

ADMINISTRATIVE REPORT



TO: Board of Directors
FROM: B. Newell, Chief Administrative Officer
DATE: May 20, 2021
RE: Official Community Plan (OCP) & Zoning Bylaw Amendment – Electoral Area “A”

Administrative Recommendation:

THAT Bylaw No. 2905.01, 2021, being a bylaw to amend the Electoral Area “A” Official Community Plan Bylaw; and, Bylaw No. 2451.27, 2021, a bylaw to amend the Electoral Area “A” Zoning Bylaw, be denied.

Purpose: To allow a 6-lot subdivision (5 residential lots and 1 conservation lot)

Owners: Steinar and Marlene Johnsen Agent: Steinar Johnsen Folio: A-06748.300

Legal: Lot 15, Plan 21789, DL 2709, SDYD, Except Plan KAP90322 Civic: 1750 Highway 3

OCP: Large Holdings (LH) Proposed OCP: part Small Holdings (SH) & part Conservation Area (CA)

Zone: Large Holdings One (LH1) Proposed Zoning: part Small Holdings Three (SH3) & part CA

Proposed Development:

This application is seeking to amend the Official Community Plan designation and zoning of the subject property in order to facilitate a bare land strata subdivision.

In order to accomplish this, the following land use bylaw amendments are being proposed by the applicant:

- amend the OCP land use designation from Large Holdings (LH) to Small Holdings (SH) for an approximately 6.93 hectare part of the land and to Conservation Area (CA) for an approximately 5.6 hectare part of the land; and
- amend the zoning from Large Holdings One (LH1) to Small Holdings Three (SH3) for an approximately 6.93 hectare part of the land and to Conservation Area (CA) for an approximately 5.6 hectare part of the land.

In support of the rezoning, the applicant has stated that “there are 5 natural benches throughout the property that are suitable for developing future building sites ... the proposed site plan has taken existing environmental values into consideration in order to avoid known sensitive areas. The remaining approximately 5.6 hectares is proposed rezoning as conservation area.”

Site Context:

The subject property is approximately 12.5 ha in area and is situated on the north side of Highway 3. It is understood that the parcel is currently being developed for a single detached dwelling and access driveway. The surrounding pattern of development is generally characterised by large rural parcels.

Background:

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on September 16, 1971, while available Regional District records indicate that building permits for a single detached dwelling (1995 and 2020), accessory dwelling (2020), and a swimming pool (2020) have been previously issued for this property.

Under the Regional Growth Strategy (RGS) Bylaw No. 2770, 2017, subject property is not situated within a designated growth area. At its meeting of November 21, 2019, the Board resolved that the proposed subdivision of the subject parcel is consistent with the RGS Bylaw.

Under the Electoral Area "A" Official Community Plan (OCP) Bylaw No. 2905, 2021, the subject property is currently designated Large Holdings (LH), and is the subject of a Watercourse Development Permit (WDP) and Environmentally Sensitive Development Permit (ESDP) Area designations. An ESDP was issued in 2016 for a single family dwelling and associated driveway access.

Under the Electoral Area "A" Zoning Bylaw No. 2451, 2008, the property is currently zoned Large Holdings One (LH1) which requires a minimum parcel size of 4.0 ha, and is within the floodplain associated with a watercourse.

BC Assessment has classified the property as "Residential" (Class 01).

Referrals:

Approval from the Ministry of Transportation and Infrastructure (MoTI) is required prior to adoption as the proposed amendments involve lands within metres of a controlled access highway (i.e. Highway 3).

Pursuant to Section 476 of the *Local Government Act*, the Regional District must consult with the relevant School District when proposing to amend an OCP for an area that includes the whole or any part of that School District. In this instance, School District No. 53 have been made aware of the proposed amendment bylaw.

Pursuant to Section 477 of the *Local Government Act*, after first reading the Regional Board must consider the proposed OCP amendment in conjunction with Regional District's current financial and waste management plans. The proposed OCP amendment has been reviewed by the Public Works Department and Finance Department, and it has been determined that the proposed bylaw is consistent with RDOS's current waste management plan and financial plan.

Public Process:

On February 22, 2021, a Public Information Meeting (PIM) was held electronically and was attended by approximately two (2) members of the public.

