

DATE OF MEETING: July 27, 2023  
TO: Saturna Island Local Trust Committee  
FROM: Brad Smith, Island Planner  
Southern Team  
COPY: Robert Kojima, Regional Planning Manager  
SUBJECT: 101 Payne Rd Rezoning Application – Preliminary Report  
Applicants: M Daniel Thachuk, Jean Morgan, Linda Cunningham, Beverly Lowsley and Judith Myers

## RECOMMENDATION

- 1. That the Saturna Island Local Trust Committee directs staff to proceed with application GL-RZ-2023.2 (Thachuk) and to prepare draft bylaws.**

## REPORT SUMMARY

The purpose of this preliminary report is to provide information regarding rezoning application GL-RZ-2023.2 (Thachuk) and to seek direction from the Saturna Island Local Trust Committee (LTC) to proceed, or not proceed, with the application, including the preparation of draft bylaws.

The above recommendation is supported as:

- As submitted, the proposal is reasonable and appears consistent with Saturna Island Official Community Plan No. 70 (OCP) policies and Islands Trust Policy Statement (ITPS);
- The applicants have secured the purchase of an additional density from a willing property owner to allow for an additional dwelling on the subject parcel; and,
- Proceeding with draft bylaws will facilitate First Nations, public and agency consultation to identify any outstanding issues or concerns with the proposed rezoning.

## BACKGROUND

A rezoning application was submitted in March 2023. The joint property owners of 100 and 101 Payne Road are seeking to rezone the subject property to allow for an additional dwelling density to be added. Currently, the shared property has a single primary dwelling and an accessory cottage which are lived in by separate families, and these families are now seeking to separate their financial/property obligations to ensure their estate planning is properly taken care of.

The proposed additional density is to be purchased by the property owners from Judith Myers who owns a 35.56 acre lot located at 201 Harris Road. This lot has been the subject of recent discussion between the LTC and the



The subject parcel presently has one dwelling and one accessory cottage, one on either side of the hooked lot. The dwelling is located at 100 Payne Rd and the cottage at 101 Payne Road.



**Figure 2. Photos - 101 Payne Road**

**100 Payne Road**

Attachment 1 provides additional site context. Attachment 2 includes maps and plans. Attachments 3 and 4 are two letters of rationale provided by the applicants.

## **ANALYSIS**

### **Policy/Regulatory**

#### ***Islands Trust Policy Statement***

The proposal appears consistent with Islands Trust Policy Statement (ITPS) policies, in particular with respect to policies related to ecosystem protection and preservation, stewardship of resources, groundwater, and growth and development.

If the LTC decides to proceed, the ITPS policy checklist will be presented to LTC for review and consideration in a future staff report when the draft bylaws are presented for 1<sup>st</sup> reading.

#### ***Official Community Plan***

The general policies of the OCP state the following with respect to increased density:

- C.1.3** From the date of adoption of the Plan, no rezoning, development permit, temporary permits, or other planning tool or device available to the local trust committee should be used to increase the maximum subdivision capacity, or total residential density of any island within the Area. Secondary suites are not considered as residential density for the purposes of calculating overall residential density within the Saturna Island Local Trust Area.

In this case, as the additional proposed density is being transferred from another parcel on Saturna, there is no net increase in overall density, so the application is consistent with this policy. In this case, a site specific zoning

amendment would be required to increase the density of the subject property by one, and also to reduce the density at 201 Harris Road by one.

The subject parcel is designated as Rural (R) in the OCP, and is zoned Rural General (RG). The RG OCP policies are:

<p><b>D.1.G Rural General</b></p> <p><b>D.1.G.1</b> Zoning for rural general use provides for a mix of home based enterprises together with family residences and cottages.</p> <p><b>D.1.G.2</b> Residential density is not to exceed:</p> <ul style="list-style-type: none"><li>a) <b>one primary residence on lots of less than 1.21 hectares (3 acres);</b></li><li>b) a total of one primary residence and one cottage on lots less than 4.05 hectares (10 acres) but greater than 1.21 hectares (3 acres); and</li><li>c) on lots of 4.05 hectares (10 acres) or greater, one primary residence and one cottage per 2.02 hectares (5 acres) of lot area to a maximum of 5 primary residences and 5 cottages per lot. If a restrictive covenant exists limiting subdivision or residential building density, the amount specified in the covenant shall not be exceeded.</li></ul> <p><b>D.1.G.3</b> Zoning will permit a full range of home based occupations customary to rural areas.</p> <p><b>D.1.G.4</b> Site planning criteria relating to setbacks, building height, maximum floor area and total lot site coverage should be addressed through zoning.</p> <p><b>D.1.G.5</b> The minimum lot area for subdivision shall not be less than 0.81 hectares (2 acres).</p> <p><b>D.1.G.6</b> One secondary suite, limited in size, contained within a primary residence may be permitted per primary residence.</p>
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The application is generally consistent with these policies. To ensure policy D.1.G.2 is met, a site specific zoning amendment would establish that only one dwelling per lot be allowed.

