

DATE: June 11, 2021**FILE:** 3220-20 / UBE**TO:** Chair and Directors
Electoral Areas Services Committee**FROM:** Russell Dyson
Chief Administrative OfficerSupported by Russell Dyson
Chief Administrative Officer*R. Dyson***RE: Union Bay Estates, Requirement for Provision of Park Land or Payment for Parks Purposes**

Purpose

To review a request (Appendix A) by the developers of Union Bay Estates (UBE) that the amenity parkland transfer within the Master Development Agreement (MDA) account for the provision of park land required by Section 510 of the *Local Government Act* (RSBC, 2015, c. 1) (LGA).

Recommendation from the Chief Administrative Officer:

THAT the Comox Valley Regional District Board deem the 51.3 hectares parkland amenity contribution described in the Union Bay Estates Master Development Agreement (2010 and 2017) to be acceptable to fulfill the requirements under Section 510 for subdivision files 02774 A 18 (subdivision plan dated November 4, 2020) and 02520 A 20 (subdivision plan dated January 4, 2021).

Executive Summary

- The UBE MDA requires that the developer transfer to the Comox Valley Regional District (CVRD) 51.3 hectares (representing 16 per cent of the development project area) for park purposes. Section 510 of the LGA requires an application for subdivision, under certain circumstances, provide a maximum of 5 per cent of the land for park purposes or cash-in-lieu.
- The UBE MDA is a covenant that was registered on the land titles as a condition of adopting the rezoning bylaw that created the Kensington Comprehensive Development Zone. The UBE MDA contains various amenity contributions that were offered to offset the impacts to the community as a result of the type and increased density of the proposed development. The 51.3 hectares of park land will be a significant community asset.
- The developer is requesting that the board consider the 16 per cent amenity park land contribution as an upfront park land dedication for all future subdivision (i.e. 11 per cent as amenity and 5 percent as the park land contribution per Section 510 of the LGA).
- As of the date of this report, the 51.3 hectares of park land has not been dedicated to the CVRD. The owner's agent has advised that the owner's lawyers are in the process of preparing the conveyance documents.
- Staff is satisfied with the park provisions supplied in files 02774 A 18 and 02520 A 20 (Appendix B), such as the shoreline trail and land around Washer Creek. However, staff recommends reviewing future individual subdivision layouts concurrent with considering park land contributions under Section 510 of the LGA so as not to fetter the decision of any future board in its consideration of accepting additional park land.

Prepared by:

J. MacLean

Jodi MacLean, RPP, MCIP
Planner II

Concurrence:

T. Trieu

Ton Trieu, RPP, MCIP
Manager of Planning Services

Concurrence:

A. Mullaly

Alana Mullaly, RPP, MCIP
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and Development Services

Concurrence:

M. Harrison

Mark Harrison, MLA, RLA
Manager of Parks

Concurrence:

D. DeMarzo

Doug DeMarzo, RPP, MCIP
General Manager of
Community Services

Government Partners and Stakeholder Distribution (Upon Agenda Publication)

McElhanney (agent for the developers of Union Bay Estates)	✓
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Background/Current Situation

The proponents of the UBE development project have made an application for a subdivision on the eastern side of Highway 19A (CDA-2 in Figure 1; subdivision files 02774 A 18 and 02520 A 20). Further applications are expected in the future for subdivision and development over the ~305 hectare project area to create lots suitable to accommodate approximately 2,900 residential units. In addition to the Zoning Bylaw and the MDA, subdivision and development within this UBE development project is subject to the provisions of other pieces of legislation, such as Section 510 of the LGA which requires the provision of land or payment for parks purposes. An agent on behalf of the UBE developers has submitted a letter, dated May 6, 2021 (Appendix A) requesting the park land dedication required by the MDA also account for the park land dedication required by Section 510 of the LGA. Because staff does not have the ability to waive park land dedication required by Section 510 of the LGA, board approval is required to fulfill this request and subsequently convey the same to the provincial approving officer as part of staff’s comments on the subdivision referral

Section 510 of the LGA

In British Columbia, subdivisions which create three or more lots, the smallest of which is less than 2 hectares, are subject to Section 510 of the LGA (see Policy Analysis section below for additional details). That section requires the owner to provide the local government a maximum of 5 per cent of the land being subdivided, or the cash-in-lieu equivalent. The land (or cash-in-lieu) can only be used for park purposes. It is used by local governments to help acquire land that is valuable as park space before it is subdivided and developed and populated by future residents. This section can only be used once on a given area of land so that subsequent subdivisions do not trigger the requirement again and it does not include considerations for utilizing land outside the area being immediately proposed for subdivision. The MDA reflects this intent in Clause 3(e).

