



November 6, 2023

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Cowichan Valley Regional District

**Re: Additional Rationale for Appaloosa Way/Belvedere Crescent Zoning Bylaw Amendment (File No. RZ23E01)**

On behalf of DU-APP GP Ltd. we would like to offer this letter of additional rationale to support the proposed zoning bylaw amendment.

**History**

Top Down Investments Inc. (via DU-APP GP Ltd.) purchased these properties from the previous developer, Carramar Holdings, in early 2022. This property was marketed as a 23-lot subdivision. Although the requirement to transfer 25% of the parcels in excess of 22 was provided in the sales package, it was not made clear that most of the developer's commitment to parkland dedication and lot transfers were pushed off to this last phase. The purchase was made in good faith only to realize that pertinent information regarding the status of the development was not made available. We have been working on this development for almost two years trying to find a balance between previous commitments that were made and financial viability of development.

It is our conclusion that today's costs far exceed the amount needed to see this project through under the current regulatory environment. It is our intention in this report to showcase the time and effort that has gone into the exploring many different options and scenarios, and the constraints that have led to our request for the zoning amendment to remove any further lot transfer, aside from the approximately 27 hectares of current and proposed parkland.

**Subdivision Plan Background**

The subdivision plan that was included with the zoning bylaw amendment application is conceptual in nature and requires further refinement before being submitted to the Ministry of Transportation and Infrastructure for preliminary layout review. If the general concept of the subdivision is supported by the Regional District via the zoning amendment, the activities outlined in this letter will be undertaken to prepare a subdivision application to the MOTI and respective development permit application to the Regional District.

The only physical constraint that had a major impact on the site plan is the network of riparian area. The main factors that influenced the plan are:

- Minimum lot size of 1 ha per Section 8.9 C) of the Zoning Bylaw, after removal of the SPEA per Section 12.12 of the Zoning Bylaw.
- Minimum lot size for properties serviced by private water supplies, as set out in Table B of Island Health's Subdivision Standards.

- Allowable footprint in each lot after removal of the SPEA as to not create undue hardship per subsection 11 3) of the Riparian Area Protection Regulations.

The site plan was developed to meet the DPA1 requirements for subdivision (RP9-13). The site plan shows the Provincial SPEA setback (pink line), the RP9 30m setback (orange line) and additional 7.5m RP10 setback (blue line).

### **Alternate Concepts – Not Feasible**

Protecting sensitive riparian area while maintaining a feasible subdivision is the focal point of this development. Clustering housing away from riparian area was considered, including proposing an amendment to the 1 ha minimum lot size required by the R-5 zone or pursuing a bare land strata. The constraint preventing this concept is Island Health's Subdivision Standard. In the absence of a community water system, the minimum lot size, as set out in the Subdivision Standard, remains 1 ha. The development of a community water system was investigated for the purposes of reducing minimum lot sizes. However, the uncertainty around provincial water licensing and further zoning amendments related to water systems serving less than 50 residential units is an unacceptable risk. Feasibility of common water or sewer systems is also problematic unless density is increased, which is not supported by the Official Community Plan. The result is riparian area incorporated into the proposed lots for the sake of achieving Island Health's minimum lot size in the absence of common water and sewer systems.

While many of the proposed lots include wetlands, they are well protected by a 37.5m setback (RP9 + RP10). Protective measures during development are set out in the Environmental Report. Restrictive covenants can be placed on the sensitive areas for long term protection, as well as other physical measures (e.g., fencing and signage), to be addressed through the development permit process.

As proposed, approximately 80% of the total 60.6 hectares of property will be protected through park dedication and RAPR / DPA1 setbacks (and potentially restrictive covenants, if required for development permit approval).

