because it would be used more frequently, the intended use remained

the same in its general nature, and can reasonably said to have been within the contemplation of the parties at the time of the grant.

***West High Development Ltd v Veeraraghaven*, 2011 ONSC 1177,**

- Right of way granting access to a residential property
- The respondents sought to renovate their property to include a parking area by the residence
- The petitioner argued the right of way was for pedestrian use only, the respondents argued it was for vehicular traffic and could be used by the respondents, tenants, and occupants of the residence.
- The court determined that the easement could be used for vehicular access to the property.

***Korisanszky v. Richardson*, 2008 BCSC 1480,**

- the petitioner sought a declaration the easement had come to an end.
- the dominant tenement had a duplex, had the lot subdivided into a strata lot
- the easement granted the respondents the unrestricted right to access to the easement for the full use and enjoyment of the dominant tenement. The easement also explicitly stated that the easement was not severable and shall only be enjoyed as long as the lands were occupied as one tenement.
- the issue was whether the subdivision increased the burden on the easement, in this case the court found that the subdivision did.
- The respondents were able to seek a "new" easement pursuant to s.36(2) of the *Property Law Act* and to compensate the petitioners for the new easement.

***Donald et al v. Friesen et al* (1990), 72 O.R. (2d) 205**

- the District Court of Ontario determined that a change in use by the dominant owner from the time of acquisition in 1979 (essentially as private land) to the development of a quarry on this land by 1990, which resulted in an increase in traffic of up to 5-7 cars per day and up to about 10 cars per day on weekends in the summer months, was a lawful use.

**Crown ArborCare**

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ryanthe Arborist@yahoo.ca

GST/HST Registration No.: 80395 3322

BW0001



# INVOICE

**BILL TO**

Ray Demarchi

Khenipsen Rd.

Cowichan Bay BC


**INVOICE #** 1629**DATE** 09/03/2020**DUE DATE** 10/03/2020**TERMS** Net 30

ACTIVITY	QTY	RATE	TAX	AMOUNT
Arborist Services	5.50	140.00	GST	770.00
Arbutus prune				
SUBTOTAL				770.00
GST @ 5%				38.50
TOTAL				808.50
BALANCE DUE				<b>\$808.50</b>

**TAX SUMMARY**

RATE	TAX	NET
GST @ 5%	38.50	770.00

# 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, coastlines<sup>14</sup> 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 92m<sup>2</sup> – 990.28ft<sup>2</sup> actual is 39m<sup>2</sup> – 420ft<sup>2</sup>) 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)

## GEOTECHNICAL FIELD REVIEW / SITE INSTRUCTION

**Project No:** 3770-10

**Project:** Geotechnical Assessment of Existing Cottage

**Project Address:** 934 Khenipsen Road, Duncan, BC

**Date:** March 26, 2021

**Client:** David Coulson Design Ltd.

**Contact:** David Coulson

**Email:** coulsondesign@shaw.ca

**Distribution:**

Structural – Mark Buesink – mark@buepoint.com

### Site Assessment

As requested and to further our letter of July 9, 2020, we attended the referenced site on March 19, 2021, to assess the soil conditions in local test pits and review slope geometry within the area of the existing cottage. Our associated observations, comments, and recommendations are provided herein.

During this visit we reviewed the soil conditions within three test pits and collected additional geometry information to review stability conditions. The test pits were advanced by hand prior to our attendance, generally evenly spaced along the slope side portions of the cottage below the perimeter wall. Two test pits were located under the deck, while the third was located to the northwest of the deck. The test pits ranged in depth from approximately 0.7 m to 1.8 m deep. Within the test pits, rocky brown fill topsoil with root intrusions was overlaying native very dense sand and gravel, with some silt and cobbles (glacial till).

The ground surface slopes down to the southwest from the edge of the building at approximately 35 to 45 degrees from the horizontal, dropping approximately 5 m. Bedrock is exposed within the lower vertical portions of the slope, extending up approximately 3.5 m.



Given the very dense native soils anticipated to be present at approximately 1.8 m depth or greater, we consider that local underpinning could be extended to bear atop these soils at this minimum depth in order to mitigate the risk of catastrophic failure of the building should the slope be subject to future instability. However, the building may not be serviceable following instability but would allow for safe egress of the structure, excluding the existing deck. The test pits could potentially be expanded to serve as underpinning locations pending review by the structural consultant. The underpinning bearing atop this undisturbed native soil at a minimum depth of 1.8 m can be designed with an allowable bearing capacity of 250 kPa. The base preparations will need to be inspected and we envision that local support of the slope walls would be beneficial to retain the loose fills from sloughing into the excavations.

If there are any questions or comments with respect to the above, please contact us.

Regards,  
Ryzuk Geotechnical



Marina Ribeca, EIT  
Junior Engineer



Andrew Jackson, P.Geo., Eng.L.  
Project Manager



### SCHEDULE B

Forming Part of Subsection 2.2.7., Division C of the  
British Columbia Building Code

Building Permit Number  
(for authority having jurisdiction's use)

### ASSURANCE OF PROFESSIONAL DESIGN AND COMMITMENT FOR FIELD REVIEW

- Notes: (i) This letter must be submitted prior to the commencement of construction activities of the components identified below. A separate letter must be submitted by each *registered professional of record*.  
(ii) This letter is endorsed by: Architectural Institute of BC, Association of Professional Engineers and Geoscientists of the Province of BC, Building Officials' Association of BC, and Union of BC Municipalities.  
(iii) In this letter the words in italics have the same meaning as in the British Columbia Building Code.

To: The *authority having jurisdiction*

Municipality of North Cowichan

Name of Jurisdiction (Print)

Re: Khenipsen Residence

Name of Project (Print)

934 Khenipsen Road, Duncan, BC

Address of Project (Print)

The undersigned hereby gives assurance that the design of the

(Initial those of the items listed below that apply to this *registered professional of record*. All the disciplines will not necessarily be employed on every project.)

MB **ARCHITECTURAL**  
           **STRUCTURAL**  
           **MECHANICAL**  
           **PLUMBING**  
           **FIRE SUPPRESSION SYSTEMS**  
           **ELECTRICAL**  
           **GEOTECHNICAL — temporary**  
           **GEOTECHNICAL — permanent**



05/21/2021

This document is a printed copy from  
a digitally signed and sealed original.  
(Professional's Seal and Signature)

Date

components of the plans and supporting documents prepared by this *registered professional of record* in support of the application for the *building* permit as outlined below substantially comply with the British Columbia Building Code and other applicable enactments respecting safety except for construction safety aspects.

The undersigned hereby undertakes to be responsible for *field reviews* of the above referenced components during construction, as indicated on the "SUMMARY OF DESIGN AND FIELD REVIEW REQUIREMENTS" below.

CRP's Initials



# BRITISH COLUMBIA BUILDING CODE 2018

## Schedule B - Continued

Building Permit Number  
(for authority having jurisdiction's use)

934 Khenipsen Road, Duncan, BC

Project Address

structural

Discipline

The undersigned also undertakes to notify the *authority having jurisdiction* in writing as soon as possible if the undersigned's contract for *field review* is terminated at any time during construction.

I certify that I am a *registered professional* as defined in the British Columbia Building Code.

Mark Buesink, P.Eng.

Registered Professional of Record's Name (Print)

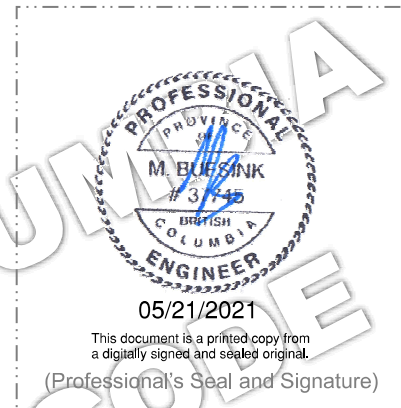
4740 Appaloosa Way, Duncan, BC V9L 6J1

Address (Print)

Address (Print) (continued)

(250) 597 2296

Phone Number



Date

(If the *Registered Professional of Record* is a member of a firm, complete the following.)

I am a member of the firm buepoint consulting ltd.

and I sign this letter on behalf of the firm.

(Print name of firm)

Note: The above letter must be signed by a *registered professional of record*, who is a *registered professional*. The British Columbia Building Code defines a *registered professional* to mean

- (a) a person who is registered or licensed to practise as an architect under the Architects Act, or
- (b) a person who is registered or licensed to practise as a professional engineer under the Engineers and Geoscientists Act.

CRP's Initials

# BRITISH COLUMBIA BUILDING CODE 2018

Schedule B - Continued

Building Permit Number  
(for authority having jurisdiction's use)

934 Khenipsen Road, Duncan, BC

Project Address

structural

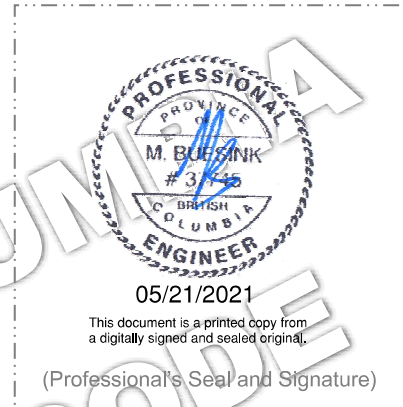
Discipline

## SUMMARY OF DESIGN AND FIELD REVIEW REQUIREMENTS

(Initial applicable discipline below and cross out and initial only those items not applicable to the project.)

