

RDN REPORT	
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MEMORANDUM

TO: Jeremy Holm
Manager, Current Planning

DATE: November 29, 2013

FROM: Lainya Rowett
Senior Planner

FILE: PL2012-096 / PL2012-097

SUBJECT: Zoning Amendment Applications No. PL2012-096 & PL2012-097
Lakes District & Schooner Cove
Electoral Area 'E'
Phased Development Agreement Authorization Bylaw No. 1692

PURPOSE

To consider a Phased Development Agreement (PDA) Authorization Bylaw, in relation to two Zoning Amendment Applications (PL2012-096 and PL2012-097), for the long term development and provision of amenities within the Lakes District and Schooner Cove Neighbourhood Plan Areas.

BACKGROUND

On November 12, 2013, the Regional Board at its Special Board meeting gave first and second reading to Amendment Bylaws No. 500.384, 500.385, and 500.388 to allow the rezoning of the subject properties and to amend the subdivision servicing standards for community water and sewer to facilitate development in accordance with the Lakes District and Schooner Cove Neighbourhood Plans. Further revisions to Amendment Bylaw 500.385 were introduced and granted second reading at the regular Board meeting held on November 26, 2013. The proposed amendments for Lakes District would allow residential development and some mixed-use/commercial development; and the amendments for Schooner Cove would allow the development of a waterfront mixed-use village and marina with multiple residential units in close proximity.

A Phased Development Agreement (PDA) and a Memorandum of Understanding (MoU) are also proposed in relation to these amendments. The intent of the PDA is to allow long term development to proceed in viable phases with provisions for community amenities and infrastructure improvements, while providing assurances to the land owner that the regulations and requirements governing the development will be stable for the term of the Agreement.

At the time of zoning bylaw introduction, the PDA and MoU were not ready for Board consideration. Staff have continued to work with the applicant to negotiate the remaining issues and to finalize the terms of the PDA and MoU. The following report discusses the implications of the PDA and MoU as proposed and introduces the PDA Authorization Bylaw No. 1692 for the Board's consideration, to authorize the Regional District of Nanaimo to enter into a Phased Development Agreement for a requested term of twenty years.

ALTERNATIVES

1. To consider first and second reading of the “Regional District of Nanaimo Phased Development Agreement (Lakes District and Schooner Cove) Authorization Bylaw No. 1692, 2013”, in support of Zoning Amendment Applications No. PL2012-096 & PL2012-097.
2. To not proceed with the Bylaw readings.

LAND USE IMPLICATIONS

Phased Development Agreement Implications

In accordance with Section 905.1(4) of the *Local Government Act*, the proposed PDA terms specify the provisions of a zoning bylaw and a subdivision servicing bylaw which will apply to the development of the subject properties (approximately 165 hectares in total area) while the Agreement is in effect. The PDA terms become legally-binding on the owners of the lands (BCIMC Realty Corporation and 3536696 Canada Inc.) and the Regional District through a PDA Authorization Bylaw. These terms outline the development obligations which are to be fulfilled in exchange for the Regional Board suspending its discretionary land use approvals for the term of the Agreement, in this case a twenty-year term. Given that the requested PDA term exceeds the maximum term of ten years for which a Regional Board may approve a Phased Development Agreement, the PDA Bylaw will require approval from the Inspector of Municipalities.

The intent of the obligations in the PDA is to secure, for example, the provision of public amenities; phasing and timing of development; registration of ancillary legal documents (covenants, rights-of-way, easements); minor amendments to the Agreement; and early termination of the Agreement if the terms are not fulfilled within the specified timeframe. The proposed PDA Authorization Bylaw No. 1692 contains a significant volume of information; therefore, for ease of access a link to view the PDA on the RDN web site is included in Attachment 1 of this report. The following sections discuss the key components of the PDA, the implications of the proposed terms, and how the PDA terms address the policies of the Lakes District and Schooner Cove Neighbourhood Plans.

