



# STAFF REPORT TO COMMITTEE

**DATE OF REPORT** January 24, 2024

**MEETING TYPE & DATE** Electoral Area Services Committee Meeting of February 7, 2024

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

**SUBJECT:** Application No. ALR23D01 (2279 Cowichan Bay Road/PIDs: 002-032-767 and 002-032-783)

**FILE:** ALR23D01

## **PURPOSE/INTRODUCTION**

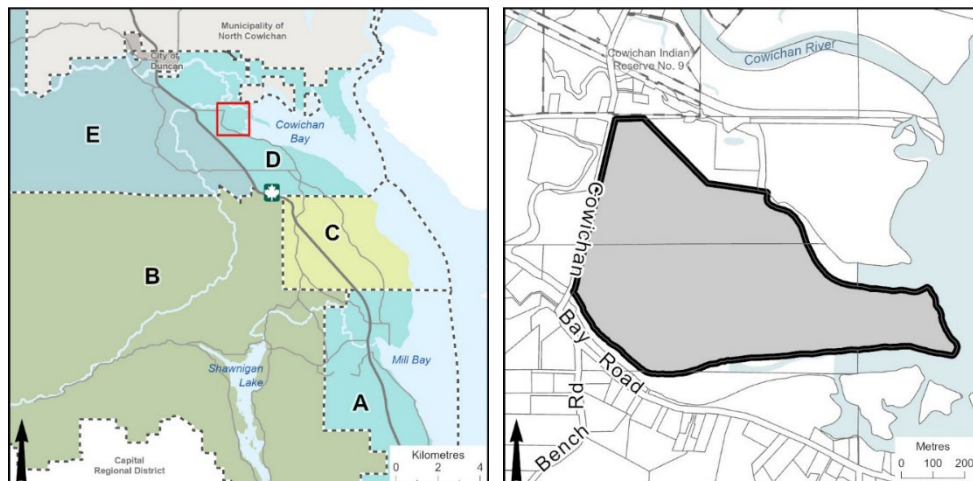
The purpose of this report is to introduce a Non-Farm Use application in the Agricultural Land Reserve (ALR) on the subject properties at 2279 Cowichan Bay Road (“Dinsdale Farm”), that would decommission 450 m of Dike 49 (“Dinsdale Dike”) for the purpose of flood mitigation and habitat restoration activities, and support indigenous food systems within the Cowichan Estuary.

## **RECOMMENDED RESOLUTION**

That it be recommended to the Board that Application No. ALR23D01 (2279 Cowichan Bay Road/PIDs: 002-032-767 and 002-032-783), be forwarded to the Agricultural Land Commission with the following comments:

1. The proposed activities are consistent with permitted uses in the Electoral Area D – Cowichan Bay (Upland) Zoning Bylaw No. 3705; and
2. The proposed activities are consistent with policies in the Official Community Plan for the Electoral Areas Bylaw No. 4270 that support local food production, ecological restoration and climate change mitigation measures.

## **LOCATION MAP**



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## **BACKGROUND**

The subject properties are approximately 16 ha (smaller parcel to north, with PID: 002-032-783) and 35 ha (larger parcel to south, with PID: 002-032-767) in area. The subject properties have recently been used for commercial agriculture (corn and other forage production), recreation at Maple Grove Park and trail use along the dike, and conservation (providing habitat for birds).

An assessment conducted by Northwest Hydraulic Consultants Ltd. (NHC) between 2021-2023 found that Dike 49 does not meet current Provincial Standards, does not provide flood protection for 10-year or 200-year flood events, is subject to overtopping during storm events and has been breached on several occasions. NHC's assessment concluded that unless significant upgrades and repairs were undertaken, the current dike is at further risk of overtopping, erosion and potential breaching during severe storm events.

Although part of a larger project that will remove approximately 1,700 m of Dike 49, the Non-Farm Use application in the ALR is for the removal of the 450 m segment of Dike 49 identified in the plan provided (Attachment D). Diking material will be reused on the land, starting with distributing the material on the non-ALR portion of the southern property. Future soil/fill placement on the ALR portion may require Agricultural Land Commission (ALC) authorization. While commercial agricultural activities have ceased, the application proposes to continue food production by transitioning to the revitalization of Indigenous food systems on the properties.

Once completed, Maple Grove Park will remain but the dike trail will no longer be publicly accessible. The property owner and its partners are working to provide alternative public access, a project that is beyond the scope of the Non-Farm Use application in the ALR.

The project has received support from Cowichan Tribes, also a partner on the project (Attachment F), and approval from the Ministry of Water, Land and Resource Stewardship, as it is consistent with the Cowichan Estuary Environmental Management Plan (Attachment G).

The project has also received approval under the *Dike Maintenance Act* from the Inspector of Dikes, Ministry of Forest (Attachment H), to conduct the decommissioning activities of Dike 49, with a completion date of March 31, 2025. The approval includes upgrading Dike 88 by raising it approximately 0.5 m to mitigate the transfer of risk as a result of decommissioning Dike 49. The project will also include a flood fringe forest restoration area along the boundary of Maple Grove Park and Cowichan Bay Road.