### ARCHITECTURAL

- 1.1 Fire resisting assemblies
- 1.2 *Fire separations* and their continuity
- 1.3 *Closures*, including tightness and operation
- 1.4 Egress systems, including *access to exit* within *suites* and *floor areas*
- 1.5 Performance and physical safety features (guardrails, handrails, etc.)
- 1.6 Structural capacity of architectural components, including anchorage and seismic restraint
- 1.7 Sound control
- 1.8 Landscaping, screening and site grading
- 1.9 Provisions for firefighting access
- 1.10 Access requirements for *persons with disabilities*
- 1.11 Elevating devices
- 1.12 Functional testing of architecturally related fire emergency systems and devices
- 1.13 Development Permit and conditions therein
- 1.14 Interior signage, including acceptable materials, dimensions and locations
- 1.15 Review of all applicable shop drawings
- 1.16 Interior and exterior finishes
- 1.17 Dampproofing and/or waterproofing of walls and slabs below grade
- 1.18 Roofing and flashings
- 1.19 Wall cladding systems
- 1.20 Condensation control and cavity ventilation
- 1.21 Exterior glazing
- 1.22 Integration of building envelope components
- 1.23 Environmental separation requirements (Part 5)
- 1.24 Building envelope, Part 10 – ASHRAE, NECB or Energy Step Code requirements
- 1.25 Building envelope, testing, confirmation or both as per Part 10 requirements



Date

### STRUCTURAL

- 2.1 Structural capacity of structural components of the *building*, including anchorage and seismic restraint
- 2.2 Structural aspects of ~~deep foundations~~
- 2.3 Review of all applicable shop drawings
- 2.4 ~~Structural aspects of unbonded post-tensioned concrete design and construction~~

### MECHANICAL

- 3.1 HVAC systems and devices, including high *building* requirements where applicable
- 3.2 *Fire dampers* at required *fire separations*
- 3.3 Continuity of *fire separations* at HVAC penetrations
- 3.4 Functional testing of mechanically related fire emergency systems and devices
- 3.5 Maintenance manuals for *mechanical* systems
- 3.6 Structural capacity of mechanical components, including anchorage and seismic restraint
- 3.7 Review of all applicable shop drawings
- 3.8 Mechanical systems, Part 10 – ASHRAE, NECB or Energy Step Code requirements
- 3.9 Mechanical systems, testing, confirmation or both as per Part 10 requirements

CRP's Initials

# BRITISH COLUMBIA BUILDING CODE 2018

## Schedule B - Continued

Building Permit Number  
(for authority having jurisdiction's use)

934 Khenipsen Road, Duncan, BC

Project Address

structural

Discipline

### PLUMBING

- 4.1 Roof *drainage systems*
- 4.2 Site and foundation *drainage systems*
- 4.3 *Plumbing systems* and devices
- 4.4 Continuity of *fire separations* at plumbing penetrations
- 4.5 Functional testing of plumbing related fire emergency systems and devices
- 4.6 Maintenance manuals for *plumbing systems*
- 4.7 Structural capacity of plumbing components, including anchorage and seismic restraint
- 4.8 Review of all applicable shop drawings
- 4.9 Plumbing systems, Part 10 – ASHRAE, NECB or Energy Step Code requirements
- 4.10 Plumbing systems, testing, confirmation or both as per Part 10 requirements

### FIRE SUPPRESSION SYSTEMS

- 5.1 Suppression system classification for type of *occupancy*
- 5.2 Design coverage, including concealed or special areas
- 5.3 Compatibility and location of electrical supervision, ancillary alarm and control devices
- 5.4 Evaluation of the capacity of city (municipal) water supply versus system demands and domestic demand, including pumping devices where necessary
- 5.5 Qualification of welder, quality of welds and material
- 5.6 Review of all applicable shop drawings
- 5.7 Acceptance testing for "Contractor's Material and Test Certificate" as per NFPA Standards
- 5.8 Maintenance program and manual for suppression systems
- 5.9 Structural capacity of sprinkler components, including anchorage and seismic restraint
- 5.10 For partial systems — confirm sprinklers are installed in all areas where required
- 5.11 Fire Department connections and hydrant locations
- 5.12 Fire hose standpipes
- 5.13 Freeze protection measures for fire suppression systems
- 5.14 Functional testing of fire suppression systems and devices

### ELECTRICAL

- 6.1 Electrical systems and devices, including high building requirements where applicable
- 6.2 Continuity of *fire separations* at electrical penetrations
- 6.3 Functional testing of electrical related fire emergency systems and devices
- 6.4 Electrical systems and devices maintenance manuals
- 6.5 Structural capacity of electrical components, including anchorage and seismic restraint
- 6.6 Clearances from *buildings* of all electrical utility equipment
- 6.7 Fire protection of wiring for emergency systems
- 6.8 Review of all applicable shop drawings
- 6.9 Electrical systems, Part 10 – ASHRAE, NECB or Energy Step Code requirements
- 6.10 Electrical systems, testing, confirmation or both as per Part 10 requirements

### GEOTECHNICAL — Temporary

- 7.1 *Excavation*
- 7.2 *Shoring*
- 7.3 *Underpinning*
- 7.4 Temporary construction dewatering

### GEOTECHNICAL — Permanent

- 8.1 Bearing capacity of the *soil*
- 8.2 Geotechnical aspects of deep *foundations*
- 8.3 Compaction of engineered fill
- 8.4 Structural considerations of *soil*, including slope stability and seismic loading
- 8.5 Backfill
- 8.6 Permanent dewatering
- 8.7 Permanent underpinning



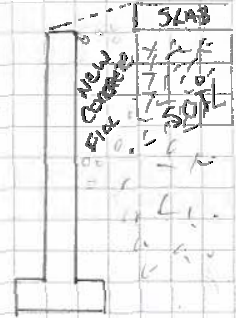
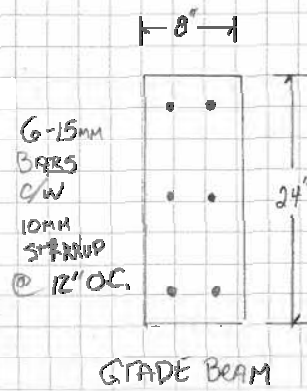
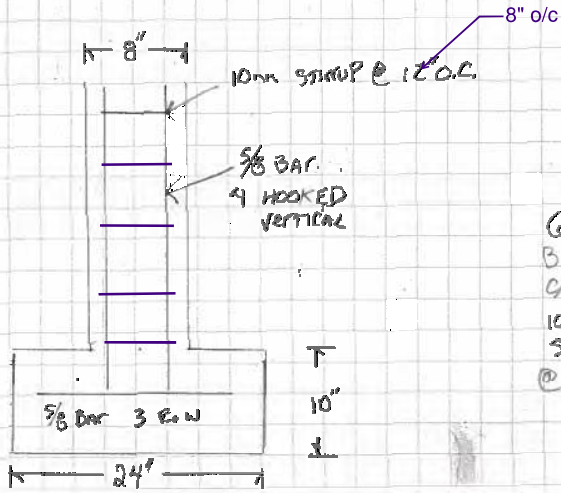
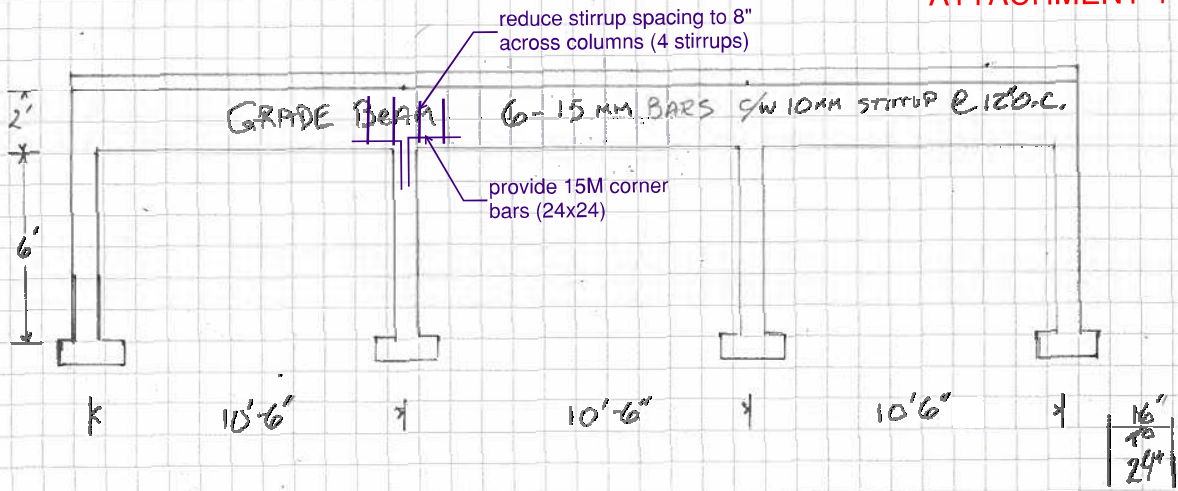
05/21/2021

This document is a printed copy from  
a digitally signed and sealed original.

(Professional's Seal and Signature)

Date

CRP's Initials



buepoint  
consulting ltd.