Policy D.1.G.5 creates some practical challenges with the proposed rezoning and subsequent subdivision. While the lot is 1.69 ha and could technically be split in two with a minimum lot size of 0.81 ha realized for each lot, the physical layout of the lot separated by Payne Road complicates matters.

As shown below, a rough calculation of total area for the portion of the lot on either side of Payne Road shows that 100 Payne Road is approximately 0.96 ha, and 101 Payne Road is approximately 0.71 ha. As policy D1.G.5 requires a minimum lot size of 0.81 ha, a subdivision creating the lots on either side of Payne Road does not comply with this OCP policy.



As such, there are two options to proceed:

- 1) The recommended option of staff is to proceed without an OCP amendment. If rezoning is approved, this would then require the property owner to create a hooked lot at time of subdivision to include a portion of the lot on the 100 Payne Rd side with the 101 Payne Road portion to meet the minimum lot size of 0.81 ha for each lot.
- 2) The other option would be to require that the applicant also pursue an OCP amendment to reduce the minimum lot size to fit a new lot configuration separated by Payne Road. Staff do not recommend this one-off approach as typically OCP amendments are established via broader OCP review processes and in this case reducing the minimum average lot size could have significant precedent setting ramifications for other lots on the island. It would also increase the cost of the application fee by \$500 and would increase the timeline to completion as an OCP amendment would require approval by the Minister of Municipal Affairs.

There are no development permit areas on the property.

***Land Use Bylaw***

The parcel is zoned Rural General (RG). Residential site density in the RG zone is as follows:

### Residential Site Density.

- 4.2.4 On a lot 1.21 hectares (3 acres) in area or less the maximum density is one (1) *residence*.
- 4.2.5 On a lot having an area greater than 1.21 hectares (3 acres) and less than 4.05 hectares (10 acres) the maximum density is one (1) *residence* and one (1) *cottage*.
- 4.2.6 On lots having an area of 4.05 hectares (10 acres) or greater one (1) *residence* and one (1) *cottage* per 2.02 hectares (5 acres) are permitted up to a maximum density of five (5) *units* and five (5) *cottages* per lot *parcel*.
- 4.2.7 One *secondary suite* is permitted per *residence* subject to section 2.18.

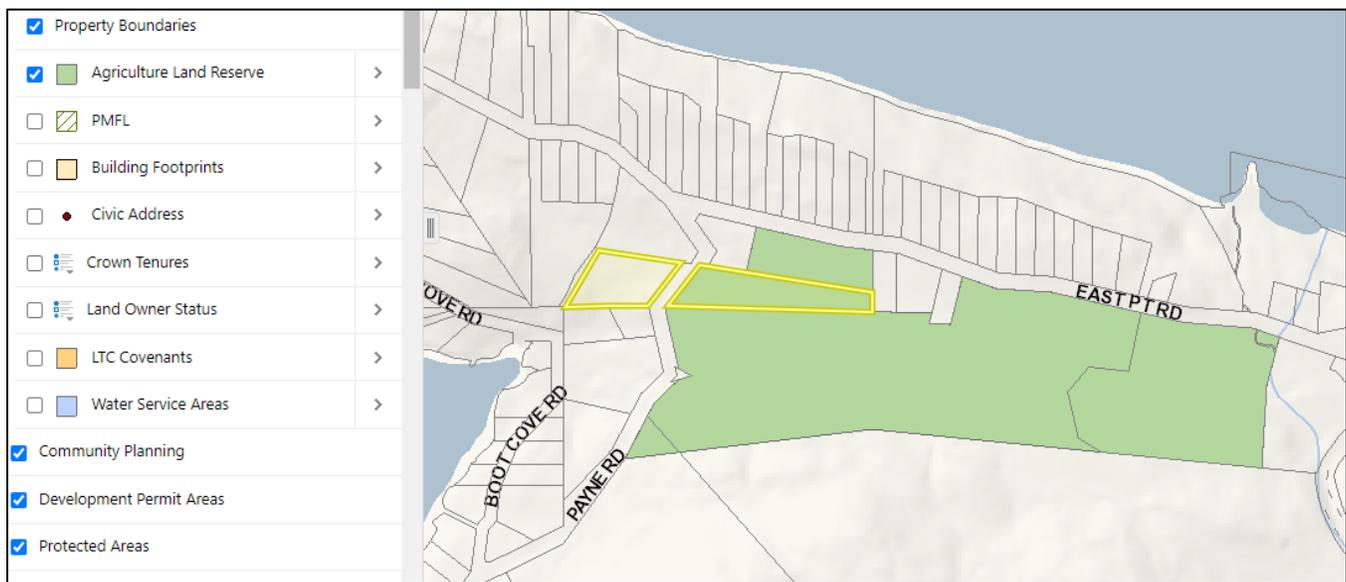
LUB amendments would be required to reduce the density of the 201 Harris Road parcel and increase the density of the Payne Road parcel by one. These changes would be realized through site specific bylaw amendments for each parcel. To ensure policy OCP D.1.G.2 is met, a site specific zoning amendment would also establish that only one dwelling per lot be allowed. In the interim between rezoning and subdivision, the cottage would be deemed legal non-conforming as it was in place prior to the rezoning.

