



# STAFF REPORT TO COMMITTEE

**DATE OF REPORT** March 13, 2023  
**MEETING TYPE & DATE** Electoral Area Services Committee Meeting of April 5, 2023  
**FROM:** Development Services Division  
Land Use Services Department  
**SUBJECT:** Application No. RZ21C02 (Hutchinson Road/PID: 006-906-401)  
**FILE:** RZ21C02

## PURPOSE/INTRODUCTION

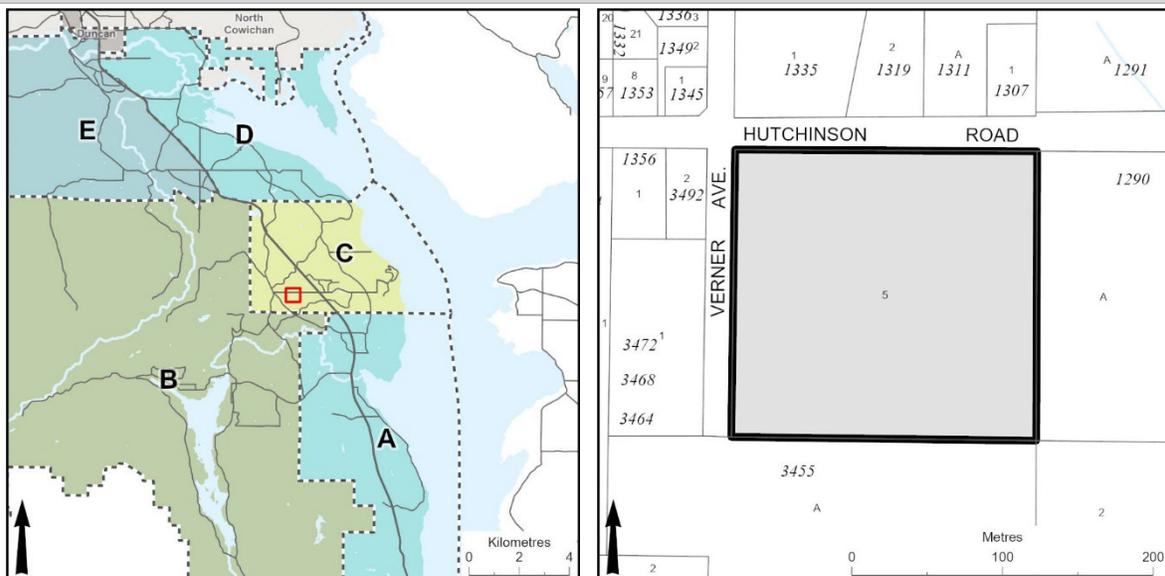
The purpose of this report is to present an application to re-designate the property located at Hutchinson Road (PID: 006-906-401) from Rural Residential to Village Residential in the Official Community Plan (OCP) and to rezone the parcel from Rural Residential 2 (RR-2) to a Comprehensive Development zone.

In accordance with the [CVRD Development Application Referrals Policy](#), dated June 22, 2022, this report is intended as a preliminary step to introduce the application to the Electoral Area Services Committee (EASC) prior to seeking comment from external referral agencies.

## RECOMMENDED RESOLUTION

That it be recommended to the Board that Application No. RZ21C02 (Hutchinson Road, PID: 006-906-401), be referred to external agencies as outlined in the Staff Report to the April 5, 2023, Electoral Area Services Committee meeting.

## LOCATION MAP



## BACKGROUND

The subject property is located in Electoral Area C at the southeast corner of Hutchinson Road and Verner Avenue, with direct access via Hutchinson Road to the Trans Canada Highway and Cobble Hill Road. The subject property is approximately 3.9 hectares (ha) in area.

Neighbouring parcels consist of R-3 Village Residential zoned parcels to the north and Rural Residential (RR-2 and RR-3) zoned parcels to the south, east and west. A higher density residential neighbourhood is located to the northwest across Hutchinson Road.

A site visit was conducted on May 26, 2022. The subject property slopes gradually from north to south, with minor depressions in the southern portion of the parcel. The parcel is undeveloped and treed, with a small wetland located in the southern middle area of the lot. CVRD mapping identifies the parcel within a Mature Forest sensitive ecosystem. Photos from the site visit are found in Attachment C.

The Verner Road Trail is located directly on the north side of Hutchinson Road, connecting Verner Avenue to the south and north. [Map 4](#) of the CVRD Community Parks and Trails Master Plan identifies the Verner Road Trail as an existing informal trail to acquire and upgrade.

The lot is currently located outside, but directly adjacent to, the Area C [Growth Containment Boundary](#) in Schedule G of the OCP (see excerpt in Attachment B).

### APPLICATION SUMMARY

The applicant is proposing to redesignate the parcel to Village Residential and include it in the Cobble Hill Growth Containment Boundary (GCB), and rezone to a site-specific Comprehensive Development zone to accommodate single family, duplex and multiple-family dwelling use.

The conceptual layout plan (Attachment D) identifies 45 proposed lots varying from 500 m<sup>2</sup> to 926 m<sup>2</sup> in area. The applicant is proposing a minimum parcel area of 500 m<sup>2</sup> for single family dwellings, 650 m<sup>2</sup> for two-family dwellings (duplex) and 850 m<sup>2</sup> for multiple-family dwellings. The current proposal would result in five (5) lots that are measured to be 650 m<sup>2</sup> or greater in area, and one (1) measured to be 850 m<sup>2</sup> or greater in area. Proposed density would be approximately 13 dwelling units per hectare.

The applicant is proposing to connect to the Cobble Hill Improvement District (CHID) community water system, and CVRD Cobble Hill Village Sewer System.

The conceptual layout plan identifies a wetland near the middle of the parcel, with a 7.5 m buffer zone drawn around the perimeter. The applicant is proposing to incorporate a greenspace/stormwater management area directly south of the wetland.

### COMMISSION / AGENCY / DEPARTMENTAL CONSIDERATIONS

In accordance with the CVRD Development Application Referrals Policy, this application has not been referred to external agencies. Should the application proceed, staff recommend referrals be sent to the following:

- Area C Advisory Planning Commission
- Area C Parks Advisory Commission
- BC Transit
- Cobble Hill Improvement District (Water)
- Cowichan Valley School District (SD 79)
- Island Health
- Mill Bay Improvement District (Fire)
- Ministry of Environment & Climate Change Strategy
- Ministry of Forests
- Royal Canadian Mounted Police
- Cowichan Tribes
- Halalt First Nation
- Malahat Nation
- Lyackson First Nation
- Penelakut Tribe
- Stz'uminus First Nation
- Ts'uubaa-asatx Nation
- Ministry of Land, Water & Resource Stewardship
- Ministry of Municipal Affairs
- Ministry of Transportation & Infrastructure

## OFFICIAL COMMUNITY PLAN/POLICY CONSIDERATIONS

[CVRD Development Application Referral Policy](#): Zoning amendment applications are generally deemed to be major applications and will proceed directly to the Electoral Area Services Committee (EASC) where a preliminary report with a list of recommended referral agencies will be presented. Upon review of the preliminary report, the EASC may:

- i. forward the preliminary report to referral agencies for comment;
- ii. refer the preliminary report back to staff for further information, prior to further consideration;
- iii. advance the application without seeking comments from referral agencies; or
- iv. deny the application, citing reasons for the denial.

