

DATE: May 11, 2011

FILE: 3360-20/RZ 1C 10

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Debra Oakman, CMA
Chief Administrative Officer

**RE: Rezoning application – Agency and First Nations referral update and recommendation to refuse rezoning application
8075 Memory Lane (Lanyon)**

Purpose

The purpose of this report is to present the comments received from external agencies and First Nations on the rezoning application at 8075 Memory Lane. Further, the report recommends that the regional district board terminate the statutory review process associated with the rezoning application on the basis that the proposed rezoning does not maintain the intent of the regional growth strategy (RGS) or the official community plan (OCP).

Policy analysis

Section 865, “Regional district must conform with regional growth strategy”, of the *Local Government Act* (LGA) states that:

All bylaws adopted by a regional district board after the board has adopted a regional growth strategy, and all services undertaken by a regional district after the board has adopted a regional growth strategy, must be consistent with the regional growth strategy.

Section 884, “Effect of official community plans”, of the LGA states that:

All bylaws enacted or works undertaken by a council, board or greater board, or by the trustees of an improvement district, after the adoption of

- (a) An official community plan, or
 - (b) An official community plan under section 711 of the *Municipal Act*, or an official settlement plan under section 809 of the Act before the repeal of those sections became effective,
- must be consistent with the relevant plan.

Executive summary

As directed by the regional district board on October 26, 2010, proposed bylaw no. 131 was referred to external agencies and First Nations. In respect to external agencies, staff is satisfied that affected agencies have been given sufficient opportunity to provide comment. With respect to First Nations, the Comox Valley Regional District (CVRD) has received written responses from the Laich-Kwil-Tach Treaty Society, Homalco (Xwemalkwu) First Nation and the K’ómoks First Nation. Given that staff has followed the consultation procedure associated with external agency referral and the First Nations consultation procedure, staff recommends that the board declare the consultation procedures complete. On the basis that the proposed bylaw is not consistent with the RGS or the OCP as per the requirements of the LGA, however, staff recommends that the rezoning application be refused and that the proposed bylaw be denied.

Recommendations from the chief administrative officer:

THAT the board declare that the consultation procedures with external agencies and First Nations, as adopted by the board on October 26, 2010, were properly followed for Bylaw No. 131, being the “Comox Valley Zoning Bylaw, 2005, Amendment No. 48”;

AND THAT the proposed bylaw be denied on the basis that it is not consistent with the regional growth strategy and the official community plan as per the requirements of the *Local Government Act*.

Respectfully:

D. Oakman

Debra Oakman, CMA
Chief Administrative Officer

History/background factors

On May 4, 2010, the regional district received an application to rezone property at 8075 Memory Lane in order to facilitate a severance of the property into two residential properties. In a report to the electoral areas services committee (EASC) meeting on October 18, 2010, staff made the following recommendation:

THAT the board deny rezoning application RZ 1C 10 (Lanyon), which proposes to rezone the property legally described as Lot 1, Section 34, Township 6, Comox District, Plan 27876 (8075 Memory Lane) from Rural Twenty (RU-20) to Country Residential One (CR-1).

The EASC did not support the staff recommendation and passed the following resolution which the board approved on October 26, 2010:

THAT staff prepare a bylaw and process documents for rezoning application RZ 1C 10 (Lanyon), which proposes to rezone the property legally described as Lot 1, Section 34, Township 6, Comox District, Plan 27876 (8075 Memory Lane) from Rural Twenty (RU-20) to Country Residential One (CR-1);

AND FURTHER THAT the bylaw be forwarded to the board for first and second readings.

Based on the October 18, 2010 recommendation of the EASC, staff had prepared the following for the October 26, 2010 board meeting:

- Agency referral list;
- First Nations consultation procedure;
- Draft rezoning bylaw.

As such, at the same board meeting (October 26, 2010), the board adopted the following additional resolutions:

1. THAT the agency and referral list and First Nation consultation procedure, as attached to the October 26, 2010 board agenda, for rezoning application RZ 1C 10 (Lanyon) be approved.
2. THAT Bylaw No. 131, being “Comox Valley Zoning Bylaw No. 2781, 2005 Amendment

No. 48” be given first and second readings concurrently.

Planning analysis

As per the resolution of the board, staff conducted the referral process to both external agencies and First Nations. A summary of the comments received from the external agencies is provided in Appendix A. With respect to First Nations, the CVRD has received written responses from the Laich-Kwil-Tach Treaty Society, Homalco (Xwemalhkwa) First Nation and K’ómoks First Nation. These comments are provided in Appendix B. On the basis of having completed the external agency and First Nations consultation procedures in accordance with board direction, this report recommends that the board resolve that the external agency and First Nations consultation processes are complete.

