



# Planning & Development Services Committee Meeting **Amended** Agenda

June 6, 2019  
3:30 pm

**Members:** *Director Reinhardt (Chair), Director McCormick (Vice Chair), Director Gay, Director Doehle, Director Sosnowski, Director Walter, Director Clovechok, Director Wilkie, Director Pratt, Director Graham, Director Qualizza, Director Miller, Director Sterzer, Director Wilks*

## Voting Rules

Unless otherwise indicated on this agenda, all Directors except the Director representing the District of Elkford have one vote and a simple majority is required for a motion to pass.

**Who Votes    Count**

**1. Call to Order**

**2. Addition of Late Items**

**3. Adoption of the Agenda**

**4. Adoption of the Minutes**

4.1 May 2, 2019 Meeting

**5. Delegations**

5.1 Richard Haworth re: Bylaw No. 2906 and Bylaw No. 2907 – *item 8.1.1*

5.2 Helen Eldstrom re: Bylaw No. 2906 and Bylaw No. 2907 – *item 8.1.1*

5.3 Jean Horton re: Bylaw No. 2923 – *item 9.1.1*

5.4 Richard Haworth re: DVP No. 16-19 – *item 9.3.1*

*Withdrawn* ~~5.5 Monty Sosnowski re: DVP No. 18-19 – *item 9.3.2*~~

5.6 Ken & Teresa Litchfield re: DVP No. 20-19 – *item 9.3.3*

5.7 Philip & Clare Marshall re: Covenant Modification Application – *item 9.6.1*

5.8 Cindy Postnikoff & Jean Horton re: Regan Road Closure / Transportation & Infrastructure Referral – *item 9.6.3*

**6. Correspondence**

**6.1 ALC Decisions**

**6.2 Mine Referral**

**6.3 Miscellaneous**

6.3.1 Planning & Development Services June 2019 Board Report

6.3.2 Information Report – Akisqnuq Additions to Reserve

**7. Advisory Commissions**

**7.1 APC Minutes**

- 7.1.1 Area A – May 21, 2019
- 7.1.2 Area B – May 15, 2019
- 7.1.3 Area C – May 9, 2019
- 7.1.4 Area E – May 14, 2019
- 7.1.5 Areas F & G – May 21, 2019

**8. Unfinished Business**

**8.1 Bylaw Amendments**

- 8.1.1 Bylaw No. 2906 and Bylaw No. 2907 (Windermere North / Bad Toro Properties Ltd.)

**9. New Business**

**9.1 Bylaw Amendments**

- 9.1.1 Bylaw No. 2923 (Lumberton / Lost Dog Forestry Ltd. & Columbia Recycle Ltd.)
- 9.1.2 Bylaw No. 2924 and Bylaw No. 2925 (Baynes Lake / McArthur)
- 9.1.3 Bylaw No. 2926 (Miscellaneous Amendments / RDEK)
- 9.1.4 Bylaw No. 2927 (Miscellaneous Amendments / RDEK)

**9.2 ALR Applications**

- 9.2.1 Radium Hot Springs North / Breeze ALR Subdivision Application

**9.3 Development Variance Permit Applications**

- 9.3.1 DVP No. 16-19 Windermere East / Elkhorn Ranch Ltd.
- 9.3.2 DVP No. 18-19 Hosmer / Sosnowski
- 9.3.3 DVP No. 20-19 Windermere East / Litchfield

**9.4 Temporary Use Permit Applications**

**9.5 Ministry of Forests, Lands, Natural Resource Operations and Rural Development Referrals**

- 9.5.1 Area F – Windermere Valley Snowmobile Society Crown Land Application

**9.6 Miscellaneous Items**

- 9.6.1 Covenant Modification Application – Earl Grey Lodge
- 9.6.2 Request for Exemption from Providing a Professional Report – Soppit
- 9.6.3 Ministry of Transportation and Infrastructure – Road Closure Referral – Postnikoff / East of Kimberley

**10. Late Agenda Items**

**11. Adjournment**

**MINUTES OF THE REGIONAL DISTRICT OF EAST KOOTENAY  
PLANNING & DEVELOPMENT SERVICES COMMITTEE  
MEETING HELD AT THE REGIONAL DISTRICT OFFICE IN  
CRANBROOK BC ON MAY 2, 2019**

**PRESENT**

Committee Chair Clara Reinhardt	Village of Radium Hot Springs
Director Mike Sosnowski	Electoral Area A
Director Stan Doehle	Electoral Area B
Board Chair Rob Gay	Electoral Area C
Director Jane Walter	Electoral Area E
Director Susan Clovechok	Electoral Area F
Director Gerry Wilkie	Electoral Area G
Director Lee Pratt	City of Cranbrook
Director Wesly Graham	City of Cranbrook
Director Don McCormick	City of Kimberley
Director Ange Qualizza	City of Fernie
Director David Wilks	District of Sparwood
Director Allen Miller	District of Invermere

**ABSENT**

Director Karl Sterzer	Village of Canal Flats
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**OTHERS PRESENT**

Shawn Tomlin	Chief Administrative Officer
Andrew McLeod	Planning & Development Services Manager
Shannon Moskal	Corporate Officer
Rhiannon Chippett	Planning Assistant (Recording Secretary)

Committee Chair Clara Reinhardt called the meeting to order at 2:35 pm.

**ADOPTION OF THE AGENDA**

Agenda

MOVED by Director Sosnowski  
SECONDED by Director Gay

THAT the agenda for the Planning & Development Services Committee meeting be adopted.

CARRIED

**ADOPTION OF THE MINUTES**

Minutes

MOVED by Director Pratt  
SECONDED by Director Wilks

THAT the Minutes of the Planning & Development Services Committee meeting held on April 4, 2019 be adopted as circulated.

CARRIED

**DELEGATIONS**

**Richard Haworth**, agent for Bad Toro Properties Inc., made a presentation and requested an amendment to the Lake Windermere OCP and Upper Columbia Valley Zoning Bylaw to permit commercial and residential development for six properties that comprise of 24.4 acres on Athalmer Road in the Windermere Area. Mr. Haworth explained the request to add “Data Centre” and “RV and Boat Storage” is to recognize existing uses on portions of the properties.

**Richard Haworth**, agent for 1817796 Alberta Ltd., made a presentation and requested a development variance to permit development of a community sewer system for a 16-lot strata subdivision on Columbia Lake Road, without providing a back-up septic field on each parcel.

**DELEGATIONS** (continued)

**Richard Haworth**, agent for Kevin and Marie Power Jay, made a presentation and requested a development variance permit to waive provision of water for subdivision of a 10.4 acre property on McLeod Avenue, Fernie. Mr. Haworth explained water is currently provided to the existing home on Proposed Lot 2 of the subdivision, and that the DVP is requested for Proposed Lot 1.

**Ron Thomson**, agent for Fountain Capital Corp., and **Chris Nault**, realtor Royal LePage – East Kootenay Realty, made a presentation and requested an amendment to the Rockyview Official Community Plan and Cranbrook Rural Zoning Bylaw to permit future subdivision in the New Lake area, west of Cranbrook. Mr. Thomson explained that if approved, the proposed development will occur in three phases, with the first one creating seven 5 acre lots to the west of Kirk Road. Mr. Thomson explained that after receiving input from the City of Cranbrook and fielding questions and concerns of the Area C Advisory Planning Commission, the initial design was adjusted. Mr. Nault explained current housing needs and marketing statistics and the need for more parcels available for purchase outside of the city.

**Michele Bates**, RDEK Planner, gave a presentation on the Moyie Area Official Community Planning process, introduced the Moyie & Area OCP and Electoral Area C South Zoning & Floodplain Management Bylaw.

**Cheryl McCann**, agent for Kevin Kelly, gave a presentation and requested amendment to the Electoral Area E Zoning and Floodplain Management Bylaw to permit subdivision along McGinty Lake Road, in Meadowbrook. Ms. McCann explained if the bylaw is approved the owner intends to subdivide the property to create new residential acreages, although the configuration has not yet been determined.

**Darin MacDonald**, spoke on behalf of his application and asked for support of his non-adhering residential use application to the Agricultural Land Commission to allow placement of a manufactured home to be used as a secondary dwelling for a farm hand on his property located at 5874 Lower Elk Valley Road, just north of Sparwood. Mr. Macdonald explained the farm hands, Jeff and Cindy Rideout, are vital to the success of his farm operations and allowing them to reside on the property would be beneficial and without them the current operations would regress.

**Andrew Richardson**, spoke on behalf of his application for a development variance permit to decrease the minimum rear and side yard setback requirements from 1.5 m to 0.6 m to construct a detached garage.

**Chad Marlatt**, spoke on behalf of Freedom Mobile, gave a presentation and requested a Letter of Concurrence for a wireless telecommunications facility on privately owned property located at 9776 Airport Road in the Wycliffe area. Mr. Marlatt explained the Letter of Concurrence is required by Industry Canada as a condition for approval of the facility and provides confirmation that they have successfully consulted with local government.

**NEW BUSINESS**

48451  
Bylaws 2906 & 2907  
Postponed

MOVED by Director Clovechok  
SECONDED by Director Gay

THAT Bylaws No. 2906 and No. 2907 be referred to staff for consultation with the applicant.

CARRIED

48452  
DVP 15-19  
Granted

MOVED by Director Sosnowski  
SECONDED by Director Wilkie

THAT Development Variance Permit No. 15-19 be granted.

CARRIED



**NEW BUSINESS** (continued)

48453  
DVP 17-19  
Granted

MOVED by Director Sosnowski  
SECONDED by Director Qualizza

THAT Development Variance Permit No. 17-19 be granted subject to registration of a restrictive covenant prohibiting serviceable buildings until proof of potable water is provided.

CARRIED

48454  
Bylaw No. 2908  
Introduction

MOVED by Director Gay  
SECONDED by Director Walter

THAT Bylaw No. 2908 cited as “Regional District of East Kootenay – Rockyview Official Community Plan Bylaw No. 2255, 2010 – Amendment Bylaw No. 23, 2019 (Cranbrook West / Fountain Capital Corp.)” be introduced;

and further, that the Board is satisfied that the OCP consultation identified in the staff report is appropriate.

CARRIED

OPPOSED: Director Pratt  
Director Graham

48455  
Bylaw No. 2909  
Introduction

MOVED by Director Gay  
SECONDED by Director Sosnowski

THAT Bylaw No. 2909 cited as “Regional District of East Kootenay – Cranbrook Rural Zoning Bylaw No. 1402, 2001 – Amendment Bylaw No. 52, 2019 (Cranbrook West / Fountain Capital Corp.)” be introduced;

and further, that a development agreement containing the items identified in the staff report be registered on title prior to bylaw adoption.

CARRIED

OPPOSED: Director Pratt  
Director Graham

48456  
Bylaw No. 2912  
Introduced

MOVED by Director Gay  
SECONDED by Director Sosnowski

THAT Bylaw No. 2912 cited as “Regional District of East Kootenay – Moyie & Area Official Community Plan Bylaw No. 2912, 2019” be introduced;

and further, that the Board is satisfied that the OCP consultation identified in the staff report is appropriate.

CARRIED

48457  
Bylaw No. 2913  
Introduced

MOVED by Director Gay  
SECONDED by Director Walter

THAT Bylaw No. 2913 cited as “Regional District of East Kootenay – Electoral Area C South Zoning & Floodplain Management Bylaw No. 2913, 2019” be introduced.

CARRIED

48458  
Bylaw No. 2917  
Introduced

MOVED by Director Walter  
SECONDED by Director Gay

THAT Bylaw No. 2917 cited as “Regional District of East Kootenay – Electoral Area E Zoning and Floodplain Management Bylaw 2502, 2014 – Amendment Bylaw No. 20, 2019 (Meadowbrook / Kelly)” be introduced.

CARRIED

**NEW BUSINESS (continued)**

48459  
MacDonald  
ALR Non-Adhering

MOVED by Director Wilks  
SECONDED by Director Sosnowski

THAT the Agricultural Land Commission be advised the RDEK supports the MacDonald ALR non-adhering residential use application for a farm hand dwelling on property located at 5874 Lower Elk Valley Road, north of Sparwood.

CARRIED

48460  
DVP 19-19  
Refused

MOVED by Director Clovechok  
SECONDED by Director Miller

THAT Development Variance Permit No. 19-19 be refused.  
CARRIED

48461  
Freedom Mobile  
Letter of Concurrence

MOVED by Director Gay  
SECONDED by Director Doehle

THAT Freedom Mobile be advised that:

- a) Freedom Mobile has satisfactorily completed its consultation with the Regional District of East Kootenay;
- b) The Regional District of East Kootenay is satisfied with Freedom Mobile's public consultation process; and,
- c) The Regional District of East Kootenay concurs with Freedom Mobile's proposal to construct a wireless telecommunications facility on privately owned property located at 9776 Airport Access Road in Wycliffe near Cranbrook, provided it is constructed substantially in accordance with the plans submitted to the RDEK.

CARRIED

The meeting recessed at 3:58 pm and reconvened at 4:10 pm.

48462  
ALR Use  
Regulations

MOVED by Director Sosnowski  
SECONDED by Director Wilks

THAT a letter be sent to Minister of Agriculture and Deputy Minister of Agriculture expressing the Board's concern on the detrimental effect the new Agricultural Land Reserve Use Regulations will have in the East Kootenay.

CARRIED

48463  
ALR Use  
Regulations

MOVED by Director Clovechok  
SECONDED by Director Miller

THAT an application be submitted to be a delegate at the upcoming East Kootenay meeting of the Standing Committee on Finance and Government Services to express the Board's concern on the impact the new Agricultural Land Reserve Use Regulations will have on the East Kootenay economy.

CARRIED

**UNFINISHED BUSINESS**

48464  
Bylaw No. 2910  
Introduced

MOVED by Director Doehle  
SECONDED by Director Gay

THAT Bylaw No. 2910 cited as "Regional District of East Kootenay – Baynes Lake Official Community Plan Bylaw No. 2319, 2011 – Amendment Bylaw No. 10, 2019 (Baynes Lake / Abbott & Ernst)" be introduced;

and further, that the Board is satisfied that the OCP consultation identified in the staff report is appropriate.

CARRIED

**UNFINISHED BUSINESS** (continued)

48465  
Bylaw No. 2911  
Introduced

MOVED by Director Doehle  
SECONDED by Director Gay

THAT Bylaw No. 2911 cited as “Regional District of East Kootenay – South Country Zoning and Floodplain Management Bylaw No. 2320, 2011 – Amendment Bylaw No. 18, 2019 (Baynes Lake / Abbott & Ernst)” be introduced.

CARRIED

**NEW BUSINESS**

48466  
Bylaw No. 2915  
Introduced

MOVED by Director Gay  
SECONDED by Director Walter

THAT Bylaw No. 2915 cited as Regional District of East Kootenay – Electoral Area E Zoning and Floodplain Management Bylaw No. 2502, 2014 – Amendment Bylaw No. 19, 2019 (Miscellaneous Amendments 2019 / RDEK)” be introduced.

CARRIED

48467  
Bylaw No. 2919  
Introduced

MOVED by Director Gay  
SECONDED by Director Walter

THAT Bylaw No. 2919 cited as “Regional District of East Kootenay – Rockyview Official Community Plan Bylaw No. 2255, 2010 – Amendment Bylaw No. 24, 2019 (Cranbrook West / 1009891 BC Ltd)” be introduced;

and further, that the Board is satisfied that the OCP consultation identified in the staff report is appropriate.

CARRIED

48468  
Bylaw No. 2920  
Introduced

MOVED by Director Gay  
SECONDED by Director Walter

THAT Bylaw No. 2920 cited as “Regional District of East Kootenay – Cranbrook Rural Zoning Bylaw No. 1402, 2001 – Amendment Bylaw No. 53, 2019 (Cranbrook West / 1009891 BC Ltd)” be introduced;

and further, that a development agreement containing the items identified in the staff report be registered on title prior to bylaw adoption.

CARRIED

48469  
Bylaw No. 2921  
Introduced

MOVED by Director Doehle  
SECONDED by Director Clovechok

THAT Bylaw No. 2921 cited as “Regional District of East Kootenay – Lake Koocanusa Official Community Plan Bylaw No. 2432, 2013 – Amendment Bylaw No. 3, 2019 (Sweetwater / KV Properties Inc.)” be introduced;

and further, that the Board is satisfied that the OCP consultation identified in the staff report is appropriate.

CARRIED

48470  
Bylaw No. 2922  
Introduced

MOVED by Director Doehle  
SECONDED by Director Clovechok

THAT Bylaw No. 2922 cited as “Regional District of East Kootenay – Lake Koocanusa Official Community Plan Bylaw No. 2432, 2013 – Amendment Bylaw No. 3, 2019 (Sweetwater / KV Properties Inc.)” be introduced.

CARRIED

**NEW BUSINESS** (continued)

48471  
EV Floodplain  
Management Policies

MOVED by Director Qualizza  
SECONDED by Director Gay

THAT a review of the Elk Valley floodplain management policies and regulations to incorporate the recommendations contained in the Elk River Floodplain Mapping Report (Jan. 2019) be referred to the list of 2019 Planning & Development Services priority projects for evaluation and ranking;

and further, that until the new floodplain management regulations are adopted, building permit applicants be required to do the following:

- i) adhere to the development standards identified in the Elk River Floodplain Mapping Final Report; or
- ii) in accordance with section 56 of the Community Charter, build according to the recommendations contained in a site specific hazard assessment completed by a Qualified Professional; or
- iii) register a covenant on the title acknowledging they are aware of the Elk River Floodplain Mapping Report, have chosen not to build to the recommended standards or obtain a site specific hazard assessment from a Qualified Professional, and indemnifying the Regional District for any damage to property due to flooding or debris flows.

CARRIED

48472  
Edgewater Legion  
Liquor Licence

MOVED by Director Wilkie  
SECONDED by Director Wilks

THAT the application by the Legion Branch #199 to change the current 'Liquor Primary Club' licence to a 'Liquor Primary' licence for the Royal Canadian Legion located at 4858 Cordillera Ave in Edgewater be supported; and further, be it resolved that, the Board recommends approval of the Liquor Primary Change because the use of the property is consistent with the zoning bylaw.

The Board's comments on the prescribed considerations are as follows:

- a. The Legion Branch #199 is located within the developed core area of Edgewater where commercial food and beverage services are anticipated.
- b. The proposal is consistent with the permitted uses in the site's C-1 zone designation.
- c. Notices of Intent were mailed to 114 property owners within 200 metres of the subject property on April 8, 2019. Three notices were returned as undeliverable and no responses from the public were received.

CARRIED

The meeting adjourned at 4:38 pm.

**CERTIFIED CORRECT**

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Committee Chair Clara Reinhardt

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Shannon Moskal, Corporate Officer

Rhiannon Chippett

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**Subject:** FW: Delegation Request - Bad Toro Properties

Rhiannon,

Our request for zoning amendments for Bad Toro Properties was presented at the May planning committee meeting. The committee voted to defer the application for one month. As such, I understand that we are now on the June agenda.

As such, I would appreciate being a delegation at the June planning committee meeting to update our application to the committee. We will not have a power point presentation and will simply be providing a quick update to the committee and being available for questions.

Thanks,  
Richard Haworth

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*[Faint, mostly illegible text, likely a list of names and addresses or a detailed report, possibly including a table with columns for names and addresses.]*

**REQUEST TO PRESENT TO PLANNING AND DEVELOPMENT SERVICES MEETING – JUNE 6 2019**

**TOPIC:** BAD TORO PROPERTIES LTD.  
BYLAW AMENDMENT APPLICATION-FILE: P719504

**SPEAKER:** Helen Elstrom, Windermere Community Association (WCA)

**SPECIFIC ACTION:** To have the Planning and Development Services Committee hear the concerns the WCA has with allowing boat storage on the frontage road (Athalmer Road) as proposed in this application.

**EXECUTIVE SUMMARY OF PRESENTATION:**

The major concern of area residents is allowing boat and RV storage on the three lots that front onto Athalmer Road on the entranceway to Invermere.

Although the application states “there has been a long standing RV and boat storage operation on these lots”, they were moved to this location not much more than a year ago. This was done in contravention of the zoning bylaw.

There are many reasons why we are asking the RDEK to deny the request to permit boat and RV storage on the 3 lots. They are as follows:

**1) The Public Does Not Want Boat and RV Storage in this Location**

During the Lake Windermere Official Community Plan (LWOCP) planning process, the public, WCA and the LWOCP Advisory Group all indicated they do not want boat, RV and self-storage facilities in commercial areas. They specifically said storage should only be permitted in industrial areas and not on the entranceway to Invermere, Windermere and along the highway #93/95 tourist corridor.

Comments from the public included: “NO MORE STORAGE FACILITIES” and “Create a new industrial area—not on highway”. Survey results found “89% of respondents indicated “the form and character of commercial development is very important.”

It should be noted the LWOCP will be approved this summer. Based on public input, it will likely not allow any storage in commercial areas and only permit it in industrial areas.

**2) Boat/RV/Self Storage Facilities Negatively Impact Commercial(C-2) Lands**

a) ***Removes Commercial Lands Necessary To Meet Future Needs-*** Using these lands for boat/RV/self storage, means they will no longer be available for “true” commercial uses. As the Lake Windermere area population continues to grow, demand for retail shops, restaurants, galleries etc. will increase. Specifically new commercial development will be required on these 3 lots to serve the needs of residents who will be living in the proposed R-1(Mobile Home Zone) community and on other nearby residential lands. Commercial businesses will also be necessary to serve tourists visiting the Lake Windermere area.

The boat and RV storage will **not** be temporary, as the applicant has stated, as there always will be a demand for boat storage in close proximity to the lake. If approved, boat and RV storage will most likely stay there many years, which is not what the public wants or needs.

b) ***Negatively Impacts Tourism-*** A primary economic driver in the Windermere Valley is tourism. A major factor attracting visitors is the natural beauty and scenic views. Lining the entrances to Invermere and Windermere and along highway 93/95 and with boat/RV/self storage will negatively impact tourism by reducing the visual appearance of the area.

c) ***Undermines Having an Attractive and Inviting Entrance to Invermere-*** Promoting and achieving visually appealing development along Athalmer Road is very important as it gives a first impression of Invermere. The DOI has just purchased the Lake Windermere Resort Lands which are further along Athalmer Road. During discussions about the purchase, improving the appearance of the entrance to Invermere was identified as a goal that could be achieved if the DOI owned the property. Putting boat and RV storage in this location works against achieving this goal, as an industrial use is not appropriate at this entranceway. OCPs such as Fairmont, Canal Flats and Dry Gulch all have policies that prohibit storage on their entranceways. It is likely the new LWOCPP will have a similar policy when it is approved this summer.

d) ***The Inability to Effectively Screen Storage Facilities-*** It is very difficult to reduce the visual impact of boats and RVs due to their height. Right now there is a chain link fence with some white material on parts of it that does not hide the many boats and RVs now being stored. To screen them, a high wooden fence is needed along with landscaping to break up the long lengths of fencing surrounding the perimeter of the facility. The applicant has said there is no room for landscaping and there is no commitment to replace the chain link fence with a wooden one. As a result, the boat and RV storage facility will continue to be an “eyesore” if it is allowed to remain.

The RDEK does not require deposits to ensure required fencing and landscaping is installed in a timely fashion. Most often this is done long after the development permit is issued. There is also no mechanism to ensure the landowner replaces landscaping if it dies after it is planted. Based on the above, we do not believe the boat and RV storage will be adequately screened.

e) ***Expansion of Boat and RV Storage on the 3 Lots-***Right now boat and RV storage is only on lot 8 and a portion of lot 9. There is nothing in the application that states the existing storage will not be expanded to cover all 3 lots. This would only make the existing situation worse.

f) ***Expansion of Boat and RV Storage on Property to the East on Athalmer Road-*** There is more illegal boat storage on Athalmer Road just east of the subject boat and RV storage. It spreads over lots 12, 13 and 14 and is part of the boat servicing business located on lot 11 which is owned by Red Toro Properties Ltd. This boat storage has only just appeared this spring with more boats being added every week. As it contravenes the zoning bylaw (C-2), It is anticipated the RDEK will receive an application from the landowner to also use “spot zoning” to permit this boat storage. If that occurs, the entrance to Invermere will be lined with boat and RV storage.

#### **COMMUNITY RECOMMENDATION**

Based on the above, the WCA asks the RDEK Planning and Development Services Committee to reject the request to permit boat and RV storage on lots 8, 9 and 10.

We suggest that the boat and RV storage be relocated to the Red Toro Properties Ltd. lands just behind these lots. Revenue could still be generated by the landowner from the current leaseholder but the boat storage would not be in a highly visible location. It could also accommodate all the boats their boat servicing tenant now has put on lots 12, 13 and 14.

In closing, the public does not want boat and RV storage on lots, 8, 9 and 10 or at the entranceways to Invermere or Windermere and along highway #93/95. In addition, placing this industrial use in these locations negatively impacts the local economy.

Thank you for allowing the WCA to present today.

**Rhiannon Chippett**

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**Subject:** FW: Delegation Request - P719 321

Hi Rhiannon,

Jean Horton would like to be a delegation at the June 6, 2019 Planning Committee. She will be speaking on behalf of our client Lost Dog Forestry your file #P 719-321.

Jean will forward a copy of her power point presentation before the meeting.

Thanks  
Cheryl

**Cheryl McCann**  
Reception/Office Admin  
Municipal Infrastructure & Geomatics



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**Rhiannon Chippett**

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**Subject:** FW: Delegation Request - June 6 Planning Committee - Elkhorn Ranch  
**Attachments:** 19-05-02 Elkhorn Ranch DVP.pptx

Rhiannon,

We are submitting this request to appear as a delegation at the June 6 Committee meeting regarding our request for DVP for Elkhorn Ranch.

The applicant has completed drilling wells for the 11 development lots. However, due to required adjustments to the subdivision plan as a result of the Agricultural Land Commission refusing to allow use of the existing easement for legal access to the development, adjustments to the plan have been required which result in the well for Proposed Lot 11 being located on Proposed Lot 10 rather than on Proposed Lot 11. As a result, we are seeking to vary to Subdivision Servicing Bylaw (Section 10.01(2)(a)) to permit the well for Proposed Lot 11 to be located on Proposed Lot 10. All other provisions of the bylaw relating to water quantity and quality have been addressed.

The well is located on the edge of Proposed Lot 10 and is in a location that does not impact the use of Proposed Lot 10. Proposed Lot 10 also has its own well, located elsewhere on the lot. Proposed Lot 11 will have an easement over a portion of Proposed Lot 10 to permit access to the well for maintenance and operation of the well as required. In addition, the easement will also pass over the proposed Common Access Lot located between Proposed Lot 10 and Proposed Lot 11

Our powerpoint presentation is attached.

If you require anything further, please contact me at your convenience.

Thanks,  
Richard Haworth

**HAWORTH** | Development  
Consulting

PO Box 223, Suite 203, 926 – 7<sup>th</sup> Avenue,  
Invermere, BC V0A 1K0

T: 250-342-1227

**Rhiannon Chippett**

---

**Subject:** FW: AGENDA - FW: Delegation Request for June 6, 2019 Meeting  
**Attachments:** Letters w application.pdf

The topic on which we wish to speak is "The Variance Permit - Lot 8 Plan  
NEP21029 District Lot 19 Kootenay District & DL4596, 1767 Windermere Loop Road, Windermere BC V0B 2L2".

Executive Summary is as follows:

- 1: We wish to speak on the impact of errant golf balls on our Home and Yard. In particular that of the protection of our Home and Yard, personal safety of ourselves and our guests and the prevention of property damage caused by errant golf balls from the Windermere Golf course.
- 2: The designated speakers will be Ken Litchfield and/or Teresa Litchfield.
- 3: We are requesting a Development Variance Permit to Vary the Zoning Bylaw to allow our Mesh height from 6' 6" to the existing 50' height.
- 4: No audio/visual equipment is required.
- 5: Attached are letters of support from our immediate neighbours, the Golf Course and from Golfers using the golf course.

Thank you for your help in this matter.

Best Regards  
Ken and Teresa Litchfield

## Rhiannon Chippett

---

**Subject:** FW: AGENDA - FW: Tree covenant modification Meeting 6th June 2019

Rhiannon

Please find the details requested below for the meeting on June 6<sup>th</sup> 2019

1. An executive summary or outline of the presentation to be made;

The summary is a verbal presentation by Philip Marshall owner of property and should last approximately 4 minutes. Areas to be covered

- The lodge pole pine trees are reaching the end of their life in this location and are either diseased or becoming a risk from stability, winds from the west are buffered off of Ski Tip, Tamarack and 1000 Peaks lodge to make a wind tunnel. In 20 years no new growth has appeared existing trees are becoming unstable
- Fire prevention, the trees are located too close to the surrounding properties and some need removing for safety reasons.
- Due to planting by neighbours and Earl Grey Lodge screening is provided for neighbouring properties.
- New landscaping, we wish to replant with different better species for the area (already planted 80 trees else ware)
- We wish to be proactive in looking forward to possible changes in the OCP for Panorama
- We have obligations under the easement covenant KN005964 granted to neighbours on this boarder which we wish to limit any liability from the trees and land stability.

2. The name of the designated speaker(s); Philip Marshall

3. The specific action which is being requested of the Board or Committee; Philip and Clare Marshall are asking that the board modify the tree covenant on Lot1 District Lot 4609. KD, Plan NEP63501

4. Whether or not you will require use of audio/visual equipment. Due to size of pictures of the area and RDEK not support Apple we will bring an ipad with pictures of the area if the directors would like to have a better visual understanding

Phil

Phil & Clare Marshall  
Earl Grey Lodge Inc

**Rhiannon Chippett**

---

**Subject:** FW: AGENDA - FW: June 6 Meeting

Hi Shannon

This is to inform you that,  
Jean Horton and myself Cindy Postnikoff will be speaking on behalf of my proposed road closure in Meadowbrook. Jean will be submitting a PowerPoint for the presentation to you in the next week or so.

Thank you  
Cindy Postnikoff



## Planning & Development Services June 2019 Board Report

P 006 001

### STATISTICS (Apr. 16, 2019 – May 15, 2019)

	2019	2018
<b>INQUIRIES</b>	<b>340</b>	325
<b>BUILDING CHECKS</b>	<b>48</b>	68

	----- ELECTORAL AREAS ----- -----						YEAR	
	A	B	C	E	F	G	2019	2018
Agricultural Land Reserve				1			1	1
Bylaw Amendments (Zoning / Land Use / OCP)	1						1	3
DP	1		8				9	5
DVP / Bd. of Variance	1						1	4
Subdivision					4		4	1
MFLNRO Referrals	1	1					2	5
Other Agency Referrals (MoTI / Liquor Control etc.)					1		1	2
Other Permits & Agreements (Housing Agreements / Temp. Use / Floodplain Exemptions / Campground)					1		1	0
<b>TOTALS 2019</b>	<b>4</b>	<b>1</b>	<b>8</b>	<b>1</b>	<b>6</b>	<b>0</b>	<b>20</b>	
<b>TOTALS 2018</b>	2	2	7	4	5	1		21

### Kootenay and Boundary Farm Advisors

The steering committee has agreed to renew the Kootenay and Boundary Farm Advisors (Keefer Ecological Services) contract for a third year with a term from June 15, 2019 to June 30, 2020. KBFA is a partnership between RDEK, RDCK, RDKB and Columbia Basin Trust and which provides producers with free, technical production support through independent consultants, academics, educational events and producer networking. KBFA's goal is to improve agricultural production and efficiency in the Basin area.

### **Panorama Official Community Plan**

Our online Issues and Idea Survey closed at the end of May. Round #2 of the engagement strategy will begin in early July including a second Open House.

### **Ministry of Transportation and Infrastructure**

Development approvals staff from MOTI met with Planning & Development Services staff on May 8<sup>th</sup> to get acquainted with new employees and review a number of shared files.

### **Lake Windermere OCP**

The draft plan will be presented to the public at an open house on June 9th.



## Information Report

P 154 502

**Date** May 13, 2019  
**Author** Andrew McLeod, Manager of Planning & Development Services  
**Subject** Akisqnuq Additions to Reserve

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### BACKGROUND

The attached letter was received from Indigenous Services Canada regarding two small Additions to the Reserve at Akisqnuq.

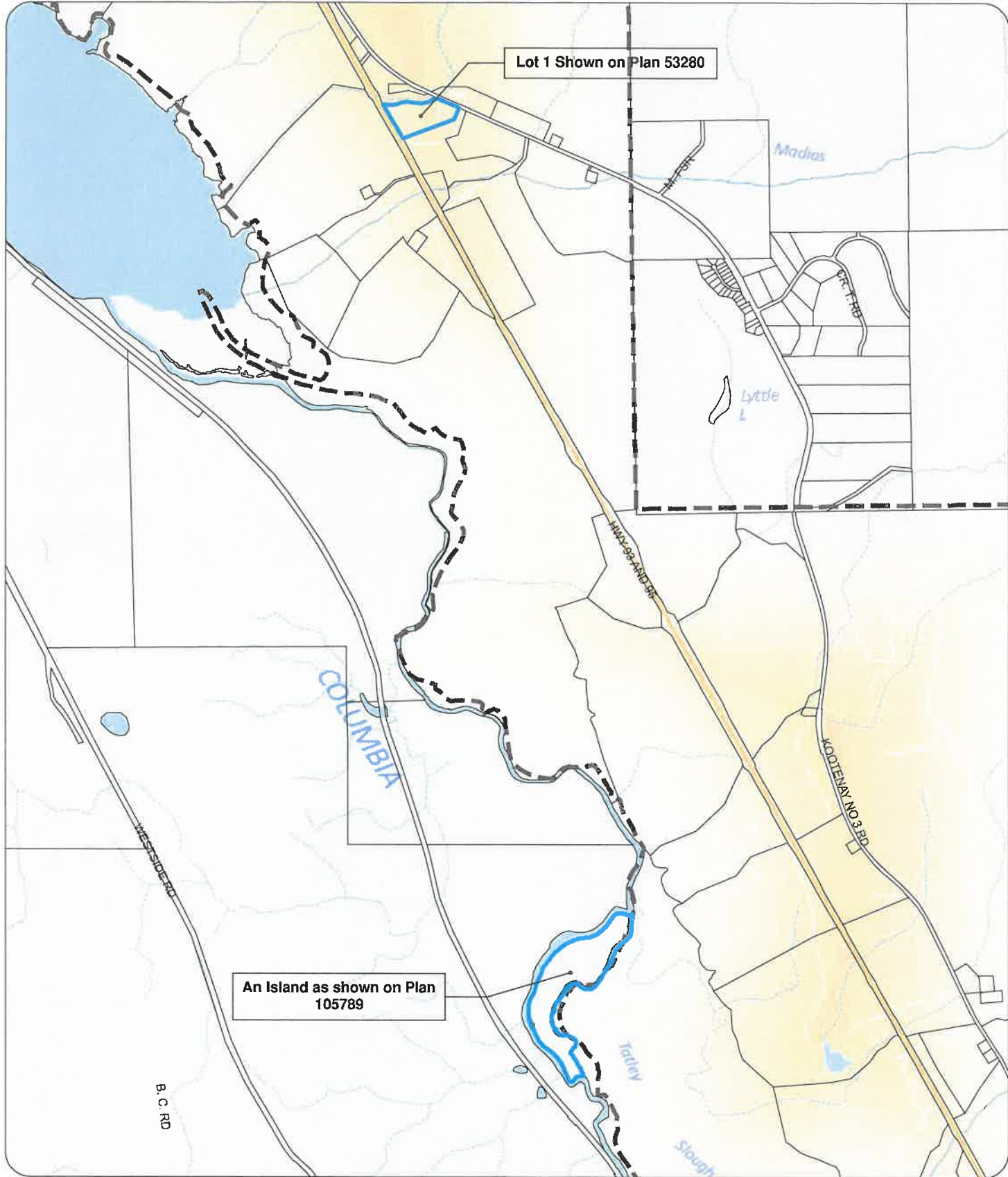
### INFORMATION

The Akisqnuq First Nation has applied to add two parcels of land to its Reserve. Both parcels are provincial Crown land that were part of the reserve prior to 1968.

1. The first parcel is approximately 6 hectares in size. It is a former gravel pit situated between Hwy 93/95 and Kootenay No. 3 Road. It is surrounded on all sides by existing Reserve lands.
2. The second parcel is an island in the Columbia River between Columbia Lake and Lake Windermere and abuts the Reserve. Our records indicate it is a 25 hectare parcel, zoned A-1 Rural Resource.

No land use impacts from the above Additions to Reserve are anticipated.



Attachment: **Letter – Indigenous Services Canada**

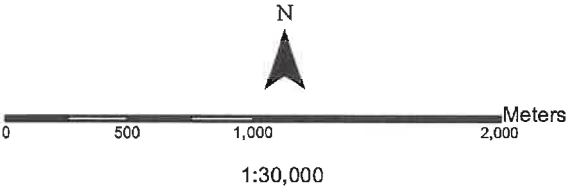


Lot 1 Shown on Plan 53280

An Island as shown on Plan 105789

**Legend**

-  First Nation Reserve Boundary
-  Proposed Lots



**Proposed  
Additions to Reserve**





Indigenous Services  
Canada

Services aux  
Autochtones Canada

**DISTRICT OF  
INVERMERE**

MAY 09 2019

May 1, 2019

District of Invermere  
PO Box 339  
INVERMERE, BC V0A 1K0

**RECEIVED**

Attention: Mayor Al Miller and Council

Dear Mayor Miller and Council,

**Re: Proposed Additions to Reserve (ATR)  
?Akisq'nuk First Nation – Pasture/Gravel Pit and Island**

---

I am writing to inform you that ?Akisq'nuk First Nation has formally submitted two requests for certain lands located in the District of Invermere to be set apart as a community additions to Columbia Lake Indian Reserve No. 3 ("Columbia Lake IR 3"). Columbia Lake IR 3 is located approximately 15 kilometres southeast of Invermere. The two parcels of land proposed to be added to Columbia Lake IR 3 (the "Proposed ATRs") are described as:

- 1) In the Province of British Columbia  
In the Kootenay District  
Columbia Lake Indian Reserve No. 3

All of Lot 1 shown on Plan 53280 recorded in the Canada Lands Survey Records, a copy of said plan is recorded as Plan F148 in the Land Titles Office

The area being approximately 6.03 hectares (approx. 14.90 acres)

These lands are former reserve lands located within Columbia Lake IR 3 which were surrendered and sold in 1968 and will be returned to ?Akisq'nuk First Nation by the Province of British Columbia.

- 2) In the Province of British Columbia  
In the Kootenay District

An island as shown on Plan 105789 recorded in the Canada Lands Survey Records

.../2

**Canada**

The area of the Island being approximately 17.10 hectares (approx. 42.25 acres)

This island is located in the Columbia River, adjacent to Columbia Lake IR 3.

Enclosed for your information are surveys and images showing the approximate location of the Proposed ATRs.

As you may know, reserves are land that has been set apart for the use and benefit of a First Nation. The Government of Canada has discretion to create reserves and add land to existing reserves in accordance with Canada's Addition to Reserve/Reserve Creation Policy Directive.

Local Government(s) and the Province are encouraged to work with the First Nation using a "good neighbour" approach, which involves good will, good faith and reasonableness in discussions between the First Nation and other Governments. As part of the Addition to Reserve/Reserve Creation process, the First Nation is responsible for negotiating agreements with local governments on issues such as service provisions, by-law harmonization, tax considerations, land-use planning, and dispute resolution.

We encourage Municipal, Provincial and First Nation governments to work together on common and shared obligations and goals. By working together, we can advance our collective work in the spirit of reconciliation and a nation-to-nation relationship. Communication among all relevant parties is encouraged when addressing issues of mutual concern.

I wish to encourage you to offer any concerns or technical comments that you may have about this proposed reserve. I would ask that you please submit your comments by June 14, 2019.

Should you have any questions or wish to receive further information, please do not hesitate to contact me by phone at: 604-396-5288, or by e-mail at [Magali.Perreault@Canada.ca](mailto:Magali.Perreault@Canada.ca)

Yours truly,



Magali Perreault  
A/Manager, Program and Project Support  
Lands and Economic Development Directorate  
British Columbia Region  
600 - 1138 Melville Street  
VANCOUVER BC V6E 4S3

Encl. Copy of plan 105789 CLSRBC – Island ATR  
Copy of plan 53280 CLSRBC – Gravel/Pasture Pit ATR  
Google Earth Images showing location of Proposed ATRs

cc. ?Akisq'nuk First Nation  
3050 Highway 93/95  
WINDERMERE, BC VOB 2L2



PROPOSED ATR  
LOT 1, SHOWN ON  
PLAN 53280 CLSRBC  
RECORDED AS PLAN F148  
IN THE LAND TITLES OFFICE  
Approx. 6.03 ha (14.90 acres)

COLUMBIA LAKE 3



PLAN AND FIELD NOTES OF SURVEY OF  
**LOT 1, COLUMBIA LAKE I.R. NO 3,**  
 KOOTENAY DISTRICT  
**BRITISH COLUMBIA**

SCALE: 1 INCH = 200 FEET

THIS SURVEY WAS EXECUTED OCTOBER 12, 1966 BY R.G. JOHNSON, B.C.L.S.

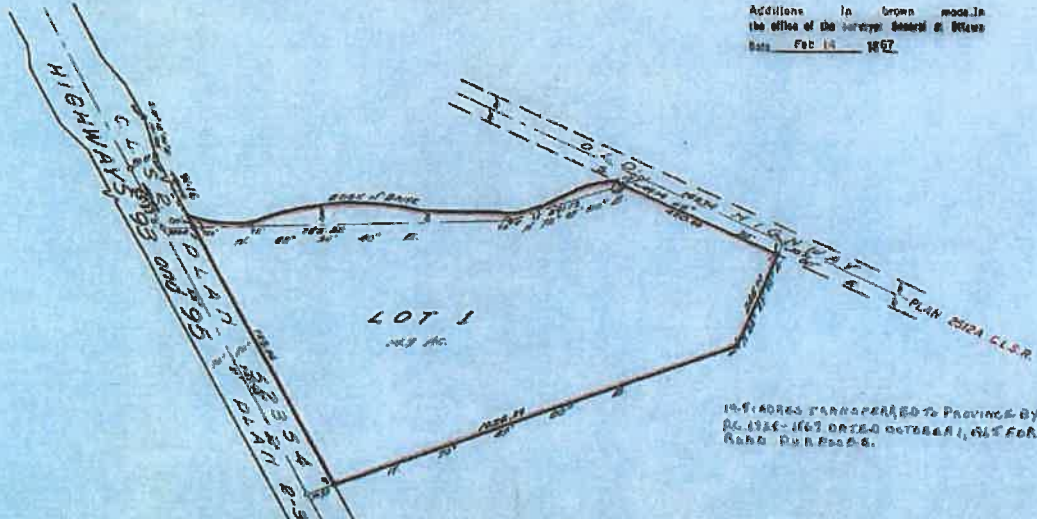
**LEGEND:**

bearings are Astronomic, derived from Highways 93 and 95 as shown on C.L.S.R. 19 52354 (Plan E-337-Nelson Land Registry Office), and according to that plan are referred to the Meridian through a point 15.7142 feet South and 7.9411 feet West of the South East Corner of Columbia Lake Indian Reservation 172 3.

- Denotes found standard concrete post
  - Denotes found old iron pin
  - Denotes set standard 8 1/2" square galvanized iron pin stamped B.C.L.S.
  - Denotes traverse lines and stations
- Lands dealt with by this plan bounded thus

A copy of this plan has been filed in the Land Registry Office for the Nelson Land Registration District of Nelson under No. A 4292.

Additions in brown made in the office of the Surveyor General at Ottawa  
 Date Feb 14 1967



14.9 ACRES TRANSFERRED TO PROVINCE BY REG. 4246-167 DATED OCTOBER 1, 1967 FOR ROAD PURPOSES.

**COLUMBIA LAKE INDIAN RESERVE NO 3**  
 PLAN T.B.C. 49 C.L.S.R.

Department of Indian Affairs and Northern Development  
 Ottawa, FEBRUARY 27th 1967  
 In Section 49 Canada Lands Survey Act  
 This survey and plan are authentic  
 R.P. HAYLLE  
 Assistant Deputy Minister, Indian Affairs

I, Raymond George Johnson, of the City of Nelson, British Columbia, Land Surveyor, make oath and say that I have in my own proper person, observing to the law and the instructions of the Surveyor General of Canada, lands, bearings, and correctly executed the survey showing bearings and distances, and that the said plan and field notes are correct and true to the best of my knowledge and belief.  
 SO HELP ME GOD.