At its meeting of February 8, 2021, the Electoral Area "A" Advisory Planning Commission (APC) resolved to recommend to the RDOS Board that the subject development application be denied.

At its meeting of April 1, 2021, the Regional District Board resolved to defer consideration of this application, pending the adoption of the Electoral Area "A" OCP bylaw No. 2905, 2021.

At its meeting of May 6, 2021, the Regional District Board gave third reading and final adoption to Electoral Area “A” OCP bylaw No. 2905, 2021.

Administration recommends that the written notification of affected property owners, the public meetings as well as formal referral to the agencies listed at Attachment No. 1, should be considered appropriate consultation for the purpose of Section 475 of the *Local Government Act*. As such, the consultation process undertaken is seen to be sufficiently early and does not need to further ongoing.

All comments received to date in relation to this application are included as a separate item on the Board Agenda.

Analysis:

In considering this proposal, Administration notes that this proposal fails to meet growth management policies, natural hazard policies, and natural environmental policies in the Electoral Area “A” OCP Bylaw, as it seeks to increase residential development on an environmentally sensitive parcel outside of a designated Growth Area (Primary or Rural) which also contains hazard areas / steep slopes.

Further, it fails to meet evaluation criteria for assessing new Rural Holdings lands which consider compatibility with and impact on the natural environment, natural hazards, servicing, area compatibility, proximity to services, and visual impacts designations, among other factors (OCP Bylaw Section 10.3.4), as discussed below.

Growth Management

Under Section 6.5.3 of the Electoral Area “A” OCP Bylaw, primary and rural growth areas are supported by discouraging re-designation or re-zoning of land that permits increased residential densities outside of Growth Area containment boundaries.

Increasing densities or intensifying land uses within areas designated as an Environmentally Sensitive Development Permit Area is also not generally supported (OCP Bylaw Section 6.5.6).

As this proposal is outside of a growth area and within an environmentally sensitive area, rezoning the subject parcel to increase density is not consistent with the above noted policies.

Area Compatibility

The proposed small holdings designation is not consistent with the immediate vicinity which consists of large, rural parcels.

It is further noted that the Electoral Area “A” OCP Bylaw has recently undergone an extensive review and upheld the Large Holdings (LH) designation for this parcel and surrounding parcels.

This proposal is inconsistent with policy to discourage changes in land designation or zoning that would allow for...the subdivision of LH parcels to less than 4.0 ha in size (OCP Bylaw Section 10.4.4). and fails to meet the criteria for being compatible with adjacent land uses and designations, and the character of the area (OCP Section 10.3.4(b)(vii)) as the character of the area is rural in nature with large parcels with limited development.

The proposed lot size of approximately 1 ha also represents a lot size that is approximately 1/4 (25%) of the typical 4.0 ha parcel size permitted in the LH1 zone, and is much smaller than existing lot sizes of surrounding properties that typically far exceed the Large Holdings minimum lot size requirements.

Housing Needs

The Electoral Area “A” OCP Bylaw states that proposal should clearly demonstrate and articulate the need for it in the context of its impact on the community (Section 10.3.4(a)).

It is noted in the Electoral Area “A” OCP Bylaw that the potential need for new homes in the Plan Area, based on the upper-bound population growth scenario for the next 10 years, can be met by existing undeveloped parcels within the Anarchist Mountain and Willow Beach Rural Growth Areas.

Visual Impacts

This proposal has also been assessed against the criteria for consideration of visual impacts where development is proposed on hillsides (Section 10.3.4.(b)(viii)), as the topography of the parcel and its surrounding lands make it highly prominent and visible from Highway 97, the Town of Osoyoos, and Highway 3.

Although the full impact of the resulting roads and building sites are unknown, the current development of the parcel (for a single detached dwelling and its access driveway) have included rock blasting which has resulted in a “scarring” effect on the hillside and further blasting or excavating to the bedrock surface will be necessary for all building footings.

Natural Environment

A Qualified Environmental Professional (QEP) has assessed the property as being entirely within an environmentally sensitive area and has identified 2.8 ha as ESA 2 (being areas that provide significant local and/or provincial environmental value, including ecosystems that are uncommon and important for rare plants and wildlife), contrary to growth management policy not to support increasing densities in ESDP areas (OCP Bylaw Section 6.5.6).

