

April 10, 2017

E-mail

David Marlor, Islands Trust

cc. Emma Restall, Islands Trust, Ann Kjerulf, Islands Trust, Sonja Zupanec, Islands Trust, Wendy Marshall, RDN, Howard Houle, RDN, Elaine McCulloch, RDN, GaLTT

Hello David

Herewith my submission to the Islands Trust Executive Committee. A shall unfortunately ... not be able to attend the next meeting.

I have copied the letter to others with a view to having my comments critiqued and if necessary corrected. The issue is I believe one requiring as full a discussion and exchange of views as possible.

Thank you.

Regards

Islands Trust Executive Committee

April 8, 2017

Dear members

Gabriola Bylaws #289 and #290, GB-RZ-2016.1

I am writing concerning your pending review of a proposal to re-zone some land on Gabriola Island as set out in draft Gabriola Bylaw #289 and draft Gabriola Bylaw #290. This proposed re-zoning is in response to an application to the Gabriola LTC identified by them as GB-RZ-2016.1.

I am a resident of Gabriola Island, am a professional engineer, a former editor of the Gabriola History and Museum Society's journal *SHALE*, and have researched and written extensively about Gabriola's geology, archaeology, history (particularly its Spanish history), hydrogeology, and natural history.

I am a strong supporter of the Islands Trust and its "preserve and protect" mandate and am a member of the Gabriola Lands and Trails Trust (GaLTT) and Gabriola Streamkeepers (GSK).

In the context of the re-zoning proposal, I have made, by my latest count, 180 regular visits over a period of two years to the ecologically integrated area comprising Coats Marsh Regional Park; all of the donor land to the east of that park, which includes the eastern shore of the shallow-water wetland in the regional park; the 707 Community Park land immediately to the north and east of the donor land; and the private land immediately to the south of the donor land. In 2010, I contributed to the Regional District of Nanaimo (RDN) Coats Marsh Management Plan 2011–2021. I am also familiar with all the other lands mentioned in this letter.

During my visits, I have been studying the area's geology, its hydrogeology, its natural history, kept species counts (which include at least one red-listed plant), and I have mapped its existing trails. I have done this both as an interested individual and as a member of Gabriola Streamkeepers, who, incidentally, were unfortunately not among the referrals for this proposal made by the Gabriola LTC and Staff. All of this work has been recorded, and all of the subsequent reports are available online.

Overall, the applicant who is requesting this re-zoning is proposing to donate land currently zoned Forestry (F) in the centre of the island to the community for park land in exchange for the creation of 25 residential lots at a location on the island closer to the village core. Some of the receiving land is currently zoned Resource (R), and some is currently zoned Forestry (F). This mix has created some confusion over the exact number of densities in the final configuration and it would be my contention that the Gabriola LTC has made this calculation incorrectly. This is not just my view, but is also the view expressed on more than one occasion by the Chair of the Gabriola Local Trust Committee.

In addition to this mis-calculation of the number of residential lots created by this re-zoning, the applicant is also proposing to retain a remainder lot in the donor land that retains its forestry zoning, and hence its single density. The applicant has chosen, and the LTC has accepted, to site this remainder in that part of the donor lands that is unquestionable of the most ecological value, and moreover has the smallest area of the three forestry units being donated with the result that there will be no decrease in density as a result of this re-zoning for this particular parcel, which has no common boundary with the other two donor parcels.

The proposal also includes, as a benefit to the community, the building of a connecting road—the so-called Church-Spruce Connector. Some on the island deem this road to be essential for safety reasons, and some deem it desirable as it would, for them, lead to a reduction in travel times to and from the village core.

In the past, the community, while recognising the desirability of this road, has not been prepared to pay the market price for the land or to pay for its construction, something that would have to be done by the Regional District of Nanaimo (RDN) following a successful referendum. This proposal gets around that problem by making the road an essential part of subdivision after re-zoning, but this raises the question as to whether this unfairly benefits residents of Gabriola, who no longer have to pay for the road, at the expense of the off-island residents of British Columbia who see some of the forested land on Gabriola fragmented in order to accomplish this and whose interests the Islands Trust must also take into account. I will argue this point later in this letter.

I note here that referral responses from the Gabriola Volunteer Fire Department, the Gabriola Community Bus Foundation, the Royal Canadian Mounted Police, and the Gabriola Health Care Foundation are favourable to the proposal, solely on the grounds that it makes provision for this road.

In general, the concentration of densities on land close to the village core in exchange for the conversion of forestry land to publically-owned park land is, I believe, supported by the majority on Gabriola—Gabriola has a particularly small area of protected park land compared to other islands and has seen in the past extensive clear-cut logging of its forested land—and I am not seeking hereby to question that, but I have issues with some of the detail that I feel runs counter to the spirit and letter of the Gabriola Official Community Plan (OCP) and some detail that I feel runs counter to the Islands Trust spirit of reducing densities on land that has considerable ecological and scenic value.

In presenting the following, I am aware that any suggestion that the “rules” be changed in this late stage of the process would be grossly unfair to the applicant, and I include discussion of the “rules” here only to highlight that, because of the way they are written, they are sometimes open to differing interpretations, are to some extent subjective, but which should ultimately be judged in the light of the intent of Islands Trust policies.

The transfer of density is being made according to Gabriola OCP policy 5.2.(i) which was formulated in 1997. The policy states:

For every 8 hectares (19.76 acres) of land in the Forestry zone (F) which an owner dedicates for wilderness recreation, the owner shall be entitled to transfer one residential density to land in the Resource zone (R) which would be re-zoned Resource Residential (RR).

Two issues arising from implementation of this policy in the present application are that:

- (1) the policy makes no statement regarding the remainder of donor land after the transfer has taken place. The existence of a remainder after a donation is inevitable given that almost no surveyed tract of land on the island is an integral number of 8 hectares; and that
- (2) the proposed transfer of density is to some land zoned Forestry (F), not Resource (R) as required by the policy. There is I believe that, notwithstanding that some receiving land is zoned Forestry (F), a general belief on the island, which I share, that it is the end result of the application that matters, not the intermediate steps needed to realize that end result; however, that intermediate steps are necessary has been a source of confusion as to whether the provisions of the Gabriola OCP are being duly followed.

The number of lots calculation

The number of lots issue is of significant importance in this application because, if it is judged that the application is entitled to the creation of 25 residential lots as specified in the draft bylaws, the applicant will be able to remove some land (conceptual subdivision lots 1–5) from the forestry reserve and privatize it in its entirety, this despite the fact that this particular land provides one of, if not the, most scenic viewpoints on the island overlooking the Strait of Georgia/Salish Sea and the mainland mountains beyond.

I note here that the applicant has recognized the importance of providing a viewpoint and has offered to make available a viewpoint off the proposed Church-Spruce connector road at the west end of the area, but in my opinion, perhaps not shared by all, while commendable, this viewpoint is up to twenty metres below the height of the crest of the bluff and is a poor substitute for loss of all public access to the crest of the bluff.

While no destruction of this viewpoint is contemplated, only access to it; nevertheless, the Islands Trust Policy Statement Directive 5.1.3 requires the LTC to address the “protection of views, scenic areas and distinctive features contributing to the overall visual quality and scenic value of the Trust Area”.

In tackling the question of the number of lots involved in the density transfer, I would strongly advocate the “black box” approach. This avoids difficulties that may arise in a step-by-step approach. The step-by-step approach introduces the possibility of an interim step that is technically not permissible, but that is not a problem when the overall intent and outcome of the re-zoning is considered. In the engineering world, the “black-box” approach is an analysis method where the only parameters considered are “what goes into the box” and “what comes out of the box” and no heed is paid to what happens within the box. This interpretation is I believe in line with the legal advice that the Gabriola LTC has received with regard to its interpretation of its OCP.

Using this approach, we look at what the distribution of densities is at present, we calculate what the distribution of densities would be after the proposed re-zoning, and only then do look to see if there is any reason why the overall transaction is not satisfactory in some respect.

At present, the 207.3 ha donor land and receiving land comprise:

Parcel I/D	Area ha	Zoning	Density units/ha	Lots permitted	Remainder ha
Lot 1	6.5	R	8	1	-1.5
Lot 6	14.9	R	8	1	6.9
Lot 7	15.9	R	8	1	7.9
Sec. 19	30.5	F	60	1	-29.5
Sec. 13	51.7	F	60	1	-8.3

Sec. 14	56.4	F	60	1	-3.6
Sec. 10	31.4	F	60	1	-28.6
	<hr/> 207.3			<hr/> 7	<hr/> -56.7

The mis-calculation of the number of residential lots allowed is a result of an error in the Gabriola Staff report dated May 2, 2016, page 2 of 12, in which the existing densities on the donor and receiving land is calculated as nine units, when in fact, as shown above, it is only seven units.

The Staff have looked inside the “black box” and decided that because the OCP does not allow a forestry zone to receive a density it must be re-zoned first. However there was no recognition that re-zoning forestry land (F) to resource (R) with no transfer of densities results in a densification that the Gabriola OCP does not permit and is expressly intended not to allow—it is only allowed for Seniors and Special Needs—and which is clearly against the wishes of islanders who see the zoning provisions in the Gabriola OCP as a tool for limiting population and development pressures on the island, even though this puts constraints on the ability of the community to provide badly-needed affordable housing.

The Staff’s mis-calculation accepted by the LTC was:

Parcel I/D	Area	Zoning	Density	Lots permitted	Remainder
	ha		units/ha		ha
Lot 1	6.5	R	8	1	-1.5
Lot 6	14.9	R	8	1	6.9
Lot 7	15.9	R	8	1	7.9
Sec. 19	30.5	R	8	3	6.5
Sec. 13	51.7	F	60	1	-8.3
Sec. 14	56.4	F	60	1	-3.6
Sec. 10	31.4	F	60	1	-28.6
	<hr/> 207.3			<hr/> 9	<hr/> -20.7

After re-zoning, as the proposal stands, the 207.3 ha donor and receiving lands would comprise:

Subdivision I/D	Area ha	Zoning	Lots permitted
Lots 1-25	46.0	RR	25
	<hr/> 46.0		<hr/> 25
Park	19.3	FWR	0
ALR	1.7	F	0
Misc. (road, etc.)	0.8		0
	<hr/> 21.8		<hr/> 0
Sec. 13	51.7	FWR	0
Sec. 14	56.4	FWR	0
Sec. 10	27.9	FWR	0
	<hr/> 136.0		<hr/> 0
Sec. 10 rem	3.5	F	1
	<hr/> 3.5		<hr/> 1
	<hr/> <hr/> 207.3		<hr/> <hr/> 26

The number of lots, according to the proposal, as it stands, has increased from 6 zoned R to 25 zoned RR. According to the Gabriola OCP policy 5.2.(i), this requires a donation of forestry land (F) amounting to $(25-6) \times 8 = 152$ ha. The proposal therefore fails to meet the requirement because only 136 ha are being donated (FWR). We cannot count the 19.3 ha labelled “Park” as a donation as it has, prior to the transfer, been zoned resource (R), not forestry (F).

When correctly calculated however, the number of lots should be increased from 3 zoned R to 23 zoned RR. According to the Gabriola OCP policy 5.2.(i), this requires a donation of forestry land (FWR) amounting to $(23-3) \times 8 = 160$ ha. With a slight reduction of the forestry land on Section 19 zoned RR by the transfer (accompanied by a slight increase in size of lots) this can be accomplished as follows:

Subdivision I/D	Area ha	Zoning	Lots permitted
Lots 1-23	44.8	RR	23
	<hr/> 44.8		<hr/> 23
ALR	1.7	F	0
Misc. strata	0.8	RR	0
	<hr/> 2.5		<hr/> 0
part Sec. 19	20.5	FWR	0
Sec. 13	51.7	FWR	0
Sec. 14	56.4	FWR	0
Sec. 10	31.4	FWR	0
	<hr/> 160.0		<hr/> 0
	<hr/> <hr/> 207.3		

The proposal fully meets the requirement because 160 ha of forestry land (F) are being donated in return for an increase in resource densities (R) of $23-3 = 20$. There is no remainder lot in keeping with the precedent set in the Legends transfer that created the 707 Community Park.

The remainder issue

In my interpretation of the OCP there is no remainder land; however, because it is quite probable that a compromise solution will eventual be required, I am going to assume that there is a remainder.

With regard to this issue in applying Gabriola OCP policy 5.2.(i), one could (especially if one were a lawyer) contemplate at least three options regarding remainders. I am going to argue that the one that does most to “preserve and protect” should be the option implemented.

Option (1): One could round-down any transfer so that, for example, only one density would be allowed for a donation that equalled or exceeded 8 hectares, the rule being that at least 8 hectares are required to be donated for every density.

In general, donations of forestry land in the way contemplated are scaled so that the maximum number of densities permitted are transferred and there are no remainders. This is obviously in keeping with the desire that the resulting donated land, which would be re-zoned to Forestry/Wilderness Recreation (FWR), be in keeping with its ecological character, and that the land remain unfragmented.

There is a precedent for interpretation of Gabriola OCP policy 5.2.(i) in this way. When the transfer of densities on forestry land were made *ca.* 2005 at the request of Centre Stage Holdings, a transfer that led to the creation of the 707 Community Park on Gabriola, there was a remainder portion after the divide-by-eight rule was applied. The applicant was not allowed by the then LTC to retain this remainder and it subsequently became a part of the newly-created park.

When dealing with donor lands that are separate parcels, as they are in this application, the drawback of this interpretation is that if, for example:

Owner A dedicated three separate parcels of forestry land each, of say, 9 ha in area, Owner A would be allowed to acquire 3 Resource Residential densities in return for a 27 ha transfer; while Owner B on dedicating three separate parcels of forestry land each, of say, 15 ha in area would only be allowed to acquire the same 3 Resource Residential densities in return for a 45 ha transfer; and

Owner C willing to dedicate three separate parcels of forestry land each, of say, 7 ha in area would not be allowed to do so.

Option (2): One could allow the owner to retain the remainder unconditionally save for a reasonable minimum.

When dealing with donor lands that are separate parcels, the drawback of this interpretation is that if, for example:

Owner A dedicated three separate parcels of forestry land each 9 ha in area, Owner A would be allowed to acquire 3 Resource Residential densities and also retain separate 3 Forestry lots of 1 ha, each with one density, while

Owner B similarly could acquire the same 3 Resource Residential densities and also retain separate 3 Forestry lots of 7 ha, each with one density; and

Owner C would still not be able to make a donation.

