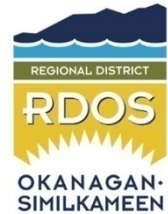


ADMINISTRATIVE REPORT



TO: Advisory Planning Commission
FROM: B. Newell, Chief Administrative Officer
DATE: February 16, 2011
RE: Zoning Bylaw Amendment Application – Electoral Area 'E'

Purpose: To facilitate the subdivision of approximately 41 parcels as well as the designation of a residentially zoned area to conservation for the purposes of preserving a wildlife corridor.

Owner: Naramata Benchland Properties Ltd. **Agent:** Urban Connections **Folio:** E-10-06834.000

Civic: 3440 Arawana Road & 3480 Arawana Forestry Road, Naramata

Legal: Plan 1190, District Lot 2711, Subsidy Lot 14, Except Plan A62, 29843, 38736, KAP44343, KAP45544, KAP46231, KAP54137, KAP57167, KAP86517, SDYD (3440 Arawana Road);
Lot A, Plan KAP58675, District Lot 3474, SDYD (3480 Arawana Forestry Road); and
District Lot 3474, SDYD, Except Plans KAP44343 and KAP59640.

This proposal was previously considered by the Advisory Planning Commission (APC) at its meeting of January 10, 2011, where it was resolved to defer “consideration of the subject development property understanding that RDOS staff and NBL will work out zoning and planning concerns and the application returned to the APC at a later date.”

At the request of the applicant, this proposal has been re-scheduled for consideration by the APC at its meeting of February 16, 2011.

Proposed Development:

This proposal originally sought to rezone an approximately 14.7 hectare (ha) area of land at 3480 Arawana Forestry Road and District Lot 3474 from Resource Area (RA) to Residential Single Family One Site Specific (RS1s) in order to facilitate a 41 lot subdivision.

It was proposed that the site specific component of the zoning allow for a minimum parcel size of approximately 464.5 m², while permitting single detached dwellings, agriculture (including sales), and public service and utility buildings.

Following the APC meeting of January 10, 2011, the applicant amended this component of their rezoning by requesting textual amendment to the Electoral Area 'E' Zoning Bylaw No. 2459, 2008, that would introduce a Small Holdings Five (SH5) Zone (which would establish a minimum parcel size of 2,020 m²), and to rezone the 14.7 ha subject area from Resource Area (RA) to Small Holdings Five Site Specific (SH5s) with the site specific component establishing a maximum density of 41 parcels, with up to 8 of these 41 parcels having a maximum parcel size of not less than 1,500 m².

If successful, the applicant would simultaneously rezone an adjacent 14.85 ha area situated at 3440 Arawana Road that is under their ownership from part Residential Single Family One Site Specific (RS1s) and part Residential Single Family One (RS1) to Conservation Area (CA). The applicant has suggested that this would be beneficial as it would “provide an increased separation between residential development and the natural movement and migration of wildlife through the area.”

Site Context:

The area under application is comprised of three separate legal titles, two of which have civic addresses, while the third is comprised as part of a District Lot. In order to ensure clarity and

consistency throughout this report, these three parcels have been labelled on Attachment No. 1 as follows:

- **'Lot 1'**: being Plan 1190, District Lot 2711, Subsidy Lot 14, Except Plan A62, 29843, 38736, KAP44343, KAP45544, KAP46231, KAP54137, KAP57167, KAP86517, SDYD. This property is split zoned RS1 and RS1s, and is the subject of an Environmentally Sensitive Development Permit (ESDP) and Watercourse Development Permit (WDP) designation under the OCP;
- **'Lot 2'**: being Lot A, Plan KAP58675, District Lot 3474, SDYD. This property is split zoned SH2 and RA and is the subject of a Watercourse Development Permit (WDP) designation under the OCP; and
- **'Lot 3'**: being District Lot 3474, SDYD, Except Plans KAP44343 and KAP59640, is zoned RA and is the subject of a Watercourse Development Permit (WDP) designation under the OCP.

'Lot 1' has recently received Preliminary Layout Approval (PLA) for a 25 lot subdivision on its western portion, with the eastern portion (that is the subject of this application) is comprised of undeveloped land and a number of right-of-ways associated with Terasen and Fortis infrastructure.

