



Memo

File: 3060-20/DP 3D 22

Date: April 26, 2022

To: Advisory Planning Commission
Electoral Area 'D' (Oyster Bay-Buttle Lake)

From: John Neill, Planner

Re: ESA DP – Watercourse – Lynnwood Road, Campbell River BC
Pcl. A (DD L4188) of Lot A, District Lot 85, Comox District, Plan 35137

The attached is for information purposes only, as there are limited discretionary powers associated with development permit applications as they are specific to the environmental requirements contained within the OCP and as associated with the provincial Riparian Areas Regulation, as they relate to development (including subdivision) within 30 metres of a riparian area be subject to a report prepared by a Qualified Environmental Professional (QEP).

The above is supported in accordance with the leading case authorities, such as the 1997 decision of the B.C. Court of Appeal in *Westfair Foods v. Saanich (District)*, when exercising its power to refuse a development permit, the Board is acting in a quasi judicial capacity and has a limited discretion, such that the Board is not entitled to take into account issues or considerations that are not set out in the applicable provisions of the OCP. This being said, there is no ability for the Board to compel the applicant to provide details outside of those contained within the OCP guidelines or the provision of community amenities, such as trails, parks, etc.

For the APC's information, the subject property is designated as Residential in the *Oyster Bay – Buttle Lake Official Community Plan* and is Residential Three (R-3) in the *Campbell River Area Zoning Bylaw*. It is surrounded by Residential Three zoning on the south and east sides and by the City of Campbell River on the west side. The proposed subdivision is permitted by the zoning bylaw; however, as the subdivision is located within 30 metres of the top bank of a watercourse connected to fish habitat, and therefore within an environmentally sensitive development permit area (DPA), an environmentally sensitive area development permit (ESA DP) is required.

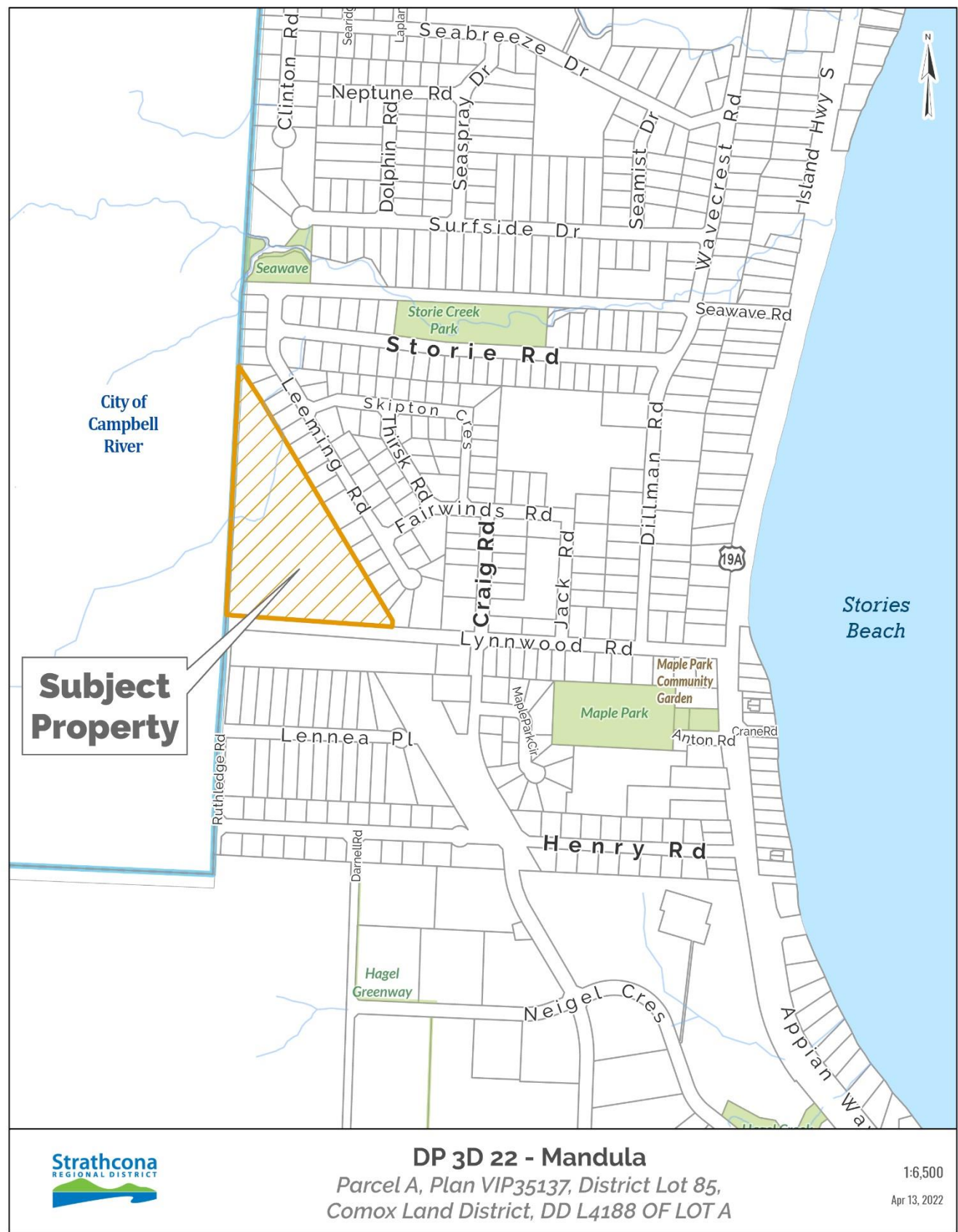
A Riparian Area Assessment (RAA) has been prepared by Matthew Lebron RPBio and Shawn Mandula, RPBio, which provides support for the issuance of the ESA DP and recommendations for the protection of fish habitat from the proposed subdivision. In the RAA, the QEPs have set criteria for the proposed subdivision, including the demarcation of the 30-metre riparian buffer in the central and north sections of the property to ensure that there is no future encroachment within the riparian area and all native vegetation within the area is retained. Post-subdivision development will be located outside of the 30-metre riparian buffer, however, should post-subdivision development be contemplated within the 30-metre riparian buffer, a detailed riparian assessment will be required under RAPR, including a post-development report to provide feedback on the protection measures taken, that the measures were implemented appropriately and the adequacy of the measures in protecting the SPEA.

