

Jonathan and Suzanne Liteplo

██████████
North Pender Island, BC
(██████████)

November 22, 2024

Sent by Email to: bsmith@islandstrust.bc.ca

Islands Trust
200 – 1627 Fort Street
Victoria, BC V8R 1H8

Attention: Brad Smith
Island Planner, Southern Team

Dear Brad:

Re: Raptor Nest Development Permit Area Review Project

We are writing in response to your letter dated October 4, 2024 in respect of the above-captioned Project, enclosing a copy of the *Raptor and Heron Nests Development Permit Area (DPA) Review Report* dated June 2024 (authored by Mr. Dan Baxter of Caurinus Environmental), and *Raptor Nest Draft Map v2* dated August 2024.

Background

We are the registered owners of ██████████ on North Pender Island (██████████). The property is 1.238 ha in size and is zoned RR2. We received your letter at our primary residence on or about October 11, 2024.

The revised map attached as Appendix A to the June 2024 Caurinus report (i.e., the map marked “Draft August 2024”) indicates that a DPA relating to a new bald eagle nest site is being proposed for our property and adjacent properties (marked as “53”). The earlier “Draft June 2024” map did not include the proposed DPA.

From the map, it appears that the DPA would center on one of two large Douglas Fir trees located on our property near the west boundary line, although we understand from your email that it is only one tree that would form the basis for the DPA. Although we are not certain at this point, we assume the specific tree identified by Mr. Baxter is the larger of the two.

We purchased the property four years ago in the fall of 2020 in an undeveloped state. We first viewed the property in late August, 2020, and inspected it carefully in the ensuing weeks leading up to completing our purchase at the end of October, 2020. At that time, there was no

eagle nest on the property (intact or partial), including in either of the two large Douglas Fir trees. Nor was there any physical evidence indicating that an eagle nest had been present on the property at some point in the past (such as the remains of a nest that may have fallen out of a tree, prey remains, etc.). We also researched the Islands Trust website, and determined that there were no DPAs applicable to the property, and that there were no known raptors' nests on or near the property.

Since that time, there has been no eagle nest on the property. Nor have we seen any indication that a nest is under construction, including in either of the two large Douglas Fir trees.

In 2021, the Islands Trust and CRD granted our application for a building permit for the property, and no mention was made during that approval process of an eagle nest site on the property. As we know you appreciate, we have invested substantial resources, including money and time, to acquire and develop the property.

Our Initial Questions on Mr. Baxter's Report

Neither your letter nor Mr. Baxter's report provide specific details as to why a DPA is now being proposed at this location. Mr. Baxter's report includes the following general comments:

"... based on local naturalist David Manning's yearly record keeping of raptor sites on Pender Island, we visited undocumented raptor nest sites across North Pender Island. ... where a nest was not present, the viability of each documented raptor nest tree to support a nest in the future was assessed. Some nest sites were not accessible, and therefore an approximate nest site coordinate was recorded."

Based on this passage and Mr. Baxter's report more generally, we indicated in an email to you (October 16, 2024) that we wanted to understand what data, analysis or other information the Islands Trust and its consultant were relying on to conclude that a DPA is required at this location. We also asked the following specific questions:

- Do David Manning's records indicate that a nest was present at some point at this location? If so, over what period of time?
- How do we obtain a copy of his records?
- Is there a description in his records as to how he conducted his yearly record keeping?
- Did Mr. Baxter visit this site and view the specific tree? If so, when and from what vantage point(s), and what were his site-specific observations at the time?
- Given that there is no nest present, did Mr. Baxter conduct an assessment of the viability of the tree(s) to support a nest in the future? If so, what did that assessment involve, what were his conclusions, and on what analysis were those conclusions based?