Development Phasing & Park Provisions

Section B. of the PDA outlines how development in Lakes District and Schooner Cove will proceed over multiple phases. Lakes District development includes four sequential phases (1-4) which will be serviced and developed in order and two independent phases (I and II), which are not limited by servicing constraints and may proceed at any time. Schooner Cove development will progress in three sequential phases as identified in Table 1.0 below. This development phasing is illustrated in the PDA in Schedule “B” (Site Plan), Schedule “C” (Lakes District Land Use Phasing Plan), and Schedule “H” (Schooner Cove Land Use Phasing Plan).

Table 1.0 Proposed Development Phases in Lakes District and Schooner Cove

Lakes District		Schooner Cove	
Phase	Area	Phase	Area
1	Dolphin Ridge	1SC	The Village
2	Enos Basin	2SC	The Waterfront
3	Terraces	3SC	The Commons
4	Gateway		
I	Enos Lakehead		
II	Dolphin Lakehead		

Concurrent with the development of these lands, the PDA will require the provision of regional and community park lands with improvements such as trails, staging areas, waterfront boardwalk and pathways as envisioned in the neighbourhood plans. With the exception of the independent Phases (I and II) in Lakes District, development phases may not proceed without the required dedications and improvements being completed in each preceding phase, and the necessary statutory rights-of-way secured for public access (e.g., to access the waterfront boardwalk in Schooner Cove, which will be publicly owned and maintained through a service area establishment). The order of phasing and location of park dedications and improvements are illustrated in the PDA in Schedule "D" (Lakes District Parks Phasing Plan) and Schedule "I" (Schooner Cove Public Open Space Phasing).

Additionally, the proposed parks and trails improvements would be provided to the standards and guidelines set out in Schedule "E" (Lakes District Parks Improvements Phasing), Schedule "F" (Regional Park Masterplan and Development Guidelines), Schedule "CC" (Lakes District Community Park Conceptual Program), and Schedule "J" (Schooner Cove Pathway Standards) in the PDA.

It is important to note that while the PDA specifies that approximately 42% of the combined lands will be dedicated for public park purposes, these dedications and the associated improvements are predicated upon development proceeding within the twenty-year term of the Agreement. The most significant dedication is the Notch Summit (20.66 ha in area), which is to be dedicated as regional park upon the first subdivision in Lakes District. The dedication of the balance of community and regional park land, as envisioned in the Neighbourhood Plan, would occur as subsequent phases of development are completed. As development phases and sub-phases are completed, the required park will be provided within the terms of the Agreement. If at the end of the term of the Agreement, the land has not been fully developed and all of the park land and improvements have not been provided, the RDN would have no legal mechanism to secure the remaining park land (or improvements) given that the statutory requirements of Section 941 (*Local Government Act*) to dedicate 5% of the land park would have been fulfilled.

Lands zoned for park use which have not been dedicated prior to expiry of the Agreement would be privately owned without public access (e.g., the Notch Trail) having been secured. Recognizing this implication, it is noted that the neighbourhood plans designate these lands for park use and that the Development Permit Area guidelines address the protection of natural features in the landscape. In addition, the RDN would pursue the provision of public access through future subdivision of these lands, beyond the term of the Agreement. Should this issue arise, the RDN will highlight the neighbourhood plan policy on park dedication and public access will be sought as a condition of subdivision in accordance with Schedule A2 - Park and Environmental Network Plan of the Lakes District Neighbourhood Plan and Schedule A2 – Public Access and Open Space Plan of the Schooner Cove Neighbourhood Plan, and the goals and objectives of the Nanoose Bay Official Community Plan (OCP) Bylaw No. 1400, 2005, which collectively outline public access routes through park areas.

Section 16. of the MoU also discusses the RDN's intent to pursue a Part 25 Implementation Agreement in accordance with Section 868(1) of the *Local Government Act* to ensure the Provincial Approving Authority considers public access in the implementation of the objectives of the neighbourhood plans.