[Official Community Plan for the Electoral Areas Bylaw No. 4270 \(OCP\)](#): The subject property is designated Residential in the OCP, and Rural Residential in the Area C Local Area Plan (LAP). The subject property is outside of the Cobble Hill Growth Containment Boundary (GCB).

The Residential designation is intended to maintain and generate, through redevelopment, a range of lot sizes that support low and medium density residential development.

Relevant OCP policies include:

- **3.2.1.2.3** *Supports new development in growth containment boundaries consistent with servicing capacity.*
- **3.2.1.4.2** *Supports housing that is consistent with the surrounding context, including character of existing neighbourhoods and rural areas.*
- **3.2.2.2.4** *Discourages development immediately adjacent to a mudflat, marsh or delta area, wetlands, floodplains, important bird breeding areas and at-risk Garry Oak complexes.*
- **3.2.2.2.6** *Supports retaining areas of mature tree cover and preserving other natural features for all development, particularly any development in environmentally sensitive areas and areas of steep slopes.*
- **3.2.3.2.10** *Supports new development proposals for subdivision considering greenway routes that improve pedestrian and cyclist pathways and connect to arterial roads per cycling and parks plans.*
- **4.1.2.6** *No development or site alteration should be permitted on a wetland, in a riparian area or within the buffer zone specified in this bylaw for wetlands and riparian areas.*
- **4.10.2.4** *Encourages development of multi-family housing in a manner that is clustered and is not disruptive to the environment and existing adjacent human-made structures.*

The proposal would re-designate the lot to Village Residential in the Area C LAP. The Village Residential designation is intended to accommodate a range of housing types in the Cobble Hill GCB. Village Residential objectives endeavor to balance a sufficient supply of housing for future growth, while maintaining the small-scale and rural village character, and ongoing development and enjoyment of greenspace, parks, trails and recreational lands. There is currently one Village Residential policy in the LAP that does not apply to the subject property. LAP policy 2.1.2.1 does not support servicing to lands outside of the village GCB.

While not currently in the Cobble Hill GCB, the *draft* modernized Official Community Plan (MOCP) includes the lot within the Area C [GCB](#). It is noted that the GCB boundaries are currently under review as part of the *draft* MOCP project, and may be subject to change.

[Development Permit Areas \(DPA\)](#): The subject property is currently subject to the following DPAs:

- DPA 1 – Riparian Protection
- DPA 2 – Sensitive Ecosystem Protection
- DPA 4 – Aquifer Protection

A condition of this application will include a requirement for the subject property to be included in the DPA 9 – Intensive Residential Development, which would apply to single-family detached dwellings on parcels less than 0.074 ha (740 m<sup>2</sup>) in area.

Any future development of the site, including subdivision, would be subject to the DPAs, and a Development Permit would be required prior to development approval.

[South Cowichan Zoning Bylaw No. 3520](#): The subject property is zoned Rural Residential 2 (RR-2), which permits agriculture, horticulture and a single-family dwelling as principal uses. The minimum parcel size in the RR-2 zone is 2 ha (except those located within Blocks 156, 201, 361 and 791 of the Malahat District).

The applicant is proposing to amend the zoning from RR-2 to a Comprehensive Development zone that would include permitted uses, buildings and structures, minimum parcel size and siting regulations applicable to the zone.

The following regulations should be considered at the time of subdivision and/or construction of any building or structure:

- Section 5.4.1 requires a setback of 15 m for buildings and structures from any watercourse, which includes any lake, river, creek, spring, wetland, the sea or a source of groundwater and includes portions that may be contained within a conduit or culvert.
- Section 6.2 requires that a parcel containing a natural water body, watercourse or wetland, the area of that water body, watercourse or wetlands shall not be included in the area of the parcel for the purposes of calculating the permitted number of parcels. The area is to be determined by a BC Land Surveyor where the water feature is not subject to the provincial *Riparian Areas Protection Regulation*.

[Development Approval Information Bylaw No. 3540 \(DAI Bylaw\)](#): Under the DAI Bylaw, the CVRD may request that an applicant provide additional information, in the form of a report prepared by the appropriate professional. Additional information requests may include information regarding:

- Transportation patterns including traffic flow;
- Local infrastructure – i.e. sewer, water and drainage infrastructure;
- Environmental Impact Assessment;
- Community services, public facilities and parks – i.e. public safety services (fire); and
- Other reports containing information related to archaeological resource information, forestry resource lands, etc.

## PLANNING ANALYSIS

OCP policies generally support new residential development within GCBs, consistent with servicing capacity and the surrounding context. Future growth policies support development in expansion areas only with an approved GCB expansion and adjacent to existing communities where transportation and services can be efficiently provided. Expansion areas are lands that have been identified for future growth, intended to have services and infrastructure. While the subject property is not currently within the GCB, it is directly adjacent to the boundary of the GCB; this application seeks to include the subject property within the GCB. It is noted that the *draft* MOCP includes the subject property within the GCB, which may be subject to change.

### Servicing:

The subject property is currently not connected to community water or sewer systems. The applicant is proposing to connect to the Cobble Hill Improvement District (CHID) community water system and to the CVRD Cobble Hill Village Sewer System.

CVRD Utilities Division staff have indicated there is capacity in the Cobble Hill Village Sewer System, but will require expansion to the sewer main at subdivision stage.

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CHID has been included as an external agency for referral.

Drainage would be managed on individual properties. The applicant is proposing to incorporate a green space/stormwater management area directly south of the wetland. The Ministry of Transportation and Infrastructure (MOTI) is responsible for maintaining road drains and culverts.

Access:

The subject property has road frontage along Hutchinson Road and Verner Avenue, a no-thru road. Access to the subject property is via Hutchinson Road, which is identified as a “Collector Road” on [Schedule T](#) of the OCP; Hutchinson Road provides direct access from Cobble Hill Road to the Trans Canada Highway. There are currently no transit routes along this section of Hutchinson Road; the nearest transit stop is approximately 0.9 km at Cobble Hill Train Station.

Environmental Considerations:

The applicant has submitted an Overview Ecological Assessment by Madrone Environmental Services, dated Nov. 18, 2021 (Attachment F), that provides a preliminary assessment of the natural features and ecosystems on the subject property. The assessment report was written in relation to the previous Development Permit Area (DPA) guidelines in the repealed South Cowichan Official Community Plan Bylaw No. 3510.

The assessment report identifies a mature second growth forest on the parcel, primarily Douglas-Fir with Western Redcedar in wetter areas. The report identifies four (4) mature western white pine, uncommon for the area, and four (4) wildlife trees, on the subject property. The report recommends that the Western White Pine trees and wildlife trees be retained, where safe and practical to do so.

The onsite wetland does not support fish or connect by surface flow to potential fish-bearing systems; therefore, the Riparian Areas Protection Regulation (RAPR) is not applicable. However, the assessment report notes that the wetland and adjacent riparian zone provide unique habitat for several native plant/tree species and amphibians; feeding opportunities for birds and (potentially) bats; water retention and purification ecosystem functions; and forested green space for both wildlife (i.e. nesting songbirds) and people (aesthetic values). The conceptual layout plan (Attachment D) includes a 7.5 m buffer zone around the wetland, and a green space/stormwater management area to the south of the wetland.

