

November 6, 2017

Mayor and Council  
District of Saanich  
770 Vernon Ave.  
Victoria, B.C. V8X 2W7

Dear Sirs/Mesdames,

**RE: Recommendation by C/W dated October 28, 2017 to rescind the EDPA Bylaw  
Submissions of Saanich Action for the Environment**

We are Saanich Action for the Environment (“SAFE”), a group of Saanich residents who support fair and effective protection of our precious natural environment.

On October 28, 2017, at a Special Committee of the Whole (“C/W”) meeting, the C/W passed the following motion (the “Motion”):

“That it be recommended that Official Community Plan Bylaw, 2008, Amendment Bylaw, 2012, No. 9164 be rescinded in its entirety, and that the motion to rescind and the consequential housekeeping amendments in the Official Community Plan be prepared for Council’s consideration as soon as practicable.”

That Amendment Bylaw relates to what is known as the Environmental Development Permit Area (“EDPA”). SAFE is gravely concerned about the Motion, and the circumstances that led to its passing at the October 28, 2017 meeting. Based on the submissions that follow, SAFE requests that:

1. Council remit the Motion back to the C/W for reconsideration at a meeting held with adequate and meaningful opportunity for public input, including adequate and meaningful public notice regarding the nature of the meeting and the motions that would be tabled; and,
2. Council adjourn any further action on potentially rescinding the EDPA until the resolution of the hearing of Mr. Ted Lea, R.P.Bio. before the Discipline Panel of the College of Applied Biology of the Province of British Columbia.

**A. Notice and Bias Issues Relating to the C/W Meeting and Motion**

SAFE believes that the October 28 meeting and Motion were flawed on two main grounds. Firstly, there was no meaningful public notice given that a motion to recommend rescinding the EDPA would be discussed at the meeting. Secondly, SAFE believes that the Motion is tainted with a reasonable apprehension of bias. Due to these flaws, SAFE believes that the Motion to recommend rescinding the EDPA should be set aside and remitted back to the C/W for reconsideration after proper and meaningful public notice and input.

The October 28 meeting was scheduled with the intent of receiving public input to the independent report by Diamond Head Consulting Ltd. regarding the EDPA. The meeting was not intended nor advertised to be a discussion, let alone the venue for passing a motion, to recommend rescinding the EDPA bylaw.

Saanich Council retained Diamond Head Consulting back in March 2016 to undertake an independent review of EDPA and provide options to revise the EDPA bylaw. At a public hearing on July 24, 2017, Council moved to “receive the draft report from Diamond Head Consulting Ltd. for information and direct staff to schedule a stand-alone meeting in October 2017.”<sup>1</sup> At the time, Councillor Brownoff stated that holding a stand-alone meeting in October “will ensure that broad public input takes place.”<sup>2</sup> Likewise, Councillor Haynes stated that having such a meeting “will allow the item to be debated by a full Council.”<sup>3</sup> The meeting was eventually scheduled on October 28, 2017 and was chaired by Mayor Atwell.<sup>4</sup>

In the public notices regarding the October 28 meeting, the nature of the meeting was described as giving an opportunity for public input into the Diamond Head report, and not to debate whether to rescind the EDPA. Firstly, the agenda for the meeting only stated that the purpose of the meeting was to receive public input regarding the Diamond Head report:

#### A. PUBLIC INPUT

##### **1. INDEPENDENT REVIEW OF THE ENVIRONMENTAL DEVELOPMENT PERMIT AREA (EDPA) REPORT FROM DIAMOND HEAD CONSULTING LTD.**

Council to receive public input further to the Independent Review of the Environmental Development Permit Area (EDPA) Report from Diamond Head Consulting Ltd. dated June 21, 2017.<sup>5</sup>

Consistent with Council’s direction dated July 24, 2017, the agenda describes the October 28, 2017 meeting as about receiving public input. Nowhere in the agenda did it place the public on notice that a motion to recommend rescinding the EDPA bylaw would be tabled and discussed.