Amenities & Contributions

In addition to the proposed park land dedications and parks and trail improvements (e.g., Notch Summit and Notch Trail), Section C. of the PDA outlines various amenities and contributions to be provided by the land owner as development proceeds. The following list summarizes the key contributions which

were envisioned through the neighbourhood planning process and which will be provided/secured in accordance with the terms of the PDA:

- Construction of a publicly accessible waterfront pathway/boardwalk in Schooner Cove, which would be maintained by the RDN through a new service area establishment, and a publicly accessible walking pathway within privately owned strata lands, which would be maintained by the applicable strata corporation;
- Installation of a publicly accessible jib-crane hoist in Schooner Cove;
- \$25,000 for public art and interpretive signage in Schooner Cove;
- \$40,000 for the installation of up to four bus shelters in the Lakes District/Schooner Cove areas;
- Construction of one publicly accessible dock on Enos Lake near the Lakehouse Centre;
- \$40,000 for the preparation of a Regional Park Management Plan in accordance with the Terms of Reference in Schedule "Z" of the PDA;
- Completion of a Community Parks Development Plan in accordance with Schedule "CC" (Lakes District Community Park Conceptual Program) in the PDA;
- Completion of a Garry Oaks Meadows Management Plan in accordance with the Terms of Reference in Schedule "AA" in the PDA; and,
- Enos Lake Protection and Monitoring Program in accordance with the Terms of Reference in Schedule "BB" in the PDA.

It is noted that a segment of the Schooner Cove waterfront pathway/boardwalk in Phase 2SC crosses existing strata lands (Schooner House Strata VIS745). The Strata's consent is therefore required to allow public access (via statutory right of way) in order to complete the construction of a continuous pathway/boardwalk as envisioned in the Neighbourhood Plan. The applicant and the RDN attempted to secure a right of way through the zoning amendment and PDA review, but the access has not yet been secured. To address this matter and allow flexibility for development to proceed to Phase 3SC (the Commons), the PDA requires the owner to continue to use reasonable efforts to secure this access, but the owner may instead provide security for the future construction of this segment of the pathway/boardwalk. The implications of this are: 1) continuous public access along the waterfront is dependent upon this right-of-way; and 2) the RDN may be in the position of having to acquire this right-of-way and complete the construction of this segment of the pathway/boardwalk using the funds secured from the owner.

Options to Purchase for Specified Lands

Concurrent with the first subdivision in Lakes District, the owner will grant to the RDN a five-year option to purchase additional lands that encircle the Notch Summit as identified within sub-Phase 4C in Schedule "B" (Site Plan) and Schedule "P" (Notch Option to Purchase) in the PDA. The owner is also required to register a Section 219 Covenant on these lands (in accordance with Schedule "R" in the PDA) to prohibit construction and any uses that would significantly devalue the utility of the land for park purposes within the five-year duration of the Option to Purchase. These lands are designated in the Neighbourhood Plan as a "Future Development Reserve" and the plan policies support an option to purchase, as proposed, to allow the RDN an opportunity to pursue additional public park lands adjacent to a significant regional park (the Notch).

Similarly, with the first subdivision of sub-Phase 1E in Lakes District, the owner will grant to the RDN a three-year option to purchase lands adjacent to the Lookout Summit, with a Section 219 Covenant, as identified in Schedule "B" (Site Plan), Schedule "Q" (Lookout Option to Purchase), and Schedule "R" (Section 219 Covenant Over Option to Purchase Lands) in the PDA. Through the future financial planning

process the RDN Board will have to consider directing funds for the purchase of these regionally significant lands that have high environmental and cultural values as identified in the OCP.

Subdivision and Infrastructure Works

Section D. of the PDA outlines the infrastructure requirements and phasing associated with the proposed development. These works are to be provided in accordance with the Specified Bylaw Provisions (Schedule “Y” in the PDA) and as illustrated in Schedule “G” (Lakes District Infrastructure Phasing Plan) and Schedule “K” (Schooner Cove Infrastructure Phasing Plan). The proposed infrastructure works include storm drainage works (e.g., regional rain gardens and wetlands); highway works (subject to the approval of the Approving Officer); water supply works (trunk mains and pump stations); sanitary sewer works (trunk mains, force mains, pump stations); as well as trail crossings at road intersections.

In accordance with the Schooner Cove Neighbourhood Plan policies, the PDA requires that the owner secure public access to, and the provision of, commercial parking for the Village (Phase 1SC) and an additional twenty (20) marina parking spaces for boat trailer parking within the Commons area (Phase 3SC). Future consideration of a reduction to the parking requirements is permitted in accordance with the terms of the Agreement.

