



REPORT

TO: Lorraine Hilton
Chief Administrative Officer

Date: March 14, 2019
File: 6480-03

FROM: Laura Beckett
Planner

To Council
March 18, 2019

RE: POTENTIAL CHANGES TO OCP SECTION 2.6

PURPOSE

To report back to Council regarding section 2.6 of the Official Community Plan (OCP).

BACKGROUND

At its February 19, 2019 Meeting, Council resolved:

That staff immediately prepare a report to remove or improve the wording in section 2.6 of Highlands Official Community Plan to reflect Highlands' values contained in the OCP vision statement, and objectives and policies as well as implications and steps of a potential OCP Amendment

At that Council Meeting, the following report from Councillors' Baird

<http://www.highlands.ca/AgendaCenter/ViewFile/Item/4808?fileID=4995> was the agenda item from which the resolution arose. That report provides this link:

<http://www.highlands.ca/AgendaCenter/ViewFile/Minutes/07162018-431>, the last three pages of which are a letter from a Highlands resident that requests Council to consider changing three sentences in section 2.6, Commercial Industrial Land Use, of the OCP.

OPTIONS

1. That Council receive this report for information, and no changes to the OCP be brought forward at this time.
2. That Council direct staff to prepare a subsequent report providing:
 - a. An OCP amending bylaw that would amend the OCP by removing Sentences 1 and 2 described below in section 2.6 of the OCP, and
 - b. Recommendations in regards to consultation.
3. That Council direct staff to prepare a subsequent report providing
 - a. Wording to amend the OCP by revising Sentences 1, 2 and/or 3 described below in section 2.6 of the OCP, and
 - b. Recommendations in regards to consultation.
4. That Council provide alternate direction.

DISCUSSION

The overarching issue is the potential for the Province to issue permits pursuant to the *Mines Act* to allow mining on lands designated as "Commercial Industrial" in the OCP.

Inherent to the issue is the fact that the extraction of soil materials – be it rock or gravel – cannot be prohibited by a municipality. The District can regulate or prohibit the processing of soil materials. However, the District cannot prohibit a land owner from extracting such materials from their land. Below is an excerpt from a staff report on Council's agenda from June 20, 2016.

The link to the full report is:

<http://highlands.bc.ca/AgendaCenter/ViewFile/Item/2844?fileID=3011>

Ability for Rock Extraction / Land Alteration

Any land owner has the ability to extract (ie blast, drill, etc.) rock and other material from the ground without a permit pursuant to the *Mines Act*. Extraction cannot be controlled by zoning. The land owner also has the ability to remove extracted material from a property. The District cannot prohibit the removal of soils (rock), but it can regulate it, which it does through the Soil Deposit and Removal Regulation and Fees Bylaw No. 341. These regulations include the submission of specialized reports, public notice requirements, fees for both processing of application and amounts of removal/deposit (\$0.50 per cubic metre of soil removed/deposited), and a security deposit. As well, the soil removal/deposit can only occur between May 1 and October 31 annually (current regulation).

Processing of extracted material is within a municipality's purview for zoning control. However, if processing is not a permitted use, a land owner can process the material only to the point where the material is able to fit into/onto a reasonable vehicle for transportation off the property.

