

Date: January 6, 2011

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To: Salt Spring Island Local Trust Committee for January 14, 2011 meeting

From: Kris Nichols, Planning Consultant

CC: Leah Hartley, Regional Planning Manager

Re: Official Community Plan Update - Environmental Development Permit Areas and Next Steps

PURPOSE

The purpose of this report is to provide the Local Trust Committee with an update on the status of the environmental development permit areas (DPA 4 and 6) update for the Official Community Plan.

BACKGROUND

Establishing Development Permits

The guiding principle for the use of Development Permits is found within Section 919.1 of the *Local Government Act*. It states that an official community plan (OCP) may designate development permit areas for one or more of the following purposes:

- (a) protection of the natural environment, its ecosystems and biological diversity;
- (b) protection of development from hazardous conditions;
- (c) protection of farming;
- (d) revitalization of an area in which a commercial use is permitted;
- (e) establishment of objectives for the form and character of intensive residential development;
- (f) establishment of objectives for the form and character of commercial, industrial or multi-family residential development;
- (g) in relation to an area in a resort region, establishment of objectives for the form and character of development in the resort region;
- (h) establishment of objectives to promote energy conservation;
- (i) establishment of objectives to promote water conservation;
- (j) establishment of objectives to promote the reduction of greenhouse gas emissions.

The purpose of Development Permit Area designation on a parcel of land is to permit a higher-level review of a development proposal for lands that are considered to have 'special conditions' in accordance with one or more of those categories stated above. They are generally issued by the Local Trust Committee (or by staff through a delegation bylaw) if the development permit application meets the guidelines. The decision to grant a development permit is non-discretionary providing it meets the Development Permit Area guidelines and policies and based on fact. Once they are issued, development permits are registered on title of the property.

Environmental Development Permit Area Review

The Salt Spring Environmental Development Permit Area Review was initiated in June 2010. The focus of the Official Community Plan (OCP) review/update is on Development Permit Area 6 – Unstable Slopes and Soil Erosion Hazards, the implementation of the Riparian Area Regulation (See January 14, 2010 report entitled, *Official Community Plan Update – Riparian Areas Regulations Options for Implementation and Next Steps*) and a review/update of Development Permit Area 4 – Lakes, Streams, and Wetlands with consideration of incorporating recommendations from the St. Mary and Cusheon Lakes Watershed Management Plans.

This review has not proceeded as anticipated due to a number of reasons such as the complexity of the revisions, new studies/maps that have been provided and had to be studied as to whether they should and how they could be included in the bylaw review. Additionally, the Provincial requirement to implement the Riparian Areas Regulation (RAR) requires careful consideration due to the impact it will have, real or perceived, before proceeding. This also included researching various maps to ascertain which would be the most useful given the existing mapping limitations (i.e. cost in identifying accurately all watercourses). In addition, in early fall there was a change in senior staff responsible for this review which required the hiring of a planning consultant on a less than part-time basis until a new planner is hired. This in itself required time to ensure that the consultant understood the background of the review process, what was needed to be achieved and the timeline to be met.

To date, staff has primarily focused on Development Permit Area 6 - Unstable Slopes and Soil Erosion Hazards since the review began. They have had meetings with the staff appointed working group set up to assist staff in gaining insight into the issues around development permit areas and their implementation. There has been no wider communication through public meetings or meetings with other agencies. It is anticipated that communication and education around this review will be focused over the next 5 months. The consultant has focused on becoming familiar with the review to date, review background information and reports, meeting with staff and Trustees and the working group. His main focus has been on the implementation of RAR into the DPAs through an OCP amendment.

Development Permit Area 6 – Unstable Slopes and Soil Erosion Hazards:

The current DPA 6 is made up of areas that have been identified as having a high hazard for soil erosion or a high hazard for slope instability. The DPA was based on a reconnaissance level hazard assessment that was designed to flag significant areas of potentially hazardous lands that need further assessment prior to disturbance. The DPA was based on two criteria: slopes and soil types.