### **Alternate Concepts – Feasible**

Without changes to the OCP, Zoning Bylaw, and Works and Services bylaw to support clustered, high density development with common water and sewer system, there are two other feasible concepts:

- 1) An amendment to Section 12.12 to include the SPEA in the minimum lot size calculation would create a larger lot yield. This was not specifically requested in the proposed zoning bylaw amendment because of concerns around environmental integrity. We feel environmental integrity can still be maintained through the DPA1 setbacks, reinforced through restrictive covenants, fencing, signage and other measures to be addressed through the development permit process.
- 2) Re-structuring the existing three parcels such that they are all accessible would create three sellable estate lots. A frontage variance would be required but no zoning amendment would be required. This is not our preferred concept and feel it is not the intent of the R-5 Zone.

### **Additional Constraints to be Addressed During Subdivision**

The setbacks related to wells and septic discharge areas, as set out in Island Health's Subdivision Standards, have not yet been considered on an individual lot basis. Changes to the conceptual

Subdivision Plan are expected when percolation and monitoring holes are dug. Changes are generally expected to be minor in nature but lot lines are expected to move and total lot yield to decrease.

Most of the proposed lots will be able to accommodate building sites, driveways, wells, and septic discharge areas while maintaining the setbacks imposed by RP9 & 10. However, some instances are anticipated where encroachment into the RP9 & 10 setbacks may be necessary to accommodate the building, driveway, well or septic. These instances will be addressed through the development permit process and will likely involve restrictive covenants, fencing, and signage where RP9 & 10 setbacks cannot be achieved and additional protective measures are required to meet the intent of DPA1. In no instance will there be encroachment into the SPEA. In no instance will there be a septic discharge area within 30m from the highwater mark. For the few instances where RP9 & 10 are not fully complied with, there will be a development permit with supporting rationale from a QEP that describes the justification for the departure, identifies acceptable alternative measures taken to ensure the intent of DPA 1 is maintained, and confirms that the project as a whole substantially complies with CVRD guidelines.

The Environmental Report identified several small wetlands that are not RAPR eligible. The area of these water bodies are considered negligible compared to the tolerances used for creating the conceptual subdivision plan and have not been factored in to area calculations. Prior to submission of the subdivision plan to MOTI and the respective development permit application to the Regional District, these areas will be surveyed, areas calculated, and setbacks indicated in accordance with Subsection 5.18 of the Zoning Bylaw.

#### **Area E and F Benefit**

Regarding the loss of the lot transfers to Area E and F, we feel this development has a wide enough community benefit that can be accessed by both Area E and F residences to justify the removal of said clause. We are open to discussing the construction of trails as part of the development, however, more details on the length and type of trails would need to be discussed further before commitments can be made.

#### **Sale of PID 009-845-119 & Relocated Homes**

The feasibility of this development is uncertain, pending the outcome of the proposed zoning amendment. One title was put up for sale to test the market for an estate lot. As previously mentioned, this is not the preferred path forward. There are no immediate plans to sell any of the existing lots. Notice will be provided if a sale of any of the existing lots is planned.

Relocating homes that are surplus from another project was another concept being entertained but there are no immediate plans to do so.

#### **The Land Conservancy of British Columbia Engagement**

The Land Conservancy was only recently contacted to communicate the development plans. No response has been received. We will keep you informed of any correspondence with TLC.

#### **Summary**

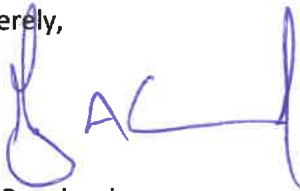
It is our opinion that the mutually beneficial outcome for the community, Regional District and developer is the Zoning Bylaw be amended as proposed so we can move forward with the proposed

subdivision. Subdivision would immediately trigger the transfer of all P2 land to the Regional District. The local community (i.e., Area E and F) would benefit from the additional park land and potential creation of a trail system and registration of restrictive covenants over environmentally sensitive areas.

The alternative is that the zoning amendment is not approved, this development does not move forward, park land is not transferred to the Regional District. The properties will remain in private ownership and subdivision would rely on the desire for the owners (either current or future) to navigate this process at a future date.

We understand the challenges of managing growth while protecting our natural environment and watershed. We look forward to progressing this conversation and remain committed to the desired outcome for the community and environment.

Sincerely,



Guy Bouchard  
President  
Top Down Investments Inc.