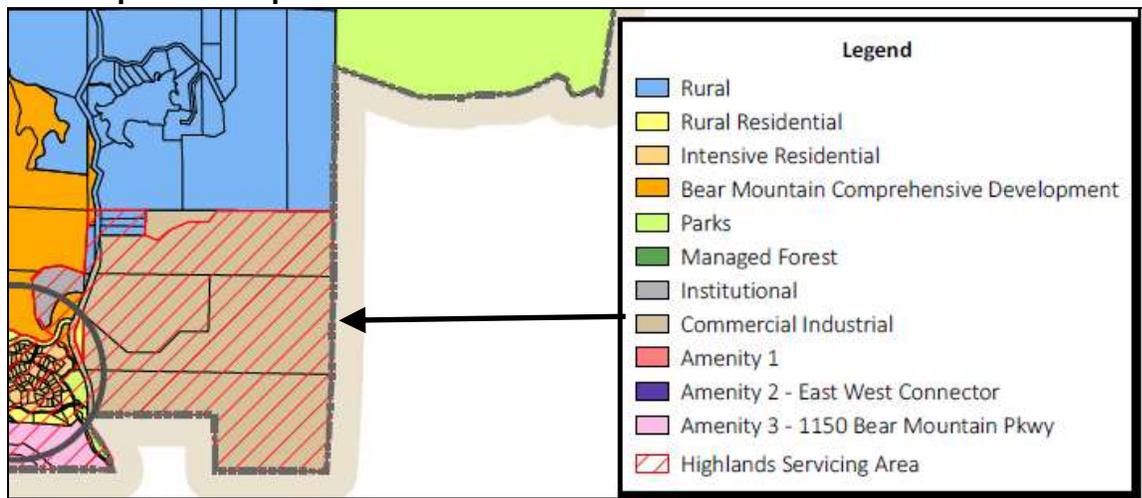
Any amount may be removed. At certain thresholds, the *Environmental Assessment Act* is triggered, but the amount of removal anticipated by the land owner is not at a threshold where that would occur. The *Mines Act* is not "triggered" by a threshold amount of material.

While there is a process around obtaining a permit pursuant to the *Mines Act*, in the case of the subject property, the only real benefit a land owner achieves by obtaining such a permit is the ability to sell the product commercially. Zoning controls whether processing can occur, and the soil deposit/removal bylaw regulates the coming and going of material.

OCP Section 2.6

Please note that OCP section 2.6 refers collectively to land and properties designated as "Commercial Industrial" in OCP Map 2.1 – please see excerpt below. All statements in section 2.6 refer to all four properties within this category, including 2015 Millstream Road, ("Millstream Industrial Park"), 1965 Millstream Road ("Millstream Meadows"), OK Industries' property, and 1943 Millstream Road ("Coast Environmental"). This area is likewise controlled by a form and character development permit area (DPA 4 – "Highlands Commercial Industrial Gateway Area") and in selected areas by environmental development permit areas 1, 2 and 3 ("Steep Slopes," "Water and Riparian," and "Sensitive Vegetation").

OCP Map 2.1 Excerpt



Staff understands that Council wishes some suggestions based on Councillors' Baird report, which referenced a resident's letter suggesting removal of the following sentences from OCP section 2.6 (these sentences are highlighted in yellow in Attachment 2 for ease of reference):

- Sentence 1: "The land base has been heavily disturbed and there are relatively few environmental preservation issues."
- Sentence 2: "The groundwater in this area has been contaminated by its former use as a sewage lagoon and landfill."
- Sentence 3: "This area contains gravel deposits that may be suitable for future extraction."

Council has directed staff to provide wording that would reflect the OCP Vision. Staff considers that no change to the OCP is necessary to accomplish this.

Sentences 1 and 2 above provide background information only and do not give any policy direction. Removing or revising them would not cause any change in policy direction. Likewise, leaving these two sentences in the OCP does not provide policy direction.

Sentence 3 together with Map 2.1 addresses section 473(1)(c) of the *Local Government Act* that requires an OCP to include a statement and map regarding the approximate location and area of sand and gravel deposits that are suitable for future sand and gravel extraction. Please note the express use of the word "may" in Sentence 3. Staff also notes that there is an existing gravel extraction facility subject to a permit pursuant to the *Mines Act* in Millstream Industrial Park. Staff recommends that this sentence should therefore not be deleted.

It is possible to revise this section and add a new map to the OCP to provide a more precise location such as a reference only to the Millstream Industrial Park. It should be noted, however, that any such amendments to the OCP may not affect a decision by the Province to issue a permit pursuant to the *Mines Act* in any area of Highlands. While the Province may consider whether the proposed activities are consistent with the District's OCP, the Province is not bound by the OCP.