In 2007, Islands Trust hired C.N. Ryzuk and Associates Ltd., a geotechnical consulting firm with extensive experience working on the southern Gulf Islands, to review the hazard mapping undertaken as part of the OCP review. Subsequently, Islands Trust contracted with the consultant to work with Islands Trust staff to develop a map and methodology for geological hazard identification. North Pender Island was the pilot project for this approach. The consultant recommended mapping that utilizes the Digital Elevation Model (DEM) contour mapping to create categories of geological hazard based on slope gradient. At a meeting in 2009, the consultant presented a preliminary report and the LTC directed staff to undertake consultation with agencies with overlapping jurisdiction (Capital Regional District (CRD) Building Inspection and Ministry of Transportation and Infrastructure). Staff and the consultant met with CRD

Building Inspection and with MoTI staff and have presented the methodology and mapping to those agencies. The consultant's final report in December 2009 outlined the background, including the geology of Salt Spring Island, the common geo-hazards, the derivation of the three designations currently recommended in the report, the data limitations, and provided some recommendations for implementation. A copy of this report was presented to the Local Trust Committee at their February 4th, 2010 meeting in a report entitled, "Steep Slopes Mapping".

The consultant's report classified three slope classes:

1. Low Hazard Areas (15 to 22.5 degrees slope): areas of low to moderate slope which may be subject to limited geohazard and slope failure under extremely adverse conditions having a relatively low probability of occurrence, such as a high magnitude earthquake.
2. Moderate Hazard Areas (22.5 to 45 degrees of slope): areas considered as possible hazard areas that may exhibit a geologic risk.
3. High Hazard Areas (greater than 45 degree slope): geologic processes in this area result in hazards to development relatively regularly, and can be unpredictable. These areas should be considered to be at a high probability of failure at some point in time.

(See Attachment 1)

As a result, the report made a number of recommendations relating to assessment of land development within the three hazard classifications:

1. Land development within Low Hazard areas is unlikely to have significant implications; consequently the report recommended that a development permit area designation would not be necessary.
2. Within Moderate Hazard any land development areas that involves extensive land clearing, construction of retaining structures greater than 1.2 metres in height, blasting, and excavation and placement of fill exceeding 0.5 metres in vertical thickness should be professionally assessed to ensure such development is not exposed to undue hazard.
3. Within High Hazard any land development areas that results in ground disturbance should be professionally assessed. In addition, to the activities discussed in the Moderate Hazard Area recommendations, this would extend to all driveway construction, septic field installation, and tree removal.

The report discussed in some detail the data limitations and risk probabilities associated with an analysis such as this, including degree of acceptable risk, the uncertainty inherent in the scale and variance of the DEM, the use of filtering, the possibility of localized hazards not being included in the model, and the lack of consensus with respect to the impact of land clearing and tree removal on geohazards in the absence of a site-specific assessment. Their overall recommendation is that development within Moderate and High Hazard Areas be restricted subject to an assessment by a qualified professional. It is therefore, recommended that as the mapping updated as part of the report is more accurate than the previous slope delineation in the current DPA mapping, it be used as part of the bylaw amendment and be restricted to showing only the moderate and high hazard areas where assessments are recommended.

The report recognized the separate jurisdiction of building inspection in assessing hazards related to structures and buildings and of the Approving Officer to review hazards relating to subdivision approvals. These different jurisdictions could be addressed through the Development Permit process allowing for exemptions another jurisdiction is vetting the geotechnical conditions, or that the DP report submitted to the Island Trust could be passed onto to these other agencies as part of their application process, thereby lessening duplication, delay and cost. The consultant's recommendations focused on land development activities could currently take place without Building Inspection review or without review as part of a subdivision application.