'Lot 2' is bisected by and provided legal access by a road dedication that is currently at a forest service road standard, and is relatively undeveloped apart from an existing single detached dwelling and related accessory structures and buildings situated approximately 200 metres from the northern property boundary, along with a Naramata Water System reservoir situated near the north-eastern corner of the property. There is also an area where earthworks were "historically done ... to create a rectangular shaped reservoir ... [and] this feature is planned to be used as one of the required components for a sewer treatment plant for the proposed subdivision. Arawana Creek bisects the property on an east-west axis.

'Lot 3' is seen to be relatively undeveloped apart from some "clearing, earthworks and grading" that has occurred on the property (and thereby resulting in "numerous terraces and plateaus"). It is not clear if this parcel enjoys a legal access (other than to a forest service road) and how this may be affected by subdivision. Arawana Creek bisects the property on an east-west axis.

Referrals:

Approval from the Ministry of Community, Sport and Cultural Development (MCSCD) will be required as the proposal is seen to involve a land area greater than 20 ha and the creation of more than 30 units/parcels. Approval from MoT is not required as the proposal is not situated within 800 metres of a controlled area (NOTE: dedication of a portion of the forestry road will require the approval of MoT).

Analysis:

Although the proponent has characterised this application as "the transfer of the zoning rights" from one parcel to another, Administration notes that zoning does not create development "rights" that can be transferred in this way. Therefore, each component of this application must be considered on its own merits, and, in order to provide clarity, each will be assessed under its own sub-section.

Proposed Conservation Area Zoning

In support of the proposal to rezone part of Lot 1 to Conservation Area, the applicant has submitted an "Ecological Assessment of Proposed Housing Development of Naramata Benchlands" that was prepared by Okanagan Wildlife Consulting in July of 2005 in relation to the previous proposal to develop 295 parcels over 'Lot 1' and 'Lot 2'.

This Assessment included Sensitive Ecosystem Inventory (SEI) mapping of the property, which established the presence of "Woodland (WD)" and "Old Forest (OF)" ecosystems, and recommended avoiding development of these areas where they occurred south of Arawana Creek.

A second recommendation favoured the incorporation of “two narrow wildlife corridors in the lower portion of the development ... These would be for potential Bighorn Sheep migrations at low-elevations, as well as for movement of other wildlife that are restricted to low elevations in the Okanagan valley. One of these corridors would be along existing utility corridors, and the other would be through the development area.”

This is supported by the OCP which specifically speaks to encouraging “the retention of existing wildlife corridors within and outside Environmentally Sensitive Areas” (Section 15.3.2.15).

For these reasons, Administration is generally supportive of the applicant’s proposal to rezone part of the property to Conservation Area, and considers that there is an advantage to removing the RS1 and RS1s zoning from this part of ‘Lot 1’ as residential land uses do not appear to be congruent with the environmental attributes of this particular area.

Where there is a concern, however, is that the Assessment by Okanagan Wildlife Consulting found that 75% of the route from the Okanagan Mountain Park to the Pentiction Creek area is situated on private lands and, in the absence of a strategy to create a “low elevation corridor” and to “set aside other developments on private lands within this corridor”, the long-term integrity of any such corridor will likely be tenuous. Accordingly, Administration considers that this rezoning should be accompanied by a broader plan to create a low-elevation wildlife corridor through the Naramata community.

As the APC is aware, this wildlife corridor is also seen to pass through that part of ‘Lot 2’ situated on the north side of Arawana Road, but that this area was not originally proposed for conservation by the applicant. Following the APCs January meeting, the applicant proposed an “interim covenant” to protect ungulate movements through this area with “the final corridor protection [to] be done after proper consultation with wildlife experts” and at the time of subdivision.

While Administration supports the registration of a covenant as an interim step, it is felt that, subject to confirmation from a “wildlife expert”, the protection of the corridor through ‘Lot 2’ should ultimately be consistent with the approach adopted for ‘Lot 1’ — which would be the introduction of a Conservation Area (CA) Zone.

Administration also favours the designation of that part of ‘Lot 1’ proposed for conservation area zoning as an Environmentally Sensitive Development Permit (ESDP) Area, the applicant, however, has indicated that they do not support this as “the suggested RDOS encumbrances on the property would devalue the property and reduce the value of the eco-gift.”

Conservation Area Zone Ownership

As the APC is aware, the applicant previously stated that the long-term tenure of the area to be zoned Conservation Area *could* be with the RDOS, the Province, The Nature’s Trust or even The Land Conservancy.

