



# STAFF REPORT TO COMMITTEE

**DATE OF REPORT** November 24, 2023

**MEETING TYPE & DATE** Electoral Area Services Committee Meeting of December 6, 2023

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

**SUBJECT:** Application No. RZ23E01 (Appaloosa Way, PID 009-845-119, PID: 009-849-637, and PID: 009-849-581)

**FILE:** RZ23E01

## **PURPOSE/INTRODUCTION**

The purpose of this report is to present an application to modify the Comprehensive Development Residential ([R-5](#)) Zone, within the Electoral Area E – Cowichan Station/Sahtlam/Glenora Zoning Bylaw No. 1840.

The application is proposing to modify Section 8.9(c) [Density and Density Bonus provisions] of Bylaw No. 1840 to accommodate a seventeen (17) lot subdivision.

At this preliminary stage of the application process, the Board is asked to consider information to support a fulsome understanding of the proposal and referral to external agencies. External agency feedback will be addressed through a subsequent staff report.

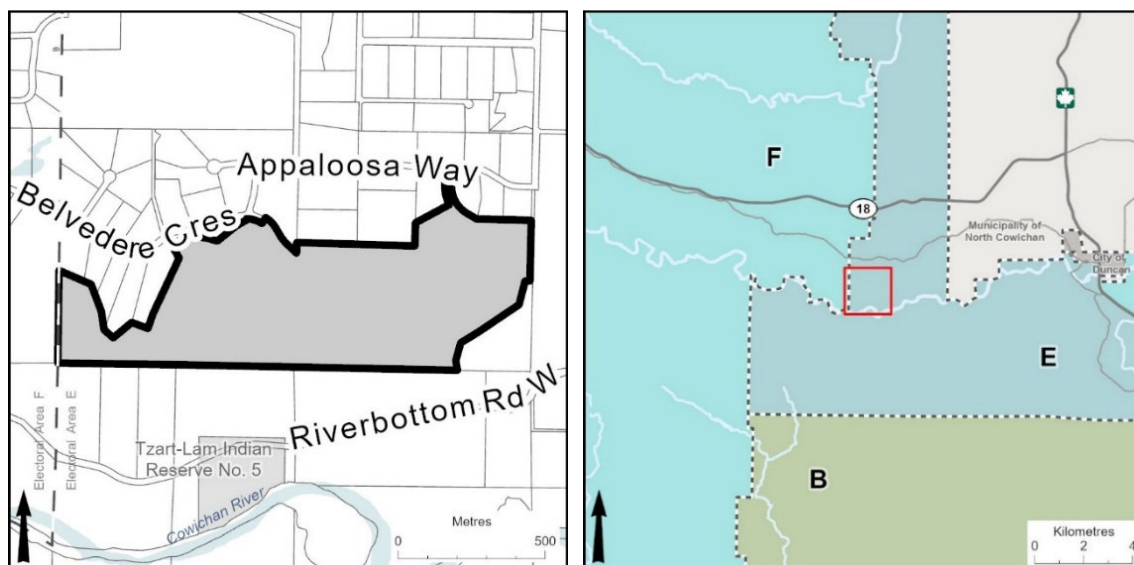
## **RECOMMENDED RESOLUTION**

That it be recommended to the Board:

1. That the following information be provided to support Application No. RZ23E01 (Appaloosa Way, PID 009-845-119, PID: 009-849-637, and PID: 009-849-581):
  - a. A revised subdivision plan to demonstrate substantial compliance with DPA 1 (Riparian Protection), DPA 2 (Sensitive Ecosystem Protection) and DPA 4 (Aquifer Protection) design guidelines, including:
    - i. Modifications to minimize crossings of riparian areas and maximize the distance between roads and riparian areas.
    - ii. Modifications to minimize the number of proposed non-contiguous lots bisected by riparian areas.
    - iii. A revised map clearly differentiating TLC covenanted areas, P-2 Zoned Areas, Natural Boundaries of watercourses, Streamside Protection and Enhancement Areas (SPEAs), stream crossings, and proposed road networks.
    - iv. Setback information related to wells and septic discharge areas as set out in Island Health's Subdivisions Standards;
    - v. Confirmation from a qualified BC Land Surveyor ([ABCLS](#)) of the minimum lot sizes (1 ha) after removal of the SPEAs associated with wetlands, watercourses and streams;
  - b. Confirmation from a qualified environmental professional (QEP) that:
    - i. The revised subdivision plan would have no adverse effect on the natural features, functions and conditions that support fish life processes in the 30 m riparian assessment area (*where a non-contiguous lot (bisected by riparian areas) is*