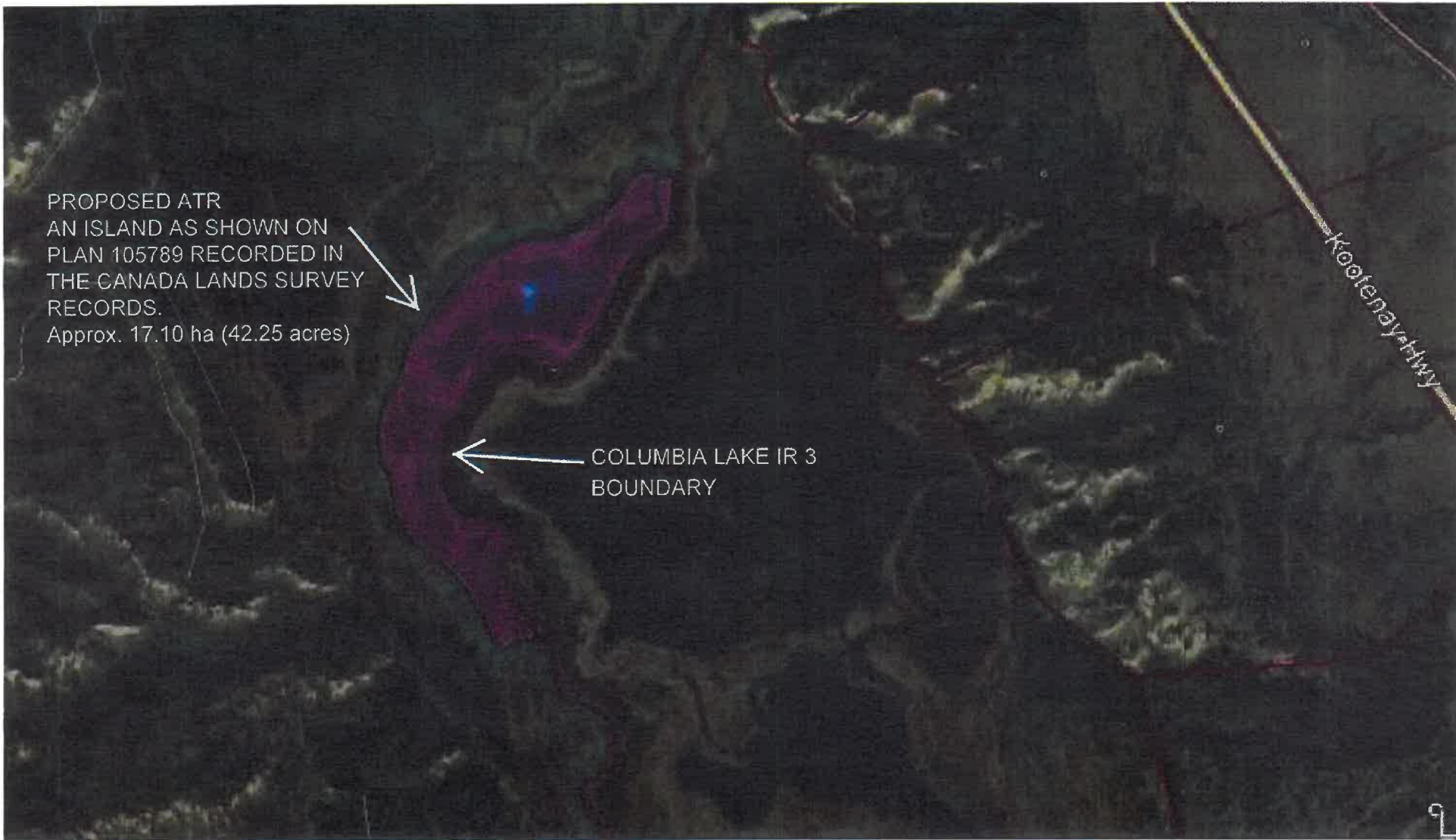
Sworn before me at Nelson B.C. this twelfth day of October, 1966.

*R.G. Johnson*  
 A Commissioner of and for the Province of B.C. } *R.G. Johnson* B.C.L.S.

Department of Geology, Mines and Resources  
 Ottawa, 10th March 1967  
 In Section 49 Canada Lands Survey Act  
 (Canada)  
*L. H. Heston*  
 Surveyor General

Highways 93 and 95  
 Plan amended.  
 Dec. 10, 1971.

10 December 1971  
 Date *M. L. Heston*  
 Acting Surveyor General.



PROPOSED ATR  
AN ISLAND AS SHOWN ON  
PLAN 105789 RECORDED IN  
THE CANADA LANDS SURVEY  
RECORDS.  
Approx. 17.10 ha (42.25 acres)

COLUMBIA LAKE IR 3  
BOUNDARY

Kootenay Hwy



**Advisory Planning Commission  
Electoral Area A**

**Minutes**

**May 21, 2019**

**Fernie Chamber Office**

**Present:**

Karen Alexander, Chair  
[Member], Vice Chair  
Joe Caravetta, Secretary  
David Beranek  
Blair Chattersson  
Dale Garrett  
Director Mike Sosnowski

**1. Call to Order**

Chair Karen Alexander called the meeting to order at 7:29.

**2. Delegations**

Director Sosnowski declared conflict and removed himself from the building. Monty Sosnowski spoke to his application P719 106 and advised that DL 455 in Hosmer. Seeking approval for DVP removing an old mobile home and putting in a new home. Reduce set back of mobile home . Is planning to Apply to have the commercial lot rezoned to residential in the future. Wants to vary bylaw from 7.6 to zero to put in new home even though new home will be shorter. Also to vary lot side set back from 4.6 to zero. Also wants vary the north house set back to allow for stairs from 3m to 1 m. Also wants to set back home from the road from 7.6 to 3.4m. MOTI has approved the reduction for the mobile home set back.

**3. Adoption of the Minutes**

Moved by Dale  
Seconded by Blair

That the minutes of the Advisory Planning Commission meeting held on April 16 be adopted.

CARRIED

**4. Planning & Development Services Monthly Report**

Moved by karen  
Seconded by Dale

That the monthly Planning & Development Services Report be received.

CARRIED

**5. Agriculture Land Reserve Referrals**

**6. Bylaw Amendment Application**

**7. Development Variance Permit Application**

P 719 106 – Sosnowski Elk St Hosmer

Moved by blair

Seconded by karen

That the Advisory Planning Commission recommends the Sosnowski Development Variance Permit application be supported

CARRIED

Comments: Director Sosnowski had removed himself from the building during this discussion.

**8. Ministry of Forests, Lands, Natural Resource Operations and Rural Development (NRO) Referrals**

P146-020 north coal ltd. Dominion coal block parcel 82

Information received

**9. Liquor & Cannabis Licence Applications**

**10. Adjournment**

The meeting adjourned at 1950 hours .



**Advisory Planning Commission  
Electoral Area B**

**Minutes**

**May 15, 2019  
Baynes Lake Fire Hall**

**Present:**

Shayne Webster, Chair  
Cory Wentzell, Vice Chair  
Lily Durham, Secretary  
Wendy Salanski  
Mary Charlton  
Gary Mitchell  
Director Stan Doehle

**1. Call to Order**

Chair Shayne Webster called the meeting to order at 7:00 pm

**2. Delegations**

Reminissa McArthur spoke on P719 204 McArthur/Sterling Rd, Baynes lake application.  
Karen MacLeod & Tina Hlushak spoke of APC Orientation.

**3. Adoption of the Minutes**

Moved by Mary Charlton  
Seconded by Wendy Salanski

That the minutes of the Advisory Planning Commission meeting held on April 17,2019 be adopted.

CARRIED

**4. Planning & Development Services Monthly Report**

Moved by Gary Mitchell  
Seconded by Cory Wentzell

That the monthly Planning & Development Services Report be received.

**5. Agriculture Land Reserve Referrals**

No Referrals

**5. Bylaw Amendment Application**

**P 719 204-McArthur/Sterling Rd, Baynes Lake**

Moved by Mary Charlton

Seconded by Cory Wentzell

That the Advisory Planning Commission recommends the Matthew McArthur Bylaw Amendment application be supported.

CARRIED

Comments: Established precedence

**P 037 953-Miscellaneous Amendment Bylaws**

Moved by Mary Charlton  
Seconded by Cory Wentzell

That the Advisory Planning Commission recommends the Miscellaneous Bylaw Amendment application be supported.

CARRIED

Comments: None

**6. Development Variance Permit Application**

No Application

**7. Ministry of Forests, Lands, Natural Resource Operations and Rural Development (NRO) Referrals**

No Application

**8. Liquor & Cannabis Licence Applications**

No Application

**9. Adjournment**

The meeting adjourned at 8:21 pm

## Advisory Planning Commission Electoral Area C

### Minutes

May 9, 2019

RDEK Office (Conference Room], 19 24<sup>th</sup> Ave. S, Cranbrook

**Present:**

Lee-Ann Crane, Chair  
Ilene Lowing, Secretary  
Wayne Stone  
Bob Bjorn  
Herb Janzen  
Jim Westwood  
Roger Mitchell

Director Rob Gay

**1. Call to Order**

Chair, Lee-Ann Crane called the meeting to order at 7pm

**2. Delegations**

Jean Horton, representing the Lost dog Forestry Ltd. & Columbia Recycle Ltd. WSP spoke to their application

She clarified the reasons for the land use changes and showed where the roads would be located.

**3. Adoption of the Minutes**

Moved by Jim Westwood  
Seconded by Bob Bjorn

That the minutes of the Advisory Planning Commission meeting held on April 11, 2019 be adopted.

CARRIED

**Planning & Development Services Monthly Report**

That the monthly Planning & Development Services Report be received.

**4. Bylaw Amendment Application**

**4.1** P719 321 / Lumberton Rd. Lumberton

Moved by Bob Bjorn

Seconded by Wayne Stone

That the Advisory Planning Commission recommends] Bylaw Amendment application be supported.

CARRIED

Comments:

**5. Adjournment**

The meeting adjourned at 7:34pm

**Advisory Planning Commission  
Electoral Area E**

**DRAFT**

**Minutes**

**May 14,2019**

**Jim Westwood's Residence, 8563 Holmes Road, Fort Steele**

**Present:**

Jim Westwood, Chair  
Susanne Ashmore, Vice Chair  
Virginia West, Secretary  
Judy McPhee  
Len Hunt  
Gord Olsen  
Cheryl Greenwood  
Director Jane Walter

**1. Call to Order**

Chair Jim Westwood called the meeting to order at 7:00 pm.

**2. Delegations**

Jean Horton spoke to their application and advised that her client, Cindy Postnikoff, was applying for a Road Closure at Reagan Road, Meadowbrook. Jean answered questions from the APC Area E Members.

**3. Adoption of the Minutes**

Moved by Judy McPhee  
Seconded by Cheryl Greenwood

That the minutes of the Advisory Planning Commission meeting held on April 9,2019 be adopted as circulated.

CARRIED

**4. Planning & Development Services Monthly Report**

Moved by Virginia West  
Seconded by Jim Westwood

That the monthly Planning & Development Services Report be received.

Carried

**5. Road Closure Referral**

**P 201 400 – Postnikoff / Reagan Rd., Meadowbrook**

Moved by Susanne Ashmore  
Seconded by Gord Olsen

That the Advisory Planning Commission recommends the Postnikoff road closure request be supported with the condition that the MOT contacts the surrounding landowners and considers their concerns.

CARRIED with one member against the referral.

Comments: Members were concerned that the property owners behind the Postnikoff proposed subdivision would be impacted by the road closure.

## **6. Adjournment**

The meeting adjourned at 8:00 pm.

The next meeting will be held on June 11, 2019 at Jim Westwood's residence.

**Advisory Planning Commission**  
**Electoral Area F&G**  
**Minutes**  
**May 21, 2019**  
**Location: Windermere Emergency Operations Centre**

**Present:**

Paul Deguise - Vice Chair  
Hermann Mauthner  
Norm Funnell  
Rick Tegart  
Owen Mitchell  
Stephanie Stevens  
MaryAnne Csokonay  
Karl Conway – Alternate Secretary  
Colleen Roberts  
Laurie Klassen  
Director Susan Clovechok  
Director Gerry Wilke

**1. Call to Order**

Chair Paul Deguise called the meeting to order at 7:15pm.  
Introduction of Board members.

**2. Presentations**

**2.1 & 2.2**

APC Orientation – Karen MacLeod and Tina Hlushak provided annual APC Orientation session. Among many items discussed the following stood out: choices for applications can be approved-decline-conditional on more information, non-support because more info required. Also, appears that recent changes to ALC will result in more ALR application to APC. Question was asked if zoning maps and/or consultant letters could be made available to the APC? Tina provided update on protocol, policies and procedures noting that primary criteria for approval is “Community Benefit”. We as a board are free to establish guidelines for sector approvals. Note: Unallocated funds show each month on agenda are one month behind. Presentation concluded at 9:00pm.

5.1 Tracy and Kenneth Litchfield spoke to their Development Variance Permit application P719517. Discussion regarding permission to retain existing protection mesh from errant golf balls. Surrounding neighbors are in agreement.

6.1 Barry Brown John discussed ALR application P718519 on behalf of Larry and Alice Breeze.

**3. 3.1 Adoption of the Minutes**

Moved by C. Roberts  
Seconded by S. Stevens

That the minutes of the Advisory Planning Commission meeting held on April 16, 2019 be adopted as circulated.

CARRIED

3.2 Planning Committee Meeting – April 4, 2019 - Received

**4. REPORTS**

- 4.1 Planning & Development Services Report – April 2019 Received
- 4.2 Planning & Development Services Report – May 2019 Received

**5. DEVELOPMENT VARIANCE PERMIT APPLICATIONS**

- 5.1 P719 517 – Litchfield/Windermere Loop Road, Windermere East

Moved by L. Klassen  
Seconded by M. Csokonay

That the Advisory Planning Commission recommends the Litchfield Development Variance Permit application be supported.

CARRIED

**6. AGRICULTURAL LAND RESERVE**

- 6.1 P718 519-Breeze (Brown-John)/Hwy95, between Edgewater & Brisco

Moved by N. Funnell  
Seconded by H. Mauthner

That the Advisory Planning Commission recommends the Breeze Agricultural Land Reserve application be supported.

CARRIED

**7. NRO Referrals**

- 7.1 P151 600 – Windermere Valley Snowmobile Society (NRO & Prosser)/Forster Creek FSR, West of Radium Hot Springs.

That the Advisory Planning Commission recommends the Windermere Valley Snowmobile Society application be supported.

Moved by C. Roberts  
Seconded by L. Klassen

CARRIED

Comments: Any impact on Radium Hot Springs watershed?

**8. Adjournment**

The meeting adjourned at 9:15pm.



## Bylaw Amendment Application

---

Date: May 27, 2019  
File: P 719 504  
Bylaw Nos. 2906 & 2907

- Applicants:** Bad Toro Properties Ltd.
- Agent:** Richard Haworth
- Location:** The subject properties are located on Athalmer Road, Amber Road, Sarah Road and along Lakeview Drive in the vicinity of the Canadian Tire Store in the Windermere north area, near Invermere.
- Legal:** Lots 79, 80 & 81, District Lot 4347, Kootenay District, Plan 1072, Except Part included in Plan 4001 (PIDs: 015-896-510, 008-233-951, and 008-233-993) and Lots 8, 9 & 10, District Lot 4347, Kootenay District, Plan 4001 except Plan NEP19552 (PIDs: 010-297-090, 008-335-389 and 008-335-460)
- Proposal:** To amend the OCP and zone designations of several properties to allow commercial development on the northerly lands near Athalmer Road, and residential development (dwellings and mobile homes) on the southerly portion of the lands (see attached maps) and, to add property specific regulations to permit an existing data centre on one of the properties and an existing RV and boat storage operation on three properties which front Athalmer Road.
- Development Agreement:** The applicant has offered to register a development agreement covenant with the following commitments:
- a) That development sequencing will consider availability of community water and sewer such that no lots permitting serviced buildings will be created without proof of availability of adequate community water and community sewer.
  - b) No building used as a data centre will be placed or constructed in a manner which is highly visible from Athalmer Road nor with a siting of less than 30 m from a boundary of residentially zoned land.
  - c) Amenity contributions of \$1000 per new residential lot created to be held in a reserve fund for future use for trails and open space development within Electoral Area F and/or for development of non-motorized public access to Lake Windermere. Amenity contribution amount is to be paid prior to subdivision sign-off by the RDEK.
  - d) The existing boat storage facility on Lots 8, 9 & 10 will be fenced along Athalmer Road with a solid wood fence no less than 1.8 m (6') high.
- Options:**
1. a) THAT Bylaw No. 2906 cited as "Regional District of East Kootenay – Lake Windermere Official Community Plan Bylaw No. 2061, 2008 – Amendment Bylaw No. 27, 2019 (Windermere North / Bad Toro Properties Ltd)" be introduced;
- and further, that the Board is satisfied that the OCP consultation identified in the staff report is appropriate.

- b) THAT Bylaw No. 2907 cited as “Regional District of East Kootenay – Upper Columbia Valley Zoning Bylaw No. 900, 1992 – Amendment Bylaw No. 348, 2019 (Windermere North / Bad Toro Properties Ltd)” be introduced:

and further, that a development agreement containing the items identified in the staff report be registered on title prior to bylaw adoption.

2. a) THAT Bylaw No. 2906 cited as “Regional District of East Kootenay – Lake Windermere Official Community Plan Bylaw No. 2061, 2008 – Amendment Bylaw No. 27, 2019 (Windermere North / Bad Toro Properties Ltd)” not proceed.
- b) THAT Bylaw No. 2907 cited as “Regional District of East Kootenay – Upper Columbia Valley Zoning Bylaw No. 900, 1992 – Amendment Bylaw No. 348, 2019 (Windermere North / Bad Toro Properties Ltd)” not proceed.
3. That Bylaws No. 2906 and No. 2907 be postponed from further consideration for six months or until after adoption of the new Lake Windermere OCP.

**Recommendation: Option #1**

This is a large area in a prominent location with potential for large scale future development, both residential and commercial. Generally speaking, the applicant has addressed staff’s concerns and the anticipated policy direction for the new OCP.

---

**Property Information:**

**OCP Designations:**

- The northerly lands: C, Commercial which supports local commercial uses intended primarily for local residents and the travelling public and commercial uses of a regional nature intended for a wide range of potential users.
- The southerly lands: R-RES, which is utilized for parcels that have been identified as having potential for future development for a range of residential uses and densities. The parcels have not been pre-designated so that flexibility in assigning the appropriate designation(s) in response to the needs of the community, market demands and site -specific conditions can occur. Re-designation to the applicable land use designations will be required at the time of rezoning. Any criteria established within Schedule A of the OCP that applies to the specific parcel or required Agricultural Land Commission approvals must be satisfied prior to, or in conjunction with, a rezoning application. (Note: Schedule A states that the portion of Lots 80 and 81, Plan 1072 zoned R-MP, Mobile Home Park Residential Zone, should be retained for residential land use purposes).

**Property  
Information –  
cont'd:**

**OCP Policies Related to Residential Development:**

- All residential development is encouraged to be serviced by community water and sewer servicing where connections and capacity are available.
- The development of attainable housing options is supported within all residential neighbourhoods.
- The integration of alternative housing options within new and existing single-family subdivisions through the integration of secondary suites, granny flats or carriage houses is supported. In consultation with the community the development of options for amendments to the zoning bylaw may be considered by the Regional District.
- Infill development within existing residential areas that require rezoning will be considered in relation to the following:
  - a) compatibility of the proposed development with surrounding land uses;
  - b) opportunities for connection to community servicing;
  - c) recognition of opportunities to retain and maximize the viewscales provided by the proximity to Lake Windermere.
- The integration of the R-RES, Residential Reserve land use designation into this plan does not commit the Regional District to a specific course of action or require the approval of an alternative land designation at any particular time. Properties designated R-RES are generally supported for a mix of residential development types and densities. Applications to amend the land use designation will be considered on an individual basis in relation to the following criteria:
  - a) provision of community water and sewer servicing;
  - b) compatibility of proposed development with surrounding land uses;
  - c) dedication and provision of open and green space for conservation and/or recreation purposes;
  - d) trail connectivity within the area under application and connectivity with adjacent existing development and trail networks;
  - e) recognition and integration of opportunities to retain and maximize the viewscales provided by the proximity to Lake Windermere;
  - f) integration of a range of housing options and levels of affordability;
  - g) consideration of the impact of the proposed density on the existing road network;
  - h) projections for estimated timelines for phasing and completion of development;
  - i) consideration of the number of undeveloped residential units currently approved by the Regional District of a comparable form and density;
  - j) confirmation that any criteria specific to the parcel(s) identified elsewhere in this plan has been met or addressed.

**Property  
Information –  
cont'd:**

- The portion of Lots 80 and 81 Plan 1072 District Lot 4347 zoned R-MP, Mobile Home Park Residential should be retained for residential land use purposes.

**OCP Policies Related to Commercial Development:**

- New commercial development and redevelopment is encouraged to sustain a high aesthetic standard that compliments the built character and natural landscape of the plan area.
- New commercial development within the plan area is limited to existing nodes along the Athalmer Road corridor, the Invermere Crossroads area, the four corners area within the Windermere core, and existing nodes along Highway 93/95.
- All commercial developments are encouraged to integrate screening and landscaping along the highway or road frontage to provide a buffer between the travelling public and provide points of interest.

**Zoning:**

Lots 8, 9 & 10: R-1, Single Family Residential Zone

Lot 79: R-1(A), Single Family Residential (A) Zone

Lots 80 & 81: the northerly portions are I-1, Light Industrial Zone and the southerly portions are R-MP, Mobile Home Park Residential Zone.

**Parcel Size:**

Total area under application: Approximately 9.1 ha (22.5 ac)

**Density**

(Note: Areas and calculations below are approximate and based on total lot area only. They do not include allowances for roads, service/utility corridors or topographical constraints, all of which have a significant impact on total number of lots possible.)

**Current development potential per zone**

R-1 (3 existing lots), min lot size with full community services: 555 m<sup>2</sup>  
Up to 5 lots may be permitted, one dwelling permitted per lot

R-MP (3.86 ha), permits up to 18 mobile homes permitted per ha of useable site area. Up to 69 mobile homes total may be permitted plus one manager dwelling

R-1(A) (3.47 ha), min lot size: 1670 m<sup>2</sup>  
Up to 20 lots may be permitted, one dwelling permitted per lot

I-1 (1.35 ha), min lot size: 0.4 ha  
Up to 3 lots may be permitted

**Potential development per zone if rezoning approved**

R1-MH (6.03 ha), min lot size with community water and sewer: 555 m<sup>2</sup>  
Up to 108 lots may be permitted, one dwelling permitted per lot

C-2 (2.93 ha), min lot size: 555 m<sup>2</sup>  
Up to 52 lots may be permitted

**Property  
Information –  
cont'd:**

**ALR Status:** Not within the ALR

**Interface Fire Hazard Rating:** High, within the Windermere fire service area

**BC Assessment:**

Lots 8, 9 & 10: Business / Other (vacant)

Lot 79: Residential (vacant)

Lot 80: Residential / Business / Other (storage & warehousing – closed)

Lot 81: Residential / Business / Other (vacant)

**Water and Sewer Services:** Community Water and Sewer are proposed. The application states that Kinbasket Water and Sewer (KWSC) will not formally commit to provision of water and sewer until the Athalmer Road area is part of a RDEK service area. The applicant has confirmed there is suitable sewer capacity available at this time and that water capacity will be available in a few years when the new KWSC water system is operational (or when the RDEK and KWSC renegotiate the MDD (maximum day demand) for water to Holland Creek, thereby making more water available to the area).

**Professional  
Studies:**

None.

**Additional  
Information:**

- A boundary adjustment subdivision is currently underway to realign property boundaries to create land for commercial development on the northerly half of the lands, and land for residential development on the southerly half of the lands (see attached map).
- Currently, there's a building on Lot 80 which did not have a building permit and is used as a data storage centre. The building has existed since prior to 1982 (based on available air photos) and the current owner renovated the building to be suitable for use as a data centre. This use is not accommodated in the Upper Columbia Valley Zoning Bylaw and the owner proposes to add a definition for a 'data centre' to the zoning bylaw and then also add 'data centre' as a permitted use on this specific property. There is no proposed limit on the size of this industrial use in the C-2 Zone.
- DP 1-18 for form and character was issued for Lot 80 in April, 2018 for a proposed new 929 m<sup>2</sup> 'storage and warehousing' building which was to be constructed south east of the existing data centre. Construction of the proposed additional building has not commenced. If the proposed C-2 zoning is adopted, the 'storage and warehousing' use referred to in DP 1-18 will no longer be a permitted use.
- There has been a long-standing RV and boat storage operation on three lots fronting Athalmer Road. This use is not permitted by the zoning bylaw and the owner is requesting that 'RV and boat storage' be added as a permitted use on these properties to bring the use into compliance. Screening of outdoor storage is a high priority issue for the Lake Windermere OCP Advisory Committee.

**Additional  
Information –  
cont'd:**

- A form and character development permit application is required for the existing non-conforming commercial structures.

**Consultation:**

**APC Areas F & G:** At their April meeting, the APC members recommended deferral until all their questions and concerns were addressed and until after adoption of the Lake Windermere OCP which will provide updated policies for consideration.

**Referral Agencies:**

- **Interior Health Authority:** No response
- **Transportation & Infrastructure:** The Ministry's interests are unaffected by the proposed amendments. The Ministry would like to remind the owner that commercial access permits will be required for land zoned C-2, Service Commercial, and that amendments to these permits will be required prior to addition or changes to business activity on the land.
- **Environment:** Reviewed without comment
- **Energy & Mines:** No response
- **Ktunaxa Nation Council:** No response
- **Akisqnuq First Nation:** No response
- **Shuswap Indian Band:** No response
- **School District No. 6:** No response
- **District of Invermere:** The proposal has not been reviewed by Council however Development Services has discussed the proposal internally and, based on that discussion, there is no defiant opposition to the land uses proposed. The principle concerns raised relate to the increase in density and users affecting the Lake Windermere infrastructure (ie: boat launching facilities for both the Lake and wetlands, public lake access at RDEK sites and pedestrian (non motorized linkage) to the existing and potential pedestrian access systems). The thoughts are that future development will add additional strain to the District Boat launch's which is in need of upgrade and is heavily used (principally by non Invermere residents), other Lake Windermere and wetland access points and increase the pedestrian and green space opportunities in the local area. Commitment by the developers to contribute financially a set sum per parcel at a pre determined development stage, (i.e. Subdivision) for amenity improvements to the Lake access, launch facilities and park, green space, pedestrian linkages would support and reinforce the applicants request for responsible growth and development in this location.
- **Telus:** No response

**Documents**

**Attached:**

- Bylaws
- Location Map
- Land Use Map
- Proposed Parent Parcel Subdivision
- Excerpts from Proposal
- Aerial Photo
- Site Photos

**RDEK**

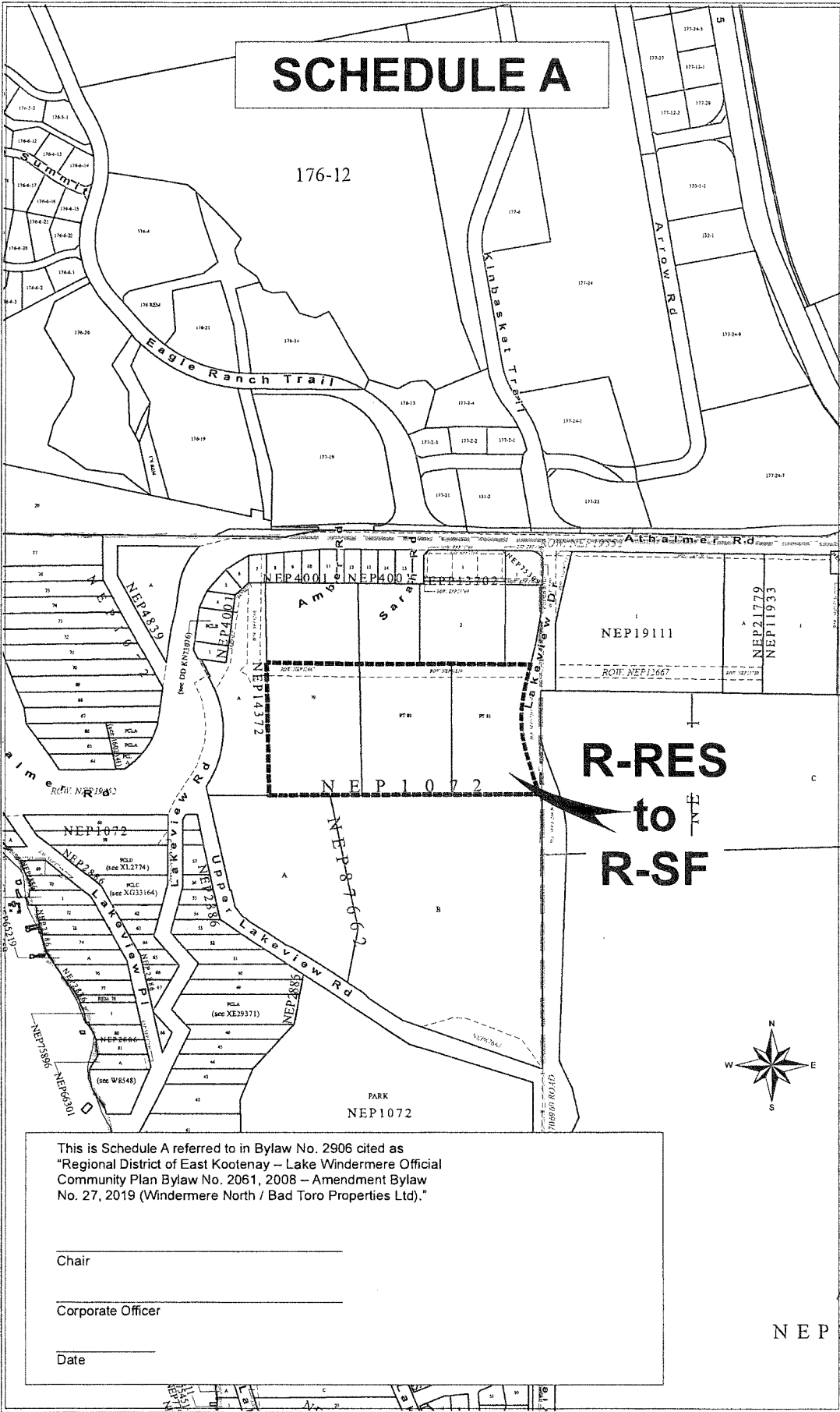
**Contact:**

Tracy Van de Wiel, Planning Technician  
Phone: 250-489-0306  
Email: [tvandewiel@rdek.bc.ca](mailto:tvandewiel@rdek.bc.ca)





# SCHEDULE A



This is Schedule A referred to in Bylaw No. 2906 cited as "Regional District of East Kootenay – Lake Windermere Official Community Plan Bylaw No. 2061, 2008 – Amendment Bylaw No. 27, 2019 (Windermere North / Bad Toro Properties Ltd)."

Chair \_\_\_\_\_

Corporate Officer \_\_\_\_\_

Date \_\_\_\_\_

NEP

REGIONAL DISTRICT OF EAST KOOTENAY

BYLAW NO. 2907

A bylaw to amend Bylaw No. 900 cited as "Regional District of East Kootenay – Upper Columbia Valley Zoning Bylaw 900, 1992."

WHEREAS the Board of the Regional District of East Kootenay wishes to amend Bylaw No. 900;

AND WHEREAS the Board deems it desirable to make this amendment as aforementioned;

NOW THEREFORE, the Board of the Regional District of East Kootenay in open meeting assembled, enacts as follows:

- 1. This Bylaw may be cited as "Regional District of East Kootenay – Upper Columbia Valley Zoning Bylaw 900, 1992 – Amendment Bylaw No. 348, 2019 (Windermere North / Bad Toro Properties Ltd)."
- 2. The designation of Lot 8, District Lot 4347, Kootenay District, Plan 4001 except Plan NEP19552, and Lot 9, District Lot 4347, Kootenay District, Plan 4001 Except Plan NEP19552, and Lot 10, District Lot 4347, Kootenay District, Plan 4001 Except Plan NEP19552, outlined on the attached Schedule A, which is incorporated in and forms part of this Bylaw, is amended from R-1, Single Family Residential Zone to C-2, Service Commercial Zone.
- 3. The designations of Lot 79, District Lot 4347, Kootenay District, Plan 1072, Except Part included in Plan 4001, and Lot 80, District Lot 4347, Kootenay District, Plan 1072, Except Parts included in Plans 4001 and 4404, and Lot 81, District Lot 4347, Kootenay District, Plan 1072, Except Plans 4001, 4404 and NEP73994, outlined on the attached Schedule A, which is incorporated in and forms part of this Bylaw, are amended from R-1(A), Single Family Residential (A) Zone, R-MP, Mobile Home Park Residential Zone, and I-1, Light Industrial Zone, to R-1(MH), Single Family Residential – Mobile Home Zone and C-2, Service Commercial Zone.
- 4. Section 3.04 is amended by adding the following definition: DATA CENTRE means a building or group of buildings housing computer systems for which the principal purpose is to provide data processing, storage and distribution services.
- 5. Section 4.28 (1) is amended by adding the following: (f) On Lot 81, District Lot 4347, Kootenay District, Plan 1072, Except Plans 4001, 4404 and NEP73994, Data Centre is permitted. (g) On Lots 8, 9 & 10, District Lot 4347, Kootenay District, Plan 4001 except Plan NEP19552, storage of recreational vehicles and boats is permitted.

READ A FIRST TIME the day of , 2019.

READ A SECOND TIME the day of , 2019.

READ A THIRD TIME the day of , 2019.

APPROVED by the Ministry of Transportation and Infrastructure the day of , 2019.

Signature: \_\_\_\_\_

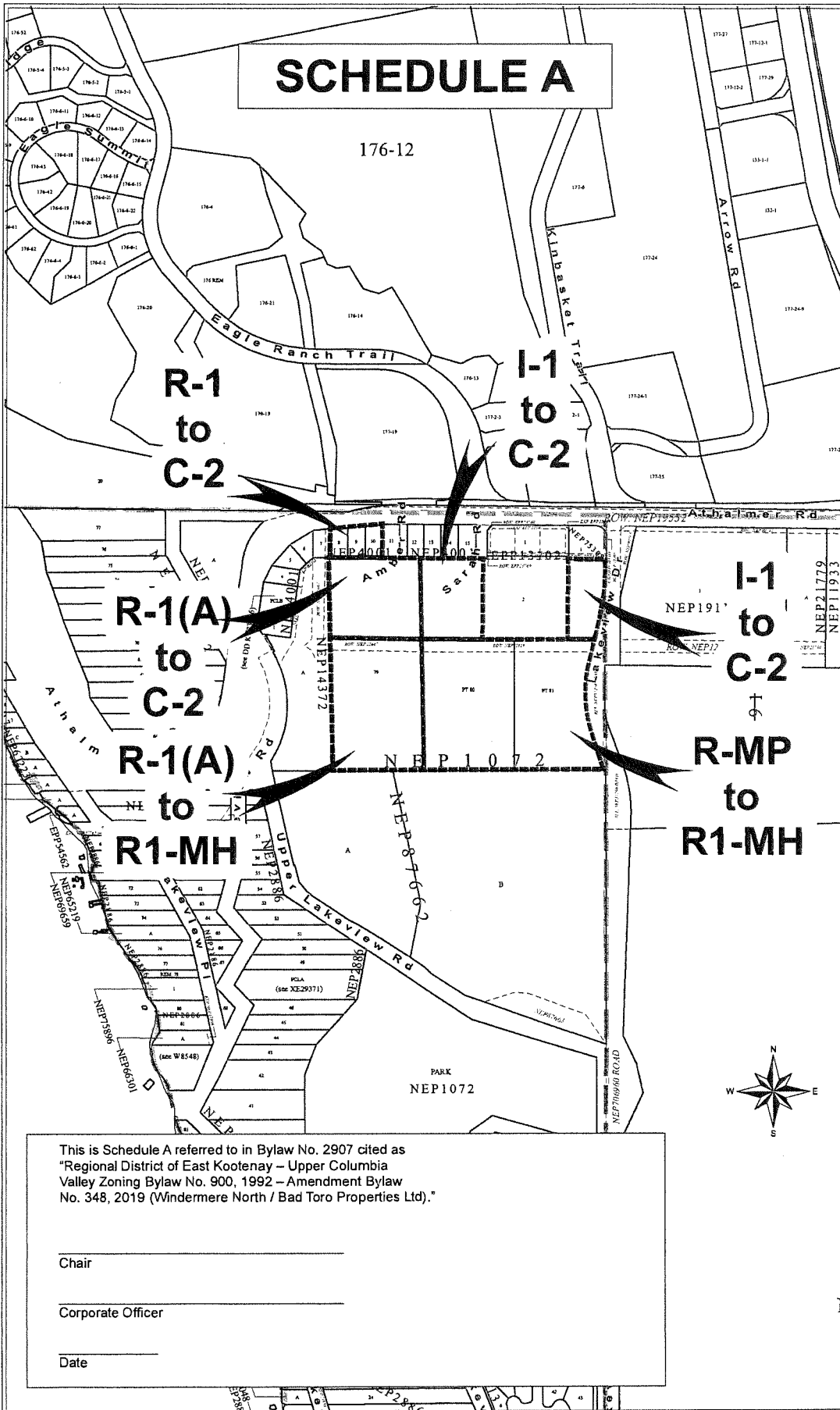
Print Name: \_\_\_\_\_

ADOPTED the day of , 2019.

CHAIR

CORPORATE OFFICER

# SCHEDULE A

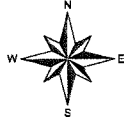


This is Schedule A referred to in Bylaw No. 2907 cited as "Regional District of East Kootenay – Upper Columbia Valley Zoning Bylaw No. 900, 1992 – Amendment Bylaw No. 348, 2019 (Windermere North / Bad Toro Properties Ltd)."

Chair \_\_\_\_\_

Corporate Officer \_\_\_\_\_

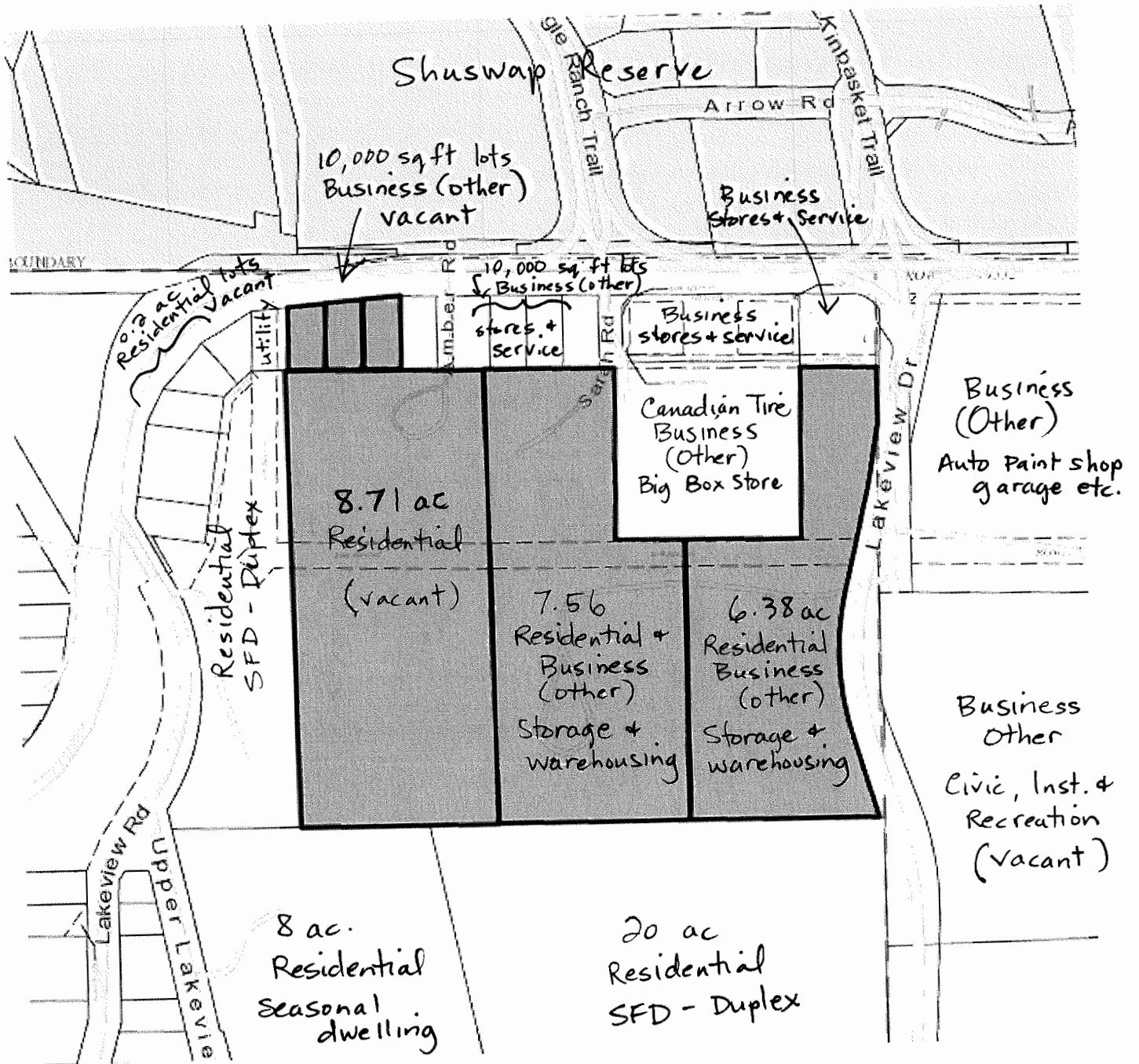
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Location Map



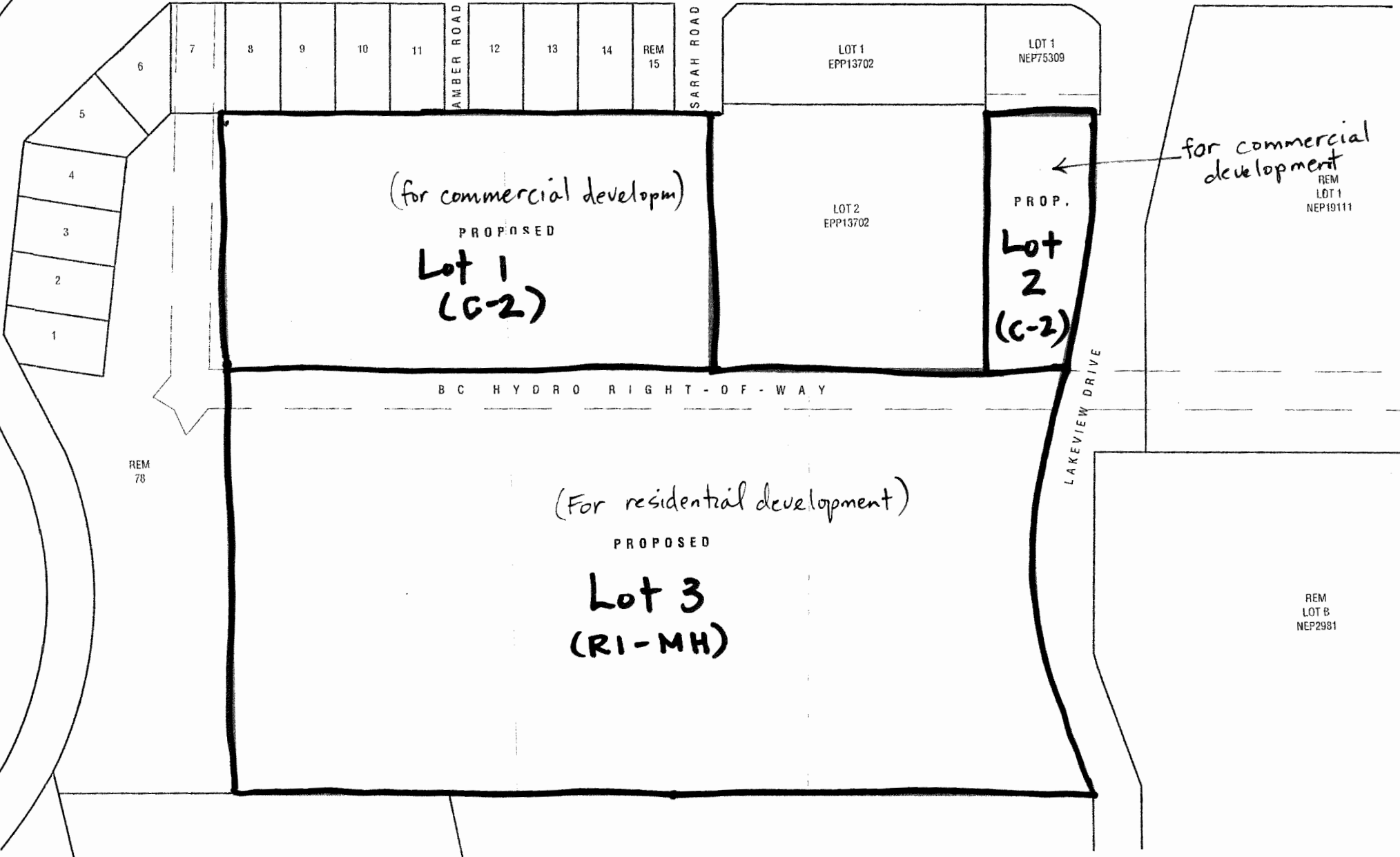
# Land Use Map



# Proposed Future Subdivision

SHUSWAP INDIAN BAND  
RESERVE #0

ATHALMER ROAD



Dear Ms. Van de Wiel

Excerpts from Proposal

On behalf of our client, Bad Toro Properties Ltd., Haworth Development Consulting submit this application for zoning and OCP amendment.