Should the application proceed, staff will recommend that prior to final adoption of bylaws, a s. 219 covenant be registered on title to ensure protection of the wetland and buffer zone, with language that the covenant area be clearly delineated by split rail fencing or similar at the time of subdivision.

Amenity Contributions:

Potential voluntary community amenity contributions include financial contribution toward the cost to construct a trail or pathway within the vicinity of the subject property, including:

- Financial contribution toward a proposed shoulder pathway along Hutchinson Road to connect Verner Road to Telegraph Road; or
- Financial contribution toward the cost of the construction of a connector trail along the section of undeveloped road right of way of Verner Road to the north of Hutchinson Road to connect north from Hutchinson Road to the developed section of Verner Road.

Five percent (5%) park dedication or cash-in-lieu under s. 510 of the *Local Government Act* will also be required at the time of subdivision, separate from any community amenity contribution that may be offered provided at the time of rezoning.

In accordance with the CVRD Development Application Referrals Policy, this application has not been referred to external agencies at this time. Should this application proceed, staff recommend referrals be sent to the identified agencies (under COMMISSION/AGENCY/DEPARTMENTAL CONSIDERATIONS). Options are provided in the order they appear in the Policy.

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**OPTIONS**

Option 1: (Recommended; forward the preliminary report to referral agencies for comment)

That it be recommended to the Board that Application No. RZ21C02 (Hutchinson Road, PID: 006-906-401), be referred to the referral agencies as outlined in the Staff Report to the April 5, 2023, Electoral Area Services Committee meeting.

Option 2: (refer application back to staff for further information, prior to further consideration)

That it be recommended to the Board that Application No. RZ21C02 (Hutchinson Road, PID: 006-906-401), be referred back to staff for further information, including: [requested information to be identified by the Board]

Option 3: (advance the application without seeking comments from referral agencies)

That it be recommended to the Board that Application No. RZ21C02 (Hutchinson Road, PID: 006-906-401) be forwarded back to staff for preparation of a report with planning analysis on the merits of the application and a detailed policy review, prior to further consideration.

Option 4: (deny the application, citing reasons for the denial)

That it be recommended to the Board that Application No. RZ21C02 (Hutchinson Road, PID: 006-906-401), be denied, citing reasons for denial. [reasons to be identified by the Board]

Prepared by:



Jaime Dubyna  
Planner II

Reviewed by:



Michelle Pressman, RPP, MCIP, MPlan  
Manager



Mike Tippett, RPP, MCIP  
A/General Manager

Reviewed for form and content and approved for submission to the Committee:

Resolution:

Corporate Officer

Financial Considerations:

Chief Financial Officer

**ATTACHMENTS:**

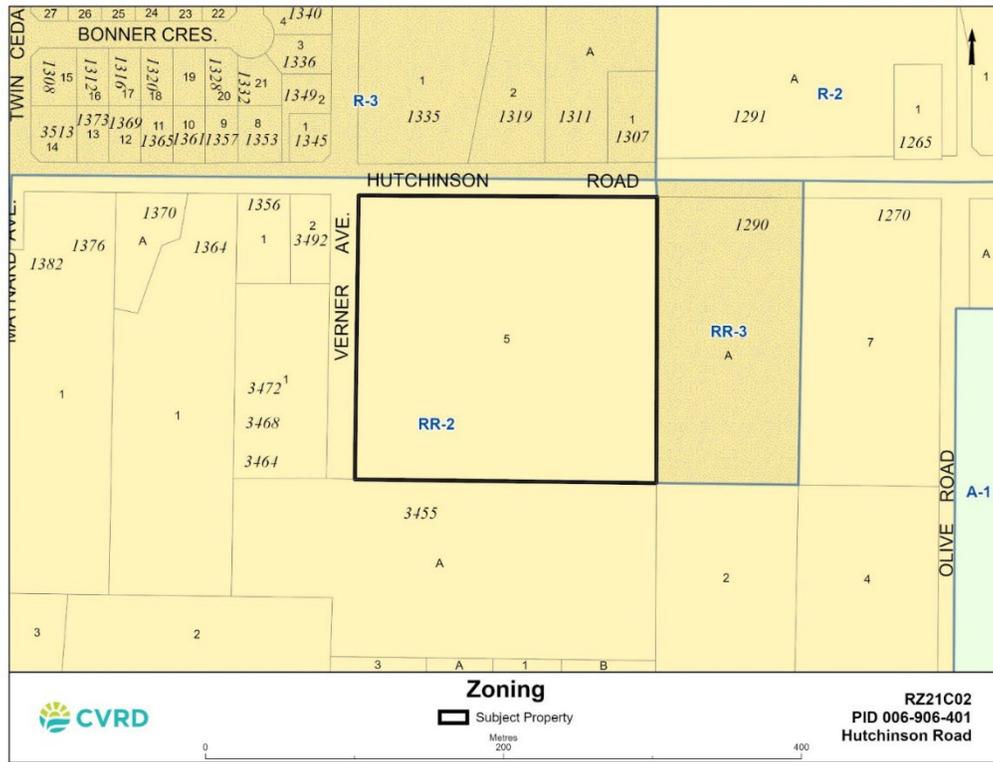
- Attachment A – Background Table
- Attachment B – Context Maps
- Attachment C – Site Photos
- Attachment D – Conceptual Site Plan
- Attachment E – Applicant Rationale & Proposed Zone
- Attachment F – Overview Ecological Assessment

## BACKGROUND TABLE

**File: RZ21C02**

Applicant:	Cam Williams, Cowichan Engineering Services Ltd.
Registered Property Owner(s):	1252316 BC Ltd.
Civic Address:	Hutchinson Road
PID & Legal Description:	006-906-401 LOT 5 BLOCK 1 SECTION 11 RANGE 6 SHAWNIGAN DISTRICT PLAN 1809
CVRD Covenants on Title:	None
Size of Existing Parcel(s):	3.9 ha
Existing Use of Parcel(s):	Undeveloped
Natural Hazards:	Not mapped
Archaeological Site:	Unknown
Environmentally Sensitive Areas:	Mature Forest
Species at Risk:	Edward's Beach Moth (red-listed species)
Watershed:	Shawnigan Creek
Agricultural Land Reserve (ALR):	Not Within ALR
OCP Designation:	RR – Rural Residential
Containment Boundary:	No
Development Permit Areas (DPA's):	DPA 1 – Riparian Protection DPA 2 – Sensitive Ecosystem DPA 4 – Aquifer Protection
Zoning:	RR-2 – Rural Residential 2
Fire Service:	Mill Bay Fire Department
Proposed Water Service:	Cobble Hill Improvement District Water System
Proposed Sewerage Service:	CVRD Cobble Hill Village Sewer System
Proposed Drainage Service:	Onsite

