



# STAFF REPORT TO COMMITTEE

**DATE OF REPORT** May 29, 2017

**MEETING TYPE & DATE** Electoral Area Services Committee Meeting of June 7, 2017

**FROM:** Development Services Division  
Land Use Services Department

**SUBJECT:** Rezoning Application No. 03-H-16RS (13271 Simpson Road)

**FILE:** 03-H-16RS

## PURPOSE/INTRODUCTION

The purpose of this report is to present an application to expand the list of permitted uses of the I-1 (Light Industrial) zone on the subject property.

## RECOMMENDED RESOLUTION

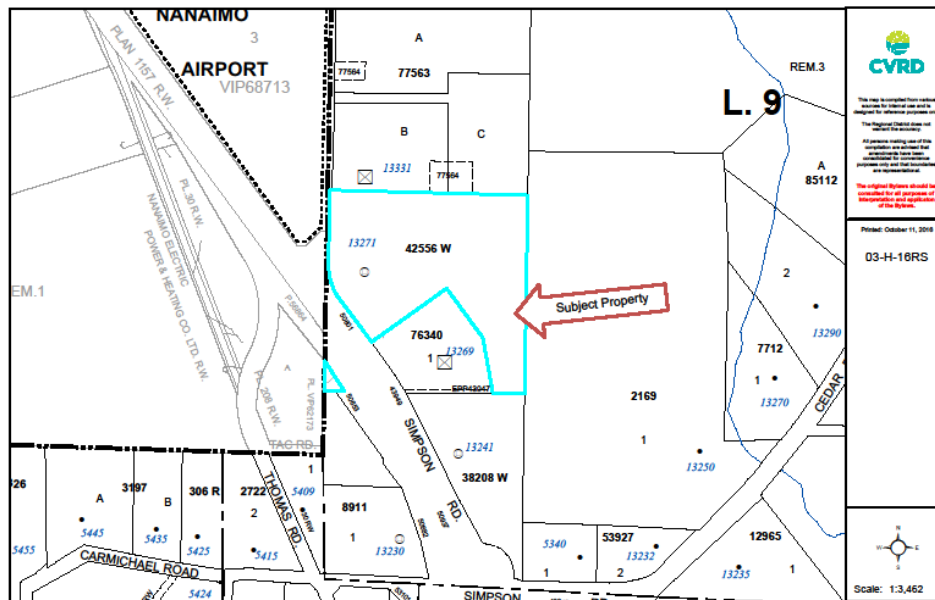
1. That staff work with the applicant to refine and secure proposed environmental and site improvements emphasizing surface and ground water protection and aesthetics;
2. That Amendment Bylaws be drafted for Application No. 03-H-16RS (13271 Simpson Road), and referred to the Electoral Area Services Committee for consideration.

## BACKGROUND

<u>Location:</u>	13271 Simpson Road
<u>Legal description:</u>	That part of Lot 9, Oyster District, lying to the west of the westerly boundary of Lot 1, Plan 2169 and to the south of the southerly boundary of Lot 3, of said Plan, except the south 10 Chains thereof and except Plan 50801 and VIP76340 (PID: 008-903-603)
<u>Agent:</u>	Nures Kara, with Schnitzer Steel Canada Ltd.
<u>Owner:</u>	Cassidy Sales & Service Ltd.
<u>Size of Land Parcel:</u>	Approximately 2.7 ha (6.6 acres)
<u>Use of Property:</u>	Recycling and transfer of autos, auto parts, and other materials
<u>Use of Surrounding Properties:</u>	North: C-3 (Service Commercial) South: I-3 (Ultra Light Industrial) East: A-1 (Primary Agricultural/ALR) West: Trans-Canada Highway
<u>Road Access:</u>	Simpson Road (Trans-Canada Frontage Road)
<u>Water:</u>	Well for non-potable water, water delivery service for drinking water
<u>Sewage Disposal:</u>	Septic system for office and scale building, portable washrooms for employees
<u>Environmentally Sensitive Areas:</u>	None
<u>Fire Protection:</u>	North Oyster Volunteer Fire Department
<u>Wildfire Hazard Rating:</u>	Moderate
<u>Existing Plan Designation:</u>	Industrial

Existing Zoning: I-1 (Light Industrial)

## LOCATION MAP



## APPLICATION SUMMARY

This application proposes to amend the I-1 Zone that is currently applied to the subject property to a new I-1A (Light Industrial A) zone that would permit all the current I-1 (Light Industrial) uses as well as permit the recycling, sorting and storage of metals, motor vehicles and motor vehicle parts, batteries, hazardous wastes (which come from the end-of-life vehicles received on site), appliances, and electrical equipment. The proposed zone would also permit exterior storage of said material.