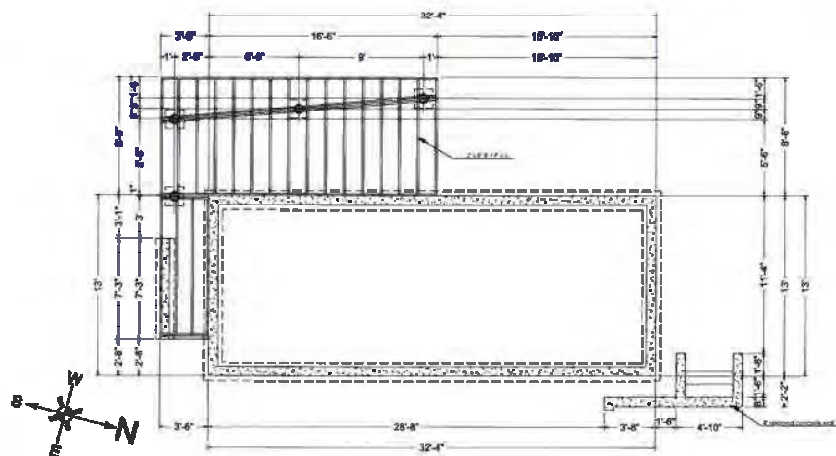
structural engineering and design services  
info@bpc.ltd (250) 597 2296 bluepoint.com



05/21/2021

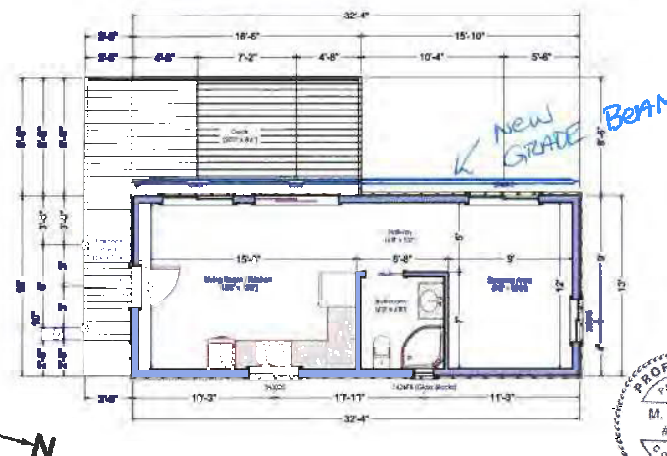
This document is a printed copy from  
a digitally signed and sealed original.

sealed for structural design of grade beam and underpinned columns to bear on strata per Ryzuk 3770-10 dated 2021.03.26



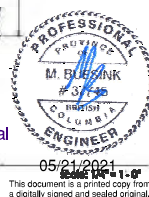
Foundation Plan

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



Main Floor Plan

sealed for structural  
engineering of  
grade beam only



### BUILDING INFORMATION

#### FOUNDATION WALL ON FOOTING

- concrete foundation walls  
min. 8"x8" (15mm Re-Bar)
- 8"x16" rectangular concrete slab footing  
(15mm Re-Bar) on undisturbed ground
- min. 18" below grade

#### DRAINAGE SYSTEM

- 4" perf. PVC
- 3" solid D.W.L.
- W/ 6" D.B. top & side
- below int. slab Ht.
- with landscape cloth over

#### FOUNDATION POST FOOTING (typ.)

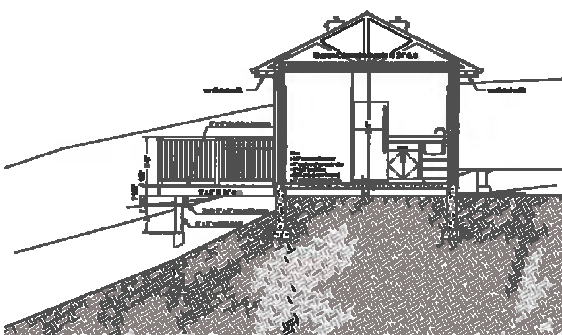
- round concrete columns Radius-4" w/ 15mm Re-Bar,  
min. 18" below grade
- 16"x16"x6" concrete footing (15mm Re-Bar)  
on solid undisturbed ground

#### EXTERIOR WALL ENVELOPE

- 1/2" perl. PVC
- 2x6 insulated frame @ 16" O.C.
- R20 batt-insul.
- 1/2" ply sheathing wrapped  
with wall paper
- Board & Batten Wood Siding

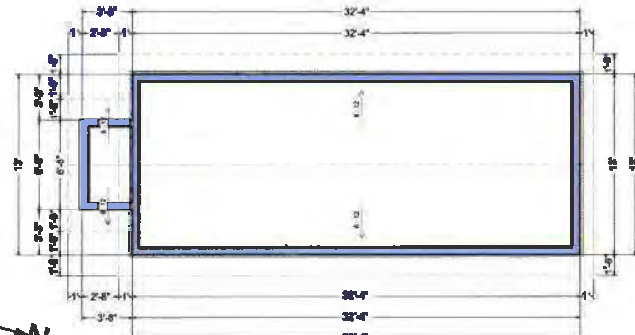
#### ROOF

- 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 G.M.I. V.P.



Section (typ.)

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



Roof Plan

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




General Exterior Views

Sheet	A2
Date	4/3/2020
Drawn by	
Checked by	
Engineer	

Carol Hartwig & Raymond Demarchi  
794 Krennman Rd., Duncan, B.C.





1. Construction shall comply with all applicable codes and industry standards as noted in the contract documents. The consulting structural engineer assumes no responsibility for the consequences of failure by the contractor/owner to build in strict conformance with the contract documents and drawings. The contractor shall be responsible for the contract documents and drawings for errors or omissions and shall verify all dimensions and review to determine discrepancies. Contact the engineer and design team for clarification prior to construction. All unreported discrepancies are the responsibility of the contractor.
3. All structural design is limited to the structural components shown on these drawings. Design of components not clearly identified in these drawings is to be done by the supplier of those components and fastened to the structure as per the supplier's specifications within the parameters shown on these drawings. If there is any ambiguity, consult the structural engineer.
4. The structure is designed to resist the design loads as completed. All bracing and support necessary for construction is the responsibility of the contractor.
5. Use only drawings that have been prepared specifically for construction and are labeled as such. Detail marker represented as  shall be read as detail #1 on page S6.
7. See architectural drawings for floor and roof elevations and sections, recesses, drainage slopes, etc.
8. Any submissions noted *issued for permit* are provided for permitting purposes only and may not be fully complete. Minor revisions may be made prior to issuing for construction.
9. The following notes in the various sub-categories of general notes are to be followed unless noted otherwise. If underlined, the entire note is to be followed.
10. Any submissions noted *issued for permit* are provided for permitting purposes only. For construction, refer to the issued for construction plans and supporting documents.

- The structural components in this drawing package have been designed in accordance with the following codes:  
a. BCBC 2018
1. Climatic data used for the design of these structural components:

Location: Duncan, BC

Snow:  $S_s = 1.8$  kPa  $S_r = 0.4$  kPa

Wind:  $q_{50} = 0.39$  kPa

Seismic:  $S_a(0.2) = 1.17$   $S_a(1.0) = 0.631$   
 $S_a(0.5) = 1.09$   $S_a(2.0) = 0.378$   
 $PGA = 0.513$   $\text{Site Class} = C$   
 $R_d = 3, R_o = 1.7$
2. All foundations are designed in accordance with limit states design.  
Soil bearing capacity is assumed to be as follows and should be verified by a geotechnical engineer or other suitable individual:  
Serviceability Bearing Capacity (SLS) = 75 kPa  
Ultimate Bearing Capacity (ULS) = 110 kPa
3. Dead and Live Loading is as follows:

**Roof:**

dead:	framing, roofing, hardware	= 0.55 kPa
	electrical, insulation, etc.	= 0.15 kPa
	<u>total dead load</u>	= 0.70 kPa
live:	Design Snow ( $C_b = 0.55$ )	= 1.45 kPa

**Floor:**

dead:	framing, hardware, flooring	= 0.6 kPa
live:	residential occupancy	= 1.9 kPa

**Decks:**

dead:	framing, hardware	= 0.55 kPa
live:	residential	= 2.4 kPa

1. Do not cover up any structural elements until blueprint has been given the opportunity to review construction. Cover up of structural elements without review by blueprint may require those components to be exposed for review if deemed necessary by blueprint. Cover up may include but is not limited to:
  - a. pouring concrete,
  - b. insulating,
  - c. sheathing, decking, siding.
2. Contact blueprint if you have any questions.
3. Please notify blueprint 3 business days in advance for site visits.
4. Site visits may be performed by proxy at the discretion of blueprint.
5. All site instructions must come from the signing engineer (SEI).
6. All changes to construction drawings must be accompanied by a written instruction from blueprint.
7. Changes made without a written site instruction from the signing engineer may be considered unacceptable.
8. At the discretion of the engineer, structural steel welds and bolt installation may be required to be inspected by an independent testing agency at the expense of the owner.

1. All concrete is to meet the following requirements in accordance with CSA 23.1/23.2 and CSA 23.3:
  - a. Minimum 28-day compressive strength  $f'c = 25$  MPa, U.N.O.
2. The contractor is responsible for concrete that meets the performance requirements stated above.
3. Concrete is to be suitable for the concrete finishes as specified by the design drawings and is to be the responsibility of the contractor.
4. Provide the following minimum concrete cover dimensions U.N.O.
  - a. Footings placed on soil or fill:

	75mm (3")
b. Placed beside normal, free draining soil or covers:	38mm (1-1/2")
c. Against soils with sulfides, chlorides or saturated:	65mm (2-1/2")
d. Slabs on-grade:	50mm (2")
e. Minimum clear cover U.N.O.	32mm (1-1/4")
5. All slabs to have 6mil poly vapor barrier between slab and subgrade. Poly joints to be lapped a minimum of 6'. Slabs are to be reinforced with 10M bars at 20" o/c each way or 15x2152 MW5.1/MW5.1 (6W11W4W1.4) welded wire mesh centered in the slab (chaired, not on the edge) U.N.O. Provide bar laps between slabs and between wall with AFRS.
6. All edges of all slabs shall be at least 2" bottom continuous with splice distance of 600mm (24"). At reentrant corners rebar is to extend 600mm beyond corner, U.N.O.
7. All openings in slab shall have (2) 12M bars parallel to all edges extending 600mm beyond corners.
8. Slab reinforcing shall not be cut at plumbing or other openings, U.N.O.
9. Slabs on grade are not to bear on foundation walls.
10. 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.
11. Splice length of rebar to be a minimum of 600 mm (24") U.N.O.
12. Rebar placement to be within  $\pm 1/4$  of the specified placement.
13. Provide a sampling of concrete cylinders for testing in accordance with CSA A23.1 to verify compressive strength and failure mode at 7 days and 28 days.
14. It is recommended to provide saw cut control joints at 16' intervals to control cracking. Control joints may be replaced with construction joints where required, Crack control is the responsibility of the contractor.
15. Be sure to properly vibrate and consolidate concrete in ICF walls by a suitably trained individual (provide extra vibrating at all corners and interface changes).
16. ICF walls may require exposure of concrete faces in spot check locations to determine pour quality.
17. Contractor may be asked to provide additional rebar on site, as directed by the engineer.
18. Helix fibre reinforcing may be used in lieu of rebar grid as designed by buepoint.
19. Reinforce top of foundation wall with two 15M continuous outside of any anchors.
20. Conduits, pipes and sleeves are to be installed in concrete to conform to the following:
  - a. Conduits must be located between top and bottom reinforcing when in the plane of the slab. Maximum conduit size not to exceed 1/4 of ICF of concrete slab thickness.
  - b. No boxes, conduit, sleeves or embedded pipes are allowed in columns without written approval from buepoint.
  - c. Minimum size of horizontal conduit or piping in a concrete beam not to exceed 4% of the area. No sleeves are permitted through beams or slab bands without written approval from buepoint.
  - d. Minimum centreline spacing to be three diameters, U.N.O.
  - e. Minimum centreline spacing between parallel conduit and reinforcing to be three diameters, U.N.O.
21. Epoxy to be Hilti HY-200, Simpson Steel-XP or approved alternative.

