

**REGIONAL DISTRICT OF EAST KOOTENAY**

**BYLAW NO. 2676**

A bylaw to adopt an Official Community Plan for the Toby Benches area.

WHEREAS the Board of the Regional District of East Kootenay deems it necessary to adopt an official community plan in order to ensure orderly development within a portion of Electoral Areas F and G.

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

**1. Title**

This Bylaw may be cited as the “Regional District of East Kootenay – Toby Benches Official Community Plan Bylaw No. 2676, 2016”.

**2. Application**

This bylaw is applicable to all land within the boundaries of the Toby Benches Official Community Plan as shown on **Schedule B**.

**3. Organization**

The following attached schedules are incorporated into and form part of this Bylaw:

- (a) Schedule A – Policies
- (b) Schedule B – Plan Area
- (c) Schedule C – Agricultural Land Reserve
- (d) Schedule D – Land Use
- (e) Schedule E – Development Permit Area #1 – Wildfire Hazard
- (f) Schedule F – Development Permit Area #2 – Environmentally Sensitive Area
- (g) Schedule G – Slope Analysis
- (h) Schedule H – Ungulate Winter Range
- (i) Schedule I – Badger Habitat
- (j) Schedule J – Columbia Valley Irrigated Fruit Lands Company Irrigation Works

**4. Severability and Enactment**

If any section, subsection, sentence, clause, phrase, map or schedule of this Bylaw is for any reason held to be invalid by the decision of any court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder.

The Planning & Development Services Manager, Building & Protective Services Manager and Compliance Officer, and any person authorized to assist the aforementioned persons, are authorized to administer this Bylaw.

This Bylaw shall come into full force and effect on the final adoption thereof.

READ A FIRST TIME the 8<sup>th</sup> day of April, 2016.

READ A SECOND TIME the 8<sup>th</sup> day of April, 2016.

READ A THIRD TIME the 6<sup>th</sup> day of May, 2016.

ADOPTED the 6<sup>th</sup> day of May, 2016.

*“Rob Gay”*

CHAIR

*“Shannon Moskal”*

CORPORATE OFFICER

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## SCHEDULE A – POLICIES

### 1. INTRODUCTION

#### 1.1 Administration

The Toby Benches Official Community Plan (OCP) is a long term strategic planning document intended to:

- reflect the collective vision of the plan area for the future;
- guide and direct land use decision making with respect to the change or conservation of land uses; and
- help create the conditions necessary for the orderly and efficient use of the community land base.

The OCP will be used and administered by the Board of Directors and Staff of the Regional District of East Kootenay (RDEK) to evaluate all future development proposals and changes in land use within the plan area. This OCP does not commit the RDEK to specific projects or courses of action; however, all decisions made by the RDEK must be consistent with the plan.

The OCP is intended to provide guidance on land use and development issues within the plan area for a five to fifteen year period. During that time, however, the OCP may be amended to respond to a change in the needs of the community. Amendments may be initiated either by a property owner or the RDEK. All proposed amendments are subject to an application process, public hearing and approval by the RDEK Board.

Once the OCP is adopted it will provide the Board with a planning framework and guidelines to promote certainty in land use decision making. In approving the OCP, the RDEK Board has considered the interests of the individual landowners and residents within the plan area and balanced those interests with the needs of the community and region as a whole.

#### 1.2 Legal Framework

The OCP is adopted pursuant to the provisions of the *Local Government Act*, which states:

*An official community plan is a statement of the objectives and policies to guide decisions on land use planning and land use management, within the area covered by the plan, respecting the purposes of local government.*

In addition, an OCP must contain policy statements and map designations respecting the following:

- Residential development and housing needs over a period of at least five years;
- Commercial, industrial, institutional and other types of land uses;
- The location and area of sand and gravel deposits suitable for future extraction;
- Restrictions on the use of environmentally sensitive and hazardous lands;
- The approximate location and phasing of any major road and infrastructure systems;
- The location and type of present and proposed public facilities; and
- Targets, policies and actions for the reduction of greenhouse gas emissions.

Land use and development within the plan area is also subject to all relevant local, provincial and federal legislation and regulations.

#### 1.3 Plan Policies and Map Designations

The OCP contains goals, objectives and policies to provide direction for how the plan area should develop over time. The goals and objectives identify the land use issues and community vision. The policies address the issues and implement the vision. Policy statements are developed based on the consideration of balancing private and public interests. The policies within the OCP become the official position of the RDEK.

Schedules attached to the OCP reflect the community's land use values and contain the map designations. The map designations apply the goals, objectives and policies identified within the plan area to each parcel to depict the desired range and pattern of future land use.

#### **1.4 Plan Process**

The RDEK Board of Directors authorized the Toby Benches OCP planning process in January of 2015. The Toby Benches OCP replaces the 1998 Toby Benches Land Use Strategy, which at the time was the oldest RDEK land use strategy in use. The update was warranted in order to replace the land use strategy, which lacks the authority of an OCP adopted by bylaw, and to update land use policies to reflect current issues, concerns and values within the Toby Benches area.

In February 2015, a newsletter and questionnaire were sent to area residents and property owners to initiate the Toby Benches planning process. The newsletter and questionnaire were also available online through the RDEK website. In March 2015, an introductory meeting was held. This meeting included a short presentation outlining the project background, stages and objectives. Meeting participants were given the opportunity to identify community assets, concerns, and a preliminary vision for the area. In June 2015, a visioning workshop was held where area residents helped identify a vision for future development in the Toby Benches. During this workshop session residents discussed objectives and policies that were potential items for inclusion in the OCP. In July 2015, the Toby Benches Society held their AGM and extended an invitation to Electoral Area Directors and Planning staff involved in the preparation of the OCP. This was an opportunity for candid discussion about the process and relevant planning issues and a chance to collect feedback on objectives and policies related specifically to residential development. The initial draft of the OCP was compiled over the summer and fall of 2015.

The draft OCP was presented at a public open house on January 13, 2016. The draft was also presented to relevant stakeholders. Revisions were made to the draft OCP in response to feedback received from the public, stakeholders and the District of Invermere prior to entering the bylaw process.

#### **1.5 Relationship to Zoning Bylaw**

The land use designations contained within the OCP were assigned based on the goals, objectives and policies outlined within the OCP and in consideration of the current land uses. However, the land use designations may not match a parcel's zoning within the Upper Columbia Valley Zoning Bylaw. This is because the OCP is a long range strategic planning document that identifies the preferred future land use, while the zoning bylaw usually recognizes the current land use. Development of the parcel may continue in accordance with the zoning of the property; however, any amendment to the zoning must be in conformity with the land use designation in the OCP.

#### **1.6 Plan Area**

The plan area is located in southeastern British Columbia. As the name suggests the Toby Benches is located on a natural bench, west of the Columbia Valley on the eastern flanks of the Purcell Mountains. The community of Wilmer is located adjacent to the northeast corner of the plan area, Toby Creek Canyon forms the southern boundary, the western boundary extends towards Mount Bruce, and the east side of the plan area is defined by the top of the natural bench. The boundary of the plan area is shown on **Schedule B**. Two Subareas have been identified within the Toby Benches Plan area. These areas include:

##### **(1) Toby Creek Road**

This area include properties adjacent to Toby Creek Road, extending from the westerly intersection with Clover Road to Bear Mountain Road. This area has been subject to limited development pressure through subdivision of rural residential properties and supports higher residential density than other parts of the Toby Benches. Open agricultural land, the Toby Creek Canyon and adjacent Crown land trails characterize this subarea.

##### **(2) Toby Hill Road**

Properties that lay to the east of Toby Hill Road form this subarea. This area has been subject to some development pressure through subdivision of rural residential properties. This area is characterized by rolling forested terrain with occasional openings providing panoramic views of the Toby Benches and Columbia Valley.

## **2. AREA HISTORY AND BACKGROUND**

### **2.1 History**

First Nations people have inhabited the area for over 10,000 years.. The natural landscape provided food, medicine, shelter and clothing for the first inhabitants as they followed seasonal vegetation and animal cycles throughout their territories.

In the spring of 1807, David Thompson led an expedition for the North West Company over the Rockies in order to expand trade routes and to find a navigable passage to the west coast. David Thompson and his party established the Kootenae House near present day Wilmer, as a trading post for the Ktunaxa and as a base for exploring the Columbia Basin. The Kootenae House is recognized as a National Historic Site of Canada.

In the early 1900's, cattle from the Windermere ranges were driven through the Toby Benches, over Jumbo Pass and down Glacier Creek to abattoirs that serviced the Lardeau mining boom.

By 1910, the settlement company Columbia Valley Irrigated Fruitlands marketed the Toby Benches as a fruit growing region that was closer to the prairie markets than the Okanagan. Irrigation water was to be delivered to the Toby Benches from Boulder Creek by an impressive series of hand dug ditches and flumes used to span valleys. However, the irrigation system was not operational until 1913, leaving the early settlers without irrigated land. The lack of water was not the only hardship early settlers faced. Upon arrival they were greeted by the realization that the rocky soils would not support the productive orchards as they had been promised and were lucky to grow enough food for subsistence, let alone for selling to market. With the tenacity and resiliency synonymous of early settlers, new residents of the Toby Benches switched to mixed farming at a subsistence level.

With the onset of the First World War in 1914, many of the early settlers volunteered for service or returned to their regiments and never returned to the Toby Benches. This interfered with the settlement of the Toby Benches and eventually the Columbia Valley Irrigated Fruitlands Company returned their unsold parcels to the Crown.

Mixed farming, Christmas tree harvesting and cattle grazing occurred on the Toby Benches through the latter part of the 1900`s and carry on to some extent today.

In 1915 the Kootenay Central Railroad was completed and in 1923 the Banff-Windermere highway opened, making the Columbia Valley fully accessible by road and rail.

The patchwork of Crown and private land created when the Columbia Valley Irrigated Fruitlands Company returned their unsold holdings to the Crown has created the pattern of wide open spaces alternating with relatively large holdings that is seen on the Toby Benches today.

### **2.2 Recent Development**

The Columbia Valley has experienced significant growth in recent years. Much of this growth occurs in the residential area of Windermere to the southeast and at the Panorama Mountain Village ski resort. Despite the development activity occurring elsewhere in the Columbia Valley, the Toby Benches has retained its rural character with only 12 new parcels being created in the last decade.

### **2.3 Rural Area Plans and Studies**

#### **Upper Columbia Valley Zoning Bylaw (1992)**

The Upper Columbia Valley Zoning Bylaw is the regulatory tool used by the RDEK to establish specific development provisions for individual parcels of

land in the rural area. The zoning bylaw establishes permitted uses, development density and parcel size, and other development controls such as building setbacks, building height and parking.

**Toby Benches Land Use Strategy (1998)**

The Toby Benches Land Use Strategy was undertaken to provide policies that would guide land use decisions for the Toby Benches. Even though it was adopted in 1998, many policies remain relevant and reflect the residents vision for development in the Toby Benches.

**Regional Sustainability Strategy (2014)**

The Regional Sustainability Strategy (RSS) was adopted in October 2014. The RSS provides the RDEK with a wide ranging, long term planning tool. It equips the region with a “sustainability lens” to guide and evaluate operations and decision-making. It also provides the RDEK with a single overarching reference point for its activities, including future planning and priority setting processes.

**RDEK Agricultural Plan (2014)**

In 2014, the RDEK Agricultural Plan was developed as a collaborative process involving consultation with local residents, government agencies and local stakeholders.

The initial phase involved a comprehensive Agricultural Land Use Inventory of land use and land cover within the ALR utilizing the Ministry of Agriculture, Strengthening Farming Program protocol. The second phase included consultation and engagement activities, development of the RDEK Agricultural Plan Background Report and creation of the Plan. The Plan contains strategies to foster, adapt and sustain the long term viability of farming in the region.