- unavoidable, recommendations from a QEP shall be provided to ensure that the development will not harm natural features, functions and conditions in the riparian assessment area).*
- ii. The revised subdivision plan will have no adverse effect on Western Toad Habitat.
  - c. Conceptual site plans showing building envelopes within allowable footprints, driveway access, sewerage & water infrastructure, and parking areas.
  - d. Details on proposed parkland dedication areas, including topographic and environmental constraints for the 2.8 ha of P-2 Zoned lands that are not within the covenant area.
  - e. Trail construction standards and locations within the proposed development to provide connectivity between subdivision blocks and the proposed park.
2. That following receipt of the information, Application No. RZ23E01 (Appaloosa Way, PID 009-845-119, PID: 009-849-637, and PID: 009-849-581), be referred to the following external agencies and First Nations:
- a. Cowichan Tribes;
  - b. Lake Cowichan First Nation;
  - c. Penelakut Tribe;
  - d. Halalt First Nation;
  - e. Lyackson First Nation;
  - f. Stz'uminus First Nation;
  - g. Ministry of Transportation & Infrastructure;
  - h. Ministry of Forests;
  - i. Ministry of Environment and Climate Change Strategy;
  - j. Electoral Area E – Parks Advisory Commission (PAC);
  - k. Ministry of Water, Land and Resource Stewardship;
  - l. BC Hydro;
  - m. Electoral Area E – Advisory Planning Commission (APC); and
  - n. The Land Conservancy.

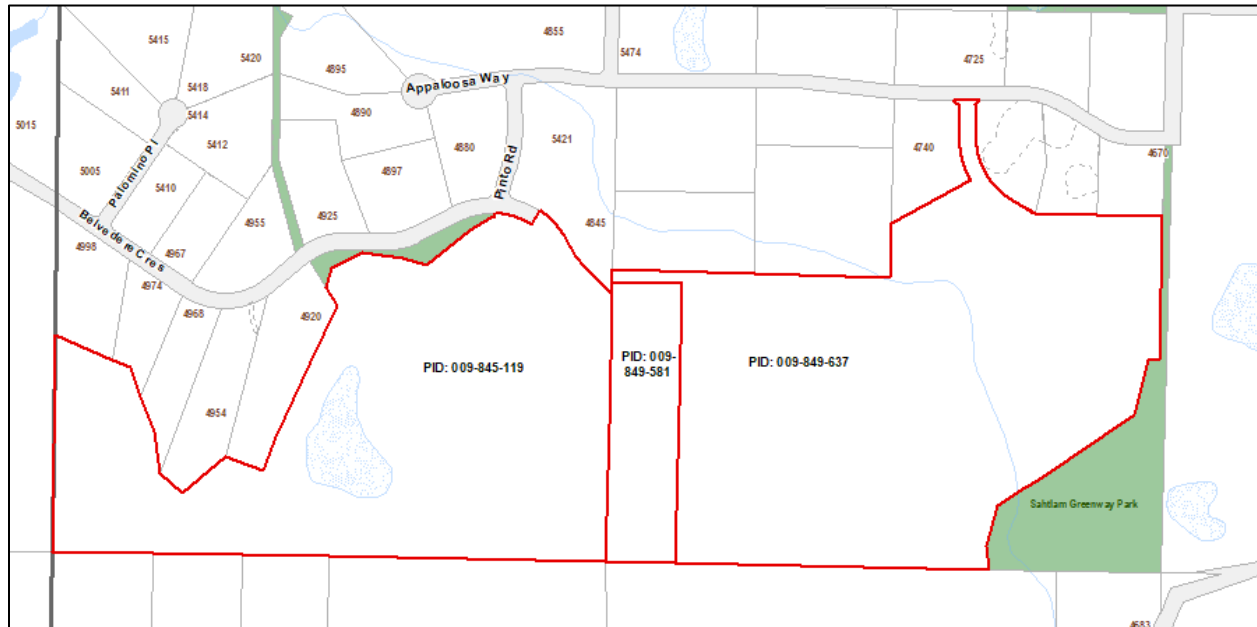
## LOCATION MAP



## BACKGROUND

The subject lands include: PID: 009-845-119 (66.75 acres), PID: 009-849-637 (72.98 acres), and PID: 009-849-581 (10.00 acres).

*Figure 1 – Subject Properties*



A development permit (No. DP23E05) was issued in July 2023 (Attachment G) to permit limited clearing on PID 009-845-119 and PID 009-849-637 to provide driveway access to each existing lot. No further development has been authorized at this time. [PID 009-845-119](#) is presently listed for sale (see Attachment B for the applicant's rationale).