Bad Toro Properties Ltd. owns seven parcels of land along Athalmer Road in the Windermere north area. Six of these properties are included in this application. The six subject properties comprise approximately 24.4 acres (9.88 ha). Appendix A illustrates the location of the properties. The seventh property is currently zoned C-2 and rezoning is not required.

We are proposing to rezone the properties to permit commercial development and residential development. Corresponding OCP amendments are also proposed.

---

The subject properties are primarily undeveloped, with the exception of a small commercial building (Data Centre) on Lot 80 and boat storage facility on Lots 8, 9 and 10. The property is bisected east to west by a BC Hydro powerline right-of-way. Site photos are attached as Appendix B.

The zoning amendments proposed will permit commercial development (C-2, Service Commercial) on the north portion of the lands proximate to Athalmer Road and other existing commercial development (Canadian Tire, Invermere Liquor Store, Pizzeria Mercato, etc). The portion of the property south of the BC Hydro right-of-way is proposed for residential development (R1-MH, Residential Single Family, Mobile Home). The R1-MH zone would permit the development of attainable housing on these lands.

---

In addition to the zoning amendments outlined above, we are seeking to add "Data Centre" as a permitted use on Lot 80, Plan 1072. This permitted use is intended to recognize the existing data centre operating on this parcel.

Following adoption of the zoning and OCP amendments outlined herein, the applicant will apply for subdivision of the lands. The proposed plan of subdivision is attached for your reference.

The subject property is located within the North Windermere area as defined by the Lake Windermere Official Community Plan. The Lake Windermere OCP establishes Objectives and Policies for residential development and commercial development within the Plan area. These policies, as they relate to the subject property, are as follows. We have provided a statement regarding how this proposal adheres to each policy:

---

We believe that the zoning and OCP amendments proposed are consistent with all relevant provisions of the Lake Windermere OCP.

The following documentation and other information is attached to this application:

1. Application fee (\$1,600.00);
2. Rezoning and Bylaw Amendment Application form;
3. Legal Titles for the subject properties;
4. Plans illustrating proposed zoning and OCP amendments;
5. Plan illustrating proposed subdivision to occur after zoning is complete;
6. Letter of Agency for Haworth Development Consulting Ltd.

We trust that the preceding is complete and to your requirements.

Please feel free to contact the undersigned at your convenience if you have any questions or require additional information regarding this application.

Sincerely,  
**Haworth Development Consulting Ltd.**



Richard Haworth



*Appendix B | Site Photos*







View of property south of BC hydro ROW from Lakeview Road

View to west from centre of property





View to north toward Canadian Tire from centre of property

View to east from centre of property







View to northwest from centre of property toward existing boat storage area

View to northeast from within property toward existing commercial building on property





# Bylaw Amendment Application

Date: May 29, 2019  
 File: P 719 321  
 Bylaw No. 2923

**Applicants:** Lost Dog Forestry Ltd. & Columbia Recycle Ltd.  
**Agent:** WSP – Jean Horton  
**Location:** 442 and 445 Lumberton Road, Lumberton  
**Legal:** Part of District Lot 5255, Kootenay District (PID: 009-793-216) and Parcel 1 (see 7464i) of District Lot 2804, Kootenay District (PID: 009-793-330)

**Proposal:** To amend the land use designation of part of the properties to permit future subdivision for residential and commercial development. The proposed land use designation change is from RR-60, Rural Resource Zone and I-1, Industrial Zone to RR-2, Rural Residential (Small Holding) Zone, RR-1, Rural Residential (Estate) Zone and C-2, General Commercial Zone.

**Development Agreement:** None

**Options:**

1. THAT Bylaw No. 2923 cited as “Regional District of East Kootenay – Moyie & Area Land Use Bylaw No. 2070, 2008 – Amendment Bylaw No. 17, 2019 (Lumberton / Lost Dog Forestry Ltd. & Columbia Recycle Ltd.)” be introduced.
2. THAT Bylaw No. 2923 cited as “Regional District of East Kootenay – Moyie & Area Land Use Bylaw No. 2070, 2008 – Amendment Bylaw No. 17, 2019 (Lumberton / Lost Dog Forestry Ltd. & Columbia Recycle Ltd.)” not proceed.

**Recommendation: Option #2**

An industrial wood fibre operation and gravel extraction exists on and adjacent to the subject properties which is incompatible with new residential development in this area. The proposed residential development will extend wildfire interface issue in this area which is not recommended. The existing and proposed plan for the area does not support residential development at this location. The province has identified potential negative impacts to ungulate winter range and species at risk.

**Property Information:** **Current Land Use Designation:** Multiple – RR-60, Rural Resource Zone (minimum parcel size: 60 ha) and I-1, Industrial Zone (minimum parcel size: 1 ha).

**Proposed Land Use Designation:** Multiple – RR-2, Rural Residential (Small Holding) Zone (minimum parcel size: 2 ha), RR-1, Rural Residential (Estate) Zone (minimum parcel size: 1 ha) and C-2, General Commercial Zone (minimum parcel size: 0.6 ha).

**Property Information - cont'd:**

**Land Use Policies:**

- In order to protect the rural character of the area, residential development should generally be directed to existing community nodes where feasible.
- New small scale commercial development that provides additional services in the bylaw area is supported within existing developed community nodes. Large scale commercial development is encouraged to be located within nearby municipalities.
- Commercial strip development along the highway is not supported.

**Parcel Size:** 131 ha (325 ac) and 244 ha (605 ac)  
Area under application: Approx. 16.8 ha (41.5 ac)

**Density:**

Existing: Industrial outbuildings

Proposed: 7 residential lots, 1 commercial lot and 2 remainder lots

**ALR Status:** Not within the ALR

**Interface Fire Hazard Rating:** Low to high, not within a fire protection area.

**BC Assessment:** Residential and Light Industrial

**Water and Sewer Services:** Onsite proposed.

**Flood Hazard Rating:** Palmer Bar Creek runs through a portion of the property. Flood regulations will apply to development.

**Professional Studies:**

None

**Additional Information:**

- The application states that the land is largely vacant with the exception of an existing workshop and outbuildings located in the southeast corner of District Lot 2804.
- Logging activity currently exists in the area and the portion of District Lot 5255 under application is currently used for access by logging trucks.
- Adjacent industrial operations include: gravel extraction, industrial wood fibre operation, concrete asphalt plant and saw mill.
- If the application is approved, the new zoning will accommodate a fee simple subdivision creating one lot for commercial development and one lot as a parent parcel for further strata subdivision. The subsequent bare land strata subdivision proposes 7 strata lots and a common property access route.
- A 1.6 ha parcel with the existing buildings will be zoned C-2, General Commercial. One 1 ha lot will be zoned RR-1, Rural Residential (Estate) and six 2 ha lots will be zoned RR-2, Rural Residential (Small Holding).

**Consultation:** APC Area C: Support.

**Referral Agencies:**

- **Interior Health Authority:** No comments to date.
- **Transportation & Infrastructure:** No comments to date.
- **Environment:** As the surrounding area provides ungulate winter range and habitat (with noted occurrences) of American Badger, a provincially listed species at risk, habitat management does not recommend increased development in this area. If permitted, any fencing must be wildlife friendly, no motorized use off of property into crown land, and no development within 30m of wetland and riparian areas.
- **Ktunaxa Nation Council:** No comments to date.
- **School District No. 5:** No comments to date.
- **Telus:** No comments to date.

**Documents  
Attached:**

- Amending Bylaw
- Location Map
- Land Use Map
- Land Use Designation Map
- Proposal

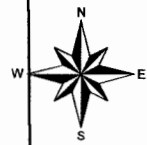
**RDEK  
Contact:**

Krista Gilbert, Planning Technician  
Phone: 250-489-0314  
Email: [kgilbert@rdek.bc.ca](mailto:kgilbert@rdek.bc.ca)



DL 5243

# SCHEDULE A



DL 2305

P.5093

DL 2804

LOC:4047

Rem. Blk.A  
DD9869-I

DL 4591

DL 2304

DL 3066

I-1  
to  
C-2

RR-60  
to  
C-2

DL 5255

RR-60  
to  
RR-2

RR-60  
to  
RR-1

Lumberton Rd

DL 12530

This is Schedule A referred to in Bylaw No. 2923  
cited as "Regional District of East Kootenay – Moyie & Area Land  
Use Bylaw No. 2070, 2008 –  
Amendment Bylaw No. 17, 2019 (Lumberton / Lost Dog Forestry Ltd. &  
Columbia Recycle Ltd.)."

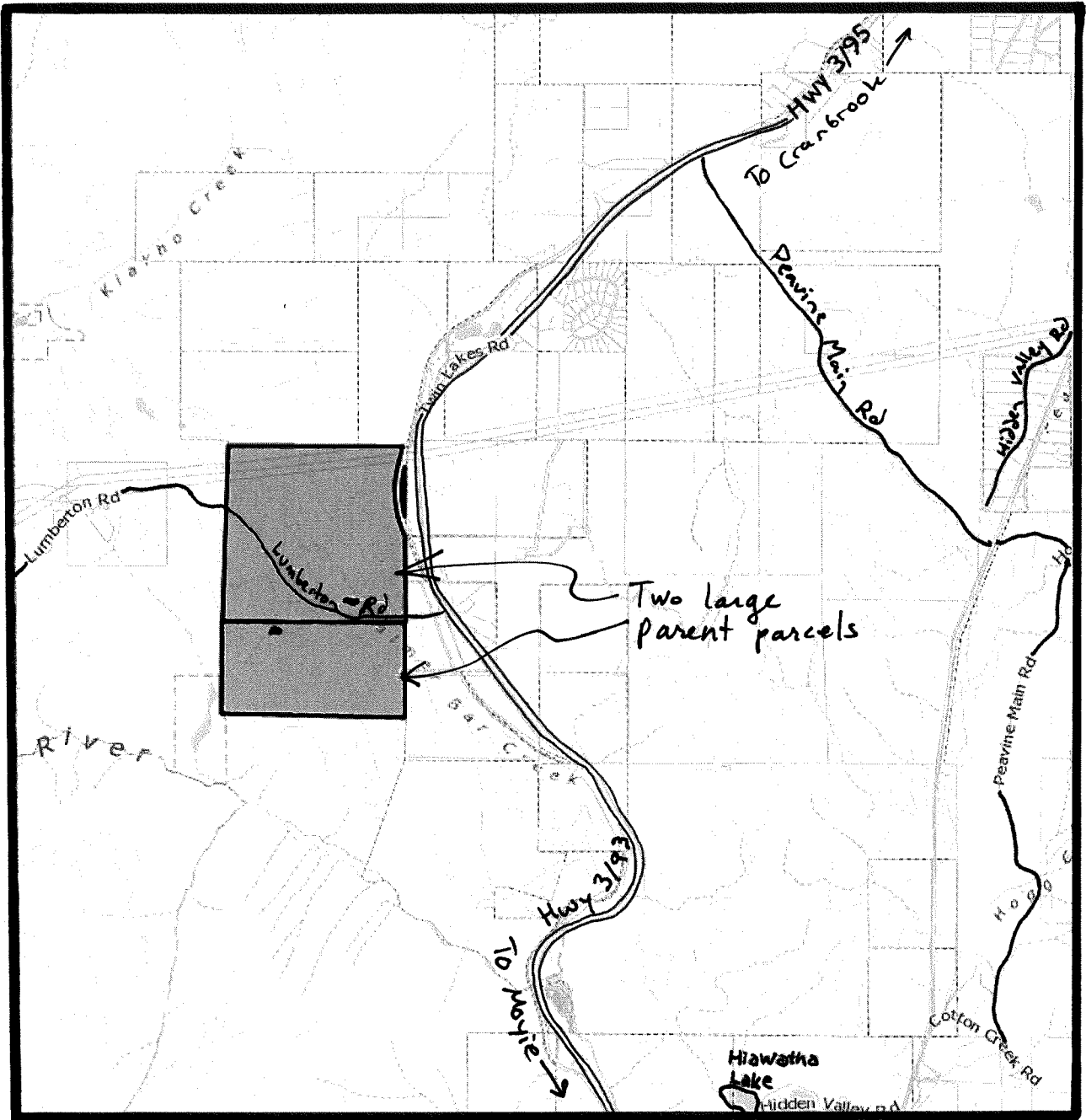
Chair

Corporate Officer

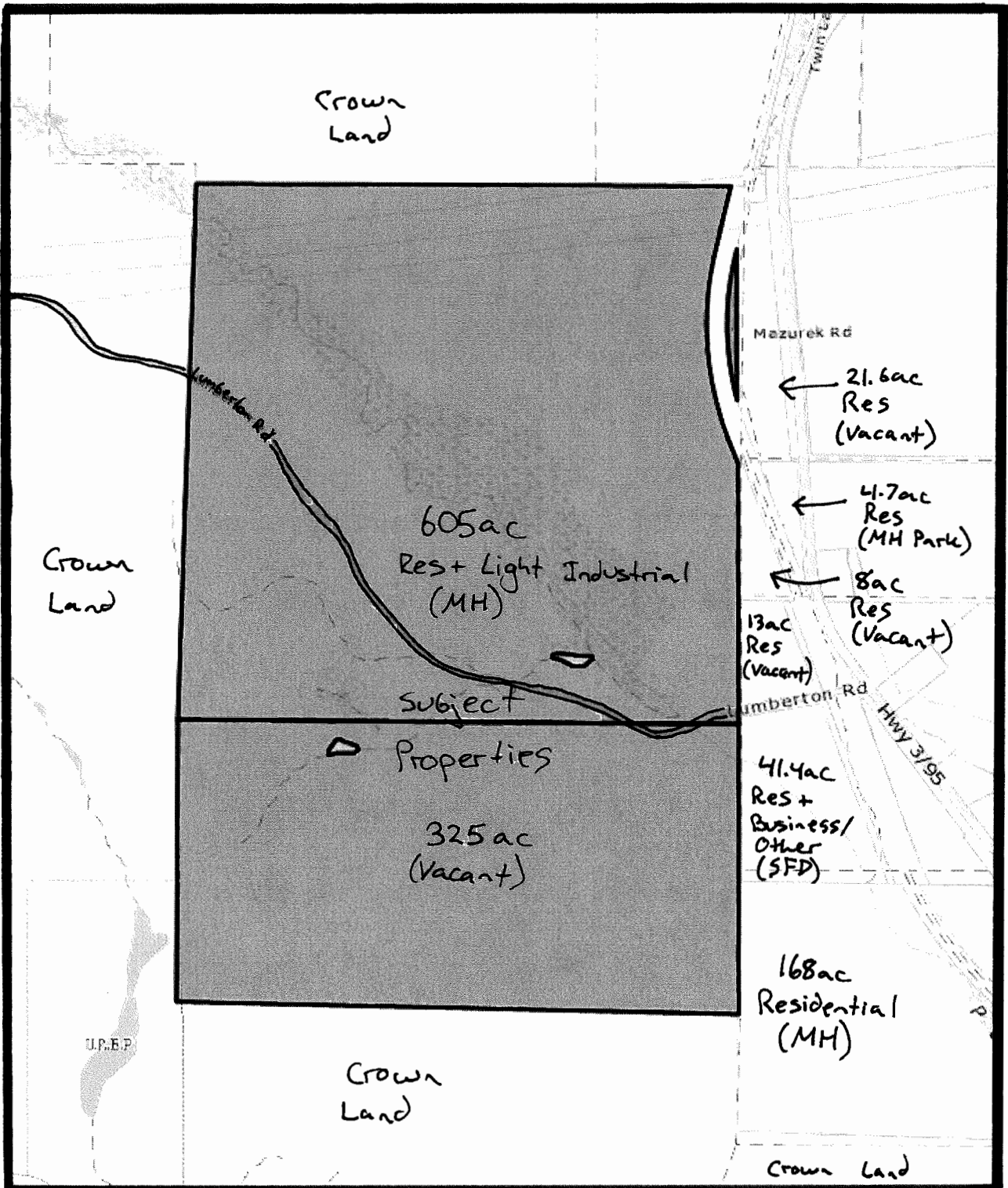
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# Location Map



# Land Use Map



# Land Use Designation Map

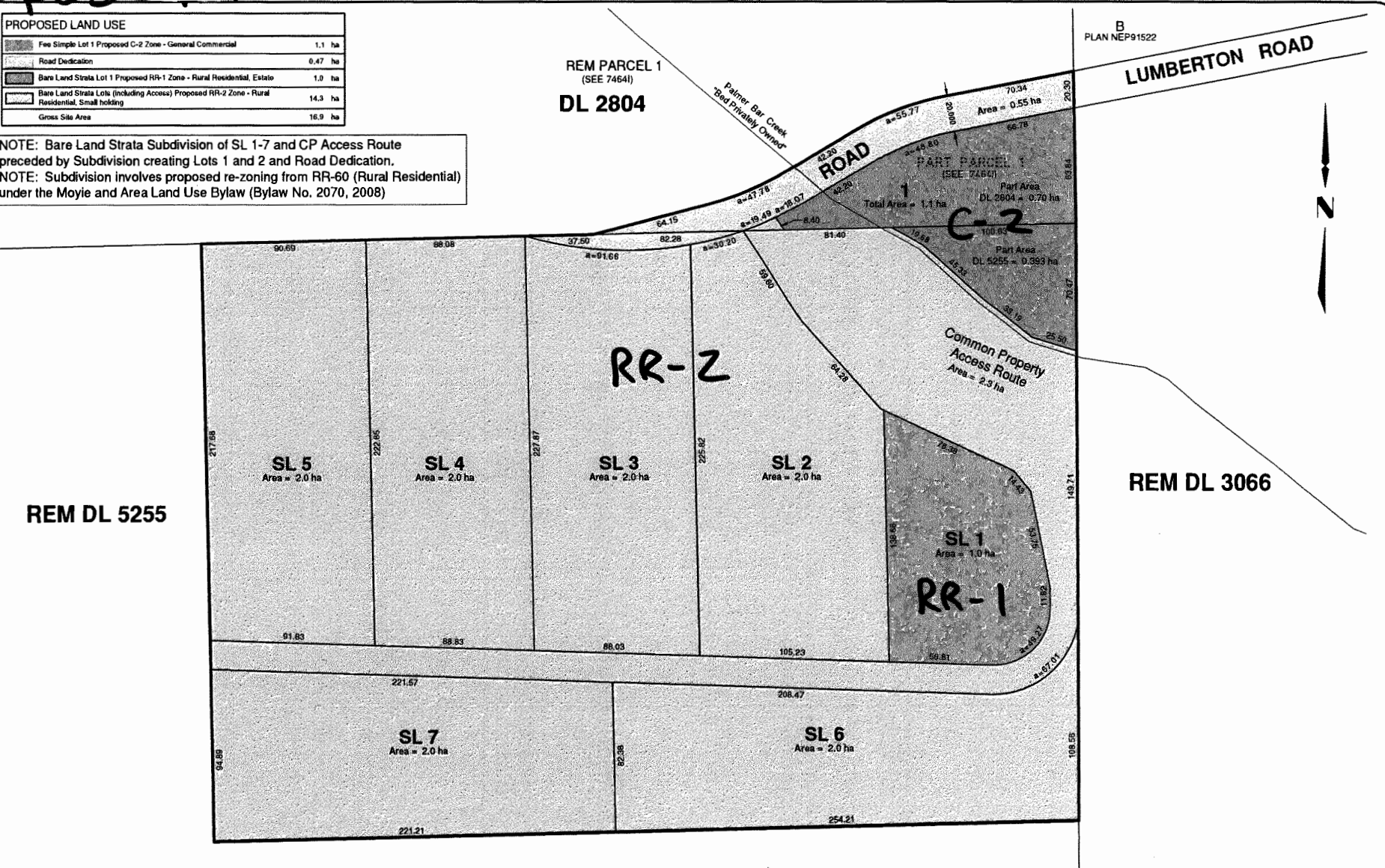




# Proposed Bare Land Strata Subdivision

PROPOSED LAND USE	
Fee Simple Lot 1 Proposed C-2 Zone - General Commercial	1.1 ha
Road Dedication	0.47 ha
Bare Land Strata Lot 1 Proposed RR-1 Zone - Rural Residential, Estate	1.0 ha
Bare Land Strata Lots (Including Access) Proposed RR-2 Zone - Rural Residential, Small holding	14.3 ha
Gross Site Area	16.9 ha

NOTE: Bare Land Strata Subdivision of SL 1-7 and CP Access Route preceded by Subdivision creating Lots 1 and 2 and Road Dedication.  
 NOTE: Subdivision involves proposed re-zoning from RR-60 (Rural Residential) under the Moyie and Area Land Use Bylaw (Bylaw No. 2070, 2008)

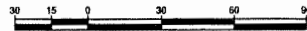


## LOST DOG FORESTRY LTD.

## PROPOSED FEE SIMPLE & BARE LAND STRATA SUBDIVISION

PROPOSED SUBDIVISION OF PART OF DISTRICT LOT 5255 AND PART OF PARCEL 1 (SEE 74641) OF DISTRICT LOT 2804 BOTH OF KOOTENAY DISTRICT

March 12, 2019



The intended plot size of this plan is 560mm in width by 432mm in height (C size) when plotted at a scale of 1:1500.

All distances are in metres and decimals thereof.

\* All lot areas and dimensions are preliminary and subject to change upon final approvals from the owner/developer and applicable government agencies.



File: 181-12677-00-SUBPE001-R0



## Bylaw Amendment Application

Date: May 21, 2019  
 File: P 719 204  
 Bylaw No. 2924 & 2925

**Applicant:** Matthew McArthur  
**Location:** 765 Sterling Road, in Baynes Lake  
**Legal:** Lot 3, Block 20, District Lot 132, Kootenay District, Plan 1181 (PID: 011-601-035)

**Proposal:** To amend the OCP and zoning designation of the property to permit future subdivision. The proposed OCP designation change is from MH, Medium Holdings to SH, Small Holdings and the proposed zoning designation change is from RR-2, Rural Residential (Small Holding) Zone to RR-1, Rural Residential (Estate).

- Options:**
1. a) THAT Bylaw No. 2924 cited as “Regional District of East Kootenay – Baynes Lake Official Community Plan Bylaw No. 2319, 2011 – Amendment Bylaw No. 11, 2019 (Baynes Lake / McArthur)” be introduced;  
 and further, that the Board is satisfied that the OCP consultation identified in the staff report is appropriate.
  - b) THAT Bylaw No. 2925 cited as “Regional District of East Kootenay – South Country Zoning and Floodplain Management Bylaw No. 2320, 2011 – Amendment Bylaw No. 19, 2019 (Baynes Lake / McArthur)” be introduced.
  2. a) THAT Bylaw No. 2924 cited as “Regional District of East Kootenay – Baynes Lake Official Community Plan Bylaw No. 2319, 2011 – Amendment Bylaw No. 11, 2019 (Baynes Lake / McArthur)” not proceed.
  - b) THAT Bylaw No. 2925 cited as “Regional District of East Kootenay – South Country Zoning and Floodplain Management Bylaw No. 2320, 2011 – Amendment Bylaw No. 19, 2019 (Baynes Lake / McArthur)” not proceed.

**Recommendation:** **Option # 1**  
 OCP policies support subdivisions which create parcels 1 ha or greater in this location, and the proposal is compatible with surrounding parcel sizes.

**Property Information:** **Current OCP Designation:** MH, Medium Holdings

**Proposed OCP Designation:** SH, Small Holdings

**OCP Policies:**

Subdivision of parcels identified on Schedule C to create parcel sizes less than 1.0 ha are generally not supported.

**Property  
Information – cont'd:**

However, if applications to accommodate smaller parcel sizes are received they will be reviewed on an individual basis in relation to the following criteria:

- Compatibility of proposed development with existing and surrounding land uses and parcel sizes;
- Proposed lot size and density;
- Compatibility to provide onsite sewage disposal in accordance with provincial requirements;
- Potential impact of the proposal on groundwater;
- Access to the development and proposed road networks;
- Identification and mitigation of potential hazards (avulsion, flooding, wildfire & geotechnical);
- Identification and mitigation measures for ecologically sensitive areas including riparian areas, wildlife habitats, and fish habitats;
- Recognition and integration of opportunities to protect viewscales including but not limited to building envelopes;
- Where necessary, pre-application public consultation at the expense of the applicant; and
- Previous Regional District of East Kootenay and Agricultural Land Commission decisions.

**Current Zoning:**

RR-2, Rural Residential (Small Holding) Zone  
(minimum parcel size: 2 ha)

**Proposed Zoning:**

RR-1, Rural Residential (Estate) Zone (minimum parcel size: 1 ha)

**Parcel Size:**

2.02 ha (5 ac)

**Density:**

Existing: The maximum number of lots that may be possible under the current RR-2 designation is one.

Proposed: Two lots

Potential: The maximum number of lots that may be possible with the proposed zoning is two.

**ALR Status:** Not within the ALR

**Interface Fire Hazard Rating:** Moderate, within the Baynes Lake fire protection area

**BC Assessment:** Residential (Manufactured Home)

**Water and Sewer Services:** Onsite proposed

**Flood Hazard Rating:** The property is not identified as being within a floodplain or flood hazard area.

**Professional  
Studies:**

None

**Additional Information:**

- The applicant has stated that no farming is occurring on the property and that they would like to subdivide the existing parcel in half and build a house on the undeveloped lot.

**Consultation:**

**Advisory Commissions:**  
**APC Area B:** Support

**Referral Agencies:**

- **Interior Health Authority:** Interests unaffected.
- **Transportation & Infrastructure:** Interests unaffected.
- **Environment:** No comments.
- **Ktunaxa Nation Council:** No comments to date.
- **School District No. 5:** No comments to date.
- **Telus:** No comments to date.

**Documents Attached:**

- Bylaws
- Location Map
- Land Use Map
- OCP Designation Map
- Zoning Designation Map
- Proposal

**RDEK Contact:**

Krista Gilbert, Planning Technician  
Phone: 250-489-0314  
Email: [kgilbert@rdek.bc.ca](mailto:kgilbert@rdek.bc.ca)





# SCHEDULE A



BIK.17

B  
372

n

BIK.19

**MH  
to  
SH**

BIK.16

BIK.20

BIK.15

1181

Plan

1181, NEP

EPP6911

NEP63642

NEP8824

A

NEP65686

NEP65685

65687

Post. NEP19942

This is Schedule A referred to in Bylaw No. 2924 cited as "Regional District of East Kootenay - Baynes Lake Official Community Plan Bylaw No. 2319, 2011 - Amendment Bylaw No. 11, 2019 (Baynes Lake / McArthur)."

Chair \_\_\_\_\_

Corporate Officer \_\_\_\_\_

Date \_\_\_\_\_

5

6

3

6

5

4

5

1

8

2

6

3

5

A

B

5

Edwards Rd

Sharpe Rd

Sterling Rd

Sundown Lane

65689

1

8

7

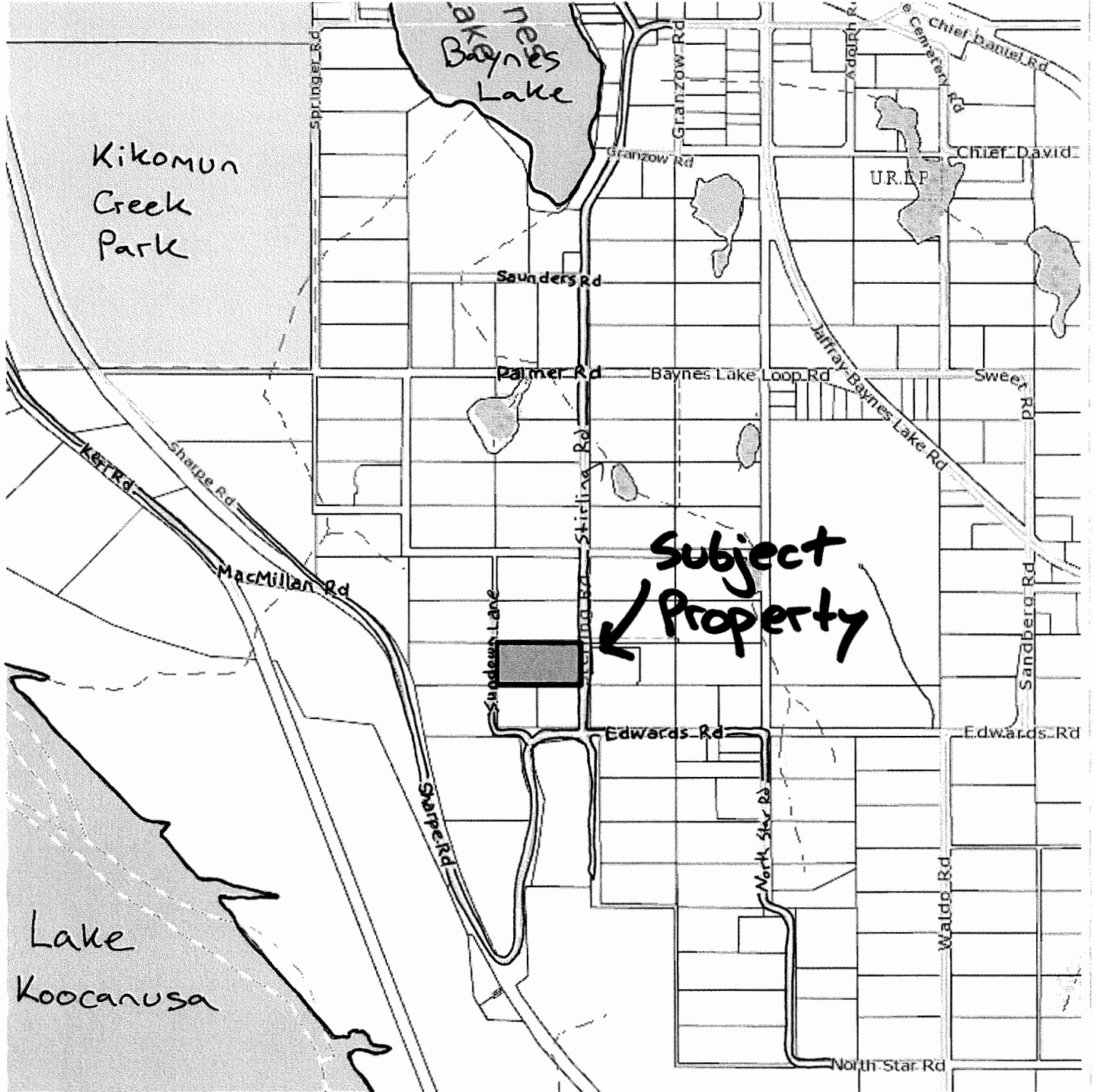
6

5





# Location Map



Notes:

500 0 250 500 Meters

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
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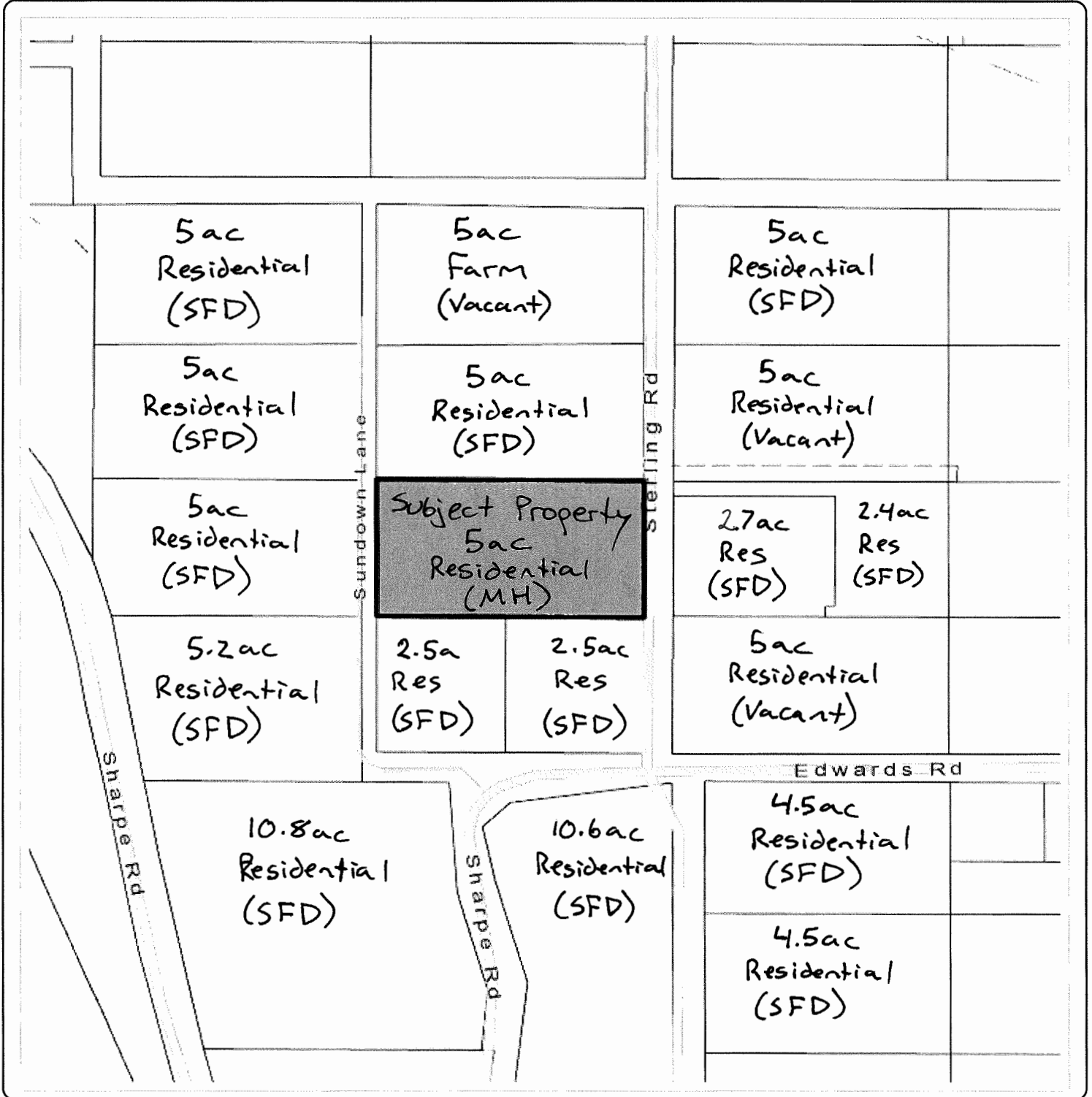
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**THIS MAP IS NOT TO BE USED FOR NAVIGATION**

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# Land Use Map



Notes:

150 0 75 150 Meters

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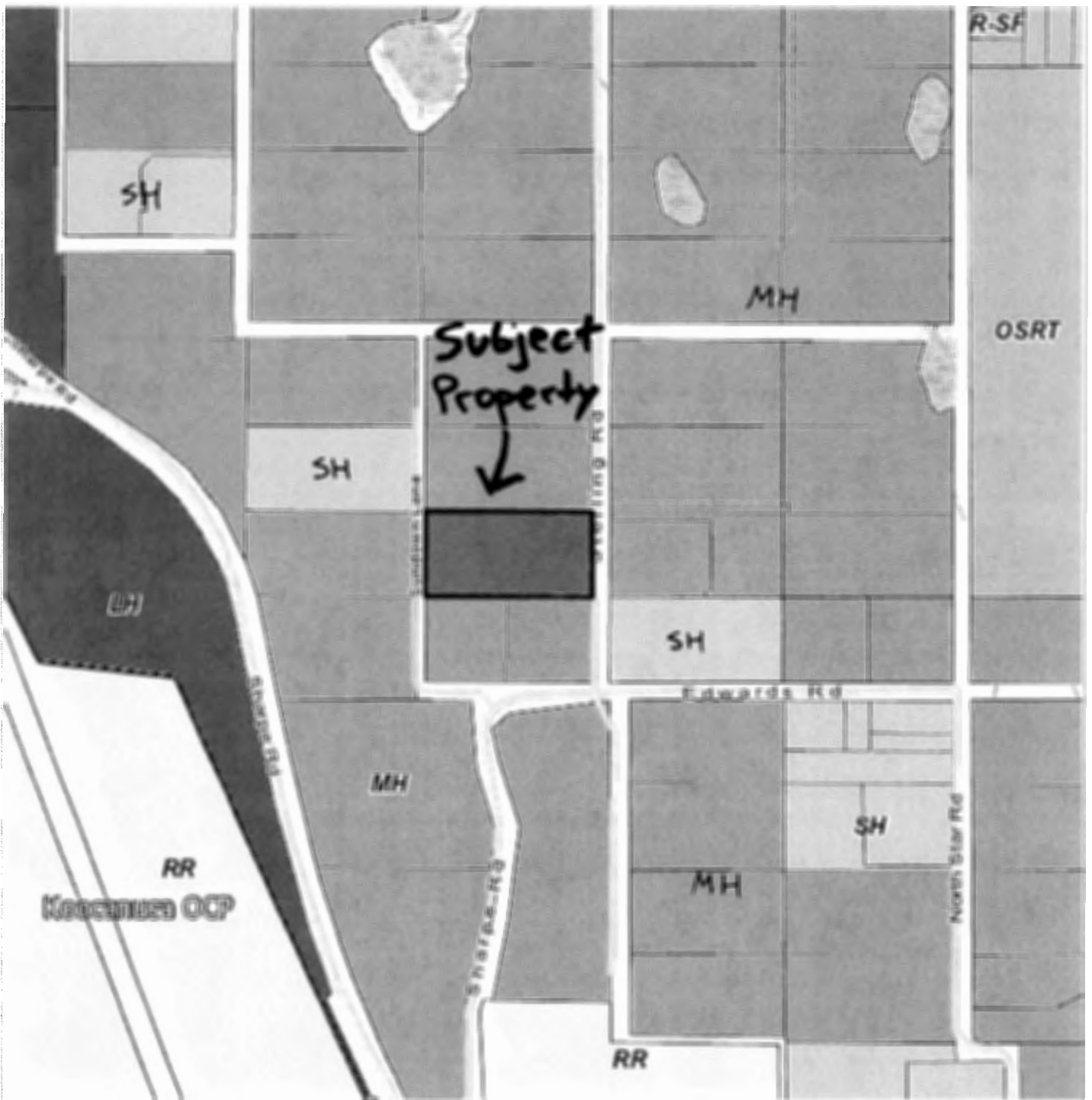
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# OCP Designation Map



Notes:

250 0 125 250 Meters

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RDEK GeoViewer - 3-27-2019 11:23 AM

Scale = 1: 10,000



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# Zoning Designation Map



Notes:

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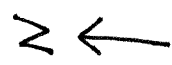
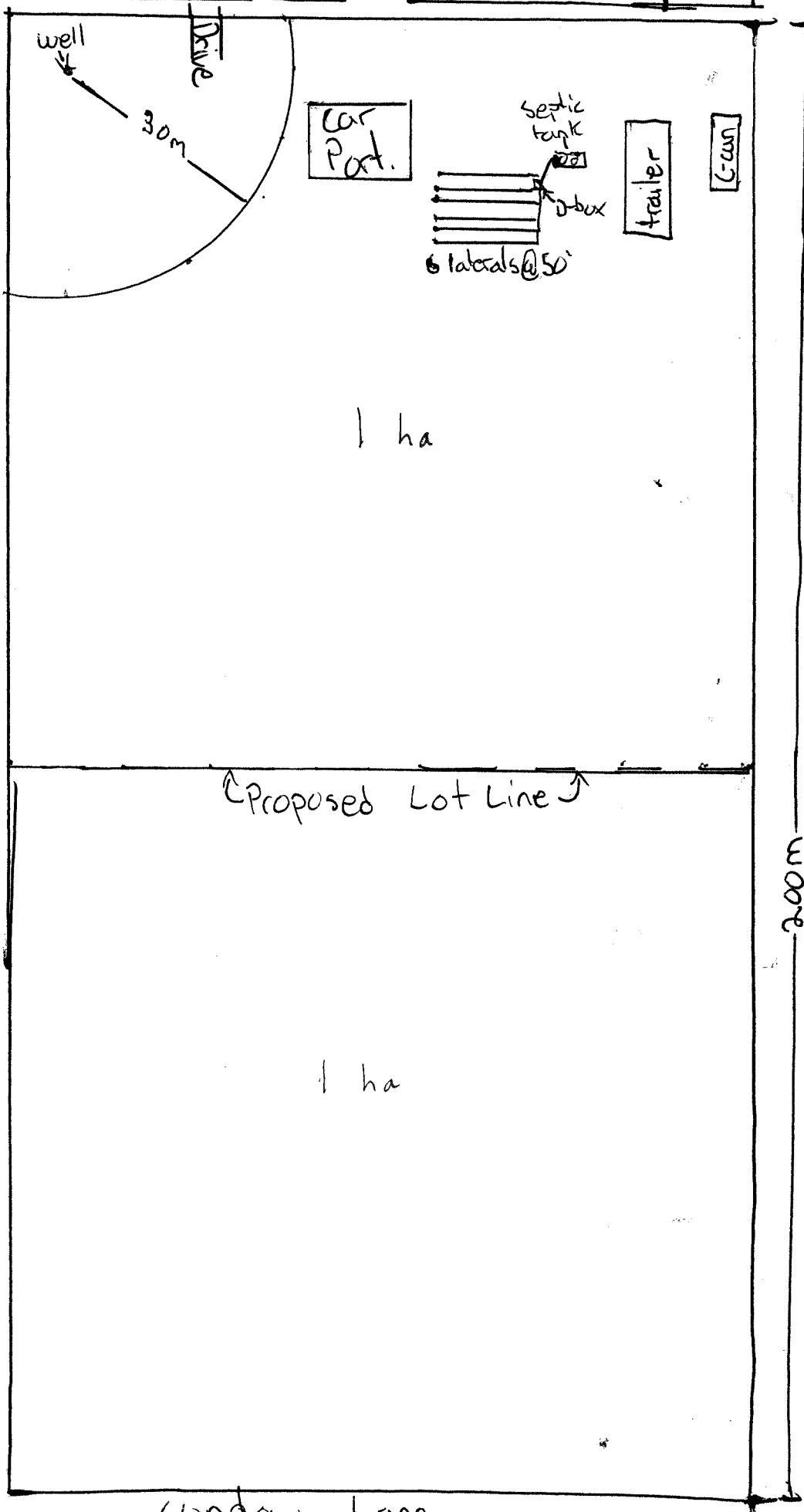


**THIS MAP IS NOT TO BE USED FOR NAVIGATION**

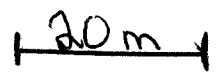
This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.



# Sterling Road Proposed Subdivision



Civic: 765, Sterling Road  
Baynes Lake  
legal: Lot 3, BLK 20, PL 181  
DL132  
owner: Matthew McArthur  
Scale: 1:1000 metric





## Request for Decision

P 037 953

<b>Date</b>	May 30, 2019
<b>Author</b>	Karen MacLeod, Planner
<b>Subject</b>	Bylaw No. 2926 – Miscellaneous Amendments – Jaffray, Tie Lake, Rosen Lake Land Use & Floodplain Management Bylaw

### REQUEST

Introduce Bylaw No. 2926.

### OPTIONS

1. THAT Bylaw No. 2926 cited as Regional District of East Kootenay – Jaffray, Tie Lake, Rosen Lake Land Use and Floodplain Management Bylaw No. 1414, 1999 – Amendment Bylaw No. 31, 2019 (Miscellaneous Amendments / RDEK)” be introduced.
2. THAT Bylaw No. 2926 cited as Regional District of East Kootenay – Jaffray, Tie Lake, Rosen Lake Land Use and Floodplain Management Bylaw No. 1414, 1999 – Amendment Bylaw No. 31, 2019 (Miscellaneous Amendments / RDEK)” not proceed.

### RECOMMENDATION

Option 1.