The subject property is an industrially zoned parcel which operates a metal recycling facility. The facility accepts vehicles, appliances, tires and other materials and prepares them for recycling and transfer to other facilities. Fluids are removed from vehicles and appliances, and materials are sorted, stored on site, and later transferred by barge to other facilities for further processing. The facility on the subject property employs 15 personnel, and operates generally within the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday, and 7:00 a.m. and 4:30 p.m. on Saturday. These hours may vary slightly depending on operational needs.

The intent of the zoning amendment application is to accommodate the facility's existing metal recycling facility, which is not currently permitted in the I-1 Zone, but which likely has an element of legal non-conforming status considering auto wrecking has been occurring on the property prior to incorporation of the CVRD. The determination of legal non-conforming status, and the extent of which, has yet to be determined by the courts.

Adjacent lands to the north and south are zoned for industrial or commercial uses, and the property to the east is within the Agricultural Land Reserve (ALR).

## COMMISSION / AGENCY / DEPARTMENTAL CONSIDERATIONS

The Advisory Planning Commission made the following recommendation after conducting a site

visit and has also prepared a background memo for consideration, both of which are included in Attachment J – Advisory Planning Commission Comments and Recommendation:

*“That the Area “H” Advisory Planning Commission recommends the CVRD staff and board to investigate the option of creating a new Light Industrial zone that would permit the applicant to legally continue the current operation on the parcel and apply for a Waste Stream Management Permit but **ONLY and we emphasize ONLY** on the following conditions:*

- 1. Any new zone created must not in any way remove or weaken the protection for the general environment and the ground water that is provided by the existing zones. It is unreasonable to cover the entire parcel with a roof so that translates into complete coverage of the ground with non-permeable, properly engineered concrete with run-off collectors and separators etc.. The protection for the aquifer should be “state of the art”. This condition is non-negotiable.*
- 2. Should the parcel or operation be sold or the current lease terminated, the parcel zone should revert back to the existing zone.*
- 3. An unrestricted list that clearly identifies materials that are specifically excluded from being on the parcel must be a condition of this new zone.*
- 4. Consideration be made to mitigate some of the unsightliness of the operation, perhaps with some sort of hedge.*
- 5. Consideration should be made regarding appropriate and clearly defined hours of operation.*
- 6. Consideration should be made to limit the height of the scrap piles.”*

This application has been referred to the following external agencies for comment (Referral responses are included as Attachment K – Referral Agency Response:

- Island Health
- Ministry of Transportation and Infrastructure
- North Oyster Volunteer Fire Department
- Regional District of Nanaimo
- Agricultural Land Commission
- CVRD Parks & Trails Division
- Public Safety Division
- Economic Development Division
- Engineering Services Department (Recycling and Waste Management)
- Engineering Services Department (Environmental Services).

#### **OFFICIAL COMMUNITY PLAN/POLICY CONSIDERATIONS**

The I-1 Zone states the following as a permitted use (Item 26):

*“Recycling, sorting and storage of glass, plastic, aluminum, wood, paper, cardboard, but excluding external storage of any material, and excluding the recycling, sorting and storage of heavy metals, batteries, appliances, wrecked motor vehicles or automotive parts.”*

The applicant indicates that aspects of the recycling facility have been in operation on the property since the 1960s, perhaps resulting in some degree of legal non-conforming status being applied to the land use. Legal non-conforming status can be established in cases where the use is not permitted by current bylaws, but the use either predates the CVRD and CVRD Zoning Bylaws or was legally permitted at the time it was established, and a subsequent change in bylaws no longer permitted the use.

Non-conforming uses are regulated by the provincial *Local Government Act*, and cannot be expanded beyond the scale and extent of the use occurring at the time the bylaws prohibiting the use became enacted. Proving the extent of non-conforming status generally requires a court decision and can be challenging depending on the historical evidence available, as well as other legal factors.