The cash-in-lieu option is available should the subdivision not contain area suitable or desirable for a park and is based on an appraisal at the time of subdivision.

Section 11 of the Official Community Plan, Bylaw No. 337, being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014” (OCP), directs the CVRD to utilize the Comox Valley Parks and Greenways Strategic Plan when evaluating and accepting park land acquisitions. In circumstances when this Section 510 of the LGA is triggered, the subdivided lands are evaluated

accordingly and either the land or cash options are selected. The UBE subdivisions are qualifying subdivisions for which the Section 510 LGA requirement for provision of park land or payment for parks purposes is triggered.

UBE Master Development Agreement

All the lands within the Kensington Comprehensive Development Zone are subject to the MDA and is a legally-binding covenant between the CVRD and the property owners. It was registered on the titles in 2010 as a condition of the CVRD adopting the rezoning bylaw that enabled the subdivision and development of the lands in accordance with the new Kensington Comprehensive Development Zone. In 2017, an amending agreement was registered on the titles. Generally, the MDA lists the amenity contributions and conditions developers must satisfy to enable the first subdivision and first building within the development project. Among the amenity contributions include:

- 51.3 hectares (i.e. 16 per cent of coal hills and development lands) for use as park and trails (to be provided at time of subdivision)(Figure 2) (outstanding)
- Improvements to the parks and trails with a 15 year maintenance obligation (outstanding)
- \$250,000 cash contribution for use in affordable housing (received)
- 30 lots or cash equivalent for use in affordable housing (outstanding)
- Land for a fire hall (received by Union Bay Improvement District, to be transferred to the CVRD on July 1, 2021)
- Serviced land for a school site (UBE and School District No. 71 currently in discussions regarding location) (outstanding)
- \$25,000 cash contribution for use in public transit (outstanding)
- \$10,000 cash contribution for use in constructing bus shelters (outstanding)
- Design option in wastewater treatment plant to expand its capacity (discussions underway)

Addressing subdivision and parks, the 2017 revisions to the MDA made the dedication or transfer of Park and Trails (Initial) due at the time of first building permit or subdivision.¹ Park and Trails (Initial) is defined as an area not less than 36.7 hectares along Washer Creek, the rail line and the waterfront area. Parks and Trails (Remainder), which is to be not less than 14.6 hectares, is required upon the first subdivision within CDA-1 and is to be located along a watercourse in the vicinity of Van West Logging Road. Combined, the Park and Trails are to be 51.3 hectares representing approximately 16 per cent of the development project area. The MDA does not make explicit reference to Section 510 of the LGA.

CDA-2 Subdivision

UBE has made applications to subdivide CDA-2. Appendix B illustrates the proposed lot layout with Lot C being transferred as park land as part of Park and Trails (Initial). Lot C consists of 2.5 hectares, including the riparian area around Washer Creek and a shoreline trail. Lot B is intended to be further subdivided into strata lots for single detached dwellings in subdivision file 02520 A 20.

Update on Park Transfer

The CVRD parks department has been working with the UBE developers to finalize the boundaries and conditions to accept the Park and Trails (Initial). While the transfer has yet to occur, it is expected to consist of approximately 35.5 hectares along Washer Creek within CDAs 1 and 4 west of the highway, plus Lot C noted above.

¹ The original 2010 MDA had required park transfers at the time of first residential building permit in phases on a CDA-by-CDA basis.

As of the date of this report, the Park and Trails (Initial) has yet to be transferred to the CVRD. It is one of several conditions that must be satisfied prior to issuance of the first building permit (i.e. Discovery Centre) or approval of the proposed CDA-2 subdivision. The CVRD parks department has worked with the property owner's agents to finalize and legally survey the Park and Trails (Initial) boundaries. The final details of the park, including encumbrances and obligations within the park areas are still being worked on with the proponent's agents.