If the LTC decides to proceed, staff will present an amending bylaw for consideration at a future LTC meeting.

### ALR Designation

A significant portion of the subject parcel is located within the ALR, including the entire portion of 100 Payne Road. The applicant should be aware that this may complicate subdivision approval as the Agricultural Land Commission (ALC) will also need to approve any subdivision. The applicant is recommended to contact the ALC to review their options and feasibility for future subdivision.

### ALR Designation



## **Water and Septic**

Both the existing house and cottage are serviced by the Boot Cove Lyall Harbour Water System. If the LTC decides to proceed, staff would refer the amending bylaws to the CRD Integrated Water Services for comment. The house and cottage also have separate septic systems.

## **Archaeological Sites**

Islands Trust reviews all applications/permits using Remote Access to Archaeological Data (RAAD) mapping to ensure the preservation and protection of cultural heritage, archaeological sites, and ancestral places. In this case, there are no registered archaeological sites on the subject property, however there is archaeological potential identified.

Further to that review, staff have directed the applicants to the following guidelines:

- All archaeological and cultural heritage is protected under the *Heritage Conservation Act* and areas of archaeological potential may contain undocumented archaeological sites which would be automatically protected under the *Heritage Conservation Act* (including all intact or disturbed sites) and require a permit from the BC Archaeology Branch. Further information regarding permits: <https://www2.gov.bc.ca/gov/content/industry/natural-resource-use/archaeology/permits>.
- In the event that archaeological features or materials are found, either intact or disturbed on the subject property, stop work immediately and contact the BC Archaeology Branch at 250-953-3334 or [archaeology@gov.bc.ca](mailto:archaeology@gov.bc.ca).
- Any impacts, would include the following: landscaping, tree removal, digging, using heavy equipment, development, fencing, footings, or any form of groundwork.
- For more information regarding registered archaeological sites and archaeological potential on the subject property, submit an Archaeological Information Request Form: [www.archdatarequest.nrs.gov.bc.ca](http://www.archdatarequest.nrs.gov.bc.ca).

## **Consultation**

### ***Statutory Requirements***

In accordance with regular statutory requirements, a public hearing is required and it is normal practice to hold a Community Information Meeting (CIM) prior to that. With direction from LTC, these would be scheduled either separately or concurrently after draft bylaws are complete, reviewed and have received at least First Reading.

Public hearing notice would be posted as per statutory and bylaw requirements in advance of a public hearing.

### ***Agencies***

Staff have identified the following agencies for bylaw referral; the LTC may direct staff to include other agencies not listed.