Typically at this stage in staff’s reporting procedure to the board staff would make a recommendation to proceed to public hearing. In this instance, however, staff recommends that the proposed bylaw to rezone the subject property in order to facilitate subdivision of the property be denied.

Regional Growth Strategy (RGS)

At the time that the rezoning application was made the then draft RGS was clear in its intent to prohibit small lot subdivisions in the proposed Rural Area designation. On the basis of that intent, staff, in October 2010, recommended that the rezoning application be denied. The RGS is now in full force and effect and the subject property is designated Rural Area – rural settlement area.

The RGS identifies development pressure to permit the subdivision of lands within the Rural Area land use designation with lot areas less than four hectares. The RGS cautions that “a preponderance of such lot sizes will...begin to change the character” of such lands. Further, the RGS states that “(t)he biggest concern is that small lots will result in the unintentional conversion of rural areas into estate residential areas, with ongoing conflicts between residential and agricultural uses”.

The following RGS policies provide further insight into the intent of the Rural Area – rural settlement area designation relative to subdivision:

MG Policy 2A-2 – Minimum Lot Sizes in Rural Settlement Areas

The Comox Valley Rural OCP shall establish minimum lot sizes in Rural Settlement Areas ranging between 4 hectares and 20 hectares, subject to soil conditions, ground water capacity, extension of existing subdivision areas, interface fire hazards and suitability of lands for rural development.

MG Policy 2A-3 – Alternative Minimum Lot Sizes for Agricultural Purposes

In limited circumstances, OCP policies that allow for lot sizes less than 4 hectares, but no smaller than 2 hectares, may be considered where it is demonstrated that such lot sizes will create opportunities for small-scale, land intensive and entry-level farming. Conditions will be established for all subdivisions less than 4 hectares to secure that such lots will be used for farming purposes, and maintained as such over time, and will not become estate housing.

Staff maintains that the rezoning application is premature until such time as the OCP is amended to establish minimum lot sizes that might, in some instances, permit parcels smaller than four hectares within the Rural Area designation. In the absence of such OCP policies and related minimum parcel sizes, however, staff is of the opinion that the proposed rezoning in order to facilitate subdivision of the property is inconsistent with the RGS.

Pursuant to the RGS, residential intensification is to be directed to the settlement nodes (e.g. Saratoga Beach, Mount Washington, and Union Bay).

Rural Comox Valley Official Community Plan (OCP)

The subject property is designated Rural within the OCP. Among the objectives of the Rural designation is the encouragement of land use patterns which minimize urban sprawl (C.1(a)). The OCP defers to the zoning bylaw to define minimum lot areas within the Rural designation. In this instance, the subject property is zoned Rural Twenty (RU-20) which identifies a minimum lot area of 20 hectares for new lots.

Options

The CVRD board could accept the recommendations contained within this report or the board could opt to allow the proposed bylaw to proceed to public hearing.

Based on the discussion contained in this report, staff recommends that the board deem the external agency and First Nations consultation procedures complete and that the board refuse the application to rezone the subject property in order to facilitate subdivision.

Financial factors

Applicable fees have been collected for this application under the “Planning Procedures and Fees Bylaw No. 3, 2008. There are no additional financial implications arising from the recommendations contained in this report.

Legal factors

Both the RGS and OCP are statutory regulations (bylaws). Staff is of the opinion that the proposed bylaw to rezone the subject property from Rural Twenty (RU-20) to Country Residential One (CR-1) is inconsistent with the RGS and the OCP.

Sustainability implications

Staff is of the opinion that a rezoning of the subject property in order to permit subdivision is inconsistent with the provisions of the Comox Valley sustainability strategy, and specifically with the following objective:

Direct the majority of future growth into new and existing “core settlement areas” (Town Centres and Neighbourhood Centres) as identified in the Regional Growth Strategy and Official Community Plans... (Objective 1.1.1)

Intergovernmental factors

On November 3, 2010 the application was referred to a number of agencies for review and comment. The First Nations were sent courier-delivered referrals that requested input and comments on both November 3, 2010 and January 4, 2011, respectively. Comments received to date are summarized in Appendices A and B. All appropriate agencies have been informed of the proposed bylaw and have been provided the opportunity to offer comments.

Interdepartmental involvement

The rezoning application was forwarded to the engineering services, community parks, and building services departments for comment. The comments received from these departments were primarily advisory in nature.