Following the January meeting of the APC, the applicant advised that donating land to a “stewardship or conservation group can take a significant amount of time (up to a year), and [the property owner] is not prepared to have the rezoning of the property delayed for this to occur.”

In subsequent discussions, the applicant indicated that they would be preparing an alternate proposal whereby the donation of the conservation zoned lands to an agency, such as The Land Conservancy, be considered as fulfilling the requirement for parkland dedication under the *Local Government Act* for Phases II & III of the Benchlands development.

Although a formal outline of this proposal was not submitted by the applicant prior to Agenda preparation for the APC’s February meeting, Administration does not generally support parkland dedication being applied to conservation areas.

The OCP establishes that “parkland dedication is intended to provide sites for parks to serve new residential subdivision or to establish trail corridors”, while the provincial Best Practices Guide advises

that “environmentally sensitive areas not intended for public access should be excluded from the [calculation of parkland dedication].”

In this instance, it is not thought that public access should be encouraged over what is supposed to be an important wildlife corridor through the Naramata community.

In addition, Administration does not favour fragmenting the ownership of this conservation land between organizations as will occur if part the land is provided to the Regional District as parkland dedication with the remainder being potentially donated to a conservation organisation for the purposes of an eco-gift.

Wildlife Corridor Plan

The APC is asked to provide direction to the Area Director as to whether a corridor linking Okanagan Mountain Park to Penticton is a community priority that should be addressed through the OCP, and as a potential project for the Regional District in 2011. The Manager of the South Okanagan-Similkameen Conservation Program (SOSCP) has already indicated that this organization would be willing to participate in a wildlife corridor planning exercise (subject to the availability of funding from Electoral Area ‘E’).

Proposed Residential Zoning

In considering the second component of this application, reference is made to the Green Bylaws Toolkit (a resource produce for local governments in British Columbia), which states that an “appropriate mechanism for conserving sensitive ecosystems if the existing zoning allows an inappropriate level of density is to zone designated areas as rural conservation zones and to use amenity density bonus programs.”

While the absence of such a program at the Regional District is somewhat problematic, an amenity density bonus can generally be used to allow a developer “to build additional density in return for providing the local government and the public an amenity in return” (i.e. environmental protection or the acquisition of parkland) and has a clear basis in provincial legislation (Section 904 of the *Local Government Act*).

In this instance, the applicant has stated that “the transfer of the zoning rights does not provide the owner of the land with any additional development rights as the area of land that will be rezoned to RS1s for residential purposes will be similar (slightly less) in size to the area of land proposed to be rezoned ... to Conservation Area.”

Administration is concerned that, while a concept plan has been provided showing potential for the creation of 41 parcels on ‘Lot 1’, no corroborating information has been provided to confirm this is actually achievable. Administration also questions this potential density as the area being proposed for Conservation Area zoning is seen to be fettered by a number of natural and man-made impediments.

Specifically, the area is encumbered by two significant rights-of-ways related to Terasen and Fortis infrastructure, while also being subject to riparian area setbacks as well as slopes in excess of 30%. It is also noted that the applicant’s own environmental assessment recommended that this area not be developed.

The question for the APC, therefore, becomes twofold: in the absence of an amenity density bonus policy, is the creation of upwards of 41 parcels an appropriate return to the applicant for setting aside over 14 ha of land as a potential public amenity (i.e. wildlife corridor); and is such a rural-residential development appropriately located at ‘Lot 2’?

COMPREHENSIVE DEVELOPMENT PLAN:

On the question of whether a 41 parcel subdivision is an appropriate level of development at ‘Lot 2’, the OCP contains very prescriptive wording as to when the Regional Board “may consider new

development proposals greater than five (5) dwelling units where [the proposal involves an] OCP amendment and associated infrastructure projects.”

Specifically, such a proposal should “clearly demonstrate how [it] responds to the community’s slow managed growth mandate [1.5%/year], and shall require the development of a Comprehensive Development Plan (CDP) ... this Plan will be prepared in accordance with Provincial environmental best management practices guidelines before any development approvals are considered, specifically addressing a land use element, a housing element, a capital facilities plan element, a utilities element, and a transportation element.”

The applicant has stated that “the time and effort in creating a CDP would not be [a] productive and valuable exercise and would provide no practical value. The information in a CDP would reveal nothing new, except the fact the proposed development would result in fewer homes and a lower population increase and generate less traffic than could result from the development of the currently zoned lands.”