The major disadvantage of this option is that it prevents Owner C from contributing and significantly increases the total number of densities after the transfer.

Option (3): One could, again subject to a reasonable minimum, allow the owner to donate the remainder together with other not necessarily contiguous remainders such that the total of the remainders justified a further density transfer.

In our general example;

Owner A could dedicate 24 ha for 3 Resource Residential densities and retain 1 Forestry lot of 3 ha with one density, while

Owner B could dedicate 42 ha for 5 Resource Residential densities and retain 1 Forestry lot of 5 ha with one density, and

Owner C could dedicate 21 ha for 2 Resource Residential densities and retain 1 Forestry lot of 5 ha with one density.

In the case of the present application, as it stands, the undesirable result of using Option (3) is twofold, in part resulting from the fact that the LTC has allowed the applicant to locate the remainder on a parcel of his choosing.

Firstly, it allows the owner to retain one density on a remainder even though the 3.5 hectare remainder is zoned forestry and such zoning normally requires a 60 hectare parcel. I note here that a substantial portion of this land is red-alder/meadow swamp land of little interest to any serious commercial forester.

Secondly, the remainder disrupts an existing trail on the property which is in such a good state that it could be immediately incorporated into a park system without further work. This trail runs diagonally across the donor land, making it a valuable connector with the existing trails in the 707 Community Park. It runs across high ground in the donor parcel making its use a year-round possibility. It would be difficult, if not impossible, to construct a work-around trail offering the same advantages because to the north of the trail is a seasonal swamp (the NE Arm wetland) and to the south of the trail is another seasonal swamp (East Path Creek and the SE Arm Wetland) and both are potentially subject to riparian area regulation (RAR) protection (they ultimately drain into Hoggan lake which is fish-bearing) and are a vital part of the Coats Marsh hydrological system.

Retaining any remainder leads to fragmentation of the donor land into land zoned Forestry/Wilderness Recreation (FWR) and land zoned Forestry (F).

While Option (3) might seem the most attractive, it has to be recognized that this option is not in keeping with the overall intent of the OCP not to fragment forestry land and not to lead to a net increase in densities. These are the reasons why all previous LTCs have preferred Option 1.

I can perhaps best illustrate this point with a hypothetical example.

Suppose Owner D had 120 ha of forested land to donate. According to Gabriola OCP policy 5.2.(i), this could be done by transferring $120/8 = 15$ densities to resource-zoned land, leaving no remainder. The total number of “dwellings” thereby created is 15 and the 2 on the forested land at 60 ha/unit are extinguished, a net increase in “dwellings” of 13.

Now suppose Owner D had sold that same 120 ha of forested land to two separate purchasers, each of whom bought 60 ha. Suppose further that both these purchasers wished to donate their land. Then, if we allowed remainders zoned forestry to be created, each could transfer $56/8 = 7$ densities to resource-zoned land, each leaving a remainder of 4 ha zoned forestry carrying 1 density. The total number of “dwellings” thereby created is $2 \times (7 + 1) = 16$, a net increase of 14, which is one more than in the previous case for the same land.

If despite this drawback, Option 3 is used, I feel strongly, as already pointed out, that the choice of where to locate the remainder be in the best interests of the ecology, if necessary contrary to the owner’s wishes. This has not been done in this application.

In summary

The calculation of the number of residential densities allowed to be transferred is wrong—it is too high. This is not just against the spirit of the Gabriola OCP, it is against its letter. Islands Trust policy states:

When making decisions and exercising judgment, Trust Council will place priority on preserving and protecting the integrity of the environment and amenities in the Trust Area.

Trust Council believes that to achieve the Islands Trust object, the rate and scale of growth and development in the Trust Area must be carefully managed and may require limitation.

The allowing of a retention of a remainder is a change in policy, appearing to have come from Staff, that leads to fragmentation of the forestry land, allows for a density in the most sensitive ecological part of the donor properties, and leads to an increase in densities on the island overall, which is contrary to the spirit of the OCP and all previous interpretations of the OCP. In particular, the proposal creates a 3.5 ha parcel zoned forestry (nonsensically) with a residential density of one that will require an access road to be useable, this access road crossing a stream feeding into the wetlands in Coats Marsh Regional Park and running through land to be designated as a park. The Islands Trust policy states:

4.2.7 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address: the retention of large land holdings and parcel sizes for sustainable forestry use, and the location and construction of roads, and utility and communication corridors to minimize the fragmentation of forests.

4.2.5 It is the position of Trust Council that the aesthetic value of forest land should be protected.

3.3.2 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address means to prevent further loss or degradation of freshwater bodies or watercourses, wetlands and riparian zones and to protect aquatic wildlife.

3.2.2 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the protection of unfragmented forest ecosystems within their local planning areas from potentially adverse impacts of growth, development and land-use.

The community is avoiding paying for a needed road by allowing fragmentation of the donor lands and while this benefits islanders financially, it is not in the best interests of the off-island residents of British Columbia. The Islands Trust policy states:

“... for the benefit of the residents of the Trust Area and of British Columbia generally ...”

The Islands Trust is responsible to the present and future residents of both the Trust Area and the Province of British Columbia. Their needs can only be met and sustained within the limitations of the natural environment and the island communities of the Trust Area. A balance must be established between the needs of all stakeholders.

The mis-calculation of the number of residential densities has allowed the applicant to close off all public access to arguably the best remaining viewpoint on the island. The Islands trust policy states:

5.1.3 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the protection of views, scenic areas and distinctive features contributing to the overall visual quality and scenic value of the Trust Area.

I would respectfully urge the committee to symphonise with the intent of the application, which has widespread support on the island, but request that it be re-considered by the applicant and the Gabriola LTC on the grounds that some of its provisions are as presently formulated not in accordance with the Gabriola OCP policy or with Islands Trust policy.

In conclusion, I will add that I have no objections to this letter being made public; on the contrary, I may have made mistakes or have been confusing, and am quite willing to engage in conversations accordingly.

Sincerely

E-mail April 12, 2017

Sonja Zupanec <szupanec@islandstrust.bc.ca>

Houle, Howard <Howard.Houle@rdn.bc.ca>

cc. Marshall, Wendy <wmarshall@rdn.bc.ca>

McCulloch, Elaine <EMcCulloch@rdn.bc.ca>

hi Sonja and Howard

I am sending you herewith a copy of a letter from me that was published in the local newspaper, the Gabriola Sounder April 4 2017 page 4, under the heading "Third Reading for GB-RZ-2016.1".

I would like to request that this become part of the official records of the LTC and the RDN on the subject of the remainder lot in the GB-RZ-2016.1 application, this despite the tone of the letter which was of course written for the general public.

I have not copied the trustees with this or the previous letter because I am thoroughly confused as to what information from the public that the trustees may now legally receive, but I trust your judgment in this.

Thank you.

The letter read:

The LTC decision to rush this re-zoning proposal to third reading despite the clear indication of many in the community at the Public Hearing that they needed more time to finalize their thoughts on this application has left us with the situation that there will be no decrease in density on the donor land that is the half-quarter section to the east of Coats Marsh. This is despite the assessment of many that this is an ecologically very valuable piece of land.

The offer of the proponent to give the RDN or GaLTT a "first refusal" option is in my view worthless. The assessed value of the 3.5 ha remainder is (pro rating on that of the whole parcel) around thirty-eight thousand dollars. I cannot believe that this amount is a serious obstacle for the proponents "donating" this land, and that the real reason for their retaining it is that they intend to build on it for their own purposes, thereby making "first refusal" irrelevant. The community or GaLTT members need not worry about having to fork over tens of thousands of dollars to the proponents to prevent a road being built through the wetlands in this area; it is unlikely it'll be coming on the market.

Regards

--

Nick Doe
1787 El Verano Drive
Gabriola, BC
Canada V0R 1X6

April 12. 2017-04-15

Received, thank you.

You are correct to send it to planning staff and we will include it as 'post public hearing' correspondence on the file.

Sonja Zupanec, RPP
Island Planner
Islands Trust
cc. Becky McErlean <bmcerlean@islandstrust.bc.ca>

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Submission to the Islands Trust Executive Committee hearing on June 7, 2015

A PowerPoint presentation posted here as a pdf file:

June 7, 2017

Gabriola Island: GB-RZ-2016.1

**Application to transfer densities
from forest land and make a
publically-owned park donation**

Issues with GB-RZ-2016.1

Number 1 - the OCP issue

The mis-calculation of the number of lots being allowed the developer. It should be 23 not 25 lots in order to comply with the intent and the spirit of the OCP.

Issues with GB-RZ-2016.1

Number 2 -- the remainder issue

Allowance of a small 3.5 ha "remainder" zoned forestry carrying one density after the density transfer.

This despite that

- in the previous similar project, developers were not allowed by the LTC to retain any "remainder"
- the result will be no decrease in density on this 30-ha donor parcel.
- this donor parcel is arguably among the most environmentally-valuable parcels on the island
- building on the "remainder" will require constructing a driveway through a riparian area
- the presence of the "remainder" will disrupt the existing trail system through the forested area, with no easy work-around.

Issues with GB-RZ-2016.1

Number 3 -- the road issue

The dubious assertion throughout the process that the provision of the Church-Spruce connector road helps justify the density transfer.

The island should not be in the business of paying for a road by being generous with developers' applications.

Issues with GB-RZ-2016.1

Number 4 -- the viewpoint issue

Loss of a major viewpoint, probably the best on the island, previously on forested land.

No public access after the re-zoning.

1. Number of lots issue

The total area of land involved in the density transfer is 207.3 ha

CURRENT STATUS (donor lands and receiving lands together)

<u>Parcel I/D</u>	<u>Area (ha)</u>	<u>Zoning</u>	<u>Allowed density</u>	<u>Densities in parcel</u>
Lot 1	6.5	R	1 per 8 ha	1
Lot 6	14.9	R	1 per 8 ha	1
Lot 7	<u>15.9</u>	R	1 per 8 ha	<u>1</u>
	37.3			3
Sec. 19	30.5	F	1 per 60 ha	1
Sec. 13	51.7	F	1 per 60 ha	1
Sec. 14	56.4	F	1 per 60 ha	1
Sec. 10	<u>31.4</u>	F	1 per 60 ha	<u>1</u>
	170.0			4
				total 7

The total area of land involved in the density transfer is 207.3 ha

STATUS AFTER TRANSFER

<u>Parcel I/D</u>	<u>Area (ha)</u>	<u>Zoning</u>	<u>Allowed density</u>	<u>Densities in parcel</u>
Lots 1-25	46.0	RR		25
ALR	1.7	F		0
Misc.	0.8	R		0
Park	19.3	R		0
Sec. 10 rem.	<u>3.5</u>	F		<u>1</u>
	71.3			26
Sec. 13	51.7	FWR		0
Sec. 14	56.4	FWR		0
Sec. 10	<u>27.9</u>	FWR		<u>0</u>
	136.0			0

The net increase in densities is thus $26 - 7 = 19$

OCP Policy 5.2 (i)

For every 8 hectares (19.76 acres) of land in the Forestry zone which an owner dedicates for wilderness recreation, the owner shall be entitled to transfer one residential density to land in the Resource zone which would be rezoned to Resource Residential.

Hence we require $19 \times 8 = 152$ ha of forestry land to be designated FWR

While only 136.0 ha has been, allowing only an increase of 17 densities.

Source of the error?

The LTC have not taken into account that the rezoning in Section 19 has created densities prior to any transfer, and this conflicts with OCP policy.

OCP General Residential Policy (a)

Increasing residential density through redesignation/rezoning shall not be permitted with the exception of Special Needs and Seniors' affordable housing

In their view the net increase in densities is $26 - 10 = 16$

Hence we require $16 \times 8 = 128$ ha of forestry land to be designated FWR and 136.0 ha has been. We can count the 19.3 ha park as a "gift".

The problem of non-compliance with policy OCP Policy 5.2 (i) (only F to R transfers are allowed) has been dealt with, but neglected is the fact that re-zoning forestry land to resource without a density transfer is in conflict with the OCP General Residential Policy (a) that such transfers should be density-neutral.

The remedy is either change the OCP or change the number of densities transferred from 25 to 23.

This error was noted by:

--the Chair of the LTC;

--two of the six voting members on the APC.