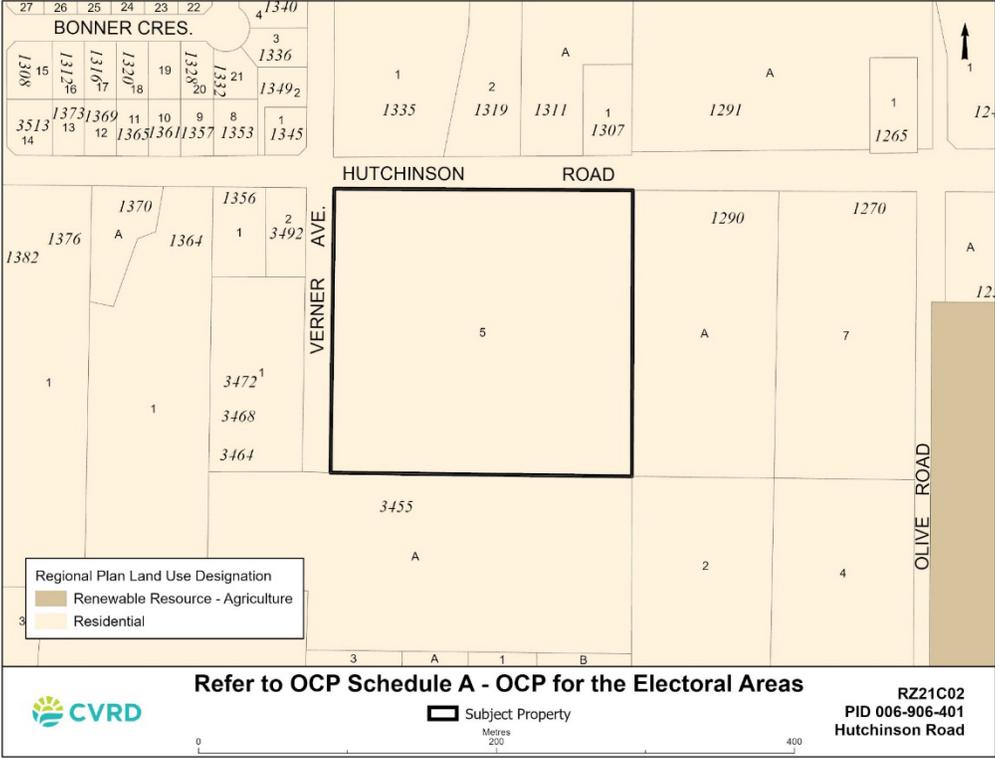
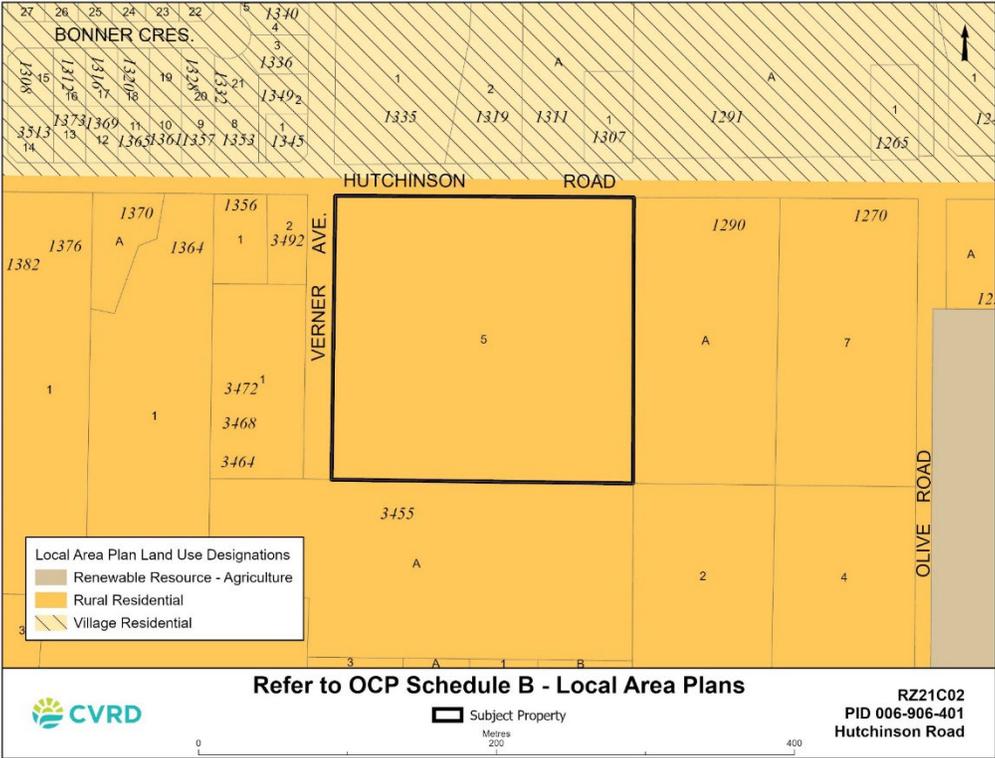
Zoning Map:



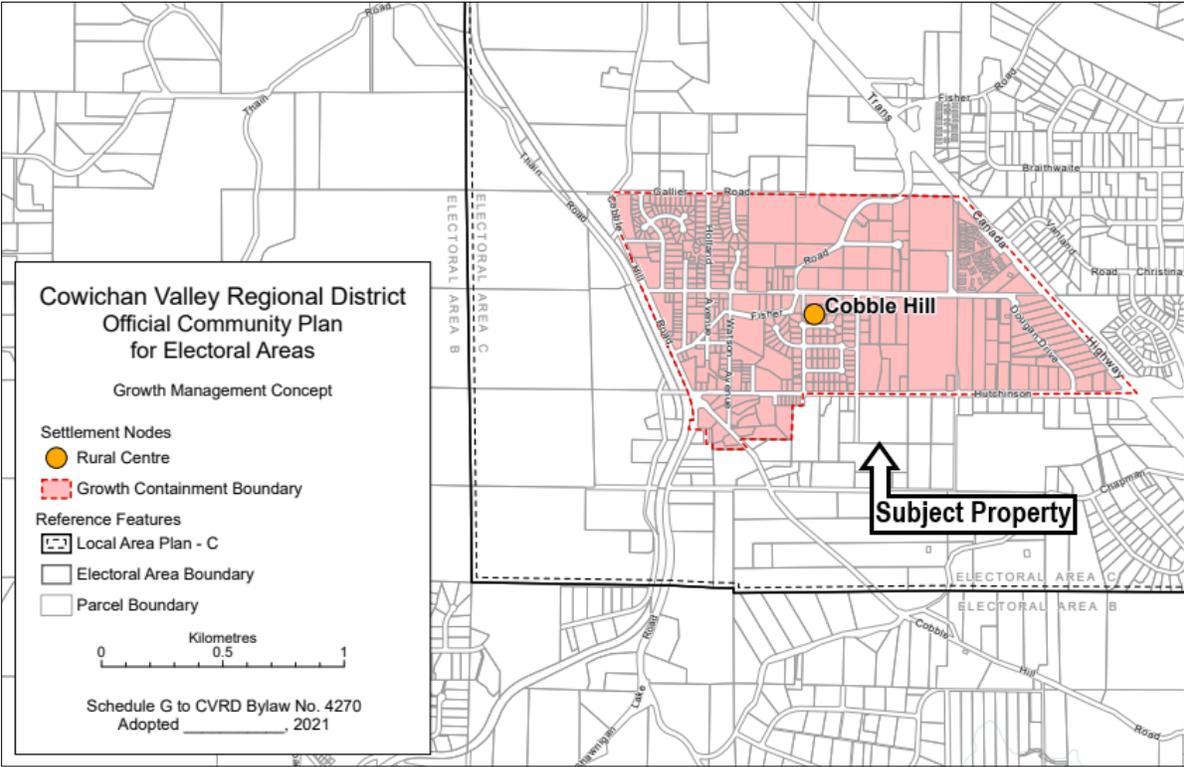
Orthophoto (2019):