### BACKGROUND

The RDEK is undertaking another round of zoning bylaw ‘Miscellaneous Amendments’ or housekeeping. The amendments are a chance to make changes to ensure consistency between bylaws and ensure that the regulations reflect current best practice. This bylaw also includes miscellaneous amendments that were deferred for this area in consideration of the planning process that was occurring at the time of the last set of housekeeping amendments.

### ANALYSIS

A brief overview of the changes that are included in the attached bylaw and the rationale is provided below:

- Interpretation Section – information on how height is calculated is moved from the Definitions section to the Interpretation section of the Bylaw. There are no changes proposed to how height is calculated for most buildings; however, a new section is being added under the General Regulations to clarify how the height of single pitch or flat roofs are calculated for the purpose of determining maximum permitted height.

- Definitions Section:
  - Changes to reflect the federal *Cannabis Act*. Reference to ‘medical marihuana’ is removed and substituted with ‘cannabis’. There are no changes proposed to where cannabis production is permitted. The retail sale of cannabis is subject to a site specific amendment application under current RDEK policy.
  - Consistency of terminology within the Bylaw for commercial accommodations. A recent legal review on another RDEK zoning bylaw highlighted the importance of consistency unless another meaning is intended. As such, commercial accommodation definitions are being amended to reflect that the guests are ‘transient paying guests’.
  - Consistency of the ‘derelict vehicles’ definition with the Unsightly Premises Bylaw. Ensuring that different RDEK bylaws are consistent assists with enforcement action and clarity residents.
  
- General Regulations Section:
  - Changes to reflect the federal *Cannabis Act* instead of previous regulations pertaining to medical marihuana and updates to the ALR Regulation relating to production of cannabis.
  - New section clarifying the permissible heights for buildings and structures with single pitch roofs (e.g. shed roofs) or flat roofs and how the height will be calculated.
  - Changes to the setback requirements for agricultural uses to reflect consistency with the Provincial Minister’s Bylaw Standard. A recurring bylaw referral comment from the Ministry of Agriculture has been that the RDEK setbacks were often excessive. The reason for this was that the RDEK standard was drafted prior to the provincial standards.
  - Changes to reflect amendments to the *Agricultural Land Commission Act* and associated regulations pertaining to permitted residential uses within the Agricultural Land Reserve. The provincial government has recently made a number of changes to the Act and Regulations under Bill 52 related to residential uses in the ALR. Staff has identified a number of RDEK regulations where reference to the Act and Regulations provide greater clarity.
  - New sections to outline specific provisions for uses that were previously contained in the definitions section.
  - Inclusion of a new property specific regulations section which consolidates all parcel specific permitted uses. Section 5.28 is proposed to include all site specific permitted uses rather than have them included in each individual zone.
  
- Parcel Area Requirements:
  - Amendment to reduce the size requirement for common lot access parcels within a fee simple subdivision. The RDEK is seeing more subdivision application referrals where access to individual parcels is proposed to be via a shared common parcel rather than a dedicated road. The proposed amendment will allow for this to occur without applicants needing to apply for a variance to the Bylaw.
  - Amendment to require all lots within a bare land strata subdivision to comply with the minimum parcel size requirements of the Bylaw.
  
  - Parking Requirements – inclusion of requirements for the size and number of disabled off-street parking spaces. The current bylaw includes a minimum requirement for disabled off-street parking, but relied on the BC Building Code for further requirements and specifications on the size of the parking space.

Recent amendments to the Building Code removed the requirements, so inclusion of comparable requirements in the zoning bylaw is required to ensure that disabled parking spaces are still provided.

## SPECIFIC CONSIDERATIONS

### Public & First Nations Consultation (Referrals)

Referrals for Bylaw 2926 were sent on April 12, 2019 to the following agencies:

- Interior Health Authority
- **Ministry of Transportation & Infrastructure**
- Ministry of Agriculture
- Agricultural Land Commission
- Ktunaxa Nation Council
- School District No. 5

Comments from referral agencies had a reply deadline of May 31, 2019. Agencies that responded to the referral are highlighted in bold and had no concerns or comments related to Bylaw 2926. The Ministry of Agriculture provided comments on the Temporary Use Permit provisions and the regulation of cannabis production. Amendments were made to the bylaw to reflect the concern related to the Temporary Use Permit provisions. Staff reviewed the concern related to cannabis production and identified that the current wording of the bylaw identifies that the use is permissible under the Agricultural Land Use Regulation without being too prescriptive, as such no changes were made to the bylaw at this time

At the April 15, 2019 Electoral Area B Advisory Planning Commission meeting, Bylaw No. 2926 was reviewed and supported.

#### Attachment

1. Bylaw No. 2926 – Regional District of East Kootenay – Jaffray, Tie Lake, Rosen Lake Land Use and Floodplain Management Bylaw No. 1414, 1999 – Amendment Bylaw No. 31, 2019 (Miscellaneous Amendments / RDEK)
2. Ministry of Agriculture Bylaw Referral Response – May 2019

## REGIONAL DISTRICT OF EAST KOOTENAY

### BYLAW NO. 2926

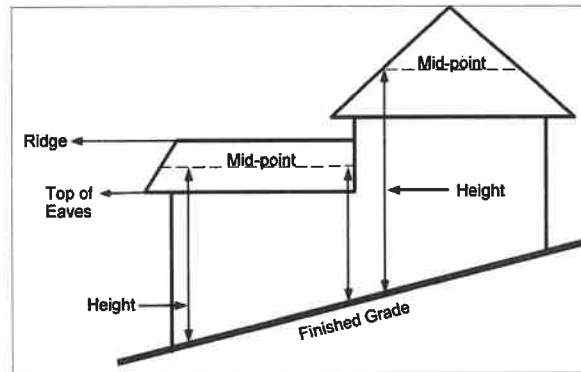
A bylaw to amend Bylaw No. 1414 cited as "Regional District of East Kootenay – Jaffray, Tie Lake, Rosen Lake Land Use and Floodplain Management Bylaw No. 1414, 1999."

WHEREAS the Board of the Regional District of East Kootenay wishes to amend Bylaw No. 1414;

AND WHEREAS the Board deems it desirable to make this amendment as aforementioned;

NOW THEREFORE, the Board of the Regional District of East Kootenay in open meeting assembled, enacts as follows:

1. This Bylaw may be cited as "Regional District of East Kootenay – Jaffray, Tie Lake, Rosen Lake Land Use and Floodplain Management Bylaw No. 1414, 1999 – Amendment Bylaw No. 31, 2019 (Miscellaneous Amendments / RDEK)."
2. Section 3.02 is amended by adding the following:
  - (5) The maximum permitted height of *buildings* and *structures* is calculated by measuring the vertical distance from the *finished grade* of the *building* or *structure* to the mid-point between the eaves and ridge of the primary roof or roofs. Height is shown in the diagram below:



When the architectural design of the primary roof or roofs does not include a roof ridge, the maximum permitted height of the *building* or *structure* shall be calculated in accordance with section 5.10 (6) of this Bylaw.

3. Section 3.03 is amended by repealing the definitions of accessory building; agriculture; cabin; cannabis; common storage area; common wall; dwelling, two family; dwelling unit; feedlot; group home; guest ranch; guest ranch lodge; height; hotel; keeping of farm animals; keeping of small farm animals; kitchen; lodge; medical marihuana; medical marihuana production facility; secondary dwelling unit for farm hands; secondary suite; vehicle, derelict; and wildland use and adding the following:

**ACCESSORY BUILDING** means:

- (a) a *building*, the use or intended use of which is *accessory* to that of the *principal building* situated on the same parcel, which may be detached or connected to other *buildings* by a *breezeway*; or
- (b) a *building* which is *accessory* to a *principal* use being made of the parcel upon which such *building* is (to be) located;

but without limiting the foregoing, does not include a *recreational vehicle*, *park model trailer* or a tent.

**AGRICULTURE** means 'farm operation' as defined in the *Farm Practices Protection (Right to Farm) Act*, but does not include growing, producing, cultivating, processing or direct marketing of *cannabis*.

**BREEZEWAY** means a roofed open passage connecting two or more *buildings*.

**CABIN** means a *building* used for seasonal recreation, temporary accommodation as part of a *guest ranch, motel, registered guide outfitting operation, backcountry commercial recreation operation or wildland use*, or for the use of a registered trapline licensee or holder of a *Mines Act* permit. A *cabin* does not contain a *kitchen*.

**CANNABIS** means the substance set out in Schedule 1 of the *Cannabis Act (Canada)*.

**CANNABIS PRODUCTION FACILITY** means a facility for the cultivation, processing, destruction, shipping and direct marketing of *cannabis*. A facility may also conduct research or testing of *cannabis*.

**COMMON STORAGE AREA** means a portion of a *manufactured home park or campground* used or intended to be used by the occupants of the *manufactured home park or campground* for storage of automobiles, *recreational vehicles*, boats and other equipment and materials.

**COMMON WALL** means a continuous, unbroken vertical or horizontal *structure* with *habitable area* adjoining either side, used to separate *dwelling units, cottages, cabins* or strata lots. A *common wall* is not a *breezeway*.

**CONFINED LIVESTOCK AREA** means a fenced area, including paddocks, corrals, exercise yards and holding pens, where *livestock, poultry, or farmed game* is confined solely for the purposes of growing or finishing and is sustained by means other than grazing.

**DERELICT VEHICLE** means any *vehicle* no longer in road worthy condition, in a state of disrepair, wrecked or in the process of being dismantled, or which is not licenced and insured in the current calendar year, but does not include *vehicles* stored in *buildings*.

**DWELLING, TWO FAMILY** means one *building* containing 2 *dwelling units* that:

- (a) share a common roof and foundation;
- (b) are separated by a *common wall*; and
- (c) where neither *dwelling unit* is a *manufactured home*.

A *building* containing a *secondary suite* is not a *two family dwelling*.

**DWELLING UNIT** means a *habitable room* or group of *habitable rooms* occupied or designed to be occupied by one or more persons, with facilities for living, sleeping and cooking.

**FLAT ROOF** means the roof of a *building* or *structure* for which the slope of the roof is equal to or less than 9 degrees.

**GROUP HOME** means a facility for the accommodation of persons who by reason of their emotional, mental, social or physical condition or legal status require a supervised group living arrangement for their well-being.

**GUEST RANCH** means a working farm or ranch that includes a principal residence, agricultural *structures* and temporary guest accommodation.

**GUEST RANCH LODGE** means a *building* associated with a *guest ranch* that provides temporary accommodation for transient paying guests of the *guest ranch* and may include sleeping facilities, communal dining facilities, sanitary facilities, meeting and recreation facilities for the exclusive use of guests on the *guest ranch*.

**HOTEL** means a *building* or part wherein accommodation is provided for transient paying guests. Entrance and exit ways are shared and the *building* may include public areas such as a lobby, restaurant, meeting, entertainment and recreation facilities.

**KEEPING OF FARM ANIMALS** means the keeping or rearing of *poultry* and *livestock*, other than swine or mink.

**KEEPING OF SMALL FARM ANIMALS** means the keeping or rearing of *small farm animals* excluding geese and turkeys.

**KITCHEN** means a room or a portion of a room in a *dwelling unit* which contains one or more of the following cooking appliances: 220 volt stove, gas stove, countertop stove and wall oven.

**SECONDARY DWELLING UNIT FOR FARM HANDS** means an *accessory dwelling unit* on land classified as "farm" under the *Assessment Act* for the accommodation of an employee or employees working on the same parcel or farm operation.

**SECONDARY SUITE** means an *accessory dwelling unit* within a *single family dwelling*.

**WILDLAND USE** means activities such as non-commercial public outdoor recreational uses or commercial tenured outdoor activities such as trapping by holders of registered trap lines, guide outfitting, heli-skiing and cat skiing.

4. Sections 4.02 (3)(j) and (6)(b)(c)(d)(e) are repealed.
5. Part 4 is amended by adding the following:

**PART 4(A) TEMPORARY LAND USE**

**BACKGROUND**

4.01(A) Within the plan area there may be a need to accommodate a temporary land use on a parcel not zoned for that purpose.

4.02(A) **OBJECTIVES**

- (1) Provide an opportunity for temporary land use applications to be considered within the plan area.
- (2) Ensure that temporary land uses are compatible with adjacent land uses.

4.03(A) **POLICIES**

- (1) Temporary Land Use Permits will be considered throughout the bylaw area.
- (2) An application for a Temporary Land Use Permit will be considered in relation to:
  - (a) demonstration that the use is temporary or seasonal in nature;
  - (b) compatibility with the existing land use;
  - (c) compatibility with surrounding land use;
  - (d) potential conflict with agricultural or resource based activities;
  - (e) potential conflict with residential land uses;
  - (f) potential impact on fish or wildlife habitat;
  - (g) provision of adequate servicing for water and sewage disposal;
  - (h) duration of the proposed temporary land use;
  - (i) relevant policies within other sections of this bylaw; and
  - (j) for lands within the *Agricultural Land Reserve*, any conditions of approval for the proposed temporary land use where the use is not consistent with the *Agricultural Land Commission Act* and *Agricultural Land Reserve Use Regulations* and a *Non-Farm Use* approval has been granted.
- (3) The permit may be issued subject to conditions such as, but not limited to:
  - (a) the buildings, structures, or area of land that may be used for the temporary use;
  - (b) the period of applicability of the permit;

- (c) required site rehabilitation upon cessation of the use;
  - (d) other business or operating conditions to mitigate the impacts of the temporary use.
6. Section 5.09 (2) and (6) are repealed and the following substituted:
- (6) *Buildings and structures for a cannabis production facility must be sited not less than:*
    - (a) 15.0 m from a *front parcel line*;
    - (b) 15.0 m from an *interior side parcel line*;
    - (c) 30.0 m from an *exterior side parcel line*;
    - (d) 30.0 m from a *rear parcel line*.
7. Section 5.10 (5) is repealed and the following substituted:
- (5) *Buildings and structures used for a cannabis production facility where a cannabis production facility is a permitted use are exempt from the height requirements of this Bylaw.*
8. Section 5.10 is amended by adding the following:
- (6) The maximum permitted height of *buildings and structures* that are not exempt from the height regulations of this Bylaw and for which the architectural design includes a roof or roofs that does not include a roof ridge must be in accordance with the following:
    - (a) Single pitch roof *buildings and structures* must not exceed 1.5 m above the permitted maximum height in the applicable zone for the *building or structure* measured from *finished grade* to the top of each wall that abuts the underside of the roof structure.
    - (b) *Flat roof buildings and structures* must not exceed the maximum permitted height in the applicable zone measured from *finished grade* to the top of the roof structure.

For *buildings and structures* that include additional primary roof types not identified above, the maximum height of any primary roof(s) that includes a roof ridge shall be calculated in accordance with section 3.02 (5) of this Bylaw.
9. Section 5.13 is amended by adding the following:
- (3) *Within the Agricultural Land Reserve a dwelling unit for a relative requiring care is subject to requirements of the Agricultural Land Commission Act and Agricultural Land Reserve Use Regulation.*
10. Section 5.19 is repealed and the following substituted:
- (1) *Where all or part of a parcel is located within the Agricultural Land Reserve activities designated farm use in the Agricultural Land Reserve Use Regulation are permitted on the parcel. In addition to the farm use activities, those uses approved by the Provincial Agricultural Land Commission as accessory to the farm use for that parcel are also permitted.*
  - (2) *Where a parcel is not in the Agricultural Land Reserve, is located in a zone that permits agriculture and the parcel is assessed as farm under the Assessment Act, activities designated farm use in the Agricultural Land Reserve Use Regulation are permitted in conjunction with the agriculture use.*
  - (3) *Uses permitted in sections 5.19 (1) and (2) are subject to all applicable agriculture regulations contained elsewhere in this Bylaw.*
  - (4) *Buildings or structures that are used for agriculture use shall be sited in accordance with the following:*



- (a) Mushroom barns must be sited a minimum of 7.5 m from all *parcel lines*.
- (b) The required minimum *setback* for *buildings* or *structures* used as principal farm *buildings* or *structures*, or animal containment for the following types of agricultural uses is identified in the table below:
- Dairying
  - Livestock, including farmed game
  - Fur farming
  - Poultry

TYPE OF AGRICULTURAL USE	MINIMUM SETBACK	
	From all <i>parcel lines</i>	From domestic water intake (well or spring)
<i>Confined livestock area</i>	30.0 m	30.0 m
All other uses	15.0 m	30.0 m

- (c) *Buildings* or *structures* used for types of *agriculture* use not identified in sections 5.19 (4) (a) or (b) must be sited a minimum of 4.5 m from all *parcel lines*.
- (d) All *agriculture* use *buildings* or *structures* that contain boilers or walls with fans must be sited a minimum of 15.0 m from all *parcel lines*.
- (e) The required minimum setback for farm *buildings* and *structures* from the *ordinary high water mark* of a lake or watercourse is identified in the table below:

TYPE OF AGRICULTURAL USE	MINIMUM SETBACK
	From <i>ordinary high water mark</i> of lake or watercourse
<i>Confined livestock area</i> - less than 10 <i>animal units</i>	15.0 m
<i>Confined livestock area</i> - more than 10 <i>animal units</i>	30.0 m
Mushroom barn	15.0 m
Livestock barn or <i>livestock shelter</i>	15.0 m
Milking facility	15.0 m
Stable	15.0 m
<i>Poultry</i> barn	15.0 m

- (f) *Buildings* or *structures* that are used for the storage of agricultural liquid or solid waste, such as manure, must be located:
- (i) a minimum of 30.0 m from domestic water supply intakes, such as a well or spring; and
  - (ii) a minimum of 15.0 m from the *ordinary high water mark* of lakes and *watercourses*.

11. Section 5.20 is repealed and the following substituted:

**SECONDARY DWELLING UNIT FOR FARM HANDS**

- 5.20 (1) *Secondary dwelling unit for farm hands* is not permitted *accessory* to a *cannabis production facility*.
- (2) Within the *Agricultural Land Reserve* a *secondary dwelling unit for farm hands* necessary for farm use is subject to requirements of the *Agricultural Land Commission Act* and *Agricultural Land Reserve Use Regulation*.

12. Section 5.21 is repealed and the following substituted:

**CANNABIS PRODUCTION FACILITY**

- 5.21 Subject to all applicable regulations contained elsewhere in this Bylaw, *cannabis production facility* is a permitted use on parcels within the *Agricultural Land Reserve* subject to the *Agricultural Land Reserve Use Regulation* and those parcels that are located within a zone where it is identified as a permitted use.

13. Part 5 is amended by adding the following:

**SECONDARY SUITES**

5.22 On *parcels* where a *secondary suite* is a permitted use:

- (1) No more than one (1) *secondary suite* shall be permitted on a parcel.
- (2) *Secondary suites* are not permitted within a *manufactured home*.
- (3) *Secondary suites* must be constructed in accordance with the BC Building Code.
- (4) *Secondary suites* must be connected to an approved sewage disposal system.
- (5) No *secondary suite* shall be subdivided from the principal *dwelling unit* by a strata plan pursuant to the *Strata Property Act*.
- (6) *Secondary suites* are only permitted within a *single family dwelling*.
- (7) On *parcels* where *secondary suite* is a permitted use, the *gross floor area* of the *secondary suite* must not exceed 90 m<sup>2</sup> or 40% of the habitable floor space of the *single family dwelling*.
- (8) Within the *Agricultural Land Reserve* *secondary suites* are subject to requirements of the *Agricultural Land Commission Act* and *Agricultural Land Reserve Use Regulation*.

14. Part 5 is amended by adding the following:

**MAXIMUM NUMBER OF KITCHENS PER DWELLING UNIT**

5.23 A maximum of one (1) *kitchen* is permitted in a *dwelling unit*.

15. Part 5 is amended by adding the following:

**GUEST RANCH**

- 5.24 (1) On *parcels* where a *guest ranch* is a permitted use, *guest ranches* must:
- (a) be conducted on a parcel not less than 16 ha;
  - (b) be conducted on a parcel assessed as farm under the *Assessment Act*; and
  - (c) not exceed 10.0 m<sup>2</sup> of *gross floor area* of *guest ranch* accommodation per hectare to a maximum of 720 m<sup>2</sup>.

16. Part 5 is amended by adding the following:

**CABIN**

- 5.25 (1) On *parcels* where a *cabin* is a permitted use, *cabins* must:
- (a) not exceed 5 m in height;
  - (b) not exceed a maximum *gross floor area* of 74 m<sup>2</sup>.

17. Part 5 is amended by adding the following:

**WILDLAND USE**

- 5.26 (1) On parcels where *wildland use* is a permitted use, *wildland use* must:
- (a) be conducted on a parcel not less than 60.0 ha in area.

18. Part 5 is amended by adding the following:

**KEEPING OF FARM ANIMALS**

- 5.27 (1) On parcels where the *keeping of farm animals* is a permitted use:
- (a) the number of *animal units of livestock* must not exceed one (1) *animal unit* per hectare total; and
  - (b) the number of *animal units of poultry* must not exceed one-half (0.5) *animal unit* per hectare in total.

In all cases, the total number of *livestock* or *poultry* permitted will be rounded down to the nearest whole number.

- (2) On parcels where the *keeping of small farm animals* is a permitted use:
- (a) The number of rabbits must not exceed one (1) *animal unit*; and
  - (b) The cumulative number of *poultry*, exclusive of geese, turkeys and *ratites*, must not exceed fifteen (15) animals.

19. Part 5 is amended by adding the following:

**GROUP HOMES**

- 5.27 (1) On parcels where *group homes* are a permitted use, *group homes* must:
- (a) not exceed the maximum accommodation of ten people, exclusive of staff;
  - (b) be licenced or approved under Provincial statute; and
  - (c) not include any use otherwise classified or defined in this Bylaw.

20. Part 5 is amended by adding the following:

**PROPERTY SPECIFIC REGULATIONS**

- 5.28 (1) Despite the use and density regulations contained elsewhere in this Bylaw:
- (a) On Lot 1, District Lot 6206, Kootenay District, Plan 16434, storage and warehousing, including mini-warehouse and storage of *recreational vehicles* is permitted.

21. Part 6 is amended by adding the following:

**MINIMUM AVERAGE PARCEL AREA FOR BARE LAND STRATAS**

- 6.03 (1) The minimum average parcel area is equal to the minimum parcel area found in Part 8 of this Bylaw.

22. Section 6.01 (3) is amended by adding the following:

- (h) involves the creation of a *parcel* to be utilized as a common lot for access in a fee simple subdivision provided the parcel will be registered as a common lot pursuant to section 12 of the *Land Title Act Regulation 334/79*.

23. Section 7.01 (9) is repealed.

24. Part 7 is amended by adding the following:

**DISABLED PARKING SPACES**

- 7.01(A) (1) All off-street parking areas containing more than 10 but fewer than 51 *off-street parking spaces* must include a minimum of one *off-street parking space* for persons with disabilities. One additional *off-street parking space* for persons with disabilities is required for each additional 50 parking spaces or portion thereof up to a maximum of 5 dedicated *off-street parking spaces* for disabled persons.
- (2) *Off-street parking spaces* for persons with disabilities must be located as close to a disabled accessible main entrance of the *principal building* as possible.
- (3) *Off-street parking spaces* for persons with disabilities must be clearly marked with stall parking signage mounted 1.0 to 1.5 m above ground level to indicate exclusive use for disabled persons.
- (4) Each *off-street parking space* for persons with disabilities must have a firm, slip-resistant and level surface.

25. Section 7.02 (1)(A) is repealed and the following substituted:

(1)(A) Cannabis Production Facility

- 1 per 30 m<sup>2</sup> of office use, plus
- 1 per 185 m<sup>2</sup> of *gross floor area* for all other uses enclosed within a *building*.

26. Section 7.03 is amended by adding the following:

- (6) Each required *off-street parking space* for persons with disabilities must be a minimum of 4.0 m in width and 6.0 m in length exclusive of aisle access.

27. Section 8.09 (1)(l) is repealed.

READ A FIRST TIME the            day of            , 2019.

READ A SECOND TIME the            day of            , 2019.

READ A THIRD TIME the            day of            , 2019.

APPROVED by the Ministry of Transportation and Infrastructure the            day of            , 2019.

*Print Name:* \_\_\_\_\_

*Signature:* \_\_\_\_\_

ADOPTED the            day of            , 2019.

\_\_\_\_\_  
CHAIR

\_\_\_\_\_  
CORPORATE OFFICER

## Karen MacLeod

---

**From:** Murphy, Kevin J AGRI:EX <Kevin.J.Murphy@gov.bc.ca>  
**Sent:** May-29-19 5:27 PM  
**To:** Karen MacLeod  
**Cc:** Bailey, Reed AGRI:EX  
**Subject:** RE: RDEK Bylaw Referral - Bylaw 2926 (Jaffray Area)

Hi Karen

Thanks for the opportunity to provide input to Bylaw 2926 (Jaffray Area). We have 2 suggestions, one concerning Part 4(A) the second regarding Section 5.21:

Part 4(A) Temporary Land Use: For clarity, the Ministry recommends adding a statement that if a temporary land use that is not consistent with the *Agricultural Land Commission Act* and *Agricultural Land Reserve Use Regulations* (the 'Regulation') occurs on a parcel in the ALR, that approval from the ALC is required.

Section 5.21: Cannabis Production Facility: Section 8 of the *Agricultural Land Reserve Use Regulation* lists a series of cannabis production methods that if produced lawfully, may not be prohibited by local governments. Local governments do however, have the ability to prohibit cannabis production methods not listed in Section 8 of the Regulation (i.e. concrete bottomed cannabis production facilities). If the RDEK's intent is to explicitly prohibit all forms of cannabis production not specifically listed in the 'Regulation' the Ministry suggests stating that production methods not listed in Section 8 of the Regulation are prohibited.

Regards,

Kevin Murphy, P.Ag. Regional Agrologist – Kootenays  
BC Ministry of Agriculture  
Office phone: 250 428-3201  
1404 Canyon Street; PO Box 1190, Creston BC, V0B1G0

---

**From:** Karen MacLeod <kmacleod@rdek.bc.ca>  
**Sent:** April 12, 2019 11:44 AM  
**To:** hbe@interiorhealth.ca; Rocky Mountain District Development Approvals group TRAN:EX <RMDdevapp@gov.bc.ca>; Murphy, Kevin J AGRI:EX <Kevin.J.Murphy@gov.bc.ca>; Bednard, Gordon ALC:EX <Gordon.Bednard@gov.bc.ca>; rwarden@ktunaxa.org; referrals@ktunaxa.org; alan.rice@sd5.bc.ca  
**Subject:** RDEK Bylaw Referral - Bylaw 2926 (Jaffray Area)

Dear Referral Agency,

On behalf of the Regional District of East Kootenay, please see the attached referral for **Bylaw 2926** which proposes to amend the text of the Jaffray, Tie Lake, Rosen Lake Land Use and Floodplain Management Bylaw. The Bylaw is a Miscellaneous Amendments Bylaw proposed by the Regional District. The attached referral provides a summary of the sections that are proposed for amendment. Information on the boundary of the Land Use Bylaw and the current bylaw is available on the RDEK website at [www.rdek.bc.ca](http://www.rdek.bc.ca).

The referral form and bylaw are attached to this email.

**Please reply to this email address with your comments prior to Friday May 31<sup>st</sup>, 2019.**



## Request for Decision

P 037 954

<b>Date</b>	May 30, 2019
<b>Author</b>	Karen MacLeod, Planner
<b>Subject</b>	Bylaw No. 2927 – Miscellaneous Amendments – South Country Zoning & Floodplain Management Bylaw

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### REQUEST

Introduce Bylaw No. 2927.

### OPTIONS

1. THAT Bylaw No. 2927 cited as Regional District of East Kootenay – South Country Zoning & Floodplain Management Bylaw No. 2320, 2011 – Amendment Bylaw No. 20, 2019 (Miscellaneous Amendments / RDEK)” be introduced.
2. THAT Bylaw No. 2927 cited as Regional District of East Kootenay – South Country Zoning & Floodplain Management Bylaw No. 2320, 2011 – Amendment Bylaw No. 20, 2019 (Miscellaneous Amendments / RDEK)” not proceed.

### RECOMMENDATION

Option 1.

### BACKGROUND

The RDEK is undertaking another round of zoning bylaw ‘Miscellaneous Amendments’ or housekeeping. The amendments are a chance to make changes to ensure consistency between bylaws and ensure that the regulations reflect current best practice.

### ANALYSIS

A brief overview of the changes that are included in the attached bylaw and the rationale is provided below:

- Interpretation Section – information on how height is calculated is moved from the Definitions section to the Interpretation section of the Bylaw. There are no changes proposed to how height is calculated for most buildings; however, a new section is being added under the General Regulations to clarify how the height of single pitch or flat roofs are calculated for the purpose of determining maximum permitted height.
- Definitions Section:
  - Changes to reflect the federal *Cannabis Act*. Reference to ‘medical marihuana’ is removed and substituted with ‘cannabis’. There are no changes proposed to where

- cannabis production is permitted. The retail sale of cannabis is subject to a site specific amendment application under current RDEK policy.
  - Consistency of terminology within the Bylaw for commercial accommodations. A recent legal review on another RDEK zoning bylaw highlighted the importance of consistency unless another meaning is intended. As such, commercial accommodation definitions are being amended to reflect that the guests are 'transient paying guests'.
  - Consistency of the 'derelict vehicles' definition with the Unsightly Premises Bylaw. Ensuring that different RDEK bylaws are consistent assists with enforcement action and clarity residents.
- General Regulations Section:
    - Changes to reflect the federal *Cannabis Act* instead of previous regulations pertaining to medical marihuana and updates to the ALR Regulation relating to production of cannabis.
    - New section clarifying the permissible heights for buildings and structures with single pitch roofs (e.g. shed roofs) or flat roofs and how the height will be calculated.
    - Changes to the setback requirements for agricultural uses to reflect consistency with the Provincial Minister's Bylaw Standard. A recurring bylaw referral comment from the Ministry of Agriculture has been that the RDEK setbacks were often excessive. The reason for this was that the RDEK standard was drafted prior to the provincial standards.
    - Changes to reflect amendments to the *Agricultural Land Commission Act* and associated regulations pertaining to permitted residential uses within the Agricultural Land Reserve. The provincial government has recently made a number of changes to the Act and Regulations under Bill 52 related to residential uses in the ALR. Staff has identified a number of RDEK regulations where reference to the Act and Regulations provide greater clarity.
    - Inclusion of a new property specific regulations section which consolidates all parcel specific permitted uses. Section 1.28 is proposed to include all site specific permitted uses rather than have them included in each individual zone.
    - Parcel Area Requirements - amendment to reduce the size requirement for common lot access parcels within a fee simple subdivision. The RDEK is seeing more subdivision application referrals where access to individual parcels is proposed to be via a shared common parcel rather than a dedicated road. The proposed amendment will allow for this to occur without applicants needing to apply for a variance to the Bylaw.
    - Parking Requirements – inclusion of requirements for the size and number of disabled off-street parking spaces. The current bylaw includes a minimum requirement for disabled off-street parking, but relied on the BC Building Code for further requirements and specifications on the size of the parking space. Recent amendments to the Building Code removed the requirements, so inclusion of comparable requirements in the zoning bylaw is required to ensure that disabled parking spaces are still provided.

## **SPECIFIC CONSIDERATIONS**

### **Public & First Nations Consultation (Referrals)**

Referrals for Bylaw 2927 were sent on April 12, 2019 to the following agencies:

- Interior Health Authority
- **Ministry of Transportation & Infrastructure**
- Ministry of Agriculture
- Agricultural Land Commission
- Ktunaxa Nation Council
- School District No. 5

Comments from referral agencies had a reply deadline of May 31, 2019. Agencies that responded to the referral are highlighted in bold and had no concerns or comments related to Bylaw 2927. The Ministry of Agriculture provided a comment on the regulation of cannabis production. Staff reviewed the concern and identified that the current wording of the bylaw identifies that the use is permissible under the Agricultural Land Use Regulation without being too prescriptive, as such no changes were made to the bylaw at this time.

At the April 15, 2019 Electoral Area B Advisory Planning Commission meeting, Bylaw No. 2927 was reviewed and supported.

Attachment

1. Bylaw No. 2927 - Regional District of East Kootenay – South Country Zoning & Floodplain Management Bylaw No. 2320, 2011 – Amendment Bylaw No. 20, 2019 (Miscellaneous Amendments / RDEK)
2. Ministry of Agriculture Bylaw Referral Response – May 2019



## REGIONAL DISTRICT OF EAST KOOTENAY

### BYLAW NO. 2927

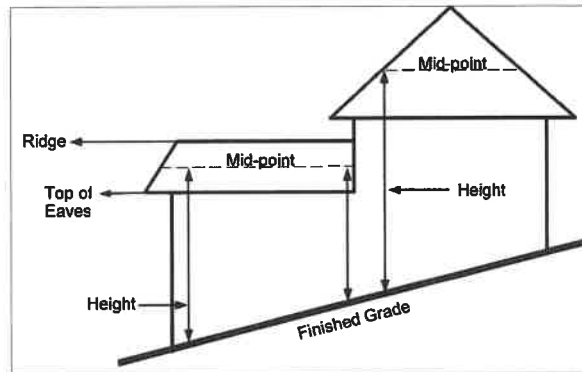
A bylaw to amend Bylaw No. 2320 cited as "Regional District of East Kootenay – South Country Zoning & Floodplain Management Bylaw No. 2320, 2011."

WHEREAS the Board of the Regional District of East Kootenay wishes to amend Bylaw No. 2320;

AND WHEREAS the Board deems it desirable to make this amendment as aforementioned;

NOW THEREFORE, the Board of the Regional District of East Kootenay in open meeting assembled, enacts as follows:

1. This Bylaw may be cited as "Regional District of East Kootenay – South Country Zoning & Floodplain Management Bylaw No. 2320, 2011 – Amendment Bylaw No. 20, 2019 (Miscellaneous Amendments / RDEK)."
2. Section 3.2 is amended by adding the following:
  - (6) The maximum permitted height of *buildings* and *structures* is calculated by measuring the vertical distance from the *finished grade* of the *building* or *structure* to the mid-point between the eaves and ridge of the primary roof or roofs. Height is shown in the diagram below:



When the architectural design of the primary roof or roofs does not include a roof ridge, the maximum permitted height of the *building* or *structure* shall be calculated in accordance with section 1.11 (6) of this Bylaw.

3. Section 3.3 is amended by repealing the definitions of cannabis; derelict vehicle; farm operation; height; lodge; medical marihuana; and medical marihuana production facility and adding the following:

**Cannabis** means the substance set out in Schedule 1 of the *Cannabis Act (Canada)*.

**Cannabis production facility** means a facility for the cultivation, processing, destruction, shipping and direct marketing of *cannabis*. A facility may also conduct research or testing of *cannabis*.

**Derelict vehicle** means any *vehicle* no longer in road worthy condition, in a state of disrepair, wrecked or in the process of being dismantled, or which is not licenced and insured in the current calendar year, but does not include *vehicles* stored in *buildings*.

**Farm operation** means 'farm operation' as defined in the *Farm Practices Protection (Right to Farm) Act*, but does not include growing, producing, cultivating, processing or direct marketing of *cannabis*.

**Flat roof** means the roof of a *building* or *structure* for which the slope of the roof is equal to or less than 9 degrees.

**Lodge** means a *building* that provides temporary accommodations for the exclusive use of operators and/or transient paying guests of a *guest ranch*, *rural retreat*, or *wildland use*. A lodge may include facilities for sleeping, cooking, communal dining, meeting, recreation and sanitation.

4. Schedule A Section 1.10 (2) and (6) are repealed and the following substituted:

- (6) *Buildings and structures for a cannabis production facility must be sited not less than:*
  - (a) 15.0 m from a *front parcel line*;
  - (b) 15.0 m from an *interior side parcel line*;
  - (c) 30.0 m from an *exterior side parcel line*;
  - (d) 30.0 m from a *rear parcel line*.

5. Schedule A Section 1.11 (5) is repealed and the following substituted:

- (5) *Buildings and structures used for a cannabis production facility where a cannabis production facility is a permitted use are exempt from the height requirements of this Bylaw.*

6. Schedule A Section 1.11 is amended by adding the following:

- (6) The maximum permitted height of *buildings and structures* that are not exempt from the height regulations of this Bylaw and for which the architectural design includes a roof or roofs that does not include a roof ridge must be in accordance with the following:
  - (a) Single pitch roof *buildings and structures* must not exceed 1.5 m above the permitted maximum height in the applicable zone for the *building or structure* measured from *finished grade* to the top of each wall that abuts the underside of the roof structure.
  - (b) *Flat roof buildings and structures* must not exceed the maximum permitted height in the applicable zone measured from *finished grade* to the top of the roof structure.

For *buildings and structures* that include additional primary roof types not identified above, the maximum height of any primary roof(s) that includes a roof ridge shall be calculated in accordance with section 3.2 (6) of this Bylaw.

7. Schedule A Section 1.14 is amended by adding the following:

- (3) *Within the Agricultural Land Reserve a dwelling unit for a relative requiring care is subject to requirements of the Agricultural Land Commission Act and Agricultural Land Reserve Use Regulation.*

8. Schedule A Section 1.18 (5) is repealed.

9. Schedule A Section 1.20 is repealed and the following substituted:

- (1) *Where all or part of a parcel is located within the Agricultural Land Reserve activities designated farm use in the Agricultural Land Reserve Use Regulation are permitted on the parcel. In addition to the farm use activities, those uses approved by the Provincial Agricultural Land Commission as accessory to the farm use for that parcel are also permitted.*
- (2) *Where a parcel is not in the Agricultural Land Reserve, is located in a zone that permits farm operation and the parcel is assessed as farm under the Assessment Act, activities designated farm use in the Agricultural Land Reserve Use Regulation are permitted in conjunction with the farm operation.*
- (3) *Uses permitted in sections 1.20 (1) and (2) are subject to all applicable agriculture regulations contained elsewhere in this Bylaw.*
- (4) *Buildings or structures that are used for farm operations shall be sited in accordance with the following:*
  - (a) *Mushroom barns must be sited a minimum of 7.5 m from all parcel lines.*
  - (b) *The required minimum setback for buildings or structures used as principal farm buildings or structures, or animal containment for the following types of agricultural uses is identified in the table below:*

- Dairying
- Livestock, including farmed game
- Fur farming
- Poultry

TYPE OF AGRICULTURAL USE	MINIMUM SETBACK	
	From all <i>parcel lines</i>	From domestic water intake (well or spring)
<i>Confined livestock area</i>	30.0 m	30.0 m
All other uses	15.0 m	30.0 m

- (c) *Buildings or structures* used for types of *farm operation* not identified in sections 5.19 (4) (a) or (b) must be sited a minimum of 4.5 m from all *parcel lines*.
- (d) All *farm operation buildings or structures* that contain boilers or walls with fans must be sited a minimum of 15.0 m from all *parcel lines*.
- (e) The required minimum setback for farm *buildings and structures* from the *ordinary high water mark* of a lake or watercourse is identified in the table below:

TYPE OF AGRICULTURAL USE	MINIMUM SETBACK
	From <i>ordinary high water mark of lake or watercourse</i>
<i>Confined livestock area - less than 10 animal units</i>	15.0 m
<i>Confined livestock area - more than 10 animal units</i>	30.0 m
Mushroom barn	15.0 m
Livestock barn or <i>livestock shelter</i>	15.0 m
Milking facility	15.0 m
Stable	15.0 m
<i>Poultry barn</i>	15.0 m

- (f) *Buildings or structures* that are used for the storage of agricultural liquid or solid waste, such as manure, must be located:
- (i) a minimum of 30.0 m from domestic water supply intakes, such as a well or spring; and
  - (ii) a minimum of 15.0 m from the *ordinary high water mark* of lakes and *watercourses*.

10. Schedule A Section 1.21 (1) is amended by adding the following:

- (k) Within the *Agricultural Land Reserve secondary suites* are subject to requirements of the *Agricultural Land Commission Act* and *Agricultural Land Reserve Use Regulation*.

11. Schedule A Section 1.25 (3) is repealed and the following substituted:

- (3) *Secondary dwelling unit for farm hands* is not permitted *accessory* to a *cannabis production facility*.
- (4) Within the *Agricultural Land Reserve* a *secondary dwelling unit for farm hands* necessary for farm use is subject to requirements of the *Agricultural Land Commission Act* and *Agricultural Land Reserve Use Regulation*.

12. Schedule A Section 1.27 is repealed and the following substituted:

**1.27 Cannabis Production Facility**

Subject to all applicable regulations contained elsewhere in this Bylaw, *cannabis production facility* is a permitted use on parcels within the *Agricultural Land Reserve* subject to the *Agricultural Land Reserve Use Regulation* and those parcels that are located within a zone where it is identified as a permitted use.

13. Schedule A Part 1 is amended by adding the following:

**1.28 Property Specific Regulations**

- (1) Despite the use and density regulations contained elsewhere in this Bylaw:
- (a) On Lot 1, District Lot 6325, Kootenay District, Plan 15359, two *single family dwellings* is permitted provided one of the *single family dwellings* is a *manufactured home* in the same location as one of the two *manufactured homes* existing on the property at the time of adoption of this Bylaw.
  - (b) On Lot 2, Block 14, District Lot 132, Kootenay District, Plan 1181 Except Plan 7682, *wireless communication facility* is permitted.
  - (c) On Lot 1, District Lot 132, Kootenay District, Plan NEP71336 west of Chief Daniel Road the *campground* is restricted to a total of 70 *recreational vehicles* or *park model trailers*.
  - (d) On Lot 2, Block 13, District Lot 132, Kootenay District, Plan 1181 and Lot 3, Block 13, District Lot 132, Kootenay District, Plan 1181 the *campground* is restricted to a total of 25 *recreational vehicles* or *park model trailers*.
  - (e) On Assigned Sublot 4 (See 23079I), District Lot 326, Kootenay District, Plan X26 the *campground* is restricted to a total of 160 *recreational vehicles* or *park model trailers*.
  - (f) On Lot 226, District Lot 329, Kootenay District, Plan 1171, employee housing is permitted. The employee housing must:
    - (i) include secure indoor storage for each resident within the employee housing; and
    - (ii) be limited to:
      - (A) two bunkhouses, each with a maximum *gross floor area* of 24m<sup>2</sup>;
      - (B) a common area/kitchen facility with a maximum *gross floor area* of 34 m<sup>2</sup> as an amenity available to all employee residents; and
      - (C) an on-site washroom and domestic laundry facility with a maximum *gross floor area* of 27 m<sup>2</sup> as a common amenity available to all employee residents.

14. Schedule A Section 2.3 (1) is amended by adding the following:

- (h) Involves the creation of a *parcel* to be utilized as a common lot for access in a fee simple subdivision provided the parcel will be registered as a common lot pursuant to section 12 of the *Land Title Act Regulation 334/79*.

15. Schedule A Section 3.1 (10) is repealed.

16. Schedule A Part 3 is amended by adding the following:

**3.1(A) Disabled Parking Spaces**

- (1) All off-street parking areas containing more than 10 but fewer than 51 *off-street parking spaces* must include a minimum of one *off-street parking space* for persons with disabilities. One additional *off-street parking space* for persons with disabilities is required for each additional 50 parking spaces or portion thereof up to a maximum of 5 dedicated *off-street parking spaces* for disabled persons.

- (2) *Off-street parking spaces* for persons with disabilities must be located as close to a disabled accessible main entrance of the *principal building* as possible.
- (3) *Off-street parking spaces* for persons with disabilities must be clearly marked with stall parking signage mounted 1.0 to 1.5 m above ground level to indicate exclusive use for disabled persons.
- (4) Each *off-street parking space* for persons with disabilities must have a firm, slip-resistant and level surface.

17. Schedule A Section 3.2 (1)(g) is repealed and the following substituted:

- (g) *Cannabis production facility*
  - 1 per 30 m<sup>2</sup> of office use, plus  
1 per 185 m<sup>2</sup> of *gross floor area* for all other uses enclosed within a *building*

18. Schedule A Section 3.3 is amended by adding the following:

- (7) Each required *off-street parking space* for persons with disabilities must be a minimum of 4.0 m in width and 6.0 m in length exclusive of aisle access.

19. Schedule A Section 4.10 (1)(k) is repealed.

20. Schedule A Section 4.11(A) (1)(k) is repealed and substituted with the following:

- (k) *Cannabis production facility.*

21. Schedule A Section 4.13 (2)(a) is repealed and substituted with the following:

- (a) *Uses, buildings and structures accessory* to a permitted use, subject to subsection 4.13 (4)(a).

22. Schedule A Section 4.13 (4) is repealed and substituted with the following:

- (4) Other Regulations
  - (a) On *parcels* with a *campground* as a permitted use, uses *accessory* to a *campground* are identified in the "Regional District of East Kootenay - Campground Bylaw No. 2403, 2012", as amended from time to time.

23. Schedule A Section 4.17 (2)(h) and (4) are repealed.

READ A FIRST TIME the            day of            , 2019.