### 3. GOALS OF THE OFFICIAL COMMUNITY PLAN

The following goals have been developed to reflect the values and interests identified through the planning process. The major goals of the Official Community Plan (OCP) are:

1. Protect the integrity and quality of Lake Lillian, Lake Eileen, Toby Creek and all other surface water resources.
2. Consider the availability of water resources when determining appropriate locations for future development so as to not compromise existing water resources.
3. Maintain the rural character of the plan area by supporting development that is consistent with the existing residential fabric and respects a diversity of lifestyles, continuation of agricultural practices and access to recreational activities.
4. Encourage and support agriculture in the plan area through the protection of agricultural land and resources and promotion of opportunities for local food production, diversification and value added agricultural activities.
5. Establish criteria under which applications for exclusion, subdivision and non-farm use of land in the ALR may be supported by the RDEK.
6. Direct commercial and light industrial activities to municipalities and resort areas outside of the Toby Benches.
7. Consider institutional and community land uses appropriate to the needs of area residents.
8. Promote opportunities for connectivity and the creation of a pedestrian friendly environment through the development of a non-motorized trail network within and between new developments, existing developed areas and existing communities.
9. Encourage the creation of a recreation and trails master plan for Crown land which considers the feasibility of new trail construction in the context of existing local and regional trail assets, environmental impacts and effects of recreation on private landowners.
10. Maintain a high level of public safety through mitigating risks to life and property from flooding, wildfire and landslip.
11. Encourage opportunities for improvements to the road network and the integration of alternative modes of transportation.
11. Recognize and conserve cultural resources and archaeological sites located within the Toby Benches, both recorded and unrecorded. Development activities will comply with heritage conservation legislation.
12. Reduce greenhouse gas emissions created within the plan area in order to mitigate the impacts of climate change.
13. Encourage the management of Crown land to fully consider a range of environmental, resource, cultural and recreational assets.
14. Recognize the risk of interface fire hazards within the plan area and establish Development Permit guidelines to mitigate the risk.
15. Recognize environmentally sensitive areas and the animal and plant species that rely on these ecosystems and establish Development Permit guidelines to protect the natural environment.

## 4. RESIDENTIAL LAND USE

### 4.1 Background

The plan area encompasses a range of residential land uses. Single family housing options are available throughout the plan area, ranging in size from small holdings around Lake Lillian to large holdings in the rural areas. Throughout the consultation process, residents of the Toby Benches expressed a strong desire to direct any multi-family development to nearby municipalities and resort areas. Within the Toby Benches, 64% of the land is within the ALR and 56% is Crown land. This open space landscape contributes greatly to the rural character of the Toby Benches.

In consideration of accommodating options for limited growth, some areas within the Agricultural Land Reserve (ALR) have been supported for subdivision; this is the position of the RDEK and does not reflect the position of the Agricultural Land Commission (ALC). Applicants wishing to subdivide land within the ALR for a relative should be aware that the ALC is not subject to the *Local Government Act*, nor does the ALC believe that encouraging small lot subdivision is supportive of agriculture and consistent with the ALC mandate to preserve agriculture and encourage farming. Policies stating support for subdivision of land for a relative within the ALR are the policy of the RDEK only.

### 4.2 Objectives

- (1) Maintain minimum parcel sizes that reflect the rural lifestyle and character of the area.
- (2) Maintain the rural and agricultural nature of the plan area by only considering new residential proposals if they are appropriately located and compatible with adjacent land uses so as not to compromise environmental and agricultural values.
- (3) Manage residential growth in a way that protects the existing quality of life for rural residents and minimizes negative environmental impacts.
- (4) Manage residential growth in a way that contributes to the preservation of the environmental quality of Lake Lillian, Lake Eileen and Toby Creek Canyon.

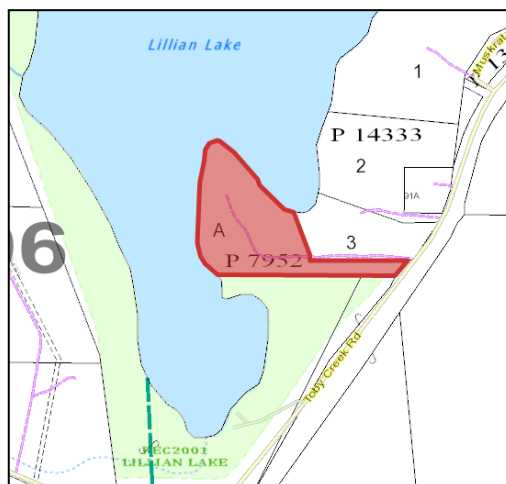
### 4.3 Policies

#### (1) General

- (a) Except as noted in subsections 4.3(1)(d) and (e), the minimum parcel size generally supported for subdivision in the Toby Benches is 8 ha.
- (b) In addition to the policies identified for specific Subareas within subsections 4.3(1)(d) and (e), all rezoning applications within the plan area will be reviewed on an individual basis in relation to the following considerations:
  - (i) compatibility of the proposed lot size and density with existing and surrounding land uses, parcel sizes, local rural character and lifestyle;
  - (ii) the capability to provide onsite sewage disposal in accordance with provincial requirements;
  - (iii) potential impacts of the proposal on the quality and quantity of existing groundwater resources;
  - (iv) integration of the Conservation Subdivision Design provisions outlined in subsection 4.3(1)(h);
  - (v) identification and mitigation of development impacts on environmentally sensitive areas including grasslands, connectivity corridors, wetlands and riparian areas and

mountain goat habitat, in accordance with Section 10 of this OCP concerning environmental considerations;

- (vi) susceptibility to natural and geotechnical hazards and integration of hazard mitigation strategies, in accordance with Section 11 of this OCP concerning development constraints; and
  - (vii) for land located within the ALR, potential impacts or benefits of the proposed subdivision on the agricultural capability and suitability of both the parcel proposed for subdivision and on neighbouring parcels.
- (c) Rezoning applications are encouraged to include a commitment to register on title a restrictive covenant or statutory building scheme directing the construction of buildings away from the centre of parcels and towards the corners of parcels to enable potential future subdivision of the parcel and maintain open space.
  - (d) Despite subsection 4.3(1)(a), rezoning to accommodate subdivision of parcels adjacent to Toby Creek Road subarea (shown on **Schedule D**) to a minimum parcel size of 2 ha is supported.
  - (e) Despite subsection 4.3(1)(a), rezoning to accommodate subdivision in the area east of Toby Hill Road subarea (shown on **Schedule D**) to a minimum parcel size of 2 ha is supported.
  - (f) Except as noted in subsection 4.3(1)(g), subdivision of existing parcels or rezoning to accommodate subdivision of properties adjacent to Lake Lillian is not supported.
  - (g) Despite subsection 4.3(1)(f), subdivision of Lot A, Plan NEP7952, District Lot 4336, Kootenay District, Except Plan 9750, shown in figure 4.1 below, to create legal parcels for each of the existing residences and an access road is supported subject to proof that an adequate sewage disposal method can be provided for each parcel.



**Figure 4.1 - Lot A, Plan NEP7952, District Lot 4336, Kootenay District, Except Plan 9750**

- (h) To minimize disturbance to environmentally sensitive areas (ESAs) and preserve agricultural land, future development is encouraged to consider the integration of Conservation Subdivision Design principles by:
  - (i) identifying and protecting conservation areas such as riparian areas, wetlands, Class 1 ungulate winter range, wildlife corridors, wildlife habitat areas, steep slopes, woodlands, agricultural land and buffers;
  - (ii) clustering development into nodes of smaller lots in order to preserve larger contiguous ESAs and agricultural zones; and

- (iii) utilizing compact neighbourhood design with dwelling units built in close proximity to each other to minimize the overall development footprint and required infrastructure.

Further details on Conservation Subdivision Design can be found in Randall Arendt's *Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks*. Washington, DC: Island Press, 1996; or the *Conservation Subdivision Design Handbook*. Southwestern Illinois Resource Conservation & Development, Inc., 2006.

- (i) Maintaining the agricultural nature and character of the plan area is supported and encouraged.
- (j) Subdivision which will have a negative impact on agricultural capability or suitability is generally not supported.
- (k) Subdivision of a parcel isolated from the remainder of the parent parcel by a physical constraint, such as a road, is supported even when the remainder is less than the minimum lot size permitted in the zoning bylaw.
- (l) Subdivision applications and applications for rezoning to accommodate subdivision must submit proof of potable water sufficient to service future proposed parcels.
- (m) Multi-family development, containing three or more dwelling units, is directed to resorts and municipalities located outside the plan area.
- (n) Development is encouraged to recognize and integrate opportunities to retain and maximize the viewscales.
- (o) At the time of writing this OCP, secondary suites in detached garages and single family dwellings are permitted in all zones within the plan area. Stand alone detached secondary suites are generally supported in the plan area. As resources allow, the RDEK will consider a bylaw amendment to the Upper Columbia Valley Zoning Bylaw to permit stand alone detached secondary suites in the Toby Benches.

## **(2) Home Occupation Policy**

The following policy identifies when home occupations are supported within the plan area:

- (a) Home occupations in the rural area which are accessory to the residential use, operate on a scale that is appropriate for the area, conform with home occupation regulations in the zoning bylaw, and do not disrupt the residential nature of the surrounding area are supported in order to facilitate diversified economic development.

## **5. COMMERCIAL LAND USE**

### **5.1 Background**

During the public consultation process for this OCP, area residents indicated strong support for directing commercial development to municipalities and resort areas adjacent

to the Toby Benches. At present, commercial land use in the plan area is limited to a mix of home occupations.

This OCP does not identify specific parcels for new commercial development. Amendments to the OCP land use designations may be necessary in order to facilitate such developments.

## **5.2 Objectives**

- (1) Direct commercial development to existing development nodes in resort areas and municipalities outside of the plan area.
- (2) Support commercial recreation and tourism land uses within the plan area where the use is compatible with adjacent land uses.

## **5.3 Policies**

- (1) Except for home occupations as permitted by the zoning bylaw, commercial development of any scale is generally not supported in the plan area and is directed to resorts and municipalities located outside of the plan area.
- (2) Despite subsection 5.3(1) the following uses may be supported in the plan area if there will be no significant adverse impact on adjacent uses, rural character, or the environment:
  - (a) commercial tourism or recreation activities adjacent to a site with recognized recreation capability;
  - (b) ecotourism activities that provide economic diversification and have limited impacts on the environment, agriculture and heritage resources;
  - (c) agritourism activities that provide economic diversification and have limited impacts on the environment, agriculture and heritage resources.
- (3) Rezoning applications to enable campground development in the plan area are generally not supported.
- (4) The use of billboards within the Toby Benches is generally not supported. The placements of signs within the plan area must comply with the provisions regulating signage in the Upper Columbia Valley Zoning Bylaw and may require approval from the Ministry of Transportation and Infrastructure if adjacent to a road.
- (5) Rezoning to permit a commercial use within the plan area is generally not supported, except as noted in subsections 5.3 (1) and 5.3 (2).

## 6. AGRICULTURAL LAND USE

### 6.1 Background

Agriculture is deeply rooted in the Toby Benches, with the early settlers moving onto the land to establish orchards on parcels of land irrigated by way of hand built ditches and flumes. Although the orchards failed to flourish, farming and ranching continue today.

Sixty-four percent of the land in the Toby Benches is included within the ALR, a provincial land use designation intended to protect farming and agriculture as the primary land use. Subdivision and non-farm uses within the ALR must meet provincial regulations and be approved by the ALC. Land included in the ALR is shown on **Schedule C**.