- CRD, Planning and Protective Services, Building Inspection
- CRD, Integrated Water Services (Lyall Harbour – Boot Cove Water System)
- Agricultural Land Commission
- Island Health
- Ministry of Transportation and Infrastructure
- Mayne Island Local Trust Committee
- North Pender Island Local Trust Committee
- South Pender Island Local Trust Committee

## **First Nations**

Staff have identified the following First Nations for bylaw referral:

- Cowichan Tribes
- Halalt First Nation
- Lake Cowichan First Nation
- Lyackson First Nation
- Malahat First Nation
- Pauquachin First Nation
- Penelakut Tribe
- Semiahmoo First Nation
- Snuneymuxw First Nation
- Stz'uminus First Nation
- Tsartlip First Nation
- Tsawout First Nation
- Tsawwassen First Nation
- Tseycum First Nation
- WSANEC Leadership Council

## **Rationale for Recommendation**

Based on the foregoing, the recommendation on page 1 is supported as:

- As submitted, the proposal is reasonable and appears consistent with Saturna Island Official Community Plan No. 70 (OCP) policies and Islands Trust Policy Statement (ITPS);
- The applicants have secured the purchase of an additional density from a willing property owner to allow for an additional dwelling on the subject parcel; and,
- Proceeding with draft bylaws will facilitate First Nations, public and agency consultation to identify any outstanding issues or concerns with the proposed rezoning.

## **ALTERNATIVES**

The LTC may consider the following alternatives to the staff recommendation:

### **1. Request further information**

The LTC may request further information prior to making a decision. If selecting this alternative, the LTC should describe the specific information needed and the rationale for this request.

Resolution:

*That the Saturna Island Local Trust Committee request that the applicant submit to the Islands Trust*

\_\_\_\_\_.

### **2. Deny the application**

The LTC may deny the application.

Resolution:

*That the Saturna Island Local Trust Committee proceed no further with application SA-RZ-2023.2 (Thachuk).*

**3. Hold the application in abeyance**

The LTC may choose to hold the application in abeyance pending completion of a significant study or OCP process, etc.

Resolution:

*That the Saturna Island Local Trust Committee hold application SA-RZ-2023.2 (Thachuk) in abeyance.*

**NEXT STEPS**

With direction from the LTC, Staff will draft amending bylaws for further consideration by the LTC.

Submitted By:	Brad Smith, Island Planner	July 19, 2023
Concurrence:	Robert Kojima, Regional Planning Manager	July 19, 2023

**ATTACHMENTS**

1. Site context
2. Mapping and photos
3. Letter 1 from applicant
4. Letter 2 from applicant

## ATTACHMENT 1 – SITE CONTEXT

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### LOCATION

Legal Description	Lot 1, Section 18, Saturna Island, Cowichan District, Plan 6417
PID	004-007-395
Civic Address	101 Payne Rd Saturna BC V0N 2Y0
Lot Size	1.69 hectares (4.17 acres)

### LAND USE

Current Land Use	Rural General (RG)
Surrounding Land Use	Rural General (RG)

### HISTORICAL ACTIVITY

File No.	Purpose
None	SA-BP-2009.3 – BP review for construction of single family dwelling

### POLICY/REGULATORY

Official Community Plan Designations	Saturna Island OCP No. 70, 2000 Designations: Rural (R)
Land Use Bylaw	Saturna Island LUB No. 119, 2018: Rural General (RG)
Other Regulations	None
Covenants	None
Bylaw Enforcement	SA-BE-2018.1 – concern about potential structure in setback – no structures identified and file was closed

### SITE INFLUENCES

Islands Trust Conservancy	There are no Islands Trust Conservancy covenants or properties in the direct area; therefore no referral has been made to the Board.
Regional Conservation Strategy	The proposal does not impact the objectives and priorities of the Islands Trust Fund regional conservation plan.
ALR Status	A portion of the subject property is located within the ALR.
Species at Risk	None identified
Sensitive Ecosystems	None identified
Hazard Areas	Portions identified as steep slope (primarily moderate and low risk)

Archaeological Sites	<p>There are no registered archaeological sites on the property. However, there is potential for archaeological material to be located on the property.</p> <p>Staff have directed the applicant to the following guidelines:</p> <ul style="list-style-type: none"> <li>• All archaeological and cultural heritage is protected under the <i>Heritage Conservation Act</i> and areas of archaeological potential may contain undocumented archaeological sites which would be automatically protected under the <i>Heritage Conservation Act</i> (including all intact or disturbed sites) and require a permit from the BC Archaeology Branch. Further information regarding permits: <a href="https://www2.gov.bc.ca/gov/content/industry/natural-resource-use/archaeology/permits">https://www2.gov.bc.ca/gov/content/industry/natural-resource-use/archaeology/permits</a>.</li> <li>• In the event that archaeological features or materials are found, either intact or disturbed on the subject property, stop work immediately and contact the BC Archaeology Branch at 250-953-3334 or <a href="mailto:archaeology@gov.bc.ca">archaeology@gov.bc.ca</a>.</li> <li>• Any impacts, would include the following: landscaping, tree removal, digging, using heavy equipment, development, fencing, footings, or any form of groundwork.</li> <li>• For more information regarding registered archaeological sites and archaeological potential on the subject property, submit an Archaeological Information Request Form: <a href="http://www.archdatarequest.nrs.gov.bc.ca">www.archdatarequest.nrs.gov.bc.ca</a>, or contact Islands Trust to access mapping of the subject property.</li> </ul>
Climate Change Adaptation and Mitigation	None
Shoreline Classification	N/A
Shoreline Data in TAPIS	N/A