READ A SECOND TIME the            day of            , 2019.

READ A THIRD TIME the            day of            , 2019.

APPROVED by the Ministry of Transportation and Infrastructure the    day of            , 2019.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

ADOPTED the            day of            , 2019.

\_\_\_\_\_  
CHAIR

\_\_\_\_\_  
CORPORATE OFFICER

## Karen MacLeod

---

**From:** Murphy, Kevin J AGRI:EX <Kevin.J.Murphy@gov.bc.ca>  
**Sent:** May-29-19 5:33 PM  
**To:** Karen MacLeod  
**Cc:** Bailey, Reed AGRI:EX  
**Subject:** RE: RDEK Bylaw Referral - Bylaw 2927 (Baynes Lake / Koocanusa Area)

Hi Karen:

Thanks for sending this referral to the Ministry of Agriculture regarding Bylaw 2927 (Baynes Lake / Koocanusa Area)

We have only one suggestion, regarding Section 1.27:

Section 1.27: Cannabis Production Facility: Section 8 of the Agricultural Land Reserve Use Regulation lists a series of cannabis production methods that if produced lawfully, may not be prohibited by local governments. Local governments do however, have the ability to prohibit cannabis production methods not listed in Section 8 of the Regulation (i.e. concrete bottomed cannabis production facilities). Given that Section 1.27 of Bylaw 2927 requires that a *cannabis production facility* is subject to the Regulation and it can be inferred that the RDEK is prohibiting cannabis production methods not listed in Section 8 of the Regulation (i.e. concrete bottomed cannabis production facilities). However, it is unclear if this is the intent of Section 1.27 and for clarity to the reader, the Ministry suggests explicitly stating that cannabis production methods not listed in Section 8 of the Regulation are prohibited if this is indeed the RDEK's intent.

Regards,

Kevin Murphy, P.Ag. Regional Agrologist – Kootenays  
BC Ministry of Agriculture  
Office phone: 250 428-3201  
1404 Canyon Street; PO Box 1190, Creston BC, V0B1G0

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**From:** Karen MacLeod <kmacleod@rdek.bc.ca>  
**Sent:** April 12, 2019 11:45 AM  
**To:** hbe@interiorhealth.ca; Rocky Mountain District Development Approvals group TRAN:EX <RMDdevapp@gov.bc.ca>; Murphy, Kevin J AGRI:EX <Kevin.J.Murphy@gov.bc.ca>; Bednard, Gordon ALC:EX <Gordon.Bednard@gov.bc.ca>; rwarden@ktunaxa.org; referrals@ktunaxa.org; alan.rice@sd5.bc.ca  
**Subject:** RDEK Bylaw Referral - Bylaw 2926 (Baynes Lake / Koocanusa Area)

Dear Referral Agency,

On behalf of the Regional District of East Kootenay, please see the attached referral for **Bylaw 2927** which proposes to amend the text of the South Country Zoning and Floodplain Management Bylaw. The Bylaw is a Miscellaneous Amendments Bylaw proposed by the Regional District. The attached referral provides a summary of the sections that are proposed for amendment. Information on the boundary of the Land Use Bylaw and the current bylaw is available on the RDEK website at [www.rdek.bc.ca](http://www.rdek.bc.ca).

The referral form and bylaw are attached to this email.

**Please reply to this email address with your comments prior to Friday May 31<sup>st</sup>, 2019.**

The bylaw is anticipated to be presented to the Regional District Board of Directors on June 7, 2019.



*Staff Report ...*  
**ALR Subdivision Application**

Date: May 29, 2019  
File: P 718 519

**Applicant:** Larry and Alice Breeze  
**Agent:** Rocky Mountain Land Co Ltd. (Barry Brown-John)  
**Location:** 4201 Highway 95, between Edgewater and Brisco north of Radium Hot Springs  
**Legal:** District Lot 10718, Kootenay District

**Proposal:** To subdivide the property as divided by the highway. If approved, the subdivision will create a new 3.3 ha residential lot on the north east side of Highway 95 and leave a 10.5 ha remainder with the existing dwelling.

**Options:**

1. THAT the Agricultural Land Commission be advised the RDEK supports the Breeze ALR subdivision application for property located at 4201 Highway 95, between Edgewater and Brisco north of Radium Hot Springs.
2. THAT the Breeze ALR subdivision application for property located at 4201 Highway 95, between Edgewater and Brisco north of Radium Hot Springs be refused.

**Recommendation:** **Option #1**  
 The proposed lot has challenging topography and marginal soils. Agricultural impacts will be minimal.

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**Property Information:** **OCP Designations:**  
 RR, Rural Resource which includes rural residential and rural resource land uses with parcel sizes 8.0 hectares and larger. The RR designation also recognizes the use of these lands for agriculture, resource extraction, open space and working landscape.

**OCP Policies:**

- New residential development is directed to land within existing development nodes, as designated on OCP Schedules D – D6 or to parcels outside of the ALR.
- Subdivision within the ALR or exclusion of land from the ALR will only be considered in accordance with the Land Use Designations on OCP Schedules D – D6.

(The land use designation of the subject property on Schedules D – D6 is RR, Rural Resource which does not support parcels smaller than 8 ha).

- ALR applications for non-farm use, subdivision or exclusion must be accompanied by a report from a qualified professional with the exception of those identified in section 5.3(3)(b) of this plan, unless

**Property  
Information - cont'd:**

an exemption from the requirement has been approved by the Regional District Board. The report must include the following:

- a) identification of the level of agricultural suitability and opportunity for both soil bound and non-soil bound agricultural uses;
- b) identification of the agricultural capability of the parcel; and
- c) demonstration of the impact that the proposal will have to the agricultural capability of the parcel, surrounding area and adjacent agricultural operations.

(An exemption from the report requirement was granted by the RDEK in April, 2019).

**Zoning Designation & Minimum Parcel Size:**

A-2, Rural Residential (Country) Zone which has a minimum parcel area requirement of 8.0 ha.

The proposed lot will be approximately 3.3 ha which is smaller than the A-2 zone permits. Section 5.04 (1)(c) of the Upper Columbia Valley Zoning Bylaw conditionally permits creation of a lot smaller than the zone allows if it is divided by an existing highway. The subdivision must comply with all conditions of this section to be permitted without the need to rezone.

**Parcel Size:** 13.9 ha (34.3 ac)

**Interface Fire Hazard Rating:** Low to moderate, not within a fire protection area.

**BC Assessment:** Residential with a single-family dwelling

**Water / Sewer Services:** Onsite proposed

**Flood Hazard Rating:** The subject property is not identified as being within a floodplain or a special policy area for flooding. RDEK mapping shows possible seasonal drainages / springs on and near the property and development in these areas will require compliance with floodplain regulations.

**Agricultural  
Capability Ratings:**

The Canada Land Inventory (CLI) Agricultural Capability Maps indicate that most of the proposed remainder is Class 4 with limiting subclasses of fertility and stoniness. This portion of the property is considered improvable to Class 3 with a limiting subclass of stoniness. The northeast corner of the property (proposed new vacant lot) is Class 6 with a limiting subclass of topography and this portion of the property is not considered improvable.

**Agrologist Report:**

An exemption from the requirement for a professional report was granted by the RDEK in April 2019.



**Additional  
Information:**

- The exemption request letter states that the property does not have viable legal access from the highway due to steep slopes across the entire frontage and it states that the current owners are retired and can't utilize this portion of their land. The letter states that two wells in the vicinity only yield approximately 2 gal/minute and suggests that finding enough water for any kind of crop is unlikely.

**Consultation:**

**APC Areas F & G:** Support

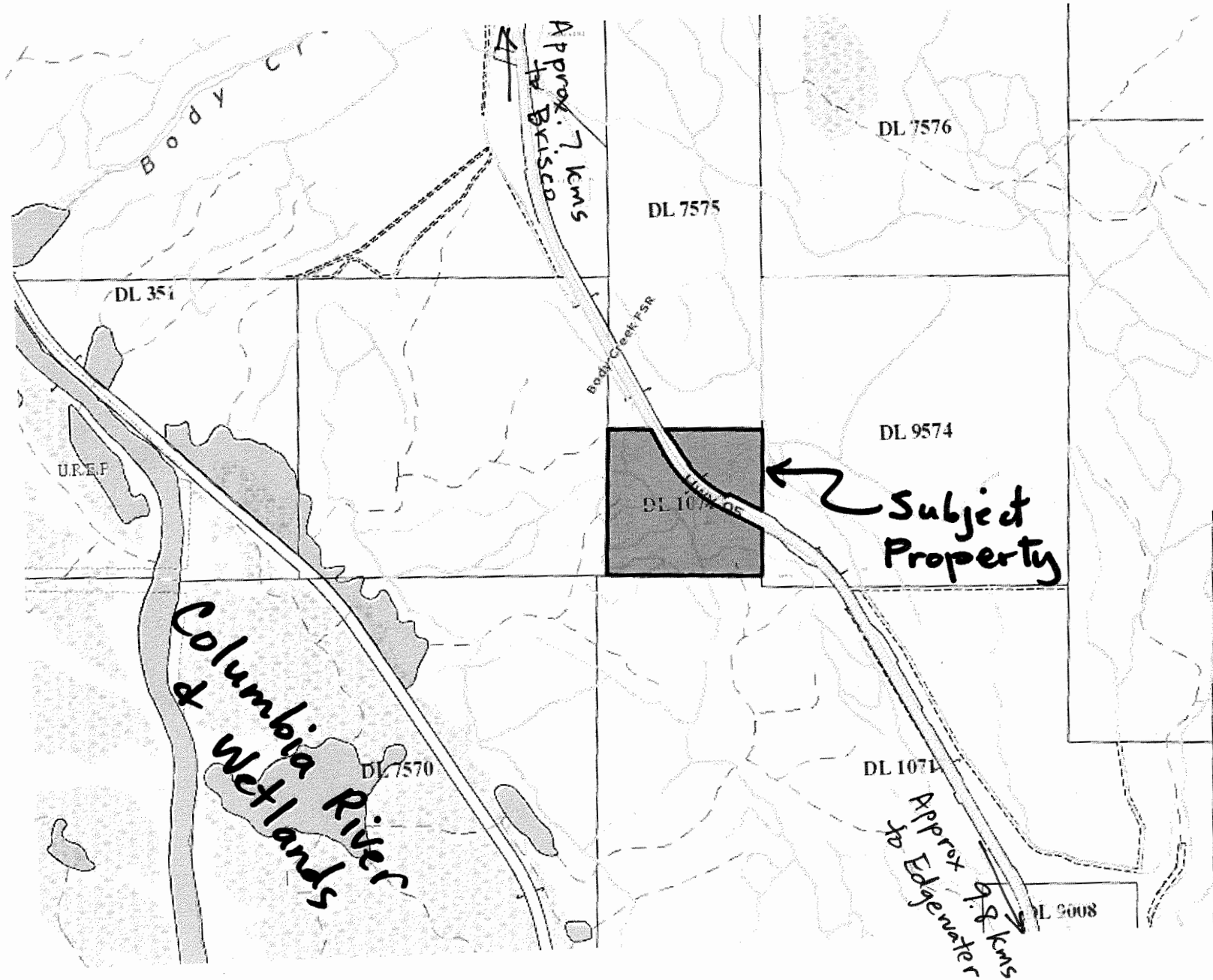
**Documents  
Attached:**

- Location Map
- ALR Boundaries
- Agricultural Capability Map and Key
- Land Use Map
- OCP Policies
- Aerial Photo
- Proposed Subdivision Plan

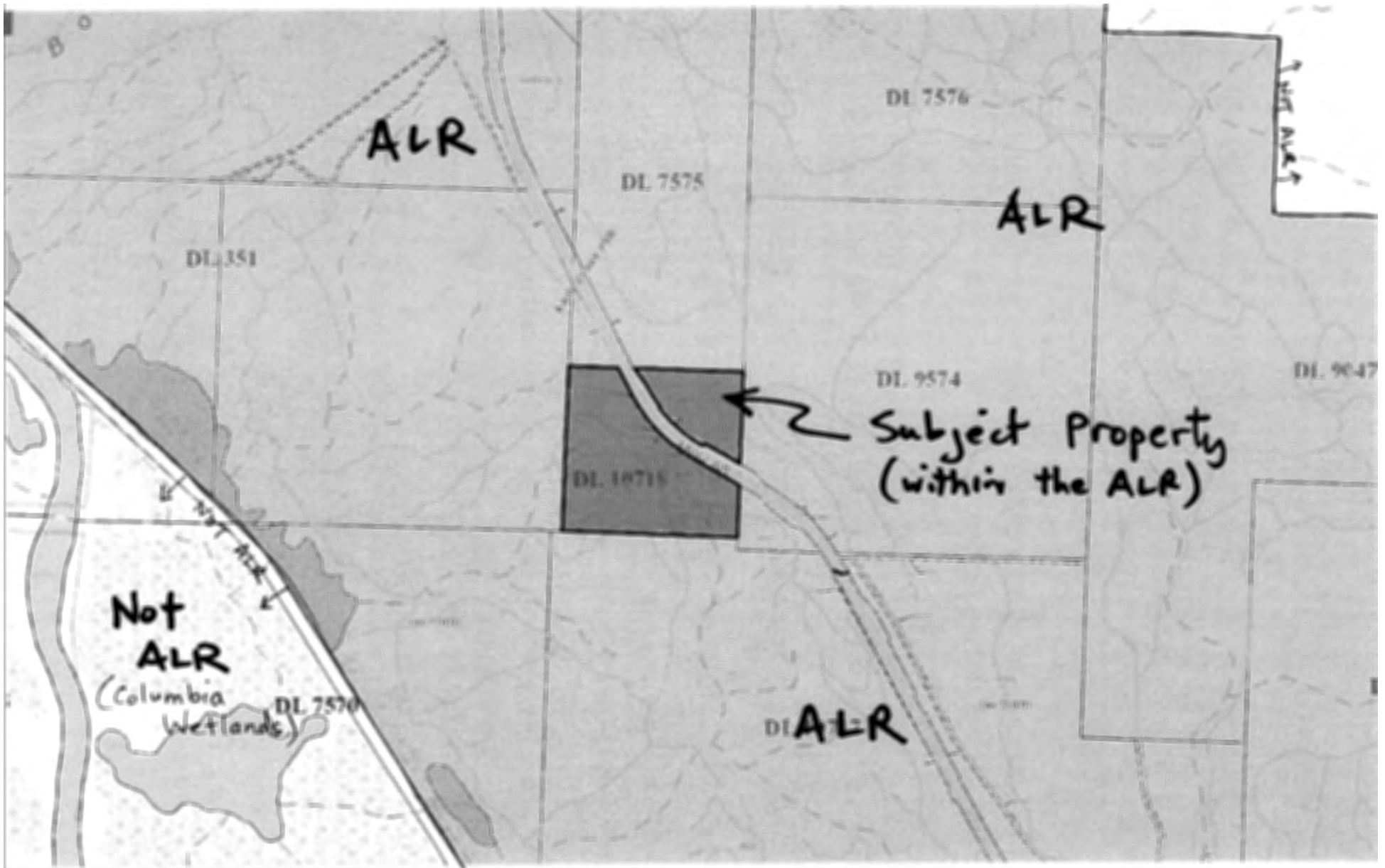
**RDEK  
Contact:**

Tracy Van de Wiel, Planning Technician  
Phone: 250-489-0306  
Email: [tvandewiel@rdek.bc.ca](mailto:tvandewiel@rdek.bc.ca)

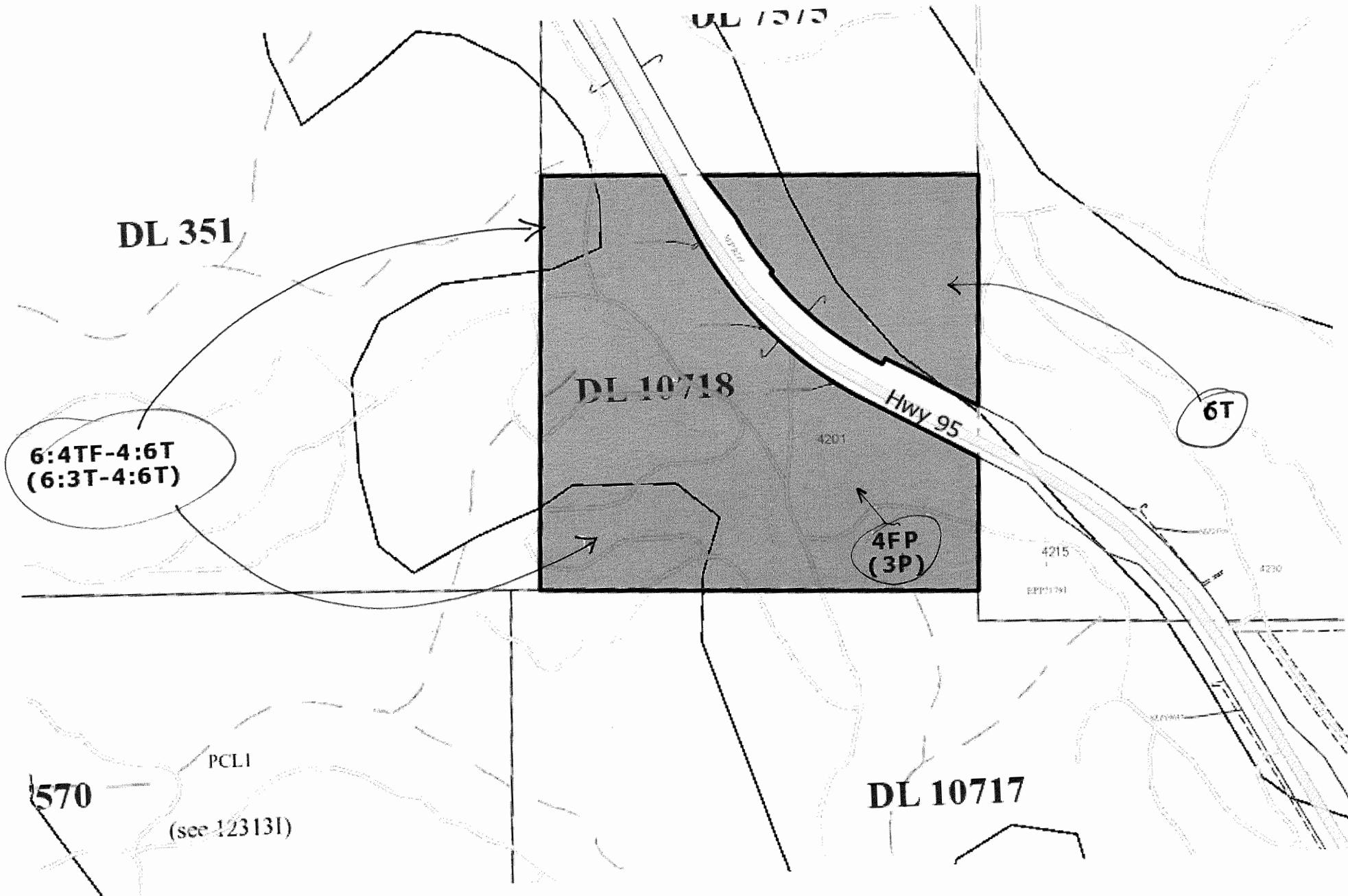
# Location Map



# ALR Boundary Map



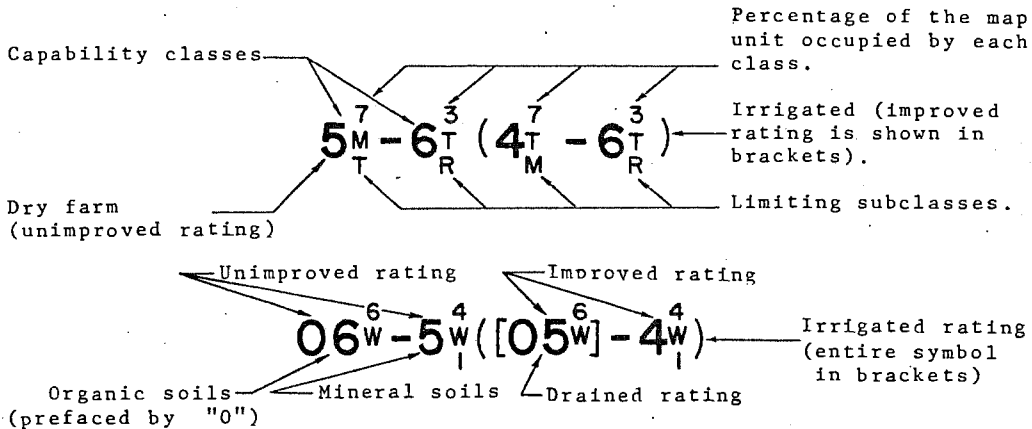
# Agricultural Capability of Soils



KEY FOR INTERPRETATION OF AGRICULTURE CAPABILITY MANUSCRIPT MAPS (B.C.)

There are 7 capability classes for agriculture with 1 representing the highest class and 7 representing the lowest. In some areas of the province, two ratings are shown: one for dry farming and a second for irrigated or drained (improved) conditions. The irrigated ratings are shown enclosed in round brackets while the drained ratings appear in square brackets. In all cases improved ratings have precedence over dry farm ratings.

Example Classifications



The agriculture capability classes are determined on the relative range of crops the land can produce.

a) Capability Classes

- Class 1 - widest range of crops
- Class 2
- Class 3 } reduced range of crops caused by a number of limiting
- Class 4 } factors (subclasses)
- Class 5 - only permanent pasture or forage
- Class 6 - natural grazing
- Class 7 - no productivity

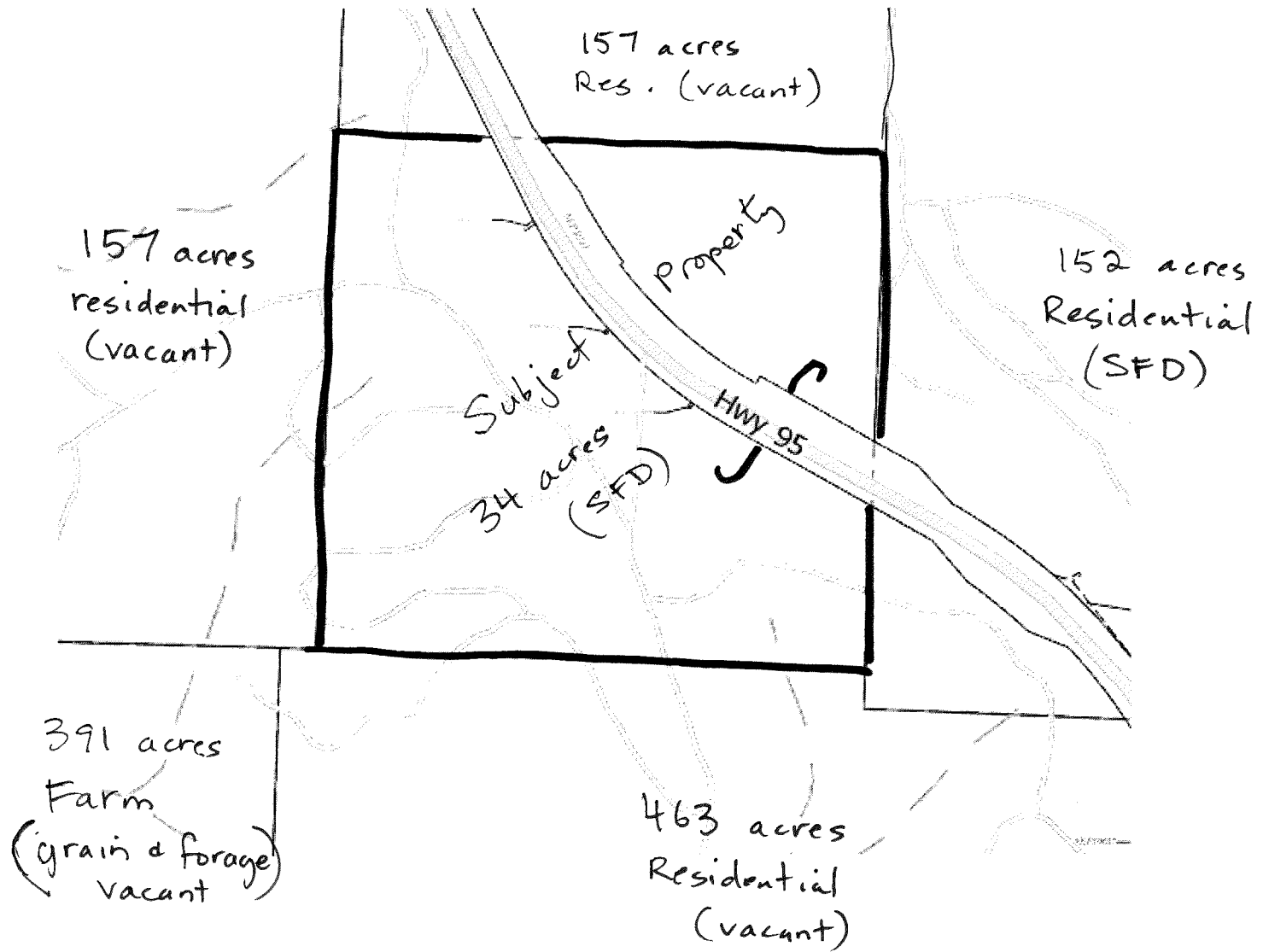
b) Limiting Subclasses

- C - adverse climate
- D - undesirable soil structure
- E - erosion
- F - low fertility
- I - inundation (flooding)
- M - moisture deficiency (droughtiness)
- N - salts
- P - stoniness
- R - bedrock near the surface
- T - topography (slope)
- W - excess water
- X } - combination of soil factors
- S } - cumulative and minor adverse characteristics

Tree fruit and grape growing areas: these crops are tolerant of soil conditions that limit field crops. Steep and stonier soils in suited climates have been upgraded to accommodate the expanded range of crops. e.g. A class 5T soil dry farmed becomes a 3T irrigated in an area climatically suited to tree fruits.

Note: A more detailed 16 page manual entitled Soil Capability Classification for Agriculture is available from the Lands Directorate, Lands Forests and Wildlife Service, Department of the Environment, Ottawa, Ontario, K1A 0H3.

# Land Use Map





**Aerial Photo**



Proposed Subdivision



D.L. 7576

D.L. 7575

SCHEDULE "A-4"  
BYLAW No. 900

D.L. 9574

D.L. 9047

subject  
Property

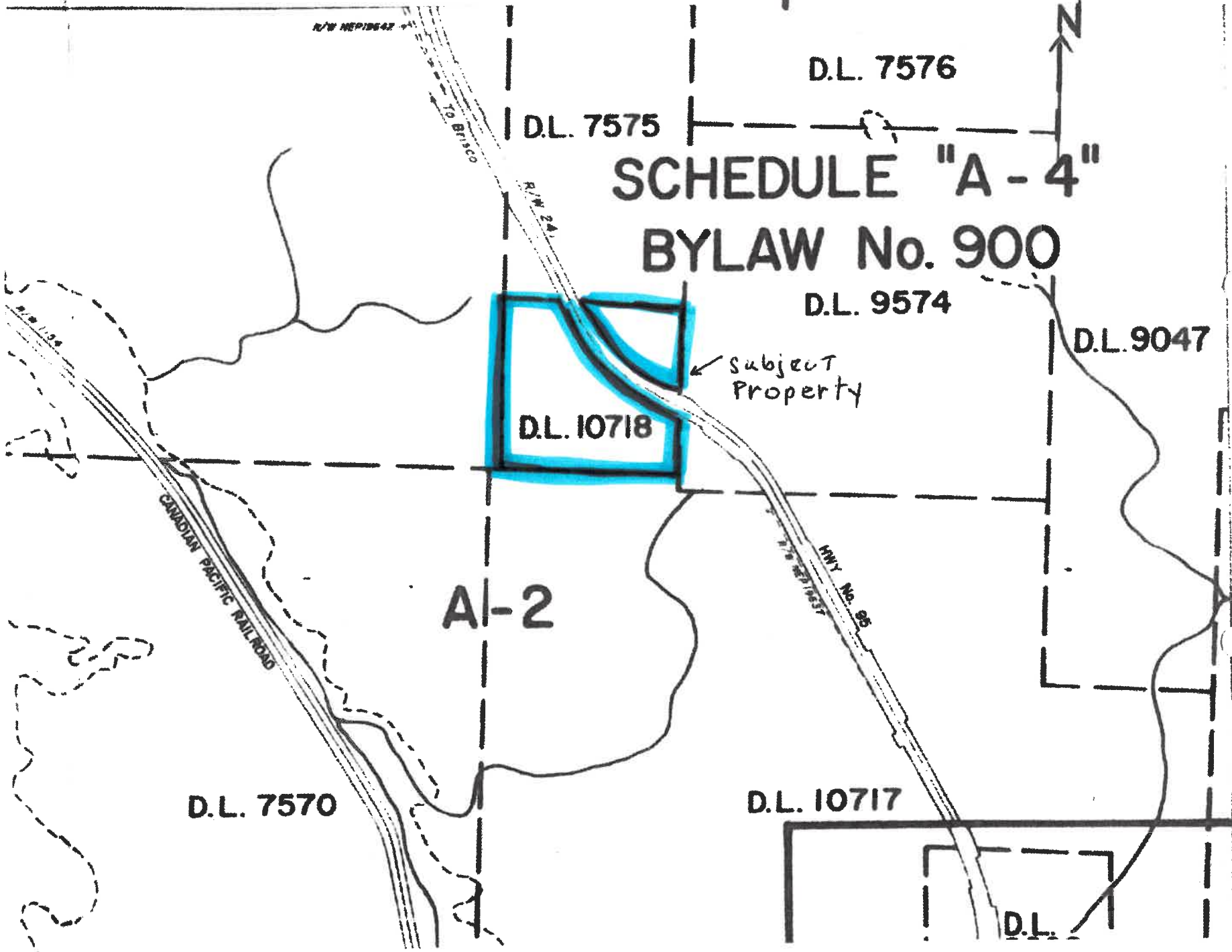
D.L. 10718

A-2

D.L. 7570

D.L. 10717

D.L.



R/W NEP12642

To BRISCO

R/W 241

CANADIAN PACIFIC RAILROAD

HWY. No. 95



## Development Variance Permit Application

---

Date: May 22, 2019  
File: P 719 513  
DVP No. 16-19

**Applicant:** Elkhorn Ranch Ltd.  
**Agent:** Richard Haworth  
**Location:** Kootenay #3 Road in the Windermere East area  
**Legal:** Lot 9, District Lot 4596, KD, Plan EPP52907 (PID: 029-811-406)

**Proposal:** Application to waive Section 10.01 (2)(b) of the Subdivision Servicing Bylaw No. 1954, 2008, which requires proof of potable water on each lot to permit proposed Lot 11 in an 11-lot residential subdivision to be serviced by a well located on proposed Lot 10 with an easement for access and maintenance.

**Options:**

1. THAT Development Variance Permit No. 16-19 be granted subject to registration of an easement agreement over Lot 10 for access and maintenance.
2. THAT Development Variance Permit No. 16-19 be refused.

**Recommendation:** **Option #1**  
The water well intended to service Lot 11 has met all other subdivision servicing bylaw criteria and the easement agreement will ensure long term access for use and maintenance.

---

**Property Information:**

**OCP Designation:** SH, Small Holdings

**OCP Policies:**

- Opportunities for infill development within existing residential areas that can be accommodated by the current zoning of the property are supported, subject to the ability to provide servicing for any new parcels created. Connection to community servicing are encouraged where capacity is available.

**Zoning:** SH-2, Small Holding Semi-Rural Zone

**Parcel Size:** 39.7 ha (98.1 ac)

**Density:** N/A

**ALR Status:** Not within

**Interface Fire Hazard Rating:** Ranging from low to high; within the Windermere fire protection area.

**BC Assessment:** Farm (Grain & Forage)

**Flood Hazard Rating:** The property is not identified as being within a floodplain or a special policy area for flood hazard.

**Property Information - cont'd:** **Water and Sewer Services:** Onsite services proposed

- Additional Information:**
- An 11-lot residential subdivision is proposed. The owner has drilled all 11 wells and the siting, design, construction and testing of the wells was reviewed by Western Water Associates Ltd. and a Groundwater Hydrology Report was prepared which concluded that the wells and water tests meet subdivision servicing bylaw requirements. A few recommendations were also made in the report with regard to pump type and installation, long term maintenance etc., and some additional recommendations for work to further improve the wells located on Lots 10 & 11.
  - After the wells were drilled and tested, it was discovered that the proposed lot boundaries needed to be changed due to an ALC decision, and this change caused the well intended to service Lot 11 to be located within the amended boundaries for proposed Lot 10.

**Consultation:** **Advisory Commissions:**  
**APC Area F & G:** Supported (reviewed by APC F & G in April)

**Response(s) to Notice:** 14 notices were mailed on April 25, 2019 to all property owners within 100 m of the subject property. No notices were returned as undeliverable and no responses were received.

- Documents Attached:**
- Permit
  - Location Map
  - Proposed Subdivision
  - Site Plan Showing Lot 11 Well Location

**RDEK Contact:** Tracy Van de Wiel, Planning Technician  
Phone: 250-489-0306  
Email: [tvandewiel@rdek.bc.ca](mailto:tvandewiel@rdek.bc.ca)



## Development Variance

Permit No. 16-19

**Permittee:** Elkhorn Ranch Ltd.

1. This Development Variance Permit is issued subject to compliance with all RDEK bylaws applicable thereto, except as specifically varied or supplemented by this Permit.
2. This Permit applies to and only to those lands described below:  

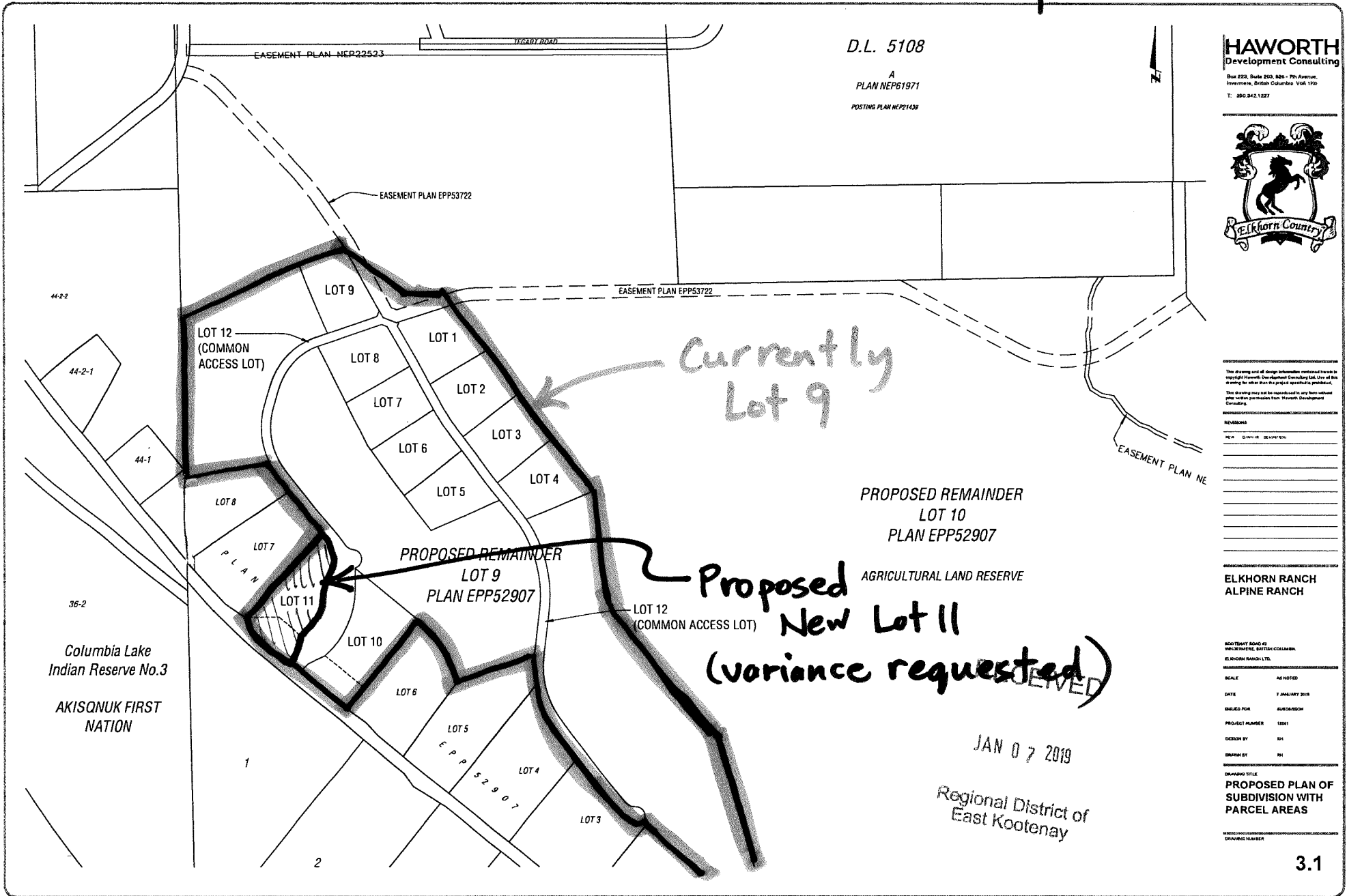
Lot 9, District Lot 4596, Kootenay District, Plan EPP52907  
[PID: 029-811-406]
3. Regional District of East Kootenay – Subdivision Servicing Bylaw No. 1954, 2008, Section 10.01(2)(a) which requires a source of potable water on each new lot, is waived to permit proposed Lot 11 to be serviced by a well located on Lot 10 with registration of an easement for access and maintenance.
4. The lands described herein shall be developed strictly in accordance with the terms and conditions of this Permit and in substantial compliance with the development variance permit application received on March 7, 2019.
5. This Permit shall come into force on the date of an authorizing resolution passed by the RDEK.
6. This Permit is not a building permit.
7. If development authorized by this Permit does not commence within two years of the issue date of this Permit, the Permit shall lapse.
8. A notice pursuant to Section 503(1) of the *Local Government Act* shall be filed in the Land Title Office and the Registrar shall make a note of the filing against the title of the land affected.
9. It is understood and agreed that the RDEK has made no representations, covenants, warranties, guarantees, promises, or agreement (verbal or otherwise) with the developer other than those in this Permit.
10. This Permit shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

**Authorizing Resolution No.** \_\_\_\_\_ **adopted by the Board of the Regional District of East Kootenay on the** \_\_\_\_\_ **day of** \_\_\_\_\_ **, 2019.**

\_\_\_\_\_  
**Shannon Moskal**  
**Corporate Officer**



# Proposal



D.L. 5108

A  
PLAN NEP61971

POSTING PLAN NEP21438

**HAWORTH**  
Development Consulting

Box 222, Suite 202, 826 - 7th Avenue,  
Invermere, British Columbia V0A 1K0  
T: 250-942-1227



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REVISIONS

NO.	DATE	DESCRIPTION

ELKHORN RANCH  
ALPINE RANCH

MOOSEHAY ROAD #3  
INVERMERE, BRITISH COLUMBIA  
ELKHORN RANCH LTD.

SCALE: AS NOTED  
DATE: 7 JANUARY 2019  
DRAUGHT FOR: SUBDIVISION  
PROJECT NUMBER: 1001  
DESIGN BY: SH  
DRAWN BY: SH

DRAWING TITLE  
PROPOSED PLAN OF  
SUBDIVISION WITH  
PARCEL AREAS

DRAWING NUMBER

JAN 07 2019

Regional District of  
East Kootenay

Columbia Lake  
Indian Reserve No.3  
AKISQNUK FIRST  
NATION

Site Plan showing Well location

LOT 4

LOT 5

LOT 8

LOT 7

P L A N

PROPOSED REMAINDER  
LOT 9  
PLAN EPP52907

COMMON LOT (ACCESS)

PROPOSED  
EASEMENT

LOT 11

LOT 11  
WELL

LOT 10

KOOTENAY # 3 ROAD

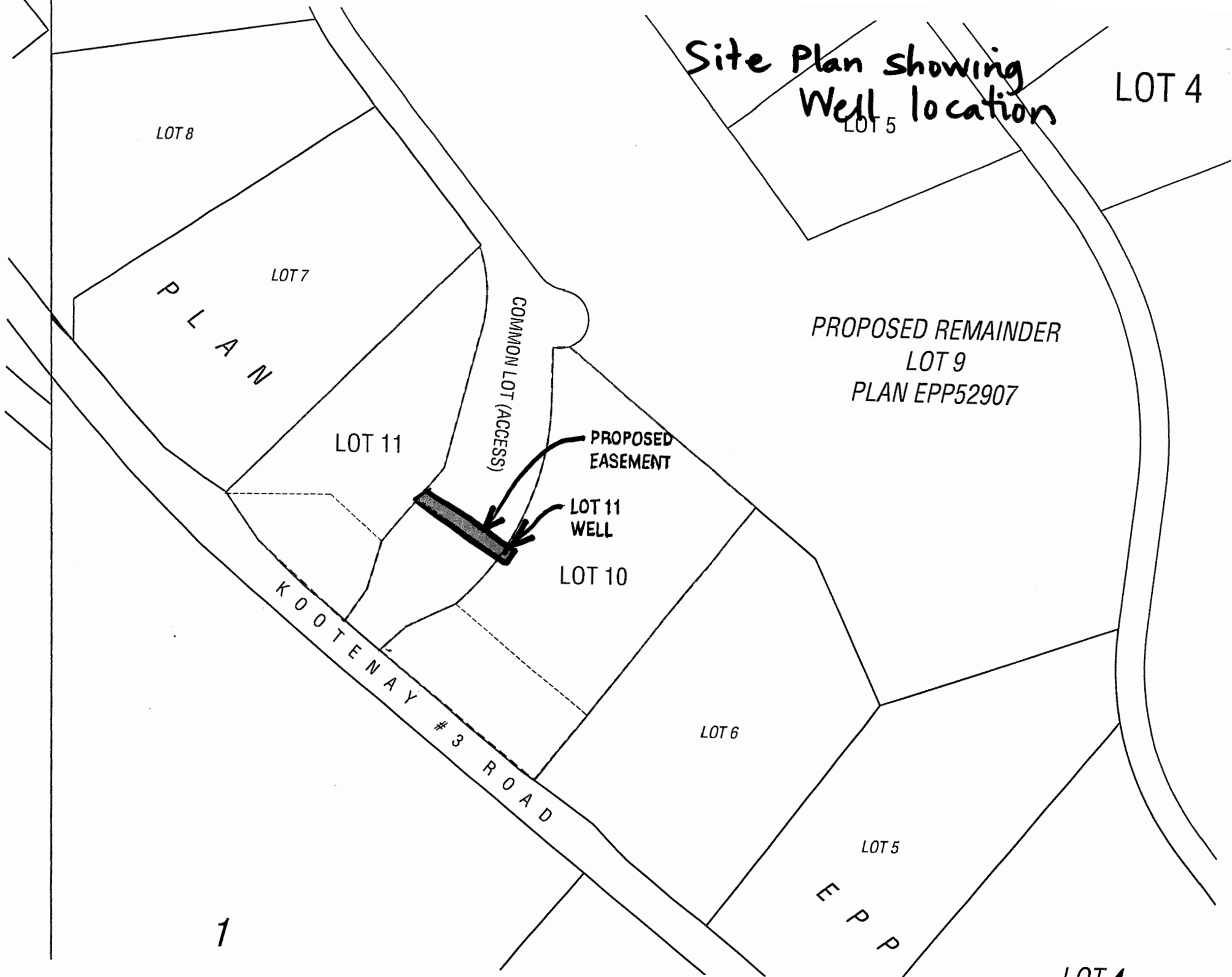
LOT 6

LOT 5

E P P

1

LOT 4



## Development Variance Permit Application

---

Date: May 23, 2019  
File: P 719 106  
DVP No. 18-19

**Applicant:** Monty Sosnowski  
**Location:** 9099 Elk Street in the Hosmer area, north of Fernie  
**Legal:** Lot 1, District Lot 4588, Kootenay District Plan 16374 except Plan NEP69329 (PID: 008-748-144)

**Proposal:** Application to vary the RDEK Mobile Home Park Bylaw No. 1 and Elk Valley Zoning Bylaw No. 829. The applicant is requesting to reduce the setback of a mobile home space from 7.6 m from a road and 4.6 m from any other mobile home park boundary to 0.0 m for the west and north side of lot 10 and to reduce the setback of a mobile home from 3.0 m to 1.0 m from the north side of the mobile home space.

**Options:**

1. THAT Development Variance Permit No. 18-19 be granted.
2. THAT Development Variance Permit No. 18-19 be refused.

**Recommendation:** **Option # 1**  
The existing manufactured home does not appear to have any negative impacts on the surrounding land uses. Placement of a new manufactured home is not anticipated to change the current state of land. Fire separation requirements of the BC Building Code must be met at the building permit stage.