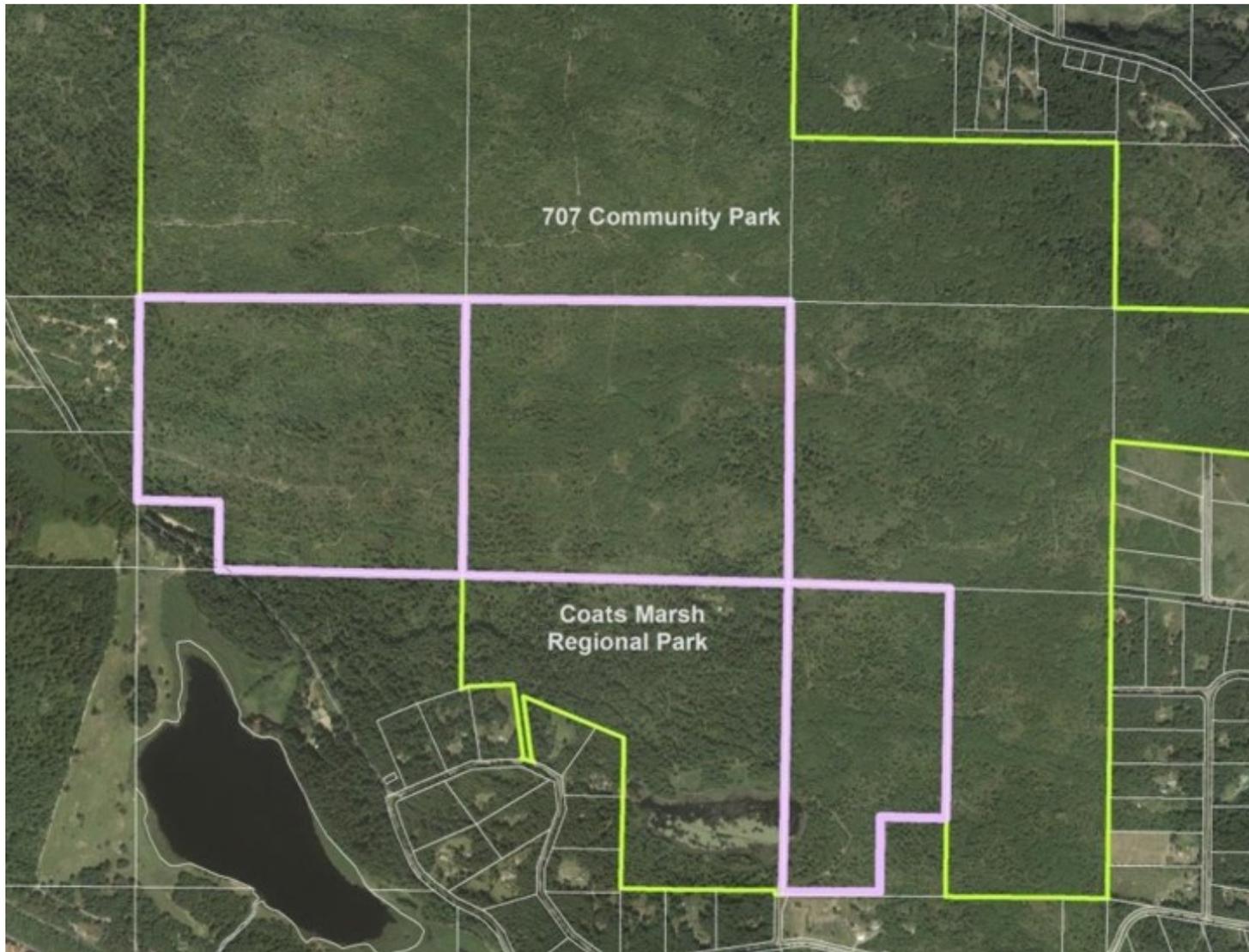
These two requested that the APC minutes reflect that the method of rezoning the lands to create densities does not follow the Official Community Plan (OCP) requirements; and

--by many members of the public within the 30% group of negative responses received by the LTC in comments about the proposed bylaws.

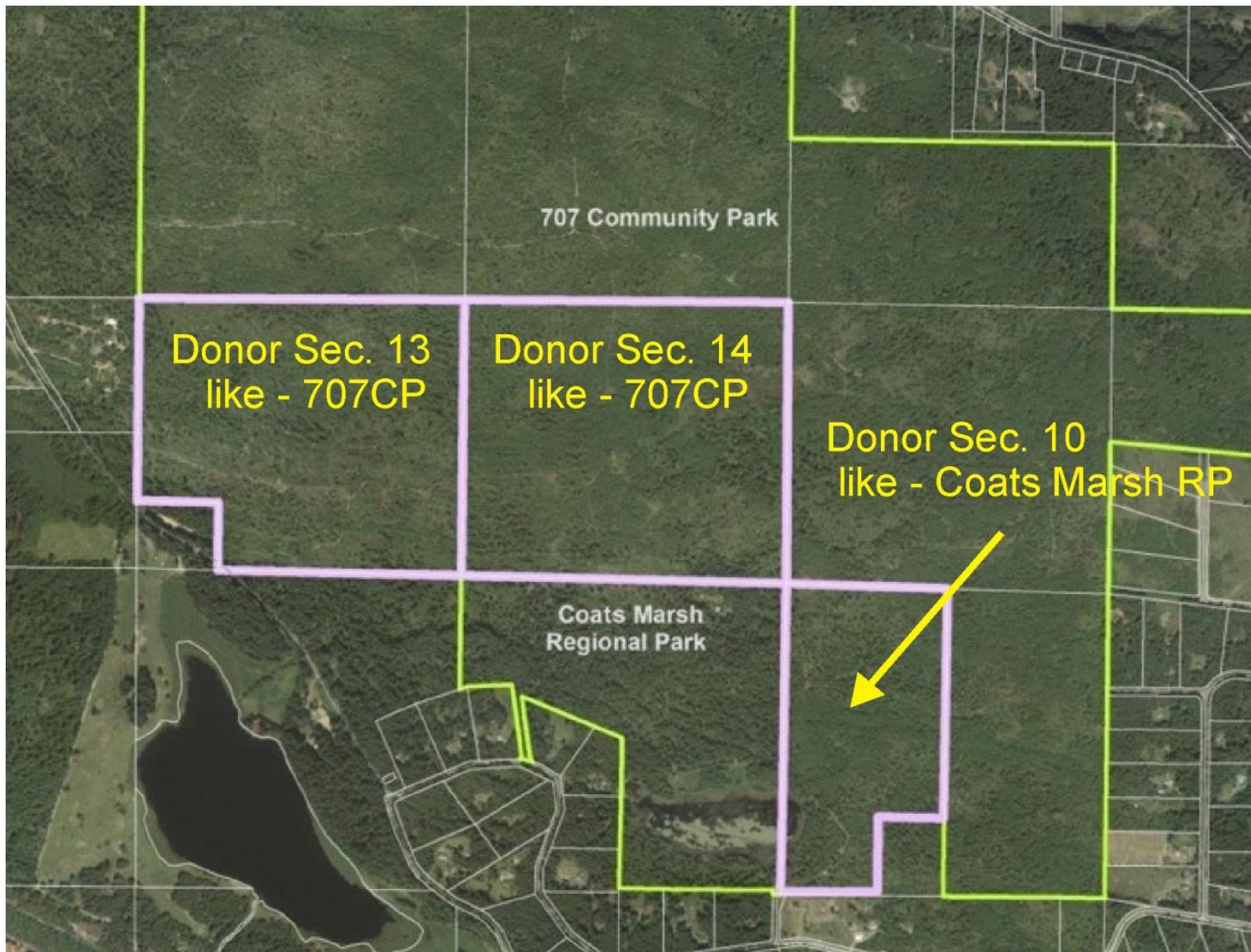
When even the most informed citizens and trustees cannot agree , understand, or explain the density transfer policies and calculations in an application like this, the policies and procedures need re-writing.

In the meantime, only the most conservative interpretation should be adopted, not the interpretation most favouring the developer.

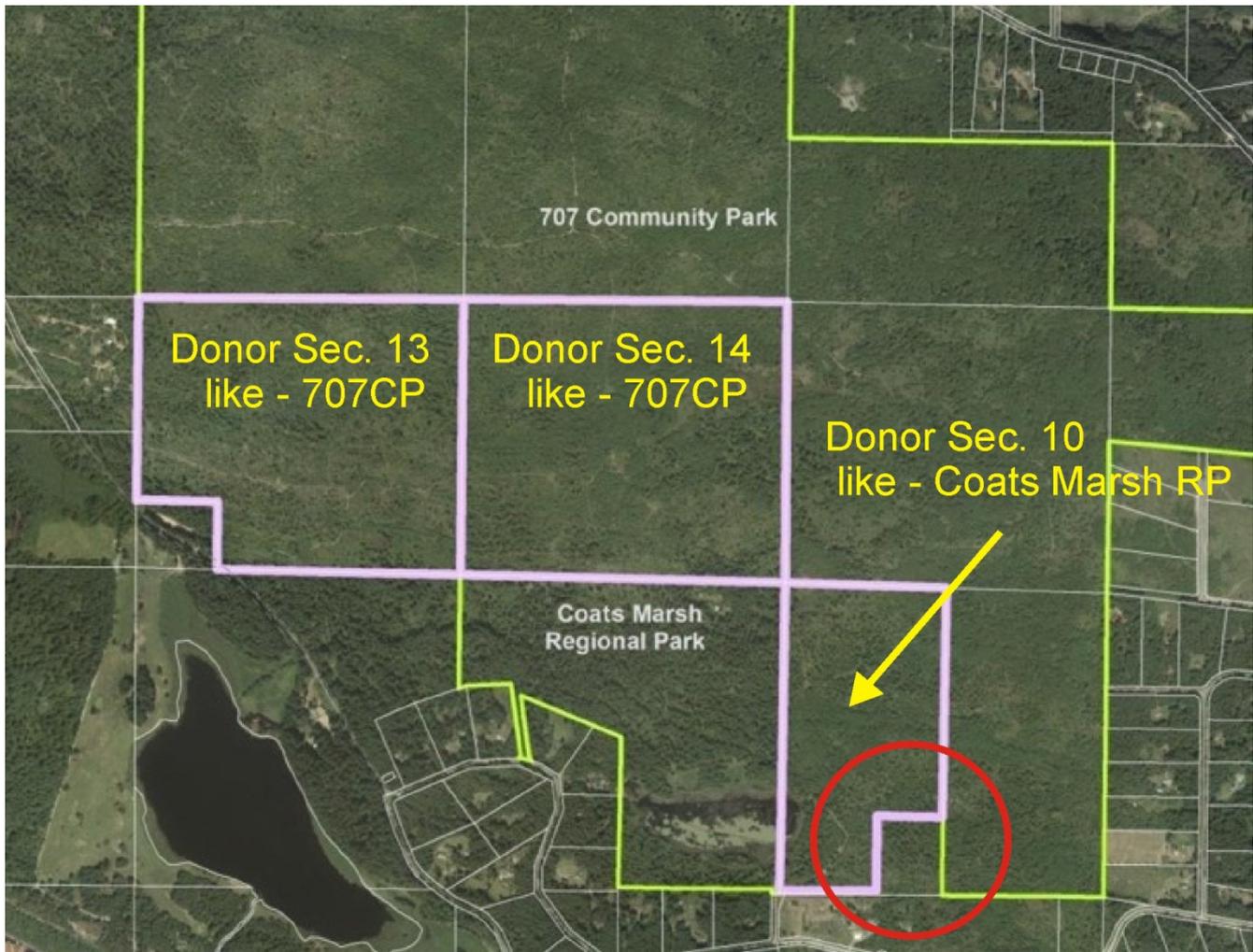
2. The remainder issue



Coastal Douglas-fir (CDF) Biogeoclimatic Zone



Within the 707CP there are no SEI areas on account of the recent clear-cut logging
Within Coats Marsh RP there are six SEI areas associated with wetlands



Because Sec. 13 + Sec. 14 + Sec.10 is not an integral number of 8-ha parcels the applicant wishes to retain the 3.5 ha remainder for development (red circle).