Secondly, Council placed an advertisement about the October 28 meeting on the *Times Colonist*. It only stated that the meeting would be about the EDPA, and did not notify the public that a motion to recommend rescinding the EDPA bylaw would be tabled and discussed.<sup>6</sup>

Lastly, Council staff also sent email notices to the public regarding the October 28 meeting. In the email, the meeting was described as a way to “allow for further public input on the Report to Council that was presented on Monday, July 24, 2017, entitled ‘Independent Review of

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<sup>1</sup> Minutes of Council Meeting (July 24, 2017), page 10.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> SAFE notes that *Council Procedure Bylaw, 2015*, No. 9321, section 72 states that “C/W shall be chaired by Councillors on a rotating basis.” SAFE submits that, by having the Mayor chair the C/W meeting, the C/W was in violation of Saanich bylaws.

<sup>5</sup> Agenda of Oct. 28, 2017 Special Committee of the Whole meeting, page 1.

<sup>6</sup> *Times Colonist* advertisement, October 19, 2017, page A4 [**Appendix A**].

Environmental Development Permit Area (EDPA) Draft Report from Diamond Head Consulting Ltd.””<sup>7</sup> Again, nowhere in that email notice did it state that the meeting would include the tabling and discussion of a motion to recommend rescinding the EDPA.

These public notices created a legitimate expectation that the October 28 meeting would only involve the C/W receiving public comments on the Diamond Head report, rather than a meeting in which a motion as critical as recommending the wholesale abolition of the EDPA would be passed.

SAFE later discovered that Paul Thorkelsson, CAO of Saanich, provided a memo to Council dated October 25, 2017 with the subject heading “EDPA – Questions Raised and Possible Next Steps”. This memo was apparently received by the Legislative Division on October 27, 2017.<sup>8</sup> It is not clear to SAFE when members of the C/W received the memo. The memo contained Saanich staff’s responses to each of 15 recommendations made by Diamond Head in its report, and ended with four options for implementation. Option 1 was to rescind the EDPA bylaw in its entirety.

While this memo is now contained as part of the agenda materials for the October 28 meeting on the Saanich website, the memo was not included in the original package of materials, and SAFE was not aware of its existence until very late on October 27. But regardless of when the memo became part of the public record, none of the public notices mentioned above described the October 28 meeting as a place to discuss the options provided by the CAO in his memo.

Even though a possible motion to recommend rescinding the EDPA was never mentioned in any public notice, certain C/W members seemed to have come to the meeting prepared to make the Motion. At the start of the second half of the meeting, the Chair laid out items on the agenda for the remainder of the meeting. At this point, the Chair stated that there would be a motion from Councillor Karen Harper—an item that was not part of the agenda in any public notice. Eventually, during that second part of the meeting, Councillor Harper moved that the C/W recommend to Council to rescind the EDPA. The C/W passed this motion by 5-4.

In SAFE’s opinion, the circumstances surrounding the Motion raises a reasonable apprehension of bias. Councillor Harper has been a critic of the EDPA. In fact, in the last municipal election, she campaigned on the promise to rescind the EDPA. Even though the October 28 meeting was intended, and was advertised, as only to give the public an opportunity to provide input on the Diamond Head, Councillor Harper seemed to have prepared the Motion before she had heard from the public at the meeting, and definitely before meaningful notice and public input opportunity was given that such a motion would be tabled and discussed. In short, SAFE believes that Councillor Harper arrived at the October 28 meeting with a closed mind already having decided to bring the Motion, and thereby tainted her action and her Motion with a reasonable apprehension of bias.

Due to these breaches of procedural fairness and natural justice, SAFE requests that Council remit the Motion back to the C/W for reconsideration at a meeting held with adequate and meaningful

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<sup>7</sup> Email from Sarah Litzenberger dated October 18, 2017 [**Appendix B**].

<sup>8</sup> Material attached to agenda of Oct. 28, 2017 Special Committee of the Whole meeting: <http://www.saanich.ca/assets/Local~Government/Documents/Mayor~and~Council/Council~Meetings/2017~Schedule~Agendas~and~Minutes/Agendas/2017-10-28-Special-Committee-of-the-Whole-Agenda.pdf>.

opportunity for public input, including adequate and meaningful public notice regarding the nature of the meeting and the motions that would be tabled.