# ATTACHMENT 1 – MAPS

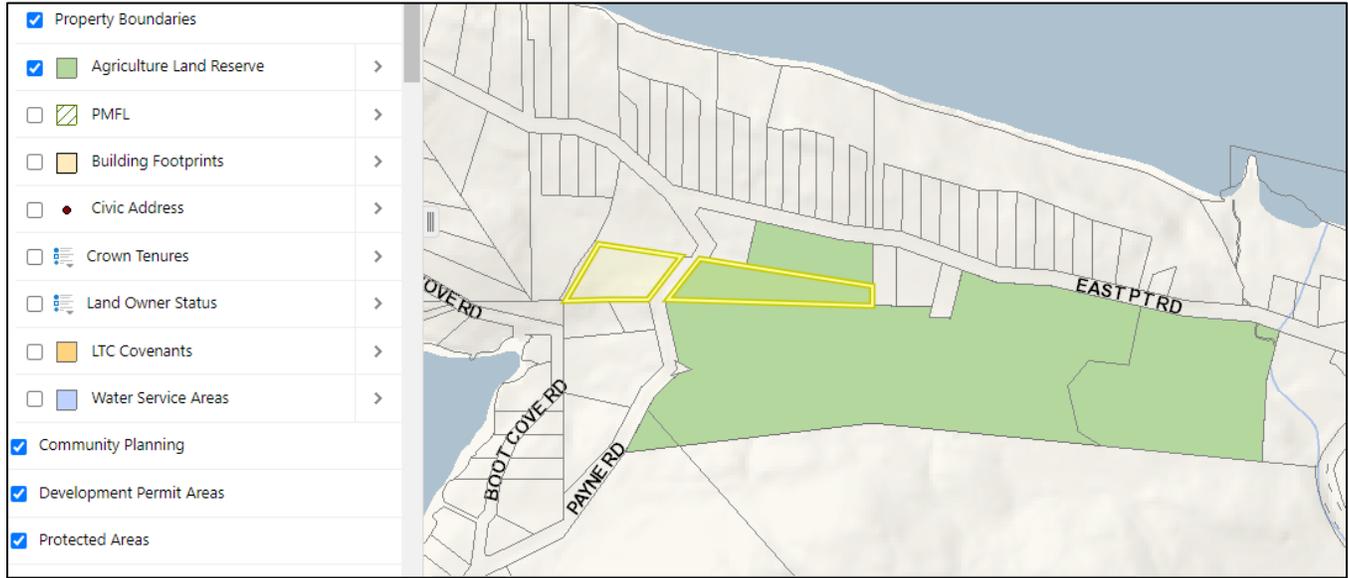
## 1.1 ORTHOPHOTO AND ZONING



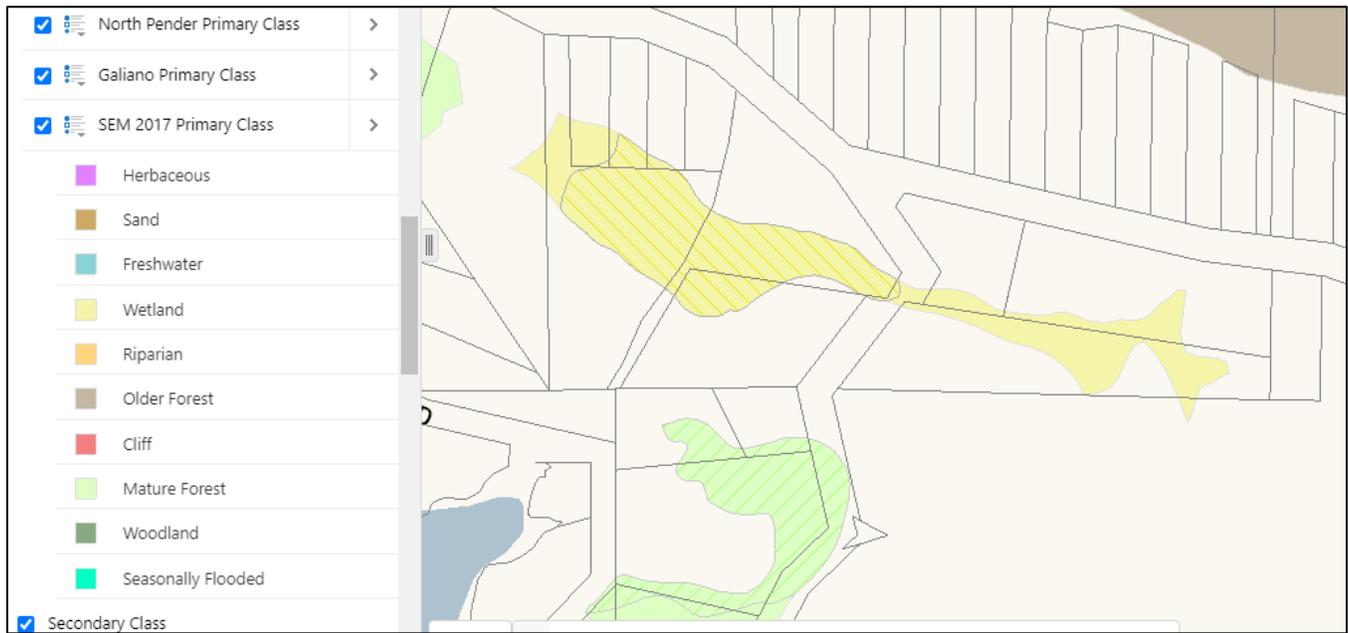
## 1.2 STEEP SLOPE HAZARD AND CONTOURS



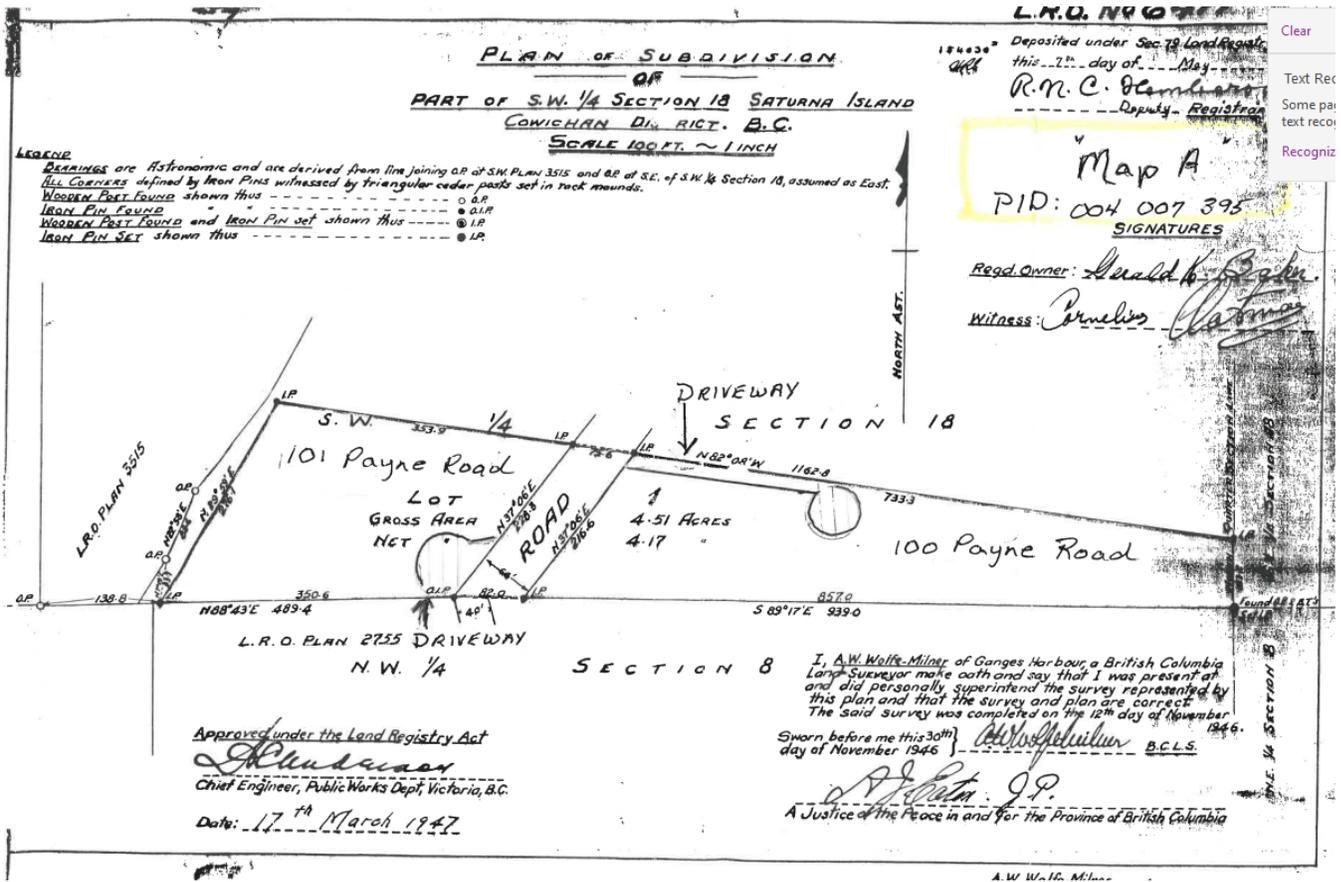
### 1.3 ALR LANDS



### 1.4 SENSITIVE ECOSYSTEMS



1.5 1947 ORIGINAL SUBDIVISION PLAN



2

Islands Trust  
Victoria Office  
200 – 1627 Fort Street  
VICTORIA, BC. V9R 1H8

February 22, 2023

ATTENTION: MR. BRAD SMITH

**RE: Proposed Density Transfer between Judith Myers, 201 Harris Road, Saturna, BC and Linda Cunningham and Beverly Lowsley, 101 Payne Road, Saturna, BC and M. Daniel Thachuk and Jean Morgan, 100 Payne Road, Saturna, BC.**

This letter forms part of the re-zoning application for 201 Harris Road, Lot 1, Plan VIP25360, Section 5, Cowichan Land District, Portion Saturna Island, PID: 002-614-383, comprising of 35.56 acres owned by Judith Myers (Judith's property); and for 101/100 Payne Road, Lot 1, VIP6417, Section 18, Cowichan Land District, Portion Saturna Island, PID: 