Islands Trust staff for North Pender have had meetings with the Ministry of Transportation and Infrastructure and the CRD's Building Inspection to review the consultant's report, its findings and recommendations. Both agencies do not have any concerns with the report or its recommendations. North Pender staff has initiated drafting a bylaw to address the recommendations as well as updating the associated mapping. The findings for the Salt Spring report by Ryzuk and Associates are similar and therefore it is logical that the Ministry of Transportation and CRD's Building Inspection will not have any issues with Salt Spring's Trust Committee proceeding along the same lines as North Pender should they chose. Regardless, these agencies will still be involved in the review of the draft amending bylaws.

Associate Slope Mapping

Given the improved accuracy of the new mapping and its rationale, it is recommended that this mapping be used as a schedule to DPA 6. Given Ryzuk and Associates concern mainly for the moderate and high hazard areas, it is recommended that only these two slope classes be reflected on the mapping. This mapping would be used in conjunction with the existing soils classification mapping. Staff will continue to review DPA 6 its guidelines, policies and associated mapping and bring their findings to a subsequent LTC for discussion.

Development Permit Area 4 – Lakes, Streams, and Wetlands:

Development Permit Area 4 is made up of Salt Spring Island's major lakes, streams and wetlands. At the time that this development permit was established the Department of Fisheries and Oceans and the Ministry of Environment has different guidelines than are established today. This and the implementation of the Riparian Areas Regulation (RAR) are the key reasons for the requirement to update this DPA.

As stated, to date other than the work done around the implementation of the RAR and its associated mapping there has not been much focus by staff on this DPA. Staff are continuing to work with other Islands Trust staff, the working group and other agencies to redefine this DPA. It requires updating and to bring it into the current legislative standards in order to better protect the natural fish and wildlife habitat. Consideration of designated "Community Drinking Water" watersheds should be undertaken. Staff are currently reviewing the mapping in conjunction with other mapping that has become available in the past years that should either be reflected in this DPA (e.g. Sensitive Ecosystem Mapping, Watershed Boundaries) or be included as a reference map/schedule within the OCP. Staff will also be reviewing this DPA in conjunction with the existing Cusheon and St. Mary Watershed Management Plans and how their recommendations can be implemented into this review. If desired by the LTC, it is anticipated that the RAR implementation will form part of this DPA rather than a stand alone DPA as their requirements are complementary.

COMMUNITY INFORMATION MEETING(S)

The Salt Spring Island website mentioning the launch of the Environmental Development Permit Area Review states that:

It is anticipated that there will be strong community interest in this project. Effort will be taken to learn from other local government experiences. Identified advisory groups and community interest groups will be fully engaged in the review/update process.

The project will include a strong component of public communication and education which is to be developed in consultation with the advisory groups and community interest groups.

In addition, in a recent Masters of Public Administration (MPA) candidate research project entitled, "Monitoring Development Permits and Restrictive Covenants on Salt Spring Island", it was found that there is a need to improve communication and education regarding development permit implementation on Salt Spring Island. The findings stated that improvements could be made around communication, education, coordination and implementation of DPAs. This bylaw amendment provides an opportunity to improve communication and education with various Island stakeholders around DPAs in general and the OCP amendments specifically.

Staff are working to ensure that the website is updated so that those that wish to follow this process and associated reports, mapping, information meeting updates can do so. It is intended that the public will be given an opportunity to e-mail their questions regarding this review as well.

Staff will be developing a "Landowner's Guide to Development Permits" as part of the communication and education plan to be implemented over the next 5 months. It is important that the public understands this Environmental DPA review process and what DPAs are and why they are used in land development.

STAFF COMMENTS

General Discussion on Development Permit Areas:

It is understood from discussions with staff and trustees that for the most part the DPAs have been working well. This does not mean that they should be left as they currently are. There are needed updates due to changes in legislation or approach as is the purpose of the Environmental DPA review.