To facilitate the timeliness and efficiency of this park transfer for the developer, the parks department have agreed with the applicants to:

- Incorporate the easements necessary for the storm sewers (connecting the proposed roads to the watercourse) into the park totals.
- Incorporate contaminated fill into a 1.2 hectare park area along the east side of the highway.
- Accept a statutory right-of-way agreement in lieu of the transfer of title for the parks on the east side of the highway until a Certificate of Compliance is completed with the Ministry of Environment concerning site remediation.

Policy Analysis

For a subdivision in which three or more lots are created (under 2 hectares in area), Section 510(1) of the LGA states "...an owner of land being subdivided must...(a) provide, without compensation, park land of an amount and in a location acceptable to the local government, or (b) pay to the municipality or regional district an amount that equals the market value of the land that may be required for park land purposes under this section as determined under subsection (6) of this section." Because the OCP contains policies and designations respecting the location and type of future parks, Section 510(2) enables a regional district to determine whether the requirement shall be provided in land or cash. Section 510(5) limits the amount to be transferred to no more than 5 per cent of the land being proposed for subdivision.

If the cash equivalent is selected (which can be no more than 5 per cent of the value of the land), then Section 510(6) states:

"If an owner is to pay money under subsection (1) (b), the value of the land is whichever of the following is applicable:

- (a) if the local government and the owner agree on a value for the land, the value on which they have agreed;
- (b) the average market value of all the land in the proposed subdivision calculated
 - (i) as that value would be on the date of preliminary approval of the subdivision or, if no preliminary approval is given, a date within 90 days before the final approval of the subdivision,
 - (ii) as though the land is zoned to permit the proposed use, and
 - (iii) as though any works and services necessary to the subdivision have not been installed."

Section 510(8) states "If an area of land has been used to calculate the amount of land or money provided or paid under this section, that area must not be taken into account for a subsequent entitlement under subsection (1) in respect of any future subdivision of the land."

Options

The board may:

1. Direct staff to interpret the park transfer as described in the MDA as also accounting for the park provision requirement under Section 510 of the LGA for all future subdivisions that trigger Section 510.
2. Waive the requirement under Section 510 of the LGA for the proposed CDA-2 subdivision (i.e. subdivision files 02774 A 18 and 02520 A 20). Further requests for waiving the

provisions of Section 510 may be considered only upon submission of a subdivision application.

3. Opt to not waive the requirements of Section 510 of the LGA and direct staff to interpret the park transfer as described in the MDA as not accounting for the park provision requirement under Section 510 of the LGA.

Staff recommends option 2.

Financial Factors

Any monies collected through Section 510 of the LGA (cash-in-lieu) are held in Parks - Land Acquisition Reserve (Function 884). This reserve can only be used to the purposes of purchasing lands for park purposes. While the CVRD would not opt for a total cash-in-lieu payment, an independent appraisal would be needed to determine the amount involved in any such payment.

Legal Factors

This report and the recommendations contained herein are in compliance with the LGA and CVRD bylaws and MDA obligations.

Regional Growth Strategy Implications

The subject properties are designated as a Settlement Node in the Regional Growth Strategy (RGS), being the “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010”. According to the RGS, Settlement Nodes are to accommodate compact forms of development through a balance of new development, intensification and improvements to public infrastructure. It is an objective of the RGS (Objective 2-D) to increase access to parks and recreation areas by requiring new developments to link to, improve or expand the existing greenway network and by working with all jurisdictions to coordinate greenway network connections.

Intergovernmental Factors

There are no intergovernmental factors.

Interdepartmental Involvement

The request (Appendix A) has been reviewed by the parks and planning departments and their comments have been incorporated into this report.

Citizen/Public Relations

The MDA was adopted as part of the public rezoning process in 2009-10 which included a public hearing with the 16 per cent park contribution in the amenity package presented. Individual acquisitions of park land under Section 510 of the LGA does not have a public review provision, though it must be consistent with the Rural Comox Valley Parks and Greenways Strategic Plan.