Administration does not share this conclusion, and views the requirement to prepare a CDP as addressing not only population increase, but also the physical challenges and constraints that may be presented by a particular parcel in relation to the environment, servicing, housing, transportation, and community engagement. In addition, the need for a CDP is seen to be a stated requirement of the OCP, and to waive this requirement will necessitate a separate amendment to the Plan.

WATER SYSTEM

As the APC is aware, the applicant is currently petitioning to have the whole of ‘Lot 2’ entered into the Naramata Water System.

A water reservoir servicing Phase I & II of the Benchlands development (to the west) as well as the proposed 25 parcels approved for ‘Lot 1’ (to the south) has already been developed at the north-east corner of ‘Lot 2’. This reservoir, however, is unable to supply domestic or fire flows to the majority of ‘Lot 2’ — including the majority of the proposed 41 parcels — due to insufficient pressure within the system, and will require upgrading.

The Regional District’s preference for any upgrade would be a dual-celled concrete reservoir at a higher elevation, but the applicant has not supplied any information on how water will be supplied to the proposed 41 parcels and has stated that this issue will be dealt with after rezoning is approved.

SEWER SYSTEM

The Ministry of Environment (MoE) has confirmed that a permit has been issued to the applicant that allows for the discharge of treated effluent on ‘Lot 2’ for approximately 95 single family dwelling units.

This sewage Treatment Plant (STP) is to serve Phase II of the Benchlands development, which represents approximately 25 parcels, while the applicant has indicated that they wish to develop no more than 41 parcels on ‘Lot 2’ — thus leaving an unused capacity for a further 29 parcels.

Under the Zoning Bylaw, the definition of a “utility use” specifically excludes “sewage treatment plants”. The applicant has advised that “Wildstone Engineering is looking at the sewerage system options and will provide some STP size and location options in due course. This information will not be available in time for the APC so the matter of zoning a specific portion of land for the STP cannot occur right now. However, we believe the best way to handle this matter is to include a sewer treatment plant as a site specific permitted use on the lands. In this way the STP would be allowed through site specific provisions and future engineering would determine exactly where and how big the STP would be.”

Administration agrees with this assessment and is proposing to introduce a Resource Area Site Specific (RAs) zoning over the remainder of ‘Lot 2’ to accommodate this future treatment plant.

TRANSPORTATION AND ACCESS

As the APC is aware, the dedicated section of Arawana Road does not extend beyond the northern boundary of 'Lot 2' (a point confirmed by the applicant), while 'Lot 3' is accessed indirectly (over Crown land via easement) from the Arawana Forestry Road.

In order to gain legal access to 'Lot 3' for the purpose of subdivision, the applicant will be required to apply to the Ministry of Forests (MoF) in order to have the Arawana Forestry Road transferred to the Ministry of Transportation and Infrastructure (MoT) as road dedication, and that the road will be required to be built to MoT standards by the applicant (which may result in a different alignment).

Administration also notes that the applicant's proposal appears to be showing access to the proposed parcels numbered 1 to 11 from the Arawana Forestry Road over Crown land, yet it is not clear how existing access arrangements with the Crown may relate to the proposed development.

On January 28, 2011, MoT expressed concerns regarding the grades found beyond the end of the existing pavement on Arawana Road (MoT's standard is 8.0% whereas the grades found on the unmade part of Arawana Road range between 10.5% and 13.5%).

Although the applicant is aware of the Ministry's comments, Administration is concerned about the prospect of the Board granting a rezoning to that part of 'Lot 2' as legal access is unclear. It is understood that the applicant is in the process of obtaining confirmation from the Ministry that it "would approve a future subdivision of the subject lands if the Arawana Road design could meet MoT road standards, or amended standards as approved by MoT", and that this be provided prior to the scheduling of a Public Hearing.

FIRE HAZARD

According to a Fire Hazard Assessment commissioned by the applicant in 2005, these properties are seen to possess, on average, an "Extreme Hazard Rating Class". This Assessment makes approximately thirty (30) recommendations and the applicant has indicated that they are prepared to incorporate these into a restrictive covenant.

COMMUNITY CONSULTATION

The Regional District has previously been advised that "local governments must during the development or amendment of an official community plan, specifically consider the requirement to consult under Section 879 [of the *Local Government Act*] and ... provide at least one opportunity to consult."