Schedule “DD” in the PDA includes an Integrated Stormwater Management Plan, which addresses the neighbourhood plan policies concerning the protection of water quality and stormwater management. The ISMP goals and objectives will be used to inform a more detailed design of stormwater infrastructure at the subdivision stage and the establishment of an RDN service area for drainage. The ISMP will also provide a baseline to inform ongoing water quality monitoring and protection initiatives in the Enos Lake basin such as the Enos Lake Monitoring and Protection Program.

To address water conservation (quantity) objectives in the neighbourhood plans, the PDA also requires that the owner register a Section 219 Covenant to require, at the development stage, a minimum topsoil depth of 300 mm within irrigated landscaped areas. This topsoil requirement is consistent with the recommendations of the ISMP and will serve to reduce the amount of water consumed to sustain landscaping, thereby reducing the local impacts of water demand. The owner has also committed through the PDA to provide, upon registration of the first subdivision in Lakes District, a homeowner’s manual outlining additional measures for ecologically responsible landscaping, water conservation, and environmentally sensitive recreational use and stewardship. To support the intent of the PDA, the RDN intends to enter into an implementation agreement with the Ministry of Transportation and Infrastructure (MoTI) to include these works and services in the subdivision and development approvals process.

Construction Environmental Management Plan (CEMP)

In accordance with the neighbourhood plan policies (Section 6 Implementation), the PDA will require the land owner to provide to the Approving Officer, as part of each subdivision application, a CEMP prepared by a Qualified Professional (as defined in Section A. of the PDA), which includes the following sections:

- Erosion and sediment control plan;
- Spill contingency and response practices;
- Terrain management practices;
- Fire protection practices;
- Tree management and vegetation restoration measures;
- Protection measures for works near water, riparian areas, and Garry Oak Meadows;

- Any mitigation from plant species at risk surveys;
- Any mitigation measures from the Archaeological Impact Assessment;
- A construction schedule and requirements to avoid or limit activities during nesting season;
- Water quality parameters and targets for sediment control as determined in the Enos Lake Protection and Monitoring Program;
- Practices for amphibian salvages where necessary; and,
- Construction traffic management.

Development Cap Covenant and Development Parcel Covenant

The neighbourhood plans identify a maximum number of dwelling units that may be developed within the Lakes District and Schooner Cove lands, 1,675 units and 360 units respectively. In the proposed Schooner Cove Comprehensive Development Zone (CD45) the total number of dwelling units is allocated between the Village Mixed Use Zone (50 units maximum) and the Residential Multiple Dwelling Zone (310 units maximum). In Lakes District, the proposed zoning restricts the total number of units over all of the lands combined and does not regulate the allocation of units within each zoning area, and there is no requirement for a minimum number of units per development phase.

To ensure development in Lakes District does not proceed disproportionately among the development phases, and to track the changes in the balance of units remaining as development proceeds, the PDA in Section E. requires the owner to register a Development Cap Covenant at the time of rezoning on the Lakes District lands (Schedule "V" in the PDA). This Covenant prohibits building on the lands for residential or commercial use until such a time as the lands have been serviced, or servicing is secured, to the standards required in the applicable Land Use and Subdivision Bylaw at the time of subdivision. The Covenant also requires that upon submission of a Development Plan to the RDN, this Covenant would be released and replaced with a Development Parcel Covenant that will limit the number of dwelling units on the applicable development parcel (Schedule "W" in the PDA). A Development Cap Covenant would remain on the balance of the lands to limit the overall development to 1,675 units.

It is important to note that the no-build restriction and the requirements of the Development Cap Covenant would remain in place beyond the term of the Agreement, and will require a new development approvals process that coordinates the actions of the developer, RDN and MoTI with the Provincial Approving Officer.

Administrative Provisions

Sections F., G. and H. of the PDA outline various administrative terms and conditions of the Agreement such as:

- The Specified Bylaw Provision Protection for the development of the lands during the term of the Agreement, in accordance with Schedule "Y" (Land Use and Subdivision Bylaw), as it exists on the date of the adoption of the PDA Bylaw;
- Provisions and process requirements for minor amendments to the Agreement;
- Termination and enforcement of the Agreement (e.g., in the event that amenities are not provided in accordance with the PDA terms);
- Arbitration; and,
- Rights and obligations upon title transfer of the subject lands.