OCP Designation Maps:



Schedule G – Growth Containment Boundary (excerpt):





Hutchinson Road, looking west



Hutchinson Road, looking east



Corner of Hutchinson / Verner



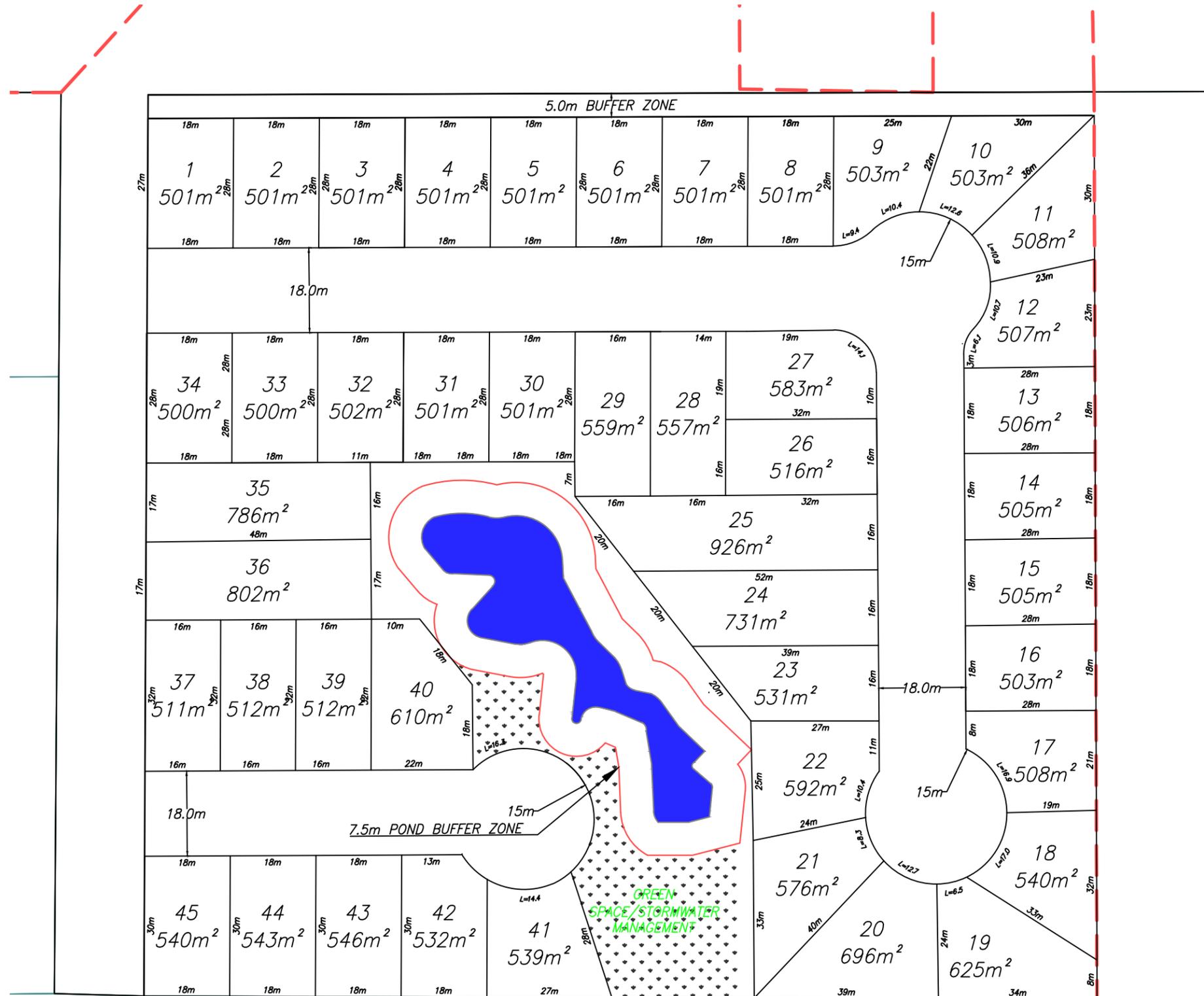
Verner Road, looking north



Onsite



Onsite, wetland, flag depicts high water mark



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CVRD  
 HUTCHINSON ROAD  
 CONCEPTUAL LOT LAYOUT OPTION #3

<b>COWICHAN ENGINEERING SERVICES</b> 6468 NORCROSS ROAD DUNCAN, BC V9L 1V1	DRAWN: SB	DATE: 10/17/22
	CHECKED: CW	FILE: 1401-C
	SCALE: 1:1000	DWG: 1401-C-01 LAYOUT: REV -



1081 Canada Ave  
Duncan, BC V9L 1V2  
p. 250.746.5545  
f. 250.746.5850

#1 – 30435 Progressive Way  
Abbotsford, BC V2T 6Z1  
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info@madrone.ca  
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November 18<sup>th</sup>, 2021

Mr. Chris Clement  
1252316 BC Ltd.

By email to: [chrisclément@shaw.ca](mailto:chrisclément@shaw.ca)

Dear Mr. Clement,

**RE: Overview Ecological Assessment – PID 006-906-401, Hutchinson and Verner Roads, Cobble Hill, BC (VIP1809, Lot 5, Block 1)**

**Background and Objectives**

Madrone Environmental Services Ltd. (Madrone) understands that you are proposing to subdivide a 4-ha property located at the corner of Hutchinson and Verner Roads, Cobble Hill, BC (PID 006-906-401) for the purpose of housing development. Planning is currently at the preliminary phase - layout plans have not yet been developed.

The proposed subdivision was assessed under the lens of the South Cowichan Rural Development Permit Area (DPA), which was in effect at the time of assessment as part of Cowichan Valley Regional District's (CVRD) South Cowichan Official Community Plan (Bylaw 3510). One of the purposes in establishment of DPA requirements is "*protection of the natural environment, its ecosystems and biological diversity*". Through completion of an overview Ecological Assessment (EA), this document will provide information related to DPA components under Bylaw 3510:

- 24.4.1 – General Guidelines (particularly involving invasive plant species management)
- 24.4.5 - Habitat Protection Area Guidelines
- 24.4.10 – Riparian Protection Guidelines
- 24.4.12 - Sensitive Ecosystems Guidelines
- 24.4.14 – Subdivision Guidelines

The main intent of this overview EA is to provide a preliminary assessment of the subject property that can be used to help inform future development plans.

## Desktop Assessment

### Sensitive and Rare Ecosystems<sup>1</sup>

An ecosystem is defined as a portion of landscape with relatively uniform dominant vegetation; a Sensitive Ecosystem is one that is fragile and/or rare. Sensitive Ecosystems are particularly valuable in that they provide critical habitat for Species at Risk, are often associated with a high level of biodiversity, and can provide wildlife travel corridors. Due to historical pressures associated with anthropogenic modifications to the land, numerous ecosystems that occur within the Coastal Douglas Fir moist maritime (CDFmm) biogeoclimatic subzone, in which the subject property is located, are rare and susceptible to disturbance.