## **B. Discipline Hearing of Mr. Ted Lea**

SAFE requests that Council adjourn any further action on potentially rescinding the EDPA until after the resolution of Mr. Lea's disciplinary hearing before the College of Applied Biology of BC.

Mr. Lea has been the sole biologist conducting assessments for most of the properties withdrawn from the EDPA. Council has given his reports considerable weight in deciding to withdraw property from the EDPA. The Mayor and some Councillors frequently referred to his assessment conclusions in making their decision to support withdrawing properties from the EDPA.

In addition, he has been influential as a member or associate of the group Saanich Citizens for Responsible EDPA ("SCRES") at casting doubt on the EDPA. For example, Mr. Lea was a speaker at a SCRES event on April 28, 2015 where he criticized the mapping and science behind the EDPA.<sup>9</sup> He has made submissions to Council as a representative of SCRES.<sup>10</sup> Also, he has provided assessments for property owners free of charge to assist them in getting their property removed from the EDPA.<sup>11</sup> Many Saanich property owners may have been swayed by his criticisms of the EDPA.

On October 24, 2017, the College of Applied Biology of BC served Mr. Lea with a citation.<sup>12</sup> A Discipline Panel will conduct a hearing into Mr. Lea's conduct in relation to the EDPA. Allegations include conflict of interest, negative personal comments made to Saanich staff and fellow R.P.Bio., and failure to "provide objective, science-based, unfettered, forthright and intellectually honest opinion, advice and reports in applied biology" and to ensure that he meets "a professional standard of care by practicing applied biology with attention, caution, prudence and due diligence".<sup>13</sup>

SAFE does not prejudge the outcome of Mr. Lea's disciplinary hearing. However, given the weight that Council has placed upon Mr. Lea's assessments in the past, his disciplinary hearing places considerable doubt as to the legal validity of Council decisions to remove property from the EDPA, and indeed Council deliberations in general regarding potentially rescinding the EDPA.

Given Mr. Lea's involvement in the EDPA controversy, and given the gravity of the allegations in his citation, which calls into question his professional ethics and the objectivity of this assessments, SAFE requests that the Council adjourn any further action on potentially rescinding the EDPA until the resolution of the hearing of Mr. Lea before the Discipline Panel of the College of Applied Biology of BC.

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<sup>9</sup> <https://www.youtube.com/watch?v=T04G5fKT78k>.

<sup>10</sup> See *e.g.*, Minutes of February 11, 2016 Town Hall meeting, page 9; minutes of March 16, 2016 Special Council meeting, page 7.

<sup>11</sup> Travis Paterson, "Investigation targets biologist at heart of EDPA opposition", *Saanich News* (May 11, 2017): <http://www.saanichnews.com/news/investigation-targets-biologist-at-heart-of-edpa-opposition/>.

<sup>12</sup> Citation in the matter of the College of Applied Biology of BC and Ted Lea, R.P.Bio. #85 [Appendix C].

<sup>13</sup> *Ibid.*

### **C. Conclusion**

The District of Saanich has worked hard over the years to protect environmentally sensitive areas in our community. SAFE believes that the EDPA is a crucial part of that effort to preserve our environment. A repeal of the EDPA bylaw will reduce important protections for our environment and encourage degradation of remaining ecosystems. SAFE believes that Saanich needs to retain the EDPA bylaw in order to preserve environmentally significant areas.

The October 28 meeting and the resulting motion to recommend rescinding the EDPA suffer critical flaws by failing to provide meaningful notice and opportunity for public input, and by a reasonable apprehension of bias.

If Saanich Council accepts the Motion to rescind the EDPA without first remedying these fatal flaws, SAFE will consider seeking legal action against such a decision.