Citizen/public relations

Should the board not accept staff's recommendation to refuse the rezoning application, Section 890, "Public hearings," of the LGA states that a local government must hold a public hearing before adopting or amending an OCP or a zoning bylaw. Should the board wish to proceed with consideration of the proposed bylaw a public hearing must be scheduled and held in compliance with the requirements of the LGA.

Prepared by:

A. Mullaly

Alana Mullaly, MCIP
Assistant Manager of
Planning Services

Concurrence:

T. Knight

Thomas Knight, MCIP
Manager of Planning
Services

Concurrence:

K. Lorette

Kevin Lorette, P. Eng., MBA
General Manager of Property
Services Branch

Attachments: Schedule A – Agency and First Nations Referral List
Schedule B – First Nation Consultation Procedure
Appendix A – Comments from External Agencies
Appendix B – Comments from First Nations
Appendix C – Letter from the Laich-Kwil-Tach Treaty Society dated
November 24, 2010
Appendix D – Letter from Xwémalkwu First Nation dated February 18, 2011
Appendix E – Email from K'ómoks First Nation dated April 8, 2011

Schedule A: Agency and First Nations Referral List

Should the regional board approve first and second reading of the amending Bylaw No. 131, being the “Comox Valley Zoning Bylaw, 2005, Amendment No. 48” that the proposed referral shall be sent to the following agencies as highlighted with a .

First Nations

<input checked="" type="checkbox"/>	K'ómoks First Nation	<input checked="" type="checkbox"/>	Homalco Indian Band
<input checked="" type="checkbox"/>	Laich-Kwil-Tach Treaty Society (Consists of We Wai Kum, We Wai Kai and Kwiakah First Nations)		

Provincial Ministries and Agencies

	Agricultural Land Commission	<input checked="" type="checkbox"/>	Ministry of Community and Rural Development
<input checked="" type="checkbox"/>	BC Assessment Authority		Ministry of Energy, Mines & Petroleum Resources
	BC Parks	<input checked="" type="checkbox"/>	Ministry of Environment
	BC Ferry Services Inc.		Ministry of Forests and Range
	BC Transit		Ministry of Tourism, Culture and the Arts (Archaeology branch)
	Integrated Land Management Bureau	<input checked="" type="checkbox"/>	Ministry of Transportation and Infrastructure
	Ministry of Aboriginal Relations and Reconciliation		
	Ministry of Agriculture and Lands		

Local Government

<input checked="" type="checkbox"/>	Comox (Town of)		Alberni-Clayoquot Regional District
<input checked="" type="checkbox"/>	Courtenay (City of)		Strathcona Regional District
<input checked="" type="checkbox"/>	Cumberland (Village of)		Regional District of Mount Waddington
	Islands Trust		Regional District of Nanaimo

Other

	Agricultural Community Advisory Panel		Comox Valley Economic Development Society
	School District #71 (Comox Valley)	<input checked="" type="checkbox"/>	Vancouver Island Health Authority (Environmental Health)
	School District #72 (Campbell River)		
	Comox Valley Accessibility Committee		

Schedule B: First Nation Consultation Procedure

The Comox Valley Regional District (CVRD) is committed to meeting with the appropriate First Nations that have an interest in the land subject to the rezoning application. Part of the consultation process of the CVRD will be to discuss issues, comments or concerns and work towards a systematic method of communication amongst all involved. In order to achieve this, the CVRD has created a step-by-step strategy that will be presented to the appropriate First Nations to ensure that all consultation regarding this bylaw amendment is considered early and on-going:

1. The regional district, through the office of the chief administrative officer (CAO) or delegate, will initiate contact with the First Nations to discuss the overall intent of the proposal.
2. The CVRD will send a formal referral for comment to the First Nations and outline a desire to formally meet with the First Nations.
3. All referral information will be sent to the First Nations through a courier. If a First Nations group does not have a physical address, the referral information will be sent by regular mail.
4. The CVRD will provide the First Nations an opportunity to submit comments related to this bylaw amendment.
5. To ensure that all consultation is considered early and on-going, the CVRD will initially provide the First Nations with a minimum of thirty (30) days to respond with any comments or concerns related to this bylaw amendment.
6. The CVRD will allow an extension of up to an additional thirty (30) days as part of this referral process.
7. Additional extensions may be granted under extenuating circumstances. The CVRD must receive a written request from the First Nations that may be requiring an extension period outlining the reason for the requested extension.
8. Should the CVRD not receive any comments from the individual First Nations within ninety (90) days of the date that the referral package was delivered; staff shall seek direction from the CVRD regional board on the consultation process with the First Nations.
9. In the event that the CVRD receives a letter from the individual First Nations regarding the consultation process, staff will report back the CVRD regional board to seek further direction.