During the consultation process for the development of this OCP, Toby Benches residents expressed a high level of support for continued agriculture operations within the plan area. Residents expressed that they do not support subdivision of lands in the ALR, although subdivision in the ALR for a retiring farmer or for a relative were strongly supported.

Applicants wishing to subdivide land within the ALR should be aware that the ALC is not subject to the subdivision for a relative provisions contained in Section 514 of the *Local Government Act*, nor does the ALC believe that encouraging small lot subdivision is supportive of agriculture and consistent with the ALC mandate to preserve agriculture and encourage farming. Policies stating support for subdivision of land within the ALR, with the exception of those applications that qualify under the ALC's Homesite Severance Policy, are the policy of the RDEK only.

### 6.2 Objectives

- (1) Support agricultural activity within the plan area.
- (2) Outline conditions under which subdivision within the ALR will generally be supported and discourage ALR subdivision that does not meet these conditions.
- (3) Minimize conflicts between agriculture and other potentially incompatible land uses on adjacent lands.
- (4) Support local food production, local distribution of food products, and diversification of agricultural uses.
- (5) Preserve and encourage the use of agricultural land for present and future production of food and fibre.

### 6.3 Policies

#### (1) General

- (a) Land in the ALR is generally designated and supported for agricultural use.
- (b) Preservation and continued use of agricultural land for present and future food production is encouraged.
- (c) The primary commercial uses for land within the ALR should be agricultural production and the processing and marketing of on-farm produce. However, accessory uses that complement agriculture, including, but not limited to agri-tourism, farm gate sales, and market gardens will generally be supported in the ALR.
- (d) Home occupations that are complimentary to agricultural operations are encouraged and supported within the Agricultural Land Reserve.
- (e) Buffers between properties on which farming is taking place and adjacent non-agricultural properties will be established through setbacks within the zoning bylaw. Measures such as fencing and screening located on adjacent non-agricultural properties should be

utilized to ensure that farm operations are adequately protected and buffered.

- (f) The location of new roads should be designed to minimize the impact on existing or potential agricultural areas.
- (g) New and continued Licenses of Occupation for grazing tenures on Crown land are generally supported provided the tenures are not associated with wildlife fencing.
- (h) The development of small scale community kitchens, food processing facilities and outdoor community ovens is encouraged.
- (i) The implementation of applicable recommendations contained in the RDEK Agricultural Plan is supported.
- (j) The cultivation of medical marihuana by licenced commercial producers is recognized as a potential agricultural use within the Toby Benches. Medical marihuana production facilities licenced under and operated in conformity with the federal *Marihuana for Medical Purposes Regulations* are generally supported within the ALR. Uses accessory to a medical marihuana production facility which are not considered to be farm use by the ALC may require approval of a non-farm use application.

## **(2) Agricultural Land Reserve Applications**

- (a) ALR applications for non-farm use, subdivision, or exclusion should identify opportunities to improve the agricultural capability and provide a net benefit to agriculture for the lands that remain within the ALR.
- (b) New residential development is encouraged to be directed to land within municipal boundaries, areas outside the ALR and areas with low agricultural capability.
- (c) Applications for subdivision for a relative pursuant to the *Local Government Act* will generally be supported when all of the following conditions have been met, subject to compliance with the zoning bylaw:
  - (i) there is no negative impact on the agricultural potential of the parent parcel;
  - (ii) the subdivision for a relative is kept as small as possible, having regard to health requirements, and is located in an area which has the least impact on agriculture;
  - (iii) the subdivision complies with the requirements of the zoning bylaw, other than with respect to the provisions relating to minimum lot sizes; and
  - (iv) a statutory declaration has been provided, prior to the issuance of an order, that confirms the parcel is for a relative and that the parcel will not be sold or transferred for a period of 5 years unless required as part of an estate settlement or as required by a lending institution.
- (d) Applications for homesite severance subdivision for a retiring farmer in the ALR will generally be supported when the minimum parcel size is 0.4 ha, the proposal is in compliance with the ALC Homesite Severance Policy, and subject to compliance with the zoning bylaw.
- (e) Applications for subdivision in the ALR which improve agricultural capability will generally be supported, subject to compliance with the zoning bylaw.

- (f) The OCP recognizes the historical importance of agriculture in the Toby Benches. Fragmentation or parcelization of agricultural lands in the plan area is generally not supported.
- (g) 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 RDEK Board. The report must include the following:
  - (i) 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
  - (ii) identification of the impact the proposal will have on the agricultural suitability and capability of the parcel, and agricultural operations in the surrounding area.

Applications will not be processed by RDEK staff until such time as the report has been submitted or an exemption has been granted. Requests for exemption must be provided in writing to the RDEK prior to making an application and must provide rationale for granting the exemption.

*Note: On August 7, 2020, Resolution 49314 was passed by the RDEK Board of Directors to issue a blanket exemption for the requirement to submit a report for all ALR applications. A report from a qualified professional (e.g. Agrologist report) is currently not required unless otherwise identified by RDEK staff.*

- (h) ALR applications for non-farm use, subdivision, or exclusion that meet one or more of the following criteria are exempt from the requirement to submit a report by a qualified professional identified in 6.3(2)(g) as part of their application to the RDEK:
  - (i) the application is for subdivision for a relative as per the provisions in the zoning bylaw and the *Local Government Act* and the parcel proposed is equal to or less than 2.0 ha in size; or
  - (ii) the application is for a reconsideration or alteration of a prior approval by the ALC.

The exemption is a condition of the RDEK review process only and does not exempt the applicant from any conditions imposed by the ALC as a condition of their consideration of the application or approval. All applications reviewed by the ALC are on an individual basis in regard to the ALC's mandate and may or may not be approved.



## 7. LIGHT INDUSTRIAL LAND USE

### 7.1 Background

Within the plan area, identified light industrial activities include a rock quarry and historically sand and gravel extraction. During the public consultation process area residents generally indicated a preference to direct light industrial activities to nearby municipalities with established light industrial nodes.

In April 2014, the production of medical marihuana shifted from a licenced access system to a licenced commercial producer system. The federal *Marihuana for Medical Purposes Regulations* require that licenced commercial producers comply with applicable local government regulations. In consideration of the new federal regulations, the RDEK considered the current land use designations and zoning to determine appropriate locations within the plan area for the accommodation of medical marihuana production facilities.

### 7.2 Objectives

- (1) Support existing light industrial uses within the plan area.
- (2) Ensure that aggregate extraction activities are conducted in a manner that is compatible with adjacent land uses and the rural character of the plan area.
- (3) Concentrate light industrial land uses within municipalities outside of the plan area.

### 7.3 Policies

- (1) Light industrial development is generally directed to nearby municipalities. However, the following uses may be supported in the plan area if there will be no significant adverse impact on adjacent uses, rural character, or the environment:
  - (a) resourced-based industries that require on-site processing at facilities located close to the source of their major resource; and
  - (b) industries which cannot find land physically suitable to accommodate their industrial activity within a municipality.
- (2) The cultivation, processing and direct marketing of medical marihuana by a licenced producer under the federal *Marihuana for Medical Purposes Regulations* is considered a light industrial use within the plan area. In accordance with the *Agricultural Land Commission Act* and *Agricultural Land Reserve Use, Subdivision and Procedure Regulation*, licenced producers may operate within the ALR as identified within the zoning bylaw and section 6.3(1)(j) of this plan.
- (3) The production, processing and distribution of medical marihuana by a medical marihuana production facility is anticipated to occur on an intensive agricultural scale in conjunction with required security measures, such as intrusion detection systems, 24 hour site monitoring, access restrictions and perimeter video recording. In consideration of these characteristics, which would not generally be associated with non-federally regulated or licenced agricultural commodities, the zoning bylaws identify regulations specific to medical marihuana production facilities.
- (4) Applications to rezone to accommodate a medical marihuana production facility shall be considered on an individual basis in relation to the following criteria:
  - (a) existing land use;
  - (b) surrounding land uses;
  - (c) proposed servicing for water and sewer; and
  - (d) proposed mitigation of potential impacts on adjacent properties resulting from the security measure requirements of the federal *Marihuana for Medical Purposes Regulations*.

- (5) Proposed new sand and gravel extraction sites should be located in areas that are compatible with adjacent land uses.
- (6) Sand and gravel operations are encouraged to utilize the existing site to its maximum extraction capacity prior to development of new sites.
- (7) The siting of sand, gravel, and mineral resource extraction activities in close proximity to residential areas is discouraged. The responsible provincial government ministry is encouraged to adjudicate applications fairly and with full public input. If an application is approved, appropriate mitigation measures should be applied in order to minimize impacts on nearby residential uses.
- (8) Resource extraction operations are encouraged to give due consideration to the preservation of scenic views in the plan area.
- (9) The rehabilitation and reclamation of industrial and resource extraction sites upon cessation of activity is encouraged.
- (10) Implementing proactive operational measures to minimize the human health impacts associated with the extraction of sand, gravel and mineral resources is encouraged.

## **8. INSTITUTIONAL AND COMMUNITY LAND USE**

### **8.1 Background**

At the time of drafting this OCP, there were no institutional or community land uses within the Toby Benches.

### **8.2 Objectives**

- (1) Facilitate the identification of lands for future community and institutional land uses.

### **8.3 Policies**

- (1) Institutional land uses should be directed to municipalities and resort areas outside of the Toby Benches. Additional locations will be considered on a case-by-case basis.
- (2) No school facilities are anticipated within the projected 5 to 15 year timeline considered within this OCP; therefore, no school sites have been identified.

## **9. OPEN SPACE, RECREATION AND TRAILS**

### **9.1 Background**

The plan area is well known for its natural beauty and outdoor recreation opportunities. Lake Lillian is a provincial recreation site popular with swimmers, boaters and anglers. In the winter, a 3 km skating loop is maintained around the shoreline. Both motorized and non-motorized trail uses can be found on Crown land within the Toby Benches. Two popular mountain bike trails, the Kloosifier and Along the Johnson, are located on the Toby Benches. Because of the favorable climate in the Columbia Valley, southern exposure and relatively low snowpack, trails in the Toby Benches are some of the first in the region to be snow free, which results in a substantial number of trail users visiting the area as early as March. The Barbour Rocks crag is a popular sport climbing area.

Access to public open space and recreational opportunities increases the likelihood that residents and visitors will be physically active, which in turn reduces the incidence of chronic health conditions.

During the consultation process, the popularity of the sanctioned mountain bike trails and the effect that trail users have on parking, washrooms and adjacent private property was an ongoing theme. With the popularity of mountain biking on the Toby Benches expanding, it is important to manage the impacts of increased trail use on infrastructure and adjacent private property owners.

### **9.2 Objectives**

- (1) Ensure recreational activities are compatible with the rural character of the plan area.
- (2) Promote trail construction and maintenance standards that protect the environment and respect the privacy of private property owners adjacent to Crown land.
- (3) Recognize and protect recreational features with tourism potential.
- (4) Provide local parks, trails and other outdoor recreation opportunities in locations and in sufficient quantity to be available and accessible, where possible, to all members of the community, including a broad spectrum of activities and lifestyle types.