THE NE 1/4

SECTION 10

AREA = 27.9 ha

3.3ha

REM.
3.5 ha

241.7m

161.6m

190.8

200.8

403.3m

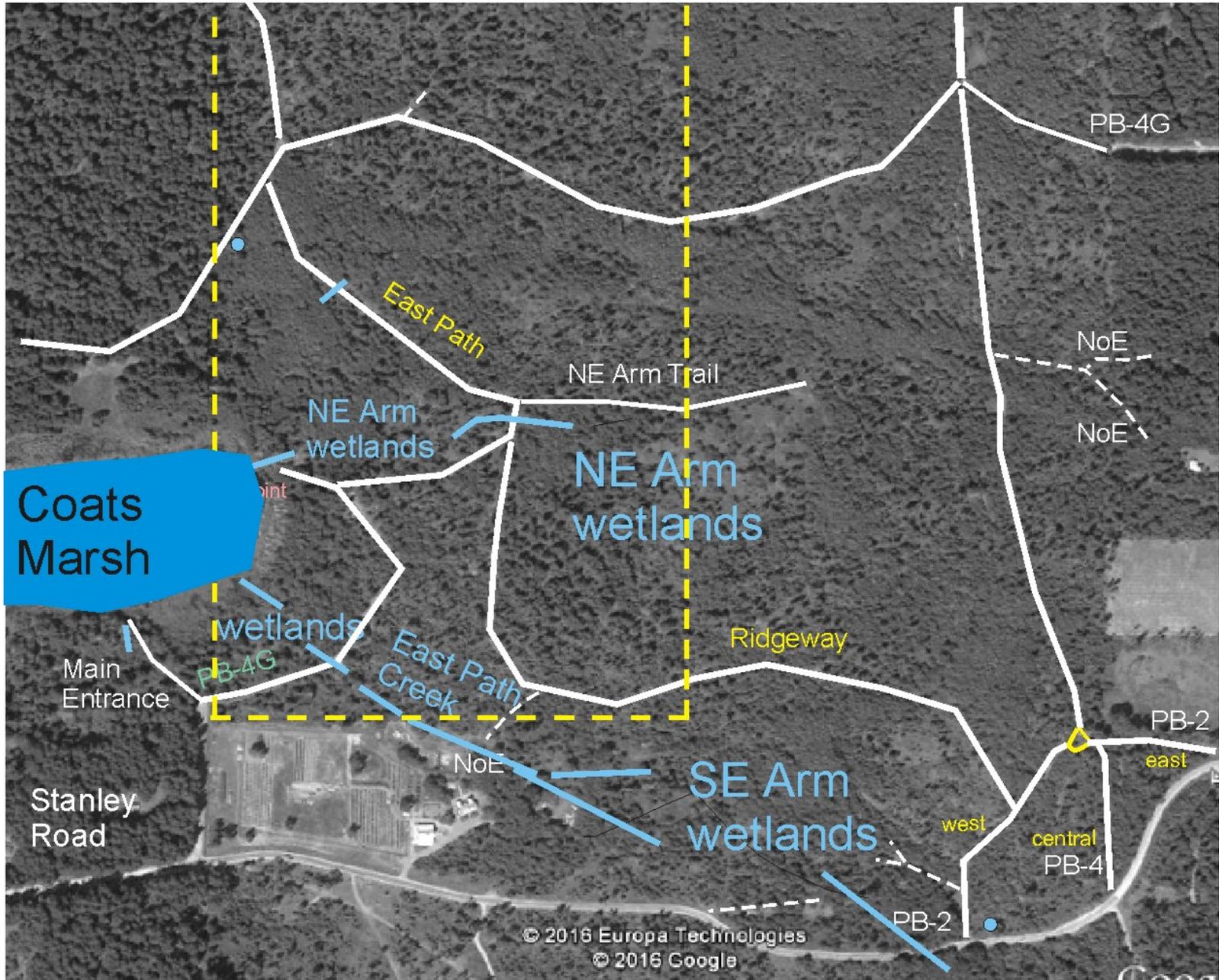
ROAD

LOT 4

PLAN VIP75929









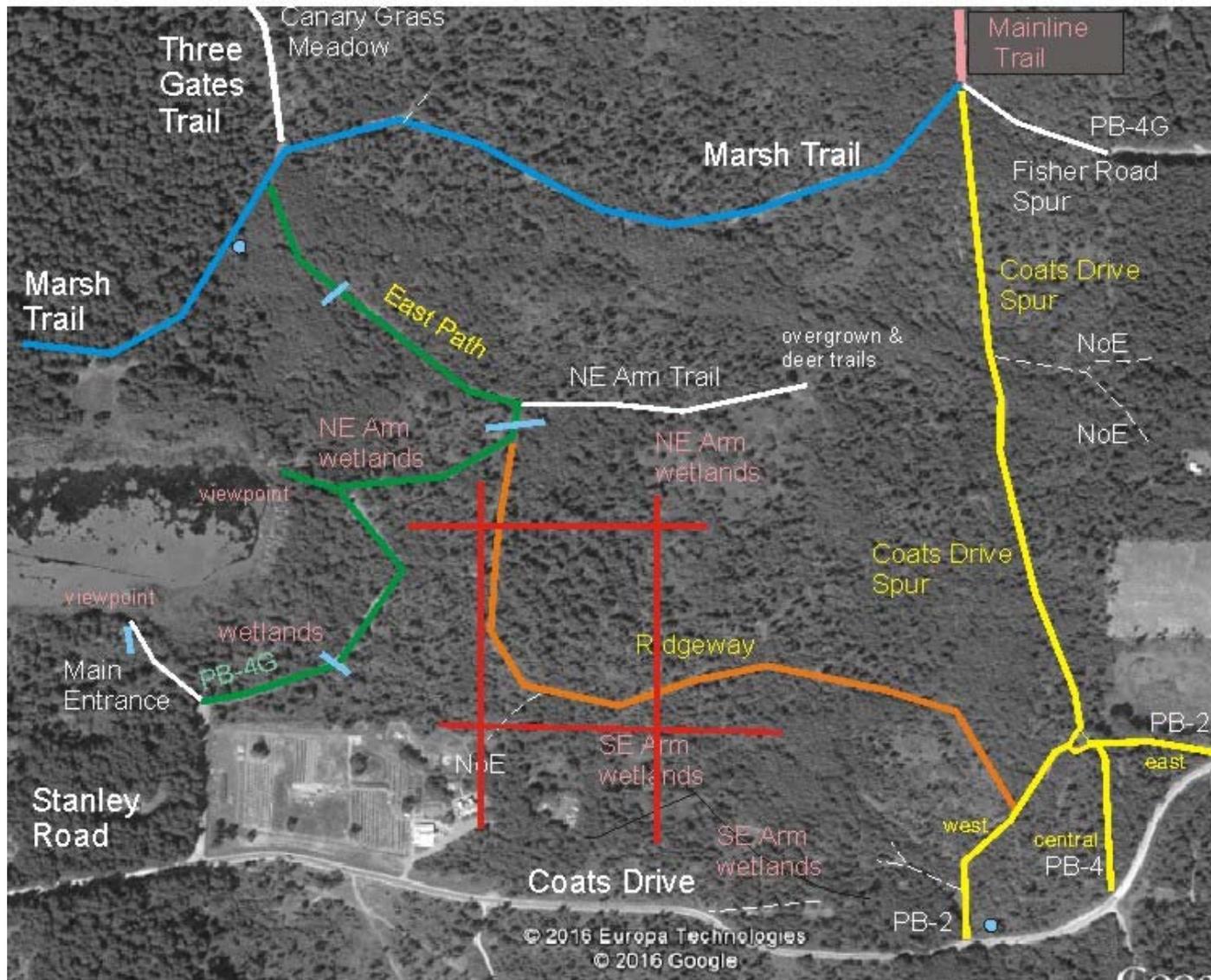
NE Arm wetlands in the spring and early summer



SE Arm wetlands in the spring and early summer



East Path Creek - it supplies about 35% of the water for the Coats Marsh shallow water wetlands.
Developing the remainder will entail building a driveway across this creek.



Developing the remainder will disrupt the existing trail system in Section 10 (red square).



The Ridgeway is an old logging road in good condition providing excellent conductivity across the section and to adjoining parts of the 707CP.



Why a remainder at all?

The OCP Policy 5.2 (i) was an outcome of the desire in 1997 to prevent landowners from breaking up large tracts of land in the Forestry Land Reserve (FLR) into numerous 20-acre (8-hectares) parcels and make them available for building homes.

Why a remainder at all?

The OCP Policy 5.2 (i) was an outcome of the desire in 1997 to prevent landowners from breaking up large tracts of land in the Forestry Land Reserve (FLR) into numerous 20-acre (8-hectares) parcels and make them available for building homes.

The zoning bylaws were amended so that the minimum parcel size for land zoned forestry was 150-acres (60 hectares). This was in keeping with the objectives of the Provincial FLR.

Why a remainder at all?

The OCP Policy 5.2 (i) was an outcome of the desire in 1997 to prevent landowners from breaking up large tracts of land in the Forestry Land Reserve (FLR) into numerous 20-acre (8-hectares) parcels and make them available for building homes.

The zoning bylaws were amended so that the minimum parcel size for land zoned forestry was 150-acres (60 hectares). This was in keeping with the objectives of the Provincial FLR.

However, in order to avoid claims for compensation by landowners for the reduction of densities on their land, it was allowed that they could donate forest land for parks and transfer the densities at the rate of 1 per 8 hectares to any lands zoned Resource.

Why a remainder at all?

In the first application of this provision was by Centre Stage Holdings in 2005, which led to the creation of the 707 Community Park.

The number of densities transferred was 35 from 707 acres (286.1 ha) of forest land, which is $35 \times 8 = 280$ ha plus a 6.1 ha (15.1 acre) "remainder".

The LTC at the time refused to allow the applicant to retain the remainder and it was included in the donation.

This was judged to be in the spirit of the zoning in the forested lands that had existed before the Islands Trust forestry zoning was introduced.

Why a remainder at all?

The current applicant is being allowed by the LTC to retain a 3.5 ha remainder with one density. A density in this context means:

- one single family dwelling
- one accessory cottage dwelling
- three buildings that exclude a cottage, pump/utility house and woodshed, and that are accessory to all dwellings.

To have such a lot, zoned forestry, within a parcel that is being donated to create an ecological reserve makes no sense. The objective is to move development away from the area, not retain the development potential exactly the same as it was before the transfer.

The applicant is a developer and has no interest in commercial forestry.

