



# STAFF REPORT TO COMMITTEE

**DATE OF REPORT** November 23, 2023  
**MEETING TYPE & DATE** Electoral Area Services Committee of December 6, 2023  
**FROM:** Development Services Division  
Land Use Services Department  
**SUBJECT:** Application No. 03-H-16RS (13271 Simpson Road/PID: 008-903-603)  
**FILE:** 03-H-16RS

## **PURPOSE/INTRODUCTION**

The purpose of this report is to recommend an updated set of requirements for approval of the OCP and zoning amendment application for 13271 Simpson Road in Electoral Area H.

## **RECOMMENDED RESOLUTION**

That it be recommended to the Board:

1. That 1<sup>st</sup> and 2<sup>nd</sup> readings of “CVRD Bylaw No. 4194 – Electoral Area H – North Oyster/Diamond Official Community Plan Amendment Bylaw (13271 Simpson Road), 2018”, be rescinded.
2. That “CVRD Bylaw No. 4194 – Electoral Area H – North Oyster/Diamond Official Community Plan Amendment Bylaw (13271 Simpson Road), 2018”, be revised as set out in CVRD Bylaw No. 4194 attached as Attachment A to this report dated November 23, 2023.
3. That CVRD Bylaw No. 4194, as revised this day, be referred to the Board for consideration of 1<sup>st</sup> and 2<sup>nd</sup> readings.
4. That 2<sup>nd</sup> reading of “CVRD Bylaw No. 4195 – Electoral Area H – North Oyster/Diamond Zoning Amendment Bylaw (13271 Simpson Road), 2018”, be rescinded.
5. That “CVRD Bylaw No. 4195 – Electoral Area H – North Oyster/Diamond Zoning Amendment Bylaw (13271 Simpson Road), 2018”, be revised as set out in CVRD Bylaw No. 4195 attached as Attachment B to this report dated November 23, 2023.
6. That CVRD Bylaw No. 4195, as revised this day, be referred to the Board for consideration of 2<sup>nd</sup> reading.
7. That the applicants provide to the CVRD the following additional information at its expense for review by staff within 120 calendar days and consideration by the Board prior to a public hearing being scheduled for CVRD Bylaw No. 4194 and CVRD Bylaw No. 4195:
  - a. An updated Environmental Management Plan (EMP) prepared by an appropriate professional, which shall include information on how the EMP addresses the protection of the Cassidy Aquifer, and updated spill response procedures, specifically addressing the scenario of contamination of the groundwater.
  - b. A Stormwater Management Plan (SWMP) prepared by an appropriate professional, which includes a stormwater management system designed to supplement works already constructed and to retain all precipitation on-site. The plan shall specify the design standard (10-year occurrence interval recommended) of the proposed system. The plan shall also include a maintenance and monitoring plan for the proposed system, with a requirement for regular maintenance intervals, and each maintenance event (typically a

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- clearing of the oils from oil-water separators) to be reported to the CVRD within 30 calendar days.
- c. A Conditions and Impact Assessment prepared by a Qualified Environmental Professional (QEP) to assess and determine if any streams (as defined by the Riparian Areas Protection Regulation) or environmentally sensitive areas are on, or adjacent to, the subject property and to determine any corresponding watercourse and/or environmentally sensitive area setbacks.
  - d. A Fire Protection Report prepared by an appropriate professional that addresses the impact of the development on the subject property on fire services, which shall include the installation of firefighting water tank(s) with a minimum total capacity of 66,000 gallons with a fire hydrant or other appropriate connection for fire protection and a system designed for the catchment to be able to handle fire suppression activities.
8. That a revised draft covenant in favour of the CVRD be agreed to in writing by the applicants and the landowners within 180 calendar days that addresses the following, to be registered on the subject property if the CVRD adopts CVRD Bylaw No. 4194 and CVRD Bylaw No. 4195:
- a. The establishment of an area on the subject property at the entrance of the subject property for after-hours scrap metal drop-offs from the public. This area shall be fully enclosed and screened with a 1.8-metre high solid fence.
  - b. Existing groundwater monitoring wells BH15-03 and BH15-01 be tested by the applicant at least every 12 months, with annual reporting to the CVRD.
  - c. The securing of the proposed works and measures in the plans and reports required to be provided by the applicant to the CVRD as set out above, including the installation and maintenance of any works and monitoring, testing and reporting requirements, as applicable.
9. That all costs associated with the preparation and registration of the covenant be borne by the applicant and paid to the CVRD if the CVRD adopts CVRD Bylaw No. 4194 and CVRD Bylaw No. 4195.