Attachments: Appendix A – Letter dated May 6, 2021, titled Union Bay Estates - Parkland Dedication and Community Amenity Contributions
Appendix B – Subdivision plans 02774 A 18 and 02520 A 20

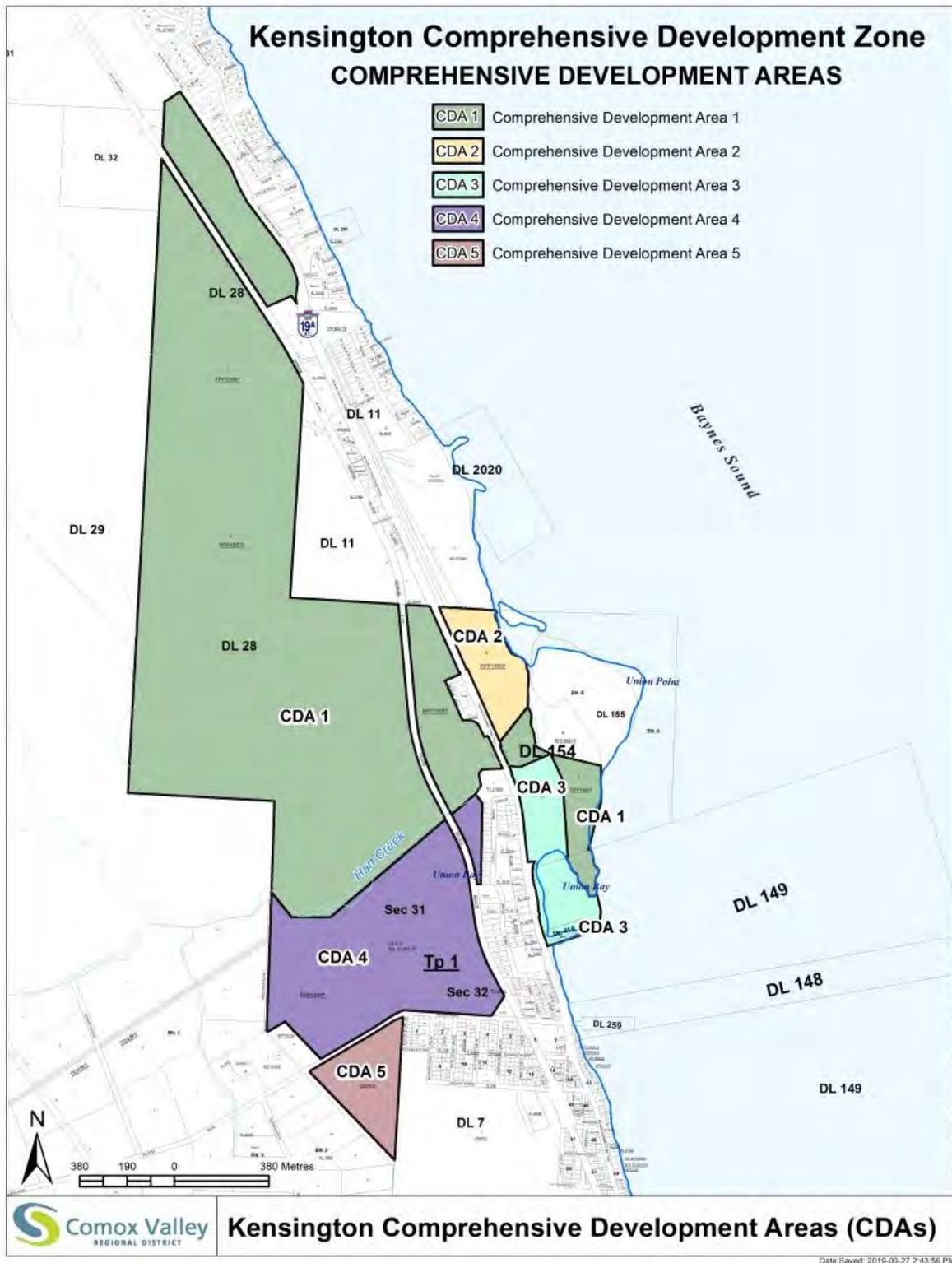


Figure 1: Comprehensive Development Areas (CDA) and Subject Properties of the Union Bay Estates (Kensington) Development