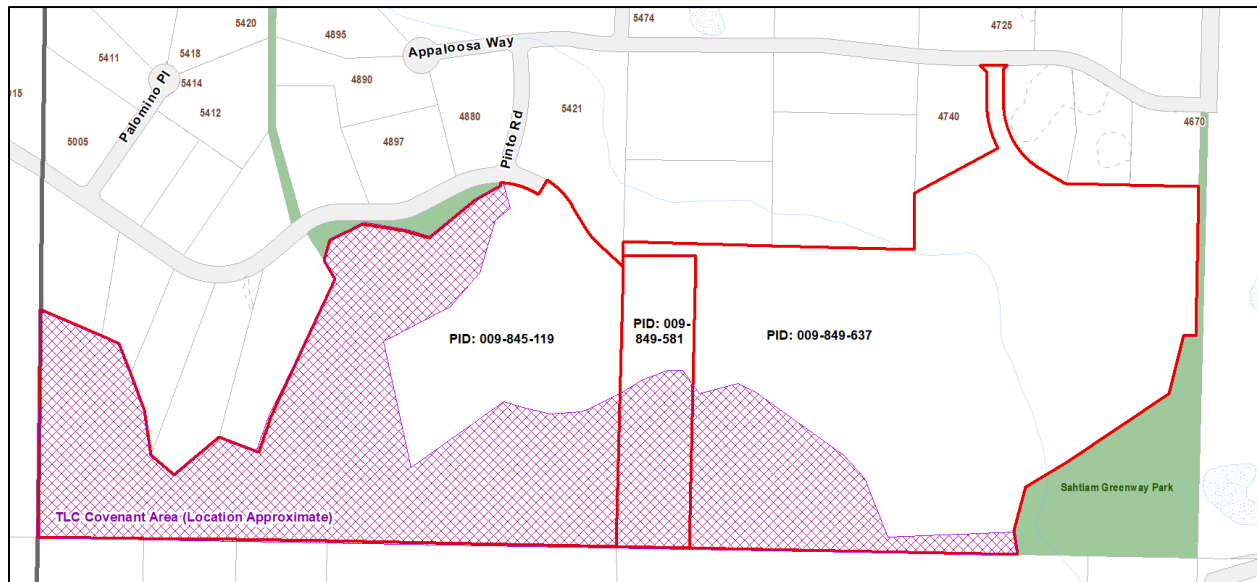
The applicant is now proposing to subdivide 17 lots (resulting in a combined total of 44 lots in the R-5 Zone).

- Section 8.9(c)(2) of Bylaw No. 1840 currently permits a maximum density of 50 lots in the R-5 Zone if density bonusing provisions are met.
- At present, 27 lots have been developed, meaning the subject lands could be further developed into a total of 23 lots (subject to density bonusing provisions).

It is estimated that only 17 additional lots can be created given the presence of natural features (e.g. wetlands and SPEAs) that constrain the site. This means that only 44 of the 50 lots permitted in the R-5 zone are achievable, and the number of lots to be transferred to the CVRD (per density bonusing provisions) is reduced from 6 (for 50 lots) to 5 (for 44 lots). To-date, 2 lots have been provided in previous phases of development.

The applicant has included a rationale letter (Attachment A and B) in which they note that the cumulative restrictions on the land (e.g. *Riparian Areas*, *Section 12.12 of Bylaw No. 1840*, *P-2 Zoning*, and *Conservation Covenant*) reduce the 23-lot yield permitted by the R-5 Zone. The applicant suggests that these site constraints when combined with the density bonusing requirements of the R-5 Zone (e.g. their obligation to transfer 3 lots to the CVRD), creates a condition where their 17-lot subdivision is not economically viable.

Figure 2 – TLC Covenant Area:



For background: On July 11, 2007, the Board passed the following motion (07-432):

*That the proposed gifting of approximately 136 acres (54.5 hectares) of lands to the CVRD for nature park purposes, encompassing portions of both Section 5, Range 6, Sahtlam Land District along with a portion of Section 6 and 7, Range 7 Sahtlam District, be approved, inclusive of a conservation covenant registered on title in favour of The Land Conservancy of BC, which limits the use of the lands for nature park purposes and also permits the Regional District to hold the lands as an undeveloped “park reserve” within the Electoral Area E and F community park functions until such time additional funds are determined available by the Board to complete and implement a park management plan for the lands.*

This anticipated donation of covenanted lands was purposely separate from the rezoning of the subject properties, and was not a condition of rezoning or tied explicitly to the rezoning application. The purpose of the 2007 motion was to proactively accept the covenanted lands for park purposes. The owner had provided a letter indicating their intention to provide the entire covenanted area to the CVRD as a gift. They drafted the TLC covenant in a manner that envisioned future CVRD ownership of the covenanted lands for park purposes.