The RDN and the land owner will be working to implement the terms of the PDA. The RDN's solicitor has advised that the PDA does not give the RDN control over the assignment of the Agreement to a

subsequent owner of the land or portion of the land. However, the terms of assignment can be arbitrated under the terms of the Agreement.

Memorandum of Understanding Implications

In addition to the PDA, the applicant proposes a non-binding Memorandum of Understanding (MoU) (see Attachment 2 for a link to view the MoU on the RDN web site) between the land owner and the RDN which addresses the following topics:

- Integrated Stormwater Management;
- Transportation;
- Water Supply;
- Sanitary Sewer; and,
- Parks.

The MoU and its corresponding schedules acknowledge the technical work and analysis performed to date which informed the proposed developments. The MoU also outlines practical considerations for future development such as constraints on available water supply and sewage treatment capacity; the need to establish new service areas (e.g., Stormwater Management); and the acknowledgement of jurisdiction over the road system by the MoTI. The MoU does not in any way limit the discretion of the Regional Board or prescribe any commitments or obligations for the RDN. Rather, it discusses the context and presently anticipated future courses of action as they relate to the proposed developments, should the Board adopt the Amendment Bylaws (No. 500.384, 500.385, and 500.388) and the PDA Authorization Bylaw (No. 1692).

Transportation & Parking

Section D. of the MoU discusses the objectives regarding MoTI road works (e.g., timing of construction and Project-Specific Street Standards) and potential future reductions in parking requirements for the Village commercial development in Schooner Cove. This section highlights MoTI's commitment to operate and maintain sidewalks within the existing Fairwinds neighbourhood and new development in Lakes District and Schooner Cove, as acknowledged in a letter dated August 28, 2013, from Minister Stone of MoTI to the Regional Board. The MoU also notes that the RDN will seek to enter into an implementation agreement pursuant to Section 868 of the *Local Government Act* to support the formal application of the proposed Project-Specific Street Standards (Schedule "2" in the MoU), and related design criteria, by MoTI and the Provincial Approving Officer, when considering subdivision in the Lakes District and Schooner Cove neighbourhood plan areas.

Water Supply & Future Development Cost Charges (DCCs)

In Section E., the MoU outlines a mutual understanding of the approach to providing water supply sources including groundwater and surface water, through the Englishman River Water System (ERWS), to enable the development to proceed. The MoU also acknowledges the RDN's intent to amend its existing Bulk Water Development Cost Charges Bylaw (1998) to include additional capital works projects (e.g., ERWS and Wallbrook wells) in a single DCC Bylaw for the Nanoose Bay Peninsula Water System area. This Bylaw amendment would benefit the owner through reimbursement from the DCC funds for the construction and dedication of the Wallbrook wells to the RDN as part of the community water system.

At its meeting held on November 26, 2013, the Regional Board directed staff to proceed with the development of a DCC Bylaw for both the Nanoose Bay Peninsula Water Service Area and the Nanoose Bay Bulk Water Service which would be applicable to future development on the PDA lands.

Sanitary Sewer Capacity & Upgrades

As outlined in the MoU, the proposed development is required to demonstrate adequate wastewater treatment capacity in the Nanoose Bay Pollution Control Centre (NBPCC) to support new development. There are two factors that will affect sewage treatment capacity for new development: 1) the total number of units in the existing RDN sewage treatment plant; and, 2) the timing of the Provincial requirement to upgrade to secondary treatment. The MoU clarifies that the development will first utilize remaining capacity in NBPCC, and at such time that this capacity is no longer available the owner will be required to pay for its share of treatment capacity for new development. This may involve the upgrade, expansion or replacement of the existing sewage treatment plant so that the existing service area residents will not bear the cost of the treatment for new development.

Public Consultation Implications

In accordance with Section 905.3 of the *Local Government Act*, a public hearing must be held and advance notice provided in relation to PDA Authorization Bylaw No. 1692. The PDA bylaw public hearing will proceed concurrently with the hearings to be held for the proposed Amendment Bylaws 500.384, 500.385, and 500.388.