This opportunity to consult is seen to be separate from the requirement for a Public Hearing, and where a proposal is deemed to result in a "significant land use change", this be met through the holding of Public Information Meeting. The criteria used by the Regional District to establish whether a proposal is "significant" is that utilised by the Ministry of Community, Sport and Cultural Development (MCSCD) when it determines whether an OCP amendment bylaw requires Ministerial approval (i.e. 20 ha / 30 units / Crown Land).

In this instance, due to the land areas involved as well as the number of parcels being proposed, Administration will be recommending to the Regional District Board that the applicant convene a Public Information Meeting, and that this occurs prior to first reading. The applicant retains the ability to hold such a meeting prior to consideration by the Board, in which case the recommendation from Administration would likely be that appropriate consultation for the purpose of Section 879 has already occurred.

Summary:

Administration is supportive of the proposal to preserve a wildlife corridor through the properties at 3440 & 3480 Arawana Road and considers that this initiative should be expanded into a broader wildlife corridor strategy connecting Okanagan Mountain Park to the Penticton Creek area.

Administration is also generally supportive of the proposal to rezone part of the 3480 Arawana Road and District Lot 3474 to accommodate a 41 parcel subdivision, subject to certain conditions being met

(i.e. confirmation of legal access for the purpose of subdivision, registration of certain covenants, additional community consultation, etc.). Administration recognises that this proposal does not contemplate the creation of any additional density in Electoral Area 'E' as the applicant is removing an equivalent area of residential density from 3440 Arawana Road.

Administrative Recommendation:

The APC may wish to consider supporting the following recommended motion in its entirety, in part, or not at all:

THAT the APC recommends to the RDOS Board that the subject development application be approved with the following conditions:

- (1) That a restrictive covenant is registered on all of that part of 3480 Arawana Road (being Lot A, Plan KAP58675, District Lot 3474, SDYD) currently zoned Small Holdings Two (SH2) to protect ungulate movements through this part of the property;**
- (2) That the precise location of the wildlife corridor through that part of 3480 Arawana Road (being Lot A, Plan KAP58675, District Lot 3474, SDYD) currently zoned Small Holdings Two (SH2) be established prior to any subdivision of 3480 Arawana Road (being Lot A, Plan KAP58675, District Lot 3474, SDYD) and that:**
 - (i) this wildlife corridor is established in consultation with a suitably qualified wildlife professional;**
 - (ii) once established, an application be made to rezone this wildlife corridor to Conservation Area (CA) and to include it in an Environmentally Sensitive Development Permit (ESDP) Area under the OCP; and**
 - (iii) this wildlife corridor is transferred to a conservation organization (preferably the same organization as acquires the area to be zoned Conservation Area (CA) at 3440 Arawana Road) or the RDOS.**
- (3) That a restrictive covenant is registered on that part of 3480 Arawana Road (being Lot A, Plan KAP58675, District Lot 3474, SDYD) proposed to be zoned Small Holdings Five Site Specific (SH5s) that incorporates the recommendations of the "Wildland/Urban Interface Fire Hazard Assessment for the Naramata Benchlands Development" prepared by Swanson Forestry Services Limited and dated 19 May 2005;**
- (4) That part of 3480 Arawana Road (being Lot A, Plan KAP58675, District Lot 3474, SDYD) generally comprised of the area south of Arawana Creek be zoned Resource Area Site Specific (RAs) in order to facilitate the development of a sewer treatment plant;**
- (5) That part of 3440 Arawana Road (being Plan 1190, District Lot 2711, Subsidy Lot 14, Except Plan A62, 29843, 38736, KAP44343, KAP45544, KAP46231, KAP54137, KAP57167, KAP86517, SDYD) proposed to be zoned Conservation Area (CA) be transferred to a conservation organization such as The Land Conservancy or The Nature's Trust, or a local government (i.e. the Regional District);**
- (6) That prior to first reading of the Amendment Bylaws, the Developer identify the lands proposed to meet the requirements for parkland dedication under the *Local Government Act*;**
- (7) That prior to the scheduling of a Public Hearing, the applicant be required to undertake the preparation of a Comprehensive Development Plan (CDP) in accordance with the requirements of the Official Community Plan;**

(8) That prior to the scheduling of a Public Hearing, the applicant obtains confirmation from the Ministry of Transportation that it is prepared to allow new development beyond the existing paved area of Arawana Road.

(9) That prior to first reading, the applicant convene a Public Information Meeting in relation to this proposed rezoning application.