In recognition of the value of Sensitive Ecosystems, Guidelines in Section 24.4.12 of the South Cowichan Official Community Plan apply to lands that are inside or within 15 m of a Sensitive Ecosystem as identified in the provincial Sensitive Ecosystem Inventory (SEI). To gain an insight into known distribution of Sensitive Ecosystems, SEI mapping for eastern Vancouver Island was accessed, to determine the extent of Sensitive Ecosystems throughout the general study area. This check of the SEI mapping database did not reveal the occurrence of any currently listed Sensitive Ecosystems on or within 15 m of the subject property.

Forested areas along the eastern slopes of Cobble Hill Mountain are included in the SEI and are located at least 600 m from the property. A wetland Sensitive Ecosystem has been identified approximately 400 m northwest of the subject property - this wetland occurs in Watson Park (CVRD Regional Park). Based on distances involved, development on the property will not lead to any negative impacts to these listed Sensitive Ecosystems.

### Rare Element Occurrences<sup>2</sup>

The Ministry of Environment and Climate Change Strategy (MoECCS) Conservation Data Centre (CDC) maintains a database of potentially occurring rare animals, plants, and ecosystems for BC (Rare Element Occurrences). This database (using the mapping function) was checked to determine whether any rare plants, animals or ecosystems are documented as occurring on or near the subject property.

The northern edge of a polygon centred around a singular Edward's Beach Moth (*Anarta edwardsii*) observation in Mill Bay from 1935 overlaps with the subject property and the outer edge of a polygon around a 1995 Dun Skipper (*Euphyes vestris*) observation occurs approximately 650 m west of the subject property. Based on habitat preferences of these species and historical nature of the overlapping occurrence (Edward's Beach moth), there is no reasonable potential for negative impacts as part of future property development to either species.

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<sup>1</sup> <https://catalogue.data.gov.bc.ca/dataset/sensitive-ecosystems-inventory-sei-project-boundaries>

<sup>2</sup> <http://maps.gov.bc.ca/ess/hm/cdc/>

An Element Occurrence polygon associated with secured (masked) CDC data does overlap with the subject property. This polygon exceeds a 4 km radius (centred on the actual occurrence location), with the subject property located close to the southern polygon boundary. Based on local knowledge of features that would be protected from general unapproved data access and distance from the occurrence location, there is no reasonable potential for negative impacts to the secured Element Occurrence from any development activities on the subject property.

### **Wildlife Tree Atlas<sup>3</sup>**

Depending upon scope of development-related activities, there is always potential for indirect noise-related disturbance to sensitive life phases of nesting birds. As such, the Wildlife Tree Stewardship Atlas was accessed to determine known distribution of Wildlife Trees (*e.g.*, raptor nests) on or around the subject property.

The nearest documented Wildlife Tree to the subject property is a Bald Eagle (*Haliaeetus leucocephalus*) nest (BAEA-104-064) located approximately 3 km southeast of the subject property. This nest is listed as the “Barry Road” nest and was last confirmed active in 2012. No updates have been made to this database regarding this nest since the 2008 observations; therefore, current status is unknown.

Due to the distance between nest BAEA-104-064 and the subject property, it is extremely unlikely that noise levels from typical residential construction activities will pose any negative impacts to an active Bald Eagle nest at this location. More intrusive industrial activities (*i.e.*, blasting) that can be a requirement of residential construction would be assessed differently, but even Best Management Practice (BMP) blasting buffers are limited to 1 km around active Bald Eagle nests.

### **Habitat Wizard<sup>4</sup>**

The government of B.C. maintains a database (Habitat Wizard) used to document detailed fish, wildlife, and ecosystem information online. This database (using the mapping function) was checked to further inspect for any sensitive ecosystems or waterbodies relevant to the subject property. Following review of Habitat Wizard, no documented watercourses were identified on or within areas that could be potentially impacted by development on the subject property. Habitat Wizard mapping does identify an un-named, ungazetted drainage approximately 80 m east of the subject property that flows southeast and connects with Shawnigan Creek.

### **Field Assessment**

A site visit was conducted on January 15<sup>th</sup>, 2021, as a follow-up to desktop research. During this assessment, the subject property was assessed to determine whether any specific undocumented sensitive elements occurred, and to determine potential for negative impacts to any sensitive features. As part of the assessment,

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<sup>3</sup> <http://cmnmaps.ca/WITS/>

<sup>4</sup> <http://maps.gov.bc.ca/ess/hm/habwiz/>

a focused nest survey was conducted throughout the area to address potential applicability of Section 24.4.5 of the DPA (Habitat Protection Guidelines). Section 24.4.5 of the DPA applies to an area of 60 m around nests of the following species: “Eagle”, “Hawk”, Osprey (*Pandion haliaetus*), “Owl” and Peregrine Falcon (*Falco peregrinus*) and 100 m around Great Blue Heron (*Ardea herodias fannini*) nests. The nest survey involved walking multiple transects of the property looking for nesting sign (*i.e.*, white-wash, feathers, pluck sites) and stick nests. As part of Section 24.4.1 of the DPA, a general assessment was conducted to determine whether any invasive plants occurred on the property. Photos were taken during the assessment (Appendix 1). A follow-up assessment was conducted on June 3<sup>rd</sup>, 2021, to check on status of a stick nest that was found during the initial site visit.

## Site Description

The subject property represents a fully forested square-shaped Lot located southeast of the corner of Verner Avenue and Hutchinson Road. Continuous forest cover extends into the neighbouring property on the east side, with developed properties and sparse tree coverage occurring to the north, south and west.

Forest cover on the subject property is dominated by mature second growth Douglas-fir (*Pseudotsuga menziesii*), with western redcedar (*Thuja plicata*) occurring in moister areas. Occasional western hemlock (*Tsuga heterophylla*) are present, along with scattered mature western white pine (*Pinus monticola*) – this species is relatively uncommon in the general study area. Diameter at Breast Height (DBH) of these pine trees ranges from 43 cm to 64 cm. Because of a relative lack of mature western white pine trees in the general study area, the trees were flagged in the field to allow for potential future retention. Average tree DBH throughout the property is 43 cm, with some mature western redcedars exceeding 100 cm in diameter. Shrub and herb vegetation consists mainly of salal (*Gaultheria shallon*), sword fern (*Polystichum munitum*), Oregon grape (*Mahonia nervosa*), red huckleberry (*Vaccinium parvifolium*) and oceanspray (*Holodiscus discolor*). Moss coverage consists mainly of step moss (*Hylocomium splendens*) and Oregon beaked moss (*Eurhynchium oregonum*).

Based on time of year, bird activity was limited to only a few resident species. The following common bird species were confirmed on the property during the site assessment: Northern Flicker (*Colaptes auratus*), Downy Woodpecker (*Picoides pubescens*), Spotted Towhee (*Pipilo maculatus*), Pine Siskin (*Spinus pinus*), Red Breasted Nuthatch (*Sitta canadensis*), Varied Thrush (*Ixoreus naevius*) and American Robin (*Turdus migratorius*). Other wildlife species detected consisted of native Red Squirrels (*Hudsonicus lanuginosus*), Columbian black-tailed Deer (*Odocoileus hemionus columbianus*) and the invasive Eastern Grey Squirrel (*Sciurus carolinensis*).