004-007-395 comprising of 4.17 acres owned by Linda Cunningham and Beverly Lowsley, joint tenants; and M. Daniel Thachuk and Jean Morgan, joint tenants, and both as to tenants in common (the Payne Road property).

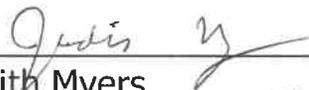
It is the intent of Judith Myers to transfer 1 lot density from her property to the benefit of the Payne Road property, thereby reducing the available density by 1 on Judith's property, and increasing the density by 1 for the Payne Road property. It is understood by Judith Myers that the reduction of density to her property requires a site specific rezoning, and as a consequence Judith has signed the Rezoning Form, together with Linda Cunningham and Beverly Lowsley and M. Daniel Thachuk and Jean Morgan, who also seek a site specific rezoning.

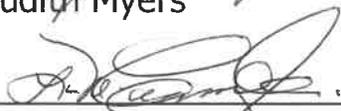
It is agreed by Judith Myers that the proposed lot density transfer, as described above, occur.

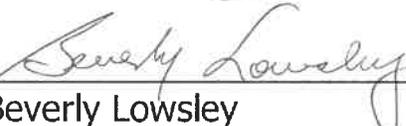
Judith wishes to donate her property (less her current home site and the lot density transferred as noted) to Natures Trust to ensure the land, which

is ecologically significant, remains undeveloped. Linda and Beverly (101 Payne Road owners) and Dan and Jean (100 Payne Road owners) wish to change ownership of their property from tenants in common, to each of them owning the property on which each respectively lives, to joint tenancy. It is understood that this requires rezoning. The Payne Road owners are seeking the rezoning and subsequent subdivision of that property for the purposes of estate planning. Judith wishes to use the consideration paid by the Payne Road owners toward assisting with the Natures Trust acquiring this special piece of Saturna.

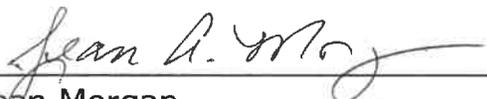
Dated: 21 February, 2023

  
\_\_\_\_\_  
Judith Myers JUDITH MYERS

  
\_\_\_\_\_  
Linda Cunningham

  
\_\_\_\_\_  
Beverly Lowsley

  
\_\_\_\_\_  
M. Daniel Thachuk

  
\_\_\_\_\_  
Jean Morgan

ISLANDS TRUST

March 6, 2023.