You responded to our questions by email (October 24, 2024) as follows:

"I have followed up with the biologist and this is what I understand:

1. *The data point was not captured in the June 2024 report or map as an oversight, this was identified by Islands Trust staff during follow-up QA/QC on the mapping data to produce the August 2024 map*
2. *The tree is known to have housed a nest in the past – the biologist notes that the old nest that was there came down in a storm, prior to any construction, but recently there have been signs of stick placement in the tree*
3. *The biologist assessed the tree from an adjacent property and determined with limited time viewing the tree it seems that there was still a viable structure for nesting in the tree and recommends inclusion as a DPA*
4. *Although a known site, the tree was not included in the current DPA layer and if now included would become a new DP area.”*

Our Concerns

With respect, the information set out in Mr. Baxter’s report and the additional information provided in your email do not in our view provide a reasonable basis for including this site in DPA 7. Importantly, it is not apparent how Mr. Baxter’s assessment of the tree “from an adjacent property” and “with limited time viewing” is a reliable basis for concluding that “it seems that there was still a viable structure for nesting in the tree” or that “recently there have been signs of stick placement in the tree”. The closest potential vantage points on adjacent properties are a considerable distance from and below the base of the trees. In addition, no details or records appear to be available respecting the basis on which “the tree is known to have housed a nest in the past”, the specific time period over which a nest was present, or the basis on which Mr. Baxter understands that the “old nest that was there came down in a storm”.

We spend considerable time on the property and keenly observe our trees and the wildlife that frequent our land. The two adult eagles that spend time on our property (and the three properties to the northwest and two properties to the southeast of our land), come across Navy Channel from Mayne Island. They spend short periods of time on our side of the Channel, perching in a number of trees and hunting fish along the shoreline, typically when the water is calm. On a couple of occasions, we have seen them fly across from Mayne aggressively when, for example, one or two Osprey come down the shoreline from the northwest to hunt fish near our and our neighbours’ properties. At different points during the nesting season, we don’t see the eagles on our side of the Channel for lengthy periods of time. Others have indicated that they believe the pair has one or more nests that they actively use on Mayne Island. We have not observed any eagle nest being constructed on our property.

Our Requests

It does not appear to us that the proposed DPA for this site is warranted. There is no eagle nest currently present in the trees, there hasn’t been a nest for at least four years (and perhaps considerably longer given that there was no evidence of a nest having been present, either in the trees or on the ground around the trees, when we purchased the property), and we don’t see evidence of stick placement in the trees, much less a partially constructed nest. Further, it

isn't immediately apparent to us that a structure exists in the trees that would support such a substantial construct.

For these reasons, we respectfully request that the Trustees not include the site in DPA 7.

If the Trustees do not agree with our request, then we respectfully ask that the Trustees delay their consideration of the proposed DPA for this site to provide us with a reasonable period of time to retain an expert, to independently investigate the site and provide their professional assessment. The facts set out above, combined with the significant impact that the proposed DPA could have on our use of the property and its value, establish a reasonable basis for questioning the appropriateness of the proposed DPA and our desire to obtain an assessment from an independent expert. Given all of the relevant circumstances, procedural fairness requires that we, as the owners of a property that will be directly and significantly impacted by the proposed DPA, be given a reasonable opportunity, including a reasonable period of time, to obtain such expert assistance and then provide the Trustees with further submissions before they make a determination as to whether or not the site should be added to DPA 7.


We also have concerns with respect to the considerable increases that Mr. Baxter appears to be proposing with respect to the size of the DPAs. For example, the 200m radius that he appears to be recommending during nesting season would impact our entire property, as well as at least five properties to the northwest of our property, three to the southwest and two to the southeast. Even his 100m recommendation outside of nesting season would encompass the vast majority of our property and the majority or considerable portions of a number of adjacent properties. We require a reasonable opportunity to consult with an expert on the appropriateness of Mr. Baxter's sizing proposals and to make further submissions to the Trustees in that regard.

Conclusion

From your email, we understand that the next step in this process is that staff would bring specific bylaw amendments to the Trustees for consideration, and perhaps the Trustees would give them first and second reading, at their meeting on November 29, 2024. Unfortunately, we will not be able to attend the meeting. (I have been scheduled since early 2024 to be in Ontario from November 28 to December 1 at Board of Director and Management meetings for an international development organization that I'm a Board member of, and I have to attend.) We ask that you provide this letter to the Trustees, along with our regrets that we are unable to attend.

Thanks again, Brad, for your helpful responses to our initial questions. Please keep us posted on further developments on this file, including the Trust's response to this letter, and any future process and schedule that is established. Best to reach us by email ([REDACTED]) or cell ([REDACTED]).

Yours truly,

A large black rectangular redaction box covering the signature area.

Jonathan and Suzanne Liteplo