**Policy Context:**

The subject property is designated Industrial within the North Oyster/Diamond Official Community Plan (OCP), and is located on land underlain by the Cassidy Aquifer.

The Cassidy Aquifer is classified as an environmentally sensitive area within the OCP (please see Attachment E), and there are numerous objectives and policies within the plan intended to protect the Cassidy aquifer from contamination.

Relevant objectives and policies from the OCP are noted below:

***Natural Environmental Objectives***

- *Protect natural freshwater systems and important groundwater recharge areas including Woodley Range, Cassidy and Bush Creek Aquifers and Long Lake, Priest Lake, and Michael Lake.*
- *Limit or prohibit development within hazardous or environmentally sensitive areas so as to protect area residents from personal injury or loss of property and to safeguard the natural environment.*

With respect to environmentally sensitive areas defined in the OCP, Policy 3.2.2 states:

*Prior to the rezoning of lands which are located in environmentally sensitive areas or which may affect environmentally sensitive areas, the Board shall give due consideration to the following:*

- a) Soil stability;*
- b) Natural vegetation or groundcover;*
- c) Wildlife and fish habitat;*
- d) Quality and quantity of surface drainage and groundwater;*
- e) Adjacent land uses.*

**Policy 13.1.5**

*All watercourses and known groundwater aquifers shall be protected from activities which would reduce their suitability as sources of domestic water supply or for fish, shellfish and wildlife habitat.*

***Industrial Area Objectives***

- *Discourage intensive industrial development that would erode the present rural residential, agricultural and recreational character of the plan area.*
- *Recognize existing light industrial land uses and encourage small scale light industrial activities in locations which do not impact on the rural character of the community or natural environment, in particular groundwater resources.*

The following outlines Industrial policies of the plan:

**Policy 10.1.3**

*All industrial development must have regard for the implications respecting the Hazardous and Environmentally Sensitive Area, Freshwater Management and Natural Resource Management policies of this plan.*

The industrial policies provide direction for where further light industrial activities should occur, and that no additional areas be designated for heavy industrial use.

***Development Permit Area***

The property is within the Cassidy Aquifer Development Permit Area, and prior to any new development, a Development Permit would be required subject to the guidelines of the Development Permit Area.

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**CVRD Waste Stream Management Licencing Bylaw:**

Municipal solid waste and/or recycling facilities within the CVRD are required to obtain a licence in accordance with Bylaw No. 2570, "Waste Stream Management Licencing Bylaw". The Bylaw specifies requirements for facilities to ensure that waste and recycling facilities do not negatively impact communities or the environment.

Prior to obtaining a waste stream facility licence, the property must be zoned for the intended land use. The applicants have applied for a waste stream facility licence, which would regulate how the facility is operating and ensure that the facility complies with current regulations. However, a licence cannot be issued while the use is not compliant with the zoning.

Attachment H summarizes the operational plans that have been developed in support of the proponent's application for a Waste Stream Management Licence:

- Operating Plan, 2015;
- Contingency Plan, 2015;
- Environmental Management Plan, 2015

**Contaminated Site Regulation – Environmental Management Act:**

As a result of the metal recycling and auto wrecking use on the property, a site profile was required. Pursuant to the Contaminate Site Regulation, a preliminary site investigation is required by the Province. In this case, the Ministry of Environment has advised that the CVRD may proceed with the zoning amendment application, and the requirement for a preliminary site investigation can be deferred as the applicants are not proposing any changes to the ground/movement of soil/construction of buildings in the current zoning amendment application.

Attachment H highlights two studies that have been completed for the site, as well as measures the applicants have taken to mitigate impact of the metal recycling and auto-wrecking activities to the environment. The above-referenced studies are:

- Stage 1 Preliminary Site Investigation, prepared by Johnston Gray Environmental which revealed no surface or subsurface impacts to soil and groundwater
- Groundwater Quality Review, prepared by Envirochem Services Inc.

**PLANNING ANALYSIS**

The motivation for this application is, at a minimum, two-fold:

1) *Resolve the ambiguous status of the property in terms of Zoning Bylaw compliance.*

Under the current possibly legal non-conforming status, the applicants are not permitted to expand the metal recycling use from that which occurred at the time the CVRD incorporated. They are also not permitted to construct any buildings, additions or alterations that support the metal recycling/auto wrecking as a result of the unconfirmed legal non-conforming use status. If it was determined through the courts to be legal non-conforming, the Board of Variance has the ability to approve applications for alterations/additions/expansion to legal non-conforming uses. However, the Board of Variance does not have the ability to authorize new structures. The applicants have plans to construct a new scale and a new building, but these and other improvements are not possible while the status of the metal recycling facility is unclear.