### **9.3 Policies**

- (1) The protection of existing green space is encouraged.
- (2) The provision of a broad spectrum of outdoor recreation opportunities, suitable for both residents and tourists, that respect the need to protect resource values, is supported.
- (3) Lake Lillian recreation site is recognized as a popular recreational asset where a variety of land and water oriented recreational opportunities are possible. Continued management of the Lake Lillian recreation site is supported in order to ensure adequate access to land and water based activities is maintained and sanitation, garbage and parking facilities are adequate for the number of users.
- (4) The development of a trail linking the Toby Benches with the District of Invermere and Panorama Mountain village for daily foot and cycle commuting is supported.
- (5) Prior to the creation of additional mountain biking and hiking trails in the Toby Benches, the development of a trails plan which includes input from residents and stakeholders such as the Toby Benches Society and the Columbia Valley Cycling Society is encouraged in order to limit the impact of trail development on wildlife, environmental values, private property and other users, while supporting opportunities for recreation, tourism and economic development.
- (6) Adherence to trail building best practices in the development of mountain biking and hiking trails, such as maintaining reasonable trail densities, is

encouraged in order to limit the impact of trail development on wildlife and environmental values. Prior to trail construction, approval of the trail building activities by the land owner or responsible agency is considered a necessity.

- (7) The establishment of a safe alternative to biking on Toby Creek Road is supported in order to reduce the risk of accidents between motor vehicles and cyclists using Toby Creek Road.
- (8) The development and maintenance of nordic ski trails on Lake Lillian is supported and encouraged.
- (9) Respect of private property by trail users is encouraged.
- (10) Barbour Rock is a climbing destination. Use of and access to this area for non-motorized recreation is supported.
- (11) Community gardens on both public and private lands are encouraged where appropriate and feasible.
- (12) The development of small scale community kitchens, food processing facilities and outdoor community ovens on both public and private lands are encouraged where appropriate and feasible.
- (13) Opportunities to utilize underused areas such as parks and public open spaces to grow food are encouraged.
- (14) When planning outdoor green spaces such as parks, the development of areas for the public to sit, eat and rest is encouraged.
- (15) Prohibiting smoking in public parks is supported.
- (16) Tobacco smoke free community events and programs are encouraged.

## 10. ENVIRONMENTAL CONSIDERATIONS

### 10.1 Background

Environmental values were consistently one of the most referenced concerns throughout the public consultation process for this plan. This is reflected in residents desire to minimize or avoid negative impacts development could have on the natural environment.

The plan area is generally characterized by lodgepole pine and Douglas fir stands with interspersed grasslands, rolling topography with some rocky outcrops, and the steep walled Toby Creek Canyon. The local ecosystem provides important ungulate winter range and habitat for species at risk such as the red listed badger and blue listed Mountain Goat.

The American Badger is at risk in British Columbia because the amount of suitable habitat has been adversely affected by human activity. Fire suppression has resulted in forest encroachment on grasslands and development pressure has further reduced the amount of suitable habitat. Reduced food supply and secondary poisoning from rodenticides are also contributing factors to the decline in badger population.

The Mountain Goat, distinguished by its characteristic white coat and short black pointed horns, is a species of special concern in British Columbia. They were recently elevated to the provincial Blue List in part due to declines in populations in the southern portions of BC. Noted as being the best climbers of all ungulates in BC, Mountain Goats rely on escape terrain provided by steep cliffs and forest cover to avoid predators and for kidding in the spring. Toby Creek Canyon provides escape terrain that is key habitat for Mountain Goats. Mountain Goats appear to be more sensitive to disturbance than other ungulates, especially to helicopters, and the effects of disturbance can be expected to produce short and long term health effects. Approximately 50% of the world's population of Mountain Goats are located in BC.

During the consultation on this OCP, the protection of environmental values such as wetland and riparian ecosystems, environmentally sensitive areas and endangered plants and animals were identified as high importance. Development permit guidelines for the protection of the natural environment for identified environmentally sensitive areas are found within Section 17.3 of this plan.

### 10.2 Objectives

- (1) Ensure that development causes minimal degradation of soil, air and water systems.
- (2) Protect the groundwater, surface water sources and community watersheds for domestic water and irrigation use in order to ensure sustainable water supplies.
- (3) Ensure that wildlife corridors and habitat connectivity are not impaired by future development.
- (4) Recognize the importance of containing and controlling noxious / invasive plants and preventing their establishment.
- (5) Recognize the contribution that the natural environment and wildlife make to the economy of the plan area.
- (6) Support rehabilitation, restoration and enhancement of environmentally sensitive areas which were subject to negative impact in the past.
- (7) Retain critical wildlife habitat, wildlife corridors and ungulate winter range.
- (8) Maintain habitat connectivity through undisturbed open space and wildlife corridors to support the movement of various wildlife species and access to foraging and nesting areas.

### 10.3 Policies

#### (1) Water and Air Quality

- (a) Activities which could adversely affect the quality of water taken from an underground aquifer needed for domestic purposes are generally not supported.
- (b) Development in the plan area should consider the impact of associated water usage requirements on groundwater resources.
- (c) Property owners are encouraged to maintain and upgrade onsite septic systems in order to decrease potential nutrient loading and bacterial inputs to both groundwater and surface water resources.
- (d) Resource extraction and development within watersheds should not compromise watershed integrity or the ability to utilize the water sources for domestic use, harm fish and wildlife habitat or negatively impact water quality.
- (e) Water conservation is encouraged through the use of low volume fixtures, the use of efficient lawn watering practices and the utilization of native vegetation in landscaping.
- (f) Initiatives to protect air quality in the plan area such as the conversion of inefficient wood burning appliances to high efficiency models and the implementation of smart burning practices are supported.
- (g) Initiatives which promote education regarding the health risks associated with radon gas, testing and remediation efforts are encouraged.

#### (2) Water Bodies, Wetlands and Riparian Areas

- (a) Development is encouraged to avoid streams, wetlands and riparian areas and to provide appropriate development setbacks and buffer areas.
- (b) Property owners adjacent to water bodies or watercourses are encouraged to protect and conserve the natural riparian vegetation. Any land altering activities within a riparian area must comply with the applicable provincial and federal legislation, regulations and approvals.
- (c) Carrying out a work or undertaking which impacts fish or fish habitat in contravention of the *Fisheries Act*, is federally prohibited and strongly discouraged.
- (d) Development adjacent to water bodies or watercourses should consider storm water management options to mitigate the impact of run-off on riparian areas and environmentally sensitive areas.
- (e) Approved development and associated management activities such as dredging within or adjacent to water bodies, wetlands or riparian areas should be conducted following appropriate best management practices and in accordance with the required approvals.
- (f) The rehabilitation, protection and enhancement of Lake Lillian and Lake Eileen is supported and encouraged.
- (g) Development within the riparian areas identified on **Schedule F** will be managed through the Development Permit process. Prior to undertaking any works within a riparian area, an applicant must receive an approved Development Permit in accordance with Section 17.3 of this plan.

**(3) Environmentally Sensitive Areas**

- (a) Ecosystem restoration and reclamation initiatives by environmental organizations, local citizen groups or the responsible Provincial Ministry that restore and enhance disturbed environmentally sensitive areas to a more natural condition are supported.
- (b) Property owners should preserve wetlands, riparian areas, wildlife habitat, native vegetation and trees through consideration of the co-location of infrastructure and utilities, concentration of development and minimization of site grading. All activities undertaken must comply with the applicable provincial and federal legislation and regulations.
- (c) In order to ensure that private land in environmentally sensitive areas is conserved and protected, designation of land as OSRT, Open Space, Recreation and Trails within comprehensive development is encouraged. Opportunities within an area designated OSRT would include passive uses with minimal impact such as non-motorized recreation trails and non-land altering recreation activities.
- (d) Future development should minimize disturbance to the integrity of ESAs. ESAs within the plan area include, but are not limited to, areas identified on **Schedule F** such as wetlands and riparian ecosystems, grassland ecosystems, connectivity corridors, and mountain goat habitat.
- (e) Development within ESAs identified on **Schedule F** will be managed through the Development Permit process. Prior to undertaking any works within an ESA, applicants must receive an approved Development Permit in accordance with section 17.3 of this plan.

**(4) Fish and Wildlife Habitat and Corridors**

- (a) Maintaining habitat connectivity through undisturbed open space and wildlife corridors to support the movement of various wildlife species and access to foraging and nesting areas is encouraged.
- (b) Future land uses should promote connectivity and discourage fragmentation of contiguous ecosystems and ecosystem components to preserve landscape diversity and allow wildlife and waterfowl use, movement and dispersal.
- (c) Agricultural operations considering the use of wildlife fencing are encouraged to consider wildlife movement, habitat and access to water when determining fence style and placement.
- (d) Conservation and/or enhancement of fish and wildlife habitat values within the plan area by local citizens, environmental organizations and Provincial and Federal jurisdictions is encouraged.
- (e) Residents are encouraged to minimize the disturbance of wildlife by pets and domestic animals.
- (f) Residents and visitors accessing Crown land are encouraged to minimize impacts to grazing, habitat, wildlife and sensitive soils.
- (g) Future land uses should not compromise the integrity of badger habitat and Class 1 and 2 ungulate winter range, particularly range located along west facing slopes. Ungulate winter range is shown on **Schedule H**, badger habitat is shown on **Schedule I**.
- (h) Development is encouraged to limit impacts on wildlife movement through development design or other compensations.
- (i) Education programs such as WildSafe BC and Wildlife Collision Prevention Program to reduce wildlife mortality are encouraged.



- (j) Habitat connectivity, sensitive ecosystems, vulnerable plant communities and movement of endangered animal species shall be considered at the time of rezoning or OCP amendment applications. Notwithstanding the development permit requirements of Section 17.3 of this plan, additional development approval information may be required by the RDEK as part of the development approval process. For example, submission of a report by a qualified professional that includes, but is not limited to the following:
  - (i) identification of any endangered or vulnerable species that utilize the area under consideration;
  - (ii) identification of opportunities for mitigation of the proposed development on wildlife movement corridors through development design or other compensation;
  - (iii) identification of areas, as appropriate, to be dedicated as conservation areas;
  - (iv) site specific additional requirements indentified by the RDEK at the time of application.

**(5) Invasive Species**

- (a) Property owners and occupiers are required to control and manage invasive plants in accordance with applicable RDEK bylaws and provincial acts and regulations.
- (b) Recreational users within the plan area are encouraged to inspect their ATVs, mountain bikes, boats and vehicles for invasive plants and animals to assist in the prevention of the spread and establishment of these species.

## 11. DEVELOPMENT CONSTRAINTS

### 11.1 Floodplains and Geotechnical Hazards

#### (1) Background

Although floodplain mapping is not available for the watercourses on the Toby Benches, development is generally discouraged in flood prone areas unless flood protection works are in place. At a minimum, the RDEK prescribes minimum flood construction levels and setbacks from watercourses in the rural area. Perhaps the most significant flooding risk residents of the Toby Benches may face is the access bridge located outside of the plan area. The primary access and egress route to the Toby Benches is via a bridge over Toby Creek at Athalmer, which is identified as being in a high floodplain hazard area. Should the bridge be compromised, access and egress to the Toby Benches would be affected.

The Toby Benches is located on the eastern slopes of the Purcell Mountains and many parcels encompass topographical features. Slopes can lead to geotechnical hazards and should be considered as part of the development approval process. Steep slope areas are identified on **Schedule G**.

The RDEK Emergency Management Plan covers the entire plan area. The Columbia Valley Emergency Management Procedures guide mitigation, response and recovery actions in the event of a disaster.

#### (2) Objectives

- (a) Ensure public safety by discouraging development in unsuitable areas such as floodplains and areas subject to geotechnical hazards such as slope, erosion and landslip.
- (b) Prevent or minimize the expenditure of public money in damage compensation or mitigation resulting from development of lands subject to hazardous events or situations.
- (c) Encourage engineering and construction of public infrastructure, such as roads, bridges, and drainage works to be more resilient to increasingly frequent severe climatic events such as flooding.