---

**Property Information:** **OCP Designation:** SH, Small Holdings which supports low density residential development with minimum parcel sizes in the range of 0.2 ha to 2.0 ha.

**OCP Objectives and Policies:**

- Encourage single family residential development on a range of rural parcel sizes.

**Zone Designation:** Multiple – RH-1, Mobile Home Park Residential Zone; minimum parcel area requirement 2 ha, and CG-6, Service Commercial Zone; minimum parcel area requirement 1670 m<sup>2</sup>.

**Parcel Area:** 0.35 ha (0.86 ac)

**Density:** One single family dwelling is permitted per lot. Maximum 18 mobile homes per hectare.

**ALR Status:** Not within the ALR

**BC Assessment:** Residential and Business/Other (Mobile Home Park)

**Flood Hazard Rating:** Currently, the property is not identified as being within a floodplain or flood hazard area.

**Property  
Information –  
cont'd:**

New Elk River Floodplain mapping indicates a minimum flood construction level of 0.6 m above the dominant surrounding grade or adjacent public road surface.

**Water / Sewer Services:** The existing manufactured home is serviced by the Shadow Mountain Mobile Home Park community sewer and water systems. The proposed manufactured home will also be connected to these systems.

**Interface Fire Hazard Rating:** Low; within the Hosmer Fire Protection Area

**Additional  
Information:**

- There is currently a mobile home there, the proposal is to replace the existing mobile home with a new one.

**Consultation:**

**APC Area A:** Support.

**Response(s) to Notice:** 24 notices were mailed on April 25, 2019 to all property owners within 100 m of the subject property. One notice was returned as undeliverable and no responses have been received.

**MOTI Referral:** Support.

**Documents  
Attached:**

- Permit
- Location Map
- Land Use Map
- Proposal

**RDEK  
Contact:**

Krista Gilbert, Planning Technician  
Phone: 250-489-0314  
Email: [kgilbert@rdek.bc.ca](mailto:kgilbert@rdek.bc.ca)





## Development Variance

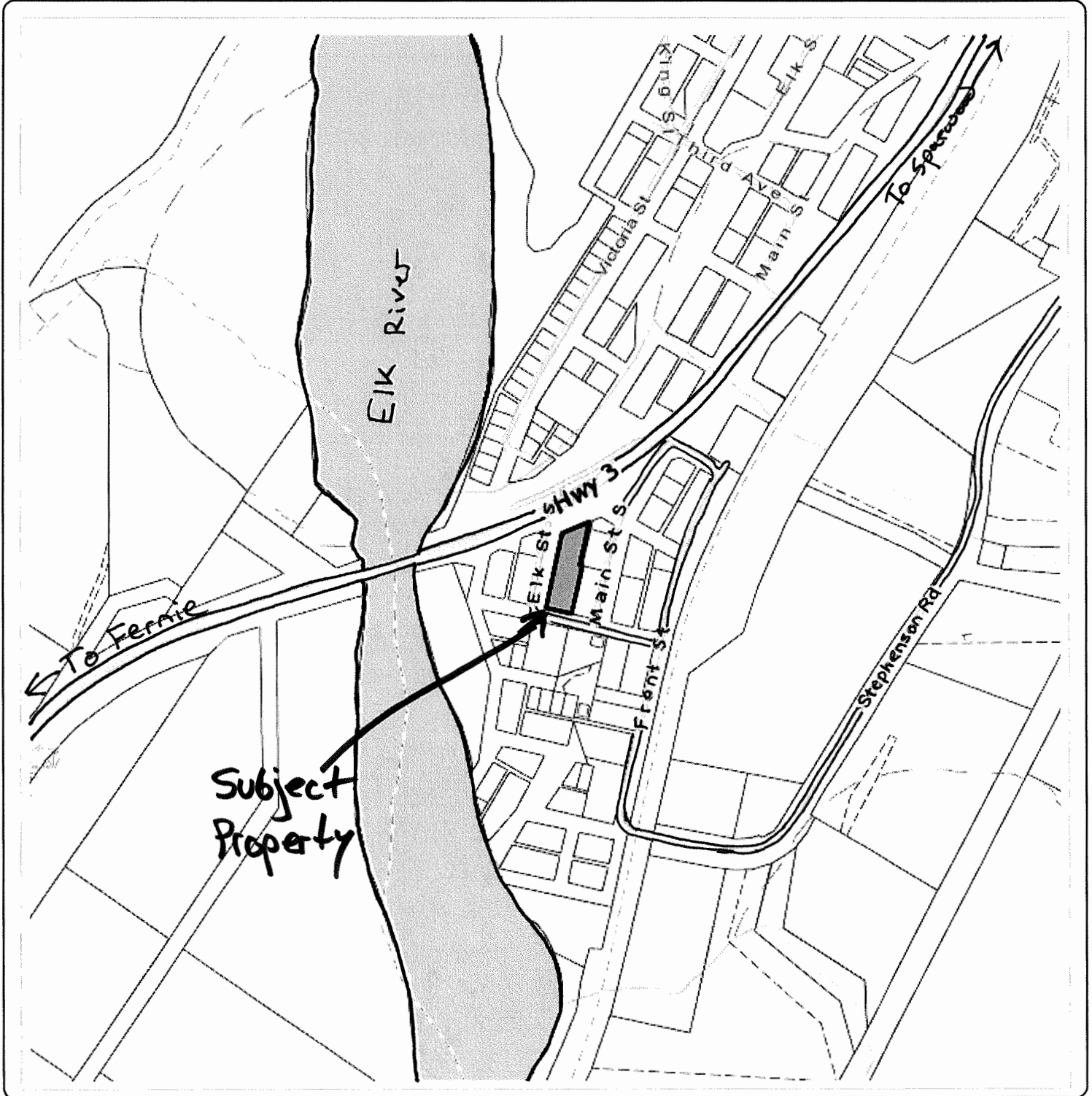
Permit No. 18-19

**Permittees:** Monty Sosnowski

1. This Development Variance Permit is issued subject to compliance with all RDEK bylaws applicable thereto, except as specifically varied or supplemented by this Permit.
2. This Permit applies to and only to those lands described below:  
  
Lot 1 District Lot 4588, Kootenay District, Plan 16374 except Plan NEP69329  
[PID: 008-748-144]
3. Regional District of East Kootenay – Mobile Home Park Bylaw No. 1, 1978, Section 4.08 (1) (a), which requires a mobile home space to be sited at least 7.6 m from the boundary of the mobile home park abutting a highway and at least 4.6 m from any remaining boundary of the mobile home park to provide a buffer, is reduced to 0.0 m; and Section 4.09(1)(b), which requires a mobile home and additions to be sited at least 3.0 m from the side of the mobile home space, is reduced to 1.0 m.
4. Regional District of East Kootenay – Elk Valley Zoning Bylaw No. 829, 1990, Section 7.7(5)(a)(i) and (ii), which requires a mobile home space to be sited at least 7.6 m from the boundary of the mobile home park abutting a highway and at least 4.6 m from any remaining boundary of the mobile home park, is reduced to 0.0 m; and Section 7.7(5)(b)(ii), which requires a mobile home and additions to be sited at least 3.0 m from the side of the mobile home space, is reduced to 1.0 m.
5. The lands described herein shall be developed strictly in accordance with the terms and conditions of this Permit and in substantial compliance with the development variance permit application received on March 15, 2019.
6. This Permit shall come into force on the date of an authorizing resolution passed by the RDEK.
7. This Permit is not a building permit.
8. If development authorized by this Permit does not commence within two years of the issue date of this Permit, the Permit shall lapse.
9. A notice pursuant to Section 503(1) of the *Local Government Act* shall be filed in the Land Title Office and the Registrar shall make a note of the filing against the title of the land affected.
10. It is understood and agreed that the RDEK has made no representations, covenants, warranties, guarantees, promises, or agreement (verbal or otherwise) with the developer other than those in this Permit.
11. This Permit shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

**Authorizing Resolution No.** \_\_\_\_\_ **adopted by the Board of the Regional District of East Kootenay on the** \_\_\_\_\_ **day of** \_\_\_\_\_ **, 2019.**

\_\_\_\_\_  
**Shannon Moskal**  
**Corporate Officer**



Notes:

250 0 125 250 Meters

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
RDEK GeoViewer - 3-29-2019 10:26 AM

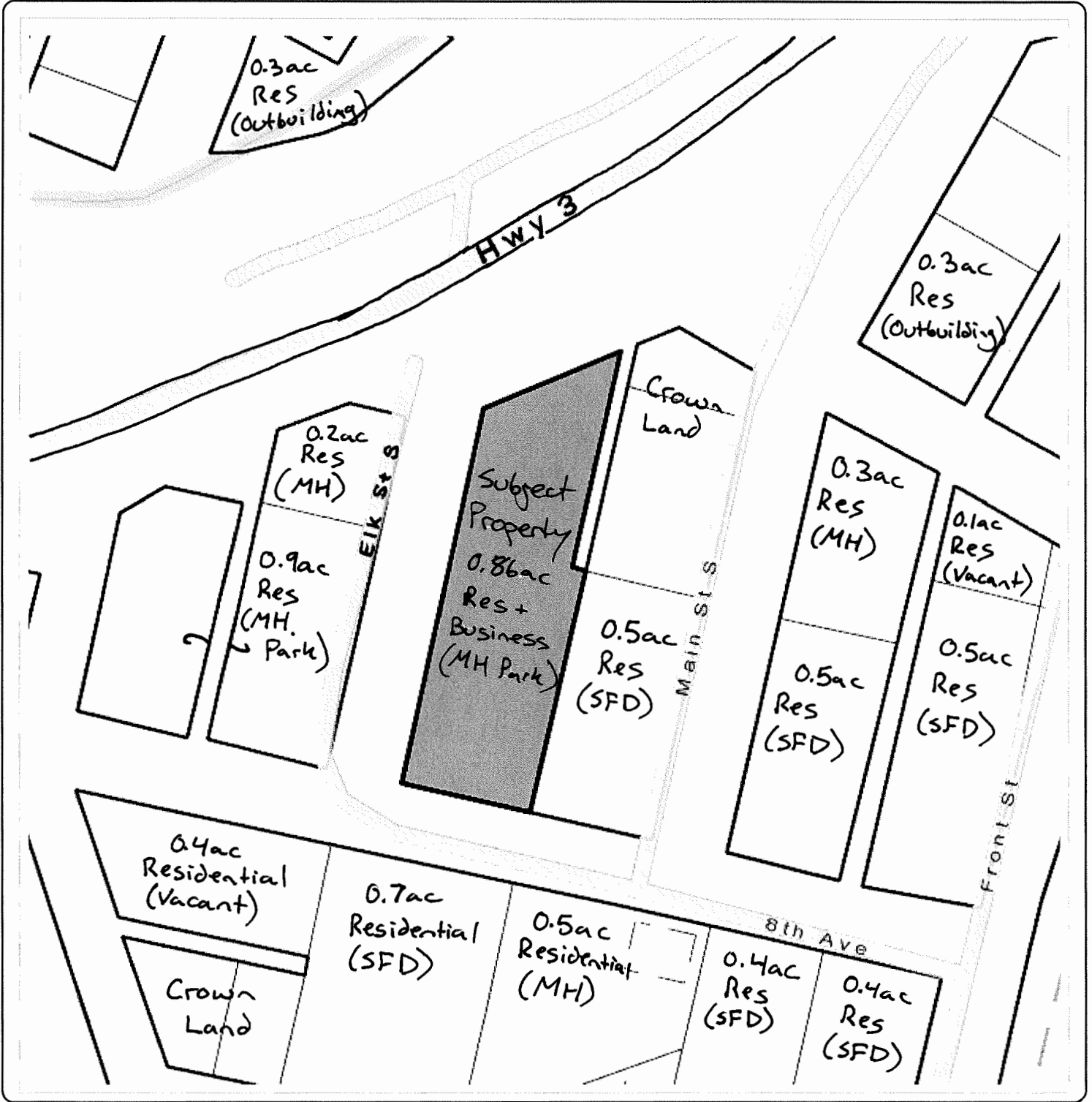
Scale = 1: 10,000



**THIS MAP IS NOT TO BE USED FOR NAVIGATION**

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

# Land Use Map



Notes:

50 0 25 50 Meters

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
RDEK GeoViewer - 3-29-2019 11:47 AM

Scale = 1:2,000



**THIS MAP IS NOT TO BE USED FOR NAVIGATION**

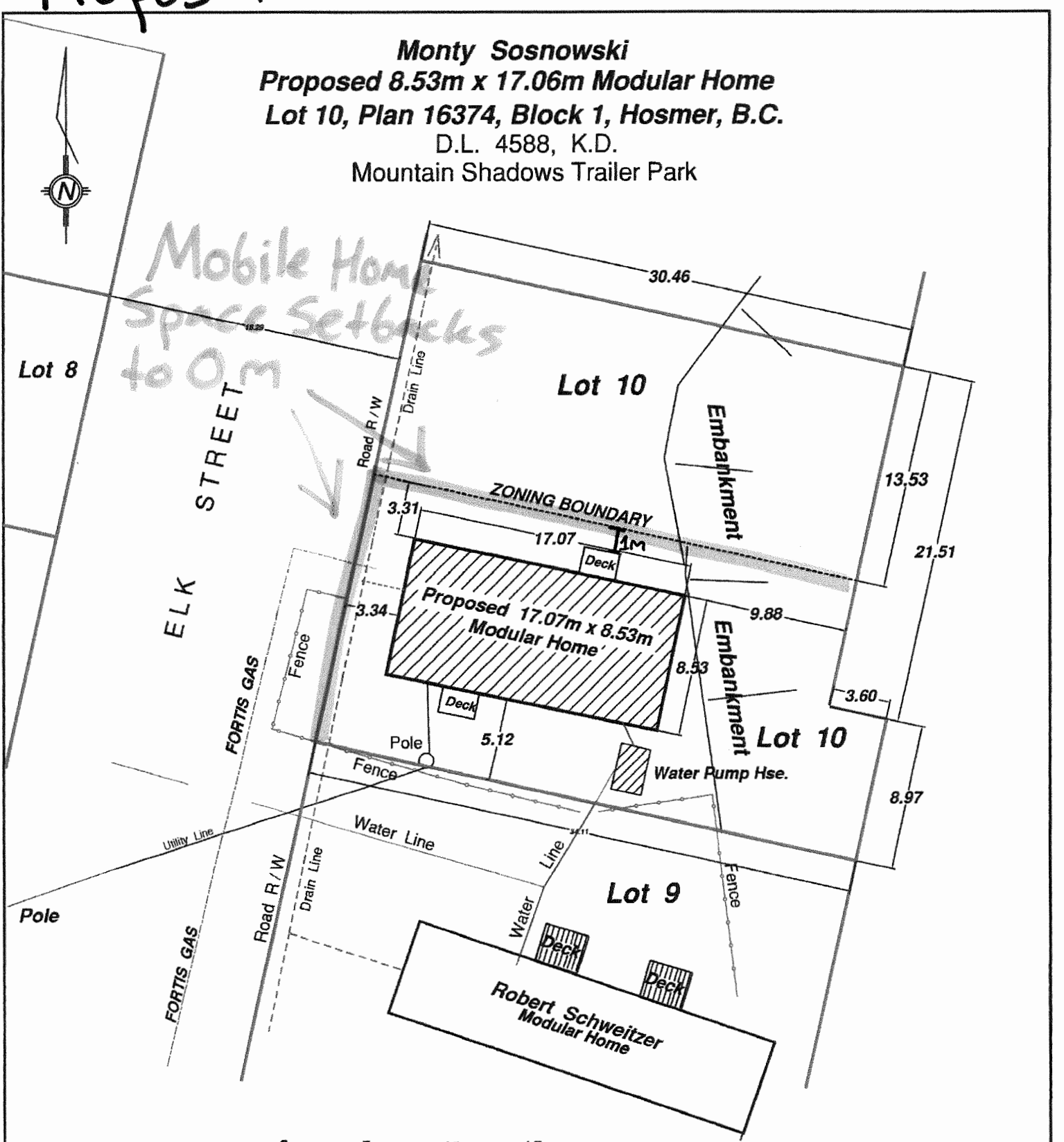
This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

# Proposal

**Monty Sosnowski**  
**Proposed 8.53m x 17.06m Modular Home**  
**Lot 10, Plan 16374, Block 1, Hosmer, B.C.**  
 D.L. 4588, K.D.  
 Mountain Shadows Trailer Park



*Mobile Home  
 Space Setbacks  
 to 0m*



BAR SCALE  
(metric)

**Monty Sosnowski**  
 10-9909 Elk Street, Hosmer, B.C.  
 Plan 16374, Block 1, Lot 10  
**Proposed Modular Home**  
**Site Plan**

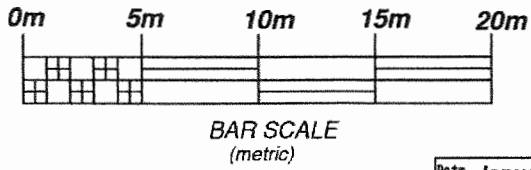
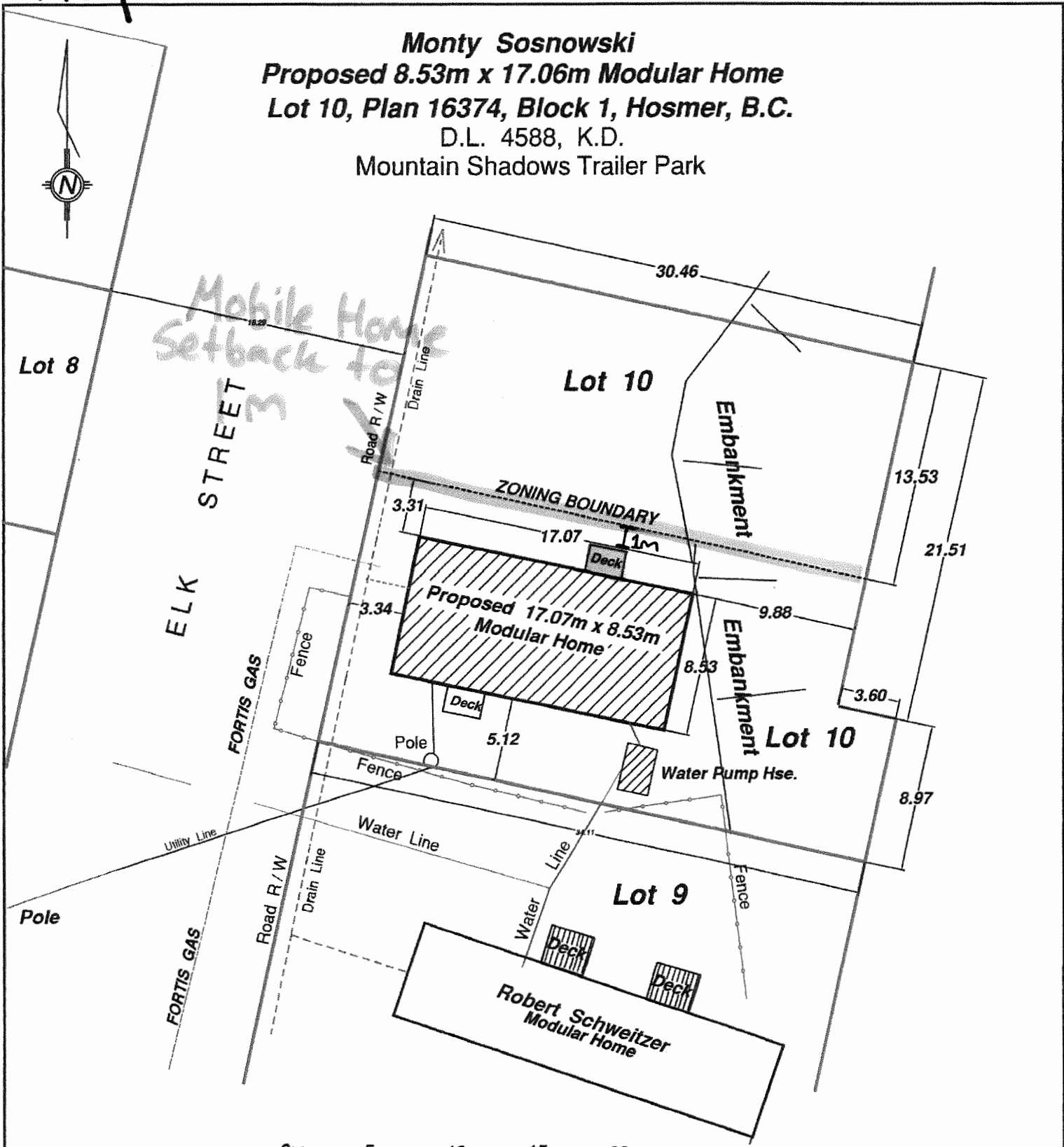
**SCHMIDT CONSULTING SERVICES Ltd.**  
 Suite 102, 35 Rivermount Pl.  
 P.O. Box 7110  
 FERNIE, B.C. V0B 1M7  
 Ph: Fax 250-423-7522

Date	January 30, 2019	Proj. No.	190130-2	Rev	R-1
Scale	Bar Scale	Rev.	6	Description	Date
Designed			1	Zoning Boundary added	Mar. 3, 2019
Drawn	BRS			Modular Home Relocated	
Checked	BRS				
Approved					



# Proposal

**Monty Sosnowski**  
**Proposed 8.53m x 17.06m Modular Home**  
**Lot 10, Plan 16374, Block 1, Hosmer, B.C.**  
 D.L. 4588, K.D.  
 Mountain Shadows Trailer Park



**Monty Sosnowski**  
 10-9909 Elk Street, Hosmer, B.C.  
 Plan 16374, Block 1, Lot 10  
**Proposed Modular Home**  
**Site Plan**

Date	January 30, 2019	Proj. No.	190130-2	Rev	R-1
Scale	Bar Scale	Rev. #	1	Description	Zoning Boundary added
Designed	BRS			Date	Mar. 3, 2019
Checked	BRS			By	BRS
Approved					

**SCHMIDT CONSULTING SERVICES Ltd.**  
 Suite 102, 35 Rivermount Pl.  
 P.O. Box 7110  
 FERRIE, B.C. V0B 1M7  
 Ph: Fax 250-423-7502





## Development Variance Permit Application

Date: May 29, 2019  
File: P 719 517  
DVP No. 20-19

- Applicants:** Kenneth and Teresa Litchfield
- Location:** 1767 Windermere Loop Road in the Windermere east area
- Legal:** Lot 8, District Lots 19 & 4596, Kootenay District, Plan NEP21029
- Proposal:** Application to vary section 4.12 (1)(b) which includes a maximum rear and side yard fence height of 2.0 m, is varied to increase the permitted rear and side yard fence height from 2.0 m to 15.5 m to allow for an existing golf net fence.
- Options:**
1. THAT Development Variance Permit No. 20-19 be granted.
  2. THAT Development Variance Permit No. 20-19 be refused.
- Recommendation:** **Option #1**  
Golf net safety fencing, where required, should be located on golf course property, not on adjoining residential properties. However, in this case, the property owner has taken on that responsibility and the immediate neighbours do not object.

---

**Property Information:** **OCP Designation:** R-SF, Residential Low Density, which includes single family residential subdivisions, duplexes and manufactured home parks.

**OCP Objective:**

- All commercial developments are encouraged to integrate screening and landscaping along the highway or road frontage to provide a buffer between the travelling public and provide points of interest.

**Zone Designation:** R-1(A), Single Family Residential (A) Zone

**Parcel Area:** 0.19 ha (0.46 ac)

**Density:** One single family dwelling is permitted per lot

**ALR Status:** Not within the ALR

**BC Assessment:** Residential (SFD)

**Flood Hazard Rating:** Not identified as being within a floodplain or a flood hazard area.

**Water / Sewer Services:** Not specified

**Interface Fire Hazard Rating:** Low; within the Windermere fire protection area.

- Additional Information:**
- The applicant states that the fence has been in place since before 2007 to keep their private property safe from errant golf balls.

**Additional  
Information –  
cont'd:**

- The structure consists of poles in the ground with mesh netting attached. The term 'screening' is defined in the UCV Zoning Bylaw and the definition excludes mesh and chain link fences. Subsequently, the subject structure is a 'fence'. Neither 'fences' nor 'screening' are permitted to be higher than 2.0 metres.

**Consultation:**

**Advisory Commissions:**

**APC Area F & G: Support**

**Response(s) to Notice:** 8 notices were mailed on April 16, 2019 to all property owners within 100 m of the subject property. No notices were returned as undeliverable and ten responses have been received. Eight responses express support for the request and the other two responses are record of an agreement reached between the applicants and a neighbor regarding removal of a portion of the fence.

**Documents  
Attached:**

- Permit
- Location Map
- Land Use Map
- Proposal
- Photos provided by applicants
- Letters received

**RDEK  
Contact:**

Tracy Van de Wiel, Planning Technician  
Phone: 250-489-0306  
Email: [tvandewiel@rdek.bc.ca](mailto:tvandewiel@rdek.bc.ca)

**Permittees:** Kenneth and Teresa Litchfield

1. This Development Variance Permit is issued subject to compliance with all RDEK bylaws applicable thereto, except as specifically varied or supplemented by this Permit.
2. This Permit applies to and only to those lands described below:

Lot 8, District Lots 19 & 4596, Kootenay District, Plan NEP21029 (PID: 018-606-199)
3. Regional District of East Kootenay – Upper Columbia Valley Zoning Bylaw No. 900, 1992, Section 4.12 (1)(b) which includes a maximum rear and side yard fence height of 2.0 m, is varied to increase the permitted rear and side yard fence height from 2.0 m to 15.5 m to allow for an existing golf net fence.
4. The lands described herein shall be developed strictly in accordance with the terms and conditions of this Permit and in substantial compliance with the drawings and photos submitted in the Development Variance Permit application received March 19, 2019.
5. This Permit shall come into force on the date of an authorizing resolution passed by the RDEK.
6. This Permit is not a building permit.
7. If development authorized by this Permit does not commence within two years of the issue date of this Permit, the Permit shall lapse.
8. A notice pursuant to Section 503(1) of the *Local Government Act* shall be filed in the Land Title Office and the Registrar shall make a note of the filing against the title of the land affected.
9. It is understood and agreed that the RDEK has made no representations, covenants, warranties, guarantees, promises, or agreement (verbal or otherwise) with the developer other than those in this Permit.
10. This Permit shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

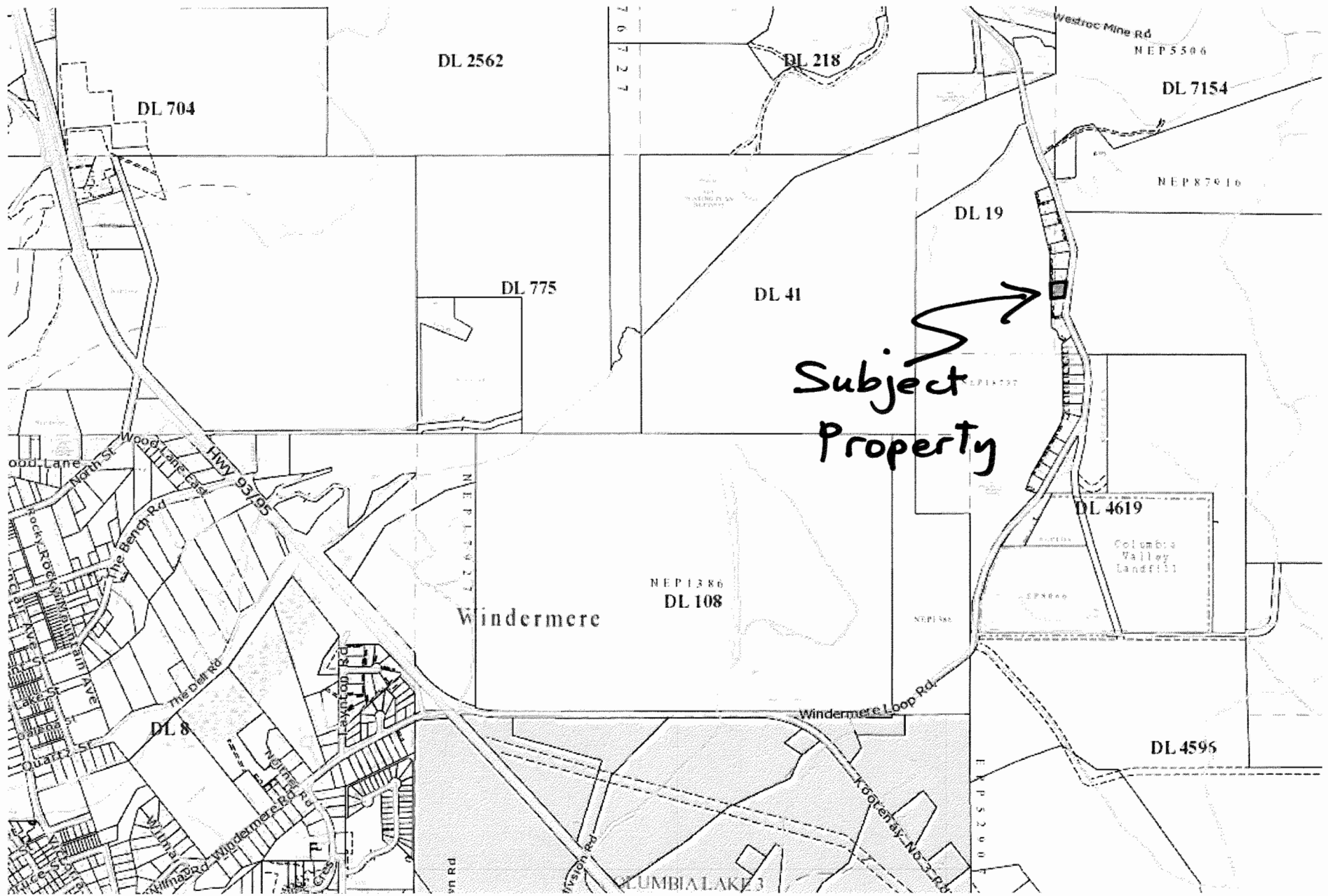
**Authorizing Resolution No.** \_\_\_\_\_ **adopted by the Board of the Regional District of East**  
**Kootenay on the** \_\_\_\_\_ **day of** \_\_\_\_\_ **, 2019.**

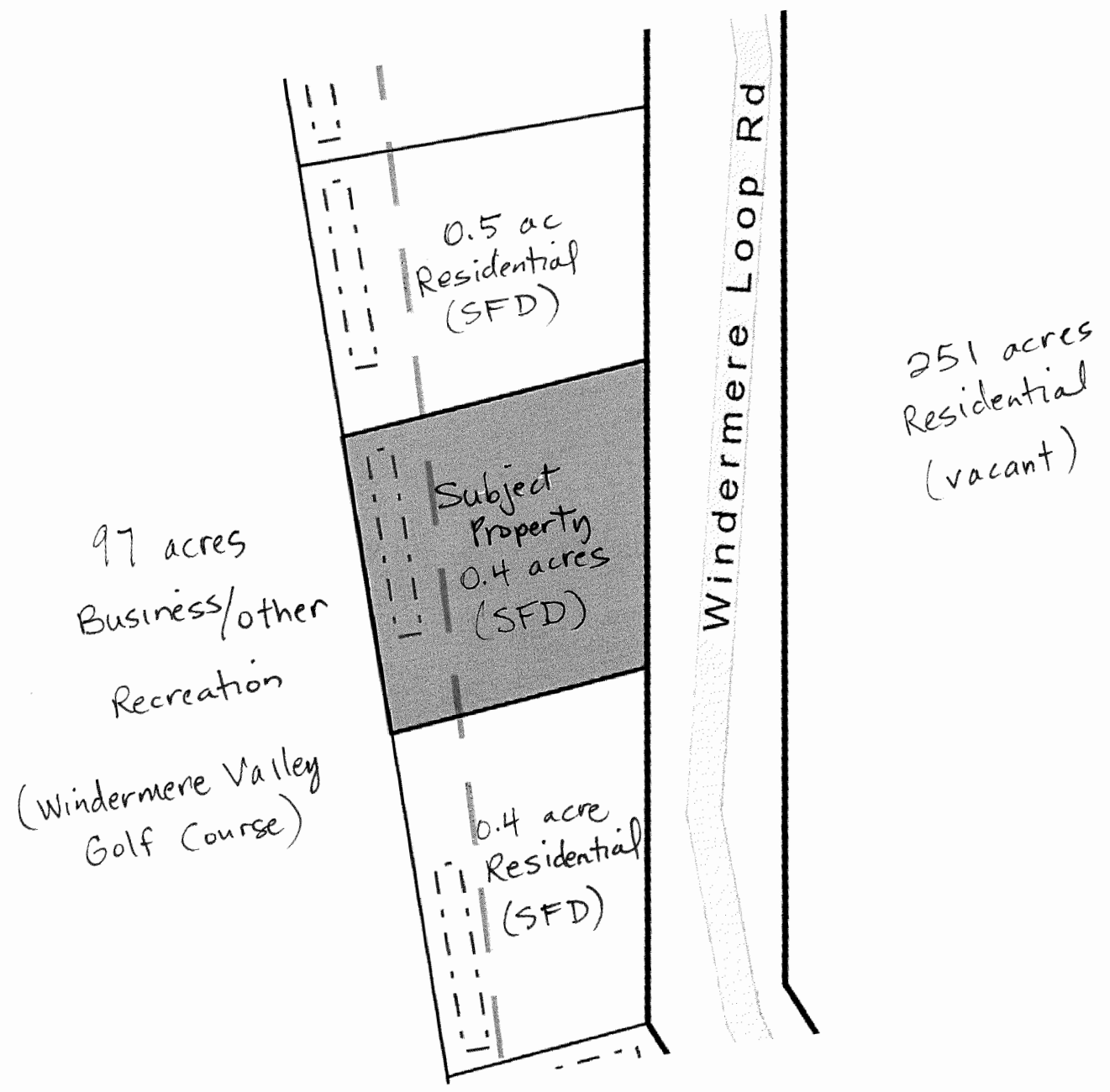
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**Shannon Moskal**  
**Corporate Officer**



# Location Map





# Teresa and Ken Litchfield

Proposal

March 18, 2019

Tracy Van de Wiel, Planning Technician  
Planning & Development  
Regional District of East Kootenay

Dear Tracy:

**RE: Development Variance Permit- To Permit a Mesh Net to Exceed 2 Meters  
Lot 8 Plan NEP21029 District Lot 19 Kootenay District & DL4596  
1767 Windermere Loop Road, Windermere Area**

When we purchased our home in 2007 there was a mesh net to prevent injury to people and property damage from the errant golf balls that are hit onto the property. We live beside hole #17 on the Windermere Valley Golf course. A title search and other real estate due diligence was undertaken at the time and none indicated that the mesh net was not in compliance with any RDEK rules and regulations. Having the mesh net on the property was one of the deciding factors in purchasing our home on the golf course.

We are unclear as to how our mesh net is in violation of the Zoning Bylaw 900. The definition of screening is as follows: *"Screening means a fence or an evergreen hedge or combination thereof that obstructs certain views of the property which it encloses and is broken only by access drives, lanes and walkways. This term excludes open mesh or chain link style fences and vegetation used as a wind break"*.

However, as we have been directed to submit this Development Variance Permit application, the following provides the rationale for its approval by the RDEK.

## Location of House and Yards

Our house is located opposite the green on the 17<sup>th</sup> hole. It is a par 3 where the distance from tee box to the green is approximately 175 yards. As a result, errant tee shots are often misdirected and, without the mesh net, could cause serious injury and/or property damage (see attachments #1, #2 and photos).

## Personal Safety

We spend a considerable amount of time in our yard gardening, mowing, dining, entertaining, relaxing, and pursuing other outdoor activities. With the existing mesh net we are able to enjoy these without fear of being struck and injured by golf balls. Removal of the mesh net will jeopardize the safety of everyone living in and visiting our home. These include children, youth, adults and other seniors like ourselves. As homeowners, we are liable for injuries to our guests and their pets that may occur from errant golf balls on our property. The mesh net ensures that we have taken the necessary steps to protect all those who come onto our property and keep them safe from this type of injury.

## Property Damage

Errant golf balls can break windows, glass doors, damage exterior building materials, and parked vehicles on our property. Fixing these damages would be costly not only to us but also for insurance companies. During the past 12 years that we have lived in our home, we have not had damage from errant golf balls nor have we made an insurance claim for this reason. The mesh net provides the protection required to shield our property from such damage.

## Visual Impact

The mesh net is designed to be protective and to have minimal visual impact. It is used on and beside many golf courses.

# Teresa and Ken Litchfield

Attached are letters of support from our neighbours.

Based on the above, we request that the RDEK allow the mesh net to remain in its present state. Thank you for your consideration in this matter.



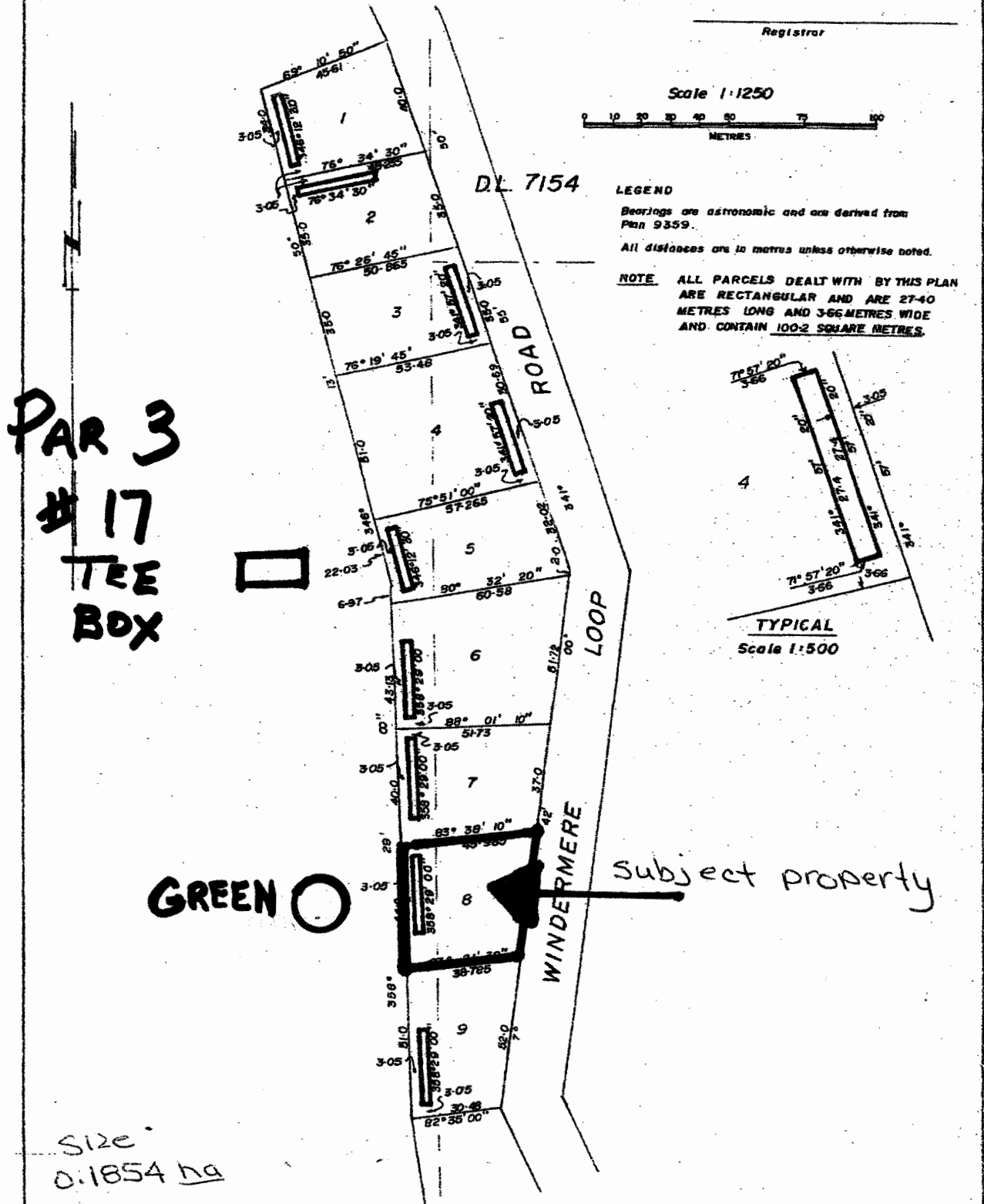
Teresa and Ken Litchfield  
1767 Windermere Loop Road  
Windermere BC, V0B 2L2

## Attachments

1. Site Plan of Subject Property
2. Location of #17 Tee Box and Greens
3. Location of Mesh Net on Property
4. Photos of Subject Home and Mesh Net
5. Letters of Support from Neighbours



# ATTACHMENT 2 LOCATION OF TEE BOX & GREEN



**PAR 3  
# 17  
TEE  
BOX**

**GREEN** ○

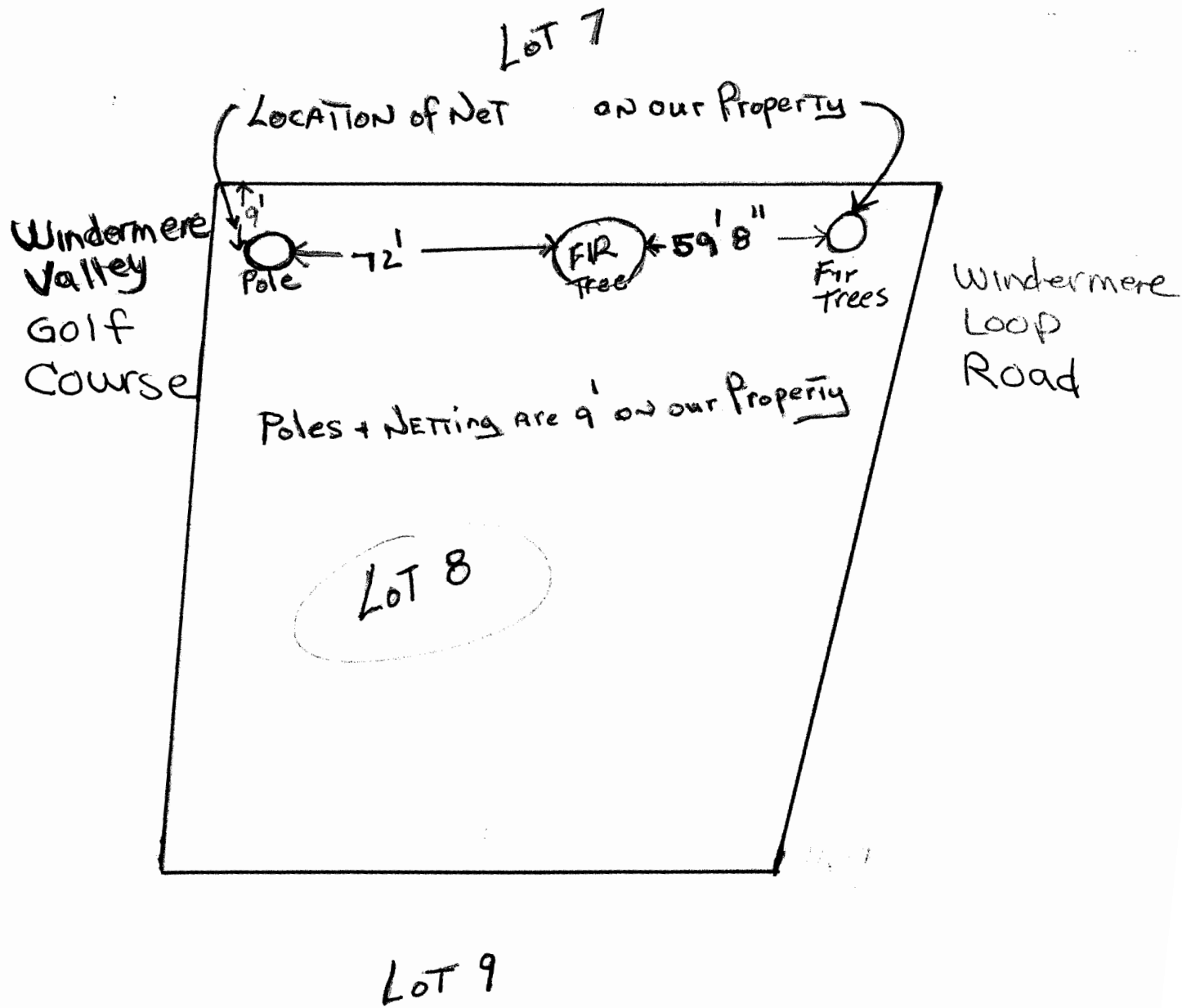
subject property

Size  
0.1854 ha

PL NEP21029 LT8  
LD 26 DISTRICT LOT 19 4596  
THIS PLAN LIES WITHIN THE REGIONAL  
DISTRICT OF EAST KOOTENAY

M. BRUCE PATERSON  
BRITISH COLUMBIA LAND SURVEYOR  
INVERMERE, B.C.

# LOT 8 LOCATION OF MESH NET







**SUBJECT HOUSE AND MESH NET**





**CHAIN LINK GOLF NET PROTECTING LOT 6&7  
ON 17TH TEE BOX**





**SUBJECT HOUSE SIDE YARD VIEW**





**SUBJECT HOUSE & WINDOWS AT RISK**



For Litchfield's DUP  
1767 Windermere Loop Road.