2) *Apply for a CVRD Waste Stream Management Licence*

Auto wrecking is regulated by the *Provincial Vehicle Dismantling and Recycling Industry Environmental Planning Regulation*. This regulation is not specific to the site and is based on the model of professional reliance, well as compliance verification and enforcement which may be undertaken by the Ministry from time to time. All operators have to register under the regulation but are not required to submit technical documents to be registered. An

Environmental Management Plan and reporting is required every two years for these types of operations.

Given the policies of the plan, and the environmentally sensitive location, there would be no justification for approval of the application if it was a newly proposed use.

However, the site has been operating in some capacity for auto wrecking and metal recycling prior to incorporation of the CVRD, and has been designated and zoned Industrial for many years. It would not appear that the use will cease, and staff have considered whether it is most appropriate to amend the zoning for the existing use with the intention to apply regulations: both the CVRD Waste Stream Management Licencing Bylaw and new conditions of use that could be specified in the amendment bylaw.

Alternatively, the site could remain with its uncertain legal status in anticipation that one day the use will cease from the site in favour of new, more appropriate uses. Adjacent land uses are:

- North - C-3 (Service Commercial Zone)
- South – I-3 (Ultra Light Industrial Zone)
- East – A-1 (Primary Agricultural Zone)
- West – Trans Canada Highway

In addition to the environmental measures summarized in Attachment H, the applicants have proposed the following:

- 1) Increase the frequency of groundwater monitoring to quarterly. If the results continue to be positive over time, reduce the monitoring to semi-annually then annually. Currently, groundwater monitoring occurs every two years.
- 2) Pave more of the site over time such that any hydrocarbons or runoff from the activities be contained onsite and directed to oil water separators. A common theme with the APC and other referral agencies is to require paving of the entire site where business operations are conducted.

If the Committee is inclined to recommend approval, further analysis and careful consideration of zoning regulations, and perhaps amendments to the Cassidy Aquifer Development Permit area, that offer mechanisms to protect groundwater on the site should be considered. These would apply to the land in perpetuity and not be reliant on the operator if there was ever a change in tenants. Currently, the owner of the property is Cassidy Sales and Service, with Schnitzer leasing the site.

Staff is seeking direction from the Committee prior to undertaking further work on developing amendment bylaws. If the Committee finds there is merit to the application, staff will work with the applicant to further refine and secure their commitments, and identify conditions of use for the zone.

Option 1 is recommended.

## **OPTIONS**

Option 1:

That it be recommended to the Board:

1. That staff work with the applicant to refine and secure proposed environmental and site improvements emphasizing surface and groundwater protection and aesthetics;
2. That Amendment Bylaws be drafted for Application No. 03-H-16RS (13271 Simpson Road), and referred to the Electoral Area Services Committee for consideration.

Option 2:

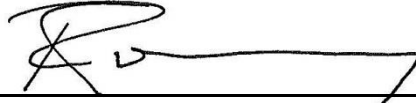
That it be recommended to the Board that Application No. 03-H-16RS (13271 Simpson Road) be denied, and a partial refund of fees be given in accordance with CVRD Fees and Procedures Bylaw No. 3275.

Prepared by:

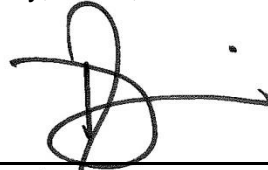


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**ATTACHMENTS:**

- Attachment A – Official Community Plan Map
- Attachment B - Zoning Map
- Attachment C – Orthophoto Map
- Attachment D – Agricultural Land Reserve Map
- Attachment E - OCP Designated Environmentally Sensitive Areas
- Attachment F - Site Map
- Attachment G – Application Proposal
- Attachment H - Environmental Summary Letter
- Attachment I - I-1 Light Industrial Zone, Bylaw No. 1020
- Attachment J – Advisory Planning Commission Comments and Recommendation
- Attachment K - Referral Agency Responses