Sustainability Implications

The intent of the Phased Development Agreement is to secure the long term provision of improvements and amenities, and the development of lands in accordance with the adopted neighbourhood plans. The terms of this Agreement outline many benefits to the community which are to be provided as development proceeds such as:

- Dedication (in phases) of regional and community park land with improvements throughout the Lakes District as development proceeds;
- Construction of a publicly accessible waterfront boardwalk and network of pathways in Schooner Cove;
- Infrastructure improvements to service each phase of development throughout the plan areas (roads, sidewalks, water supply, wastewater disposal, drainage);
- An Integrated Stormwater Management Plan for the Lakes District development; and,
- Provision of related amenities and contributions such as a jib-crane hoist, funding for public art, transit shelters, and various parks management and environmental monitoring plans.

Inter-governmental Implications

In accordance with Section 905.2 of the *Local Government Act*, the maximum term for which a local government may approve a PDA is ten years. The proposed twenty-year Agreement requires approval from the Inspector of Municipalities following a public hearing and prior to consideration of adoption of the PDA Authorization Bylaw.

RDN staff have provided information to both Snaw-Naw-As First Nation and Snuneymuxw First Nation including the proposed Amendment Bylaws and Phased Development Agreement. Staff have met with Nanoose First Nation to discuss the nature of the proposed developments and zoning regulations, and to facilitate ongoing dialogue with regards to these projects.

SUMMARY/CONCLUSIONS


On November 12, 2013, the Regional Board of Directors granted first and second reading to Amendment Bylaws 500.384 (Lakes District), 500.385 (Schooner Cove), and 500.388 (subdivision servicing standards). At that time, staff had reviewed the related Phased Development Agreement (PDA) and determined that further negotiations were necessary to resolve the remaining issues in order to introduce a PDA Authorization Bylaw. Staff have worked with the applicant to address these matters and the PDA Bylaw is being introduced for first and second reading.

Should the Board give readings to the PDA bylaw, the public hearing for the zoning amendments and the PDA will be scheduled and held concurrently. A tentative public hearing date has been scheduled for December 16, 2013.


Following the public hearing, the Amendment Bylaws and PDA Authorization Bylaw could proceed for the Board's consideration of third reading. Subsequently, the PDA Authorization Bylaw would require approval from the Inspector of Municipalities, for the proposed twenty-year term, and then the bylaws could be considered for adoption.

RECOMMENDATIONS

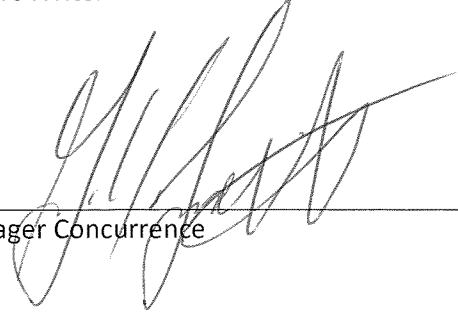
1. That "Regional District of Nanaimo Phased Development Agreement (Lakes District and Schooner Cove) Authorization Bylaw No. 1692, 2013", be introduced and read two times.
2. That the public hearing on "Regional District of Nanaimo Phased Development Agreement Authorization Bylaw No. 1692, 2013", be scheduled concurrently with the public hearing for "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.384, 2013", "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.385, 2013", and "Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.388, 2013", and that the public hearing be chaired by Director Holme or his alternate.
3. That the public hearing be scheduled for December 16, 2013.



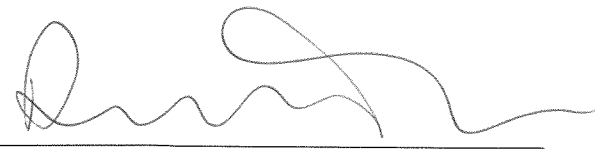
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

Attachment 1

Phased Development Agreement Authorization Bylaw No. 1692

Phased Development Agreement (PDA)

Click on the hyperlink below to view the PDA document and corresponding schedules:

<http://www.rdn.bc.ca/cms.asp?wpID=3155>

**Attachment 2
Memorandum of Understanding**

Memorandum of Understanding (MoU)

Click on the hyperlink below to view the MoU document and corresponding schedules:

<http://www.rdn.bc.ca/cms.asp?wpID=3156>