Yours respectfully,

Saanich Action for the Environment

## **Appendix A**

*Times Colonist* advertisement

October 19, 2017, page A4

KH - #8a

preliminary stages and that, in the view of the Council, could reasonably be expected to harm the interests of the District if they were to be held in public." 7:00 p.m., Council Chambers, Agenda highlights as follows:

Delegation

- CREST – Upgrade of the Public Safety Communications System in the Region

Bylaws

- 9449 2558 Killarney Road – Zoning Bylaw Amendment and Approval of Development Variance Permit
- 9459 4024, 4028, 4030, 4032 & 4036 Shelbourne Street – Housing Agreement
- 9460 Tax Exemption Real Property Bylaw Amendment

Resolutions for Adoption

- Designation of Councillors as Acting Mayor

Recommendations from Committees

- Saanich Heritage Foundation – Shelbourne Memorial Avenue (2017) Project
- Governance Review Citizen Advisory Committee – Saanich Governance Review
- Healthy Saanich Advisory Committee – November Flag

Reports from Members of Council

- Municipal Election Voting Opportunities

Reports from Directors

- McKenzie Interchange Project – Bents Construction
- Update: Request to Create a Berm in Cumberland Holmes Park
- 5420 Alderley Road – Antenna Application
- 1400 Derby Road and 3220 Cedar Hill Road – Liquor Licence Amendment for Cedar Hill Golf Course and Cedar Hill Recreation Centre

Healthy Saanich Advisory Committee

Wednesday, October 25, 6:00 p.m., Committee Room No. 2

Parks, Trails and Recreation Advisory Committee

Thursday, October 26, 7:00 p.m., Committee Room No. 2

Special Committee of the Whole Meeting

Saturday, October 28, 10:00 a.m., G.R. Pearkes Recreation Centre Fieldhouse, 3100 Tillicum Road

- Environmental Development Permit Area

For more information contact the Legislative Division at 250-475-1775 or by e-mail at [clerksec@saanich.ca](mailto:clerksec@saanich.ca)

Agendas and minutes are available at [saanich.ca](http://saanich.ca)

Times Colonist ad from  
Thursday, Oct. 19 2017  
p. A4

## **Appendix B**

Email from Sarah Litzenberger (October 18, 2017)



**From:** [Lynn Husted](#)  
**To:** [Anthony Ho](#)  
**Subject:** Fwd: Notice of Meeting - Independent Review of Environmental Development Permit Area (EDPA).  
**Date:** November 5, 2017 2:03:52 PM

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----- Forwarded message -----

From: Sarah Litzenberger <[Sarah.Litzenberger@saanich.ca](mailto:Sarah.Litzenberger@saanich.ca)>  
Date: Wed, Oct 18, 2017 at 2:07 PM  
Subject: Notice of Meeting - Independent Review of Environmental Development Permit Area (EDPA).  
To: <[Clerksec@saanich.ca](mailto:Clerksec@saanich.ca)>

This email is to advise that a Special Committee of the Whole meeting will be held to allow for further public input on the Report to Council that was presented on Monday, July 24, 2017, entitled "Independent Review of Environmental Development Permit Area (EDPA) Draft Report from Diamond Head Consulting Ltd."

The meeting will be held at Pearkes Recreation Centre Fieldhouse on **Saturday, October 28, 2017 at 10:00 a.m.**

A copy of the report is available on the Saanich website at: <http://www.saanich.ca/EN/main/community/sustainable-saanich/environmental-planning/environmental-development-permit-area.html>

You are welcome to attend and will be given an opportunity to make a 5 minute presentation to Council if you choose. **Correspondence may be submitted** for inclusion in the meeting agenda to the address noted below, or by email to [clerksec@saanich.ca](mailto:clerksec@saanich.ca) and should be received **no later than 12:00 noon on Friday, October 27, 2017**. All correspondence submitted to the District of Saanich in response to this Notice will form part of the public record and will be published in a meeting agenda.