Some amendments to the OCP for the DPAs could also be accomplished through various formatting changes. Currently, the focus appears to be on exemptions to the DPAs not necessarily on the benefit and necessity of having them to create better development and development practices on the Island. To simply change the format of how the DPAs are outlined may present a picture that DPAs are beneficial and it is not so much about when they don't apply, but when they do and their importance to the community and the environment. This is an option to consider when looking at the review of these DPAs. However, it would mean that unless the other DPAs are updated in the near future the formatting will be different. However, such a shift for the other DPAs not being reviewed at this time could be accomplished over time. Exemptions in themselves help to manage cost and delay of applications and can be seen as a good management tool. It is, however, important that the importance of DPAs is not lost when

using exemptions. Exemptions do play a role and are needed so that all activities are not automatically part of the DP process.

However, exemptions do not permit the local government, when needed, to ensure that other development permit area guidelines are followed or that the development permit itself is registered on title. For instance, exemptions are given if there is a need for a building permit due to the fact that a geotechnical report is generally requested as part of that process. However, will this address all the guidelines/policies within a DPA? Should it still be registered on title as part of a DPA? This would help with monitoring the issuance of DPs (i.e. two years in which to start development or the permit will lapse). Should the DPAs be a bit more rigorous, informative and useful or are they doing the job they are intended to achieve? In making a change like this it would mean that there would be less exemptions, but there may be improved credibility in the value/usefulness of the DPs. However, from an administrative point of view, this would likely lead to an increased number of DPs being reviewed by staff and the LTC and subsequently registered on title and a possible delay in issuance of a building permit that relies on a DP being issued first.

It is recommended that the LTC discuss the above regarding the value they see in the DPAs and whether over and above the legislative changes, wording review and mapping changes that will occur as part of this review, is there a need to change the structure of DPAs and their format centred around possible exemptions. Is there a concern by the public that DPAs are not performing as they should, or as will be done in this review is there just a need for improved communication and education around DPAs in general? These are some of the questions to be considered in evaluating the changes (if any) that are required.

NEXT STEPS

Staff will be working towards the approval of the amending bylaws by June 2011. This will involve a streamlined process of bylaw review, consultation, education and bylaw adoption. While this is the anticipated outcome, it is understood that additional effort may have to be made around public consultation.

In the next two months, staff will begin a process of notifying the community of this work underway and will develop a "Landowners Guide to Development Permits" to be available at the front counter, public meetings, website and with other processes such as building inspection applications. It will address such topics as:

- Development Permit Areas (DPAs) in general – how established and why?
- Salt Spring Island DPAs – which ones and how they are applied and processed
- Need for OCP review and the Environmental DPA review (new information, improved mapping, etc.)
- Implementation of RAR as a requirement of all local governments

Generally, to give landowners a better idea of what DPAs are, their benefits, need for their use and how the process works if you are within a DPA. The written information will be accompanied with diagrams illustrating some of the concepts that are mentioned.

Staff will also ensure that the website is updated with all reports and general information including proposed mapping (e.g. RAR watersheds, hazards, etc.) It will permit submissions to be received as well on the bylaw amendments.

RECOMMENDATION

1. Based on these discussion, that the Salt Spring Island Local Trust Committee:
 - (a) Directs staff to develop a draft DPA 4 - Lakes, Streams, and Wetlands with consideration for the inclusion of recommendations from the St. Mary and Cusheon Lake Watershed Management Plans and the implementation of the Riparian Areas Regulation for review by the Local Trust Committee.
 - (b) Directs staff to develop a draft DPA 6 - Unstable Slopes and Soil Erosion Hazards for review by the Local Trust Committee.
 - (c) That staff be directed to outline a consultation process for involving the public in the bylaw amendment process and present to the LTC along with a sample 'Landowner's Guide to Development Permits" brochure for discussion.
2. That the Salt Spring Island Local Trust Committee directs staff to forward this report to the Advisory Planning, Agricultural and Environmental Advisory Committees for comment.