3. Road issue

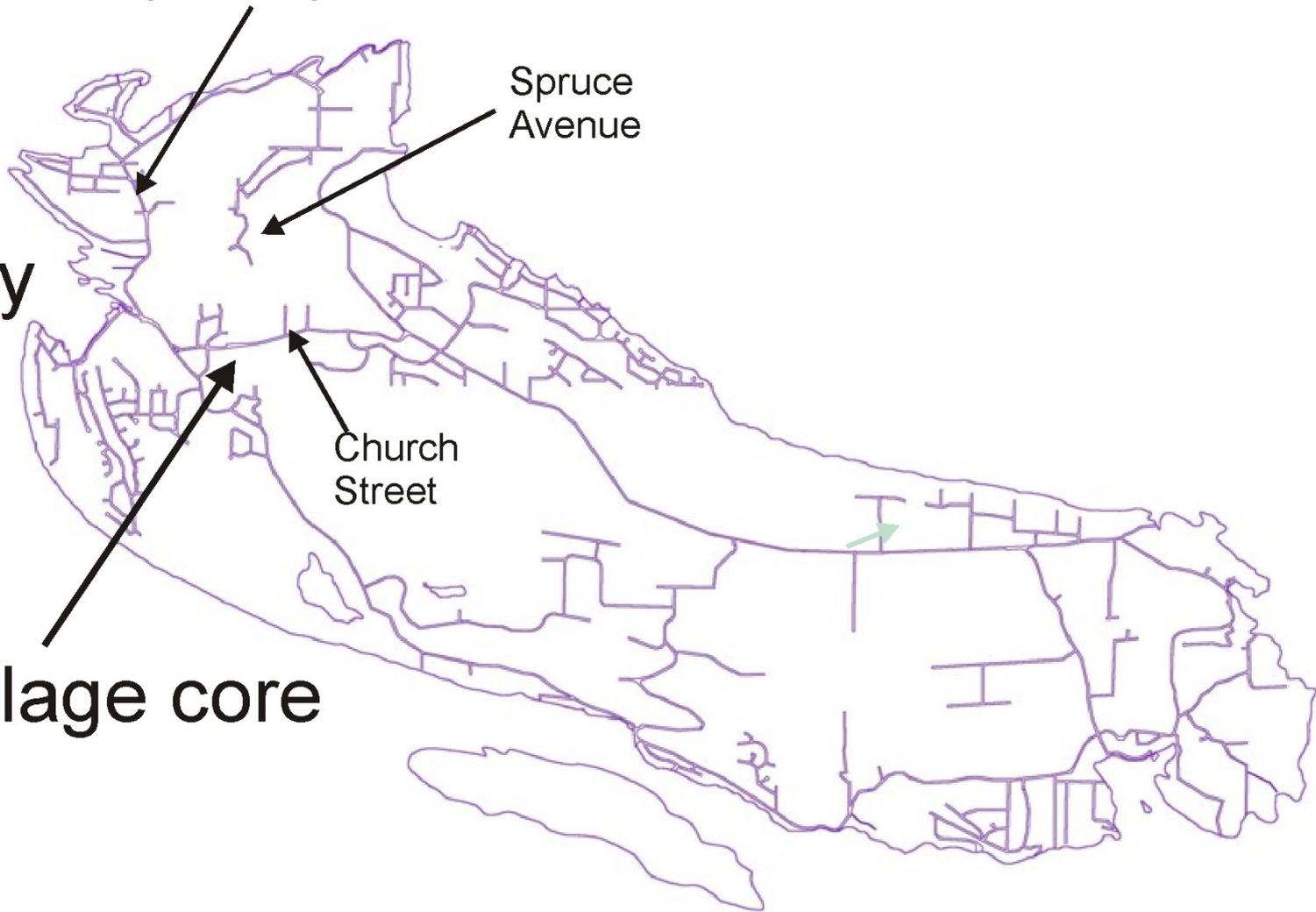
Taylor Bay Road

Spruce Avenue

Church Street

ferry

village core



Taylor Bay Road

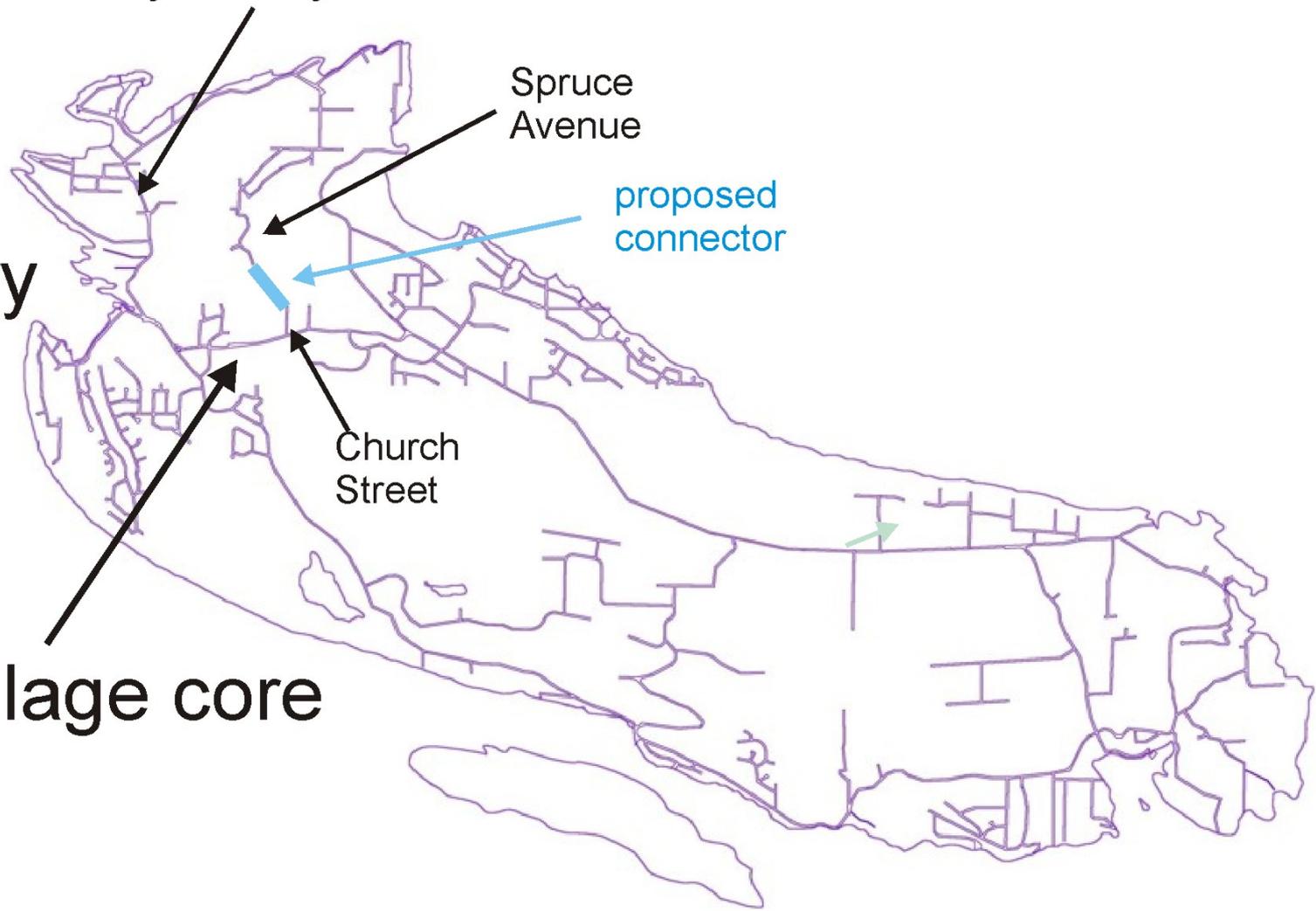
Spruce Avenue

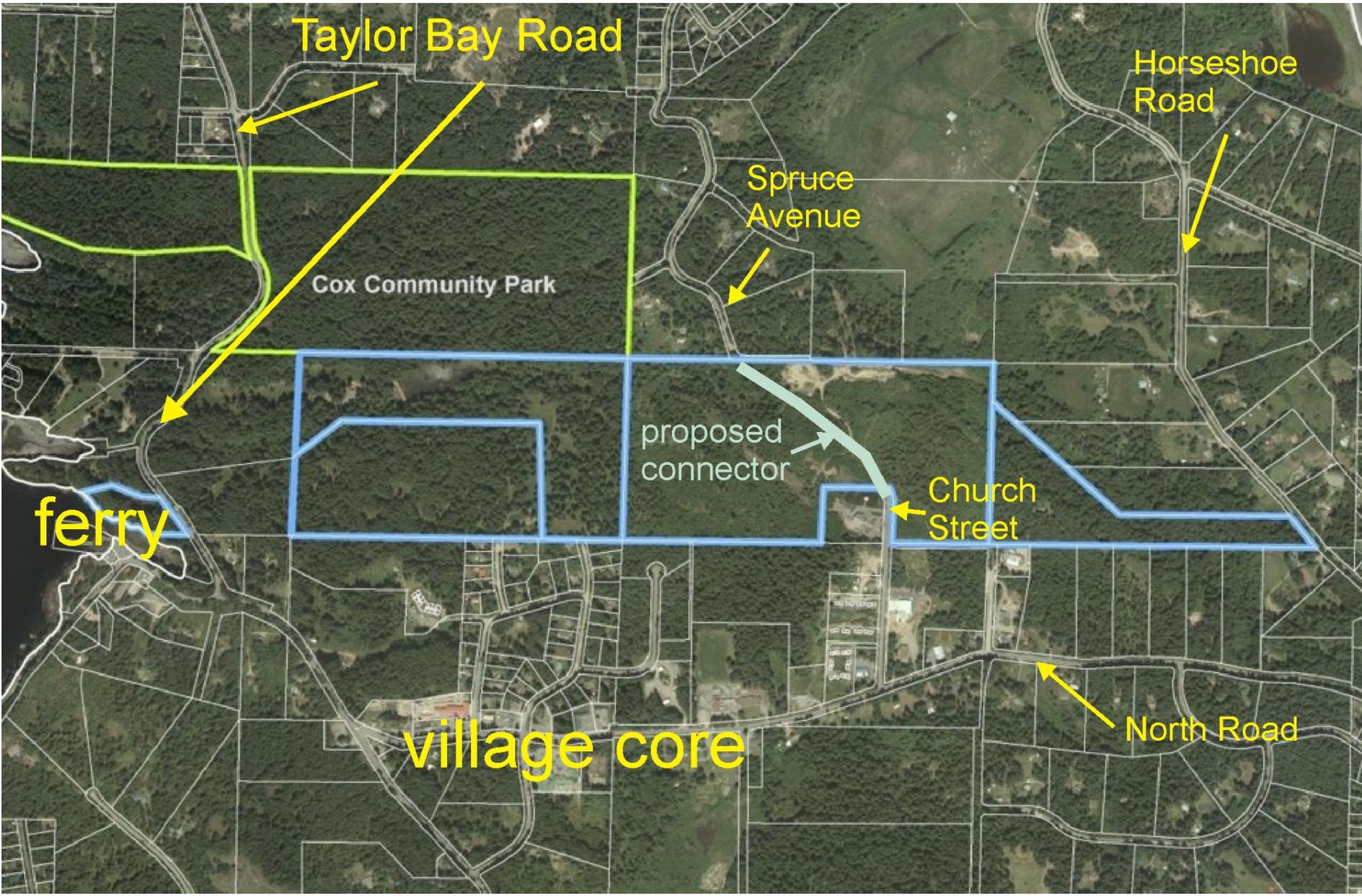
proposed connector

Church Street

ferry

village core





Taylor Bay Road

Horseshoe Road

Spruce Avenue

Cox Community Park

ferry

proposed connector

Church Street

village core

North Road

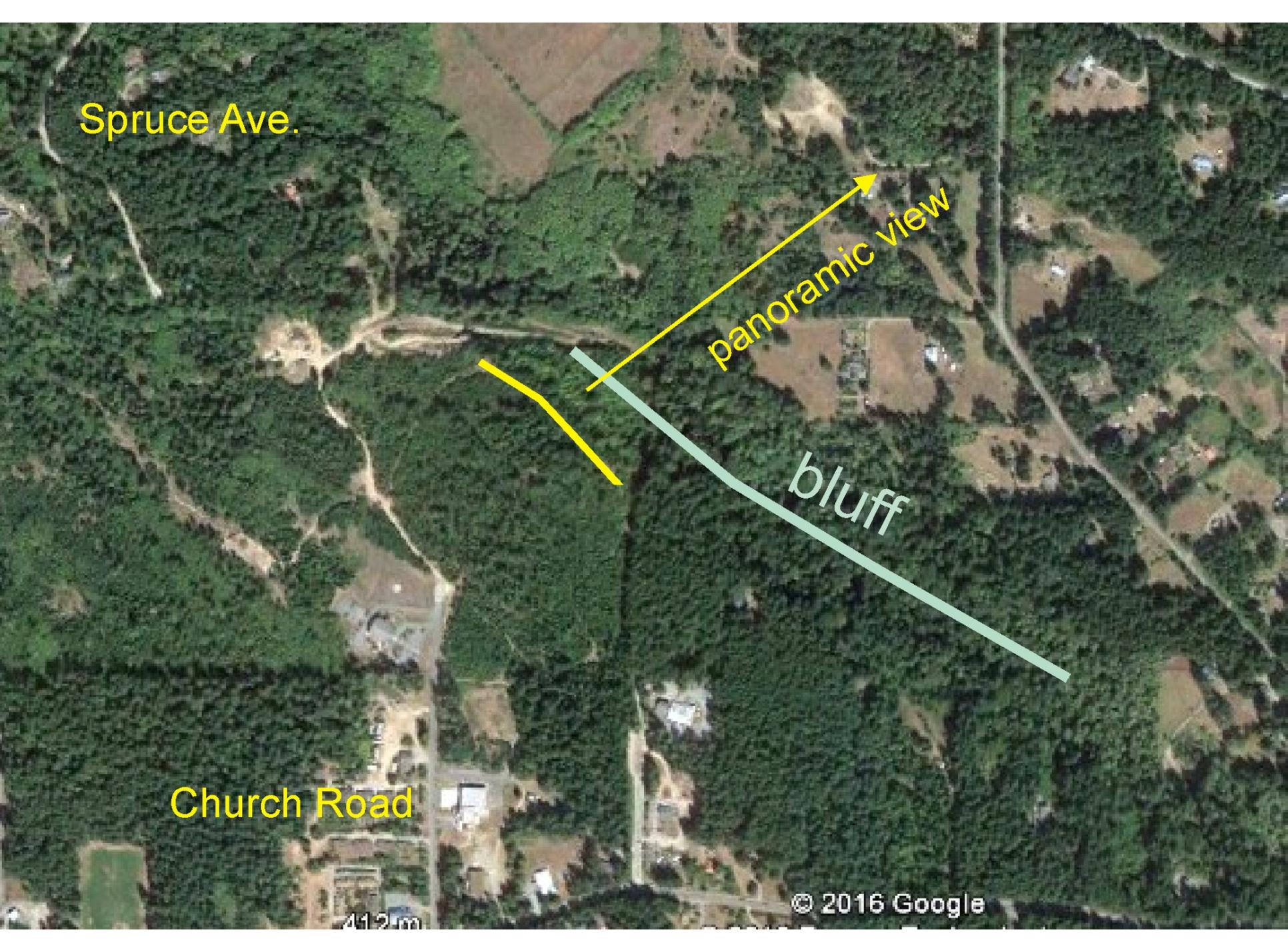
4. Viewpoint issue

Spruce Ave.

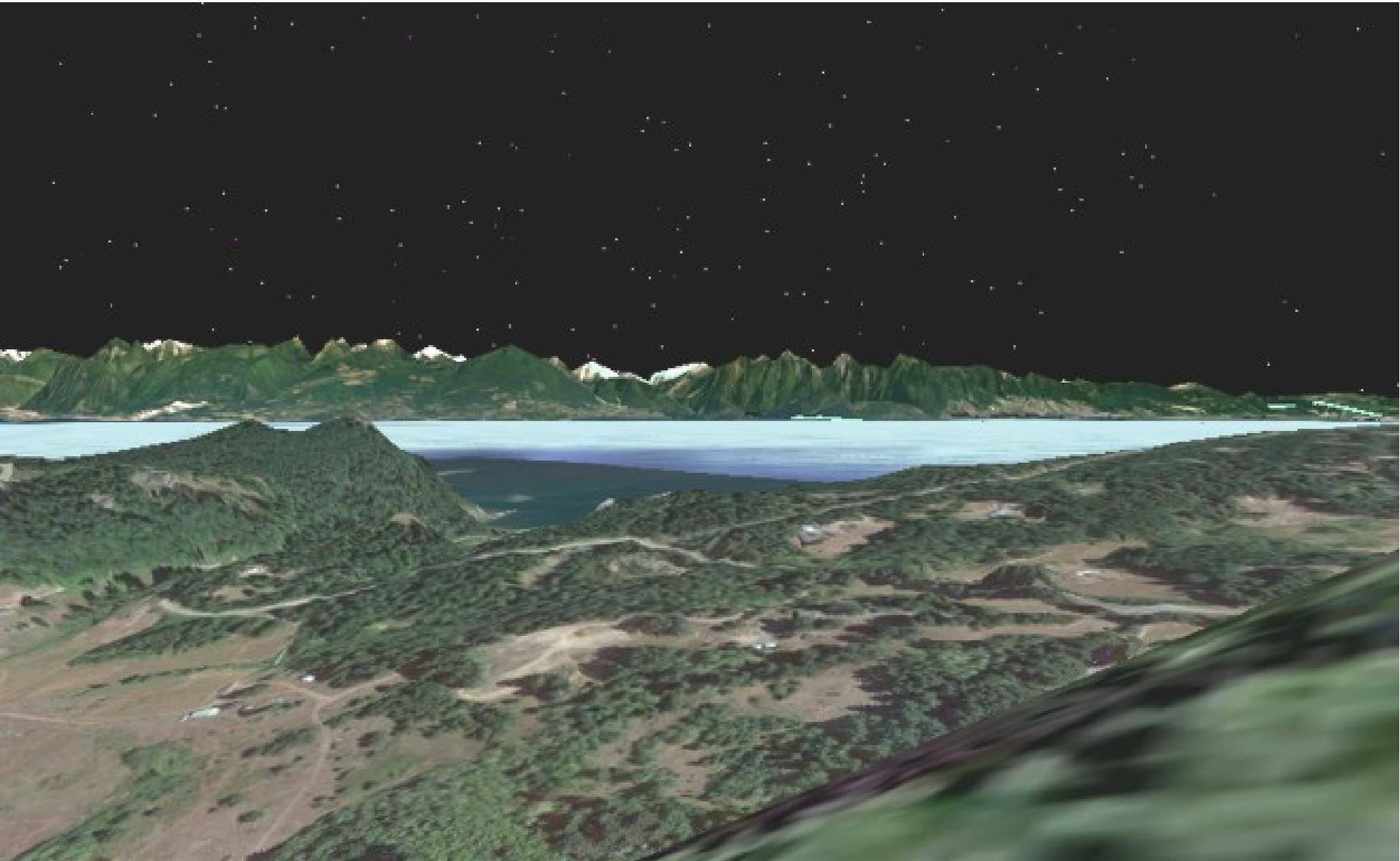
panoramic view

bluff

Church Road









Analysis of public reaction on Gabriola to the proposal

PUBLIC SUBMISSIONS REGARDING THE BYLAWS

Gabriola LTC website lists 282 submissions.

Of these:

74 are follow-ups;

8 are from institutions and large groups;

11 are from trustees and staff.

Remaining are 179 submissions, representing 227 individuals.

PUBLIC SUBMISSIONS REGARDING THE BYLAWS

Of the 227 individual submissions:

51% express support for the proposal

31% do not support the proposal

18% express no opinion, wanted more information, or had problems with the process.

PUBLIC SUBMISSIONS REGARDING THE BYLAWS

Of the 227 individual submissions:

28% gave as the main or only reason for their support the Church-Spruce connector

26% indicated that their support was principally for the new parkland

8% mentioned that they supported the density transfer process in general.

30% were dissatisfied with the process or the way the process was being conducted

20% were concerned about the stress on groundwater supply

18% said they did not want the road.

PUBLIC SUBMISSIONS REGARDING THE BYLAWS

Of the 116 individual submissions expressing support:

- 55% gave as the main or only reason for their support the Church- Spruce connector
- 51% indicated that their support was principally for the new parkland
- 16% indicated their support for the density transfer process in general.

Of the 111 individuals who were against or had doubts about the proposal:

- 62% were dissatisfied with the process or the way the process was being conducted
- 41% were concerned about the stress on groundwater supply
- 37% said they did not want the Church-Spruce connector.

SUMMARY

Committee should return the bylaws because:

--while it may be acceptable in some circumstances to disregard the letter of the OCP in the interests of achieving a desirable outcome, it is NOT acceptable to not conform with the intent of the OCP, which is, in this case, that such transfers be density-neutral. The bylaws should be changed to conform, or the OCP should be amended so that they do conform.

--allowing the applicant to retain a 3.5 ha remainder zoned forestry is not in accordance with previous policy and defeats the purpose of retaining intact tracts of environmentally-sensitive land, which, in this case, includes riparian areas. The bylaws should be amended so that all of the West ½ of the North East ¼ of Section 10 becomes donor land.

END -- thank you

E-mail June 9, 2017

David Marlow <dmalow@islandstrust.bc.ca>

Dear David Marlow

Could you please explain to me, or direct me to somebody who can, as to why Trustee Laura Busheikin was allowed to participate in the recent Executive Committee review of the above bylaws given that she is the Chair of the Gabriola LTC and as such will be voting on final adoption of the bylaws. My understanding of post-hearing procedures in BC is that LTC members may not hear from or receive correspondence from interested parties relating to a rezoning proposal; yet Trustee Busheikin participated fully in the reception and discussion of presentations by three delegations from Gabriola.

I am asking because my attempt to give the other two Gabriola LTC trustees the same content of my submission to the EC that Trustee Busheikin received has been rebuffed and I don't understand why she should be so privileged.