To whom it may concern,

As members in good standing of the Windermere Valley Golf Course we strongly support the structured golf netting at Mr. & Mrs. K. Litchfield's residence located at 1767 Windermere loop road.

We have personally witnessed many errant shots hit the protective netting, and in doing so prevent damage to property and more importantly lessen the potential for injury.

The netting is hardly noticeable from the golf course until it does what it was designed to do.

We are very much in support of the netting remaining in place.

Thank you,

Larry & Sally Logan

04/22/2019

*Sally Logan  
Larry Logan*

## Tracy Van de Wiel

---

**From:** Doug Page <[REDACTED]>  
**Sent:** May-16-19 6:44 PM  
**To:** Tracy Van de Wiel  
**Cc:** [REDACTED]  
**Subject:** Development Variance Permit No. 20-19

*Personal information has been withheld in accordance with Section 22(1) of the Freedom of Information and Protection of Privacy Act.*

Re: Notice of Intent  
Development Variance Permit No. 20-19

I bought a house adjacent to a golf course. Inso doing I did not waiver my rights to a reasonable degree of privacy. I certainly did not agree to have their clients trespass on my property at will to retrieve their errant shots, to use my house as a target for their misdirected shots and most importantly allow their clients to put my family members and guests at risk of injury due their clients' negligence. The golf course has not taken reasonable action to address the issues as outlined above and therefore it is beholden on us as home owners to do what we can to protect our family, guests and property. The net is the very best we can do to accomplish this objective. It is not a fence it is a reasonable and necessary protection mechanism.

I whole heartedly support the application for the requested variance.

Respectfully  
Douglas Page  
Owner: 1775 Windermere Loop Rd

Sent from dpage

From: Sylvia Page [REDACTED]  
Subject: Net  
Date: Mar 15, 2019 at 9:09:11 AM  
To: Tracy Litchfield [REDACTED]

Personal information has been withheld in accordance with Section 22(1) of the *Freedom of Information and Protection of Privacy Act*.

Sylvia and Douglas Page  
1775 Windermere Loop Road  
Windermere BC  
[REDACTED]

Attention:  
Debbie Pighin  
Compliance Officer  
RDEK

Dear Ms. Pighin,

It has come to our attention that our neighbours to the North of us, Ken and Tracy Litchfield have received a complaint regarding the net which protects their home and ours from errant golf balls.

We realize living on a golf course does come with a some risk. The net is absolutely essential in mitigating the risk. A significant number of balls in a golf season are shanked left into that net. Even with the net in place, we have had several balls bounce onto our back deck, bounce off the side of our house, contacting and damaging our heat pump, and bounce off our roof. We have even have found balls in our front yard.

We are concerned that our grandchildren are at risk of being struck when they play in our backyard and even when we all are sitting on our deck.

We fully support the continued use of this net and cannot see any reason for someone to complain about it. It is basically an unobstrusive but reasonably effective means of damage prevention to property and persons. In fact we would like to see the net extended further given the frequency of balls ending up in our yard.

In short unless the golf course management changes the 18th tee box and green configuration the net is our only protection.

Yours Truly,

Sylvia and Douglas Page

April 19, 2019

Andrew McLeod  
Planning & Development Services

Notice of Intent  
Development Variance Permit No. 20-19  
Lot 8, District Lots 19&4596  
Kenneth & Teresa Litchfield

To Whom It May Concern:

I received a notice from your office regarding the Variance Permit for Ken and Teresa Litchfield.

As an original home owner on the Windermere Loop Road, I would like to offer some background information on the history of this property.

During the subdivision development, the subject property was the last piece to be sold. Interested buyers who inspected the property could easily see that it was a landing ground for any errant golf balls from the golf course. It took a long time to sell this lot because of its location. The tee box and fairway on the Windermere Valley Golf course run along the row of houses. Lot 8 is in direct line with any golf balls that are misdirected from the tee box. Other lots not so much. A net/screen was erected and the problem was solved allowing the home owner to utilize the yard and sundeck.

The house and the house beside Lot 8 have had several owners since those early days and each buyer has purchased the property with the net in place. The net and the net's height is necessary for the safety of the home owner. In order for the property owner to be safe in the yard or to enjoy their deck that faces the golf course the net/screen is imperative to this property.

As a home owner on the Windermere Loop Rd, I support the application for the Variance Permit for Ken and Teresa Litchfield.

Sincerely,  
Nancy Wilfley

**Windermere Valley Golf Course**

**1881 Windermere Loop Road**

**Windermere, BC [REDACTED]**

*Personal information has been withheld in accordance with Section 22(1) of the Freedom of Information and Protection of Privacy Act.*

**March 18, 2019**

**RDEK**

FILE NO. F18/11

DEBBIE PIGHIN

**Compliance Officer**

Dear Ms. Pighin

For the record, the Windermere Valley Golf Course has no complaint regarding Ken and Tracy Litchfield's net. I understand their desire to have it in place. Errant golf balls, however rare, can be damaging to property. The existing net has been in place for years, so it is puzzling how it has become an issue now. The golf course will support an amendment to allow the net.

Sincerely,

Bryan Wilfley

Manager WVGC



Personal information has been withheld in accordance with Section 22(1) of the *Freedom of Information and Protection of Privacy Act*.

**From:** stanrc [REDACTED]

**Date:** March 14, 2019 at 9:32:57 PM MDT

**To:** TRACY LITCHFIELD [REDACTED]

**Subject:** Re. Litchfield 1767 Windermere Loop Rd & Regional District of East Kootenay

My name is Carol Stanford and I live at 1751 Windermere Loop Rd. The netting that is in conflict does not bother me at all! We hardly notice it and I think it was originally put up by the previous owners of said property! ALSO I have been witness early on to one of the basement windows being broken By a flying golf ball. It is not the golf courses responsibility to protect windows but you might have noticed the screen at the 17th teebox.....this protects my home and my next door neighbours 1759 Windermere Loop Rd.

Thank you for your kind attention to this letter and I am truly sorry that a complaint was received at your office for such a trivia!

Yours,

Carol Stanford

From: LITCHFIELD  
Subject: Fwd: Golf netting, Ken Litchfield  
Mar 18, 2019, 8:32:21 AM  
Tracy Litchfield

Personal information has been withheld in accordance with Section 22(1) of the *Freedom of Information and Protection of Privacy Act*.

Ken Litchfield

Begin forwarded message:

From: KEN MALLETT <[REDACTED]>  
Date: March 18, 2019 at 8:30:09 AM MDT  
To: [planningdept@rdek.bc.ca](mailto:planningdept@rdek.bc.ca)  
Cc: Tracy van de Weil, Ken Litchfield <[REDACTED]>  
Subject: Golf netting, Ken Litchfield

Re: 1767 Windermere Loop Road, Windermere, BC, and the protective golf netting in question:

We are Ken and Terrie Mallett, at 1715 Windermere Loop Road. We golf this course. Several times over the years I have hit a ball, and, with sinking heart, watched it arc left toward the Litchfield home. Before the netting went up, I would hold my breath, waiting for the crash and splinter of glass, or even the thump of ball on wall. After the netting went up, I would watch the ball arc over, but be stopped by that netting, thankfully! Please know that I am not alone in errant balls heading there - have witnessed wide-eyed, suddenly silent golfers do the same thing.

Thus, am glad that the netting is there. Not all of us hit straight, true balls! And the Litchfields do not need to be replacing windows or getting dents on their walls.

Thank you.  
Ken and Terrie Mallett

**Subject:** Re: Jenkinson Support for Netting

**From:** [REDACTED]

**Date:** 2019-03-19, 1:13 p.m.

**To:** Ken Litchfield [REDACTED]

Personal information has been withheld in accordance with Section 22(1) of the *Freedom of Information and Protection of Privacy Act*.

Hello Ken. This email has been written about the netting that is hanging to the south side of your property. I have been golfing at the Windermere Valley Golf Course for more than 20 years. Your home is situated along the 17th hole, quite near to the green. The netting gives me - and probably many other golfers - reassurance that any errant shots hit towards the very close out-of-bounds stakes could not hit your home, or someone in the backyard. I have become so used to the netting, that I no longer notice it; which is the desired effect. I also like the fencing that the owners of the golf course had erected to the property side of the tee box. That fencing also protects the properties and owners between your home and the tee box. Again, I seldom attend to that fencing, knowing that any shots hit towards the homes along the fairway are twice protected.

Jim Jenkinson

[REDACTED]

[REDACTED]

1009 Westridge Drive  
Invermere, BC

## Tracy Van de Wiel

---

**From:** Ken Litchfield [REDACTED]  
**Sent:** May-21-19 3:16 PM  
**To:** [REDACTED] Tracy Van de Wiel; Nancy Wilfley  
**Subject:** The Litchfield's DVP No. 20-19 (1767 Windermere Loop Road, Windermere)  
**Attachments:** Settlement agreement.03.1-signedbyJoostens.pdf

Good Afternoon.

Please find attached a legally binding agreement between Ken and Teresa (Tracy) Litchfield and Kevin and Rosemary Joosten. The agreement says that the two parties agree that the Development Variance Permit No. 20-19 now only applies to the West portion of the Golf Net and not the East portion as set out in attachment A which is enclosed within the agreement. The two parties have agreed that the East portion will be taken down and is not to be part of the Development Variance Permit No. 20-19. Therefore The Litchfield's will only be speaking for the Variance Permit relative to the West portion of the golf net.

This notification to all parties listed satisfies our legal obligations as set out in the Settlement Agreement between the two parties. Although only one set of signatures are present on the attached document please be assured that both parties have signed.

Thanks you for your time in this matter.

Please respond to me that all have received this email for my records.

Personal information has been withheld in accordance with Section 22(1) of the *Freedom of Information and Protection of Privacy Act*.

--

Best Regards  
Ken and Tracy Litchfield

## SETTLEMENT AGREEMENT

This settlement agreement (“**Agreement**”) is effective from the date that it is duly signed by all parties and is between:

- (1) Kevin Bernard Joosten and Rosemary Gina Joosten (“Joostens”); and**
- (2) Kenneth Frank Litchfield and Teresa Constance Litchfield (“Litchfields”).**

### WHEREAS:

- A. The Litchfields are the registered owners of the land and premises situated at 1767 Windermere Loop Road, Windermere, B.C., V0B 2L2; PID: 018-606-199; Legal description: Lot 8, District Lot 19 & 4596 Kootenay District Plan NEP21029 (the “**Litchfield Property**”);
- B. The Joostens are the registered owners of the land and premises situated to the North of the Litchfield Property at 1759 Windermere Loop Road, Windermere, B.C., V0B 2L2; PID: 018-606-181; Legal description: Lot 7, District Lot 19 & 4596 Kootenay District Plan NEP21029 (the “**Joosten Property**”);
- C. There is installed on the North-side of the Litchfield Property a netting which runs East/West and which extends past the West-side of the house on the Litchfield Property and towards the West boundary of the property lot of the Litchfield Property.
- D. For the purposes of this Agreement, and in reference to **Attachment A** hereto, the netting is defined as the:
  - a. “**East Netting**”, being all netting (from the ground to the heavens) between the hand written arrows on **Attachment A**, that is, all netting between (i) the tree situated behind the garage (where the first arrow begins) to (ii) the next tree to the right (where the arrow ends) as appearing on **Attachment A**; and
  - b. “**West Netting**”, being that portion of netting running from (i) the tree behind the garage, (ii) to the left/West, as appearing on **Attachment A**, as that netting currently stands.
- E. The Litchfields have applied to the Regional District of the East Kootenays (“**RDEK**”) to vary the Upper Columbia Valley Zoning Bylaw for the Litchfield Property to increase the permitted rear and side yard fence height from 2 meters to 15.5 meters to allow the netting (“**variance application**”).
- F. The parties had a dispute regarding the netting. The Joostens have claimed the right to enforce the current building scheme registered against title to both the Litchfield and Joosten property, which limits front yard fence and side yard fence to 1.2 meters.

Furthermore, the RDEK have provided the Joostens with the ability to make submissions on the variance application.

G. The parties wish to settle this matter by agreeing that the East Netting be removed.


**NOW THEREFORE** in consideration of the covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. Not later than June 14, 2019 at 4:30pm Mountain Daylight Time (Invermere time), the Litchfields shall remove the East Netting at their own sole cost and expense.
2. The Litchfields will inform the RDEK of this Agreement and request in good faith to the RDEK that no approval is given with respect to the East Netting.
3. On the condition that the East Netting is removed as required herein;
  - a) Subject to clause 4, the Joostens will not make any negative submission to the RDEK regarding the West Netting as it currently stands;
  - b) The Joostens will not make any claim or take any legal action against the Litchfields under the said building scheme or otherwise as permitted at law in respect of the West Netting at it stands on this date, and will forever waive and release said claim or claims.
4. Notwithstanding clause 3a), the Joostens are entitled to make submissions to RDEK which inform of the content of this Agreement (and may include a copy of this Agreement in those submissions) and request that no approval is given in respect of the East Netting.
5. If the Litchfields do not satisfy their obligations required at clause 1 and 2, then the Joostens will not be bound by clause 3, and will be entitled to make any claim permitted at law to the Supreme Court of British Columbia for removal of all of the netting, including the East and West Netting, whether available at law under the building scheme or otherwise and may claim for specific performance of this Agreement.
6. The Joostens will indemnify the Litchfields for any loss incurred by the Litchfields as a result of a breach of this Agreement by the Joostens.
7. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.
8. The provisions of this Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all previous communications, representations, and agreements, whether oral or written, between the parties with respect to the subject matter hereof, there being no representations, warranties, terms, conditions,

undertakings, or collateral agreements (express, implied, or statutory), between the parties other than as expressly set forth or referred to in this Agreement.

9. No alteration, amendment, change, or addition to this Agreement shall be binding upon the parties unless it is in writing and signed by the parties.
10. Each party to this Agreement shall be responsible for all of his, her or its own expenses, legal and other professional fees, disbursements, and all other costs incurred in connection with the negotiation, preparation, execution, and delivery of this Agreement.
11. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement continues in effect.

THE PARTIES hereto have executed this Agreement on the following dates:

  
\_\_\_\_\_  
Kevin Bernard Joosten

Date: MAY 20/19

  
\_\_\_\_\_  
Rosemary Gina Joosten

Date: May 20/19

\_\_\_\_\_  
Kenneth Frank Litchfield

Date:

\_\_\_\_\_  
Teresa Constance Litchfield

Date:



ATTACHMENT A





Invermere Office:  
PO Box 2647, 906 – 8<sup>th</sup> Avenue  
Invermere, BC V0A 1K0  
Tel: (250) 342-4447 | Fax: (250) 342-3298  
Writer's Email: [jeff@rockieslaw.com](mailto:jeff@rockieslaw.com)

Our File No. 72454

May 21, 2019

**Regional District of the East Kootenays  
Main Office**

19-24 Avenue South  
Cranbrook, B.C.  
V1C 3H8  
Fax: 250-489-1287

&

**Regional District of the East Kootenays  
Columbia Valley Office**

Box 2319  
4969 Athalmer Road  
Invermere, B.C.  
V0A 1K0  
Fax: 250-342-0064

Email: [info@rdek.bc.ca](mailto:info@rdek.bc.ca);

Dear Sirs/Mesdames,

**Re: Response to Notice of Intent re Development Variance Permit No. 20-19**

---

I am writing on behalf of Mr. Kevin Joosten and Mrs. Rosemary Joosten (“my clients”) in relation to the above noted matter. This letter constitutes their written submissions in respect of the proposed variance referenced above. I undertake that my clients have authorized me to write this letter.

**A. BACKGROUND**

My clients received the above referenced Notice of Intent dated April 16, 2019 as they own the relevant neighbouring property. In particular, as I understand:

1. The RDEK is considering an application by Mr. Kenneth Litchfield and Mrs. Teresa Litchfield to vary the Upper Columbia Valley Zoning Bylaw for their property located at 1767 Windermere Loop Road (PID: 018-606-199; Legal description: Lot 8, District Lot 19 & 4596 Kootenay District Plan NEP21029) (the “Litchfield property”);
2. The application is to increase the permitted rear and side yard fence from 2.0 m to 15.5 m to allow for an existing golf net fence;

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**SOUTHEAST BRITISH COLUMBIA'S REGIONAL LAW FIRM**

**FERNIE – CRANBROOK – KIMBERLEY – INVERMERE – SPARWOOD – CRESTON**

3. My clients own and occupy the property neighbouring the Litchfield property to the North, being 1759 Windermere Loop Road, Windermere, B.C., V0B 2L2 (PID: 018-606-181; Legal description: Lot 7, District Lot 19 & 4596 Kootenay District Plan NEP21029) (the “**Joosten property**” or “**their property**”).

For the purposes of this letter, and in reference to **Attachment A** attached, the netting is defined as the:

- a. “**East Netting**”, being all netting (from the ground to the heavens) between the hand written arrows on Attachment A, that is, all netting between (i) the tree situated behind the garage (where the first arrow begins) to (ii) the next tree to the right (where the arrow ends) as appearing on Attachment A; and
- b. “**West Netting**”, being that portion of netting running from (i) the tree behind the garage, (ii) to the left/West, as appearing on Attachment A, as that netting currently stands.

**B. SUBMISSIONS**

My clients have reached an agreement with the Litchfields, namely, that the Litchfields will remove the East Netting as defined. My clients take no issue with the West Netting.

All of which is respectfully submitted.

Best regards,  
**Rockies Law Corporation**



**Jeff Martin**  
**Barrister & Solicitor**  
JLM/ss  
Encl.



EAST NET  
REMOVAL ONLY  
17.5 METERS

ATTACHMENT A



*Staff Report ...*

## Natural Resource Operations Referral

Date: May 29, 2019

File: P 151 600

NRO #420356

**Applicant:** Windermere Valley Snowmobile Society  
**Agent:** Ministry of Forests, Lands, Natural Resource Operations & Rural Development (Kevin Eskelin)  
**Location:** Located approx 12.74 kms due west from Radium Hot Springs along Forster Creek FSR  
**Legal:** Part of DL 6361 and adjoining unsurveyed Crown land

**Proposal:** Crown land application pursuant to Sections 56 & 57 of the *Forest and Range Practices Act* to establish and maintain a 4.6 ha area as a recreation site to accommodate parking and construction of a garage for trail grooming equipment. Users of both the Forster Creek FSR and the Forster Creek Snowmobile Trail will pass through the proposed recreation area.

**Options:**

1. THAT the Ministry of Forests, Lands, Natural Resource Operations and Rural Development, be advised the RDEK supports the Windermere Valley Snowmobile Society Crown land application to establish and maintain a 4.6 ha recreation site located west of Radium Hot Springs along Forster Creek FSR.
2. THAT the Ministry of Forests, Lands, Natural Resource Operations and Rural Development be advised the RDEK does not support the Windermere Valley Snowmobile Society Crown land application to establish and maintain a 4.6 ha recreation site located west of Radium Hot Springs along Forster Creek FSR.

**Recommendation:** **Option # 1**  
 The recreation site for the parking area and construction of a garage for trail maintenance equipment will help to enhance backcountry recreation assets.

**Property Information:** **OCP Designations:**  
WP, Watershed Protection - includes those lands that are part of a community or irrigation district watershed and require protection from development that may impact water quality or quantity. The WP designation also recognizes the use of these lands for agriculture, timber harvesting, green space and recreation.

RR, Rural Residential - includes rural residential and rural resource land uses with parcel sizes 8.0 hectares and larger.  
 The RR designation also recognizes the use of these lands for agriculture, resource extraction, open space and working landscape.

**Property  
Information - cont'd:**

**OCP Policies:**

- Protection of the Forster Creek, McCauley Creek and Vermillion Irrigation District watersheds for community and irrigation water supply.
- Development within the community watersheds is to be in accordance with the Watershed Protection zoning and avoid impacts to the quality and quantity of water in the watershed.
- Development within the Watershed Protection zone should be limited to those activities that do not have a negative impact on water quality or quantity.
- Crown lands within community and irrigation district watersheds are to be used in a manner that does not impact the quality or quantity of ground and surface waters.
- Development or activities on Crown land are encouraged to employ visual impact mitigation measures.

**Zoning Designation:** W-1, Watershed Protection Zone (wildland use is permitted).

**Parcel Size:** Area affected: 4.6 ha +/-

**Density:** N/A

**ALR Status:** Not within the ALR

**BC Assessment:** N/A

**Water / Sewer Services:** N/A

**Interface Fire Hazard Rating:** Low. Crown land is serviced by the the BC Wildfire Service.

**Flood Hazard Rating:** N/A

**Crown Land  
Management Plans:**

N/A

**Lake Management  
Plans:**

N/A

**Shoreline  
Management  
Guidelines:**

N/A

**Additional  
Information:**

- The area is proposed to be designated as an established recreation site under FRPA Section 56 (establishing recreation sites or trails on Crown Land).

**Additional  
Information – cont'd:**

- The designation will give Recreation Sites and Trails BC the needed tools to work collaboratively with the Windermere Valley Snowmobile Society in the ongoing improvements and recreation management of the area.
- The proposed recreation area is intended for all user groups and the general public.

**Consultation:**

**APC Area F/G:** Support

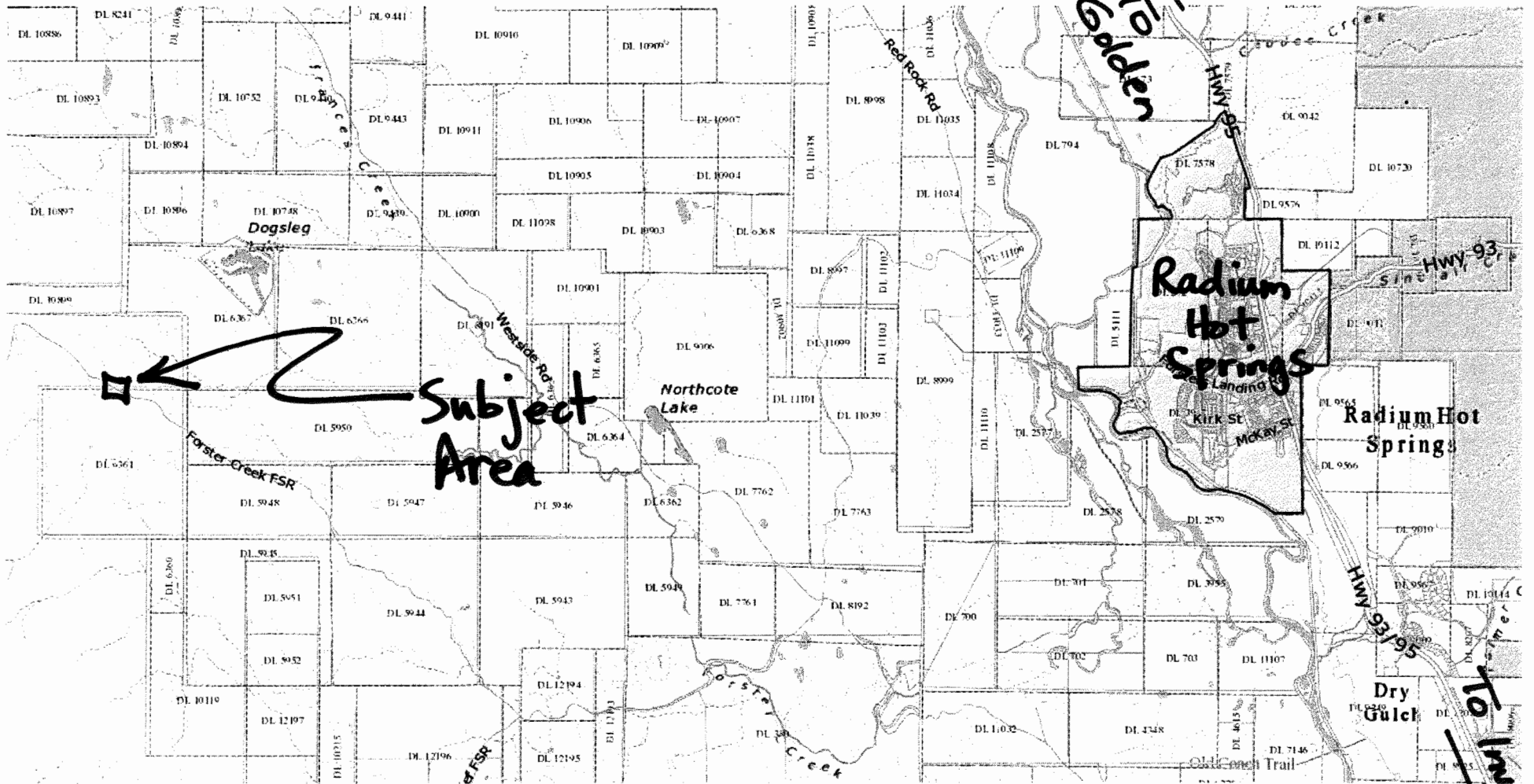
**Documents  
Attached:**

- Location Map
- Proposal
- Letter

**RDEK  
Contact:**

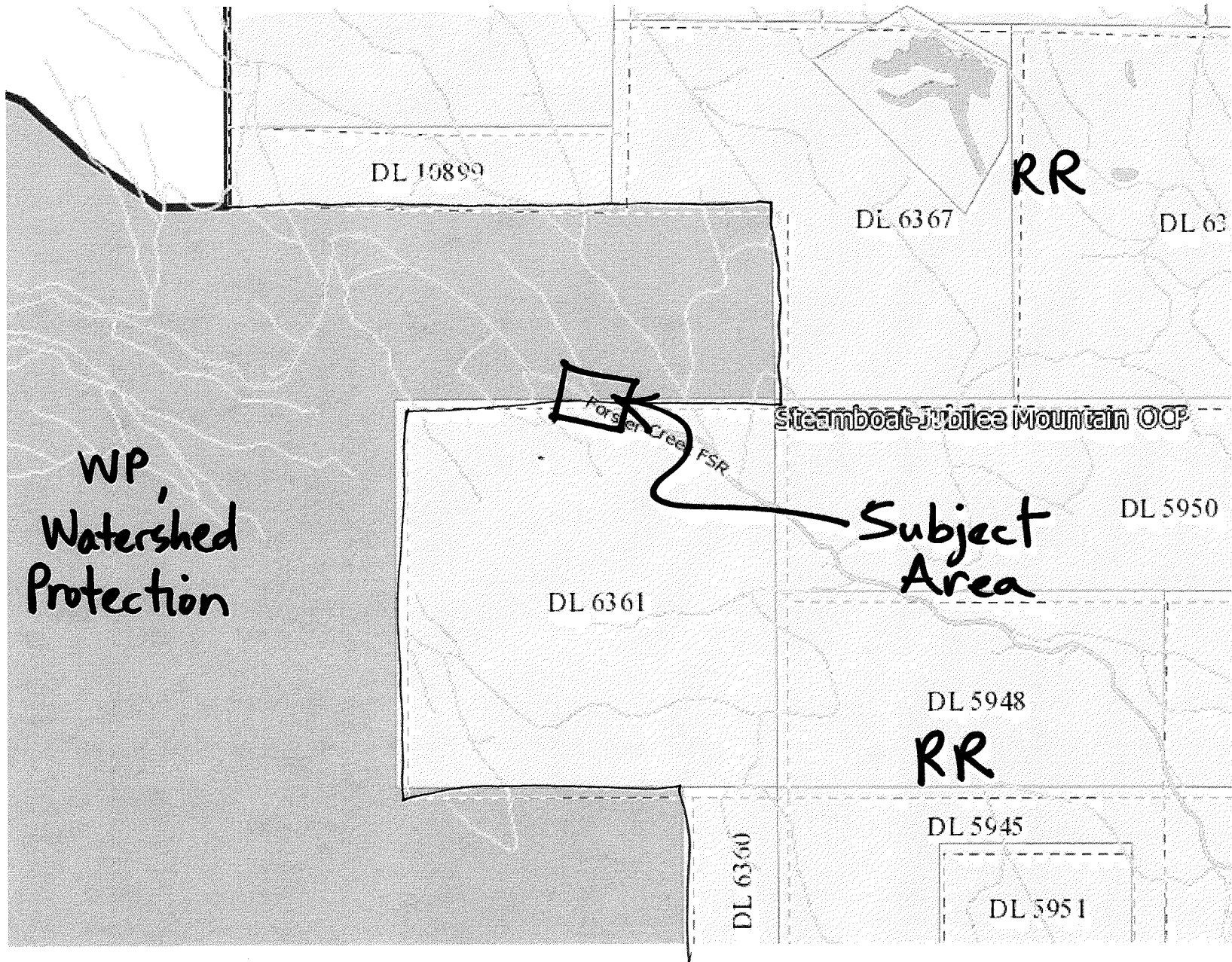
Tracy Van de Wiel, Planning Technician  
Phone: 250-489-0306  
Email: [tvandewiel@rdek.bc.ca](mailto:tvandewiel@rdek.bc.ca)

# Location Map



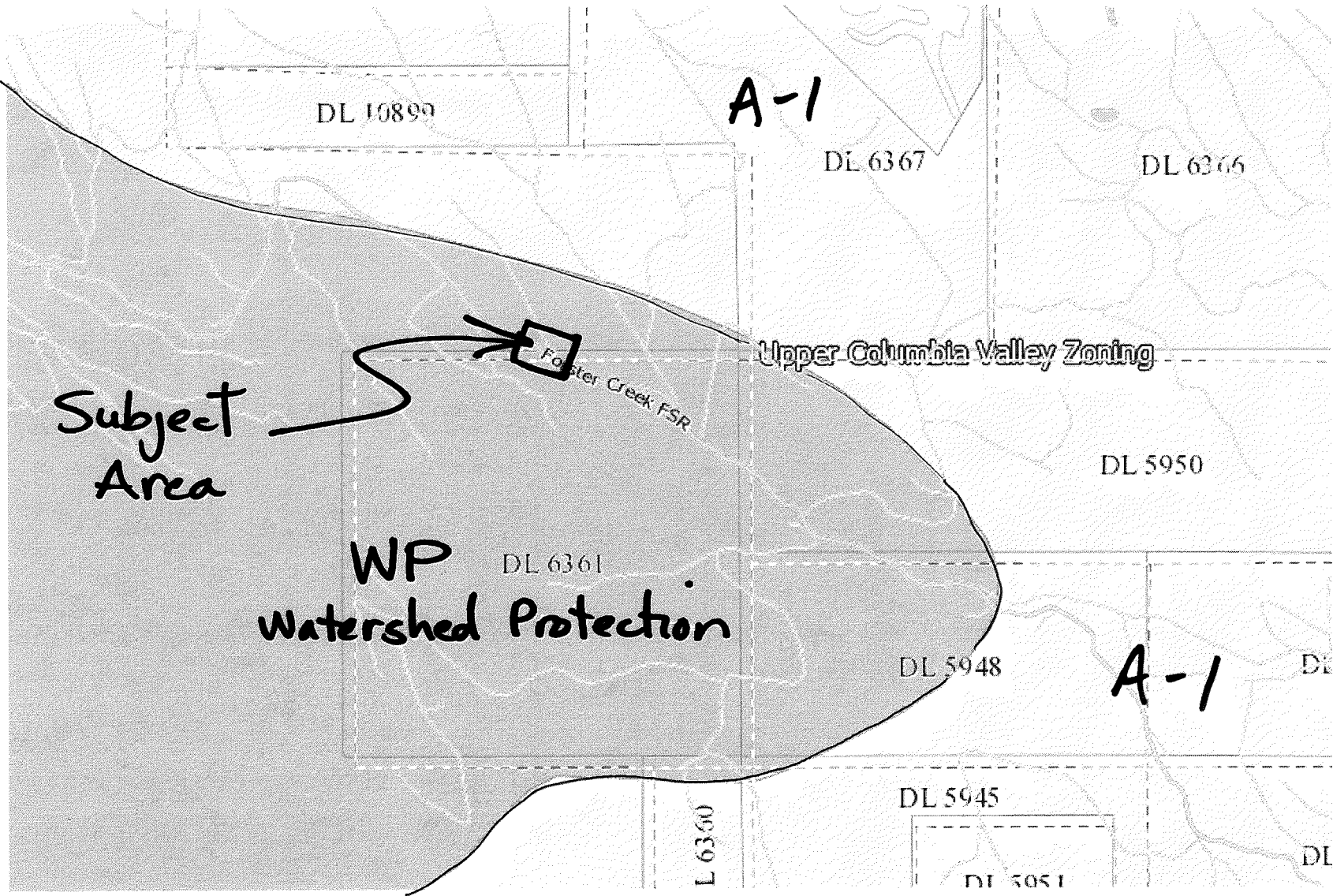
To Invermere

# Current OCP Designations





# Current Zone Designations



Proposal



Recreation Project No. 16660-20/259085

February 13, 2019

Dear Recreation Land Referral Recipients:

Recreation Sites and Trails BC is submitting an application to establish a Recreation Site to accommodate parking and a garage in partnership with the Windermere Valley Snowmobile Society.

This site is to be managed for value-added public recreation while increasing public safety, environmental protection, and recreation experience.

The application is made under Section 57 of the *Forest and Range Practices Act (FRPA)* (allowing construction, rehabilitation, and maintenance) and will subsequently be designated as an established Recreation Site under FRPA Section 56 (establishing Recreation Sites or Trails on Crown Land). The designation will give Recreation Sites and Trails BC (RSTBC) the needed tools to further engage collaboratively with the Windermere Valley Snowmobile Society in the ongoing improvements and recreation management in the area.

The proposed Recreation Site is 4.6 hectares (240 x 190 metres) and will have an associated License of Occupation application submitted by the Windermere Valley Snowmobile Society for the construction of a garage for the trail grooming equipment. The Forster Creek Forest Service Road and Forster Creek Snowmobile Trail pass through the proposed Recreation Site.

The proposed works within the Recreation Site will consist of upgrading the existing parking lot and constructing the garage to house trail grooming equipment. The structure will not be used for overnight accommodation.

The Recreation Site will be included in the existing partnership agreement that RSTBC holds with the Windermere Valley Snowmobile Society to maintain the Forster Creek Snowmobile Trail.

Yours truly,

A handwritten signature in black ink, appearing to read "Aina Cernenoks".

Aina Cernenoks  
Recreation Officer  
Rocky Mountain District



## Covenant Modification Application

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Date: May 28, 2019  
File: P 719 522  
Covenant: KM127025 & CA5160971

**Applicants:** Philip and Claire Marshall, Earl Grey Lodge  
**Agent:** Terpsma Land Development Consulting  
**Location:** 2069 Summit Drive, Panorama  
**Legal:** Lot 1, District Lot 4609, Kootenay District, Plan NEP63501 (PID: 024-356-786)

**Proposal:** A partial release of Restrictive Covenant KM127025 and CA516097. The applicants wish to reduce the width of the tree buffer area along their west boundary from 15.0 m to 6.0 m.

The original covenant (KM127025) was registered in 1998 to protect trees along the property boundary and provide a buffer from neighbouring residential lots. In 2013, the RDEK granted a partial release of the covenant (which was amendment CA516097, registered in 2016).

**Options:**

1. THAT the request from Philip and Claire Marshall to modify Covenant KM127025 to exclude the area shown on the Sketch Plan dated April 16, 2019 be approved.
2. THAT the request from Philip and Claire Marshall to modify Covenant KM127025 to exclude the area shown on the Sketch Plan dated April 16, 2019 be refused.
3. THAT the request from Philip and Claire Marshall to modify Covenant KM127025 to exclude the area shown on the Sketch Plan dated April 16, 2019 be referred to staff for public consultation on the proposal by mailing of notices to properties within 100 m of the subject lands.

**Recommendation:** **Option # 3**  
The tree buffer was an important consideration during the original approval of this pension site.

---

**Property  
Information:**

**OCP Designation:** CA-P, Tourist Accommodation - Pension

**OCP Policies:**

- Each of the residential neighbourhoods shall contain a mix of residential accommodation, which may include temporary accommodation, and shall generally conform to the land uses shown on Schedules A3 and A4 and as contained in the Comprehensive Development Plan.
- The design of all commercial uses shall be pedestrian oriented, incorporating appropriate landscape and signage treatments which reinforce the overall pedestrian focus. All commercial uses

**Property  
Information –  
cont'd:**

constructed on land owned or sold by the resort shall be subject to the Panorama Village Design Guidelines and applicable sections of the Design Standards manual – CDP Vol III.

- On-site parking sufficient to accommodate demands generated by various land uses shall be required in accordance with Bylaw No. 900.

**Zone Designation:** RES-3(TP), Resort Tourist Pension Zone, minimum parcel size: 925 m<sup>2</sup>.

**Parcel Size:** Total Area: 3719 m<sup>2</sup> (0.9 ac)  
Portion requested for removal from covenant is approximately 540 m<sup>2</sup>.

**Density:** One principal building permitted per parcel.  
The maximum gross floor area permitted is 740 m<sup>2</sup> (7965 ft<sup>2</sup>) or a floor area ratio of 0.35, whichever is less.

**ALR Status:** not within

**Interface Fire Hazard Rating:** High, within the Panorama fire protection area.

**BC Assessment:** Bed and Breakfast (4 or more units)

**Professional  
Studies:**

None.

**Additional  
Information:**

The owners state they would like to modify the tree buffer covenant area for various reasons including wildfire hazard reduction, potential future development and for planting new tree species.

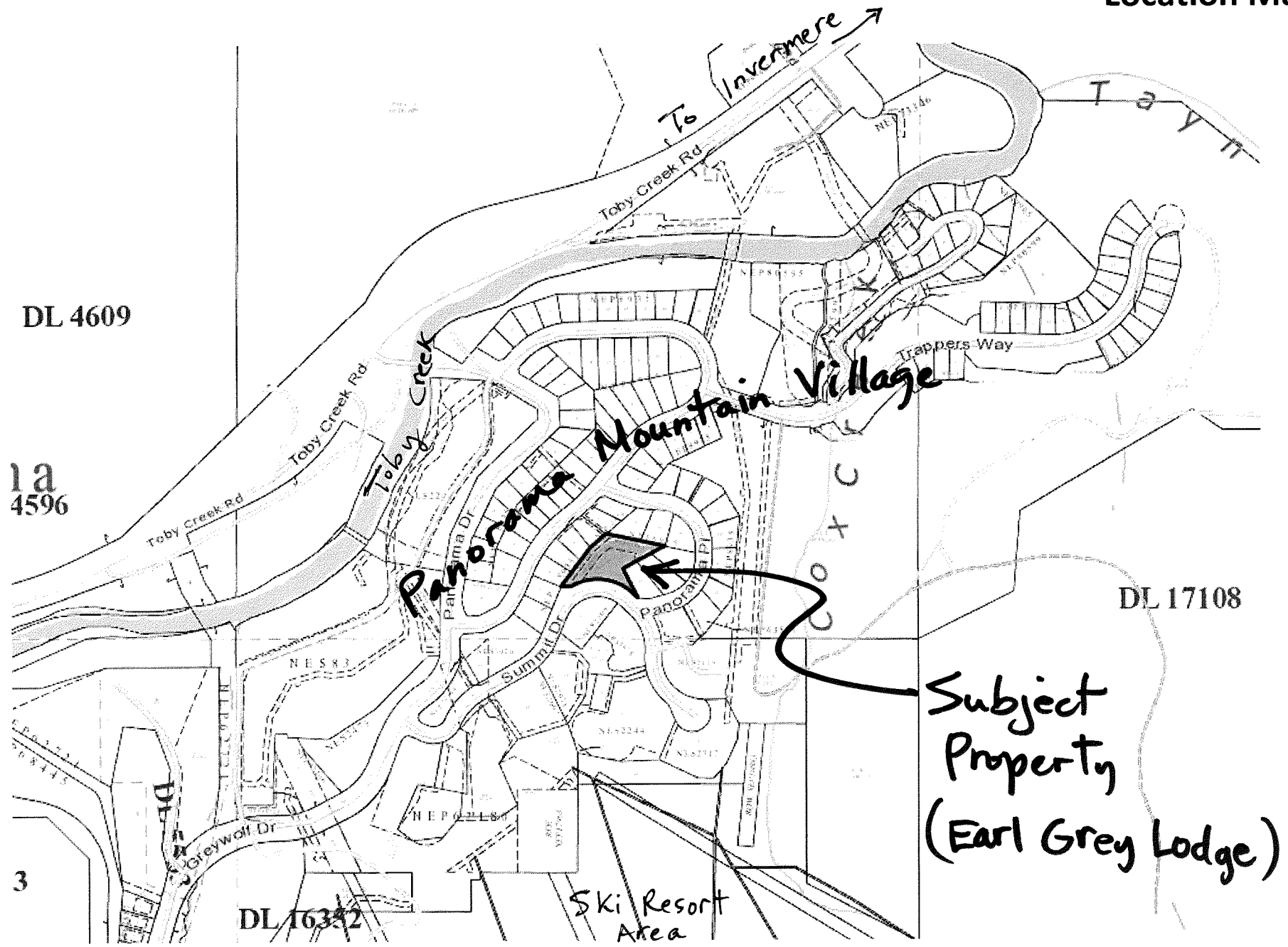
**Documents  
Attached:**

- Location Map
- Proposal
- Sketch Showing Historical Covenant Areas
- Photographs
- Excerpts from Covenant KM127025
- Excerpts from Covenant Amendment CA5160971
- Letter of support from a neighbour

**RDEK  
Contact:**

Tracy Van de Wiel, Planning Technician  
Phone: 250-489-0306  
Email: [tvandewiel@rdek.bc.ca](mailto:tvandewiel@rdek.bc.ca)

Location Map



DL 4609

1a  
4596

DL 17108

Subject  
Property  
(Earl Grey Lodge)

3

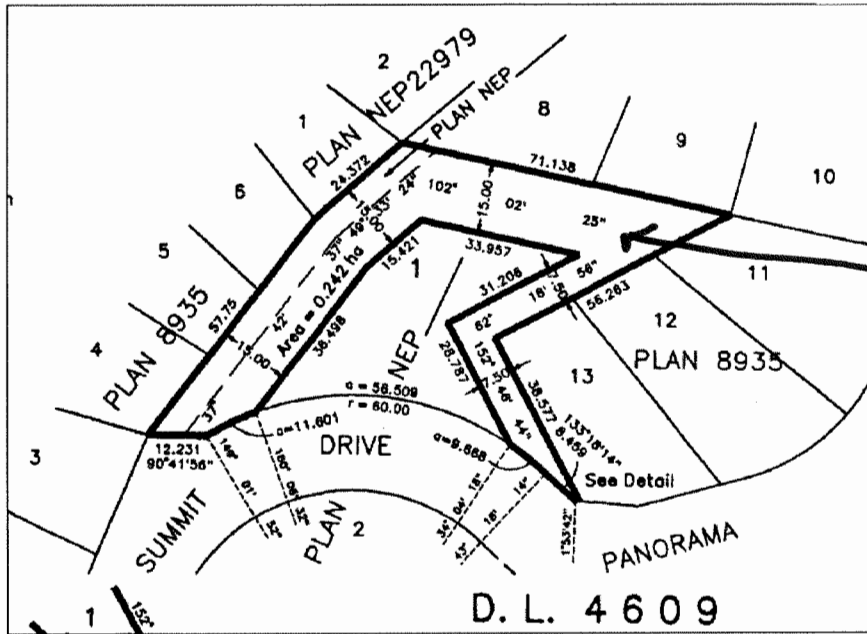
DL 16342

Ski Resort  
Area



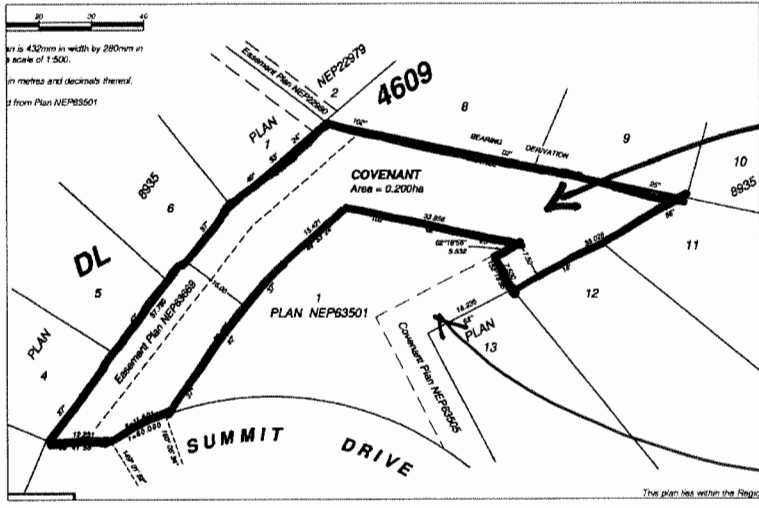
# History of Covenant

Original  
1998



Original  
Covenant  
area  
(0.242 ha)

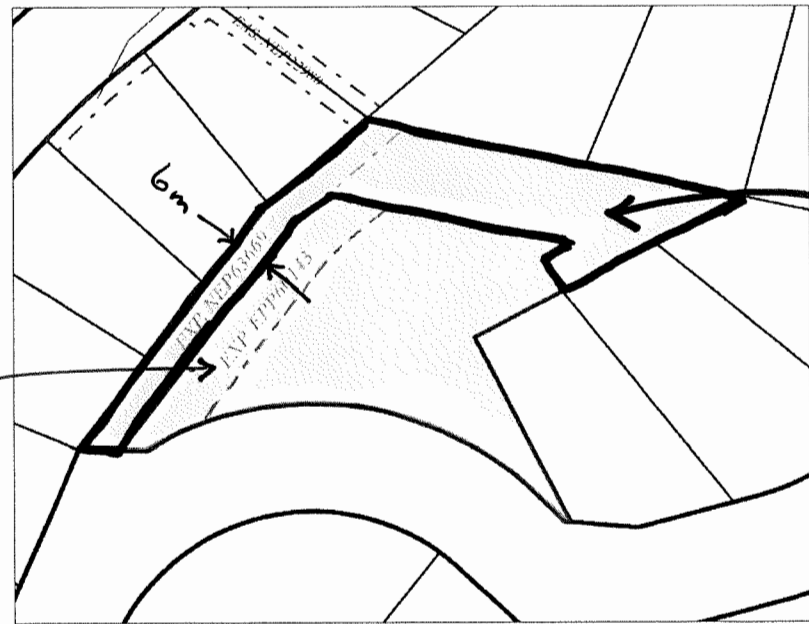
2013/  
2016



Current  
Covenant  
area  
(0.2 ha)

portion removed  
in 2013/2016

2019



Proposed  
Covenant  
area to  
remain.  
(0.146 ha)

Area to be  
removed from  
Covenant  
(approx. 540 m<sup>2</sup>)





Looking Northeast along easement area



Looking Southwest, along easement area

Original Covenant  
1998

LAND TITLE ACT

TERMS OF INSTRUMENT - PART 2

Page 3 of 8 pages

SECTION 219 (TREE PRESERVATION) COVENANT

THIS AGREEMENT is dated November 9, 1998

BETWEEN:

INTRAWEST CORPORATION  
800 - 200 Burrard Street  
Vancouver, British Columbia  
V6C 3L6

(the "Covenantor")

AND:

REGIONAL DISTRICT OF EAST KOOTENAY  
19 - 24th Avenue, South  
Cranbrook, British Columbia  
VIC 3H8

(the "Regional District")

WHEREAS:

A. The Covenantor is the registered owner of those lands and premises situated in the East Kootenay Assessment Area, British Columbia, and legally described as:

Lot 1  
District Lot 4609  
Kootenay District  
Plan NEP 63501

(the "Lands");

B. Section 219 of the *Land Title Act*, R.S.B.C. 1996, c. 250, as amended, permits the registration of a covenant of a negative or positive nature in favour of the Regional District that land or a specified amenity in relation to it be protected, preserved, conserved or kept in its natural state in accordance with and to the extent provided by the covenant; and

C. The Covenantor acknowledges that it is in the public interest to preserve certain trees on the Lands and agrees to grant this Covenant to the Regional District on the terms and conditions contained herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that pursuant to Section 219 of the *Land Title Act*, and in consideration of the terms of this Covenant and the sum of ONE (\$1.00) DOLLAR now paid by the Regional District to the Covenantor (the receipt and sufficiency of which are hereby acknowledged) and of other good and valuable consideration, the Covenantor hereby covenants and agrees with the Regional District as follows:

1. Definition. For the purposes of this Covenant, "cut" or "cutting" means to cut down or remove a tree by any means and includes the topping of a tree and also includes the removal of any branch or trunk of a tree having a diameter of more than four inches.