AIFB	asphalt impregnated fiberboard
ARCH	architectural plans
CBCC	British Columbia building code
B/W	between
CANT	cantilever
CONT	continuous
CSA	Canadian standards association
C/W	complete with
FH	full height
FND	foundation
FTG	footing
O/C	on center
P.T.	pressure treated
R/W	reinforced with
SIM	similar
SOG	slab-on-grade
TYP	typical
U.N.O	unless noted otherwise
U/S	underside
c.l.	center line
e.f.	each face
i.f.	inside face
o.f.	outside face

1	Issued for construction	M.B.	2021.05.21



Duncan, BC (250) 597 2296  
Langford, BC (778) 400 1790  
New Westminster, BC (604) 239 2430  
engineering@buepoint.com



05/21/2021  
This document is a printed copy from  
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(C) COPYRIGHT RESERVED.  
THIS PLAN AND DESIGN ARE, AND AT ALL TIMES,  
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CONSULTING REPRODUCTION OR USE WITHOUT  
WRITING CONSENT IS PROHIBITED. CONTRACTOR  
SHALL VERIFY AND BE RESPONSIBLE FOR ALL  
DIMENSIONS AND CONDITIONS ON PROJECT AND  
THIS OFFICE SHALL BE INFORMED OF ANY  
VARIATIONS FROM DIMENSIONS AND CONDITIONS  
SHOWN ON THE DRAWING. DO NOT SCALE  
DRAWING.

### Khenipsen Grade Beam

934 Khenipsen Road, Duncan, BC

## General notes

DESIGNED BY:	MB
CHECKED BY:	MB
DRAWN BY:	MG
PROJECT NO:	11399
DATE:	2021.05.21
SCALE:	As indicated

DRAWING NO.

# S1



Carol Lee Hartwig, B.Sc., M.Sc.



FIPPA s. 22(1)

December 12, 2021

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](http://www.northcowichan.ca)  
[glenn.morris@northcowichan.ca](mailto:glenn.morris@northcowichan.ca)

RE: ZB000126 – 934 Khenipsen Road – 2<sup>nd</sup> Dwelling Use

Glenn,

This letter is being written in response to your email of December 9, 2021 asking that:

"Carol Hartwig provide a notarized letter that I can include with the report to Council in order to demonstrate her commitment to the items listed in 3."

**"3. a statement about whether the applicants' intent is to i) complete all the necessary steps to obtain a building permit and undertake required alterations or**

**ii) undergo a basic life safety review and accept a notice on title."**

I am confirming that my intent is to complete all the necessary steps to obtain a building permit and undertake required alterations.

Thank you for your kind and prompt attention to this file,

Sincerely,

A handwritten signature in blue ink, appearing to read 'Carol Hartwig', written over a horizontal line.  
Carol Hartwig

*Witnessed this 10<sup>th</sup> day  
of December 2021.*

A handwritten signature in blue ink, appearing to read 'Michael H. Genge', written over a horizontal line.

**MICHAEL H. GENGE**  
Lawyer & Notary Public  
201 - 64 Station Street  
Duncan, BC, V9L 1M4  
Tel: (250) 748-8779

## ATTACHMENT 6

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 &amp; 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  
 VIP 85366

PRIORITY AGREEMENT granting  
 Easement FB192985 priority over  
 Mortgage FA62783

Page 6, Para.5

DT 08/07/16 14:51:30 01 VI 810971  
 CHARGE \$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

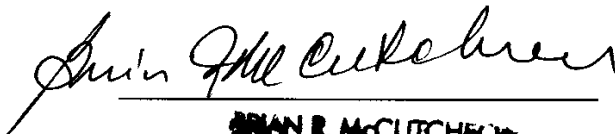
**7. ADDITIONAL OR MODIFIED TERMS:**

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.

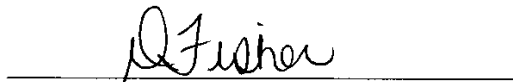
## Execution Date

Officer Signature(s)



**BRIAN R. McCUTCHEON**  
Barrister & Solicitor  
221 St. Julian Street  
DUNCAN, B.C. V9L 3B8

(as to both signatures)



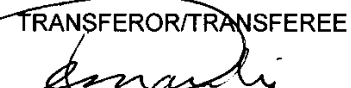
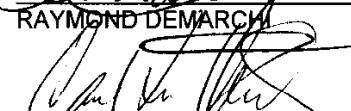
**DEBBY FISHER**  
Commissioner for taking Affidavits  
for British Columbia  
Island Savings Credit Union  
300 - 499 Canada Avenue  
Duncan, BC V9L 1T7

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.

Page 3 of 8 Pages

**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 17<sup>th</sup> 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"

Page 8 of 8 Pages

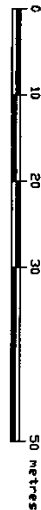
## REFERENCE PLAN OF EASEMENT OVER PART OF

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. 92B.072

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

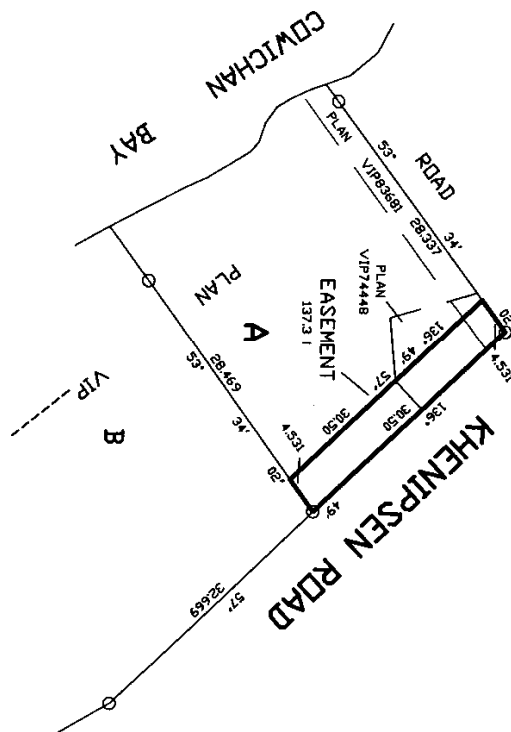
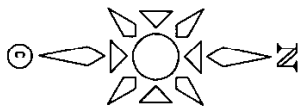
The plan lies within the Cowichan Valley Regional District.

## 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.



BOWERS &amp; ASSOCIATES

2856 CASWELL STREET,  
CHEMINUS, B.C. V0R 1K3  
PHONE/FAX: 246-4928  
File: 3367

File: 3360-20-0551 Folio: 414,000

I, Philip J. Bowers, a British Columbia Land Surveyor of the  
Town of Cheminus, 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

VIP85369

*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 85366

I enclose:

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

Dated the *14<sup>th</sup>* day of July, 2008.

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

  
Signature

**DYE & DURHAM**

VIP85369

Our Ref: 205046

PLEASE REPLY TO DUNCAN OFFICE

February 20, 2020

**Shawn Slade**

[REDACTED]  
Duncan, BC V9L 5L3

FIPPA s. 22(1)

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.

April 30, 2020

Shawn Slade

 FIPPA s. 22(1)

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 itself<sup>1</sup>.

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<sup>1</sup> 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

[REDACTED] FIPPA s. 22(1)

Duncan, BC V9L 5L3

FIPPA s. 22(1)

**Re: July 16, 2008 Easement on [REDACTED] – FB192986**

---

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

Background Information

FIPPA s. 22(1)

You own property within the Municipality of North Cowichan with a residential address of [REDACTED]  
FIPPA s. 22(1) [REDACTED] (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***

A handwritten signature in black ink, appearing to read 'Greg R. Phillips', with a stylized, flowing script.

Per: Greg R. Phillips  
Direct email: [gp@jfbllaw.ca](mailto:gp@jfbllaw.ca)  
GRP/ao



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 enacts as follows:

**Title**

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

"Despite section 53 (4) (a), a maximum of 2 residential buildings, with a total combined maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578)."

\_\_\_\_\_  
READ a first time on the 18 day of November, 2020

READ a second time on the \_\_\_\_ day of \_\_\_\_\_, 2022

This bylaw was advertised in the Cowichan Valley Citizen on the \_\_\_\_ day of \_\_\_\_\_, 2022 and the \_\_\_\_ day of \_\_\_\_\_, 2020 and the municipality's website and notice board on the \_\_\_\_ day of September, 2022.