The project partners have undertaken public engagement and have a website with information about the Cowichan Estuary Restoration Project (<https://www.estuaryresilience.ca/cowichan-estuary-restoration-project/>).

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

Official Community Plan for the Electoral Areas Bylaw No. 4270 (OCP):

The subject properties are designated Renewable Resource – Agriculture and Parks (north property) and Renewable Resource – Agriculture and Marine – Marine Resource (south property) in the OCP and Area D Local Area Plan (LAP). The application area on both properties is within the Renewable Resource – Agriculture designation.

Objectives and policies in the OCP support restoration of the natural environment, protection of water quality and biodiversity, prioritize regional self-sufficiency and local food security, and encourage environmentally friendly agricultural practices.

The LAP recognizes the cultural and ecological importance of the Cowichan Estuary, and prioritizes applications that support its environmental enhancement.

Relevant OCP policies include:

- *3.2.1.2.7 Discourages non-farm use of land in the ALR other than those non-farm uses permitted in the Agricultural Land Reserve Use Regulations.*
- *3.2.2.2.2 Supports identification, protection and restoration of priority ecological areas and wildlife corridors to increase resilience of the natural environment.*
- *3.2.2.4.1 Recognizes aquatic habitats and resources as environmentally sensitive sites to be protected and restored.*
- *3.2.4.2.2 Encourages agriculture production that increases local food security and reduces GHG emissions.*
- *4.8.4.1 Recognizes the international importance of the marine foreshore areas for fisheries, food, social, cultural, security, tourism and marine wildlife.*
- *4.8.4.9 Supports recognition of ecologically sensitive areas by identifying and conserving special wildlife, plant and marine shore environments in their natural state. Modifications to environmentally sensitive areas that assist in building resilience to the effects of sea level rise will be permitted.*
- *4.8.4.11 Recognizes the cultural significance of the Cowichan Estuary and foreshore to First Nations and will consult with Cowichan Tribes and Malahat on development proposals and other land use matters concerning the estuary and foreshore.*

The subject properties are within five DPAs – DPA 1, DPA 2, DPA 3, DPA 4 and DPA 5. Provincial works are exempted from the requirement for a Development Permit.

Electoral Area D – Cowichan Bay (Upland) Zoning Bylaw No. 3705:

The subject properties are split-zoned A1 – Agricultural Resource, P1 – Parks Conservation and W1 – Water Conservancy (in Zoning Bylaw No. 1015). The application area is fully within the A1 zoned area of the parcels. The purpose of the A1 zone is to accommodate primary agricultural activities.

“Agriculture” is defined as “means growing, rearing, producing or harvesting livestock or agricultural crops other than cannabis, and includes the processing on a parcel of the primary agricultural products harvested, reared or produced on that parcel and the use and storage of associated farm machinery, implements and agricultural supplies.”

Section 2.1.1 permits the following uses in all zones:

- (c) *Environmental protection, restoration and enhancement;*
- (d) *Flood control works undertaken by a government agency;*

Section 2.1.4 provides:

- (b) *Unless an activity is explicitly designated a farm use, or permitted by this bylaw pursuant to the Agricultural Land Use, Subdivision and Procedure Regulation, the use is prohibited unless approval has been granted by the ALC for a non-*

*farm use or is subject to Section 23(1) of the ALC Act, and the non-farm use is permitted by this bylaw.*

**CVRD Agriculture Land Reserve Applications Policy:**

The [CVRD ALR Applications Policy](#) is a CVRD Board standing policy with respect to ALR applications. The policy provides the following direction:

- ALR non-farm use applications will only be forwarded to the ALC if:
  - the proposed non-farm use complies with CVRD bylaws; or
  - the proposed non-farm use does not comply with CVRD bylaws, if the ALR applicant has also applied for the necessary bylaw amendments and these have received at least 1<sup>st</sup> reading.

**COMMISSION / AGENCY / DEPARTMENTAL CONSIDERATIONS**

Division 2 of the [Agricultural Land Reserve Use Regulation](#) (the “Regulation”) includes permitted non-farm uses in the ALR that may be prohibited by a local government, with conditions.

Section 22 (2) of the Regulation permits:

*22 (2) The use of agricultural land for biodiversity conservation, passive recreation, heritage, wildlife and scenery viewing purposes, other than in a park referred to in subsection (1) (a), is permitted, but may be prohibited as described in section 20, if both of the following conditions are met:*

- (a) the area occupied by any associated structures does not exceed 100 m<sup>2</sup> for each parcel;*
- (b) the purpose does not include the creation of a wetland intended to manage urban runoff or waste.*

While Section 25 (b) of the Regulation permits the construction, maintenance and operation of dikes and ancillary works on ALR land “for the purpose of drainage or irrigation or to combat the threat of flooding”, it does not specifically permit the removal (decommissioning) of dikes.