Appendix A: Comments from External Agencies

Agency	Comments Received
Vancouver Island Health Authority (VIHA) (Environmental Health)	<p>“The Vancouver Island Health Authority has no objection to the above noted referral for a rezoning change. Since it is the property owner’s intent to subdivide the property in the future, should the zoning allow, at that time; all requirements of the VIHA Subdivision Standards must be met prior to subdivision approval from this office.”</p>
Ministry of Transportation and Infrastructure	<p>“No objections. The Ministry will deal with our concerns during the subdivision process.”</p>
Village of Cumberland	<p>No response</p>
Ministry of Natural Resource Operation (MNRO)	<p>MNRO has no concerns related to this proposed rezoning, although there are at least 3 bald eagle nest trees in close proximity to the site. Because the site appears to still be forested with trees suitable for the nesting. The ministry recommend, that is consistent with develop with Care, that the landowners are ask to conduct a site survey for the presence of other protected nest trees or other valuable environmental components that may be affected by future development of the property.</p>
Ministry of Community, Sport and Cultural Development (formerly Ministry of Community and Rural Development)	<p>“Thank you for referring this file to MCSCD for comment. Please consider this email as MCSCD’s response to your referral. Due to our role in the Bylaw approval process, the Ministry doesn’t generally offer comments at the referral stage. However, here are some of the current Bylaw processing considerations that we will be looking for when the Bylaw is submitted for Ministerial approval.</p> <ul style="list-style-type: none"> • Referral to the appropriate ministries and agencies and a record of comments and the results (i.e. no comment received, resolution of concerns/objections). • A record and the results of the consultation with First Nations. A copy of the Interim Guide to First Nations Engagement on Local Government Statutory Approvals (Guide) was sent to all local governments last year. • Commitments related to the signing of the Climate Action Charter (i.e. development of compact, complete communities).

	<ul style="list-style-type: none"> • LGA, Section 877 (3) - targets, policies and actions for the reduction of green house gas emissions for OCPs or OCP amendments. • Whether or not Ministerial approval is needed as per Regional District Exemption Regulation 279/2003. Circular No. 03:01. Under the regulation, ministerial approval is not required for an OCP or a zoning bylaw unless the bylaw: <ul style="list-style-type: none"> ○ allows 30 or more new parcels; ○ allows 30 or more new dwelling units; ○ applies to 20 hectares or more of land; or ○ applies solely to Crown land.” <p>The regional district determines which bylaws will need to be submitted for ministerial approval. The ministry will process submitted bylaws in the normal manner. For more information please see: http://www.cd.gov.bc.ca/lgd/intergov_relations/planning_circulars/cir0301.htm.”</p> <p>As not all of these comments are applicable to the rezoning application, staff has reviewed the applicable ones and is of the opinion that the procedures have satisfied the applicable requirements.</p>
BC Assessment Authority	No response
City of Courtenay	“In response to the subject referral, we would as why this application is being processed when it is contrary to the draft Regional Growth Strategy (RGS) and your policy is to defer consideration of all application to amend the Official Community Plan and Zoning bylaw unless they are in full compliance with the RGS. As such, we are opposed to this application to create further lots in the electoral areas contrary to the draft RGS.”
Town of Comox	No response
Interdepartmental Referrals	<p>This proposal was forwarded to the community services and property services branches for comments.</p> <p>The community parks department stated that given the relatively small size of the area to be rezoned and no apparent need for a public amenity in the form of trail corridor, park consideration are not request as part of this rezoning application.</p> <p>The engineering services department commented that the subject property is outside any regional district water or sewer service area. There is no record of community sewer or water in this neighbourhood. Accordingly, the applicants are responsible for ensuring that newly created lots are fully serviced with adequate</p>

	<p>on-site sewage treatment/disposal in accordance to provincial legislation. Subject to the above, engineering has no objection to the application.</p> <p>The building services department commented that there are no concerns or issues at this time.</p>
--	---

Appendix B: Comments from First Nations

Laich-Kwil-Tach (formerly Hamatla Treaty Society)	<p>“At this time, we have no objection to the rezoning at 8075 Memory Lane for Alan and Susan Lanyon.”</p> <p>Please refer to Appendix C for a copy of the letter received.</p>
Homalco (Xwémalhkwu) First Nation	<p>At this time we do not object to your proposal. The Xwémalhkwu First Nation is however, completing their Land Use Plan. This work is scheduled for completion in 2011 and at the time reserve the right to provide further comment.</p> <p>Please refer to Appendix D for a copy of the letter received.</p>
K'ómoks First Nation	<p>K'ómoks First Nation does not have any concerns with this referral.</p>

