



STAFF REPORT TO COMMITTEE

DATE OF REPORT January 16, 2024
MEETING TYPE & DATE Electoral Area Services Committee of February 7, 2024
FROM: Parks & Trails Division
Operations Department
SUBJECT: Electoral Area A - Mill Bay/Malahat Statutory Right of Way
Discharge between Fawn Terrace and Lodgepole Road
FILE: COV21A02

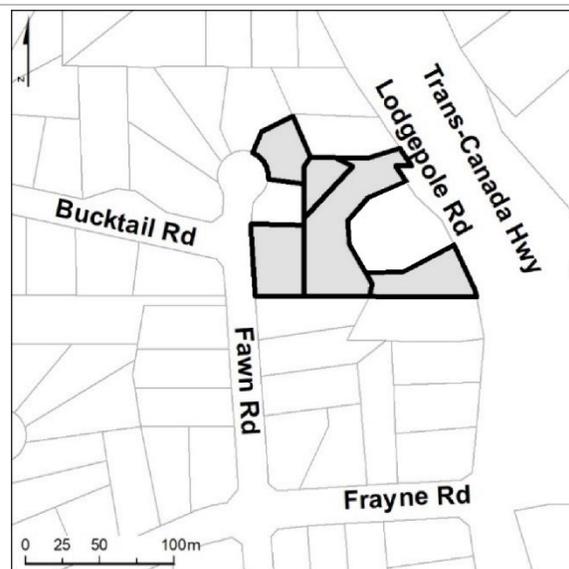
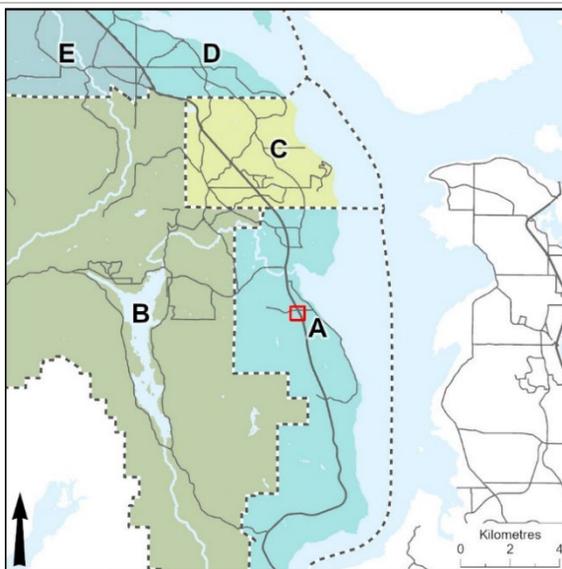
PURPOSE/INTRODUCTION

The purpose of this report is to consider discharging registered Statutory Right of Way (SRW) EG110164 on several properties between Fawn Road and Lodgepole Road in Electoral Area A – Mill Bay/Malahat.

RECOMMENDED RESOLUTION

That it be recommended to the Board that Statutory Right of Way EG110164 be discharged from several properties between Fawn Road and Lodgepole Road (specifically PIDs: 018-390-421, 018-390-404, 023-517-531, 023-517-557; and the Common Property of VIS4065), subject to a financial amenity contribution from the property owners (the applicants) to the Electoral Area A Community Parks Capital Reserve Fund equal to the fair market value of the Statutory Right of Way as determined by a certified land appraiser.

LOCATION MAP



BACKGROUND

The Electoral Area Services Committee at its meeting of September 7, 2022 considered an application to discharge a Statutory Right of Way (SRW EG110164) registered in favour of the CVRD across several residential properties between Fawn Road and Lodgepole Road in Electoral Area A – Mill Bay/Malahat ([2022-09-07 EASC RPT COV21A02](#)). The purpose of the SRW provides for the use of the land “...for normal pedestrian and non-motorized vehicular use by the servants, agents and invitees, including the public, of the Grantee.” The Cowichan Valley Regional District is named as the Grantee. The SRW was originally established in 1993 in conjunction with creation of a 22-lot residential subdivision off of Frayne Road, and currently encompasses four residential properties and one strata lot. The rationale provided to discharge the SRW included limitations with managing public use with the SRW, the inability of the CVRD to build and/or maintain a public pathway or otherwise undertake any improvements (i.e. signage, garbage can installation, etc.).