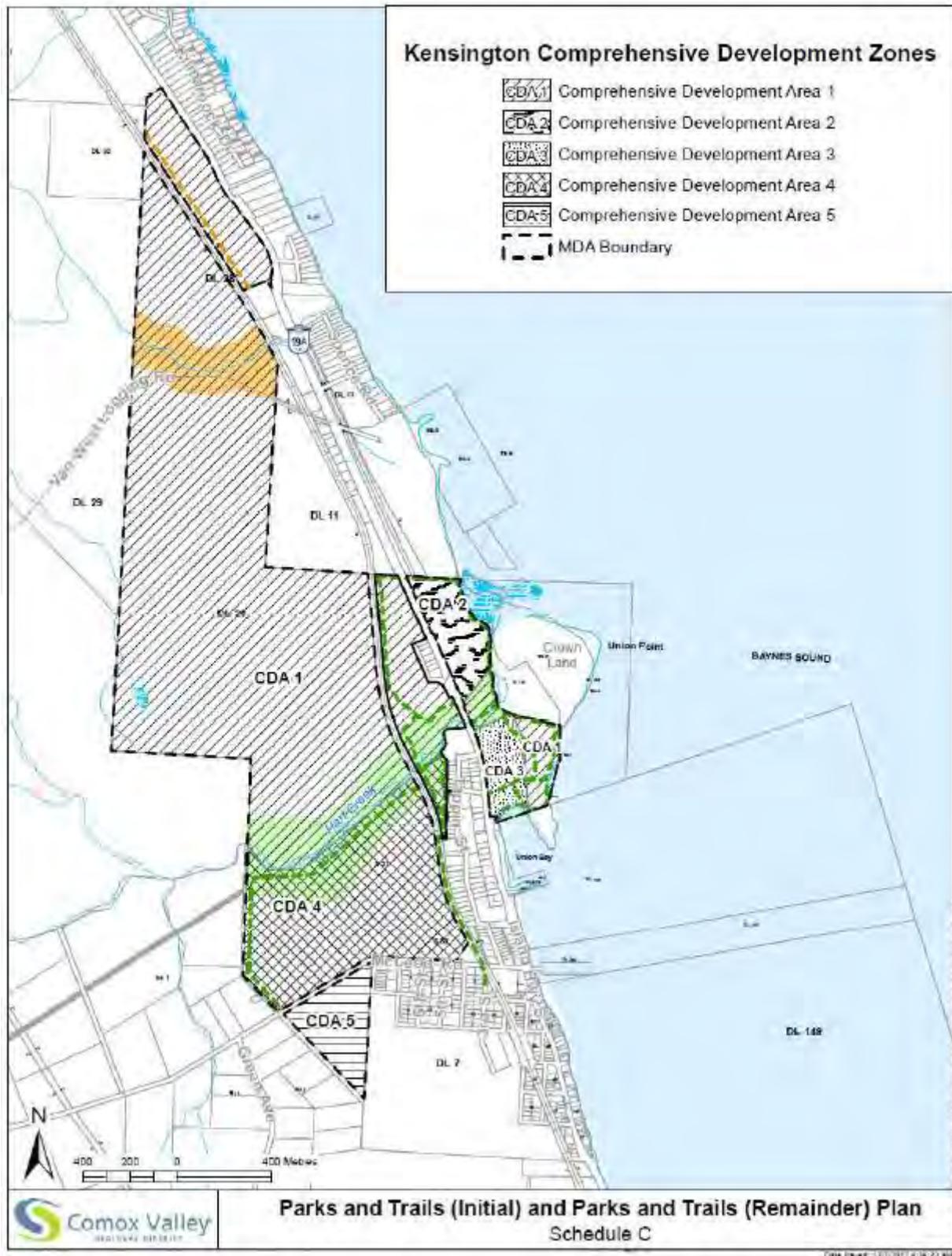


Figure 2: General Location of the Parks Required by the MDA

Our File: 2211-47390

May 6, 2021

Planning and Development Services Branch
Comox Valley Regional District
700 Harmston Avenue,
Courtenay, BC V9N 0G8

Attention: Ton Trieu
Manager of Planning

Union Bay Estates - Parkland Dedication and Community Amenity Contributions

REQUEST

We are requesting that the Board confirm that the 16% parkland (128.25 acres) to be transfer as a condition of the Master Development Agreement for Union Bay Estates (UBE) accounts for:

1. 5% park land dedication as required under the LGA Section 941 (now Section 510); and,
2. an additional 11% land dedicate in form of a community amenity contribution.

BACKGROUND

In 2009, Kensington and the Comox Valley Regional District (CVRD) negotiated a Master Development Agreement for ~ 308 ha of land, now know as Union Bay Estates. The negotiations addressed numerous items including:

- Affordable housing
- Servicing (water and sanitary)
- Transit
- Housing typology
- Parks and Trails

As a part of the negotiations, it was agreed that 16 % of the land would be transferred to the CVRD for parks and trails. At this time, it was understood by Kensington that the 16% represented the legally required 5% parkland dedication under Section 941 of the LGA and an additional 11% for a community amenity contribution (CAC) for a total park land dedication of 51.3 ha (128.25 acres) of land and trails.