Typical Steps to Amend the OCP

In this case, typical steps could include:

1. Follow-up report to Council providing:
 - a. Consultation requirements with respect to the *Local Government Act*, including a consultation plan for Council consideration.
 - b. Draft wording and/or new map, including a draft amendment bylaw
 - c. Give proposed amendment bylaw first reading
2. Carrying out the consultation plan.
3. Second follow-up report to Council providing:
 - a. Results of consultation plan to Council, along with any suggested changes to proposed amendment bylaw.
 - b. Council to consider proposed amendment bylaw in conjunction with the District's financial plan and any waste management plan under Part 3 of the *Environmental Management Act* that is applicable in the District
 - c. Give proposed amendment bylaw second reading
 - d. Council to consider whether consultation is sufficient
 - e. If consultation is sufficient, refer amendment bylaw to public hearing.
4. Hold public hearing.
5. After public hearing, third reading, and adoption of bylaw.

Staff estimates that this process could take approximately three months or more.

Financial

- Amending the OCP has not specifically been incorporated into the 2019 operating budget. Based on the scope in Options 2 and/or 3, associated costs could range from \$4,000 - \$6,000, which would include newspaper notification and map creation. This does not include any associated staff time or additional public notices or consultation Council may choose to undertake. Staff time is estimated at approximately 35 hours, depending on direction from Council.
- Should an amendment occur, as part of the bylaw adoption process, the amendment would be considered in conjunction with the District's financial plan and any waste management plan under Part 3 of the Environmental Management Act that is applicable in the District.
- Not amending the OCP has no financial consequence that staff can foresee.

Legal/Bylaw/Regulatory

- The District may change its OCP as it sees fit, providing requirements regarding content and process are followed.
- The District cannot pass any bylaws nor do any works that are inconsistent with its OCP.
- Any change to an OCP requires Council consideration for consultation of persons, organizations and authorities that Council considers might be affected. Full consultation requirements are outlined in section 475 of the *Local Government Act*, which is in addition to the public hearing as part of the bylaw adoption process.

Environmental

- Staff understands that in considering an application for a permit pursuant to the *Mines Act*, the Province is not bound by the District's OCP. Thus, the environmental outcome may remain the same whether or not the OCP is amended.

Social

- Both individuals and the Highlands District Community Association have presented concerns with respect to section 2.6 in the OCP.

Intergovernmental

- The CRD has an active rezoning application for their property at 1965 Millstream Road (Millstream Meadows), which is within this area. Their application does not seek to change the OCP, nor do they have an active application under the *Mines Act* of which staff is aware.

Consultation

- Based on Council's Public Consultation Policy, staff would advise that these particular changes to the OCP would fall between "consult" and "collaborate". Here is the link to that policy: <http://www.highlands.ca/DocumentCenter/View/6561/Public-Participation-Communications-Policy?bidId=>
- If Council wishes to amend the OCP, land owners of the four properties relevant to OCP section 2.6 should be consulted.

CONCLUSION

Extraction of soil materials cannot be prohibited by the District. Amending the OCP may not change the outcome of any application for a permit pursuant to the *Mines Act*.

RECOMMENDATION

That Council receive this report for information, and no changes to the OCP be brought forward at this time.

Respectfully submitted,

Concurrence



Laura Beckett,
Planner

Lorraine Hilton,
Chief Administrative Officer

Attachments:

- *Attachment 1 – Highlands Vision (from OCP)*
- *Attachment 2 – OCP Section 2.6: Commercial Industrial Land Use*

Attachment 1 – Highlands OCP Vision

The Highlands is a primarily residential community, rural in nature, and blessed with an exceptional abundance of scenic beauty, native plant and animal life, and public parkland. Those of us who live here place high value on the natural environment and our rural lifestyle. Highlanders are actively involved in the community, which fosters a spirit that is both self-reliant and cooperative.

The Highlands will strive to diversify its economy while preserving our natural systems, including the aquifers on which we depend so heavily. Land use decisions will be guided by a community plan, with the ongoing involvement of residents.