CONSIDERED at a Public Hearing on

READ a third time on

ADOPTED on

\_\_\_\_\_  
CORPORATE OFFICER

\_\_\_\_\_  
PRESIDING MEMBER

# **COUNCIL MINUTES**



#### 4. **MAYOR'S REPORT**

Acting Mayor Justice extended a note of thanks towards the North Cowichan Fire Department and their role in fighting the tire fire.

#### 5. **DELEGATIONS AND PRESENTATIONS**

##### 5.1 **Vancouver Island Vipassana Association (VIVA)**

Four representatives of the Vancouver Island Vipassana Association, Evie Chauncey, Carl Welford, Deborah Harding, and their spokesperson Steven Armstrong, presented their request to Council to change their tax exemption status for 2359 Calais Road, that they be classified as and receive the same exemptions [both statutory and permissive] as a religious organization.

#### 6. **PUBLIC INPUT**

Council received 23 submissions via email prior to the meeting regarding agenda items 7.2, 11.1 and 11.2. A summary of those submissions was read out in the meeting.

Councillor Douglas left the meeting at 2:00 p.m.

#### 7. **BYLAWS**

##### 7.1 **Permissive Tax Exemption Request**

IT WAS MOVED AND SECONDED:

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.

(Opposed: Justice)  
CARRIED

Acting Mayor Justice relayed Councillor Douglas' message that he would be recusing himself from the next item, as he lives in the same neighbourhood as the applicant, at 2:28 p.m.

##### 7.2 **Zoning Amendment Application - ZB000126 - 934 Khenipsen Road**

Council suspended the rules to provide the applicant's representative, David Coulson, an opportunity to be heard before Council considered the options presented in the staff report included in the agenda.

IT WAS MOVED AND SECONDED:

That the application (Zoning Amendment Application - ZB000126) be referred back to staff to review the new information as submitted and that staff work with the applicant to identify whether an alternative location for the suite can occur and report back to Council.

CARRIED

Councillor Douglas returned to the meeting at 3:28 p.m.

**8.2 Zoning Amendment Bylaw (Cannabis Production in the Agricultural Land Reserve), 2020, No. 3797 for adoption**

IT WAS MOVED AND SECONDED:

That Council adopt Zoning Amendment Bylaw (Cannabis Production in the Agricultural Land Reserve), No. 3797, 2020. CARRIED

Councillor Douglas declared a conflict on the next item, stating the reason being that he lives in the same neighbourhood as the applicant, and he left the meeting at 2:58 p.m.

**8.3 Zoning Bylaw Amendment Application No. ZB000126 (934 Khenipsen Rd.) – Proposed Detached Second Dwelling Use - Update**

IT WAS MOVED AND SECONDED:

That council give first reading to Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798;

And that before council considers second reading the applicants provide the municipality with the following information:

1. a plan for ensuring the adequate safety of the building in the event of a seismic event through a second geotechnical report.
2. a plan for adequately dealing with the wastewater problems which ensures the system meets environmental and health standards.
3. a statement about whether the applicants' intent is to i) complete all the necessary steps to obtain a building permit and undertake required alterations or ii) undergo a basic life safety review and accept a notice on title.

(Opposed: Siebring, Marsh)

CARRIED

Councillor Douglas returned to the meeting at 3:30 p.m.

**8.4 Respectful Spaces Bylaw Consequential Amendments**

IT WAS MOVED AND SECONDED:

That Council gives first, second and third reading to Municipal Ticket Information System Amendment Bylaw, 2020, No. 3807. CARRIED

IT WAS MOVED AND SECONDED:

That Council gives first, second and third reading to Parks and Public Places Regulation Amendment Bylaw, 2020, No. 3806. CARRIED

Council, by unanimous consent, recessed at 3:39 p.m. and reconvened at 3:48 p.m.

**9. REPORTS**

**9.1 Crofton Fire Hall Upgrade**

IT WAS MOVED AND SECONDED:

1. That Staff be directed to include \$3.5 million in the 2021-2025 Financial Plan for upgrades to the Crofton Fire Hall based on Option 1, the Demolition of the original 1964 building and replacing it with a smaller 2,150 gross square foot addition, and associated upgrades to the 2002 truck bays.
2. That the Crofton Fire Hall redevelopment be financed by long term debt. CARRIED

*Substance Use Act]*

- (2) Item 2.2.3 [Cowichan Climate Hub Re: Reducing GHG Emissions in Built Environment]
- (3) Item 2.2.4 [South Coast Ship Watch Alliance Re: Anchorages in the Southern Gulf Islands]
- (4) Item 2.2.5 [City of Terrace Re: Resolution to the 2022 NCLGA Convention (Prolific Offenders)]
- (5) Item 2.2.7 [BC Hospitality Sector Re: Reducing patio application red tape]
- (6) Item 2.2.9 [City of Victoria and City of Kamloops Re: AVICC Resolution R37 - Case for Basic Income for Municipalities]

IT WAS MOVED AND SECONDED:

THAT the agenda be adopted as amended.

CARRIED

**4. MAYOR'S REPORT**

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

**5. DELEGATIONS AND PRESENTATIONS**

None.

**6. PUBLIC INPUT**

Council received no public input.

**7. BYLAWS**

**7.1 Election and Assent Voting Bylaw No. 3837 and Sign Amendment Bylaw No. 3836 for adoption**

IT WAS MOVED AND SECONDED:

THAT Council adopt:

- (1) Election and Assent Voting Bylaw No. 3837, 2022; and
- (2) Sign Amendment Bylaw No. 3836, 2022.

CARRIED

**7.2 Zoning Amendment Bylaw (1379 Maple Bay Road), 2021, No. 3822 for adoption**

IT WAS MOVED AND SECONDED:

THAT Council adopt Zoning Amendment Bylaw (1379 Maple Bay Road), 2021, No. 3822.

CARRIED

**7.3 Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798 for second reading**

Councillor Douglas declared a conflict of interest on this item, stating the reason being that he lives near the applicant, and he left the meeting at 1:45 p.m.

IT WAS MOVED AND SECONDED:

THAT Council give second reading to Zoning Bylaw Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798.

CARRIED

Councillor Douglas returned to the meeting at 2:06 p.m.

# **CORRESPONDENCE**

# 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 2<sup>nd</sup> 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

A handwritten signature in black ink, appearing to read 'David Coulson', is written over the word 'Sincerely'.

David Coulson

---

**From:** shawn slade [REDACTED] **FIPPA s. 22(1)**  
**Sent:** Friday, May 1, 2020 10:11 AM  
**To:** Caroline von Schilling  
**Subject:** Easement at 934 Khenipsen  
**Attachments:** Lacroix Law Legal Opinion.pdf; Johnston Franklin Bishop Legal Opinion.pdf; N. Cowichan Planning Dept Letter.pdf

Thanks Caroline

I again appreciate your clear and detailed response.

I thought that after reading my letter of opposition, and seeing the wording of the easement, that it would have ended there. I am surprised under the circumstances, such an amendment would be entertained at all! Changing the bylaws to suit someone who has ignored them would seem like a very poor precedent to set.

The easement wording appears pretty clear and obvious to me. However I am not a lawyer, and I don't suspect that North Cowichan cares much about my interpretation of a legal document. For this reason I have had two lawyers from two different law firms review the easement and write legal opinions. They both conclude that there is no legal access for a second dwelling on the subject property.

I would also like to point out a couple of items, in addition to the letter which I have already written (I have re-attached that letter here as well):

I constructed a house a few years ago, on the parcel next to 934 Khenipsen. I obtained a building permit, and built a home that aligned with the local bylaws. I had to adjust my building plans several times because what I wanted to build had slight discrepancies with the bylaws. Each one of these adjustments took time and cost money.

One such adjustment required me to submit a plan that did not have wood siding, as I am in a high fire risk zone. This not only cost money for having plans reworked, but I ended up with siding that was different from what I wanted. If I ignored the bylaws I wouldn't have had that expense, and I would have gotten exactly the siding I wanted.

The non-compliant suite has wood siding.

I had to install a 3 tank septic system complete with a treatment system and a pump which transports my effluent across Khenipsen Rd. This system cost 10's of thousands of dollars and requires ongoing maintenance with ongoing costs (compressor, pumps, electricity, etc.). I would have far preferred to have a single tank, no treatment system, and discharge my septic in a field without pumping it across the road and up the mountain. The non compliant suite does not have a septic treatment plant, or pump its effluent to the far side of Khenipsen.

In order for my basement suite to be approved at my house, I had to create off street parking for the tenants. My suite, which the bylaws do allow, was not going to be allowed if I was unable to show a parking space on the property for the tenants.

The non compliant suite has no off street parking, as access across my property is not permitted.



The list goes on and on. There were dozens of requirements that cost me money, and several restrictions that I was forced to adhere to in order to be compliant with North Cowichan's building and planning department. However I did them because that is what is required of me as a tax paying and law abiding citizen of North Cowichan.

There is another community member on Khenipsen who is seeking to develop his property. His name is Peter Paul. I understand that North Cowichan will not permit him to develop as he wishes because part of the access to his parcel crosses the neighbors property, and he requires her written permission before he can increase the traffic across her driveway.

Likewise, the owners of 934 Khenipsen Rd. are not permitted to have an additional dwelling that increases the traffic across my property without my permission. I have given no such permission.

One of the attached legal opinions actually expresses that North Cowichan would be creating this legal conflict (paragraph 10, Lacroix) by rezoning the neighboring parcel.

I have currently started the process of putting a carport onto my house. I have been in contact with North Cowichan Planning department and have intentions of following the correct process. Obtaining a permit, and building within the bylaws, restrictions and requirements. This is going to take additional time and cost extra money. Additionally I will be restricted to building a complaint structure rather than building whatever I please.

Surely North Cowichan can recognize that it would not be reasonable to expect me (or anyone else in the neighborhood) to carry on with this permitting process if ignoring the bylaws and breaking the rules provides a cheaper, faster and more personally rewarding outcome.