#### (3) Policies

- (a) Minimum setbacks and flood construction levels for development near the ordinary high water mark of water bodies and watercourses are established within the Upper Columbia Valley Floodplain Management Bylaw. All floodplain requirements must be met unless a site specific exemption has been granted by the RDEK.
- (b) Applications to vary the minimum usable site area requirements contained within the zoning bylaw will generally not be supported.
- (c) All development within a floodplain or along a watercourse or water body, or potentially impacted by a site specific hydrologic hazard, such as flooding or channel avulsion, must ensure that adequate protection measures are incorporated into development designs. Specific geotechnical studies may be required as per the *Community Charter*.
- (d) The development of land susceptible to flooding is discouraged. Lands susceptible to flooding should not contain structures used for habitation. Suitable uses for land susceptible to flooding include but are not limited to parks, open space, recreation or agricultural uses.
- (e) Development of land with slope equal to or greater than 15%, susceptible to erosion and landslip is discouraged. Land susceptible to erosion and landslip should be used for open space and passive recreation purposes.

- (f) Development activity that occurs on a slope that is equal to or greater than 15%, susceptible to surface erosion, gully, landslides or landslip, must ensure that adequate protection measures are incorporated into development designs. Specific geotechnical studies prepared by a qualified professional may be required prior to issuance of a building permit or other development approval as per provincial legislation.
- (g) Development of lands with slopes equal to or greater than 30% is discouraged and is subject to a geotechnical assessment and the registration of a covenant identifying the hazard and remedial requirements as specified in the geotechnical assessment.
- (h) Removal or deposition of soil within the plan area must be carefully reviewed for erosion, drainage or sedimentation concerns, in addition to potential impacts on agriculture.

## 11.2 Interface Fire Hazard and Public Safety

### (1) Background

Decades of forest fire suppression in the East Kootenay region has contributed to an altered ecosystem characterized by forest in-growth and the accumulation of wildfire fuels. This situation poses a significant threat to the Toby Benches and is referred to as the interface fire hazard. The plan area is surrounded by forest and has significant stands of coniferous trees interspersed with developed areas, both of which increase the risk from wildfire. The fire hazard is being heightened due to the current Mountain Pine Beetle infestation and resulting dead and dry Pine snags.

Climate change is expected to result in an increase in wildfire activity in the 21<sup>st</sup> century. Following FireSmart best practices can make rural properties more resilient to the effects of a wildfire.

Portions of the Toby Benches are provided fire protection through an agreement with the District of Invermere.

### (2) Objectives

- (a) Support local and regional ecosystem restoration initiatives on Crown and private land.
- (b) Mitigate the risk associated with interface fire hazard to Toby Benches residents and visitors.
- (c) Encourage the adoption and implementation of FireSmart principles and wildfire mitigation measures by property owners, occupiers and developers.
- (d) Investigate the creation of fire protection service areas as requested by residents.

### (3) Policies

- (a) Applications for rezoning of parcels which include land rated as high for interface fire hazard on **Schedule E** will be considered with respect to the following FireSmart principles, as appropriate to the nature of the application:
  - (i) ability to integrate fire fuel modified areas including an area of a minimum of 10 metres in radius to be maintained clear of combustible material surrounding buildings and structures;
  - (ii) integration and promotion of building materials that minimize the risk of fires starting or spreading;
  - (iii) provision of a minimum of 2 vehicular access/egress routes to allow for simultaneous access for emergency equipment and evacuation of people;

- (iv) availability of sufficient water capacity for firefighting activities;
  - (v) the implementation of phasing or staging of development to minimize the interface fire risk; and
  - (vi) availability of firefighting equipment and trained personnel as appropriate for the proposed development.
- (b) Ecosystem restoration and interface fuel management initiatives on Crown and private land to mitigate the risk of interface fire hazard are supported.
  - (c) Development in high fire hazard areas may require mitigation measures as prescribed by a Development Permit issued in accordance with Section 17.2 of this plan.
  - (d) The development and dissemination of public education messages about protecting communities from wildfire is supported.
  - (e) The creation of fire protection service areas, as requested by residents, is supported.
  - (f) Efforts by private landowners to reduce the threat of interface fire on their properties are encouraged.
  - (g) Residents and visitors are required to comply with the provincial *Wildfire Act* and *Wildfire Regulation*.
  - (h) The acquisition and utilization of resources, facilities and funding for emergency response planning and management is supported.
  - (i) Residents are encouraged to ensure that their civic address is clearly posted, in good repair, and visible to assist emergency response personnel in locating the property.
  - (j) Efforts by the public to protect forest interface areas, heritage site and environmentally sensitive areas from fire risk by properly disposing of cigarette butts is encouraged.

## 12. ARCHAEOLOGICAL AND HERITAGE RESOURCES

### 12.1 Background

Part of the plan area's heritage includes archaeological sites—the physical evidence of how and where people lived in the past. This archaeological history extends back thousands of years through inhabitation and utilization of the land and its resources by First Nations people. For most of the time people have lived in this area, no written records were made. Cultural heritage sites and oral tradition are the only evidence of this rich history extending back many thousands of years. The term “cultural heritage sites” includes, but is not limited to, archaeological/heritage sites and objects, cultural/heritage landscapes, sacred/spiritual sites, and sites with cultural value. It encompasses sites and objects regardless of age.

The plan area contains recorded archaeological sites and is also likely to contain many unrecorded archaeological and cultural heritage sites. The provincial government protects both recorded and unrecorded archaeological sites through the *Heritage Conservation Act*. Archaeological sites dating before 1846 are protected under the *Heritage Conservation Act* and must not be disturbed or altered without a permit from the Archaeology Branch. This protection applies to both private and Crown land and means that the land owner must have a provincial heritage permit to alter or develop land within an archaeological site.

Knowledge of cultural heritage sites is gained through the provincial database of recorded archaeological sites and consultation with First Nations. An Archaeological Overview Assessment (AOA) has not been conducted for the plan area, but the completion of such an overview is supported within this plan.

The heritage resources of the plan area include remnants of the hand built ditches, flumes and trestles built by the Columbia Valley Irrigated Fruit Lands Company in the early 1900`s to irrigate the Toby Benches with water diverted from Boulder Creek. The irrigation works, shown on **Schedule J**, are in various stages of disrepair and can be seen on Crown and private land throughout the Toby Benches. The most iconic remnant of the historic irrigation works is the high level flume; a 75 foot high wooden trestle that transported water across a deep ravine. In 1941 the original structure collapsed. Lacking funds to repair the structure, a government grant was received and local residents volunteered to re-build the structure, which still stands today.

### 12.2 Objectives

- (1) Ensure that property owners are aware of their responsibilities under the *Heritage Conservation Act* when conducting land-altering activities.
- (2) Recognize and communicate the potential for discovery of cultural heritage sites and artifacts during the development process.
- (3) Avoid unauthorized damage and minimize authorized damage to protected archaeological sites on private land in accordance with the *Heritage Conservation Act*.
- (4) Recognize and support the need for an Archaeological Overview Assessment for private land located within the plan area.
- (5) Preserve and develop the heritage resources of the plan area.

### 12.3 Policies

- (1) Initiatives that protect archaeological sites and cultural resources within the plan area are supported.
- (2) Undertaking an Archaeological Overview Assessment (AOA) for the plan area is supported. The intent of the AOA is to identify areas with potential to contain archaeological sites and recognize known archaeological sites. Upon completion of the AOA the OCP should be amended to integrate a schedule depicting the areas of archaeological distribution and potential. This schedule should then be incorporated into the RDEK development application process in order to alert applicants to their obligations under provincial heritage legislation.

- (3) As part of the site planning and design of future developments, the developer or property owner is legally obligated to recognize and avoid the disturbance of identified cultural resource sites. The RDEK will provide development and building permit applicants with information regarding their obligation to protect recorded and unrecorded archaeological sites.
- (4) Developers are encouraged to engage professional archaeological consultants prior to proceeding with land clearing and site grading to determine if an Archaeological Impact Assessment (AIA) is required to manage and mitigate the impact of the development on any known or unrecorded archaeological sites protected under the *Heritage Conservation Act*. An AIA includes the assessment, recording and evaluation of archaeological resources located within a defined area. The archaeological assessment process is comprised of two principle components: assessment and impact management. Assessment is primarily concerned with the location and evaluation of archaeological resources, and the assessment of impacts during the initial stages of project planning. Impact management follows directly from assessment and is primarily concerned with managing unavoidable adverse impacts as well as unanticipated impacts. Impact management should be discussed with the Ktunaxa Nation Council as per the Ktunaxa Nation Archaeological Engagement Guidelines.
- (5) Upon receipt of a building permit or rezoning application, the provincial archaeological site inventory will be checked for overlaps with protected archaeological sites. Where archaeological potential mapping is available, building permit and rezoning applications will also be reviewed for overlaps with areas that have potential to contain unknown but protected archaeological sites.
- (6) Building permit and rezoning applicants will be notified if the subject property overlaps with a recorded protected archaeological site or an area of archaeological potential. Notification will include direction to engage a professional consulting archaeologist. The archaeologist will determine if an archaeological impact assessment is necessary to manage development related impacts to an archaeological site. Altering a protected archaeological site will require a provincial heritage alteration permit prior to land altering activities.
- (7) If an unrecorded archaeological site is encountered during development, work is to be halted and the applicant should contact the Archaeology Branch of the provincial government.
- (8) The preservation of historically significant sites and features such as the high level flume and other water works constructed by the Columbia Valley Irrigated Fruit Lands Company, shown in **Schedule J**, is supported.

## **13. SOLID WASTE, UTILITIES, AND TRANSPORTATION**

### **13.1 Background**

Solid waste in the plan area is managed in accordance with the RDEK's Regional Solid Waste Management Plan. The Solid Waste Management Plan outlines strategies for reducing the amount of waste generated, reuse of items and recycling of as much material as possible. The residual solid waste is handled at a transfer station and landfill in Windermere. The recycling program allows for recycling of cardboard, paper, tin, aluminum cans, numbered plastics, shopping bags and food-grade glass, through the yellow bin program.

Centralized waste and recycling bins are currently provided to residents of the Toby Benches on a contract basis. The Toby Benches Society collects dues and administers the contract. The nearest RDEK transfer station is in Windermere, which is a considerable distance for residents to travel to dispose of their waste and deposit recycling. During the consultation process, residents of the Toby Benches expressed an interest in having a transfer station available to them that is closer than Windermere.

Sewer services in the Toby Benches are provided through onsite sewage disposal systems.

The main transportation corridor in the Toby Benches is Toby Creek Road, which connects Invermere to the Toby Benches by crossing Toby Creek. Toby Creek Road also services Panorama Mountain Resort and beyond, the Delphine Creek and Jumbo Creek forest service roads.

### **13.2 Objectives**

- (1) Promote responsible solid waste management and recycling practices.
- (2) Promote responsible onsite sewer system management.
- (3) Consider and maintain road network safety and efficiency for all new development.
- (4) Encourage the assessment of regional and local non-motorized trail connections.

### **13.3 Policies**

- (1) Within the plan area the public is required to dispose of household waste in a responsible manner at the transfer station located in Windermere. Commercial construction and demolition waste must be disposed of at the Windermere transfer station.
- (2) Planning for future regional transfer station locations should engage the Toby Benches Society and area residents.
- (3) Residents and visitors are encouraged to follow the principles contained in the RDEK Solid Waste Management Plan to reduce the amount of solid waste produced by the following 5 R's: reduce, reuse, recycle, recover and residual management.
- (4) Recycling is encouraged and coordinated through the RDEK recycling program and through stewardship programs for products such as electronics, tires and batteries. The more extensive provision of recycling stewardship programs and facilities in the plan area is supported.
- (5) In order to promote and encourage responsible solid waste management practices, the RDEK should continue to provide on-going public education campaigns to increase public knowledge about how to reduce solid waste.
- (6) Residents and developers within the plan area are encouraged to practice responsible solid waste management and support ongoing recycling initiatives.
- (7) Property owners and occupiers are encouraged to ensure that maintenance programs for onsite sewer systems are followed in accordance with the appropriate provincial regulations.