McElhanney

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The project is now proceeding, and we are in the process of transferring park land to the CVRD. In addition, there is an active subdivision application with MoTI for review. We have been informed that the CVRD requires an additional 5% parkland dedication as per Section 510 of the LGA.

We are requesting this determination by the CVRD Board. There is no longer any staff member at the CVRD that was involved on the original negotiation of the MDA; as such it was recommended that a request was made to the Board to consider this issue.

RATIONALE

As noted above, in 2009, Kensington and the CVRD negotiated various key aspects for the future development of the lands. This included the 51.3 ha (128.25 acres) of park and trail lands.

The parks and trail areas are defined as:

***"Parks and Trails"** means, the 51.3 hectare portion of the Lands shown on Schedule "A" as Park and Trail and representing 16% of the total area of the Coal Hills and the Lands that the Developer will either dedicate or transfer to the Regional District as park in accordance with paragraphs 2.5(b) and 3.1(e);*

***"Parks and Trails (Initial)"** means that portion of the Lands comprising not less than 36.7 hectares, shown in green on Schedule "C" to be dedicated or transferred to the Regional District as park in accordance with Section 2.5(b);*

***"Parks and Trails (Remainder)"** mean that portion, or those portions, of the Lands comprising not less than 14.6 hectares, shown in orange on Schedule "C" to be transferred to or dedicated as park to the Regional District in accordance with Section 3.1(e) as park;*

In addition, to the CAC of 11% of parks and trails, the developer also agreed to the construction of all the trails and amenities as well as the requirement to maintain and operate the parks and trails for 15 years from the time of the first occupancy permit. The cost of trail construction and amenities is unknown at this time; however, the cost of maintenance is anticipated to be a minimum of \$20,000/ year for 15 years.

It should be noted these are not the only CACs provided by UBE. UBE is/has also provided the following:

- Wastewater Treatment Facility with the ability to expand to services Union Bay
- A 4-7 acre school site
- A 5 acre firehall site
- A public gathering/performance area
- \$10,000 to construct a Bus stop
- \$25,000 to Reginal transit

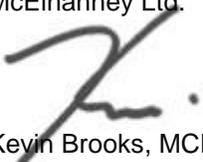


SUMMARY

Parks and open space are essential for an attractive and vibrant community. Our request is that the Board confirm that the 16% (51.3 ha) of parks and trails represent both the LGA 5% plus the CACs as requested above.

Thank you for your consideration and we look forward to continuing to work together on this project.

Sincerely,
McElhanney Ltd.