Thank you.

E-mail June 9, 2017

Hi Nick

It is a function of the legislation. The Islands Trust Act creates local trust committees and the Executive Committee. The Executive Committee is made up of the Chair, and three vice-chairs of Trust Council. As you know, the Executive Committee members sit as chairs for each Local Trust Committee (again, a function of the legislation). Laura wears two hats - one as a Chair of the LTC and the other as a member of Executive Committee. It is in the role of member of the Executive Committee that she is able to hear and discuss the delegations to the Executive Committee.

David Marlor, MCIP, RPP
Director of Local Planning Services
Islands Trust
200 1627 Fort Street, Victoria, BC V8R 1H8
Phone 250-405-5169
Enquiry BC Toll-free call 1-800-663-7867
or from the lower mainland 604-660-2421

E-mail June 9, 2017

David Marlow <dmalow@islandstrust.bc.ca>

hi David

Not being a lawyer or politician, it sounds to me that that policy can put the Chair in a conflict of interest situation.

On one hand he/she is not permitted to receive further information after a public hearing, and on the other hand he/she, as a member of the ITEC, is.

To me, receiving information after a public hearing should disqualify him/her from voting on final adoption. Presumably, in discussion at the time of adoption, Trustee Laura will not be permitted to discuss the EC meeting with the other trustees prior to them voting.

However, be that as it may, what can I do about my perception that Trustee Laura mis-represented the dispute over compliance with the OCP to the EC in the absence of a copy of the legal advice the LTC had received on this.

The essential difficulty with the bylaws is that, as written, they conflict with Gabriola's Official Community Plan (OCP) in two respects.

One is the density transfer policy OCP Policy 5.2 (i) requiring receiving lands to be zoned resource not forestry; the other being the General Residential Policy (a) that such transfers be density neutral. That latter policy reads:

"Increasing residential density through redesignation/rezoning shall not be permitted with the exception of Special Needs and Seniors' affordable housing."

I personally have no problem with dealing with the first on the grounds that it is the end result of the changes to the bylaws that is important, not the individual steps needed to achieve it, but I object most strongly, as do others, including members of the APC, to infringement of the second requirement on the grounds that this is, and has been for a long time, a core issue for islanders governing all aspects of the OCP, not just density transfers.

The advice that Trustee Laura gave the meeting was that the LTC has taken legal advice and "it had OKed the project". In fact, the legal advice was to the effect that the detailed provisions of OCP Policy 5.2 (i) need not be followed to the letter. This was conveyed to the public at the time to mean that all was well provided that the overall intent and outcome of the process was compliant with the spirit of the OCP.

The legal advice not previously available to the public and not provided at the EC meeting was as follows:

[start of quote]

A. Legal advice was requested and received on the interpretation and application of density transfer policies in the Gabriola Island Official Community Plan in relation to the Potlach Proposal. The legal opinion was prepared by Islands Trust Solicitor Bill Buholzer who wrote the publication British Columbia Planning Law and Practice which is the acknowledged authority on interpreting and using the BC Local Government Act.

B. The Local Trust Committee may consider density transfer proposals that do not fit the literal scope of the density transfer policies set out in the official community plan as regards the current zoning of the receiver site (in this cases, Forestry rather than Resource).

C. With respect to density calculations, it is feasible to apply Resource zoning to the entire receiving site, despite that some of it is currently in the Forestry zone, to illustrate that the proposed density of 25 lots on the receiving lands meets the intent of the Official Community Plan density transfer policies.

D. Generally speaking, density transfers under Part 14 of the Local Government Act involve concurrent rezoning of donor and receiver sites in the manner reflected in proposed Bylaws 289 and 290, and there is no legal need to undertake a two-step rezoning process.

[end of quote]

What this does not address is the fact that rezoning and providing the developer with 25 lots rather than 23 is in direct conflict with OCP General Residential Policy (a).

The community is going to be most astonished to learn that their OCP is for guidance only and that deviations from its core provisions in density transfer applications is, in Trustee Laura's words, "not a tie breaker". Two lots represents over a million dollars of assets, and I do not think her view is widely shared on the island.

If you can recommend some avenue that I could pursue this vitally important issue, I would be grateful. Thank you.

E-mail June 9, 2017

As I stated in my previous email it is Provincial legislation that results in Trustee Busheikin wearing two hats, not Islands Trust policy. The legislature intended the system to work this way.

Link to Islands Trust Act:

http://www.bclaws.ca/civix/document/id/complete/statreg/96239_01#section11

Under British Columbia legislation, when it comes to decisions on land use issues, such as policy changes to its OCP, interpretation of the OCP and regulatory changes to its land use bylaw, the Local Trust Committee's decision is final. The Local Trust Committee heard your submission at the public hearing, along with many others, and following that made its decision on the bylaws. The Executive Committee and Trust Council are limited to considering whether or not the proposed bylaws are not contrary to or at variance with the Islands Trust Policy Statement. Outside of that authority, the Executive Committee and Trust Council cannot over-ride specific provisions of the local trust committee's bylaws.

The next step is that Staff will send the OCP amendment bylaw to the Minister of Community Sport and Cultural Development for approval. Note that the Minister's role is to ensure that provincial interests have been addressed. The Minister cannot over-ride specific provisions in the local trust committee's OCP; the Minister can only ask that items of Provincial interest be addressed. Planning staff work closely with Provincial ministries during development of the bylaws, so it is rare for there to be any Provincial interest concerns when the bylaws reaches the Minister's desk.

If you have concerns about procedural fairness, that is if you feel the process undertaken by the Local Trust Committee to solicit community feedback on the proposed bylaws was unfair, you may make an administrative fairness complaint by writing to Mr. Russ Hotsenpiller, CAO, Island Trust.

Link to Trust Council's policy on the handling of administrative fairness complaints:

<http://www.islandstrust.bc.ca/media/58408/7.1.ii%20handlingadminfairnesscomplaints.pdf>

David Marlor, MCIP, RPP
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200 1627 Fort Street, Victoria, BC V8R 1H8
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or from the lower mainland 604-660-2421

E-mail June 10, 2017

David Marlow <dmarlow@islandstrust.bc.ca>

Carmen Thiel <cthiel@islandstrust.bc.ca>

Russ Hotsenpiller <rhotsenpiller@islandstrust.bc.ca>

Sonja Zupanec <szupanec@islandstrust.bc.ca>

Dear David

Thank you for these responses David. They are clear, concise, and to the point.

I would also like to mention here my special thanks to Emma Restall for her much appreciated friendly help in guiding me through, what is for me an entirely new process.

However, despite being a long-time supporter of the Islands Trust, I remain very dissatisfied with the Islands Trust overall approach and conclusions in this matter which, for me, are a very poor implementation of its overall mandate to "preserve and protect".

This has not been done and I will be submitting a procedural fairness complaint, especially focusing on inaccurate statements made to the public by Staff, to Trustee Busheikin's failure as Chair of the LTC to guide the novice local trustees into ensuring that the proposed rezoning bylaws were within the spirit and intent of the Official Community Plan, her disquieting reason given as to why they could in this case be overlooked to the benefit of the applicant, and to the Executive Committee's seemingly perfunctory dismissal of objections without questioning or probing further into the core facts and policy issues in dispute, or providing any explanation for their decisions to those like myself who have spent a lot of time and energy attempting to make sure that this project goes ahead, but within the limitations on development imposed by the OCP and IT Policy directives.

Thank you again.

Sincerely

Nick Doe

Formal complaint lodged with the Islands Trust on June 19, 2017.

1787 El Verano Drive
Gabriola, BC V0R 1X6

June 19, 2017

Russ Hotsenpiller
Chief Administrative Officer of the Islands Trust
By e-mail: rhotsenpiller@islandstrust.bc.ca

Dear Mr. Hotsenpiller

I submit herewith formal complaints on the fairness with which the Islands Trust has handled Application GB-RZ-2016.1 (Potlatch Properties) made to the Gabriola Local Trust Committee (LTC). The complaints are directed at:

—the Gabriola LTC Staff who misrepresented to the public the way the LTC were responding to the application with regard to the Official Community Plan (OCP) and refused to fairly consider complaints from well-informed critics of the process; unfairly presented the retaining of a “remainder” by the applicants in their reports as if allowing them to do so was established IT policy when it was not

—the Chair of the LTC, who failed in her duty to see that the response to the application conformed with the OCP; agreed with the other trustees to give the third reading to the bylaws despite her own judgement that the density calculations by Staff were wrong; failed to decline the demand of the applicants for a “remainder” density that all agreed was an important component of the application; failed to give guidance to the other trustees regarding the “gift” of a road; failed to encourage the LTC to explore alternatives that might satisfy the critics, and slanted her presentation of the facts to the Executive Committee in what in most other circumstances would be regarded as a conflict of interest situation

—the Executive Committee whose response and manner of their response showed a disdainful attitude toward the views of the many, including several former trustees, who considered the response of the LTC to the application to be unduly skewed in favour of the applicants; provided no explanation for their decision.

You will no doubt notice in reading this that many points concern decisions rather than process. I have deliberately done this because in my view the question is not just was the process fair, but if it was not, how unfair was it, and one can only answer that question by looking at the consequences of the unfairness, in other words, how bad were the decisions made because the process was unfair.

You are at the top of the Islands Trust organization, I, not being a professional planner, lawyer, bureaucrat, or policy wonk, but an ordinary resident of the Gulf Islands, am at the bottom, but we both share a hope that the Islands Trust can continue to succeed in the difficult task of achieving sustainability in the face of seemingly never-ending human population growth and demands for development on the islands. I hope therefore that you will make the effort to try and see the

events described here from my perspective as well as your own. I walk the lands in question often more than once a week throughout the year, rain or shine. To me, “preserve and protect” means just that, not manage gradual development.

You have my unreserved permission to share the contents of this letter with whomever you feel needs to receive it, and further, I have no objection whatsoever to myself being identified as the author along with all of my contact information. However, while I will not forward a copy to anyone while it is receiving your attention, I do reserve the right to make it or selected parts of it available to anyone, including the general public, after the process has been concluded, and, should I do so, will do so in a responsible and respectful manner.

Thank you for your consideration

Sincerely

A handwritten signature in black ink that reads "NADoe". The letters are cursive and somewhat stylized, with a small loop at the end of the "e".

Nicholas (Nick) Doe P.Eng.

1787 E1 Verano Drive, Gabriola BC, V0R 1X6

E-mail: nickdoe@island.net

Phone: 250-247-7858

Here are my formal complaints on the fairness with which the Islands Trust has handled Application GB-RZ-2016.1 (Potlatch Properties) made to the Gabriola Local Trust Committee (LTC).

- 1.1 This application is for a density transfer in accordance with the Gabriola Official Community Plan (OCP) Policy 5.2 (i) which reads:

For every 8 hectares (19.76 acres) of land in the Forestry zone which an owner dedicates for wilderness recreation, the owner shall be entitled to transfer one residential density to land in the Resource zone which would be rezoned to Resource Residential.
- 1.2 This particular policy was an outcome of the desire in 1997 to prevent landowners from breaking up large tracts of land in the Forestry Land Reserve (FLR) into numerous 20-acre (8-hectare) parcels and making them available for building homes. The zoning bylaws were amended at that time so that the minimum parcel size for land zoned forestry became 60 hectares (150 acres). This consolidation of forest land was in keeping with the objectives of the Provincial FLR; however, in order to avoid claims for compensation by landowners for the reduction of densities on their land, it was allowed that they could donate their forest land for public parks and transfer their densities on those donated park lands at the rate of 1 per 8 hectares to lands zoned Resource.
- 1.3 In this historical context, OCP density-transfer policy 5.2 (i) is not out of step with the OCP General Residential Policy (a) which reads:

Increasing residential density through redesignation/rezoning shall not be permitted with the exception of Special Needs and Seniors' affordable housing.

The historical basis for this policy is that Gabriola has hundreds of undeveloped residential lots, mostly zoned prior to the formation of the Islands Trust. It has been a long-standing opinion of the majority of islanders expressed in successive elections for the LTC that these undeveloped lots are sufficient for all land use needs for residential development and that no more densities need, or should be, created.¹ This is also in keeping with the Islands Trust's mandate to "preserve and protect" from excessive development.
- 1.4 A problem arose with Application GB-RZ-2016.1 in that it requires transfer from land zoned forestry (F) to other land zoned forestry (in Section 19), which is strictly not allowed under OCP density-transfer policy 5.2 (i).
- 1.5 There is no doubt however that the majority on Gabriola, including myself, consider the merits of the project overall to be such that it justifies some kind of exceptional legislative "work-around" so that the transfer could take place,² provided only that the overall end result of implementing the transfer was that it remained density neutral, that is, the core provision of the OCP General Residential Policy (a) that there should be no increase in density beyond that permitted by OCP density-transfer policy 5.2 (i) be observed.
- 1.6 My first complaint about the fairness with which the Islands Trust has handled Application GB-RZ-2016.1 is that the particular "work-around" adopted by Staff and presented to the

¹ One of former Trustee Rudischer's oft-made statements during election campaigns was that "not a single density has been added on my watch". She was elected to serve for four terms. The policy has recently evoked much discussion in addressing the need for affordable housing on the island.

² Endnote A.

LTC and to the general public was not compliant with General Residential Policy (a) and yet was presented as if it were.

In the initial information meetings, Staff reported to the public that there would be “no net increase in density beyond what is currently permitted by the OCP”.³ This statement was only true if the administratively-convenient rezoning of land in Section 19 from forestry to resource was without the density increase that this rezoning would normally permit. Instead, the bylaws incorporate these extra densities without there being any density transfer to justify them.⁴

- 1.7 A statement made at the time by Director Marlor that “there is no increase in density overall based on the redesignation and rezoning of the receiver lands” was not true,⁵ the issue being that in order for those receiver lands zoned forestry (F) to be receiver lands according to OCP Policy 5.2 (i), which requires them to be zoned resource (R), rezoning was necessary and this rezoning resulted in an overall increase in densities allowed the applicants over and above the increase they were receiving as a result of the density transfer.
- 1.8 An accompanying statement by the Chair, Trustee Busheikin that “it is in compliance with the intent of the OCP” was similarly not true. The intent of the OCP is that all rezoning be density neutral.
- 1.9 Despite receiving input from the public to the effect that the proposal was not compliant with the OCP, Staff obstinately continued to represent to the LTC and to the general public that Staff’s controversial interpretation of the OCP policies was correct, and it was the only one that was so.