Appendix C



LAICH-KWIL-TACH TREATY SOCIETY

1441 Old Island Highway
Campbell River, BC V9W 2E4
Phone: (250) 287-9460
Fax: (250) 287-9469
Toll free No. 1-888-900-5720
email: reception@lkts.ca

Comox Valley Regional District

RECEIVED

File: 3360-20/RZ1C 10

NOV 24 2010

To: Ton TRIEU

CC:

November 24, 2010

Ton Trieu, Planner Comox Valley Reg. District
600 Comox Road
Courtenay, BC V9N 3P6
Phone 250-334-6000
Fax 250-334-4358

Dear Mr. Trieu:

Re: File # RZ 1C 10 – Lanyon, -8075 Memory Lane

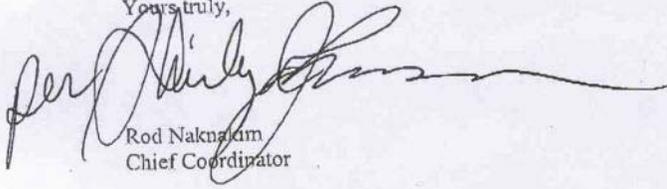
Thank you for your letter dated November 2, 2010. Zoning amendment – 8075 Memory Land. As you may know, the Hamatla Treaty Society represents its member Nations, the We Wai Kai (Cape Mudge Band), Wci Wai Kum (Campbell River Band) and Kwiakah (Phillips Arm).

As the courts have confirmed on numerous occasions, both the provincial and the federal governments owe a fiduciary duty of utmost good faith to First Nations. The Supreme Court of Canada made it clear in *Delgamuukw* that this duty can only be satisfied by the involvement of First Nations in decisions taken with respect to our lands. The Court then went on to say "There is always the duty of consultation." (para. 168) This consultation must, at a minimum, be in good faith with the intention of substantially addressing the concerns of the First Nation whose lands are at issue." The BC Court of Appeal in its February 2002 decision in *Council of the Haida Nation* has further clarified this obligation by confirming that your government is obliged to make an initial assessment of our rights and must not only to engage in meaningful consultation, but also must seek an accommodation of our interests (including cultural and economic ones).

At this time, we have no objection to the Rezoning at 8075 Memory Land for Alan and Susan Lanyon. We may choose in the future to address the issues of infringement and compensation with respect to this project through the treaty process, the courts or other

dispute resolution process. We also reserve the right to raise objections if we discover impacts on our rights or interest that we had not foreseen.

Yours truly,

A handwritten signature in black ink, appearing to read "Rod Naknam", with a long horizontal flourish extending to the right.

Rod Naknam
Chief Coordinator

Appendix D



Xwémalkwu First Nation
1218 Bute Crescent
Campbell River, B.C. V9H 1G5
Phone: (250) 923-4979
Fax: (250) 923-4987

February 18, 2011

Debra Oakman
Comox Regional District
600 Comox Road
Courtenay, BC V9N 3P6

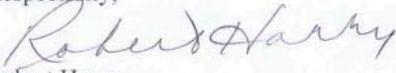
RE: Application: File: 3360-20/RZ 1C 10; Rezoning Application; 8075 Memory Lane – Lanyon; Lot 1; Section 34; Township 6; Comox District Plan 27876

Dear Debra Oakman,

Thank you for your letter of February 4, 2011. At this time we do not object to your proposal. The Xwémalkwu First Nation is however, completing our Land Use Plan, our Traditional Use Plan and an Archaeological Overview of our Traditional Lands. This work is scheduled for completion in 2011 and at that time we reserve the right to provide further comment.

In regards to the proposed activity / development in the referral listed above, we will defer this referral to the "Comox First Nation."

Respectfully,


Robert Harry
Xwémalkwu Treaty Coordinator

Comox Valley Regional District

RECEIVED

File: RZ 1C 10

FEB 25 2011

To: T-Trew

CC:

Appendix E

From: Jenny Millar [mailto:jenny.millar@comoxband.ca]
Sent: Friday, April 08, 2011 4:17 PM
To: Kevin Lorette
Cc: Thomas Knight; Ton Trieu
Subject: RE: FW: Memory Lane - KFN referral

Hi Kevin,
My apologies for not having responded to this referral – but cannot find it, thanks for resending this to us.

As per our discussion, I wish to confirm that K'ómoks First Nation does not have any concerns with this referral. I will be following up with a formal letter.

Thanks
Jenny

*Jenny Millar
Executive Assistant
K'ómoks First Nation*

*Tel: (250) 339-4545
Fax: (250) 339-7053
email: jenny.millar@comoxband.ca*