Prepared and Submitted by:

Kris Nichols, Consultant

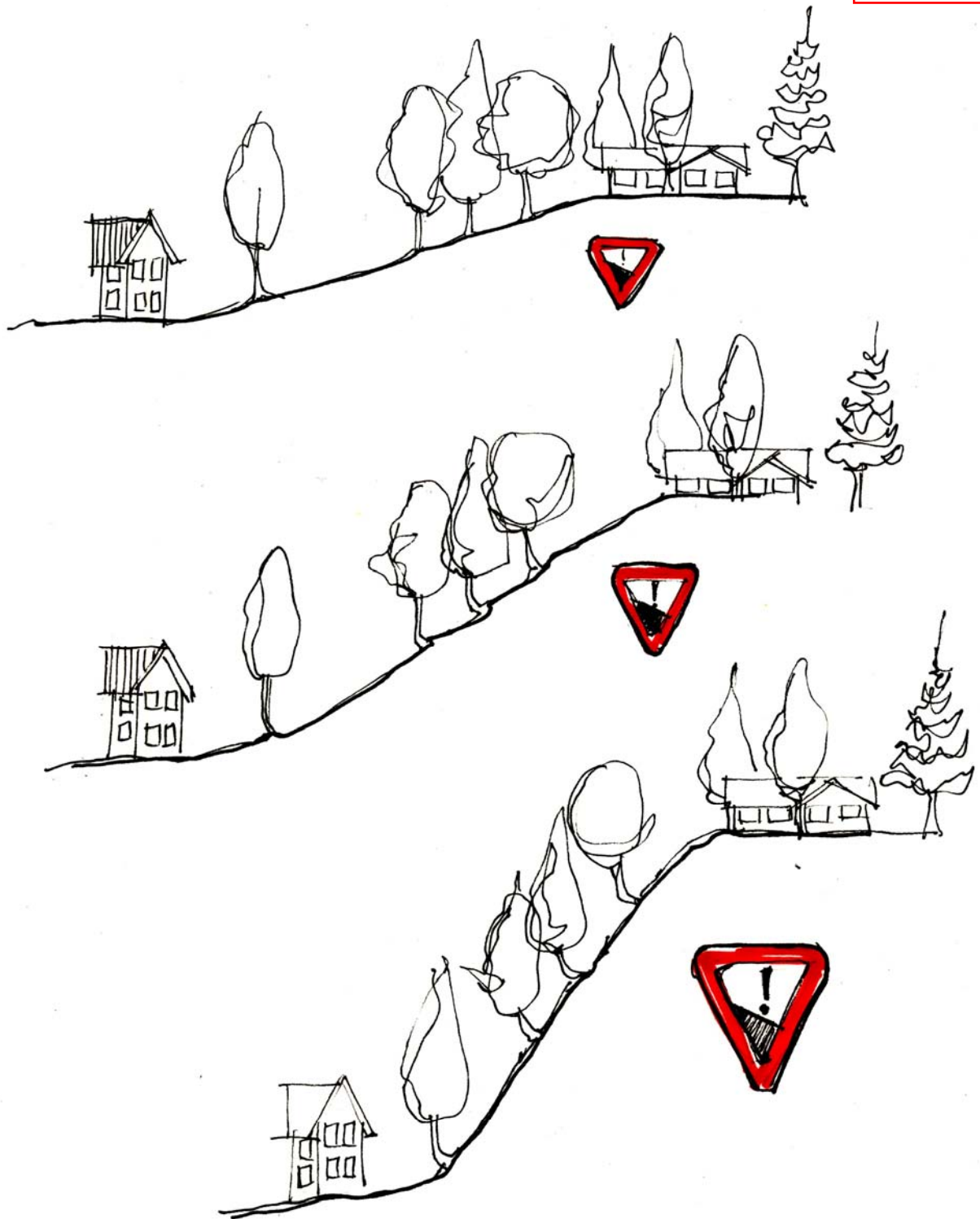
January 6, 2011

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