As stewards of our unique natural environment, we will protect its integrity. We will retain sufficient lands in their natural state to permit a diversity of plant and animal life to flourish and to ensure that the rural lifestyle we enjoy today can be experienced by future generations. We believe in the value of open and green space, trail systems, and outdoor recreational opportunities, both to enhance life in the Highlands and to contribute to the well-being of southern Vancouver Island as a whole.

We will provide for an adequate tax base, including light industrial, related commercial and nature-related recreational uses in some areas of the Highlands, in order to support basic, affordable municipal services and facilities. We will encourage alternative transportation choices, housing choices, and a community hall.

New development in the Highlands will be in keeping with the rural character of the community and carefully designed to protect sensitive environmental conditions. The pace of change should be gradual and the type of development should leave a small footprint on the land.

Attachment 2 – OCP Section 2.6

NB: Sentences highlighted in yellow were subject of letter submitted as part of Council Minutes from their July 16, 2018 meeting.

2.6 Commercial Industrial Land Use

At the present time, there is no traditional retail commercial or office commercial in the Highlands. The topography of much of the District is not suitable for traditional commercial and office uses.

The major area of industrial activity is located east of Millstream Road, immediately north of Highlands' boundary with the City of Langford. This area falls inside the Urban Containment Boundary of the Regional Growth Strategy and the Highlands Servicing Boundary as shown on Map 2.1. **The land base has been heavily disturbed and there are relatively few environmental preservation issues. The ground water in this area has been contaminated by its former use as a sewage lagoon and landfill.**

The amount of industrial land in Greater Victoria is in short supply and this large contained area has reasonable access to the Trans Canada Highway. A light industrial/business park in this location would require utilities such as piped water, storm and sanitary sewers, and street lighting. Landscaping, screening (e.g. perimeter trees) and access to regular transit service are important considerations.

Lands in the Commercial Industrial Land Use have also been designated Development Permit Area 4 – Highlands Commercial/Industrial Gateway Area. There should not be any additional access routes into this area from Millstream Road other than the existing Industrial Way. Preference is for an internal service road parallel to Millstream Road.

This area contains gravel deposits that may be suitable for future extraction.

Commercial Industrial Land Use – Objectives

- To allow a range of light industrial and service commercial land uses that would increase the Highlands' tax base with minimum infringement on the rural, less disturbed land in the rest of the Highlands.
- To encourage redevelopment of the properties located in the proposed "Highlands Industrial Park" area in a coordinated manner.

Commercial Industrial Land Use – Policies

1. Over time, the area designated as Commercial-Industrial land use on Map 2.1 should be redeveloped as a range of light industrial and service commercial uses in conformance with Development Permit Area 4 - Highlands Commercial/Industrial Gateway Area and any agreements that are in place. These uses may include green economy-based industries such as: recycling; manufacturing and assembly; warehousing and storage; service industries; sales and service operations; and office uses that are ancillary to these uses. Industrial uses and practices that have appreciable negative impacts on surrounding areas, groundwater resources and air quality are discouraged. Industrial uses and practices that have appreciable positive impacts on surrounding areas, groundwater resources and air quality are encouraged.
2. There should not be any additional access points into the southernmost industrial area from Millstream Road other than the existing Industrial Way. An internal service road parallel to Millstream Road is appropriate.
3. Landowners are encouraged to coordinate their business operations, land planning and servicing. Examples of other areas where business parks have been created in rural settings should be explored.
4. The industrial area should be serviced by underground services (water, sanitary sewer, hydro, cable and similar utilities).
5. At the time of subdivision or development, the District will ensure that the road and lot layout are designed to safeguard environmental values, remediate existing ground pollution and accommodate the potential for municipal trails.
6. Landscaping and screening of existing native and complementary vegetation will be maintained on any borders of the area such as roads – especially Millstream Road – or property and adjacent uses to prevent visual and noise intrusion of commercial and industrial uses. A larger width of landscaping may be required adjacent to residential uses.
7. Alternative uses that are more consistent with the character of the Highlands will be considered to replace the nonconforming industrial use in the East Highlands.
8. In cooperation with the District and BC Transit, if appropriate, consideration may be given to the replacement of parking stalls with the provision of transit passes.