Staff surmise that the previous owner had intended to donate the land as park for tax purposes (e.g. to receive a tax receipt for the appraised value of the donation), concurrently with the last subdivision phase.

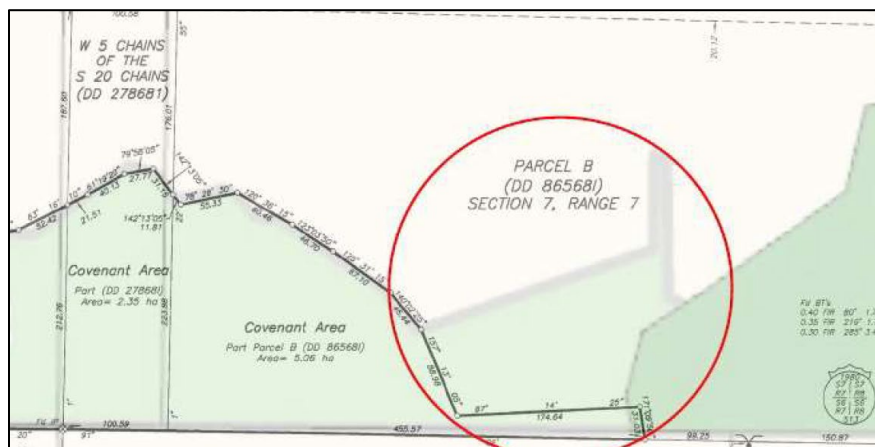
**Current Proposal:**

As an alternative to transferring 3 fee-simple lots to the CVRD, the applicant proposes to transfer the entirety of the TLC covenant lands as well as the transfer of the P-2 Zoned land that is not within the TLC covenanted area.

- The TLC covenant lands are approximately 23 ha (59 acres);
- The area of the P-2 Zoned lands that are not within the covenant area is roughly 7 acres (2.8 ha) and is largely constrained by wetlands and SPEAs; and
- These areas are not clearly labeled in the conceptual subdivision plan. Should the Board advance this application, staff will recommend that a more detailed survey plan be provided to indicate the streams, watercourses, SPEAs, Wetlands, TLC Covenant, and P-2 Zoned lands.

While both the Covenanted Area and P-2 Zoned portions of the lands can presently only be used for conservation and/or park purposes, there is currently no mechanism to trigger the transfer of these lands to the CVRD.

**Figure 3 – P2 Zoned Lands outside of the Covenanted Area:**



**OFFICIAL COMMUNITY PLAN / POLICY CONSIDERATIONS**

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

The P-2 Zoned portions of the subject properties are designated as Parks in both the regional and local area plans (LAP).

<i>Official Community Plan</i>	<i>Local Area Plan</i>
The Parks designation is intended to identify lands appropriate and sustainable for outdoor recreational opportunities while maintaining and supporting enhancement of the various ecosystems across the region.	The Parks designation is intended to ensure that adequate parkland and park amenities are available to all residents in the plan area.

The R-5 Zoned portions of the subject properties are designated as Residential in the OCP and Rural Residential in the local area plan.

<i>Official Community Plan</i>	<i>Local Area Plan</i>
The Residential Designation is intended to provide a wide range of housing and lifestyle options for various stages of life and different community lifestyles.	The Rural Residential designation is intended to provide a rural residential lifestyle option that creates a buffer between resource lands and residential areas with parcel areas ranging from 2 to 5 ha in size.