Although most of the ESA 2 areas are contained within the proposed Conservation Area zone, some of the ESA 2 areas are within the proposed Small Holdings designation. The OCP encourages ESDP designated parcels to remain large to ensure their protection (OCP Bylaw Section 16.3.2.4) and this proposal seeks the opposite by requesting smaller parcel sizes to enable an additional two parcels over and above what is permitted under the existing LH1 zone.

Hazard Lands

The Electoral Area “A” OCP Bylaw discourages development on slopes with grades in excess of 30% to avoid geotechnical hazards (OCP Bylaw Section 17.34.1), while this proposal seeks to increase development potential on a parcel with topography generally descending from the southeast towards Highway 3 at between 30 to 50% and where the majority of construable area of this parcel has been deemed by a geotechnical engineer as a ‘moderate’ hazard.

It is also noted that the Community Wildfire Protection Plan identifies the majority of the parcel as moderate wildfire risk area.

Administration has further concerns with increasing development permissions in an area known to contain geo-technical hazards as well as sensitive, protected habitat, as there is an increased

likelihood that variances will be sought in the future due to difficulty to meet zoning or subdivision standards.

Servicing

In considering proximity to community and essential services (OCP Bylaw Section 10.3.4(v)), the subject parcel is located 1.6 kilometres from the Town of Osoyoos boundary and in an area where community water and sewer services are not available.

Smaller residential parcels are, more appropriately, located in the Town of Osoyoos where there are community and essential services available.

In response to the concerns raised regarding impact on the water supply to neighbouring properties and potentially reduce the water available to the Osoyoos Irrigation District that serves residences and agricultural operations on the east bench of Osoyoos, Administration acknowledges that the impact of additional wells on the aquifer is unknown and recommends using the precautionary principal when evaluating this proposal.

Should this bylaw receive 1st reading, it is suggested that the Board request the applicant provide a hydrogeological study prepared by a qualified groundwater engineer to evaluate the water balance for the aquifer and whether there is an adequate water surplus to support the proposed development as well as the cumulative withdrawals (i.e. existing demands).

Alternative Recommendation

Conversely, Administration recognises that the proposal includes a conservation area zone to help protect a 5.6 hectare portion of the parcel that contains the majority of ESA 2 areas in perpetuity.

The Environmental Assessment supports this proposal based on most of the proposed development being directed away from ESA 2 areas, which will be within a conservation area. Mitigation can then be utilized to help reduce potential impacts to ESAs.

Similarly, mitigation measures can be used to develop the site from a geotechnical perspective.

It is also noted that the parcels would provide additional housing in a unique location with view of Osoyoos and away from the valley floor, which is suitable for agriculture.

However, the intent of OCP is to avoid development in environmentally sensitive areas and hazard areas, where possible, and to direct residential growth to areas with services.

Summary

In summary, Administration does not support amending the recently adopted Electoral Area "A" OCP Bylaw nor the Electoral Area "A" Zoning Bylaw to enable additional residential development on an environmentally sensitive and highly prominent hillside containing geological hazards.

Alternatives:

1. THAT Bylaw No. 2905.01, 2021, Electoral Area "A" Official Community Plan Amendment Bylaw and Bylaw No. 2451.27, 2021, Electoral Area "A" Zoning Amendment Bylaw be read a first time;
AND THAT prior to second reading of Bylaw No. 2905.01, 2021, Electoral Area "A" Official Community Plan Amendment Bylaw and Bylaw No. 2451.27, 2021, Electoral Area "A" Zoning

Amendment Bylaw, the applicant provide a hydrogeological study prepared by a qualified groundwater engineer to evaluate the water balance for the aquifer and whether there is an adequate water surplus to support the proposed development as well as the cumulative withdrawals (i.e. existing demands).