Given that the proposed development is permitted by the *Campbell River Area Zoning Bylaw, 1991*, is outside the SPEA identified by the RAA, and as the ESA DP incorporates the recommendations provided within the RAA, issuance of the ESA DP to allow the proposed development to take place is supportable. The issuance of this DP is not discretionary and as the subdivision substantially complies with the DP guidelines contained within the Oyster Bay/Buttle Lake Official Community Plan, it will be forwarded to the SRD Board with a recommendation for approval.

Sincerely,

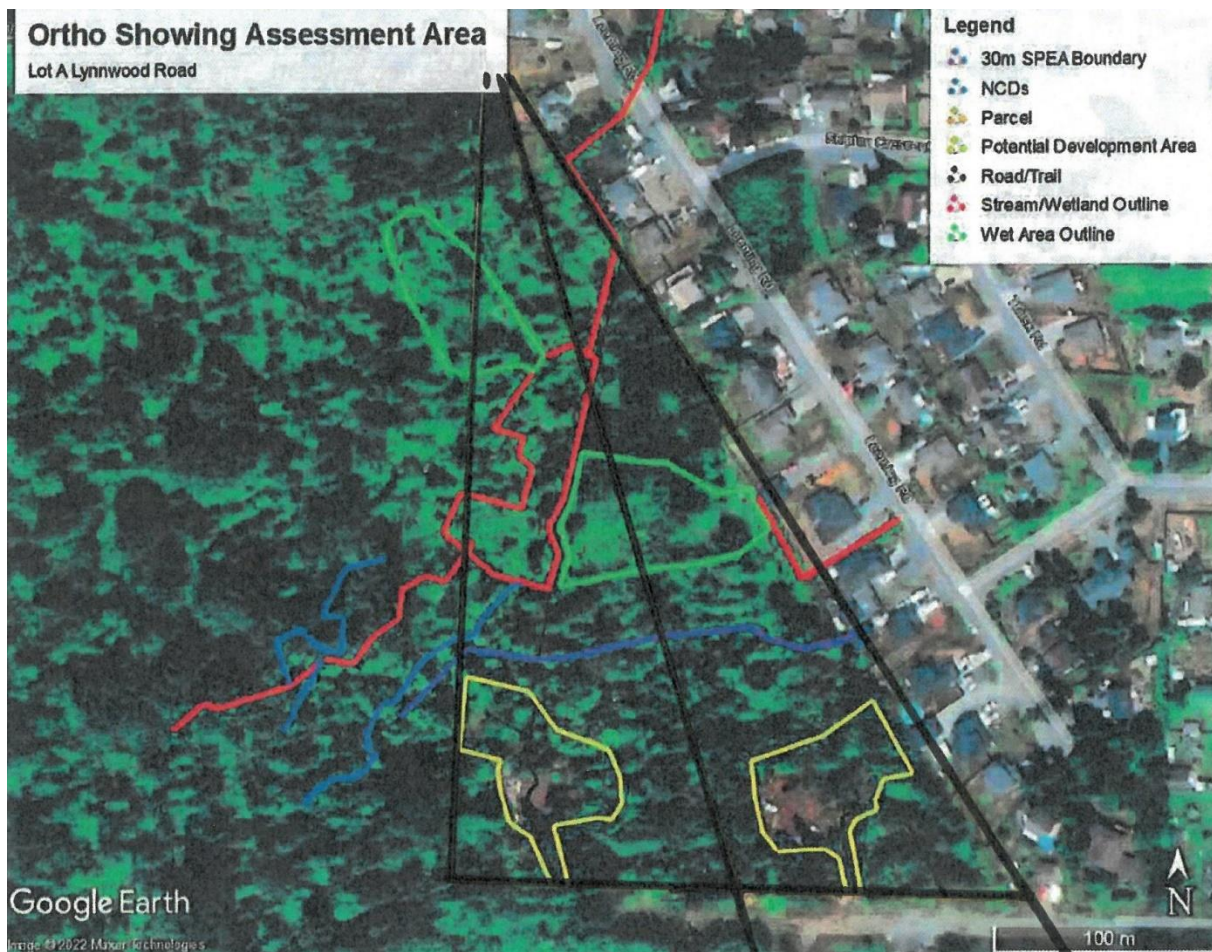
A handwritten signature in black ink that reads "John Neill". The signature is written in a cursive, flowing style.

John W. Neill MCIP MRTPI
Planner



GIS: U:\proj\EA_D\SubjectProperties\EA_D_SubjProp.aprx

Location Map



Site Plan