#### Development Permit Areas

The subject property is currently subject to the following Development Permit Areas (DPA):

- DPA1: Riparian Protection
- DPA2: Sensitive Ecosystem Protection
- DPA4: Aquifer
- DPA5: Wildfire

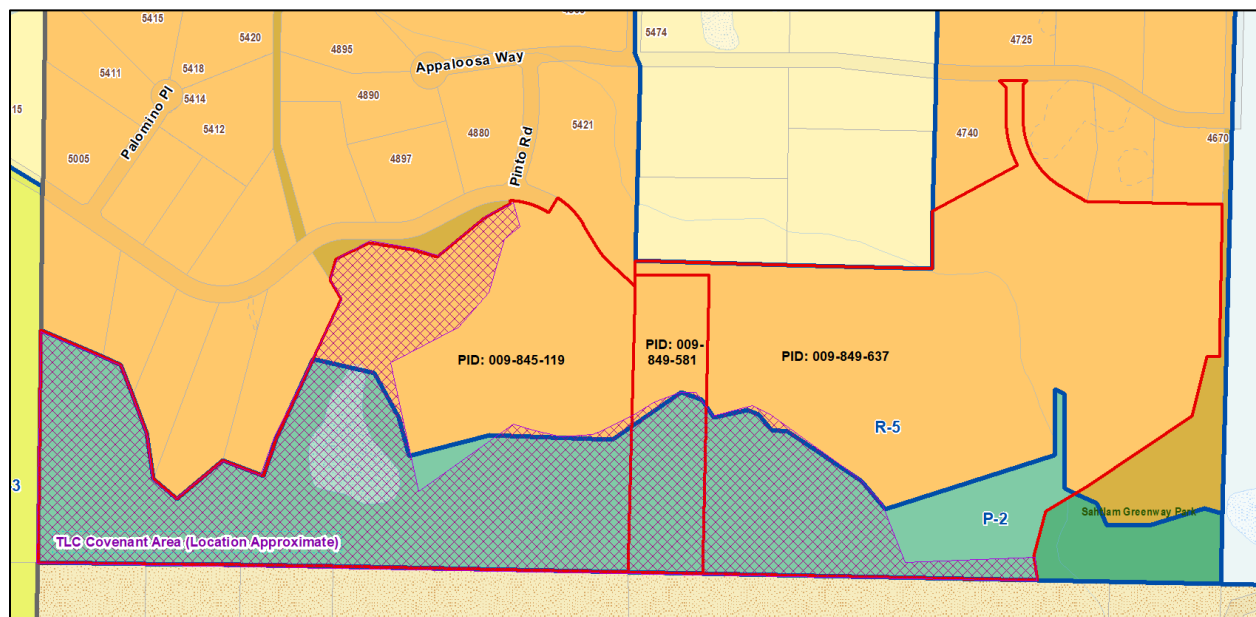
Future development of the property shall require development permits.

#### Area E – Cowichan Station/Sahtlam/Glenora Zoning Bylaw No. 1840:

The subject property is split into two distinct zones:

- The properties are currently split-zoned [R-5](#) (comprehensive Development Residential Zone) and [P-2](#) (River Corridor Conservation);
- The R-5 Zone allows for further subdivision, subject to amenity contributions in the form of fee-simple lots to be transferred to the Regional District (the sale of which will be used for community park purposes or the provision of fire protection services);
- The P-5 Zone was established as part of the R-5 zoning and was intended to match the boundaries of a conservation area volunteered by the previous land owner. This conservation area was not a condition of rezoning and is covered by a conservation covenant between the land owner and The Land Conservancy (TLC).

*Figure 4 – Zoning Boundaries Vs. Covenant Boundaries*





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R-5 Zone Density Bonusing Provisions:

Section 8.9(c)(6) of Bylaw No. 1840 requires that for each 4 parcels created in excess of 22, one parcel must be provided to the CVRD. These fee-simple parcels can be sold by the CVRD and the proceeds would be used for community park purposes and/or the provision of fire protection services.

Watercourse Regulations:

In addition to the requirements of the R-5 and P-2 zones, Section 12.12 of Bylaw No. 1840 notes that *“the area of a water body, watercourse or wetland shall not be included in the area of the parcel for the purposes of calculating the permitted number of parcels.”*

- In order to achieve the minimum parcel size within the R-5 Zone, the land available after excluding all wetlands and Streamside Protection and Enhancement Areas (SPEAs) must meet or exceed 1.0 ha.
- It is unclear how the “useable area” in the conceptual site plan (Attachment C) was calculated, as some of the proposed lots appear to show less than 1.0 ha in area exclusive of watercourse and/or wetlands.

Conservation Covenant (No. FB208158):

In addition to the density bonusing provisions of the R-5 Zone, a [Land Conservancy of British Columbia \(TLC\)](#) covenant is applicable to 59 acres of the property.

- The covenant requires that the owner prepare and adopt a Management Plan for managing the covenant area as a public regional park.
- The Covenant area cannot be sold, subdivided or transferred without written approval of the TLC.
- The covenant also permits the land owner to transfer the covenant area to the CVRD (or another party approved by the TLC).
- There is presently no mechanism to trigger the transfer of the park area to the CVRD (or another approved party).