200 – 1627 Fort Street

VICTORIA, BC V8R 1H8

ATTENTION: Mr. Brad Smith.

**RE: Property municipally known as 100 and 101 Payne Road, and legally described as: Lot 1, Plan VIP 6417, Section 18, Cowichan District, Portion Saturna Island; PID: 004-007-395; consisting of 4.17 net acres (the "Property")**

The purpose of this letter is to offer the Trust some observations concerning the history of the development of this Property; some information about the owners; and the rationale for their request to re-zone and subsequently subdivide that Property.

#### SOME OF THE HISTORY OF DEVELOPMENT OF THE PROPERTY:

The Property was surveyed and subdivided in March 1947, but remained undeveloped until 2007. The Property was purchased on June 29, 2004 by Linda M. Cunningham and Beverly A. Lowsley, as Joint Tenants; and by M. Daniel Thachuk and Jean A. Morgan, as Joint Tenants, each as to an undivided one-half interest.

It was the intention of each of the Joint Tenants of the Property to develop their residence independent of the other, and each would be responsible for their own part of the Property. The Property lent itself to this concept because the Property is a hooked lot, and there were two existing driveways separated by Payne Road, approximately 200 feet apart. One driveway entered the western portion of the Property and one driveway entered the eastern portion of the Property on the opposite side of Payne Road. Each portion of the Property divided by Payne Road was approximately equal in size. (see Map "A")

Linda Cunningham and Beverly Lowsley began to develop the western portion of the Property ("Property A") in 2005. It was developed independent from the property on the

eastern portion ("Property B"). Property A has its own septic system, Hydro, and water connection to the Boot Cove Lyall Harbour Water System. The house is a 995 square foot, single story home. The municipal address became 101 Payne Road, Saturna. They have resided in the home since 2007.

Daniel Thachuk and Jean Morgan began to develop the eastern portion of the land, Property B, in 2009. It was developed independent from the Property A. Property B has its own septic system, Hydro, and water connection to the Boot Cove Lyall Harbour Water System. The house is approximately 1600 square foot and is a two story home. It was used by them as a recreational property until 2015 when they moved into the residence permanently.

Due to the fact that each residence has its own driveway, separated by Payne Road, the Fire Chief of Saturna Island (then John Wiznuk) designated Property B with the municipal address of 100 Payne Road for purposes of a locator for utilities and emergency services.

Each property has been developed and treated separately. The only shared responsibility between the parties is the property taxes, which are assessed on the single PID number.

#### THE OWNERS:

All the owners have been and remain committed to the community of Saturna and have volunteered with various organizations and services in various capacities both prior to coming to live on Saturna Island and after their homes were completed.

#### RATIONALE FOR THE PROPOSED RE-ZONING OF THE PROPERTY:

The owners of the Property wish to re-zone it for purposes of better estate planning. It is understood that a density is required to be purchased from another property owner to apply to the lot currently owned by the undersigned, and an application for a site-specific rezoning be made to allow for a smaller minimum average lot size than 5 acres. If the re-zoning is approved, it is the intent of the owners to sub-divide the property, which will continue to reflect its current use and occupation.

Judith Myers, 201 Harris Road, has agreed to our purchase of one lot density from her. Judith wishes to donate her property (less the density purchased by us and less her current home site) to Natures Trust. Judith's property consists to 35.56 acres which is ecologically significant, and which she wishes to remain undeveloped (save the site of her home). Judith wants to use the consideration paid to her by us to assist Natures Trust to acquire her land.

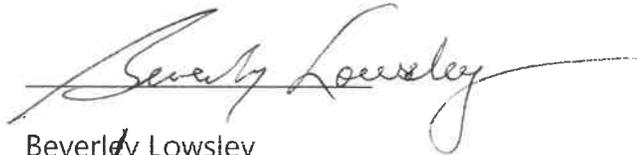
The requested re-zoning reflects the current occupation and uses of the Property. If granted it will permit the owners the opportunity to better plan their separate estates without altering the character of the Payne Road neighbourhood.

We have enclosed a letter dated February 22, 2023 and the Re-zoning Application signed by us and by Judith Myers, required documents, and our application fee of \$4400.

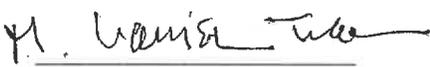
Regards,



Linda Cunningham



Beverly Lowsley



M. Daniel Thachuk



Jean A. Morgan