During the site assessment, a raptor stick nest was found in the southeastern segment of the property (Figure 1). Based on size and characteristics of the nest, it was likely constructed and used by a breeding pair of Cooper’s Hawks (*Accipiter cooperii*). The nest is in a second growth Douglas-fir tree with a DBH of 47 cm and approximate height of 25 m. The nest tree contains a natural deformity (forked branches creating a suitable platform) close to the forest canopy where the 50 cm diameter stick nest is situated. No recent signs of use were identified underneath the nest, suggesting that it may have been inactive for at least one breeding season.

A follow-up site visit was conducted on June 3<sup>rd</sup>, 2021, to check on the nest during the breeding season. No evidence of use was identified during this follow-up visit, meaning that the nest was also inactive in 2021.

In addition to Cooper's Hawks (*Accipiter cooperii*), which were likely to have constructed the observed nest, potential habitat also exists for somewhat disturbance-tolerating urban/rural interface forest-dwelling raptors such as Sharp-shinned Hawks (*Accipiter striatus*), Barred Owls (*Strix varia*) and Great Horned Owls (*Bubo virginianus*). Use of the forest for nesting at any point in the future by Great Blue Herons or Ospreys, which are listed in CVRD's DPA is unlikely, as there is no potential foraging habitat for these species nearby. There is no reasonable potential for the habitat to be used by Peregrine Falcons, based on nesting requirements of this species. Currently, trees are too small and lack the required structure to support a Bald Eagle nest. Both Peregrine Falcons and Bald Eagles are listed in CVRD's DPA.

Four dead "Wildlife Trees" that displayed feeding activity from Pileated Woodpeckers (*Dryocopus pileatus*) were observed during the assessment. Cavities from Pileated Woodpeckers can provide nesting opportunities for cavity nesting birds (including small owls), but occurrence potential of species such as Western Screech Owls (*Megascops kennicottii*), Pygmy Owls (*Glaucidium gnoma*) or Northern Saw-whet Owls (*Aegolius acadicus*) is unlikely, because of surrounding development footprints and general disturbance from neighbouring properties. Based on general value of "Wildlife Trees" (e.g., provision of feeding opportunities for a range of species such as Pileated Woodpeckers), the four trees were labelled on site to allow for potential future retention and included in Figure 1. Diameter of these trees ranged from 25 cm to 51 cm.

A wetland complex was identified during the assessment (location shown in Figure 1). This feature is isolated (i.e., there are no inlet or outlet streams), it does not support fish and does not connect by surface flow to any potentially fish-bearing system. Because of a lack of fish habitat or connectivity with fish habitat, the wetland is not applicable to the Riparian Areas Protection Regulation (RAPR). The wetland does, however, represent a unique habitat type that supports a range of hydrophytic vegetation including willow (*Salix* sp.), slough sedge (*Carex obnupta*), red-osier dogwood (*Cornus stolonifera*), Pacific crabapple (*Malus fusca*), water parsley (*Oenanthe sarmentosa*) and salmonberry (*Rubus spectabilis*). Shallow water was present in pockets of the wetland during the assessment, which likely persists for long enough into the early summer to provide breeding opportunities for native amphibians. The wetland and surrounding riparian habitat will also provide feeding opportunities for a range of bird species and provide potential foraging and roosting habitat for bats. The larger western redcedar trees observed on site (i.e., those exceeding DBH of 100 cm) were located in the wetland's riparian area. Ecosystem services in the form of water retention and purification will also be provided by the wetland and adjacent riparian zone.

In addition to habitat attributes provided by the wetland, the subject property represents a valuable forested green space that provides general values to wildlife (mainly in the form of nesting habitat for songbirds) and people (i.e., in terms of aesthetic value and provision of other ecosystem services). It also supports ecological values in terms of occurrences of assemblages of native plants typical of local climatic, geological, and geographical conditions.



## Discussion and Recommendations

### Riparian Areas – DPA Section 24.4.10

The overview EA revealed the occurrence of a wetland ecosystem that, despite not being applicable to the RAPR, has implications related to Section 24.4.10 (Riparian Protection Guidelines) of CVRD's DPA. Part 3 of these guidelines states the following: *“For development located within 30 metres of a watercourse, including a seasonal watercourse, whether fish bearing or not, development should be located away from and should not contribute to changes in the riparian area through loss of trees and vegetation or alteration of natural processes”*. It is worth noting that a “wetland” is included in CVRD's definition of a “watercourse”. In keeping with these guidelines, riparian protection will be established as part of future development planning. Such protection will focus on establishing a riparian buffer that remains in a functional state that is not negatively impacted by any adjacent development activities. Riparian protection measures will be developed once specific construction footprints and development activities are known. Any applicable default riparian setbacks will also be applied that may be related to local government bylaws. The high-water mark of the wetland was identified with blue flagging tape during the assessment – this flagged edge will be used as the point of origin for the future riparian buffer.

Part 7 of CVRD's Riparian Protection Guidelines is also applicable, which highlights importance of stormwater management. As such, development on the subject property must aim for a no net gain in stormwater production through maximizing natural infiltration of runoff into the ground and minimizing coverage of impervious surfaces.

### Habitat Protection – DPA Section 24.4.5

As noted, the stick nest that was identified during the field assessment was likely constructed by a pair of Cooper's Hawks. It is unknown when the nest was last active, but it was confirmed to be inactive in 2021 and, based on a lack of evidence of use, it was likely inactive during the previous breeding season (2020). It is unknown whether birds will return to the nest, but in general, Cooper's Hawks do not show strong fidelity to a specific nest, tending to build a new nest each year in the same general area. Because CVRD's DPA Habitat Protection Guidelines include “Hawks”, discussion is required regarding the stick nest. The DPA adjacent to nests is 60 m - intent of buffers such as this around nests is to avoid impacts to breeding activity during critical time periods (*i.e.*, egg laying, incubation and raising young). Generally, nests are not protected outside the breeding season, unless the nest has been constructed by a specific species (see discussion below). As such, the 60 m DPA would only be applicable in this case if the nest was actively being used in any given year.

The provincial Wildlife Act<sup>5</sup> (Section 34C) affords protection to nesting birds, and it is illegal to possess, take, injure, molest, or destroy the nest of a bird when the nest is occupied by a bird or its eggs. These restrictions extend to nests of the following species, even if birds or eggs are not present (*i.e.*, these nests are protected year-round): “Eagle”, Peregrine Falcon, Gyrfalcon, Osprey, “Heron” and Burrowing Owl. Of these species,

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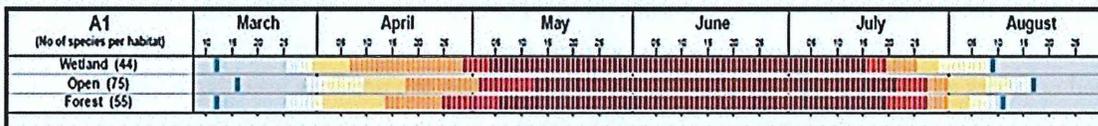
<sup>5</sup> [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00\\_96488\\_01](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96488_01)

the range of Gyrfalcons and Burrowing Owls does not overlap with the subject property. As noted previously, there is no current use of habitat on the subject property for nesting by any species of “Eagle”, Osprey, or “Heron”. Future use of the property for nesting by these species is unlikely, based on nesting habitat preferences, and there is no reasonable potential for Peregrine Falcons to ever nest on the subject property. Implementation of seasonal restrictions associated with vegetation clearance will avoid potential impacts to nesting activity of focal DPA bird species (the listed urban/rural interface raptors) should nesting occur at any point in the future (including Cooper’s Hawks).