2. Retention of Trees. The Covenantor hereby covenants, promises and agrees, pursuant to Section 219 of the *Land Title Act*, as amended, that unless it receives the prior written consent of the Regional District pursuant to section 4 of this Covenant:

(a) the Covenantor will not cut and shall not permit the cutting of any trees presently or hereafter growing on or in those portions of the Lands (collectively called the "Preservation Area") which are shown outlined in heavy black on Explanatory Plan NEP 6350 deposited concurrently herewith, a reduced photocopy of which plan is attached hereto as Schedule "A"; and

(b) the Covenantor will not construct, install or place any building, driveway, parking area or other improvement of any kind on or in the Preservation Area.

3. Permitted Cutting. Notwithstanding subsection 2(a) of this Covenant, the Covenantor may cut or permit the cutting of any tree within the Preservation Area which is diseased, dead or damaged or destroyed by fire or other act of God such that, in the reasonable opinion of the Covenantor, the tree poses an immediate risk or danger to persons or property; provided that where such a tree is cut down pursuant to this section, the Covenantor shall notify the Regional District of such cutting and shall complete such cutting and revegetation as may reasonably be required by the Regional District.

4. Consent to Cut. Except as provided in section 3 of this Covenant, the Covenantor shall obtain the written consent of the Regional District prior to cutting or permitting the cutting of any trees in the Preservation Area. Any request for consent to the cutting of trees pursuant to this section shall be accompanied by a detailed report explaining the grounds for the request, which report shall be submitted to the Regional District for

review and considered by the Regional District in determining whether consent will be granted.

5. **Powers Protected.** Nothing contained or implied herein shall prejudice or affect the Regional District's rights and powers in the exercise of its functions pursuant to the *Municipal Act*, R.S.B.C. 1996, c. 323 or its rights and powers under all of its public and private statutes, bylaws, orders and regulations to the extent the same are applicable to the Lands, all of which may be fully and effectively exercised in relation to the Lands as if this Covenant had not been executed and delivered by the Covenantor.

6. **Runs with Land.** The covenants set forth herein shall charge the Lands pursuant to Section 219 of the *Land Title Act* and shall be covenants the burden of which shall run with the Lands and bind the Lands and every part or parts thereof, into which the Lands may be divided or subdivided, whether by subdivision plan, strata plan or otherwise howsoever.

7. **Future Liability.** Notwithstanding anything contained herein, neither the Covenantor named herein nor any future owner of the Lands or any portion thereof shall be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Covenantor named herein or any future owner ceases to have any further interest in the Lands.

8. **Priority.** The Covenantor will, after execution hereof by it at the expense of the Covenantor, do or cause to be done all acts reasonably necessary to grant priority to this Covenant over all financial charges and encumbrances which may have been registered against the title to the Lands in the Land Title Office save and except those as have been specifically approved in writing by the Regional District or have been granted in favour of the Regional District.

9. **Interpretation.** Wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.

10. **Further Assurances.** The parties hereto shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Covenant.

11. **Waiver.** Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.

12. **Reference.** Every reference to a party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party wherever the context so requires or allows.



# Covenant Modification 2013/2016

## COVENANT MODIFICATION AGREEMENT

THIS AGREEMENT made the \_\_\_\_ day of April, 2016

**WHEREAS:**

A) The Covenantor is the register owner of those lands and premises situate in the East Kootenay assessment area in the Province of British Columbia legally knowns and described as:

**Legal Description:** Lot 1 District Lot 4609 Kootenay District Plan NEP63501

**PID:** 024-356-786

(hereinafter called the "Lands")

B) The Covenantor previously granted Covenant KM127025 to The Regional District of East Kootenay ("RDEK") which was registered pursuant to Section 219 of the Land Title Act on the 21<sup>st</sup> of December, 1998 (the "First Covenant").

C) The Covenantor has requested the RDEK amend the First Covenant by removing from it a portion of the Lands by explanatory plan NEP63505, and the RDEK has agreed to do so.

D) The Covenantor has agreed to ratify and confirm the remaining provisions of the First Covenant.

NOW THEREFORE THIS AGREEMENT WITNESSETH that pursuant to Section 219 of Land Title Act, and in consideration of the terms of this Covenant and the sum of \$1.00 now paid by the RDEK to the Covenantor (the receipt and sufficiency of which is hereby acknowledged) the Parties hereto each agree with the other as follows:

1) the Parties agree that the First Covenant shall be amended by:

- \* → a) deleting in its entirety paragraph 2 (a) from the Terms of Instrument, Part Two, of the said Covenant, and replacing same with:
  - 2. (a) the Covenantor will not cut and shall not permit the cutting of any trees recently or presently or hereinafter growing on or in those portions of the Lands (collectively called the "Preservation Area") which are shown outlined in heavy black on explanatory Plan EPP60143 deposited concurrently herewith, a reduced photocopy of which Plan is attached hereto as Schedule "A"; and

- b) deleting in its entirety Schedule "A" to the First Covenant and replacing same with Schedule "A" attached hereto, which Schedule sets forth those portions of the Lands to be affected by this Covenant as are outlined in black on Plan EPP60143.
- 2) the Covenantor hereby ratifies and confirms the remaining provisions of the First Covenant without further amendment, modification or change thereto.

**IN WITNESS WHEREOF** the Parties have affixed their hands and seals the day and year first written above.





Letter from a

Tracy Van de Wiel

---

**From:** Panorama Vacations <info@panoramavacations.com>  
**Sent:** May-17-19 8:21 PM  
**To:** Tracy Van de Wiel  
**Subject:** Tree covenant

neighbour

Hello Tracy,

I am emailing to express my support for Phil Marshall's proposal to reduce the tree covenant from 15 m to 6 m. Please let me know if you need any further information in this matter. Thank you.

--

Thanks,  
Carolyn Gibson  
[www.PanoramaVacations.com](http://www.PanoramaVacations.com)  
[www.SpiritRidgeResidences.com](http://www.SpiritRidgeResidences.com)



## Request for Decision

File: Soppit

<b>Date</b>	May 22, 2019
<b>Author</b>	Krista Gilbert, Planning Technician
<b>Subject</b>	Request for Exemption from Providing a Professional Report Soppit

---

### REQUEST

Alva Soppit and Holly Elliott have requested an exemption from the requirement of providing a report from a qualified professional in support of their ALR subdivision application. They are making the subdivision application because they wish to remove the binding of titles covenant KX12779 from their farm and the ALC considers this to be similar to an ALR subdivision. The subject properties are located at 450 Wardner-Fort Steele Road in the Fort Steele area.

### OPTIONS

1. THAT the Soppit request for exemption from providing a report from a qualified professional in support of a proposed ALR subdivision application for property located at 450 Wardner-Fort Steele Rd in the Fort Steele area be approved.
2. THAT the Soppit request for exemption from providing a report from a qualified professional in support of a proposed ALR subdivision application for property located at 450 Wardner-Fort Steele Rd in the Fort Steele area be refused.

### RECOMMENDATION

#### Option 1

The applicants have no intention of subdividing; however, removal of the covenant allows the individual titles to be sold separately. Staff do not believe a professional report is required for review of the applicant's application.

### BACKGROUND / ANALYSIS

In 2001, the owners applied for ALR subdivision of a different property they owned (District Lot 284, Kootenay District, Except (1) Part included in RW Plan DD15976; (2) Plans 7825 and 17453) and, in exchange for approving the requested subdivision, the ALC required consolidation of the owner's farm property or registry of a binding of titles covenant. Historically, we've seen the ALC use this technique to protect farms made up of separately titled properties from being broken up by the owners selling the titles separately. The owners decided to register the covenant on their farm properties and the subdivision of their other property was completed. The owners have indicated that they will continue to use their farm in the same way as they have historically and they have no intentions of selling. They've stated they wish to remove the covenant because their financial institution will not recognize each title as a separate entity for financing purposes, due to the covenant. The covenant binds two parcels that together total 102.8 ha.

## **SPECIFIC CONSIDERATIONS**

### **Zoning Bylaw**

#### Steeple's Zoning and Floodplain Management Bylaw

Current Designation: RR-60, Rural Resource Zone which has a minimum parcel area requirement of 60.0 ha and permitted uses which include: single-family dwelling, farm operation, extraction of sand and gravel, equestrian centre, and portable sawmill. Accessory uses include: home based business and secondary suite.

### **Official Community Plan**

#### Steeple's Official Community Plan

Designation: RR, Rural Resource which supports agricultural, rural residential and rural resource land uses with parcel sizes 8.0 hectares and larger. The RR designation also recognizes the use of these lands for public utility, resource extraction, green space and recreation.

#### OCP Section 6.3(2) – Agriculture

ALR applications for exclusion, non-farm use, or subdivision of parcels 4.0 ha in size or larger must be accompanied by a report from a qualified professional unless an exemption from the requirement has been approved by the Regional District Board. The report must include: (a) determination of the level of capability and suitability for both soil bound and non-soil bound agricultural production on the parcel including investigation of the terrain, soil, size, configuration and context of the agricultural lands; and (b) identification of the impact the proposal will have on the agricultural suitability and capability of the parcel, and agricultural operations in the surrounding area.

## **ATTACHMENTS**

- Letters of Request
- Location Map
- Covenant KX012779

May 7 2019

Alva Soppit  
Holly Elliott  
450 Wardner Fort Steele Rd.  
Fort Steele, B.C. V0B 1N0

Regional District of East Kootenay  
Cranbrook, B.C.

Attention: Krista Gilbert

Subject: Covenant KX12779 on K.D. Lot 39 and Covenant KX12779 K.D. Lot 781

Dear Krista:

Alva and Holly are NOT making an application for a subdivision on either of these titles. We are simply asking the ALC to remove the covenants from the titles. These covenants were put on 14 years ago and believe they no longer apply. These titles have been in our family for four generations, going into the fifth. They have always had animals and crop production on them. My husband, Gordon passed away in March 2019. Holly and family and myself fully intend to carry on with the farming of this land.

Please advise us if RDEK will be involved with our request of the ALC to remove these covenants. If so, what further information would you require, please call Alva 250 489 0878 or Holly 250 421 1040. We look forward to your reply.

Respectfully,



P.S. I had spoken to Tracy VanderWiel on the phone May 3<sup>rd</sup> and she would be glad to discuss this further with you.

Alva Soppit  
450 Wardner RD  
Fort Steel BC  
VOB 1N0  
May 10 2019

Regional district of East Kootenay  
Cranbrook BC

Dear Krista

Thank you for your response to my letter dated May 7 2019.  
As per our conversation on that day, Please note that both  
Holly and I are requesting an Agrologist exemption for having  
an Agrologist report done on our property.

As was written in my letter <sup>to</sup> you, we are only requesting the ALC  
to remove those covenants.

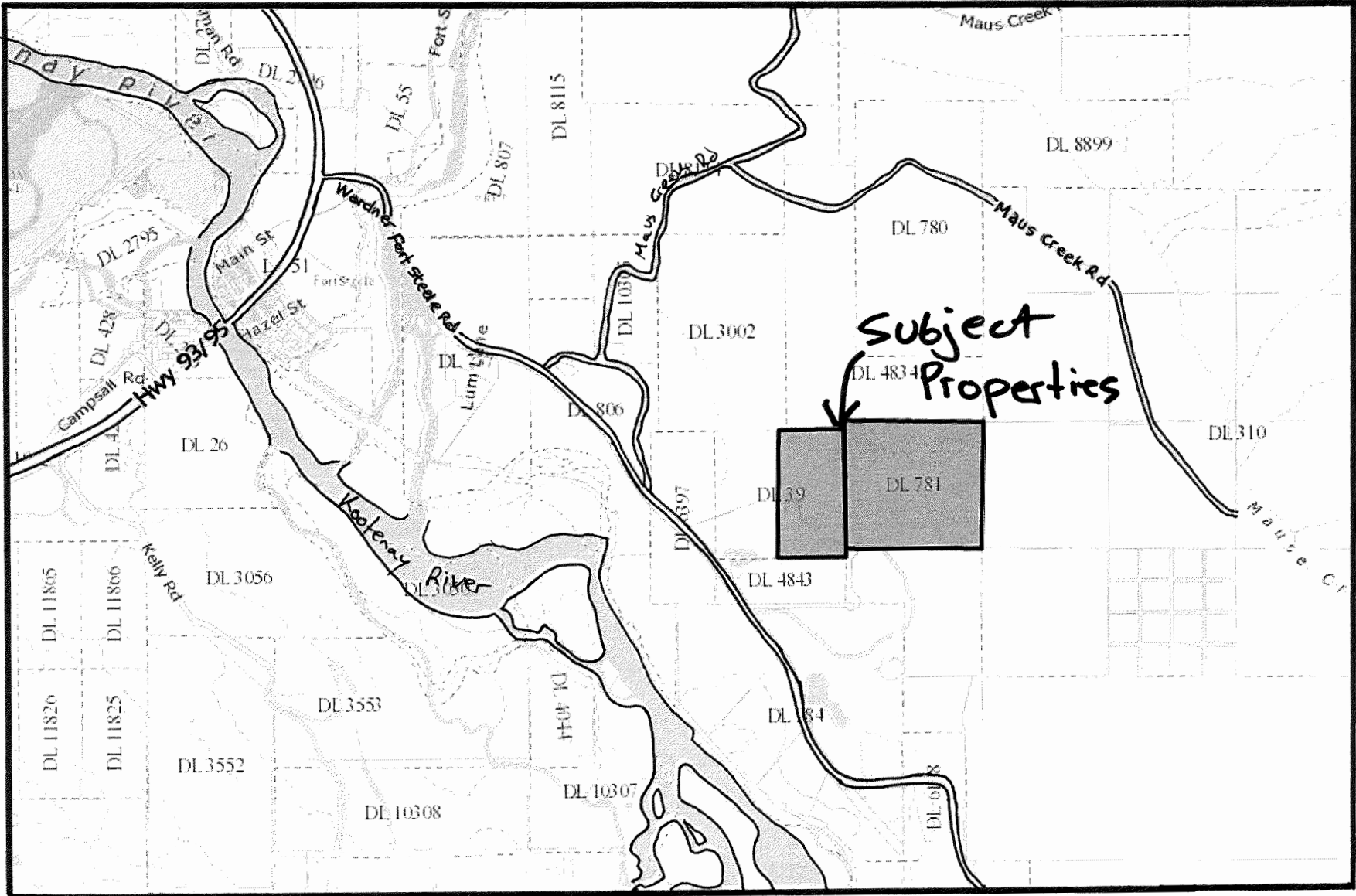
Any further advice or comments you could offer would be  
greatly appreciated.

Respectfully



Alva Soppit

Location Map



51  
28 2005 14

KX012780-1 FEB 2005 11. 22

KX012779  
C U15 P10  
C U15 P10

**LAND TITLE ACT  
FORM C  
(Section 233(1))  
PROVINCE OF BRITISH COLUMBIA  
GENERAL INSTRUMENT - PART 1**

01 05/02/01 14:32:36 01 KL 805273  
CHARGE \$129.50

Page 1 of 8 pages

**1. APPLICATION: (Name, address, phone number and signature of applicant,  
applicant's solicitor or agent)**

KELLE M. MAAG LAW CORPORATION,  
20 - 11th Avenue South  
Cranbrook, B.C. V1C 2P1  
426-5508 (Client #10778)

*Kelle Maag*  
Signature of applicant, applicant's  
solicitor or agent

**2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:  
(PID) (LEGAL DESCRIPTION)**

016-390-610 ✓  
016-390-636 ✓

District Lot 781 Kootenay District ✓  
That Part of District Lot 39 Kootenay District Lying East of a Line  
Which Bisects the Northerly and Southerly Boundaries Thereof ✓

**3. NATURE OF INTEREST:**

Description	Document Reference (page and paragraph)	Person	Entitled	to	Interest
-------------	--	--------	----------	----	----------

See Schedule

**4. TERMS: Part 2 of this instrument consists of (select one only)**

- |     |                             |          |                                       |
|-----|-----------------------------|----------|---------------------------------------|
| (a) | Filed Standard Charge Terms | —        | D.F. No.                              |
| (b) | Express Charge Terms        | <u>X</u> | Annexed as Part 2 ✓                   |
| (c) | Release                     | —        | There is no Part 2 of this instrument |

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in Item 2.

**5. TRANSFEROR(S):**

ALVA MARIE SOPPIT and GORDON LOUIS SOPPIT (As to Covenant)  
HSBC BANK CANADA (As to Priority)

**6. TRANSFEREE(S): (including postal address(es) and postal code(s))**

AGRICULTURAL LAND COMMISSION, a corporation created by an act of the legislature of the Province of British Columbia, having an office at 4940 Canada Way, Burnaby, B.C. V5G 4K6

KAMLOOPS  
AGENT #10688  
Gillespie Renkema  
Barnett Broadway

7. ADDITIONAL OR MODIFIED TERMS: Nil

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature

Execution Date  
Y M D

Party(ies) Signature(s)




04/11/13

  
Alva Marie Soppit

As to both signatures

KELLE M. MAAG  
Barrister & Solicitor  
20 - 11th Avenue South  
Granbrook, B.C. V1C 2P1

  
Gordon Louis Soppit

Officer Signature

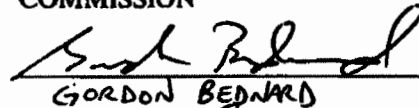
Execution Date  
Y M D

Party(ies) Signature(s)




04/11/24

AGRICULTURAL LAND  
COMMISSION

  
GORDON BEDNARD

As to all signatures

BRIAN UNDERHILL  
Commissioner for Taking Affidavits  
#133 - 4940 Canada Way  
Burnaby, B.C. V5G 4K6

  
COLIN FRY, AUTHORIZED SIGNATORY OF THE  
PROVINCIAL AGRICULTURAL LAND COMMISSION

OFFICER CERTIFICATION:


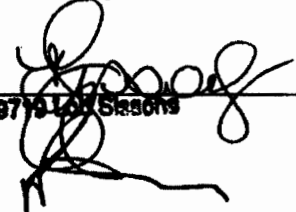
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.



Land Title Act

**FORM D  
EXECUTIONS CONTINUED**

Page 3

Officer Signature(s)	Execution Date (Y/M/D)	Party(ies) Signature(s)
 As to both signatures <b>KELLE M. MAAG</b> Barrister & Solicitor 20 - 11th Avenue South Cranbrook, B.C. V1C 2P1	<u>2004/11/15</u>	<b>HSBC BANK CANADA</b> by its authorized signatory(ies):  <u>9799107/5180818</u> [Signature]

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**Land Title Act****FORM E  
SCHEDULE**

---

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

**3. NATURE OF INTEREST:**

<b>Description</b>	<b>Document Reference (page and paragraph)</b>	<b>Person Entitled to Interest</b>
<b>Restrictive Covenant pursuant to Section 19 of the <u>Agricultural Land Commission Act</u></b>	<b>Entire Document</b>	<b>Transferee</b>
<b>Priority Agreement granting Covenant priority over Mortgage KW15767 extended by KW162182</b>	<b>Page 7</b>	<b>Transferee</b>

**TERMS OF INSTRUMENT - PART 2****WHEREAS:**

A. The Transferor is the registered and beneficial owner of certain lands situate, lying and being in the East Kootenay Assessment Area, Province of British Columbia, being more particularly known and described as:

P.I.D.

016-390-610	District Lot 781 Kootenay District
016-390-636	That Part of District Lot 39 Kootenay District Lying East of a Line Which Bisects the Northerly and Southerly Boundaries Thereof

(the "Lands")

B. Alva Marie Soppit ("Soppit") and Timothy Alan Fox ("Fox") wish to subdivide District Lot 284, Kootenay District Except: (1) Part Included in RW Plan DD 15976 and (2) Plans 7825 and 17453 ("District Lot 284") pursuant to the plan of subdivision prepared by Frank R. Maag, British Columbia Land Surveyor, completed on the 12<sup>th</sup> day of October, 2004 (the "Subdivision Plan");

C. All of the Lands and District Lot 284 consist of agricultural land situated in the Agricultural Land Reserve of the Regional District of East Kootenay (the "Regional District") and are subject to the provisions of the Agricultural Land Commission Act (the "Act") and the Regulations thereto;

D. Soppit and Fox wish to subdivide District Lot 284 by depositing in the Land Title Office a subdivision plan (the "Subdivision Plan"), a true copy of which is attached hereto as the first schedule;

E. Soppit and Fox have applied to, or caused an application to be made to the Transferee for authorization to subdivide District Lot 284;

F. The Transferee is empowered to authorize the deposit of the Subdivision Plan and to impose terms it considers advisable pursuant to the Act and Regulations thereto; and

F. The Transferee, by execution of this Indenture, has authorized the Registrar of Titles to accept the deposit of the Subdivision Plan in the Land Title Office at Kamloops, British Columbia, upon the terms and conditions considered advisable by the Transferee and which are set out below, and the Transferor and HSBC Bank Canada (the "Mortgagee") have agreed below to the imposition of these terms and conditions and to the execution and registration of this Indenture.

Page 6

THEREFORE in consideration of the premises and the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Transferee to the Transferor and the Mortgagee, the receipt of which is hereby acknowledged, and other good and valuable consideration the parties covenant and agree as follows:

1. In this Indenture the following definitions shall apply where the context allows:
  - a. "enactment" means an enactment as defined in the Interpretation Act of Canada and an enactment as defined in the Interpretation Act of British Columbia;
  - b. "transfer" includes a conveyance, a grant, an assignment, and a grant of leasehold interest;
  - c. "transferee" includes a grantee, an assignee, and a lessee.
2. The Transferor shall not transfer the Lands separately and shall only transfer the Lands collectively to the same transferee. ✓
3. The covenants in this Indenture shall be covenants running with the Lands and shall be binding on the successors in title and assignees of the Lands.
4. The Transferor covenants with the Transferee that the Transferor has done no acts to charge or encumber the Lands, save for Mortgage KW15767 extended by KW162182 in favour of the Mortgagee.
5. The Lands shall remain in the Agricultural Land Reserve of the Regional District and remain subject to the provisions of the Act and the Regulations thereto.
6. The Transferee hereby authorizes the Registrar of Titles to accept the application for deposit of the Subdivision Plan.
7. The authorization given by the Transferee to the Registrar of Titles to accept an application for deposit of the Subdivision Plan shall in no way relieve the Transferor, his successors in title and assigns of the Lands, or any user or occupier thereof, from complying fully with any law or enactment or the decisions, directions, rulings or orders of the Transferee or of any other body, commission, tribunal or authority whatsoever which may apply to the Lands.
8. The Transferor and the Mortgagee will, upon the request of the Transferee, make do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, documents, and assurances whatsoever as may be necessary or desirable for the better and more perfect and absolute performance of the grants, covenants, provisos and agreements herein.
9. This Indenture shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto.
10. Words importing male gender, including the female gender and either includes the neuter and vice versa and words importing the singular number include the plural number and vice versa.

**HSBC Bank Canada**  
**Holder of a Mortgage registered under number KW15767 extended by KW162182**

**CONSENT AND PRIORITY**

**WHEREAS** by an instrument registered in the Land Title Office at Kamloops, British Columbia on the 10<sup>th</sup> day of February, 2004, under number KW15767 extended by number KW162182, HSBC Bank Canada (the "Mortgagee") was granted a Mortgage in respect of the Lands described in the attached Covenant ("the Subsequent Charge").

**AND WHEREAS** the Mortgagee consents to and agrees that the Subsequent Charge shall have priority over the Mortgage.

**THEREFORE** in consideration of One Dollar (\$1.00) (the receipt of which is hereby acknowledged), the Mortgagee hereby approves of, joins in, consents to and grants to the Transferee priority over the interest of the Mortgagee in the Lands and postpones the right, title and interest of the Mortgagee in the Lands to the Transferee with the intent that the interest of the Mortgagee in the Lands shall be wholly subject to the rights and interests of the Transferee under the Subsequent Charge to the same effect and extent as if the Subsequent Charge had been dated, executed, delivered and registered before the Mortgage.

**IN WITNESS WHEREOF** this Consent has been executed in Item 8 of Form D -- Part 1 of this Instrument.

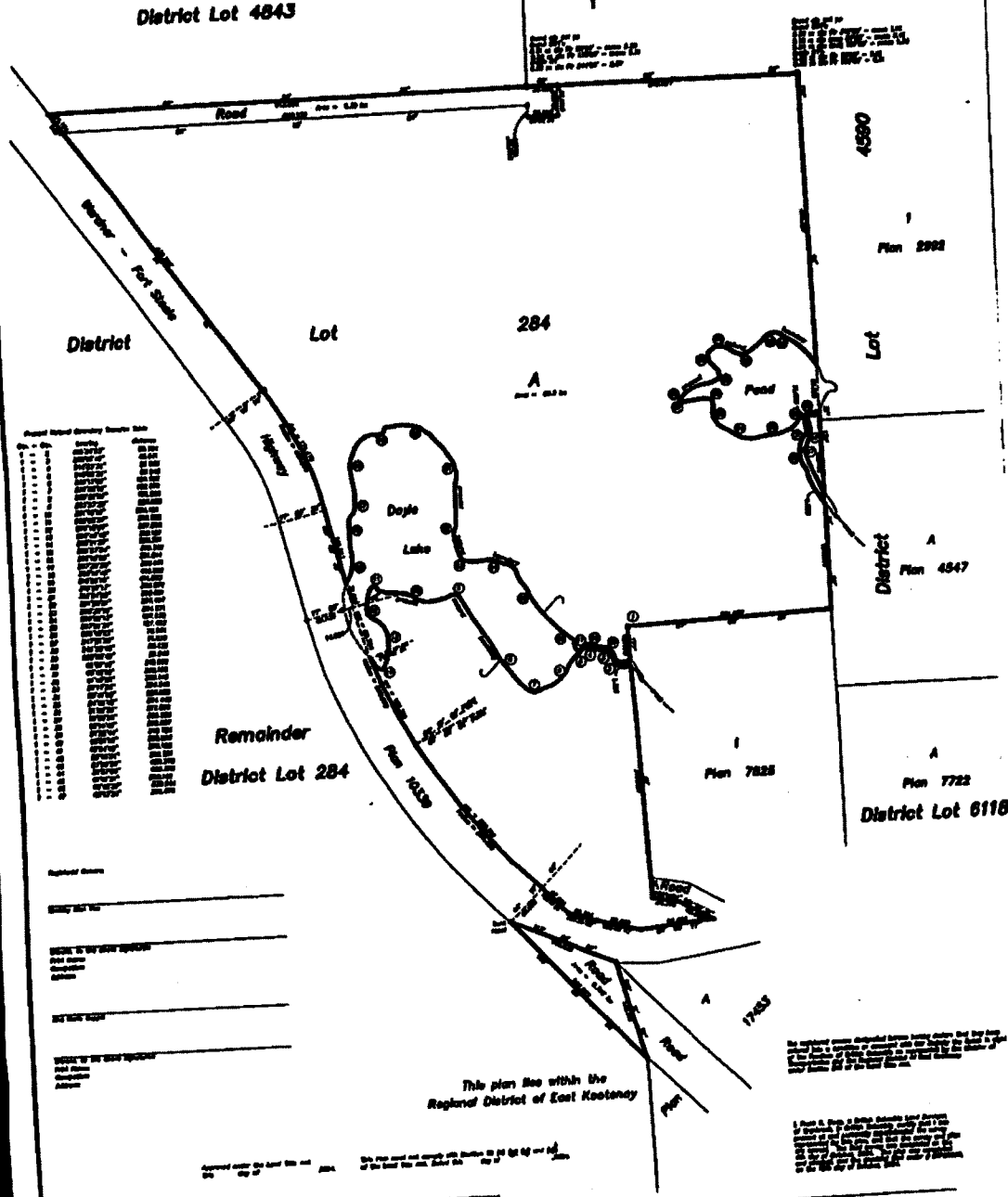
Subdivision Plan of Part of District Lot 284, Kootenay District, except (1) Part included in RW Plan DD 15978, and (2) Plans 7825 and 17453.

Scale 1:2500 S.C.O.E. 820.033

- Legend
- Centre of road or canal
  - Centre of road or canal
  - Centre of road or canal
  - Centre of road or canal

Plan NEP  
No. 1000

District Lot 4843



Actual Road Boundary Survey Data

1	100.00	100.00
2	100.00	100.00
3	100.00	100.00
4	100.00	100.00
5	100.00	100.00
6	100.00	100.00
7	100.00	100.00
8	100.00	100.00
9	100.00	100.00
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37	100.00	100.00
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91	100.00	100.00
92	100.00	100.00
93	100.00	100.00
94	100.00	100.00
95	100.00	100.00
96	100.00	100.00
97	100.00	100.00
98	100.00	100.00
99	100.00	100.00
100	100.00	100.00

Registered Plans

Survey Act No.

SECTION TO BE SUBMITTED

DATE

DATE

SECTION TO BE SUBMITTED

DATE

DATE

SECTION TO BE SUBMITTED

DATE

DATE

This plan lies within the Regional District of East Kootenay

The survey of the land shown hereon was made by the Surveyor General of British Columbia on the 10th day of August 1900 and the same was registered in the office of the Registrar of Titles on the 10th day of August 1900.

A Plan A, Part of District Lot 284, Kootenay District, except (1) Part included in RW Plan DD 15978, and (2) Plans 7825 and 17453, is hereby approved for registration in the office of the Registrar of Titles.

Approved under the Land Act on the 10th day of August 2005.

By the Registrar of Titles.

END OF DOCUMENT



## Transportation & Infrastructure Referrals

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Date: May 27, 2019  
File: P 201 400

- Applicant:** Cindy and Nick Postnikoff
- Location:** An unconstructed portion of Regan Road in the Meadowbrook area, east of Kimberley
- Legal:** The portion of Regan Road adjoining the Remainder of Lot 2, Plan NEP87478
- Proposal:** Application to close a 0.98 ha unconstructed section of Regan Road.
- Options:**
1. THAT the Ministry of Transportation and Infrastructure be advised the RDEK supports the Postnikoff application for proposed closure of a portion of an unconstructed portion of Regan Road in the Meadowbrook area east of Kimberley.
  2. THAT the Ministry of Transportation and Infrastructure be advised the RDEK does not support the Postnikoff application for proposed closure of an unconstructed portion of Regan Road in the Meadowbrook area east of Kimberley.
- Recommendation:** **Option # 1**  
Despite the OCP policy not supporting closure of undeveloped road R/W, in this situation, a new road will be established to access a previously landlocked parcel.

- 
- Property Information:**
- OCP Designation:** LH, Large Holdings
- OCP Policies:**  
Applications for closure of undeveloped road right of way within the Meadowbrook subarea will not generally be supported.
- Zoning Designation:** RR-2, Rural Residential (Small Holding) Zone
- Parcel Size:** Area affected: 0.98 ha (2.4 ac)
- Density:** N/A
- ALR Status:** The subject area is not within the ALR.
- Interface Fire Hazard Rating:** Low to high, not within a fire protection area
- Flood Hazard Rating:** The subject area is not designated as being within a floodplain or a special policy area for flooding.

**Property  
Information –  
cont'd:**

**BC Assessment:** Residential (SFD)

**Water / Sewer Services:** Onsite

**Additional  
Information:**

A 5-lot subdivision is proposed where-in part of the proposed closed road will be created as a common lot for access pursuant to BC Regulation 334/79. As part of the same subdivision, Regan Road is proposed to be rededicated in northerly direction along the westerly boundary of the subdivision.

**Consultation:**

**APC Area E:** The Commission recommends support for the road closure subject to the MoTI contacting surrounding land owners and considering their concerns.

**Documents  
Attached:**

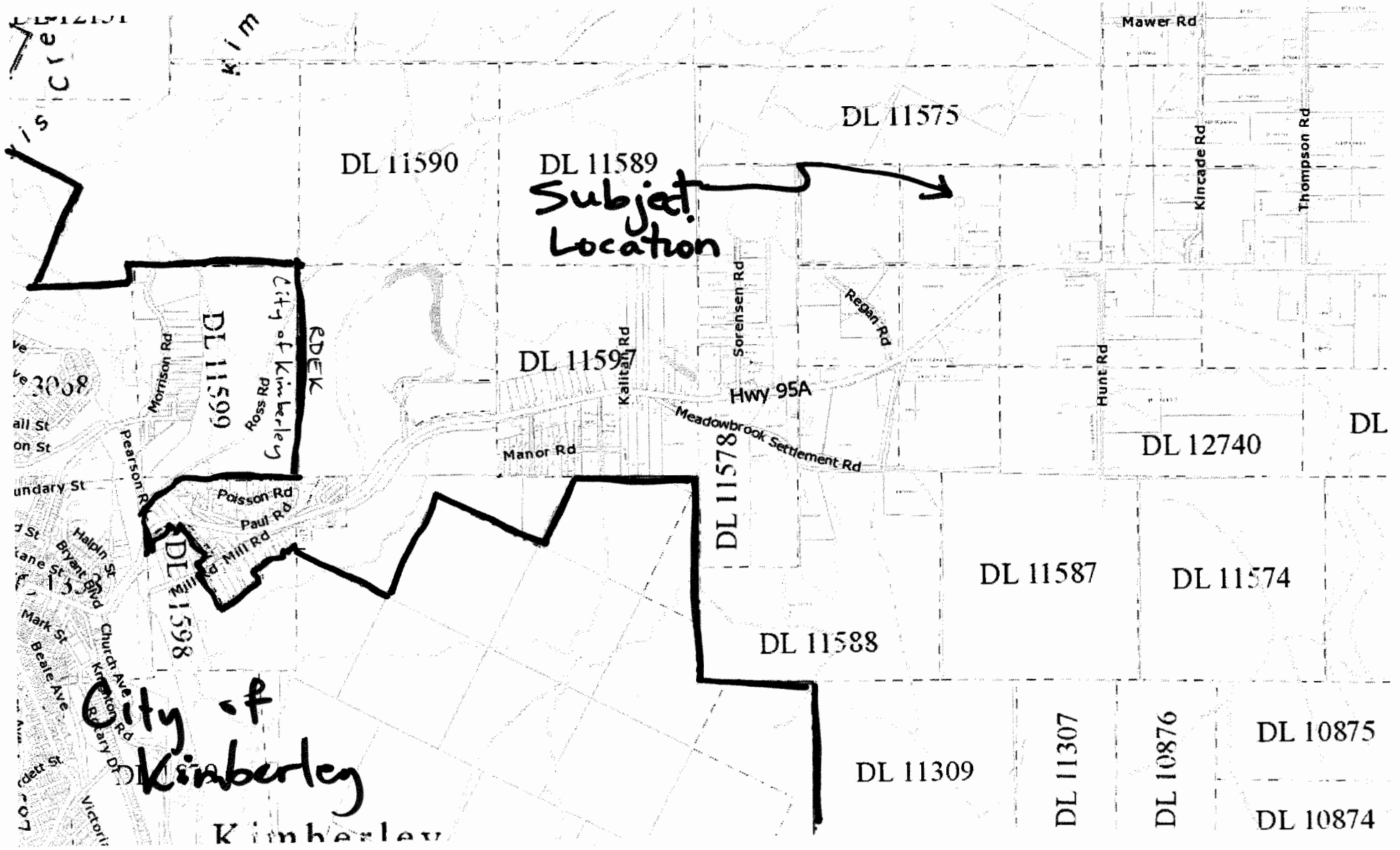
- Location Map
- Sketch showing proposed closure area

**RDEK  
Contact:**

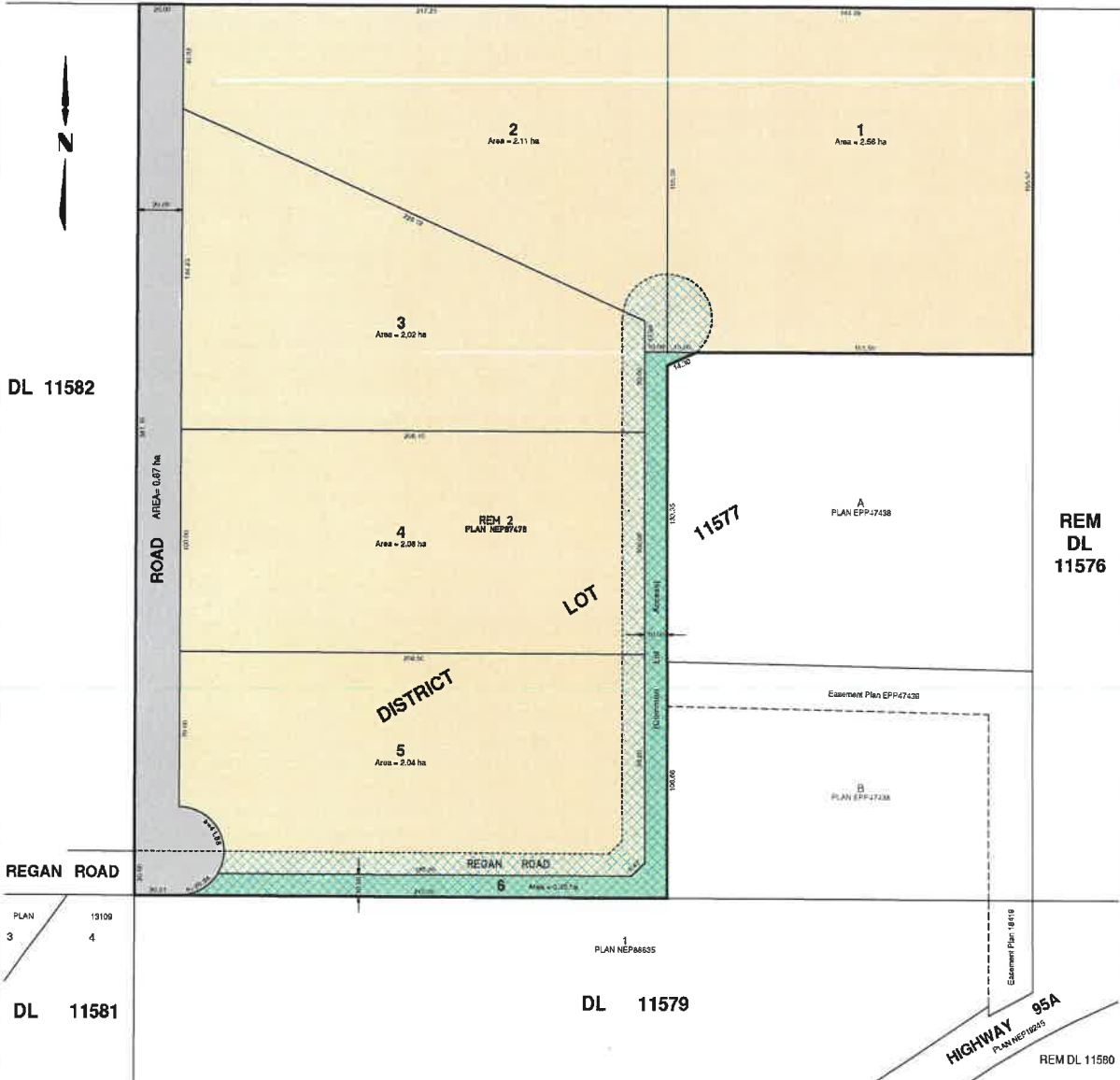
Tracy Van de Wiel, Planning Technician  
Phone: 250-489-0306  
Email: [tvandewiel@rdek.bc.ca](mailto:tvandewiel@rdek.bc.ca)



# Location Map



PART DL 11575



- LEGEND**
- ROAD TO BE CLOSED
  - ROAD TO BE DEDICATED
  - FEE SIMPLE LOTS
  - COMMON LOT ACCESS

- NOTES**
1. Regan Road to be closed prior to subdivision, Total area for closure = 0.98 ha
  2. Lots A and B, Plan EPP47438 accessed from Highway 95 by easement. See document CA4241726 (Plan EPP47439) and document XC13711 (Plan 18419)

**N. & C. POSTNIKOFF**  
 PROPOSED SUBDIVISION OF LOT 2 DISTRICT LOT 11577  
 KOOTENAY DISTRICT PLAN NEP87478 EXCEPT PLAN EPP47438  
 AND LOTS A AND B DISTRICT LOT 11577 KOOTENAY DISTRICT  
 PLAN EPP47438

**PROPOSED SUBDIVISION PLAN**

FEBRUARY 14, 2019



The intended plot size of this plan is 560mm in width by 660mm in height (D size) when plotted at a scale of 1:1000.  
 All distances are in metres and decimals thereof.

\* All lot areas and dimensions are preliminary and subject to change upon final approvals from the owner/developer and applicable government agencies.