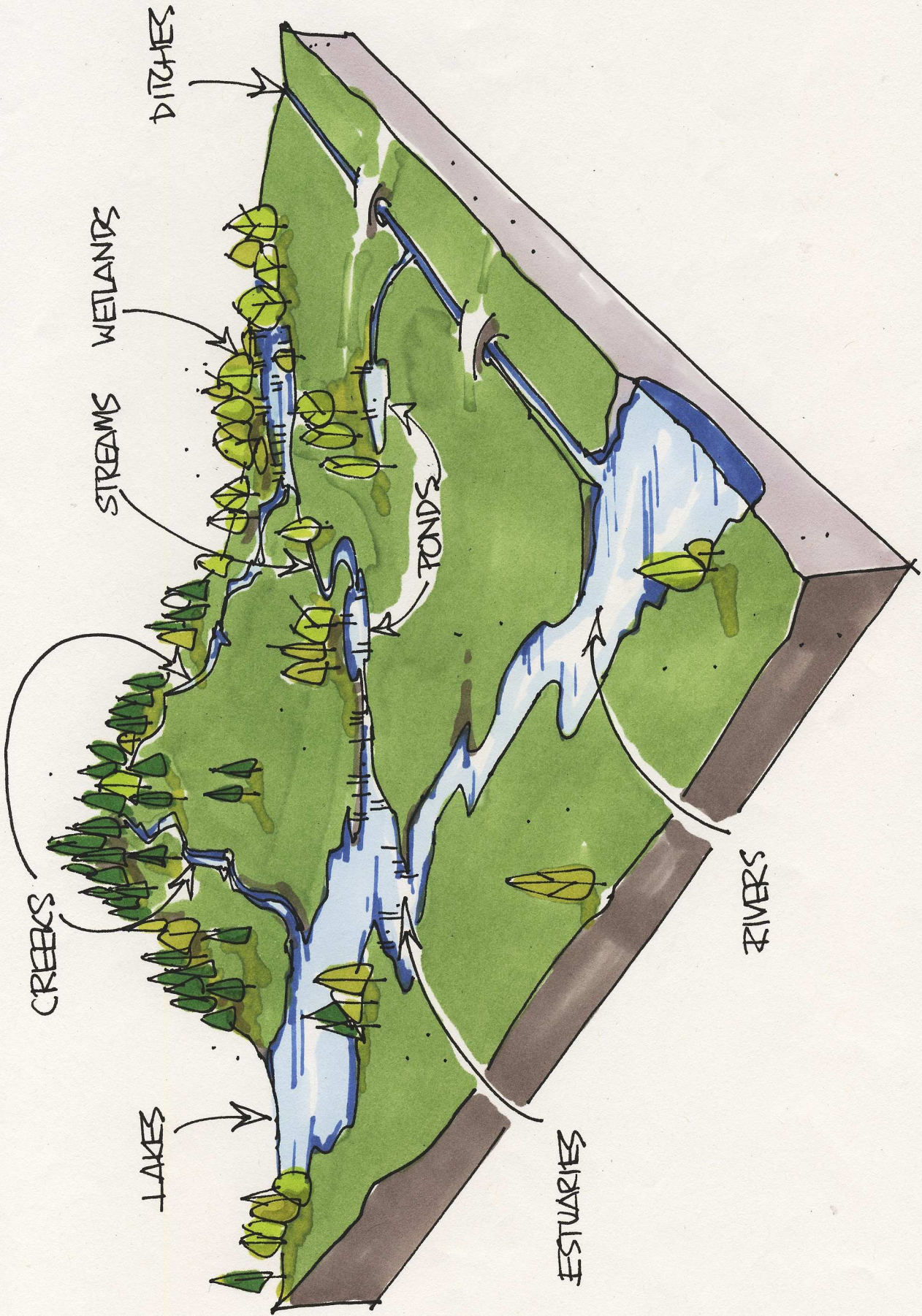
Leah Hartley, Regional Planning Manager

January 6, 2011

Attachment 1: Slope Diagrams



SLOPE HAZARD .



RIPARIAN AREAS ARE...