Please include my letter and all emails, as well as the two legal opinions regarding lack of legal access for a second dwelling in my official submission for staff and council consideration.

Thank you for your time.

Shawn Slade

# 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



**FIPPA s. 22(1)**

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 itself<sup>1</sup>.

---

<sup>1</sup> 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.jfblaw.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

[REDACTED] **FIPPA s. 22(1)**

Duncan, BC V9L 5L3

**FIPPA s. 22(1)**

**Re: July 16, 2008 Easement on [REDACTED] FB192986**

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

Background Information

**FIPPA s. 22(1)**

You own property within the Municipality of North Cowichan with a residential address of [REDACTED] (the "Slade Property").

**FIPPA s. 22(1)**

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;

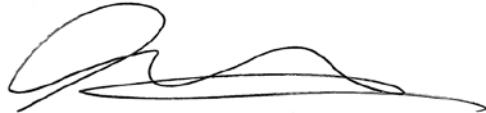
You have advised me that there is, in fact, more than one occupied residential dwelling upon the Demarchi property. The terms of the easement are very clear – it exists to provide access to the single family residential dwelling.

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***

A handwritten signature in black ink, appearing to read 'Greg R. Phillips', with a stylized, flowing script.

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



North Cowichan Planning Department

To Whom it May Concern

My name is Shawn Slade. I am a property owner and tax payer of two properties within North Cowichan. 948 Khenipsen road is my personal residence (and the neighboring property to the 934 Khenipsen). I also own 953 Jaynes Road.

I am writing to express my firm opposition to an amendment or exception of the zoning bylaws with respect to the application made by the property owners at 934 Khenipsen Rd.

934 Khenipsen Rd has a detached dwelling which has been operating as a suite, in violation of local bylaws and in violation of the easement over 948 Khenipsen Rd.

My reasons for opposing the amendment are as follows:

- This detached suite was built, presumably without a permit, and certainly in violation of the bylaws. To allow someone to disregard the bylaws, then reward them by changing the bylaws in their favor would be a shocking and dangerous precedent to set.
- As a taxpaying resident in North Cowichan, I have obtained building permits and followed the bylaws for the construction activities on my property – not always because I wanted to, but because I was required to. I expect North Cowichan to hold all of its tax paying citizens to the same standard
- The only access to this suite would be by crossing my property, resulting in increased traffic across my property. This will lower my property value and also my quality of life, as the access passes in such close proximity to my house that the traffic is disturbing and bothersome.
- There will actually be no access for the suit due to the fact that here is an easement in place which allows for access for “a single family dwelling” (easement attached). By North Cowichan’s definition within the Zoning bylaw, a “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”. The easement does not allow for multiple dwellings or multiple dwelling units, but a singular, single family dwelling.
- In the event that the access is continued to be used by multiple dwelling units illegally, the driveway will be blocked with a physical barrier. It is likely that legal proceedings would follow which I am sure North Cowichan does not want to be caught up in.

Ultimately, this suite was built without regard for the local bylaws. To amend by-laws at the expense of bylaw abiding tax payers in order to legitimize the infractions of persons who have not abided bylaws is neither reasonable nor fair. I would be shocked, upset, and vocal if disregarding bylaws resulted in amendments rather than enforcement.

This is not a simple matter of amending a bylaw for a single person or property with no other interests to consider. This will have a negative impact on myself, and I am firmly opposed to it.

Please feel free to contact me to discuss or clarify any of this.

Shawn Slade

██████████ **FIPPA s. 22(1)**

████████████████████ **FIPPA s. 22(1)**

Jan. 26, 2020

North Cowichan Planning Department

Regarding; 934 Khenipsen Rd.; amendment or exception to zoning bylaws.

To Whom it May Concern

My name is Shawn Slade. I am a property owner and tax payer of two properties within North Cowichan. **FIPPA s. 22(1)** road is my personal residence (and the neighboring property to the 934 Khenipsen). I also own **FIPPA s. 22(1)**.

I am writing to express my firm opposition to an amendment or exception to the zoning bylaws with respect to the application made by the property owners at 934 Khenipsen Rd.

934 Khenipsen Rd has a detached dwelling which has been operating as a suite, in violation of local bylaws and in violation of the easement over **FIPPA s. 22(1)** Khenipsen Rd.

My reasons for opposing the proposed amendment are as follows:

- This detached suite was built, presumably without a permit, and certainly in violation of the bylaws. To allow someone to disregard the bylaws, then reward them by changing the bylaws in their favor would be a shocking and dangerous precedent to set.
- As a taxpaying resident in North Cowichan, I have obtained building permits and followed the bylaws for the construction activities on my property as I was required to. I expect North Cowichan to hold all of its tax paying citizens to the same high standard
- The only access to this suite would be by crossing my property, resulting in increased traffic across my property. This will lower my property value and also my quality of life, as the access passes in such close proximity to my house that the traffic is disturbing and bothersome.
- There will actually be no access for the suite due to the fact that here is an easement in place which allows for access for "a single family dwelling" (easement attached). By North Cowichan's definition within the Zoning bylaw, a "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". The easement does not allow for multiple dwellings or multiple dwelling units, but access for a singular, single family dwelling only.
- In the event that the access is continued to be used by multiple dwelling units illegally, I will exercise my right to enforce the terms of the access easement, which could include gating or blocking access.

Ultimately, this suite was built without regard for the local bylaws. To amend by-laws at the expense of bylaw abiding tax payers in order to legitimize the infractions of persons who have not abided bylaws is neither reasonable nor fair. I would be shocked, upset, and vocal in my dismay if disregarding bylaws results in an amendment rather than bylaw enforcement.

This is not a simple matter of amending a bylaw for a single person or property with no other interests to consider. This will have a negative impact on myself, and the value of my property, and I am firmly opposed to it.

Please feel free to contact me to discuss or clarify any of this.

Shawn Slade

**FIPPA s. 22(1)**

**FIPPA s. 22(1)**

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**From:** shawn slade [REDACTED] **FIPPA s. 22(1)**

**Sent:** Tuesday, September 15, 2020 9:57 AM

**To:** Al Siebring <mayor@northcowichan.ca>; Rob Douglas <rob.douglas@northcowichan.ca>; Christopher Justice <christopher.justice@northcowichan.ca>; Tek Manhas <tek.manhas@northcowichan.ca>; Kate Marsh <kate.marsh@northcowichan.ca>; Rosalie Sawrie <rosalie.sawrie@northcowichan.ca>; Debra Toporowski <debra.toporowski@northcowichan.ca>

**Subject:** file no. ZB000126. Zoning bylaw amendment application

North Cowichan Council

My name is Shawn Slade. I have attached a letter regarding the zoning bylaw amendment application that will be before Council for the September 16th meeting. I have reviewed the agenda, and I am comforted to see that North Cowichan staff have recommended that the application be denied.

I am also firmly opposed to the amendment. It is not fair to other community members who follow due process. Also this particular amendment would have a direct negative impact on my family and my property.

Please see the attached letter.

Thank you for your time and consideration,

Shawn Slade

[REDACTED] **FIPPA s. 22(1)**

Sept 14, 2020

North Cowichan Council

My name is Shawn Slade. I am a property owner and tax payer within North Cowichan, as well as a resident and community member. I am writing this letter in regard to a zoning bylaw amendment application that is on the Council agenda for the September 16<sup>th</sup> meeting.

I would like to express my opposition to an amendment of the zoning bylaws with respect to the application made by the property owners at 934 Khenipsen Rd.

FIPPA s. 22(1)

Myself and my family live at [REDACTED] Khenipsen, which is next door to the applicants. The neighboring parcel has created a detached dwelling which has been operating as a suite, in violation of local bylaws and in violation of the easement over my property at [REDACTED] Khenipsen Rd. As the access to 934 Khenipsen is through my property, the suite results in considerably more traffic across my land. This impacts my family's quality of life, and reduces my property value.

FIPPA s. 22(1)

This detached suite was constructed without a permit. In fact a permit would not have been issued for the suite, as the zoning does not allow for detached suites in our area.

As a community member of North Cowichan, I have obtained building permits and followed the bylaws for the construction activities on my property – not always because I wanted to, but because I was required to.

Prior to construction of my house, I had to adjust my building plans several times because what I wanted to build had slight discrepancies with the bylaws. Each one of these adjustments took time, cost money, and resulted in some form of sacrifice.

I was required to install a 3 tank septic system complete with a treatment system and a pump which transports my effluent across Khenipsen Rd. This system cost 10's of thousands of dollars and requires ongoing maintenance with ongoing costs (compressor, pumps, electricity, etc.). I would have far preferred to have a single tank, no treatment system, and discharge my septic in a field without pumping it across the road and up the mountain.

The non compliant suite does not have septic treatment, or pump its effluent to the far side of Khenipsen.

Ultimately, this suite was built without regard for the local bylaws. To amend by-laws in order to legitimize the infractions of persons who have disregarded those bylaws is neither reasonable nor fair.

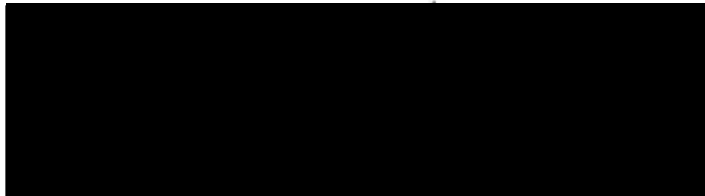
I have currently started the process of putting a carport onto my house. I have been in contact with North Cowichan Planning department and have intentions of following the correct process - Obtaining a permit and building within the bylaws, restrictions and requirements. In comparison to disregarding the process, this is going to take additional time and cost extra money. Additionally, I will be restricted to building a complaint structure rather than building whatever I please.



Surely North Cowichan can recognize that it would not be reasonable to expect me (or anyone else in the community) to carry on with this permitting process if ignoring the bylaws and breaking the rules provides a cheaper, faster and more personally rewarding outcome.