## **BACKGROUND**

Attachment C provides an approximate timeline of OCP and Zoning Amendment Application No. 03-H-16RS for 13271 Simpson Road, including previous reports to the EASC, aerial photos and bylaw reading/adoption dates. Links or attachment of previous reports include:

- 2017-06-07 EASC Report – Attachment D
- [2018-03-07 EASC Report](#)
- [2019-08-07 EASC Report](#)
- [2021-07-07 EASC Report](#)
- [2023-05-03 EASC Report](#)

On April 11, 2018, the Board granted 1<sup>st</sup> and 2<sup>nd</sup> readings of the following:

- Official Community Plan Bylaw No. 4194 – to amend Area H OCP Bylaw 1497 by designating this site as a Commercial/Industrial Development Permit Area (Attachment E).
- Zoning Amendment Bylaw No. 4195 – to amend Area H Zoning Bylaw 1020 by rezoning the subject property to the east of the Trans-Canada Highway as I-4 Industrial Recycling Zone, to permit “auto recycling yard” and “metal recycling yard” (Attachment F).

In 2018, the Board directed staff to work with the applicant to develop a covenant to supplement the provision of the above-noted bylaws, specifically to mitigate the visual and environmental effects of the land use that Bylaw Nos. 4194 and 4195 would have the effect of approving. Under Development Applications Procedures Bylaw No. 4483, all legal costs associated with the preparation, finalization and registration of legal documents must be paid by the applicant.

A draft covenant was prepared that required hard surfacing of parts of the site where vehicle storage and dismantling take place, drainage collection, maintenance and monitoring and reporting of test results to the CVRD.

The subsequent EASC report in 2019 addressed the applicant's proposal to have a "land improvement agreement" in lieu of a covenant, which was not accepted by the EASC/Board. Further EASC reports addressed updates and word variations of the proposed covenant. These reports became necessary because the applicant hard-surfaced portions of the site and installed a drainage collection system with oil/water separators in 2020 (without obtaining a required Development Permit) (Attachment G – Site Plan).

In 2021, the Board directed that the application be referred to an in-person public information meeting once the applicants had agreed to the wording of the draft covenant. This written approval occurred early in 2023 and the public information meeting was held in Ladysmith on June 19<sup>th</sup>. The EASC received the minutes of the public information meeting on July 19, 2023.

## **ANALYSIS**

### ***Public Meeting***

The public information meeting minutes indicate that concerns remain about the suitability of the site for the current use, for numerous reasons. The minutes also indicate dissatisfaction with the content of the proposed covenant. The covenant was proposed to address aesthetic and environmental matters that could not be addressed in zoning, and the proposed requirements were arrived at after several previous iterations appeared to be insufficient.