There was no acknowledgment that alternative interpretations were possible and Staff continued with the view that the misunderstanding arose only because of the public’s failure to read the “clear and unambiguous” rationale of Staff.
- 1.10 Trustees received legal council on the legality of re-zoning Section 19 contemporaneously with the density transfer. The response to this referral was never made public, even to the Executive Committee on June 7, 2017, but was presented as being an opinion that the procedure being followed by the LTC was correct.
- 1.11 However, because this opinion was not made public, it was left unclear as to whether the opinion by the legal expert had been reached by including, in addition to the conclusion that the one-step process of transferring densities was allowable, detailed consideration of the narrower issue of whether the actual number of densities being proposed was correct.
- 1.12 On June 7, 2017, Trustee Busheikin in her role as an Executive Committee member asserted that it had (“the deal was OKed”), implying that consideration of the detailed density calculations had been included. We, the public, still do not know if this is true because discussion with the LTC is now disallowed. I consider it unfair that the Executive Committee was not able or willing to take account of lack of clarity on this issue in their deliberations.

³ LTC Meeting May 26, 2016 and again at LTC Meeting June 23, 2016.

⁴ Endnote B.

⁵ LTC Minutes March 20, 2017, p.5.

1.13 Persons maintaining that this was not a fair representation and that the proposal could or should have been made compliant with the OCP include:

- former Islands Trust LTC members in the post-Weldwood era⁶
 - Trustee Gisele Rudischer (1996–9, 1999–2002, 2002–5, 2011–14)⁷
 - Trustee Gail Lund (1996–9, 1999–2002)⁸
 - Trustee Deb Ferens (2008–11)⁹
- the current Director of the Regional District of Nanaimo (RDN) Howard Houle¹⁰
- two of the six voting members of the Advisory Planning Commission (APC) including the APC’s Secretary Kees Langereis¹¹
- many letters from the more-well-informed members of the public within the 30% group of negative responses received by the LTC about the proposed bylaws.¹²

1.14 In the Staff Report of January 12, 2017, Staff in effect admitted that their interpretation had been challenged and that the interpretation of the critics had merit. It says:

Previous staff reports have also described this proposal as “density neutral”, which is based on the end result of the application (following adoption of bylaws to amend the OCP and LUB), where all of the receiving lands would have a ‘Resource’ designation in the OCP and a new site specific ‘Resource Residential 2 (RR2)’ zone in the Land Use Bylaw (LUB). Staff recognize that the term “density neutral” may be misconstrued because a portion of the receiving lands are currently designated and zoned ‘Forestry’ with one (1) unit of density rather than a potential of three (3) densities under a ‘Resource’ designation/zone. However, this is the existing state rather than the end state and the application is density neutral as it respects the collective intent of the Gabriola Island OCP in terms of the stated density transfer policies, with density transferred in exchange for parkland dedication. Notwithstanding, it is not necessary to use the term “density neutral” but rather to simply explain the proposal using clear, unambiguous language.

1.15 It is part of my complaints that the Chair of the LTC, Trustee Busheikin, while admitting that her task was to see that the bylaws complied with the OCP, did not agree that they did¹³ and yet make no effort to raise this with the locally-elected members of the LTC, voted in favour of 3rd reading, and during the discussion at the 3rd reading meeting

⁶ All of them with the single exception of former Trustee Sheila Malcolmson who is now Member of Parliament living in Ottawa with, she tells me, no time to follow Gabriola Island issues in depth any more.

⁷ Numerous submissions.

⁸ Letter, Nov. 8, 2016.

⁹ Letter, July 20, 2016.

¹⁰ Personal communication: e-mail dated June 1, 2017, “...yes I would sign, or let my name appear on the complaint”.

¹¹ APC draft minutes p.3, March 22, 2017. “Two members of the APC requested that the minutes reflect that the method of rezoning the lands to create densities does not follow the Official Community Plan (OCP) requirements, that this process should have been done in two stages, and the way the densities were calculated has resulted in a density increase.”

¹² Endnote A. Rick Jackson Chief of the Gabriola Volunteer Fire Department, LTC Minutes January 12, 2017, p.2; Chris Bowers, former editor of the *Flying Shingle* local newspaper, LTC Minutes November 10, 2016, p.2; Andrew Deggan & Alix Hodson, Summary letter to ITEC May 27, 2007.

¹³ LTC Minutes March 30, 2017, p.10, “She acknowledged that her preference would have been for 23 densities and not 25”. This remark was prefaced by the comment not recorded in the minutes that she saw her duty as being to ensure conformity with the OCP.

indicated that, despite concerns expressed to the LTC, in her view the non-compliance was unimportant (“not a tie-breaker”), a view that she also promulgated again without in-depth discussion at the Executive Committee Meeting on June 7, 2017.

- 1.16 It was, in my view, her duty to raise legitimate concerns over compliance with the OCP, and initiate discussion of these concerns as Chair of the LTC. This was even the more so in that to my certain knowledge—I was present at all three public meetings—she admitted that she, along with the many critics in para.1.13 above, did not agree with Staff’s density calculations indicating that 23 not 25 should have been the number of lots.
- 1.17 This is a complicated application, and the great majority of the island residents, rather than studying for themselves the technical issues involved, rely on Staff and Trustees to accurately report on the current OCP provisions and the adjustments needed to the OCP to see such applications succeed. Staff and Trustee Busheikin failed to do this in this case and instead promulgated their own interpretation with no regard to the merits of alternatives, and without ever providing an explanation as to why the alternative interpretations were not correct.
- 1.18 Here I note that Trustee O’Sullivan has noted that under the Local Government Act, an OCP is defined as a visionary document and in her opinion, the goals and objectives of an OCP are at least as important as the policies designed to enable them,¹⁴ an opinion widely shared on the island and a directive of the IT.¹⁵
- 1.19 While understanding the legalistic reasons why Trustee Busheikin is able to take part in discussions on the proposal after a public hearing while the other trustees are not; nevertheless, I consider it unfair that she was allowed at the Executive Committee meeting on June 7, 2017 to be a lead in the discussion and to subsequent vote on an issue she had already approved. In any other forum, this was an obvious conflict of interest.
- 1.20 When even the most informed citizens and trustees cannot agree, understand, or explain the density transfer policies and calculations in an application like this, the policies and procedures need re-writing.¹⁶ In the meantime, it would have been fair to have only adopted the most conservative interpretation, not the interpretation most favouring the developer, or the interpretation not requiring Staff to change their minds and arguably admit, although administratively inconvenient to do so, that a mistake had been made.

¹⁴ LTC Minutes January 12, 2017, p.7.

¹⁵ Islands Trust Policy Statement 5.2.5: Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address means for achieving efficient use of the land base without exceeding any density limits defined in their official community plans.

¹⁶ I might add here that I am a professional engineer and a former professional technical writer, and as such am not unaccustomed to reading technical documents. When the result of a calculation that should have a single definitive answer consistently depends on who is doing the calculation, there is obviously an inconsistency in the methodologies, not a problem with the various calculators’ ability to do arithmetic.

- 2.1 Another issue arising from this application is that the applicants have stipulated that according to the density transfer calculations, there is a portion of land zoned forestry left over after an integral number of 8 hectare parcels have been transferred. They have chosen to claim that this “remainder” allows them to retain a density on one particular parcel of the the donor lands (Section 10) zoned, nonsensically, forestry, plus a corridor through wetlands in the donor parcel to provide road access to the remainder.
- 2.2 Staff and the LTC have never challenged the applicants right to retain this remainder and the road access despite the facts, as argued in the Executive Meeting of June 7, 2017,¹⁷ that:
- there is no historical precedent for a remainder being allowed to retain a density
 - in the previous similar application by Centre Stage Holdings in 2005, the LTC were firm in their refusal to allow the applicant to retain the remainder and it was subsequently included in the donation¹⁸
 - the end result will be no decrease in density on this 30-ha donor parcel despite it being unquestionably the most environmentally-valuable of the donor parcels¹⁹
 - building on the "remainder" will require constructing a driveway through a riparian area and the donor land destined to become park land, quite possible with a prospect of becoming a nature reserve
 - the presence of the "remainder" will disrupt the existing trail system through the forested area, with no easy work-around because of the topography.
- 2.3 Staff have unfairly presented the applicants’ request for a remainder as if this were established IT policy when my subsequent research showed that it was not.²⁰
- 2.4 The argument that the Staff and Chair of the LTC should have initiated discussion on the merits of allowing a remainder, on where, if allowed it should be sited, were unfairly dismissed by the LTC, essentially because the applicants portrayed it as a “deal breaker”.

On being presented with the arguments at the Executive Committee meeting on June 7, 2017, the complaint was ignored. There was no discussion, no questions were asked, and no explanations were offered as to why. Efforts to point out that this could have been a good example of the Islands Trust exercising its mandate to preserve and protect were by implication, perfunctorily rejected.

¹⁷ My own documentation of this meeting at which I was a delegate is at <http://www.nickdoe.ca/pdfs/Webp685.pdf>

¹⁸ It was this application that led to the creation of the 707 Community Park. The number of densities transferred was 35 from 707 acres (286.1 ha) of forest land, which is $35 \times 8 = 280$ ha plus a 6.1 ha (15.1 acre) "remainder".

¹⁹ Endnote C. The Islands Trust sensitive ecosystem mapping (SEM) shows the parcel as having a secondary wetland ecosystem, but no sensitivities. This is an error and shows an incomplete understanding and knowledge of the relationship of this land to the shallow water wetlands in the Coats Marsh Regional Park. There is however a slide (CIM presentation March 20, p.6) that does show, apart from my own files in Endnote C, some of the wetland geography.

²⁰ In an e-mail from Staff, February 2, 2017, I was told “In response to your question #2, the applicant is proposing to retain the 3.5 ha parcel as a 'Forestry' zoned lot with the applicable zoning provisions currently in effect for this zone (permitted principal and accessory uses, setbacks etc.)” There was no mention in the e-mail or in any public document from the LTC that this was contrary to past practice and that complying with this proposal was not in accordance with any LTC policy regarding remainders.

- 3.1 The dubious assertion throughout the process that the provision of the Church-Spruce connector road helps justify the density transfer. The island should not be in the business of paying for a road by being generous with developers' applications. While Staff had every right to identify this "gift" to the public, it behove the LTC, in order to avoid giving the impression that they were being generous with the applicants on account of it, not to include it as a benefit in their deliberations. It was especially the duty of the Chair, Trustee Busheikin, to guide the LTC in this regard as she was responsible for seeing that the application was not to the benefit of Gabriolans alone, but to all the people of British Columbia in accordance with the IT mandate.
- 3.2 Trustee Busheikin failed to do this to the extent that Trustee O'Sullivan in her remarks at 3rd reading extolled the benefits of having the "gift" as one of the reasons for her voting the way she did.²¹ This was a failure of leadership on the part of the Chair and unfair to the process. It is noteworthy here that practically all of the referral agencies and non-agencies gave a favourable response but did so mainly, or often only, on the grounds that it made provision for the Church-Spruce connector. Of the members of the public writing to the LTC in favour of the proposal, more did so indicating that it was on account of the Church-Spruce connector than did so on account of the acquisition of new parkland.²²

²¹ Safety (Church/Spruce Connector Road) LTC Minutes March 30, 2017, p.6.

²² Endnote A.

4.1 One of the possible outcomes of allowing the applicants two extra lots is that the community will have lost all access to arguably the best remaining accessible viewpoint on the island. The Islands trust policy states:

5.1.3 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the protection of views, scenic areas and distinctive features contributing to the overall visual quality and scenic value of the Trust Area.

I suppose any lawyer could interpret “protection” to mean regardless of for whose benefit, so I will leave it there. Efforts to draw attention to this at the Executive Committee Meeting, June 7, 2017, drew no response at all.

4.2 The Gabriola Lands and Trail Trust (GaLTT) who have been negotiating an option for a bluff view trail available to the public have had zero success in having either a trail or a significant viewpoint incorporated into the proposal.

- 5.1 As a strong supporter of the Islands Trust and its “preserve and protect” mandate for over 25 years, I am disappointed and angry at the way this has been handled by the IT. The applicants, who are developers with no interest in forestry, have got all they wanted.
- 5.3 Environmentally sensitive land and a trail across the donor property will be built on by one of the applicants for his own use, just as was planned before the application except that he will no longer have to pay taxes on the forest surrounding his new home.
- 5.4 The public will be denied access to a popular viewpoint across to the mainland.
- 5.5 Protection of the Mallett Creek watershed will be limited to a small corridor with the new private owners having the option of removing the dam for liability reasons, thereby completely destroying the creek’s ability to support fish.
- 5.6 The “take it or leave it” demeanor of the applicants applied pressure to the novice LTC Trustees without support from the Chair to vote in favour because of their fear of being held responsible if it failed, while the reality is that the applicants are holding large tracts of forest land as a bargaining chip for their long-term development plans,²³ and the forest will continue to regenerate for decades after clear-cutting, regardless of the zoning.
- 5.7 The Executive Committee has behaved as a rubber stamp to a list of items checked off by Staff. As a result of the “take it or leave” approach by the applicants, combined with the lack of leadership from the Chair of the LTC, the LTC has allowed themselves to be coerced into a making a hurried²⁴ and bad decision.
- 5.8 I have, in my time, had two occasions to make use of the BC Small Claims Court, an informal quasi-legal dispute resolution process with an arguably similar function as was the Executive Committee’s on June 7, 2017. Their dispute resolution process was by contrast to that of the IT was perfectly acceptable, even though I lost one of the two cases. I was heard respectfully, allowed as much time as I needed to present my case, engaged in discussion, and received a full explanation as to the outcome. In contrast, my experience at the Executive Committee’s on June 7, 2017 was unpleasant, the ITEC seemingly disinterested in the issues and more interested in protecting the reputation of Staff and Trustees, unappreciative of the time, cost, and energy that delegations had put into their submissions, and were brusque in their manner almost to the point of rudeness.
- 5.9 I am left with a loss of faith in the Islands Trust organization’s resolve to fulfil its mandate. There is no reason why this application could not have been re-negotiated to meet the stipulations of the island’s OCP either by changes in the application or well-thought through amendments and improvements to the OCP after public participation. Instead, the policies of the OCP have been rendered of questionable value despite all the hard work and time that goes into agreeing on its policies. Ecologically valuable land has been unnecessarily compromised. A sad, frustrating, and disappointing ending indeed.