Regards,

Sarah Litzenberger  
Committee Clerk Assistant  
Legislative Services Department  
[District of Saanich](#)  
[770 Vernon Ave.](#)  
Victoria BC V8X 2W7

t. [250-475-5494](tel:250-475-5494) ext. 3504  
[sarah.litzenberger@saanich.ca](mailto:sarah.litzenberger@saanich.ca)  
[www.saanich.ca](http://www.saanich.ca)

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## **Appendix C**

Citation in the matter of the College of Applied Biology of BC and Ted Lea, R.P.Bio. #85

**CITATION**  
**IN THE MATTER OF THE COLLEGE OF APPLIED BIOLOGY OF BC**

**and**

**TED LEA, R.P.Bio. #85**

TO: Ted Lea, R.P.Bio.

**TAKE NOTICE** that a Discipline Panel of the College of Applied Biology of the Province of British Columbia will be convened at the offices of the College of Applied Biology to undertake a Hearing for the purpose of taking evidence and deliberating with respect to allegations described herein, pursuant to the *College of Applied Biology Act*, S.B.C. 2002, chapter 68.

**AND TAKE NOTICE** that the following allegations are made against you:

1. That you are in breach of paragraph 4 of Schedule 2 (The College of Applied Biology Member Code of Ethics) of the Rules of the College of Applied Biology by failing to “avoid situations and circumstances where there is a conflict of interest” by virtue of the fact that you:
  - (a) are an advisor, member, and/or have participated in the affairs of the Saanich Citizens for a Responsible EPDA Society (SCRES), a known opponent to the District of Saanich Environmental Development Permit Area Bylaw (EPDA Bylaw);
  - (b) own private property in the District of Saanich; and
  - (c) have authored reports for multiple land owners which have consistently recommended the exemption of properties from the EPDA Bylaw.
2. That you are in breach of paragraphs 7 and 8 of Schedule 2 (The College of Applied Biology Member Code of Ethics) of the Rules of the College of Applied Biology by failing to “maintain a standard of personal and professional conduct that does not reflect adversely on the College or its members” and “avoid injuring the reputation of others through malice or negligence” by virtue of the fact that you made negative personal comments about a Saanich staff person and fellow R.P. Bio. at a:
  - (a) SCRES meeting on April 15, 2015; and
  - (b) Saanich council meeting on May 25, 2015.
3. That you are in breach of paragraphs 1 and 3 of Schedule 2 (The College of Applied Biology Member Code of Ethics) of the Rules of the College of Applied Biology by failing to “provide objective, science-based, unfettered, forthright and intellectually honest opinion, advice and reports in applied biology” and “ensure [that you] meet a professional standard of care by practicing applied biology with attention, caution, prudence and due diligence” by virtue of the fact that you:

- (a) failed to undertake proper due diligence with respect to the identification of a blue listed species in a report prepared for 2893 Seaview Road;
- (b) failed to undertake proper due diligence and ground work with respect to the preparation of reports for 2766 Seaview Road, 2810 Seaview Road, 2785 Tudor Ave., 2801 Tudor Ave., 2811 Tudor Ave., 2821 Tudor Ave., 2825 Tudor Ave., 2831 Tudor Ave.;
- (c) failed to properly apply applicable guidelines prepared by the District of Saanich in the aforementioned reports; and
- (d) applied incorrect criteria (ecosystems at risk) for assessing sensitive ecosystems in the aforementioned reports.

**AND FURTHER TAKE NOTICE** that you, Ted Lea, R.P.Bio., have the right, at your own expense, to be represented by counsel at the above-mentioned Hearing by the Discipline Panel and that you or your counsel shall have the full right to cross-examine all witnesses called and to call evidence in defence and reply in answer to the aforesaid allegations.

**AND TAKE FURTHER NOTICE** that in the event of your non-attendance at the said Hearing that the Discipline Panel may, upon proof of service of the Notice of Hearing upon you, proceed with the taking of evidence or otherwise ascertaining the facts concerning the said allegations, your absence notwithstanding, and may make its findings on the facts and its decision thereof without further notice to you.

**DATED** at the City of Victoria, in the Province of British Columbia, this 24<sup>th</sup> day of October, 2017.

The Discipline Committee of the  
College of Applied Biology  
of the Province of British Columbia.  
Per:



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Mel Kotyk, R.P.Bio., Chair