- (8) Requests for the RDEK to take over the operation and maintenance of existing or proposed community water or sewer systems will only be considered in relation to the requirements of the RDEK Subdivision Servicing Bylaw, the RDEK Board policy related to the condition of the utility system and the necessary service establishment approvals.
- (9) Where onsite sewage disposal is utilized for new or redesigned septic systems, the use of Type 1 septic systems as defined by the Sewerage System Regulation under the *Public Health Act* is preferred where site conditions permit their installation. Type 1 systems are generally preferred as they are more reliable over time if the maintenance program is followed.
- (10) The OCP supports the creation of active transportation routes and alternative forms of transportation such as public transit, ride sharing and car sharing.
- (11) A consultative process involving the community and the Ministry of Transportation and Infrastructure to identify and establish safe and attainable active transportation networks is encouraged.
- (12) When conducting short-term and long-term transportation planning objectives, major street networks should be taken into consideration.
- (13) The Ministry of Transportation and Infrastructure and School District No. 6 are encouraged to review the safety of the current school bus turn-around at Lanac Road.
- (14) The Ministry of Transportation and Infrastructure is encouraged to consider upgrades to Houlgrave Road.
- (15) The Ministry of Transportation and Infrastructure is encouraged to continue monitoring the condition of roads within the Toby Benches and to consider future upgrades or improvements.



## **14. GREENHOUSE GAS (GHG) EMISSIONS REDUCTION AND CLIMATE CHANGE**

### **14.1 Background**

Local governments are required to establish targets and identify specific policies and actions for the reduction of greenhouse gas emissions. Consequently, the RDEK has established a greenhouse gas reduction target of 17% below 2007 levels by 2020. Policies that address this target promote reductions in the consumption of energy and emission of greenhouse gases through proactive land use, solid waste management and transportation planning.

### **14.2 Objectives**

- (1) Recognize the need to plan for the reduction of greenhouse gas emissions and climate change.
- (2) Support policies and actions that will contribute to the RDEK's commitment for a 17% reduction in greenhouse gas emissions.

### **14.3 Policies**

- (1) Green building standards, such as consideration of opportunities to minimize the energy and resource requirements of buildings and structures, is encouraged for all development.
- (2) The integration of energy efficient and renewable energy infrastructure and utilities is encouraged.
- (3) The utilization of passive solar energy through solar orientation is encouraged.
- (4) The location of future development within existing development nodes is encouraged.
- (5) The use of compact development footprints is encouraged within the plan area.
- (6) The reduction of greenhouse gas emissions generated from solid waste landfills through the diversion and reduction of solid waste is encouraged.
- (7) The integration of water efficient landscape features such as xeriscaping and the use of native vegetation is encouraged.
- (8) The development of intercommunity trail linkages is supported
- (9) The protection of existing forested areas, green spaces and grasslands is supported.

## 15. TEMPORARY USE

### 15.1 Background

The *Local Government Act* allows for the issuance of temporary use permits in areas designated within an OCP. A temporary use permit may allow a use not permitted by a zoning bylaw. In general, a temporary use permit may be issued for a period of up to three (3) years and renewed, at the discretion of the RDEK Board, only once. The RDEK Board may impose special conditions under which the temporary use may be carried on and regulate the construction of buildings or structures related to the temporary use.

### 15.2 Objectives

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

### 15.3 Policies

- (1) Temporary use permits will be considered throughout the plan area.
- (2) An application for a temporary 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 adjacent 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 use; and
  - (i) relevant policies within other sections of this plan.
- (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; and
  - (d) other business or operating conditions to mitigate the impacts of the temporary use.

## **16. CROWN LAND MANAGEMENT**

### **16.1 Background**

The primary purpose of this OCP is to provide policy direction for the development of private land on the Toby Benches. However, within the plan area there are large areas of Crown land. Activities on this land are often not under the jurisdiction of the RDEK, but can have a significant impact on local residents.

Crown land accounts for approximately 56% of the land area in the Toby Benches. During the consultation process, many residents of the Toby Benches expressed concern with conflicts arising from the recreational use of Crown land.

Popular recreational assets are located on Crown land in the Toby Benches. These include the Lake Lillian Recreation Site, Along the Johnson and Kloosifier mountain bike trails and the Barbour Rock climbing area. Due to the favorable climate of the Toby Benches, mountain bike trails open early and experience high use from early spring through the fall. Parking spots at the two designated trailheads can be inadequate during peak use.

### **16.2 Objectives**

- (1) Support the management of Crown land in a manner that considers the social, environmental and economic needs of the plan area.
- (2) Support ecosystem restoration on Crown land.
- (3) Preserve public access to Crown land for recreation purposes.

### **16.3 Policies**

- (1) Alienation of public land will be supported only where it is demonstrated that such development is in accordance with the goals and policies identified within this plan.
- (2) New and continued Licenses of Occupation for grazing tenures on Crown land are generally supported provided the tenures are not associated with wildlife fencing.
- (3) The RDEK encourages management of Crown land in an environmentally responsible manner that:
  - (a) protects surface and groundwater sources;
  - (b) manages forest ingrowth;
  - (c) minimizes risk of interface fire and wildfire;
  - (d) enhances wildlife habitat;
  - (e) protects views and scenery;
  - (f) protects watershed ecological values, including waterfowl and fish and their corresponding habitat; and
  - (g) maintains diverse plant communities by managing invasive plants.
- (4) Efforts to minimize conflicts between motorized and non-motorized recreation users of Crown land within the Toby Benches are supported.
- (5) The RDEK encourages management of the Lake Lillian Recreation Site to include ongoing assessments of the number of site users and their impact on existing site services such as parking and waste and sanitation facilities. Should impacts to existing recreation site infrastructure prove to be inadequate for the number of users, enhancing site infrastructure is supported.
- (6) Prior to the creation of additional mountain biking and hiking trails in the Toby Benches, the development of a trails plan which includes input from residents and stakeholders such as the Toby Benches Society and the

Columbia Valley Cycling Society is encouraged in order to limit the impact of trail development on wildlife, environmental values, private property and other users, while supporting opportunities for recreation, tourism and economic development.

- (7) Active enforcement of transgressions related to the use of Crown land for recreation and hunting are supported.

## 17. DEVELOPMENT PERMIT AREAS

### 17.1 Background

Pursuant to the *Local Government Act*, it is the policy of the RDEK to designate certain areas within the Toby Benches as Development Permit Areas, and implement special conditions in the form of development guidelines.

### 17.2 Development Permit Area #1 – Wildfire Hazard

#### (1) Area

Development Permit Area #1 applies to all properties with all or a portion of the property designated as having a high fire hazard rating as shown on **Schedule E**.

#### (2) Purpose

The purpose of Development Permit Area #1 is for the protection of development from hazardous conditions.

#### (3) Requirements

Within the Development Permit Area #1, owners must obtain a Development Permit before:

- (a) subdivision creating one or more vacant parcels;
- (b) placement or construction of a dwelling unit, or additions to a dwelling unit which increase the floor area by an amount greater than 25% of the area existing at the time this Bylaw was adopted.

#### (4) Exemptions

Development Permits are not required within Development Permit Area #1 under the following conditions:

- (a) The proposed activity is limited to internal alterations to buildings or structures.
- (b) A Registered Professional Forester (RPF) who is a member of the Association of BC Forest Professionals conducts a site visit and certifies in a signed letter that all or a portion of the parcel of land to be subdivided or upon which the dwelling unit is to be constructed or placed is not within a high fire hazard area.
- (c) The land is already subject to a Wildfire Hazard Development Permit or wildfire hazard restrictive covenant.

#### (5) Justification

In an effort to minimize the risk of damage to property by wildfire, some properties in the plan area have been identified as requiring wildfire hazard management. Subdivision creating one or more vacant parcels and placement or construction of a dwelling unit on these properties will be subject to FireSmart construction standards that aim to reduce the risk of damage by wildfire.

#### (6) Guidelines

Development Permits issued shall be in accordance with the following guidelines:

- (a) Subdivision Guidelines
  - (i) Prior to issuance of final subdivision comments to the Ministry of Transportation and Infrastructure, a Development Permit will be registered on the property that states all future dwelling units on the property shall be in conformance with section 17.2 (6)(c) of this OCP and the results of the report prepared under section 17.2 (6)(a)(ii), if applicable.
  - (ii) In cases of Development Permit Area overlap, the RDEK may require a Wildfire Hazard Assessment Report prepared

- by an RPF who is a member of the Association of BC Forest Professionals. The reports for wildfire hazard and environmentally sensitive areas should be submitted concurrently.
- (iii) The RDEK may require written acknowledgment that the professionals involved have read and collaborated on their reports and recommendations. The Wildfire Hazard Assessment shall take into account the findings of the other professional report(s) and recommendations including regard for the cutting or thinning of trees and the need for remediation of disturbed areas to avoid situations that could lead to adverse conditions such as destabilization of slopes or negative effects to other environmentally sensitive areas on the property.
- (b) Dwelling Unit Guidelines
- (i) The intention of the guidelines is to ensure the long term maintenance of Priority Zone 1. This zone is the area within ten metres of a dwelling unit including, but not limited to, decks, additions and balconies. The Development Permit will state that future development will comply with the guidelines contained in section 17.2 (6) as well as the results of the report prepared under section 17.2 (6)(b)(ii), if applicable.
  - (ii) In cases of Development Permit Area overlap, the RDEK may require a Wildfire Hazard Assessment Report prepared by an RPF who is a member of the Association of BC Forest Professionals. The reports for wildfire hazard and environmentally sensitive areas should be submitted concurrently.
  - (iii) The RDEK may require written acknowledgment that the professionals involved have read and collaborated on their reports and recommendations. The Wildfire Hazard Assessment shall take into account the findings of the other professional report(s) and recommendations including regard for the cutting or thinning of trees and the need for remediation of disturbed areas to avoid situations that could lead to adverse conditions such as destabilization of slopes or negative effects to other environmentally sensitive areas on the property.
- (c) Occupancy Permit Guidelines
- An Occupancy Permit will not be issued by the RDEK until an inspection has been completed and it has been confirmed that the conditions under section 17.2 (6)(d) and 17.2 (6)(e) have been met.
- (d) Occupancy Permit requirements for dwelling units:
- (i) All roofing materials of new dwelling units must conform to Class A, B or C fire resistance as defined in the BC Building Code.
  - (ii) Buildings and structures used to store wood or other combustible materials must be located a minimum of 10 metres away from the dwelling unit.
- (e) Property owners must post their civic address in accordance with the RDEK House Numbering Regulation and Fee Bylaw as may be amended or replaced from time to time.
- (f) Occupancy Permit landscaping requirements within the Priority 1 Zone:
- (i) Removal of combustible fuel is required, including the removal of ground-level fuels, piled debris, and other combustible debris.
  - (ii) Planting of new coniferous species including, but not limited to, juniper, pine and spruce is not permitted.

- (iii) It is not advisable to retain previously existing mature coniferous trees. If retained, coniferous trees must:
  - have limbs pruned such that they are at least two metres above the ground; and
  - be spaced so that there are three metres between crowns, thereby ensuring the tips of the branches of a coniferous tree are no closer than three metres to the tips of the branches of neighbouring coniferous trees; and
  - have no limbs within three metres of the dwelling unit or attachments such as balconies; OR
  - be managed as recommended in a Wildfire Hazard Assessment Report, in consideration of FireSmart Principles, prepared by an RPF who is a member of the Association of BC Forest Professionals.