Options:

THAT the APC defers consideration of the subject development application.

THAT the APC recommends to the RDOS Board that the subject development application be approved.

THAT the APC recommends to the RDOS Board that the subject development application be approved with the following conditions:

That the APC recommends to the RDOS Board that the subject development application be denied.

Respectfully submitted:



Christopher Garrish MCIP
Planner

Attachments: Attachment No. 1 – Context Maps

Attachment No. 2 – Aerial Photo

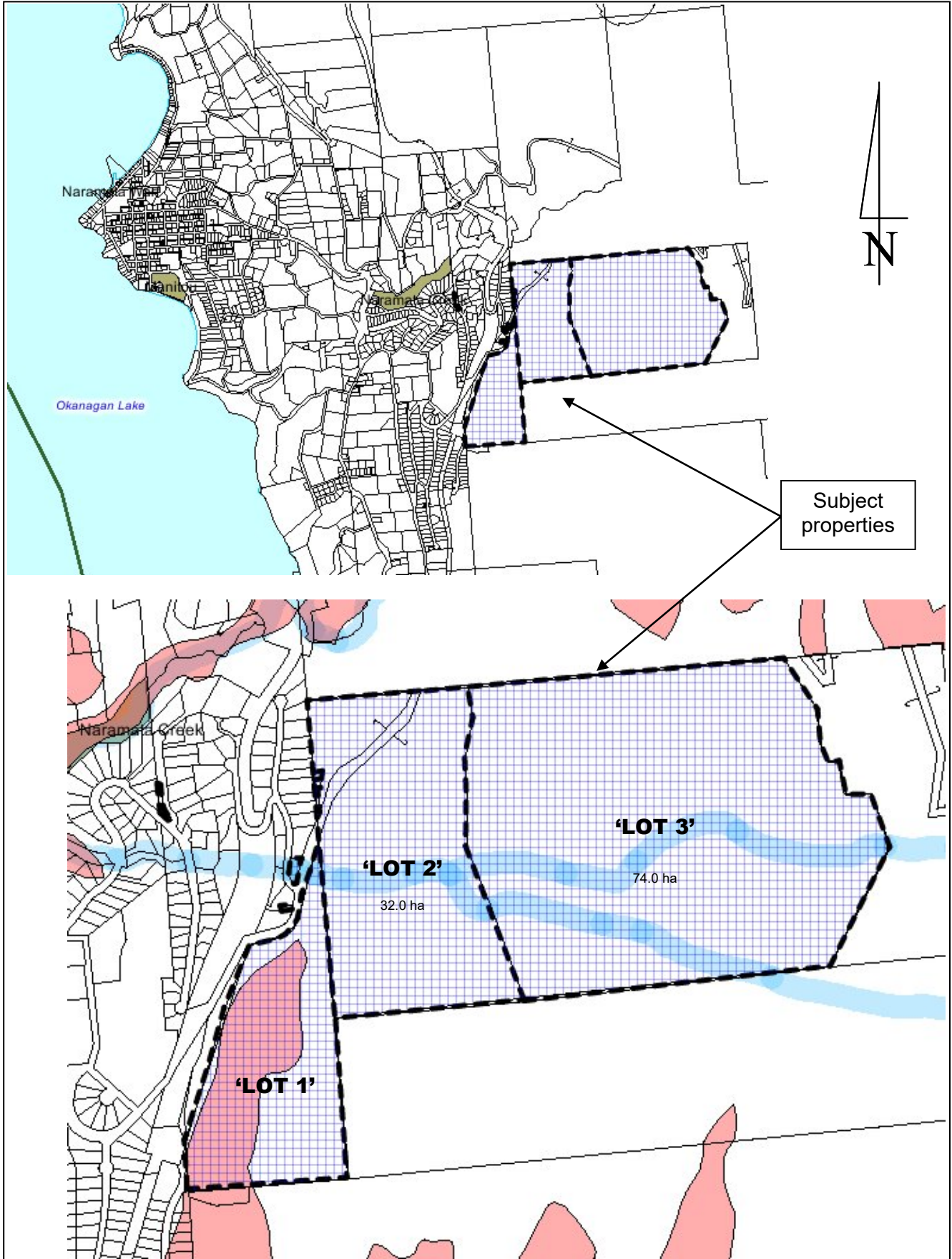
Attachment No. 3 – Applicant's Site Plan