The P-2 Zone boundaries was based on the proposed boundary of the Covenant area; however, there is a slight discrepancy between the P-2 zone and the TLC covenant. This is because the TLC Covenant was registered after the property was split zoned, and the CVRD is not a signatory to the TLC covenant.

**COMMISSION / AGENCY / DEPARTMENTAL CONSIDERATIONS**

The application was referred to internal divisions, and preliminary comments have been received from the Parks & Trails, Emergency Management and Community Planning Divisions (Attachment D).

The Parks & Trails Division has noted that:

- The covenanted (Land Conservancy of B.C.) lands represent an important trail linkage between Sandy Pool Regional Park and Inwood Creek Park (as part of the Sahtlam Greenway Trail).
- Additional information on the proposed park land may be necessary (*e.g. the area of the P-2 Zoned lands that are not within the covenant area (roughly 7 acres/2.8 ha) may not be suitable for park purposes*). Lands not suitable for park purposes could be incorporated within the proposed subdivision.

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- Under the existing Density Bonusing Provisions, 2 lots have been received and 4 additional lots were expected to be transferred to the CVRD Parks & Trails Division to be sold with the proceeds to be split 50/50 between Electoral Area E and Electoral Area F. Based on the applicant's anticipated density, only 3 additional lots are anticipated at this time; however, the request before the Board is that none of these lots be required.
  - There is currently no Park Advisory Commission for Electoral Area F for this application to be referred to so a decision will need to be made at the Board in regard to both Electoral Areas.

The Community Planning Division has noted that:

- There are environmental constraints that may limit the number of parcels that can ultimately be achieved through subdivision. The layout should be reviewed in accordance with the policies and guidelines of DPA 1 (Riparian Protection), DPA 2 (Sensitive Ecosystem Protection) and DPA 4 (Aquifer Protection).
- The preliminary subdivision plan shows many of the proposed parcels to be encumbered by riparian areas, which ultimately does not preserve the integrity of this sensitive environment.
- In order for the application to be considered, the subject properties should be consolidated as a condition of approval of rezoning (Note: it appears that a one of the parcels, PID: 009-845-119, is listed for sale).

The Emergency Management Division noted that:

- In light of the potential firehall relocation study that is being considered in conjunction with the Paldi development, additional contributions to the statutory reserve fund could help to offset the construction costs of a firehall or fire infrastructure.
- If the CVRD Board advances this application and directs staff to negotiate contributions to statutory reserve funds in lieu of lots, Fire Rescue Services would welcome additional contributions to the Sahtlam Fire Protection Service Area statutory reserve fund.

If the Board advances the application, these comments and the external agency feedback will be addressed through a subsequent report to the EASC, prior to consideration of bylaw readings.

**External Agency Referrals:**

Should the Board choose to proceed with the application, external referrals to the following agencies are recommended:

- |   |  |
|---|--|
| • Ministry of Transportation & Infrastructure         | • First Nations  |
| • Ministry of Forests                                 | • Ministry of Water, Land and Resource Stewardship     |
| • Ministry of Environment and Climate Change Strategy | • BC Hydro   |
| • Electoral Area E – Parks Advisory Commission (PAC)  | • Electoral Area E –Advisory Planning Commission (APC) |
|   | • The Land Conservancy                                 |

NOTE: A Parks Advisory Commission (PAC) for electoral Area F has not been appointed at this time.



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### **First Nations:**

Nations who may have interests within the area include:

- Cowichan Tribes
- Lake Cowichan First Nation
- Penelakut Tribe
- Halalt First Nation
- Lyackson First Nation
- Stz'uminus First Nation

### **PLANNING ANALYSIS**

#### **Next Steps:**

If the Board wishes to advance this application, the EASC may recommend to the Board that staff be directed to forward the application to external agencies once the recommended additional information is received. Staff would return to the EASC for consideration of referral comments, analysis of the application based on additional information, and next steps.

#### **Development Permits:**

The applicant has provided a letter of rationale (Attachment A) and a conceptual subdivision plan (Attachment C). The applicant notes that the plan is conceptual in nature and requires further refinement as septic field locations are confirmed, wells are drilled, and access is established.

Development Permits will still be required irrespective of any changes to the amenity contribution requirements within the R-5 Zone. Development permits would generally be required prior to subdivision approval and prior to any land clearing/alteration.

#### **Previous Density Bonusing:**

Under the existing Density Bonusing Provisions 7 lots would be transferred to the CVRD.