Please note, the minutes were presented to the EASC for information on July 19, 2023. The minutes presented only contained the questions and answers that were provided at the public information meeting, but did not contain the comments that were also received (but not addressed) at the meeting. All of the minutes and comments have been compiled and made available on the PlanYourCowichan application webpage here:

<https://www.planyourcowichan.ca/3-h-16-rs-13271-simpson-rd>

### ***Referral Agency Responses***

Referrals were sent to applicable agencies in 2017 during the initial analysis of the application. In 2023, internal CVRD divisions and external referral agencies expressed interest in having another opportunity to comment on this application, and referrals were redistributed and comments were received from the following:

- CVRD Environmental Services
- CVRD Community Planning
- CVRD Building
- Agricultural Land Commission
- BC Transit
- Ministry of Environment and Climate Change Strategy, Compliance and Environmental Enforcement
- Ministry of Environment and Climate Change Strategy, Aquatic Habitat Branch
- Ministry of Transportation and Infrastructure

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|------------------------------------|--------------------------------|
| • Island Health                    | • North Oyster Fire Department |
| • Ministry of Agriculture and Food | • Ts'uubaa-asatx Nation        |

Please refer to Attachment H – Referral Response Summary

***Ministry of Environment and Climate Change Strategy – Spill Recovery Response Letter***

In July 2023, the CVRD received correspondence from the Ministry of Environment and Climate Change Strategy regarding the status of spill recovery associated with the monitoring of potential migration of contaminants from the on-site fire incident that occurred in September 2020. The letter states that chemical results were “within the maximum allowable concentrations for health-related parameters”. The Ministry further states they will maintain regulatory oversight, and that Island Health and the CVRD will provide guidance for monitoring the operations of the site, including rezoning and compliance monitoring.

Please refer to Attachment I – Letter from Ministry of Environment and Climate Change Strategy

***Recommendations: Proposed Amendments to the Draft Bylaws and Covenant***

In order for the application to proceed, the following is recommended:

**1. OCP Amendment Bylaw**

1<sup>st</sup> and 2<sup>nd</sup> readings of CVRD Bylaw No. 4194 – Electoral Area H – North Oyster/Diamond Zoning Amendment Bylaw (13271 Simpson Road), 2018 were given in 2018. CVRD Bylaw No. 4194 was drafted to amend the Area H OCP Bylaw No. 1497, which in 2021 was repealed and replaced with “CVRD Bylaw No. 4270 – Cowichan Valley Regional District Official Community Plan for the Electoral Areas Bylaw, 2021”. It is, therefore, recommended that 1<sup>st</sup> and 2<sup>nd</sup> readings of CVRD Bylaw No. 4194 be rescinded and a revised CVRD Bylaw No. 4194 be considered for 1<sup>st</sup> and 2<sup>nd</sup> readings to amend “CVRD Bylaw No. 4270 – Cowichan Valley Regional District Official Community Plan for the Electoral Areas Bylaw, 2021”. The proposed revisions include:

- Amend Schedule C – Development Permit Areas to add the portion of the subject property to the east of the Trans-Canada Highway to DPA 12: Industrial Development; and
- Amend Schedule C - Development Permit Areas, Development Permit Area 12: Industrial Development by deleting paragraph 4 for area H under “Development Permit Area” and replacing it with the following to correct typos and replacing ‘Commercial/Institutional’ with ‘Commercial’ or ‘Industrial’, as shown below:

“In Area H, this DPA applies to the area bordering the Regional District of Nanaimo along the Trans-Canada Highway designated as ‘Commercial’ or ‘Industrial’ and the lands zoned I-2 on Brenton-Page Road (Ladysmith Harbour).”

CVRD Bylaw No. 1497 will require a Public Hearing prior to 3<sup>rd</sup> reading.

CVRD Bylaw No. 4194 has been considered in conjunction with the CVRD Capital Expenditure Program and Solid Waste Management Plan.

**2. Zoning Amendment Bylaw**

1<sup>st</sup> and 2<sup>nd</sup> readings of CVRD Bylaw No. 4195 – Electoral Area H – North Oyster/Diamond Zoning Amendment Bylaw (13271 Simpson Road), 2018 were given in 2018, and will require a Public Hearing prior to 3<sup>rd</sup> reading. This bylaw was to add a new I-4 Industrial Recycling

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Zone to permit “auto recycling yard” and “metal recycling yard”, along with all of the uses currently permitted in the existing I-1 zone.