Nicholas Doe P.Eng. phone: 250-247-7858
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Gabriola, BC V0R 1X6

²³ The gift of the Church-Spruce connector and land for the clinic in return for help in getting the rest of Section 19 rezoned was first broached by one of the applicants with the Gabriola Health Care Society (GHCS) in March 2010.

²⁴ LTC Meeting March 30, 2017, “Staff reiterated that, as previously noted, the applicant had an offer of sale on the subject property that was conditional on third reading of the bylaws and said offer was due to expire March.”

ENDNOTE A

This note on an analysis of the responses the LTC received from individual members of the public on GB-RZ-2016.1 was intended to be presented at the Executive Committee meeting on June 7, 2017, but never was because of the limited time allowed at the meeting.

There are problems with such analyses, particularly, some responses are complex and difficult to characterize in way that one can confidently be sure reflects the writer's opinion; some responses were in the form of signed petitions which can be construed as deserving less weight than a letter; petitions in general tend to be "against", leaving open the question as to what might have been the response to a "for" petition had there been one; and so on. Nevertheless, this is the result of my analysis. I have capped the number of signatories counted to any one letter arbitrarily to five. Percentages do not add to 100% because some of the more lengthy submissions covered more than one aspect.

PUBLIC SUBMISSIONS

LTC website lists 282 submissions

Of these, 74 are follow-ups; 18 are from institutions & groups; 11 are from trustees and staff

Remaining are 179 submissions, representing 227 individuals.

Of the individual submissions:

- 116 (51%) express support for the proposal (often without qualification or reason)
- 71 (31%) do not support the deal
- 40 (18%) express no opinion, wanted more information, or had problems with the process.
- 64 (28%) gave as the main or only reason for their support the Church-Spruce connector
- 59 (26%) indicated that their support was principally for the new parkland
- 19 (8%) indicated their support for the density transfer process in general.
- 69 (30%) were dissatisfied with the process or the way the process was being conducted
- 46 (20%) were concerned about the stress on groundwater supply
- 41 (18%) said they did not want the Church-Spruce connector.

Of the individuals supporting the proposal:

- 64 (55%) gave as the main, or only reason, for their support the Church-Spruce connector
- 59 (51%) indicated that their support was principally for the new parkland
- 19 (16%) indicated their support for the density transfer process in general.

Of the individuals who were against or had doubts about the proposal:

- 69 (62%) were dissatisfied with the process or the way the process was being conducted
- 46 (41%) were concerned about the stress on groundwater supply
- 41 (37%) said they did not want the Church-Spruce connector.

ENDNOTE B

This note is my own analysis of the density transfer calculation. It is probably over-simplified and is so because some of the sub-division discussions on matters such as average and minimum lot sizes and whether “this and that” should be included in such calculations were way above my head. I doubt that more than a handful of people other than the professional planners could and did follow the arguments being made.

My approach is the engineering “black box” approach. Look at what goes into the box, look at what comes out of the box, and do not worry about what goes on within the box.

CURRENT STATUS (donor lands and receiving lands together)

<u>Parcel I/D</u>	<u>Area (ha)</u>	<u>Zoning</u>	<u>Allowed density</u>	<u>Densities in parcel</u>
Lot 1	6.5	R	1 per 8 ha	1
Lot 6	14.9	R	1 per 8 ha	1
Lot 7	<u>15.9</u>	R	1 per 8 ha	<u>1</u>
	37.3			3
Sec. 19	30.5	F	1 per 60 ha	1
Sec. 13	51.7	F	1 per 60 ha	1
Sec. 14	56.4	F	1 per 60 ha	1
Sec. 10	<u>31.4</u>	F	1 per 60 ha	<u>1</u>
	170.0			4
	<u>207.3</u>			<u>7</u>

STATUS AFTER TRANSFER (donor lands and receiving lands together)

<u>Parcel I/D</u>	<u>Area (ha)</u>	<u>Zoning</u>	<u>Allowed density</u>	<u>Densities in parcel</u>
Lots 1-25	46.0	RR		25
ALR	1.7	F		0
Misc.	0.8	R		0
Park & RAR	19.3	R		0
Sec. 10 rem.	<u>3.5</u>	F		<u>1</u>
	71.3			26
Sec. 13	51.7	FWR		0
Sec. 14	56.4	FWR		0
Sec. 10	<u>27.9</u>	FWR		<u>0</u>
	136.0			0
	<u>207.3</u>			<u>26</u>

The net increase in densities is thus $26 - 7 = 19$; hence, we require $19 \times 8 = 152$ ha of forestry land to be designated FWR, but only 136.0 ha has been, allowing only an increase of 17 densities, not 19.

ENDNOTE C

Personal studies of the hydrology and ecology of the donor parcel Section 10 are detailed in the following files.

I note that the donor lands to the north and west of Coats Marsh Regional Park have had no areas included in the Sensitive Ecosystem Inventory (SEI) on account of these lands being dry Douglas-fir forest that was recently clear-cut, while Coats Marsh itself with its shallow water wetland has six such areas. As noted in my presentations to the LTC, RDN, and ITEC, I fully expect all or most of these will also apply to the donor parcel to the east of the regional park which includes the contentious remainder and its access driveway.

Growing on this land is at least one red-listed species of native plant, and another species originally introduced as a common agricultural weed from the UK, probably in the late 19th century, that has since become red-listed (endangered) throughout the UK.

Coats Marsh and adjacent lands to the east

Geological and hydrological notes — <http://www.nickdoe.ca/pdfs/Webp668.pdf>
Observations on hydrogeology and natural history — <http://www.nickdoe.ca/pdfs/Webp673.pdf>
Evapotranspiration observations and notes — <http://www.nickdoe.ca/pdfs/Webp673t.pdf>
Water balance and catchment area calculations — <http://www.nickdoe.ca/pdfs/Webp673u.pdf>
Observing ducks and geese, disturbance issues — <http://www.nickdoe.ca/pdfs/Webp682.pdf>
Species checklists — <http://www.nickdoe.ca/pdfs/Webp679.pdf>
Trails in Coats Marsh, letters to RDN — <http://www.nickdoe.ca/pdfs/Webp680.pdf>
A 707CP atlas supplement showing trails — <http://www.nickdoe.ca/pdfs/Webp656.pdf>
Field notes at Coats Marsh, 2015 — <http://www.nickdoe.ca/pdfs/Webp673d.pdf>
Field notes at Coats Marsh, 2016 (Jan.-Mar.) — <http://www.nickdoe.ca/pdfs/Webp673e.pdf>
Field notes at Coats Marsh, 2016 (Apr.-Jun.) — <http://www.nickdoe.ca/pdfs/Webp673f.pdf>
Field notes at Coats Marsh, 2016 (Jul.-Sep.) — <http://www.nickdoe.ca/pdfs/Webp673g.pdf>
Field notes at Coats Marsh, 2016 (Oct.-Dec.) — <http://www.nickdoe.ca/pdfs/Webp673h.pdf>
Field notes at Coats Marsh, 2017 (Jan.-Mar.) — <http://www.nickdoe.ca/pdfs/Webp673j.pdf>
Field notes at Coats Marsh, 2017 (Apr.-Jun.) — <http://www.nickdoe.ca/pdfs/Webp673k.pdf>

END



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June 29, 2017

File Number: 2220-20-Doe

Nick Doe
1787 El Verano Drive
Gabriola Island, BC V0R 1X6

Dear Nick Doe:

Re: Complaints regarding the handling of GB-RZ-2016.1

This is to formally confirm receipt of your letter to CAO Russ Hotsenpiller in which you raise issues about the handling of GB-RZ-2016.1 (Potlatch Properties). Specifically, you have expressed concerns related to:

1. Staff misrepresenting the way the Gabriola Island Local Trust Committee (LTC) was responding to the application with regard to the Official Community Plan (OCP) and their refusal to consider complaints from critics of the process with specific regard to retaining of a "remainder" by the applicants, as if allowing them to do so was established Islands Trust policy;
2. Failure of the LTC Chair to see that the response to the application conformed with the OCP and agreement with the other trustees to give third reading to the bylaws despite her own judgement that the density calculations by staff were wrong;
3. LTC Chair's failure to urge to decline the applicant's demand for a "remainder" density;
4. LTC Chair's failure to give guidance to the other trustees regarding the "gift" of a road and failure to encourage the LTC to explore alternatives that might satisfy the critics; and slanted presentation of the facts to the Executive Committee;
5. The Executive Committee's response and manner toward the views of the many, including several former trustees, who considered the response of the LTC to the application to be unduly skewed in favour of the applicants and no provision of explanation for their decision.

The Islands Trust has a process for handling some of the concerns you have expressed. Our Administrative Fairness Complaint policy (Islands Trust Council's *Policy 7.1.ii – Handling of Administrative Fairness Complaints*) explains the process. It is available on our website at:

<http://www.islandstrust.bc.ca/media/58408/7.1.ii%20handlingadminfairnesscomplaints.pdf>

The role of the Executive Committee is to review activities, and to provide advice and recommendations to trustees, or take other actions within its jurisdiction, if appropriate. The Executive Committee does not have the power to judicially review the conduct of a local trust committee. Please also note that, in accordance with s. E.3.2.iv(4) of our administrative fairness complaint policy, an Executive Committee member who is the subject of a complaint does not take part in the Executive Committee's discussion or review of the matter, other than during the initial process of collecting information

Before proceeding with our process for handling administrative fairness complaints, I would like to confirm that you have no objection to having your concerns made known to the Gabriola Island Local Trust Committee members and affected staff. If you have no objection, please advise me in writing, by email to cthiel@islandstrust.bc.ca

Provided you have no objections, your correspondence will be forwarded to the Gabriola Island Local Trust Committee. It may either address your concerns or request the Executive Committee to do so. We will advise you once the Gabriola Island Local Trust Committee has determined how to proceed.

June 29, 2017

Page 2

Our policy on administrative fairness complaints makes note of the role of the Ombudsperson's Office. If you are not satisfied with our response to your complaint, you may wish to contact the Ombudsperson's Office directly to determine if it can assist you.

Thank you for advising us of your concerns and we look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Carmen Thiel".

Carmen Thiel
Legislative Services Manager
Islands Trust

cc: Executive Committee



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August 31, 2017

File Number: 2220-20-Doe

Nick Doe
1787 El Verano Drive
Gabriola Island, BC
V0R 1X6

Dear Nick Doe:

Re: GB-RZ-2016.1 - Administrative Fairness Complaint

Thank you again for your letter of June 19, 2017 in which you raise a number of concerns related to the fairness with which the Islands Trust has handled application GB.RZ.2016.1 (Potlatch Properties) – Gabriola Island. We understand from your letter that you had no objections to having your concerns made known to affected trustees and staff.

The Islands Trust Executive Committee (EC) has now had an opportunity to discuss your concerns and has completed its review of this matter. The EC based its conclusions on a review of your concerns, analysis by staff, and consideration of relevant legislation, bylaws and policies.

I am writing as Chair of the EC to advise you of our conclusions. This letter addresses the three concerns in your covering letter, which are directed at Gabriola (Northern Office) staff, the Chair of the Gabriola Island Local Trust Committee and the EC. It does not address the 36 points raised in the attachment to your letter, some of which appear to be statements, and some which have been clarified through staff reports/public meetings during the application and bylaw process, or through staff emails to you.

1. Gabriola Local Trust Committee staff:

- **misrepresented to the public the way the LTC were responding to the application with regard to the (OCP) and refused to fairly consider complaints from well-informed critics of the process;**
- **unfairly presented the retaining of a “remainder” by the applicants in their reports as if allowing them to do so was established IT policy when it was not.**

Staff are professionals and adhere to a code of professional conduct. Staff presented the application as requested, ensured all information was available to the public, and created FAQs and other documents to help inform the public of the proposal. Staff reports were clear that the applicant intended to retain a portion of the remainder. The decision on whether to accept this or not is with the local trust committee.

2. Gabriola LTC Chair:

- **failed in her duty to see that the response to the application conformed with the OCP;**
- **agreed with the other trustees to give the third reading to the bylaws despite her own judgement that staff's density calculations were wrong;**
- **failed to urge to decline the demand of the applicants for a "remainder" density that all agreed was an important component of the application;**
- **failed to give guidance to the other trustees regarding the "gift" of a road;**
- **failed to encourage the LTC to explore alternatives that might satisfy the critics; and**
- **slanted her presentation of the facts to the Executive Committee in what in most other circumstances would be regarded as a conflict of interest situation.**

Each trustee, including the chair, has a vote on the application. There is no policy or legislation that states how a trustee votes. There is nothing wrong with the process or the decision of the Chair.

The Chair is not obligated to urge, guide or encourage trustees to do anything.

The Chair sits on the EC and participates in EC. This system is setup by legislation and intended to work the way it does. The Chair is not in conflict of interest by being a member of both the EC and LTC.

3. The Executive Committee:

- **Showed a disdainful attitude toward the views of many, including several former trustees, who considered the response of the LTC to the application to be unduly skewed in favour of the applicants; and**
- **provided no explanation for their decision**

The EC held a meeting and public were able to watch, and were given an opportunity to speak to the EC. After that the EC made its decision. This is in keeping with parliamentary rules under which all local government operate in BC. The EC is not obliged to give a reason for its decision. The EC deliberated in open meeting at which you were present.

TC Policy 2.4.iv requires that when a local trust committee (LTC) bylaw is submitted for approval to EC, EC must consider the bylaw and either approve it; or return it to the LTC giving reasons for the return and directions as to changes that would be required for approval; or refuse the bylaw giving reasons for refusal.

August 31, 2017
Nick Doe
Page 3

Thank you again for writing to express your concerns. I want to assure you that the EC takes such concerns seriously and that we carefully considered your point of view. If you have further information to provide us in regard to this matter, please do not hesitate to contact us again.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Luckham". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Peter Luckham
Chair
Islands Trust Executive Committee
pluckham@islandstrust.bc.ca

pc: Islands Trust Executive Committee
Gabriola Island Local Trust Committee
C. Thiel, Legislative Services Manager
D. Marlor, Director – Local Planning Services