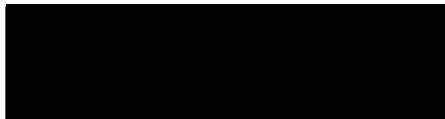
I am firmly opposed to this amendment application. Not only because the correct process was ignored and laws were disregarded, but also because the amendment will have a direct negative impact on myself, my family, and my property.

Thank you for your time and consideration.

A large black rectangular redaction box covering the signature area.

**FIPPA s. 22(1)**

Shawn Slade

A black rectangular redaction box covering the signature area.

**FIPPA s. 22(1)**

# **Public Comments Received**

**After 2nd Reading of Bylaw  
and  
Prior to Public Hearing Notice**

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-----Original Message-----

From: Chris and Kathy McLean [REDACTED] **FIPPA s. 22(1)**

Sent: Tuesday, April 12, 2022 3:35 PM

To: Council <council@northcowichan.ca>

Subject: Rezoning accessory building 934 Khenipsen Rd

Please find attachment

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

"Despite section 53(4) (a), a maximum of 2 residential buildings, with a total combine maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578)."

To: The Council of the Municipality of North Cowichan

council@northcowichan.ca

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I have no objections to the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

**FIPPA s. 22(1)**

FROM:

Signature

Print name

C.S. McLEAN

Signature

Print

name

Address

**FIPPA s. 22(1)**

---

**From:** Chris Richardson [REDACTED] **FIPPA s. 22(1)**  
**Sent:** Tuesday, April 12, 2022 9:03 PM  
**To:** Council <[council@northcowichan.ca](mailto:council@northcowichan.ca)>  
**Subject:** Letter of support for Rezoning Amendment Bylaw for 934 Khenipsen Road, Duncan BC

Dear Council Members of the Municipality of North Cowichan,

Please find attached a pdf of our letter of support for a **Rezoning Amendment Bylaw to permit the use of a second dwelling (converted accessory building) at 934 Khenipsen Road.**

Please email me with any questions you have concerning this matter. Thank you for your time.

Sincerely,

Chris G Richardson

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road)), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

“Despite section 53(4) (a), a maximum of 2 residential buildings, with a total combine maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578).”

April 12, 2022

To: The Council of the Municipality of North Cowichan

[council@northcowichan.ca](mailto:council@northcowichan.ca)

We live in the Khenipsen Gore-Langton Neighbourhood (several parts of our property are immediately adjacent to the property at 934 Khenipsen Road) and we can attest to the character and credibility of the property owners at 934 Khenipsen Road - we feel very fortunate to have such thoughtful neighbours who have actively supported both the community and environmental well-being of the area.

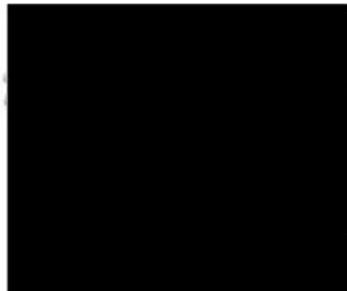
We are aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. We support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798) and we have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides much needed alternative housing for the Cowichan Valley.

We understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

**FIPPA s. 22(1)**

Signature:



Print name: Chris G Richardson

Signature:

Print name: Rachel Johnson

**FIPPA s. 22(1)**

**FIPPA s. 22(1)**

**FIPPA s. 22(1)**



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**From:** Julia Bendtsen [REDACTED] **FIPPA s. 22(1)**

**Sent:** Wednesday, April 13, 2022 10:36 AM

**To:** Council <council@northcowichan.ca>

**Subject:** Khenipsen Neighbour Support (No. 3798)

Municipality of North Cowichan,

Please find attached my letter of support for the rezoning Carol Hartwig's second dwelling at 934 Khenipsen Road. Not only is there a dire need for affordable housing, but I also trust that the owners have done all necessary studies, reports and updates to make sure that this cabin is up to code in every way possible. As a particularly ecologically sensitive area, removing the cabin would do more damage than good.

—Carol is an outstanding neighbour and we support her needs wholeheartedly. —

We are happy to provide any further information you may need.

Thank you and be well,

Julia Bendtsen & Thomas Duke

[REDACTED] **FIPPA s. 22(1)**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

"Despite section 53(4) (a), a maximum of 2 residential buildings, with a total combine maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578)."

To: The Council of the Municipality of North Cowichan


[council@northcowichan.ca](mailto:council@northcowichan.ca)

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM: **FIPPA s. 22(1)**

Signature  Print name \_\_\_\_\_

Signature  Print name \_\_\_\_\_

Address  **FIPPA s. 22(1)**

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From: Goetz Schuerholz [REDACTED] **FIPPA s. 22(1)**

Date: April 18, 2022 at 10:05:01 AM PDT

To: Council <[council@northcowichan.ca](mailto:council@northcowichan.ca)>

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

Dear Council members,  
please find attached my "no objection" letter regarding the application for an auxiliary building at the referenced property.

Respectfully,

[REDACTED] **FIPPA s. 22(1)**

---

Dr. Goetz Schuerholz

[REDACTED] **FIPPA s. 22(1)**

Duncan BC, V9L 5L3

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

“Despite section 53(4) (a), a maximum of 2 residential buildings (second building not larger than the existing converted accessory building), are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578).”

To: The Council of the Municipality of North Cowichan

[council@northcowichan.ca](mailto:council@northcowichan.ca)

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling as long as it is not being added to.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

 **FIPPA s. 22(1)**

Name: Dr.Goetz Schuerholz

 **FIPPA s. 22(1)**

---

-----Original Message-----

From [REDACTED] **FIPPA s. 22(1)**

Sent: Tuesday, April 19, 2022 10:03 AM

To: Council <council@northcowichan.ca>

Subject: Rezoning amendment at 934 Khenipsen Road

Members of Council:

Please find attached a letter to council regarding a rezoning amendment bylaw at 934 Khenipsen Road, Duncan.

Thank you.

Jill and Jackson Ellis

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

"Despite section 53(4) (a), a maximum of 2 residential buildings, with a total combine maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578)."



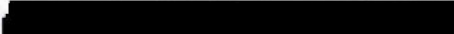
To: The Council of the Municipality of North Cowichan  
7030 Trans-Canada Hwy  
Duncan, BC V9L 6A1  
[council@northcowich.ca](mailto:council@northcowich.ca)

We live in the Khenipsen Road Neighbourhood and we can attest to the character and credibility of the property owners at 934 Khenipsen Road.

We are aware of the existence of a small 40 year old converted accessory building at 934 Khenipsen Road. We support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

We understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM: **FIPPA s. 22(1)**

Signature  Print name Jill Ellis  
Signature  Print name Jackson Ellis  
Address  **FIPPA s. 22(1)**



---

**From:** Deb [REDACTED] **FIPPA s. 22(1)**  
**Sent:** Wednesday, April 20, 2022 12:52 PM  
**To:** Council <council@northcowichan.ca>  
**Subject:** Neighbour form supporting rental of 934 Khenipsen Rd cottage

Dear Council.

Please find the attached PDF in support of Carol Hartwig renting out her existing very small cottage at 934 Khenipsen Rd.

---

Thank you.

Deb Carfrae  
[REDACTED] **FIPPA s. 22(1)**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling  
(converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

“Despite section 53(4) (a), a maximum of 2 residential buildings, with a total combine maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578).”

To: The Council of the Municipality of North Cowichan  
7030 Trans-Canada Hwy  
Duncan, BC V9L 6A1  
[council@northcowichan.ca](mailto:council@northcowichan.ca)

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

Deb Carfrae

 **FIPPA s. 22(1)**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

"Despite section 53(4) (a), a maximum of 2 residential buildings, with a total combine maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578)."

To: The Council of the Municipality of North Cowichan

council@northcowichan.ca

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM: **FIPPA s. 22(1)**

[REDACTED]

Print name

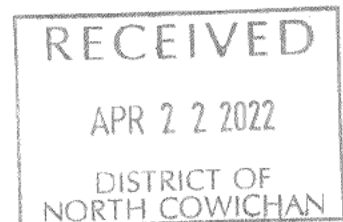
JOHN CHALMERS

Print name

CAROLYN CHALMERS

[REDACTED]

**FIPPA s. 22(1)**



Carol Hartwig  
934 Khenipsen Road  
Duncan, BC V9L 5L3

April 29, 2022

The Council of the Municipality of North Cowichan  
7030 Trans-Canada Hwy  
Duncan, BC V9L 6A1  
[council@northcowichan.ca](mailto:council@northcowichan.ca)

RE: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Dear Councilors,

**FIPPA s. 22(1)**

Please ensure that this enclosed letter of mine along with a letter from Steve Kirley of (15) [REDACTED] (on the same easement as my property) and an additional enclosed number of letters from neighbours is included in the public hearing for June 15, 2022. I believe this provides clear evidence that there is overwhelming support from neighbours on Khenipsen and Gore-Langton for this rezoning amendment bylaw.

I believe that I have fulfilled the necessary studies and reports that have been required by the Planning Department of the Municipality of North Cowichan for this rezoning amendment bylaw. I wish to reiterate the conclusions of the Council at the April 6 meeting that:

1. There is a need for this type of alternative affordable housing in the Cowichan Valley and it fits into character of this "eccentric seaside community" on Khenipsen Road.
2. This building was constructed in an ecologically sensitive zone many years ago; the environmental damage was done 40 years ago and any change including removing it would cause more environmental damage than leaving it as is.
3. The owners have been willing to do all the necessary studies and reports.
4. The Municipality has no legal role in private easement disputes.

David Coulson of Coulson Design will be providing the Covenant and proceeding with the Development Permit and Building permit on my behalf.