2. THAT Bylaw No. 2905.01, 2021, Electoral Area "A" Official Community Plan Amendment Bylaw and Bylaw No. 2451.27, 2021, Electoral Area "A" Zoning Amendment Bylaw be read a first and second time and proceed to public hearing;

AND THAT the Board of Directors considers the process, as outlined in this report from the Chief Administrative Officer dated May 20, 2021 to be appropriate consultation for the purpose of Section 475 of the *Local Government Act*;

AND THAT, in accordance with Section 477 of the *Local Government Act*, the Board of Directors has considered Amendment Bylaw No. 2905.01, 2021, in conjunction with its Financial and applicable Waste Management Plans;

AND THAT the holding of a public hearing be scheduled for the Regional District Board meeting of June 17, 2021;

AND THAT staff give notice of the public hearing in accordance with the requirements of the *Local Government Act*.

3. THAT Bylaw No. 2905.01, 2021, Electoral Area "A" Official Community Plan Amendment Bylaw and Bylaw No. 2451.27, 2021, Electoral Area "A" Zoning Amendment Bylaw be read a first and second time and proceed to public hearing;

AND THAT the Board of Directors considers the process, as outlined in the report from the Chief Administrative Officer dated May 20, 2021, to be appropriate consultation for the purpose of Section 475 of the *Local Government Act*;

AND THAT, in accordance with Section 477 of the *Local Government Act*, the Board of Directors has considered Amendment Bylaw No. 2905.01, 2021, in conjunction with its Financial and applicable Waste Management Plans;

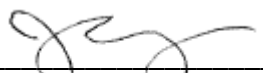
AND THAT the holding of the public hearing be delegated to Director Pendergraft, or their delegate;

AND THAT staff schedule the date, time, and place of the public hearing in consultation with Director Pendergraft;

AND THAT staff give notice of the public hearing in accordance with the requirements of the *Local Government Act*.

4. THAT Bylaw No. 2905.01, 2021, Electoral Area "A" Official Community Plan Amendment Bylaw and Bylaw No. 2451.27, 2021, Electoral Area "A" Zoning Amendment Bylaw be deferred.

Respectfully submitted:



JoAnn Peachey, Planner I

Endorsed By:



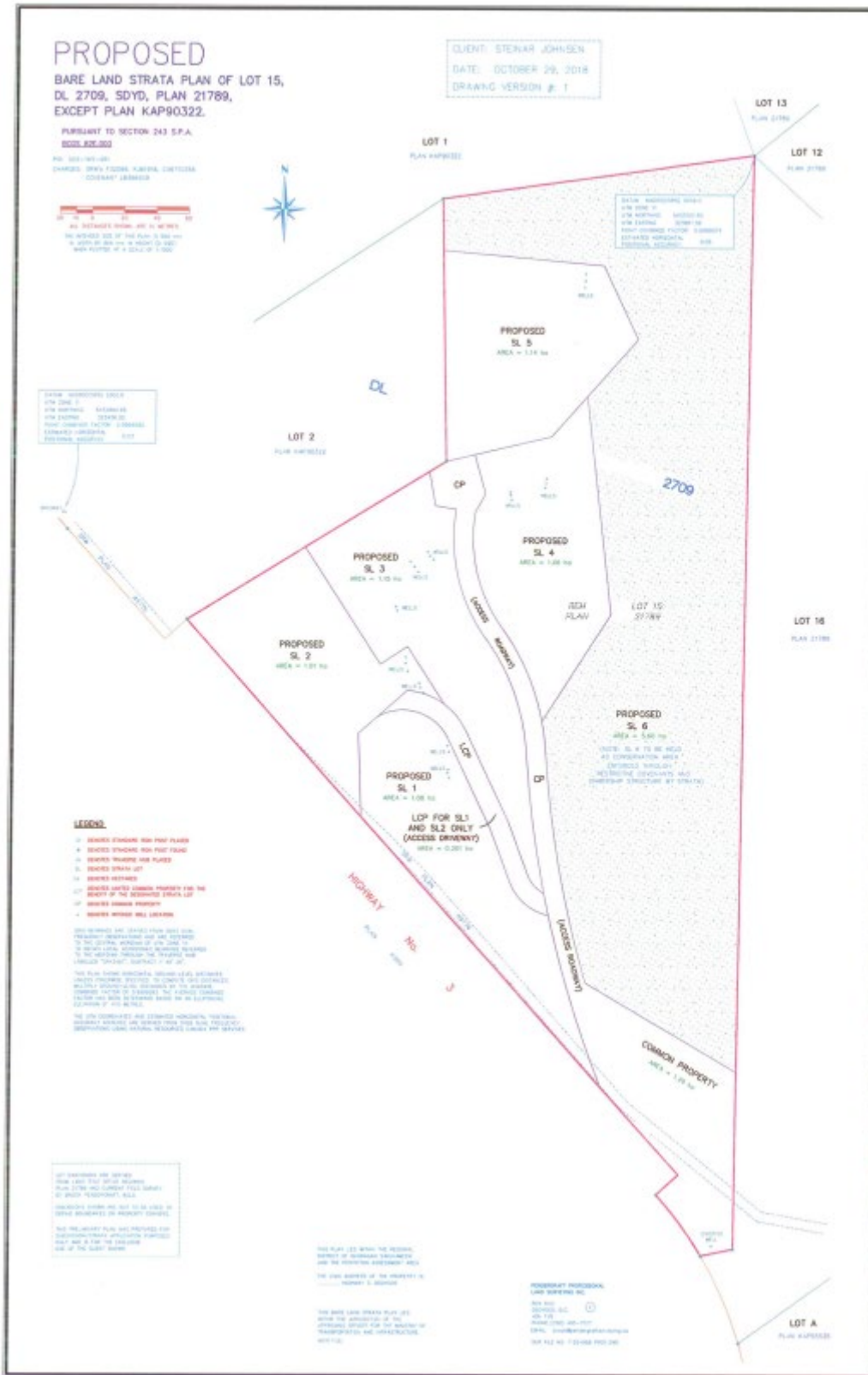
C. Garrish, Planning Manager

Attachment No. 1 – Agency Referral List

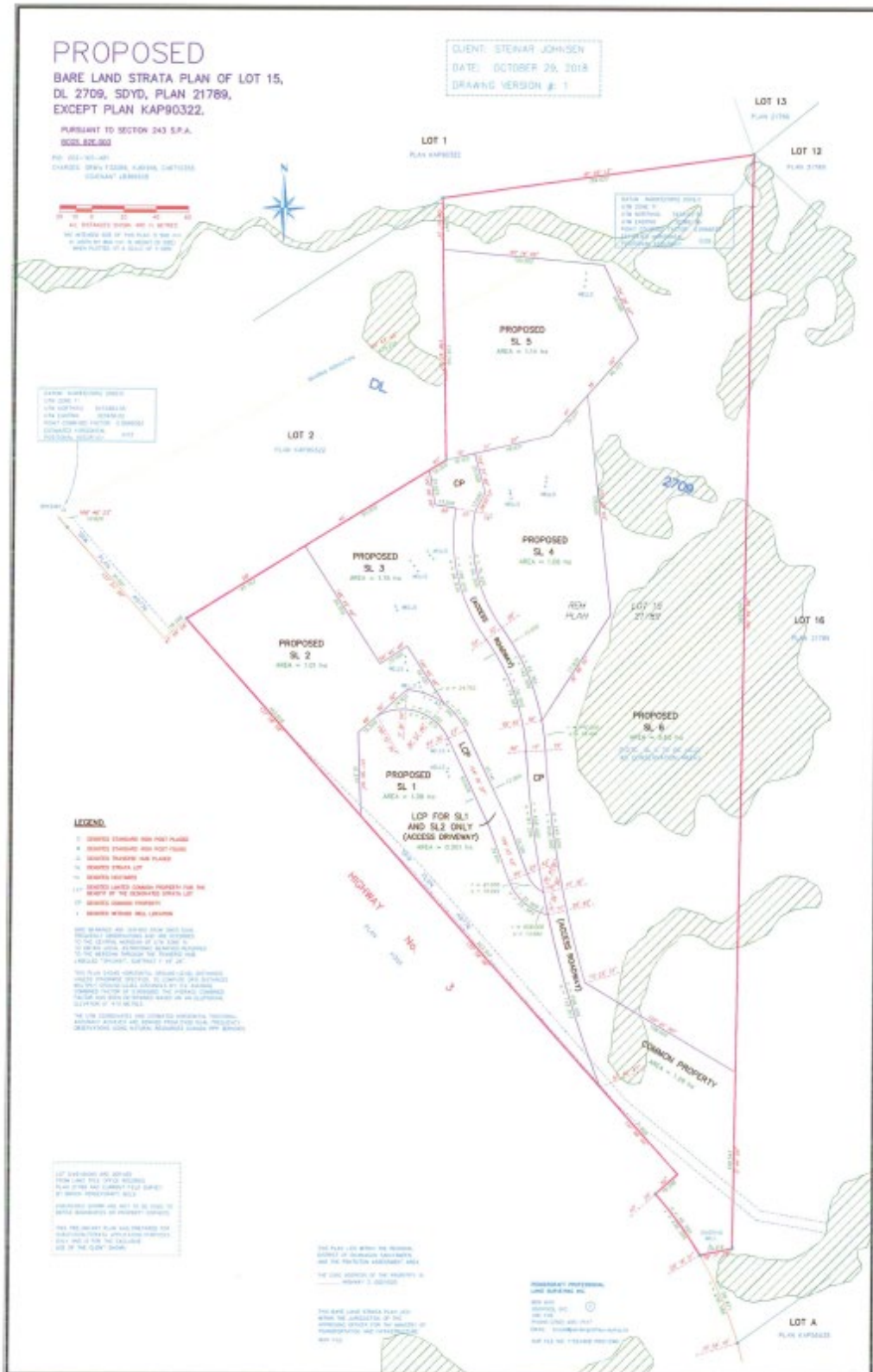
Referrals have been sent to the following agencies as highlighted with a , regarding Amendment Bylaw No. 2905.01, 2021:

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|-------------------------------------|---|-------------------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> | Agricultural Land Commission (ALC) | <input checked="" type="checkbox"/> | Fortis |
| <input checked="" type="checkbox"/> | Interior Health Authority (IHA) | <input type="checkbox"/> | City of Penticton |
| <input checked="" type="checkbox"/> | Ministry of Agriculture | <input type="checkbox"/> | District of Summerland |
| <input type="checkbox"/> | Ministry of Energy, Mines & Petroleum Resources | <input type="checkbox"/> | Town of Oliver |
| <input type="checkbox"/> | Ministry of Municipal Affairs & Housing | <input checked="" type="checkbox"/> | Town of Osoyoos |
| <input checked="" type="checkbox"/> | Ministry of Environment & Climate Change Strategy | <input type="checkbox"/> | Town of Princeton |
| <input type="checkbox"/> | Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch) | <input type="checkbox"/> | Village of Keremeos |
| <input type="checkbox"/> | Ministry of Jobs, Trade & Technology | <input type="checkbox"/> | Okanagan Nation Alliance (ONA) |
| <input checked="" type="checkbox"/> | Ministry of Transportation and Infrastructure | <input type="checkbox"/> | Penticton Indian Band (PIB) |
| <input type="checkbox"/> | Integrated Land Management Bureau | <input checked="" type="checkbox"/> | Osoyoos Indian Band (OIB) |
| <input type="checkbox"/> | BC Parks | <input type="checkbox"/> | Upper Similkameen Indian Band (USIB) |
| <input checked="" type="checkbox"/> | School District #53 (Areas A, B, C, D & G) | <input type="checkbox"/> | Lower Similkameen Indian Band (LSIB) |
| <input type="checkbox"/> | School District #58 (Area H) | <input checked="" type="checkbox"/> | Environment Canada |
| <input type="checkbox"/> | School District #67 (Areas D, E, F, I) | <input type="checkbox"/> | Fisheries and Oceans Canada |
| <input type="checkbox"/> | Central Okanagan Regional District | <input checked="" type="checkbox"/> | Canadian Wildlife Services |
| <input type="checkbox"/> | Kootenay Boundary Regional District | <input type="checkbox"/> | OK Falls Irrigation District |
| <input type="checkbox"/> | Thompson Nicola Regional District | <input type="checkbox"/> | Kaleden Irrigation District |
| <input type="checkbox"/> | Fraser Valley Regional District | <input checked="" type="checkbox"/> | Osoyoos Irrigation District |
| <input checked="" type="checkbox"/> | Anarchist Mtn Fire Department | | |

Attachment No. 2 – Applicant’s Site Plan



Attachment No. 3 – Applicant’s Site Plan



Attachment No. 4 – Site Photo