- 27 lots have been created to date which have triggered the transfer of 2 lots;
  - 1 lot was provided to the Sahtlam Fire Department. It has been sold, and the proceeds have been used for the provision of fire protection services).
  - The second lot is being held by the CVRD. Its proceeds are expected to be split 50/50 between Area E and Area F parks.

On July 11, 2007, the Board passed the following motion (07-433):

*That the methodology for receipt of funds derived from the sale of lots transferred in fee simple to the CVRD as outlined in proposed Bylaw No. 2909 (Caromar Sales) be as follows:*

- *Funds derived from the first lot acquired and subsequently sold under direction of the Board be allocated to the Sahtlam Fire Protection Service Area statutory reserve fund, and,*
- *Funds derived from the second and all additional lots acquired and subsequently sold under direction of the Board be allocated equally between the Electoral Area E Community Parks statutory reserve fund and the Electoral Area F Community Parks statutory reserve fund.*

*And furthermore, that expenditure of funds derived through the sale of such lots be limited to within the broader Sahtlam community of Electoral Areas E and F.*

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With the reduced density, a maximum of 44 lots will be created in the R-5 Zone:

- The subdivision that creates the 31<sup>st</sup> lot triggers the transfer of the 3<sup>rd</sup> lot;
- The subdivision that creates the 35<sup>th</sup> lot triggers the transfer of the 4<sup>th</sup> lot;
- The subdivision that creates the 39<sup>th</sup> lot triggers the transfer of the 5<sup>th</sup> lot;
- The 6<sup>th</sup> lot will not be transferred as 46 lots will not be constructed; and
- The 7<sup>th</sup> lot will not be transferred as 50 lots will not be constructed.

If the application were to proceed under the current density bonusing provisions three additional lots would be provided to the CVRD (for a maximum of 4 lots to be split between Area E and Area F parks); however, the applicants propose to eliminate the future transfer of three fee-simple residential lots (leaving the one lot currently held by the CVRD to be split between Area E and Area F parks).

In lieu of lots, the applicant proposes to dedicate the TLC covenanted lands and P-2 zoned portions of the property. These lands represent a trail linkage between Sandy Pool Regional Park and Inwood Creek Park (as part of the Sahtlam Greenway Trail). Per the Parks & Trails Division referral comments, additional information on the proposed park land may be necessary (*e.g. the area of the P-2 Zoned lands that are not within the covenant area (roughly 7 acres.2.8 ha) may not be suitable for park purposes*). Lands not suitable for park purposes could be incorporated within the proposed subdivision.

Additional Information:

Based on the feedback received during the initial referral process, additional information may be required. The Board may direct that these items be resolved prior to advancing bylaws. These items could include:

1. A lot consolidation to ensure that the TLC covenanted lands are transferred to the CVRD in advance of any further development/subdivision;
2. Contributions to the Electoral Area F community parks statutory reserve fund and/or Fire Rescue Services;
3. A revised subdivision plan to demonstrate substantial compliance with DPA 1 (Riparian Protection), DPA 2 (Sensitive Ecosystem Protection) and DPA 4 (Aquifer Protection) design guidelines, including:
  - a. Modifications to minimize crossings of riparian areas and maximize the distance between roads and riparian areas.
  - b. Modifications to minimize the number of proposed non-contiguous lots bisected by riparian areas.
  - c. A revised map clearly differentiating TLC covenanted areas, P-2 Zoned Areas, Natural Boundaries of watercourses, Streamside Protection and Enhancement Areas (SPEAs), stream crossings, and proposed road networks.
  - d. Setback information related to wells and septic discharge areas as set out in Island Health's Subdivisions Standards;
  - e. Confirmation from a qualified BC Land Surveyor ([ABCLS](#)) of the minimum lot sizes (1 ha) after removal of the SPEAs associated with wetlands, watercourses and streams;
4. Confirmation from a qualified environmental professional (QEP) that:
  - a. The revised subdivision plan will have no adverse effect on the natural features, functions and conditions that support fish life processes in the 30.0m riparian assessment area (*where a non-contiguous lot (bisected by riparian areas) is*

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*unavoidable, recommendations from a QPE shall be provided to ensure that the development will not harm natural features, functions and conditions in the riparian assessment area).*

- b. The revised subdivision plan will have no adverse effect on Western Toad Habitat.
- 5. Conceptual site plans showing building envelopes within allowable footprints, driveway access, Sewerage & water infrastructure, and parking areas;
- 6. Details on the proposed parkland dedication areas, including, topographic and environmental constraints for the 2.8 ha of P-2 Zoned lands that are not within the covenant area.
- 7. Trail construction standards and locations within the proposed development (to provide connectivity between subdivision blocks and the proposed CVRD/TLC park)

This list will be further refined following the external agency feedback. These and other items may be addressed through a subsequent report to EASC, prior to consideration of bylaw readings.