[REDACTED]  
Carol Hartwig

**FIPPA s. 22(1)**

[REDACTED]  
**FIPPA s. 22(1)**

**FROM NEIGHBOUR at 966 Khenipsen Rd THAT SHARES EASEMENT WITH 934 Khenipsen Road**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

"Despite section 53(4) (a), a maximum of 2 residential buildings, with a total combine maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578)."

To: The Council of the Municipality of North Cowichan

council@northcowichan.ca

**FIPPA s. 22(1)**

**FIPPA s. 22(1)**

I own the property at [REDACTED] that shares the short driveway and turn-around easement with [REDACTED] and 934 Khenipsen Road. I am friends with both the owners of 948 Khenipsen and 934 Khenipsen.

I have always been aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road which has been rented at times. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling nor to the use of the easement by a renter. It conforms to the neighbourhood character and provides alternative affordable housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM **FIPPA s. 22(1)**

Signature

[REDACTED]

April 13/22

Print name

Steve Kirley

**FIPPA s. 22(1)**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

"Despite section 53(4) (a), a maximum of 2 residential buildings, with a total combine maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578)."

To: The Council of the Municipality of North Cowichan

council@northcowichan.ca

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

**FIPPA s. 22(1)**

Signature

[Redacted Signature]

Print name

RONALD DAVIS

Signature

**FIPPA s. 22(1)**

Print name

Address

[Redacted Address]

[Redacted Address]

[Redacted Address]

\_\_\_\_\_



Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM: **FIPPA s. 22(1)**

Signature



Print name

D. Loderick

Signature

Chris Sherman

Print name

Address



**FIPPA s. 22(1)**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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council@northcowichan.ca

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM: [REDACTED] **FIPPA s. 22(1)**

Signature

Print name

ROBERT E HOLDEN

Signature

Print name

Address

**FIPPA s. 22(1)**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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To: The Council of the Municipality of North Cowichan

council@northcowichan.ca

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

**FIPPA s. 22(1)**

[Redacted Name]

Print name MARY ANN DEACON

Signature

\_\_\_\_

Print name

\_\_\_\_

Address

[Redacted Address]

**FIPPA s. 22(1)**



Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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[council@northcowichan.ca](mailto:council@northcowichan.ca)

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.


I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.


I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM: **FIPPA s. 22(1)**

Signature  Print name Maura Walker

Signature \_\_\_\_\_ Print name \_\_\_\_\_

Address 

 **FIPPA s. 22(1)** Rob Purgavie

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

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council@northcowichan.ca

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

**FIPPA s. 22(1)**

Signature

Print name

*Lauren Pheasant*

Signature

Print name

Address

**FIPPA s. 22(1)**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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council@northcowichan.ca

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

**FIPPA s. 22(1)**

FROM:

Signature

Print name

JOHN COLEMAN

Signature

Print name

JOE COLEMAN

A

**FIPPA s. 22(1)**



Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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council@northcowichan.ca

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I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

**FIPPA s. 22(1)**

FROM:

Signature

Print name

T. A. Down

Signature

Print name

SUSAN DOWN

Address

**FIPPA s. 22(1)**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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To: The Council of the Municipality of North Cowichan

council@northcowichan.ca

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I have no objections to the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

Signature \_\_\_\_\_ Print name \_\_\_\_\_

Signature \_\_\_\_\_ Print name \_\_\_\_\_

Address \_\_\_\_\_

*J. Roma Crovi*  
J. ROMA CROVI

**FIPPA s. 22(1)**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

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I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

**FIPPA s. 22(1)**

Signature

Print name

Howard Roloff

Signature

Print name

John Noble

Address

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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To: The Council of the Municipality of North Cowichan

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I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

**FIPPA s. 22(1)**

Signature

Print name

Ingrid Brounstein

Signature

Print name

Howard Brounstein

Address

THE SECOND DWELLING HAS BEEN VERY  
WELL MAINTAINED,

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

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To: The Council of the Municipality of North Cowichan

council@northcowichan.ca

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

**FIPPA s. 22(1)**

FROM:

Signature

Print name

HALL WALKER

Signature

Print name

Teresa Coninx

Address

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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To: The Council of the Municipality of North Cowichan

council@northcowichan.ca

I live in the Khenipsen Gore-Langton Neighbourhood and I can attest to the character and credibility of the property owners at 934 Khenipsen Road.

I am aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. I support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798 and I have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides alternative housing for the Cowichan Valley. Affordable Housing is at a crisis level in our communities, and I am fully supportive of second dwellings, increased density, and rental suites on any previously residentially developed parcels of land.

I understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

Signature



**FIPPA s. 22(1)**

Print name: Elyse Kuwert

Address:



**FIPPA s. 22(1)**



Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road)), 2020, No. 3798

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April 12, 2022

To: The Council of the Municipality of North Cowichan

[council@northcowichan.ca](mailto:council@northcowichan.ca)

We live in the Khenipsen Gore-Langton Neighbourhood (several parts of our property are immediately adjacent to the property at 934 Khenipsen Road) and we can attest to the character and credibility of the property owners at 934 Khenipsen Road - we feel very fortunate to have such thoughtful neighbours who have actively supported both the community and environmental well-being of the area.

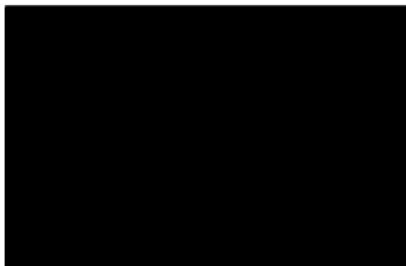
We are aware of the existence of a small, 40-year old converted accessory building at 934 Khenipsen Road. We support the rezoning amendment bylaw Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798) and we have no objections to this building being rented as a second dwelling. It conforms to the neighbourhood character and provides much needed alternative housing for the Cowichan Valley.

We understand that the owners have provided documentation that they have obtained all the necessary professional studies and have promised to complete all other studies and alterations asked by the Municipality of North Cowichan.

FROM:

**FIPPA s. 22(1)**

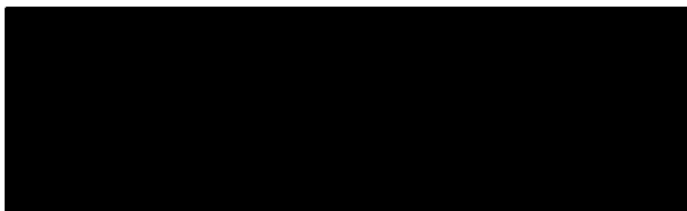
Signature:



Print name: Chris G Richardson

Signature:

Print name: Rachel Johnson



**FIPPA s. 22(1)**

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Thank you for your email, Mr. and Mrs. Phillips. I can confirm that Mayor and Council have received the information. I have also forwarded it to the appropriate staff members for inclusion on the file.

Kind regards,

Terri Brennan  
Executive Assistant and Council Support  
Office of the Mayor & CAO

Municipality of North Cowichan  
[terri.brennan@northcowichan.ca](mailto:terri.brennan@northcowichan.ca)  
T 250.746.3117

7030 Trans-Canada Highway  
Duncan, BC V9L 6A1 | Canada  
[www.northcowichan.ca](http://www.northcowichan.ca)

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**From:** [REDACTED] **FIPPA s. 22(1)**  
**Sent:** April 28, 2022 9:41 AM  
**To:** Council <council@northcowichan.ca>  
**Cc:** Carol Hartwig [REDACTED] **FIPPA s. 22(1)**  
**Subject:** Rezoning of 934 Khenipsen Road

Please find attached a letter in support of the rezoning for 934 Khenipsen Road to accommodate a rental cabin on the property.

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Regards,  
Jane and Brian Phillips  
[REDACTED] **FIPPA s. 22(1)**

Zoning Bylaw 1997, No. 2950, is amended by adding the following text:

“Despite section 53(4) (a), a maximum of 2 residential buildings, with a total combined maximum of 2 dwelling units, are permitted on (vi) 934 Khenipsen Road (PID: 027-581-578).”

To: The Council of the Municipality of North Cowichan


council@northcowichan.ca

We live in the Khenipsen Gore-Langton Neighbourhood and can attest to the character and credibility of the property owners at 934 Khenipsen Road.


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FROM: **FIPPA s. 22(1)**

Signature  Print name BRIAN PHILLIPS

Signature  Print name Jane Phillips

Address  **FIPPA s. 22(1)**

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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To: The Council of the Municipality of North Cowichan

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FROM:

Signature \_\_\_\_\_ Print name ERICA A. DESILVA

Signature \_\_\_\_\_ Print name HOWARD STEPHEN DESILVA

Address \_\_\_\_\_ **FIPPA s. 22(1)**

# **PUBLIC COMMENTS**

*(Public Comments Received after Public Hearing Notice and Prior to Deadline)*

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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7030 Trans-Canada Hwy  
Duncan, BC V9L 6A1  
[council@northcowichan.ca](mailto:council@northcowichan.ca)

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FROM: **FIPPA s. 22(1)**

Signature

[Redacted Signature]

Print name

John Stroulger

Signature

Print name

Address

[Redacted Address]

**FIPPA s. 22(1)**



**From:** [REDACTED] **FIPPA s. 22(1)**  
**To:** [Council](#)  
**Subject:** Rezoning amendment for 934 Khenipsen Road  
**Date:** Monday, June 6, 2022 1:29:18 PM

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Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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FROM: Julie and Peter Morris

Signature **Julie Morris** Print name Julie Morris

Signature **Peter Morris** Print name Peter Morris

Address [REDACTED] **FIPPA s. 22(1)**

Please acknowledge receipt of this email.

Thank you  
Julie Morris

Regarding: Rezoning Amendment Bylaw (To permit the use of a second dwelling (converted accessory building at 934 Khenipsen Road), 2020, No. 3798

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**FIPPA s. 22(1)**

FROM:

Signature:

Phyllis Marshall \_\_\_\_\_

Signature

Loree M Fulton \_\_\_\_\_

**FIPPA s. 22(1)**