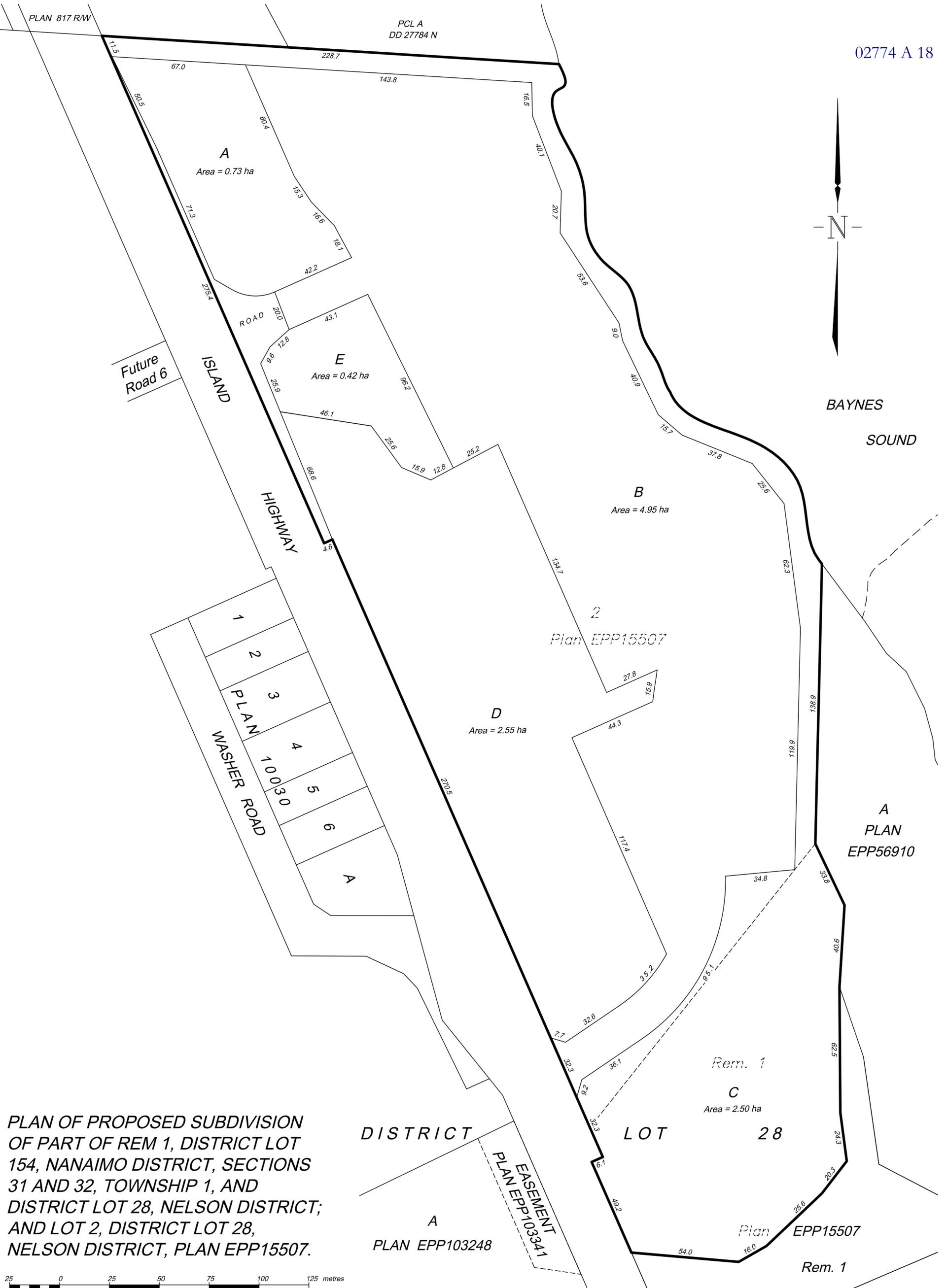
Kevin Brooks, MCIP, RPP
kbrooks@mcelhanney.com | 778 560-2371

02774 A 18



BAYNES
SOUND

A
PLAN
EPP56910



PLAN OF PROPOSED SUBDIVISION
OF PART OF REM 1, DISTRICT LOT
154, NANAIMO DISTRICT, SECTIONS
31 AND 32, TOWNSHIP 1, AND
DISTRICT LOT 28, NELSON DISTRICT;
AND LOT 2, DISTRICT LOT 28,
NELSON DISTRICT, PLAN EPP15507.



DISTRICT

LOT 28

A
PLAN EPP103248

PLAN EASEMENT
PLAN EPP103341

Rem. 1
C
Area = 2.50 ha

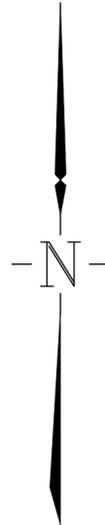
Plan EPP15507

Rem. 1

NOTE:
- Dimensions are in metres and decimals thereof

PCL A
DD 27784 N

02520 A 20



Future
Road 6

ISLAND

HIGHWAY

WASHER ROAD

PLAN

Future
Road 6

EPP104244

COMMON

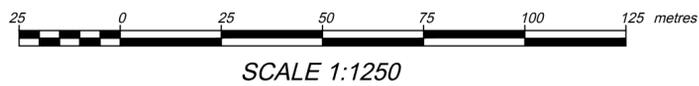
PROPERTY

(ACCESS)

BAYNES
SOUND

A
PLAN
EPP56910

PLAN OF PROPOSED BARE LAND
STRATA SUBDIVISION OF LOT B,
DISTRICT LOT 28, NELSON DISTRICT,
PLAN EPP104244.



NOTE:
- Dimensions are in metres and decimals thereof
- Plan EPP104244 has not been registered and work
is currently in progress.

DISTRICT

LOT 28

A
PLAN EPP103248

EASEMENT
PLAN EPP103341

Rem. 1
PLAN EPP15507