**PLANNING ANALYSIS**

The Non-Farm Use application is for the removal of a 450 m segment of Dike 49 that is within the ALR, as identified in the plan provided (Attachment D). The proposal is part of a broader project that will decommission approximately 1,700 m of Dike 49, to restore the wetland/estuary habitat. The removal of Dike 49 is intended to improve the overall health of the Cowichan Estuary and increase resilience to the effects of climate change; reconnect historically cut off areas from tidal influences; revitalize important salmon, shellfish and bird habitat; conserve biodiversity; and increase absorption of flood waters.

While commercial agricultural operations will cease on the subject properties, the proposal includes a shift toward revitalizing Indigenous food systems to continue farming and food production on the land. The applicants are partnered with Cowichan Tribes to support the transition to traditional food sources, such as the cultivation of camas, sea asparagus and shellfish. Project partners include the Nature Trust of British Columbia, Ducks Unlimited Canada, the Ministry of Water, Land and Resource Stewardship, Ministry of Forests, Environment and Climate Change Canada, Fisheries and Oceans Canada, and Habitat Conservation Trust Foundation.

The project aligns with the Cowichan Estuary Environmental Management Plan (CEEMP) objective to “support rehabilitation of presently degraded habitat in the estuary”. The CEEMP’s primary focus is on conservation of the environmental values of the estuary, while recognizing existing uses and potential new uses that are considered environmentally acceptable. Provincial approval for the project under the CEEMP has been granted.

While Section 25 (b) of the *ALR Use Regulation* permits the construction of dikes in the ALR, it does not explicitly permit the removal or decommissioning of dikes. However, it is noted that under Section 22 (2) of the Regulation, “the use of agricultural land for biodiversity conservation, passive recreation, heritage, wildlife and scenery viewing purposes” is considered a non-farm use that may be permitted on ALR land, but may be prohibited by a local government if the conditions in 22 (2) (a) and (b) are met. It is noted that (a) and (b) do not apply in this situation. The transition from commercial agricultural production to Indigenous food systems continues food production on ALR land.

The proposal is consistent with Zoning Bylaw No. 3705, as “agriculture”, “environmental protection, restoration and enhancement” and “flood control works undertaken by a government agency”, are all permitted uses in the A-1 zone.

Further, the proposal is consistent with OCP policies that support restoration of priority ecological areas to increase resilience of the natural environment; recognizes aquatic habitats as environmentally sensitive sites to be protected and restored; permits modifications to environmentally sensitive areas to increase resilience to the effects of sea level rise; increases local food security; and recognize the cultural significance of the Cowichan Estuary and foreshore to First Nations.

Under the CVRD ALR Applications Policy, the CVRD Board will only forward non-farm use applications to the ALC when the proposed use complies with CVRD bylaws. Therefore, staff are recommending the Non-Farm Use application be forwarded to the ALC for approval with the comments that the proposed activities are consistent with permitted uses in Zoning Bylaw No. 3705 and with policies in the OCP that support local food production, ecological restoration and climate change measures.

## **OPTIONS**

### **Option 1:** (recommended)

That it be recommended to the Board that Application No. ALR23D01 (2279 Cowichan Bay Road/ PIDs: 002-032-767 and 002-032-783), be forwarded to the Agricultural Land Commission with the following comments:

1. The proposed activities are consistent with permitted uses in the Electoral Area D – Cowichan Bay (Upland) Zoning Bylaw No. 3705;
2. The proposed activities are consistent with policies in the Official Community Plan for the Electoral Areas Bylaw No. 4270 that support local food production, ecological restoration and climate change mitigation measures.

Option 2:

That it be recommended to the Board that Application No. ALR23D01 (2279 Cowichan Bay Road/PIDs: 002-032-767 and 002-032-783), be forwarded to the Agricultural Land Commission without comment.

Option 3:

That it be recommended to the Board that Application No. ALR23D01 (2279 Cowichan Bay Road/PIDs: 002-032-767 and 002-032-783), not be forwarded to the Agricultural Land Commission.


**GENERAL MANAGER COMMENTS**

Restoration of the Cowichan Estuary has been a long-standing goal of the CVRD Board, and this proposal is consistent with current CVRD Corporate Strategic Plan reconciliation and climate action objectives.

Prepared by:

  
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Reviewed by:

  
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Reviewed for form and content and approved for submission to the Committee:

Resolution:

☒ Corporate Officer

Financial Considerations:

☒ Chief Financial Officer

**ATTACHMENTS:**

- Attachment A – Background Table
- Attachment B – Context Maps
- Attachment C – ALC Application
- Attachment D – Application Area Plan
- Attachment E – Site Photos
- Attachment F – Letter, Larry George, Director of Lulumexun, Cowichan Tribes, July 27, 2022
- Attachment G – Letter, Jesse Patterson, Ministry of Land, Water and Resource Stewardship, September 2, 2022

Attachment H – Letter (*Dike Maintenance Act* approval), Chantelle Grafton, Ministry of Forests,  
April 13, 2023