Since then, the new Comprehensive Zoning Bylaw project has begun, which will harmonize and modernize 8 of the nine Electoral Area zoning bylaws (excluding the Area D Marine Zoning Bylaw) into one comprehensive bylaw, and the total number of zones will be reduced. Until the new Comprehensive Zoning Bylaw is officially adopted, it will be much simpler to add site-specific uses to existing zones, rather than create new zones, which are anticipated to change in the near future through the zoning harmonization and modernization process.

To move forward, it is recommended that 2<sup>nd</sup> reading of CVRD Bylaw No. 4195 be rescinded and a revised CVRD Bylaw No. 4195 be considered for 2<sup>nd</sup> reading to amend Zoning Bylaw No. 1020 to add site-specific provisions to the existing Light Industrial (I-1) zone that will permit the uses that were initially proposed (auto recycling yard and metal recycling yard) on the subject property with some additional site-specific conditions of use, which include:

- A maximum height of 9 m for all vehicles, metal and materials stored outside;
- Visual screening and landscaping along the Trans-Canada Highway and Simpson Road frontages, including a 1.8 m high solid fence combined with at least one row of evergreen trees;
- Despite the setbacks of the I-1 zone, setbacks for buildings and structures where the adjacent parcel is zoned Agricultural is 15 meters; and
- Where an adjacent parcel is in the Agricultural Land Reserve, screening and landscaping along that parcel boundary shall be provided to mask or separate uses consisting of an 8-meter vegetated buffer on the property.

CVRD Bylaw No. 4195 already contains the following regulation, which is carried forward in the revised bylaw as a site-specific condition of use:

- The surface of the ground where end-of-life vehicles or non-ferrous materials are stored must be paved and serviced by functioning oil-water separators.

CVRD Bylaw No. 4195 also currently proposes a permitted 15-meter maximum height for structures (does not mention buildings) which is higher than the existing height for buildings/structures permitted in the zone of 10 meters (Section 5.8 Height – Default Regulations and Exceptions of CVRD Bylaw No. 1020). The proposed revisions to CVRD Bylaw No. 4195 would reduce the maximum height to 10 meters for both buildings and structures and would apply to all properties in the I-1 zone.

### **3. Additional Application Information & Site Works**

Recent referral responses (Attachment H) identify additional information that could be requested under CVRD Bylaw No. 3540 – Development Approval Information Bylaw, 2011 that may be used to evaluate the impact of the proposal on the community. The following information may be requested:

- An updated Environmental Management Plan to address the protection of, and work to avoid contamination of, the aquifer.
- A Stormwater Management Plan (SWMP), which includes a stormwater management system designed to supplement the paving works that were

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completed on site in 2021 (which was not approved through a required Development Permit), as well as the other development that exists on the site.

*A SWMP is an integral component to any development, and includes provisions to minimize the impact of contaminated runoff flowing into waterbodies and impacting aquifers.*

- A Conditions and Impact Assessment (CIA) prepared a Qualified Environmental Professional (QEP) to assess and determine if any streams (as defined by the Riparian Areas Protection Regulation) or environmentally sensitive areas are on, or adjacent to, the subject property and to determine any corresponding watercourse setbacks.

*The CIA will ensure that any regulatory restrictions are known and informed prior to final consideration of the application.*

- A Fire Protection Report that addresses the impact of the development of fire services, which includes the the installation of firefighting water tank(s) with a minimum total capacity of 66,000 gallons with a fire hydrant or other appropriate connection for fire protection and a system designed for the catchment to be able to handle fire suppression activities (this should be designed in conjunction with the above-noted SWMP).

*These measures are to ensure that an adequate water supply is available, if required for an emergency event.*

#### **4. Covenant**

A covenant was drafted and presented at the [2023-05-03 EASC](#) meeting. In light of the recent referral responses and the comments received at the June 2023 public information meeting, it is recommended that the covenant be revised to include the following:

- Establish an area at the entrance of the subject property (directly on the subject property) for after-hours scrap metal drop-offs from the public. This area should be fully enclosed and screened with a 1.8m high solid fence.