### 17.3 Development Permit Area #2 – Protection of Environmentally Sensitive Areas (ESA)

#### (1) Area

Development Permit Area #2 applies to all areas designated as ESAs on **Schedule F** of this OCP.

#### (2) Purpose

The purpose of Development Permit Area #2 is for the protection of the natural environment, its ecosystems and biological diversity.

#### (3) Applicable Definitions

Within Development Permit Area #2:

**DEVELOPMENT FOOTPRINT** means the area affected by development or by project site activity. Hardscape, access roads, parking lots, non-building facilities, and the building itself are all included in the development footprint.

**ENVIRONMENTAL IMPACT ASSESSMENT REPORT** means a report prepared in accordance with the terms of reference issued for the land development project in accordance with the “Regional District of East Kootenay – Development Approval Information Bylaw No. 2122, 2008” as may be amended or replaced from time to time, and section 19.4(2)(b) of this OCP. As identified in the Development Approval Information Bylaw, Environmental Impact Assessment Reports must include baseline information, identification of likely impacts and their significance and mitigation recommendations.

**NATURAL BOUNDARY** means the visible high water mark where the presence and action of water are so common and usual and continued in all ordinary years as to mark upon the soil of the bed of a lake, river or stream or other body of water a character distinct from that of the banks thereof, in respect to vegetation as well as in respect to the nature of the soil itself.

**QUALIFIED ENVIRONMENTAL PROFESSIONAL (QEP)** means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if:

- (a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;
- (b) the individual's area of expertise is recognized by their professional organization as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal; and
- (c) the individual is acting within that individual's area of expertise.

**RIPARIAN ECOSYSTEM** means a terrestrial ecosystem where the vegetation complex and microclimate conditions are the product of combined presence and influence of perennial and/or intermittent water, associated high water tables, and soils that exhibit some wetness characteristics. The riparian ecosystem is influenced by, and exerts an influence on, the associated aquatic system.

**WATERCOURSE** means any natural or manmade depression with well defined banks and a bed 0.6 metres or more below the surrounding land serving to give direction to a current of water at least six (6) months of the year or having a drainage area of 2 square kilometres or more upstream of the point of consideration.

**WETLAND** means land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, fens, estuaries and similar areas that are not part of the active floodplain of a stream.

**(4) Requirements**

- (a) Within Development Permit Area #2, owners must obtain a Development Permit before:
  - (i) Subdivision creating one or more vacant parcel(s) where any portion of the parcel under application is located within Development Permit Area #2;
  - (ii) Construction, addition or alteration of a building, structure or fencing within Development Permit Area #2; or
  - (iii) Alteration of land, including the removal of vegetation or site grading, within Development Permit Area #2.

**(5) Exemptions**

- (a) A Development Permit is not required within Development Permit Area #2 under the following conditions:
  - (i) The proposed activity is limited to internal alterations to buildings or structures.
  - (ii) The proposed activity is limited to the reconstruction, renovation, repair of, or addition to existing buildings or structures which increase the development footprint by an amount less than 25% of the area existing at the time this OCP was adopted.
  - (iii) The proposed activity is limited to the installation, repair or placement of utilities infrastructure within a public right of way.
  - (iv) The proposed activity is limited to general road or railway construction or maintenance within a public road right of way or railway right of way.
  - (v) The proposed activity is limited to:
    - (A) the removal or pruning of hazardous trees as identified by a qualified hazard tree assessor;
    - (B) an ecosystem restoration project approved by a Qualified Environmental Professional (QEP); or
    - (C) supplementing or maintaining natural existing vegetation.
  - (vi) The proposed activities are considered to be normal agricultural practices as defined in the *Farm Practices Protection (Right to Farm) Act* or designated as farm use within the *Agricultural Land Commission Act* and Regulations.
  - (vii) With respect to subdivision under 17.3(4)(a)(i), either:



- (A) RDEK staff conducts a site visit and confirms that the environmentally sensitive area identified in **Schedule F** is not present on the parcel under application. If identifying the presence or absence of the environmentally sensitive area identified in Schedule F is beyond the expertise of RDEK staff, then Section 17.3(5)(a)(vii)(B) applies.
  - (B) A QEP conducts a site visit and certifies in a signed letter that the environmentally sensitive area identified in **Schedule F** is not present on the parcel under application.
- (viii) With respect to development under 17.3(4)(a)(ii) or (iii), either:
  - (A) RDEK staff conducts a site visit and confirms that the area proposed for development is not within an environmentally sensitive area identified in **Schedule F**. If identifying the presence or absence of the environmentally sensitive area identified in **Schedule F** is beyond the expertise of RDEK staff, then Section 17.3(5)(a)(viii)(B) applies.
  - (B) A QEP conducts a site visit and confirms in a signed letter that the area proposed for development is not within an environmentally sensitive area identified in **Schedule F**.
- (ix) The land and ESA values within Development Permit Area #2 have been permanently and adequately protected by means such as a conservation covenant, returned to Crown ownership, provided as public park, or similar method as is acceptable to the Planning & Development Services Manager. Any reference in section 17.3 to the RDEK accepting a conservation covenant is at the discretion of the RDEK.
- (x) The proposed activity is limited to timber harvesting, forest road construction, grazing enhancement, forest recreation or other forest management activities on Crown land that are conducted under the auspices of the appropriate provincial Ministry.
- (xi) The proposed activity is conducted under the authority of the appropriate Provincial agency (eg. Ministry of Forests, Land and Natural Resource Operations) and is intended to resolve emergency situations that present an immediate danger to life or property including procedures related to flooding or erosion.
- (xii) The proposed activity is limited to emergency repairs to buildings or structures where there is a demonstrable and immediate risk to personal or public safety and property.
- (xiii) The proposed activity is limited to drilling a well, or the siting, construction or installation of a septic tank, drainage field, or sewage treatment system in accordance with provincial regulations. This exemption does not apply within sections of Development Permit Area #2 identified in **Schedule F** as wetland or riparian ecosystem areas.
- (xiv) The proposed activity is limited to the siting, construction or installation of a retaining wall or shoreline/bank protection device in accordance with applicable legislation, regulations and best practices.
- (xv) The proposed activity is limited to subdivision which solely involves parcel line adjustment where no section of a parcel line being adjusted is located within Development Permit Area #2.
- (xvi) The proposed activity is substantially consistent with a development permit previously issued under section

17.3(4)(a)(i) and the conditions of the previously issued Development Permit have been met.

- (xvii) The proposed activity involves the development or management of a provincial park or recreation site; is conducted within the boundaries of a provincial park or recreation site; and is compliant with the provincial *Park Act*.

**(6) Justification**

- (a) The plan area includes a range of significant ecosystems, habitats and features. These include:

- (i) Wetland and riparian ecosystems

Wetlands and riparian ecosystems play a critical role in helping maintain biodiversity as they provide habitat and wildlife corridors for many terrestrial and aquatic species. Wetland and riparian ecosystems, including both the wetted area and adjacent supporting land and vegetation, provide productive fish habitat and are important to both aquatic and terrestrial wildlife.

- (ii) Grasslands ecosystems

Grasslands are home to more than 30% of provincial species at risk and support more threatened or endangered species than any other habitat in the province. Grasslands represent less than 1% of the provincial land base and are recognized as one of BC's most threatened ecosystems.

- (iii) Connectivity corridors

Wildlife populations, communities and ecological processes are more likely to be maintained in landscapes that include an interconnected system of habitats than in landscapes where natural habitats occur as dispersed ecologically-isolated fragments. Connectivity corridors act as linkages between habitats and mitigate fragmentation due to development activities. Connectivity corridors within the plan area provide important linkages between fragmented habitat for many species.

- (iv) Mountain Goat habitat

The key habitat feature required by Mountain Goats to avoid predation is escape terrain; which includes steep cliffs and forest cover. The security provided by the steep cliffs and forest cover of Toby Creek Canyon provides safety from predators during kidding in the spring and during the summer and fall when the Canyon is being used. Toby Creek Canyon also contains mineral licks that Mountain Goats depend on for essential nutrients during the spring. Mountain Goats appear to be more susceptible to disturbance than most ungulates and intense single disturbance events and chronic stress from repeated disturbances can be expected to have both short and long term health effects. The herd that uses the Toby Creek Canyon once numbered in the sixties, but has since declined to less than 15 animals.

- (b) The objective of Development Permit Area #2 is the protection, preservation, restoration and enhancement of the significant ecosystems, habitats and features identified in 17.3(6)(a)(i)-(iv) and on **Schedule F**. These ecosystems, habitats and features are considered vital to the retention of the character and ecosystem health of the plan area. Activities within these areas must be undertaken in a manner that minimizes the disruption or alteration of its environmental integrity. The intent is not to preclude all development in these areas, but to provide notice that the areas include unique characteristics that warrant special review and consideration and to ensure appropriate mitigation measures are prescribed where appropriate.

**(7) Guidelines**

Proposed development must comply with the Guidelines. Development Permits issued shall be in accordance with the following:

(a) General

The following guidelines apply to all areas identified as ESAs on **Schedule F** of this plan:

- (i) All development proposals are subject to the applicable requirements and approval processes under federal or provincial legislation or regulations. Identification of the permits and approvals required must be submitted with the Development Permit application. Issuance of the Development Permit will be conditional upon the acquisition of all required permits and approvals from the responsible jurisdictions. It is the responsibility of the applicant to identify and complete the applicable federal and provincial approval processes.
- (ii) Where development is considered in an ESA, the following strategies may be used to meet guideline provisions and direct development away from the ESA:
  - (A) Variance through the development permit to vary setbacks or siting regulations in the zoning bylaw;
  - (B) Reduction of the minimum parcel sizes specified in the zoning bylaw in a subdivision application may be considered on the parcel that contains the ESA if the proposed subdivision is based on Conservation Subdivision Design principles and conserves the environmentally sensitive feature or area as recommended by a QEP in an Environmental Impact Assessment Report. Further details on Conservation Subdivision Design can be found in Randall Arendt's *Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks*. Washington, DC: Island Press, 1996;
  - (C) Registration of a conservation covenant against the title of the property which requires that the environmentally sensitive area be protected in its natural, existing, or restored state as recommended in an Environmental Impact Assessment Report prepared by a QEP.
- (iii) The RDEK may require additional information as part of the development permit application process, for example, submission of an Environmental Impact Assessment Report prepared by a QEP.
- (iv) When an Environmental Impact Assessment Report by a QEP is prepared as part of a Development Permit application for Development Permit Area #2, an inventory of any habitat that supports species at risk which are identified as extirpated, endangered or threatened in federal or provincial legislation or regulations must be completed as part of the identification of relevant baseline information. If habitat that supports species at risk is identified, the Environmental Impact Assessment Report must:
  - (A) Document the species at risk and their habitat which may be impacted by the proposed activity or development;
  - (B) Identify and describe any potential and likely impacts of the activity or development on the species at risk

and their habitat, including any cumulative effects when combined with other projects proposed or under development;

- (C) Evaluate the impacts in terms of their significance and the extent to which they might be mitigated; and
- (D) Make recommendations as to conditions of approval that may be appropriate to ensure that undesirable impacts are mitigated or avoided;

in accordance with accepted impact assessment methodology. All approved development should be completed in accordance with the recommendations of the Environmental Impact Assessment Report.