## **OPTIONS**

### Option 1 (Request Information and Refer the Application):

That it be recommended to the Board:

- 1. That the following additional information be provided to support Application No. RZ23E01 (Appaloosa Way, PID 009-845-119, PID: 009-849-637, and PID: 009-849-581):
  - a. A revised subdivision plan to demonstrate substantial compliance with DPA 1 (Riparian Protection), DPA 2 (Sensitive Ecosystem Protection) and DPA 4 (Aquifer Protection) design guidelines, including:
    - i. Modifications to minimize crossings of riparian areas and maximize the distance between roads and riparian areas.
    - ii. Modifications to minimize the number of proposed non-contiguous lots bisected by riparian areas.
    - iii. A revised map clearly differentiating TLC covenanted areas, P-2 Zoned Areas, Natural Boundaries of watercourses, Streamside Protection and Enhancement Areas (SPEAs), stream crossings, and proposed road networks.
    - iv. Setback information related to wells and septic discharge areas as set out in Island Health's Subdivisions Standards;
    - v. Confirmation from a qualified BC Land Surveyor ([ABCLS](#)) of the minimum lot sizes (1 ha) after removal of the SPEAs associated with wetlands, watercourses and streams;
  - b. Confirmation from a qualified environmental professional (QEP) that:
    - i. The revised subdivision plan will have no adverse effect on the natural features, functions and conditions that support fish life processes in the 30.0m riparian assessment area (*where a non-contiguous lot (bisected by riparian areas) is unavoidable, recommendations from a QPE shall be provided to ensure that the development will not harm natural features, functions and conditions in the riparian assessment area).*
    - ii. The revised subdivision plan will have no adverse effect on Western Toad Habitat.
  - c. Conceptual site plans showing building envelopes within allowable footprints, driveway access, Sewerage & water infrastructure, and parking areas.

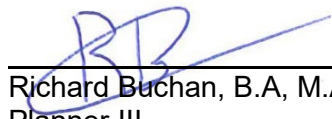
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- d. Details on the proposed parkland dedication areas, including, topographic and environmental constraints for the 2.8 ha of P-2 Zoned lands that are not within the covenant area.
  - e. Trail construction standards and locations within the proposed development (to provide connectivity between subdivision blocks and the proposed CVRD/TLC park).
2. That on receipt of the additional information, Application No. RZ23E01 (Appaloosa Way, PID 009-845-119, PID: 009-849-637, and PID: 009-849-581), be referred to the following external agencies and First Nations:
- a. Cowichan Tribes;
  - b. Lake Cowichan First Nation;
  - c. Penelakut Tribe;
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  - g. Ministry of Transportation & Infrastructure;
  - h. Ministry of Forests;
  - i. Ministry of Environment and Climate Change Strategy;
  - j. Electoral Area E – Parks Advisory Commission (PAC);
  - k. Ministry of Water, Land and Resource Stewardship;
  - l. BC Hydro;
  - m. Electoral Area E –Advisory Planning Commission (APC); and
  - n. The Land Conservancy,

Option 2 (Request Additional Information):


That it be recommended to the Board that the preliminary staff report for Application No. RZ23E01 (Appaloosa Way, PID 009-845-119, PID: 009-849-637, and PID: 009-849-581), be referred back to staff for the following information [*requested information to be provided by the Board*], prior to further consideration.

Option 3 (Deny): That it be recommended to the Board that Application No. RZ23E01 (Appaloosa Way, PID 009-845-119, PID: 009-849-637, and PID: 009-849-581), be denied, [*specific reasons to be identified by the Board*].

Prepared by:

  
Richard Buchan, B.A, M.A  
Planner III

Reviewed by:

  
Michelle Pressman, RPP, MCIP, MPlan  
Manager

  
Ann Kjerulf, MCP, RPP, MCIP  
General Manager

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

Resolution:

☒ Corporate Officer

Financial Considerations:

☒ Chief Financial Officer

**ATTACHMENTS:**

Attachment A – Rationale Letter

Attachment B – Additional Rationale

Attachment C – Conceptual Subdivision Plan

Attachment D – Internal Referral Responses

Attachment E – Environmental Report

Attachment F – Existing Covenant

Attachment G – Development Permit No. DP23E05