*It has been noted that the public drops off materials on road right-of-way during non-business hours. To solve this issue, the applicant has placed a drop-off bin on the Simpson Road frontage area during non-business hours. This bin should be placed on the subject property itself and removed from the road right-of-way.*

- Existing groundwater monitoring wells BH15-03 and BH15-01 be tested by the applicant at least every 12 months, with annual reporting to the CVRD.

*To ensure routine and ongoing monitoring of the groundwater.*

- Secure the proposed works and measures in the plans and reports requested (under “3. Additional Application Information and Site Works” above) to be provided by the applicant to the CVRD, including the installation and maintenance of any works and monitoring, testing and reporting requirements, as stated in the requested reports.

*It is recommended that the owner and applicant agree to the changes to the proposed covenant within 180 calendar days in order to ensure this application process is not further delayed.*

#### **Summary**

This OCP and zoning amendment application raises the fundamental question as to the suitability of this site for the requested use. Clearly it is a challenging location from a variety of perspectives, including those of the tenant, owing to the shallow unconfined aquifer, the unusual lot shape, the

proximity to the airport and the high visibility of the site. The proposed bylaws and covenant amendments work to address these challenges.

The proposed covenant would not be required by the CVRD if this application is not approved; however, the insights that might be gained through the proposed covenant's monitoring program are themselves not a sufficient rationale to proceed with an approval. One or more Provincial agencies may already have the nominal or actual ability to require or access this information under their own regulatory regimes.

Option 1 involves revisions to the draft covenant, as well as revisions to the OCP amendment and zoning amendment bylaws. This work would require the timely cooperation of the applicant.

Option 2 would be to deny the application and investigate non-conforming uses, buildings and structures on the subject property.

### ***Options***

#### **Option 1:**

As listed above under "Recommended Resolution".

#### **Option 2:**

That it be recommended to the Board that Application No. 03-H-16RS (13271 Simpson Road), be denied.

### **FINANCIAL CONSIDERATIONS**

N/A

### **COMMUNICATION CONSIDERATIONS**

N/A

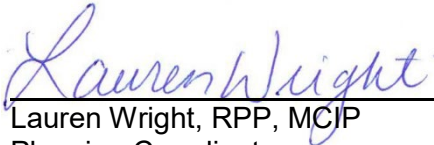
### **STRATEGIC/BUSINESS PLAN CONSIDERATIONS**

N/A


### **Referred to (upon completion):**

- ☐ Community Services (*Cowichan Community Centre, Cowichan Lake Recreation, South Cowichan Recreation, Arts & Culture, Facilities & Transit*)
- ☐ Corporate Services (*Finance, Human Resources, Information Technology, Legislative Services*)
- ☐ Operations (*Utilities, Parks & Trails, Recycling & Waste Management*)
- ☐ Land Use Services (*Community Planning, Strategic Initiatives, Development Services, Building Inspection & Bylaw Enforcement*)
- ☐ Strategic Services (*Communications & Engagement, Economic Development, Emergency Management, Environmental Services*)

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Financial Considerations:

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**ATTACHMENTS:**

- Attachment A – Proposed Revised CVRD Bylaw No. 4194
- Attachment B – Proposed Revised CVRD Bylaw No. 4195
- Attachment C – Subject Property Timeline
- Attachment D – 2017-06-07 EASC Report
- Attachment E – CVRD Bylaw No. 4194 – Electoral Area H – North Oyster/Diamond Official  
Community Plan Amendment Bylaw (13271 Simpson Road), 2018
- Attachment F - CVRD Bylaw No. 4195 – Electoral Area H – North Oyster/Diamond Zoning  
Amendment Bylaw (13271 Simpson Road), 2018
- Attachment G – Site Plan
- Attachment H – Referral Response Summary
- Attachment I – Letter from Ministry of Environment