(b) Wetland and Riparian Ecosystem Guidelines

The following guidelines apply to areas identified as wetland and riparian ecosystem ESAs on **Schedule F** of this plan:

- (i) Human settlement and other land development activities within, or adjacent to wetlands is discouraged.
- (ii) Proposals that offer to register a conservation covenant on the title of the lands in order to permanently protect wetland or riparian ecosystems are encouraged. The covenant should be registered before any development, including subdivision, and should be in favour of the RDEK, other public agencies including the provincial government, or non-governmental organizations, such as a private land trust committed to the management of watercourses or streamside areas.
- (iii) Locating road and utility corridors along or across wetland or riparian ecosystems should be avoided in order to maintain natural connectivity.
- (iv) A riparian buffer for watercourses, lakes, ponds and wetlands must be established within which no development or alteration of land is permitted. The minimum size of the riparian buffer must be equal to or greater than the minimum setback distance as required by the RDEK's floodplain regulations. Consideration should be given to establishing a 15 metre riparian buffer adjacent to lakes, marshes, ponds and wetlands measured on a perpendicular line inland from the natural boundary.
- (v) Despite subsection 17.3(7)(b)(iv), development proposals that involve disturbance of watercourses, lakes, ponds, marshes, wetlands or riparian ecosystems may be permitted in compliance with the following guidelines:
  - (A) For development proposals that involve disturbance within the riparian buffer, or the filling in of lakes, ponds, marshes, wetlands or riparian ecosystems, an Environmental Impact Assessment Report by a QEP must be completed to determine appropriate measures to protect wetland hydrology and ecological processes. All approved development should be completed in accordance with the recommendations of the Environmental Impact Assessment Report.
  - (B) All channelization or alterations of creeks must incorporate mitigation measures as determined by a QEP in an Environmental Impact Assessment Report to minimize adverse environmental effects and be in compliance with federal or provincial legislation or regulations.

(C) Applications for development activities that will negatively impact wetland or riparian ecosystems should include appropriate compensatory enhancement or restoration measures as determined by a QEP in an Environmental Impact Assessment Report in order minimize the net loss of wetlands and riparian ecosystems.

(vi) When an Environmental Impact Assessment Report by a QEP is prepared to satisfy guidelines in subsection 17.3(7)(b)(i)-(v), the potential for upland development to impact riparian ecosystem areas through increased runoff, sedimentation, loss of shade, or increased watercourse temperature must be considered. Appropriate mitigation strategies should be identified where applicable. All approved development should be completed in accordance with the recommendations of the Environmental Impact Assessment Report.

(c) Grasslands Ecosystem Guidelines

The following guidelines apply to areas identified as grassland ecosystem ESAs on **Schedule F** of this plan:

(i) Reductions in grassland ecosystem areas as the result of development activities should be limited. Where possible, development should be directed outside grassland ecosystem areas.

(ii) If development is proposed within grassland ecosystem areas a compact development footprint should be utilized to minimize negative impacts to existing grasslands.

(iii) Applications for development activities where grasslands ecosystems are temporarily disturbed should include commitments to restore the grassland areas through replanting with native vegetation as determined by a QEP in an Environmental Impact Assessment Report.

(iv) Applications for development activities that will negatively impact grasslands ecosystems should include compensation measures in order to minimize the net loss of grassland ecosystems. Suitable compensation activities include:

(A) Permanent protection of native grasslands of an equivalent size and ecological value to the lands disturbed through the development activity. Protection should occur through the registration of a conservation covenant on the title of the lands. The covenant should be registered before any development activities commence. The covenant should be registered in favour of the RDEK, other public agencies including the provincial government, or non-governmental organizations, such as a private land trust committed to the management of grassland areas.

(B) Appropriate restoration or enhancement of comparable areas through removal of trees encroaching on grassland ecosystems and reclamation of grassland areas by planting native grass species, as determined by a QEP in an Environmental Impact Assessment Report.

(d) Connectivity Corridor Guidelines

The following guidelines apply to areas identified as connectivity corridor ESAs on **Schedule F** of this plan:

- (i) Contiguous habitat areas should be preserved.
- (ii) Structures and barriers that impede wildlife movement, such as exclusion fencing should be avoided within connectivity corridors. For example, solid walls or fences erected to control wildlife capable of jumping over a fence 2.0 m in height should not be used.
- (iii) Extensive development within connectivity corridors that restricts the opportunity for wildlife movement should be avoided.
- (iv) If the construction of a structure within a connectivity corridor cannot be avoided, the structure should be located at the periphery of the corridor to limit the impediment of wildlife movement.
- (v) In order to maintain the integrity of connectivity corridors, extensive pruning of underbrush should be avoided.
- (vi) Forest cover should be maintained to encourage the use of connectivity corridors by wildlife.
- (vii) Native vegetation within connectivity corridors should be maintained. Conversion of vegetation to non-native species should be avoided.
- (viii) Snags, downed logs, stumps and other forest features should be preserved unless they present a danger to personal or public safety or are within 10 metres of a dwelling unit.

(e) Mountain Goat Habitat

The following guidelines apply to areas identified as Mountain Goat Habitat ESAs on **Schedule F** of this plan:

- (i) Human settlement and other land development activities within Mountain Goat habitat is discouraged.
- (ii) If industrial activity, road building or recreational trail development is unavoidable, then it should not occur between November 1 and July 15.
- (iii) Locating roads and utility corridors within Mountain Goat habitat should be avoided.
- (iv) When roads cannot avoid being sited within Mountain Goat habitat, they should be temporary in nature, have controls in place to discourage public access and be decommissioned as soon as possible.
- (v) Motorized and non-motorized recreational trails should not be developed within Mountain Goat habitat.

## 18. REGIONAL CONTEXT

### 18.1 Intergovernmental Relations

#### (1) Background

Crown land within the plan area is managed by the provincial government. Provincial responsibilities include the areas of agriculture, energy, mines and mineral policies, water protection, species and ecosystem protection, forest stewardship, Crown land allocation and authorizations, and backcountry public and commercial recreation. The provincial government and the RDEK recognize that land management decisions for Crown land within the Toby Benches can impact residents and communities. In addition, both agencies acknowledge that development activities on private land can impact a variety of values on Crown land. The provincial government and the RDEK agree that consultation between both agencies can result in better land use decisions that consider a range of important values.

Land use within the Toby Benches area is of common concern to the RDEK, the KNC, Akisq'nuk First Nation and Shuswap Indian Band, and should be addressed within the regional context.

**(2) Objectives**

- (a) Promote effective government to government and First Nation communication and relationships regarding land use applications through referral processes.

**(3) Policies**

- (a) Applications for OCP amendments within the plan area will be referred to the provincial government for consideration of the impact of the proposed change on provincial legislation and interests.
- (b) Provincial referrals for tenure applications for occupation of Crown land under the *Land Act* will be reviewed by the RDEK in consideration of the goals, objectives and policies contained within this plan.
- (c) All applications for OCP amendments within the plan area will be referred to the KNC, Akisq'nuk First Nation and Shuswap Indian Band for comment.

## 19. IMPLEMENTATION

### 19.1 Background

The OCP sets out the broad objectives and policies of the RDEK for the Toby Benches area. The OCP does not provide all the tools to implement the specific directions contained within it.

Many of the policy statements contained within the OCP are not the direct responsibility of the RDEK. In these cases, the OCP represents the RDEK's position with respect to the preferred course of action for other levels of government, public authorities or individuals.

### 19.2 OCP Amendments

- (1) In the future, OCP amendments may occur in response to a change in the needs of the community or the objectives for development or conservation. Amendments may be initiated by the RDEK or by an application by a property owner. All amendments to the OCP require a bylaw amendment as prescribed by the *Local Government Act*.
- (2) Upon application to amend the OCP the applicant shall demonstrate that the proposed development site(s) will have adequate access and infrastructure services and that they are able to sufficiently mitigate any hazardous site conditions such as soil erosion, flooding or interface fire.
- (3) To ensure that the OCP remains effective, relevant and responsive to the needs of the community, the OCP should periodically be reviewed to determine if the level of development that has occurred in the plan area, or a change in other conditions, necessitates that the OCP be substantially amended or rewritten.

### 19.3 Zoning Bylaw Amendments

Parcels may be rezoned in conformity with the land use designations contained in **Schedule D**. The proposed zoning must also conform to the objectives and policies contained in the OCP.

The subject parcel(s) shall be developable and meet the requirements of the zoning bylaw.

The owner shall demonstrate that the proposed development site(s) will have adequate access and infrastructure services and will sufficiently mitigate any hazardous site conditions such as soil erosion, flooding or wildfire.

### 19.4 Development Approval Information

- (1) Pursuant to the *Local Government Act*, the RDEK may require the submission of development approval information to ensure that sufficient supporting documentation is provided, prior to approval, to assess the potential impact of a development or activity.

The procedures for the preparation and review of development approval information are established within "Regional District of East Kootenay – Development Approval Information Bylaw No. 2122, 2008", as may be amended or replaced from time to time.

- (2) Development approval information may be required for the following circumstances and areas.

- (a) *Agriculture*

Criteria: Applications for amendments to the zoning bylaw or temporary use permits for land that has not previously been subject to an application for which a report under section 6.3(2)(g) of this plan has been provided to the RDEK.

Rationale: To minimize conflict between agriculture and other land uses and meet the objectives and policies identified within section 6 of this plan.



(b) *Natural Environment*

Criteria: Applications for amendments to the zoning bylaw, Temporary Use Permits or Development Permits under section 17.3, Development Permit Area #2 – Protection of Environmentally Sensitive Areas (ESAs).

Rationale: To consider the impact of the proposed activity or development on endangered and threatened species, fish habitat, wildlife habitat and water resources in order to meet the objectives and policies identified within the following sections of this plan:

- 4. - Residential Land Use;
- 10. - Environmental Considerations;
- 17.3 - Development Permit Area #2 –Protection of Environmentally Sensitive Areas

(c) *Wildfire Hazard*

Criteria: Applications for Development Permits under section 17.2, Development Permit Area #1 – Wildfire Hazard of this plan.

Rationale: To minimize the risk of damage to property by wildfire and to create a natural environment with a reduced fire risk.

## 20. LAND USE DESIGNATIONS

### 20.1 Background

The land use designations are meant to identify, in general terms, the type of land uses that are appropriate for the designated lands. The range in parcel sizes are reflective of parcel sizes that currently exist within the land use designation. The referenced minimum parcel sizes do not reflect the perspective of the ALC. For lands within the ALR, it is possible that subdivision into these lot sizes will not be supported by the ALC.

Subject to the zoning bylaw, agricultural use is permitted on all lands located within the ALR. The ALR is a provincial zone in which agriculture is recognized as the priority use. Farming is encouraged and non-agricultural uses are controlled. Further detail regarding the intent of the land use designations is found below.

The land use designations are shown on **Schedule D**. Where a land use designation boundary is shown as following a highway or creek, the center line of such highway or creek shall be the land use designation boundary.

### 20.2 Residential Land Uses

- (1) **SH, Small Holdings** supports low density residential development with minimum parcel sizes in the range of 0.2 ha to 2.0 ha.
- (2) **LH, Large Holdings** supports rural residential development and rural resource land uses on parcels sizes in the range of 2.0 ha to 8.0 ha.

### 20.3 Rural Land Uses

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

### 20.4 Institutional Land Uses

- (1) **INST, Institutional** supports such land uses as utilities, parks and playing fields, educational facilities, churches or places of assembly, and similar developments.
- (2) **OSRT, Open Space, Recreation and Trails** supports greenspaces, recreational amenities, agricultural use, local, regional and provincial parks and other protected areas, such as wildlife corridors.

This is Schedule A referred to in Bylaw No. 2676 cited as "Regional District of East Kootenay – Toby Benches Official Community Plan Bylaw No. 2676, 2016".

"Rob Gay"

Chair

"Shannon Moskal"

Corporate Officer

May 6, 2016

Date