In considering the application to discharge the SRW, the following resolution (22-507.5) was approved at the September 28, 2022 Board meeting:

1. *That an information sign be posted on the Fawn Road public access right of way advising the Regional District is considering the discharge/closure of the right of way and is seeking public feedback.*
2. *That the application to discharge Statutory Right of Way EG110164 be referred to the Electoral Area A – Mill Bay/Malahat Community Parks Advisory Commission for comment.*

ANALYSIS

Public Feedback:

As per direction of the Board, a community notice was posted adjacent the SRW on a community mailbox at the end Fawn Road between September 8, 2023 and October 20, 2023. The timing of the community notice posting was purposeful to capture the attention of any users following the summer months/return to school while the daylight and weather was still reasonable. The single notice was considered to be sufficient, as any community member using the SRW, along with those retrieving mail at the community mailbox, would see the information posted.

During the time that the community notice was posted, the Parks & Trails Division received one written response from the community providing input on the potential removal of the SRW in question. The response noted that they are opposed to removing the SRW. The individual responding noted that they use the SRW regularly and feel that it is more convenient and safer than the alternative route along Lodgepole Road.

In addition, one of the property owners upon which the SRW is registered responded to the notice during this time, advising that they are content with how the SRW is operating as it is. However, their response also noted that they are not opposed to the removal of the SRW, but had concerns about any associated costs that it would require to have the SRW removed.

Referral to the Electoral Area A Parks Advisory Commission:

On November 14, 2023 the application to discharge the Fawn Rd SRW was referred to the Area A Park Advisory Commission for comment. In reviewing the application referral, the Area A Parks Advisory Commission passed the following recommendation:

“It was moved and seconded that it be recommended to the Board that Statutory Right of Way EG110164 be discharged, subject to a financial amenity contribution to the Electoral Area A Community Parks Capital Reserve Fund equal to the fair market value of the Statutory Right of Way as determined by a certified land appraiser.”

The Area A Park Advisory Commission minutes and motion were included as information (IN1) to the EASC on [December 20, 2023](#).

The following options are provided for consideration:

Option 1: (Recommended)

That it be recommended to the Board that Statutory Right of Way EG110164 be discharged from several properties between Fawn Road and Lodgepole Road (specifically PIDs: 018-390-421, 018-390-404, 023-517-531, 023-517-557; and the Common Property of VIS4065), subject to a financial amenity contribution from the property owners (the applicants) to the Electoral Area A Community Parks Capital Reserve Fund equal to the fair market value of the Statutory Right of Way as determined by a certified land appraiser.

Option 2:

That it be recommended to the Board that Statutory Right of Way EG110164 not be discharged.

The Parks & Trails Division is supportive of the request to discharge the registered SRW on the five properties, given the inability of the CVRD to develop and maintain a public pathway per the limited conditions of the SRW, ongoing liability issues and with consideration of best management approaches now practiced by the CVRD to establish pathway connections within Electoral Areas, inclusive of the community pathway network outlined in the adopted Electoral Area A Community Parks and Trails Master Plan.

FINANCIAL CONSIDERATIONS

If the SRW were to be discharged, it may require the SRW to be surveyed by a professional land surveyor, as well as legal costs to file the discharge with Land Titles. It would, therefore, be applicable to deduct such costs from the fair market value determined for the SRW, given these costs would otherwise be incurred by the CVRD with a property disposal.

COMMUNICATION CONSIDERATIONS

N/A

STRATEGIC/BUSINESS PLAN CONSIDERATIONS

Area A Community Parks & Trails Master Plan

The SRW alignment for public access and use across the properties between Fawn Road and Lodgepole Road is not part of the community trail/pathway network highlighted in the adopted [Area A Community Parks & Trails Master Plan, 2015](#).

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)*

Prepared by:



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Reviewed by:



Brian Farquhar
Senior Manager, Parks & Trails Division



Darcy Mooney
General Manager, Operations Department

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

Resolution:

Corporate Officer

Financial Considerations:

Chief Financial Officer

ATTACHMENTS:

Attachment A – Subdivision Plan