In addition to Section 34C of the provincial Wildlife Act, migratory birds are also afforded protection under the federal Migratory Birds Convention Act<sup>6</sup>. It is illegal to destroy or take a nest, egg, or nest shelter of a migratory bird. Migratory birds covered under the Migratory Bird Convention Act include a number of species known to visit and likely to breed in the subject property. With the exception of raptors, common black bird species, and some game birds, all birds and active nests are protected under the Migratory Bird Convention Act, including Species at Risk.

The breeding season for bird species that may breed in the subject property has the potential to occur from March 25<sup>th</sup> to August 10<sup>th</sup>, as identified in the nesting calendar for zone A1 where the subject property is located (see below). The blue markers in Table 1, taken from Environment Canada, show extreme dates predicted for some atypical parts of the nesting zone where nesting could occur earlier or later (*i.e.*, between March 12<sup>th</sup> and March 25<sup>th</sup> or between August 10<sup>th</sup> and August 12<sup>th</sup>).

**TABLE 1: NESTING CALENDAR - ZONE A1 MIGRATORY BIRD NESTING PERIODS, AS PER ENVIRONMENT CANADA**



Legend for calendars: Number of species in percentage (Blue markers show extreme dates predicted for some atypical parts of the nesting zone where nesting could be earlier or later)



[Long description for nesting calendars in zone A](#)

The figure presents a set of 15 calendars showing the proportion in percentage of federally protected species that are predicted to be actively nesting on a given date from March to September for three habitat types: wetlands, open and forest and for five nesting zones: A1, A2, A3, A4 and A5. On each day, the percentage of species is shown according to one of the following six categories: 0 percent, less than 5 percent, 6 to 10 percent, 11 to 20 percent, 21 to 40 percent, 41 to 60 percent and 61 to 100 percent. In addition, markers show extreme dates predicted for some atypical parts of the nesting zone where nesting could occur earlier or later.

For nesting zone A1, within the species used, there are 55 species known to nest in forest habitats. The percentages of species actively nesting are: less than 5 percent from March 26 to 30 and from August 8 to 9, 6 to 10 percent from March 31 to April 1 and from August 5 to 7, 11 to 20 percent from April 2 to 13 and from August 1 to 4, 21 to 40 percent from April 14 to 24 and from July 28 to 31, 41 to 60 percent from April 25 to May 5 and from July 20 to 27, 61 to 100 percent from May 6 to July 19. The markers are on March 12 and August 11. The rest of the calendar dates are zero percent.

<sup>6</sup> <https://laws-lois.justice.gc.ca/eng/acts/m-7.01/>

To avoid potential impacts to nesting birds or their habitats, and to comply with current legislation requirements, development activities that lead to the loss of potential nest sites (i.e., clearance of any vegetation, including ground cover) must be suspended between March 25<sup>th</sup> and August 10<sup>th</sup>. If activities cannot be suspended during this period, specific disturbance footprints would need to be checked for nest sites, as per applicable nest-search protocols, prior to disturbance to prevent impacts to nesting birds. Based on potential for Great Horned Owls to breed on the subject property, and in recognition of the tendency of these birds to breed early in the season, as a further recommendation, vegetation removal should be avoided between February 15<sup>th</sup> and August 10<sup>th</sup>.

#### **Subdivision Guidelines – DPA Section 24.4.14**

General guidelines in Section 24.4.14 of CVRD's DPA specify that tree removal as part of subdivision should "*only be allowed where necessary and where alternate vegetation and water retention measures can be achieved*". Proposed development will involve clearance of trees from the parcel (current extent unknown). Tree removal would not occur inside the wetland riparian buffer (dimensions yet to be confirmed) or in any bordering property line setbacks. Retention of a riparian buffer would help retain some forest cover and help achieve water retention measures, as specified in the guideline. Additional measures will be required, however, to ensure that stormwater management measures are properly implemented to offset loss of naturally absorbent forested areas.

In recognition of relative value of the identified Wildlife Trees (see Figure 1 for locations), consideration should be given to retention of these trees, where safe and practical to do so. The same consideration should be given to the mature western white pine trees, based on relative scarcity of this species in the general study area. Depending on eventual Lot layout and feasibility, consideration could also be given to buffering these trees to help maintain ecosystem services such as shade (temperature regulation), water retention and buffering of wind, while also providing aesthetic value. Prior to any removal of trees from the subject property, potential interactions associated with wind exposure to the neighbouring forested property to the east should be considered.

#### **General Guidelines (specifically invasive plant species management) – DPA Section 24.4.1**

Based on current site conditions, invasive species do not occur on the subject property. No recommendations have been provided, therefore, regarding invasive species eradication. As part of future development, individual property owners should be encouraged to use native species during landscaping. This will help reduce potential spread of invasive plants while also helping to allow establishment of naturally drought-resistant, absorbent landscapes.

### **Sensitive Ecosystems – DPA Section 24.4.12**

No recommendations have been provided in terms of protection of Sensitive Ecosystems, as no listed Sensitive Ecosystems were identified on, or close to, the subject property.

### **Closing**

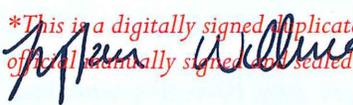
The proposed subdivision has undergone an overview EA as a preliminary means to consider Section 24 of CVRD's South Cowichan Rural Development Permit Area, specifically Sections 24.4.1, 24.4.5, 24.4.10, 24.4.12 and 24.4.14. Based on background research and a follow up field assessment, discussion has been provided to address future requirements for riparian area management (bylaw Section 24.4.10) in terms of protection of a wetland. Establishing a riparian buffer around this wetland would also help address requirements for tree protection and natural provision of water retention areas under Section 24.4.14 of the DPA, understanding that additional stormwater management measures will be required to compensate for loss of naturally absorbent areas as part of the development phase. Retention of the identified Wildlife Trees and mature western white pine trees is also recommended, where safe and practical to do so.

Implementation of recommendations for protection of breeding birds during property development will be important in ensuring that the intent of Habitat Protection Guidelines (DPA Section 24.4.5) is applied. This is especially important knowing that Cooper's Hawks likely use the general area for nesting. Seasonal restrictions related to vegetation disturbance must be applied, therefore, to avoid impacts to sensitive life stages of all birds.

Please let me know if you have any questions or concerns.

Yours sincerely,

*\*This is a digitally signed duplicate of the official manually signed and sealed document.*



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**MADRONE ENVIRONMENTAL SERVICES LTD.**



## **APPENDIX 1**

### **Site Photos**



Typical forest stand characteristics found throughout the subject parcel.



Example of mature western redcedar trees located in moister soil conditions near the wetland ecosystem.



Raptor stick nest located in the southeastern segment of the property.



Example of a Wildlife Tree displaying feeding cavities excavated by Pileated Woodpeckers found in the southwestern corner of the subject property.



Example of a mature western white pine tree (centre of photo) found close to the northern property boundary.



Typical characteristics of an open-water segment of the wetland located on the subject property.