Attachment No. 4 – "Sensitive Ecosystems of the Naramata Benchlands site" (2005)

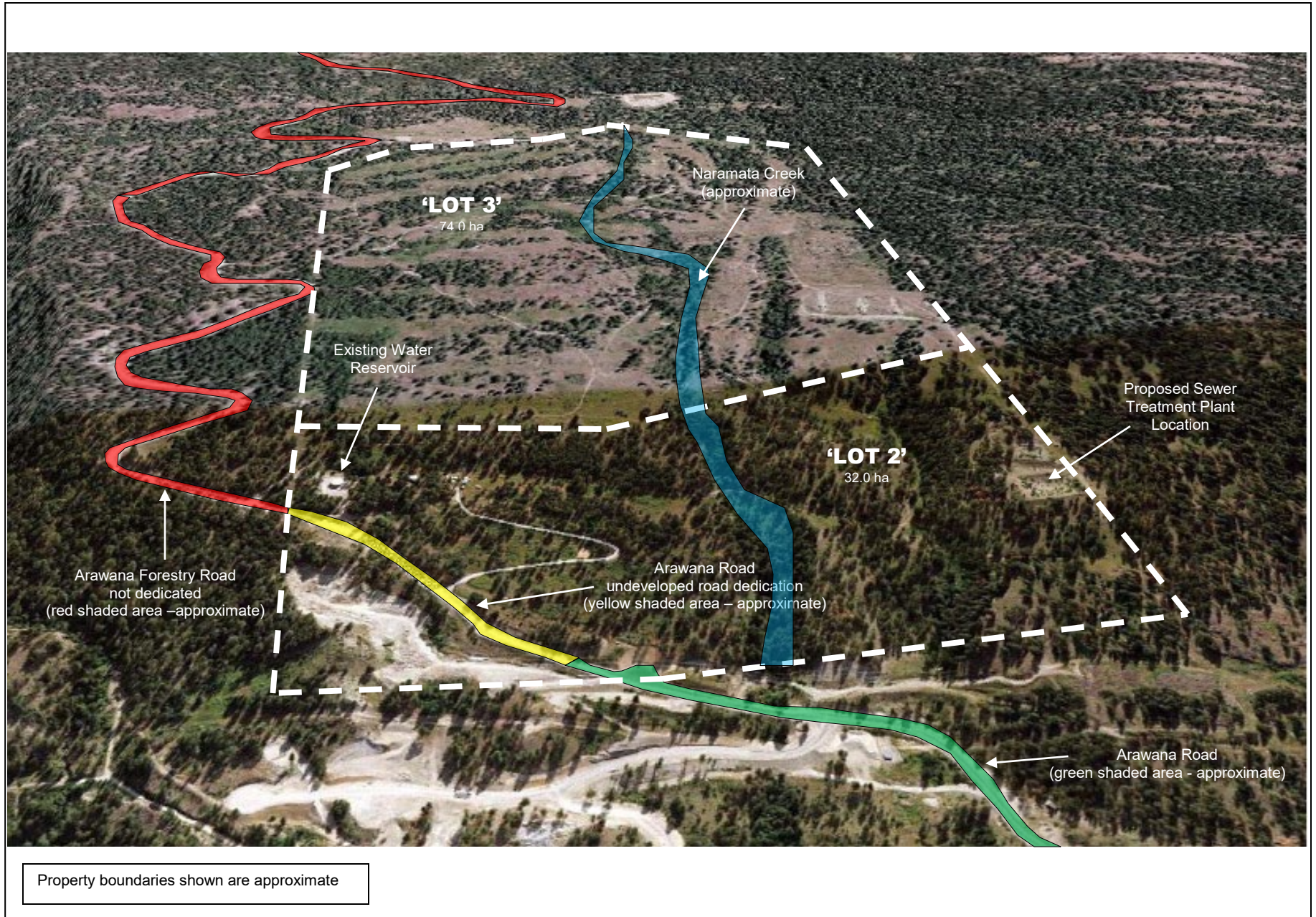
Attachment No. 5 – [Draft OCP Amendment Bylaw No. 2458.03, 2011](#)

Attachment No. 6 – [Draft Zoning Amendment Bylaw No. 2459.06, 2011](#)

Attachment No. 1 — Context Maps



Attachment No. 2 — Aerial Photo



Attachment No. 3 — Applicant's Site Plan

