

ADMINISTRATIVE REPORT



TO: Board of Directors

FROM: B. Newell, Chief Administrative Officer

DATE: April 6, 2023

RE: Official Community Plan (OCP) & Zoning Bylaw Amendment – Electoral Area “A” (A2018.207-ZONE)

Administrative Recommendation:

THAT Bylaw No. 2905.01, 2023, a bylaw to amend the Electoral the Area “A” Official Community Plan to allow a 6-lot subdivision at 1750 Highway 3; and,

THAT Bylaw No. 2800.23, 2023, a bylaw to amend the Okanagan Valley Zoning Bylaw, be denied.

Folio: A-06748.300 Legal: Lot 15, Plan KAP21789, Sublot 2, DL 2709, SDYD, Except Plan KAP90322

OCP: Large Holdings (LH) Zone: Large Holdings One (LH1)

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 land use designation under Schedule ‘B’ (OCP Map) of the Electoral Area “A” Official Community Plan (OCP) Bylaw No. 2905, 2021, 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 under Schedule ‘2’ (Zoning Map) of the Okanagan Valley Zoning Bylaw No. 2800, 2022, 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 rezoned as a conservation area.”

Site Context:

The property is approximately 12.5 ha in area and is situated on the northeastern 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.

The easterly adjacent parcel (PID: 002-165-490) was recently acquired by the Southern Interior Land Trust Society (SILT) for conservation purposes.

Background:

The property was created 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.

The subject property is not situated within a designated growth area, but at its meeting of November 21, 2019, the Board resolved that the proposed subdivision is consistent with the RGS Bylaw.

The 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.

It is 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:

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

February 8, 2021 - the Electoral Area “A” Advisory Planning Commission (APC) recommended that the subject development application be denied.

May 20, 2021 - consideration of the amendment bylaws to allow for the submission of a hydrogeological assessment and an updated environmental assessment to be prepared were postponed.

August 6, 2021 - the applicant submitted the requested updated environmental assessment (i.e., a July 27, 2021 response letter to referral comments regarding the application).

November 18, 2021, March 17, 2022, and October 6, 2022 - three separate requests for an extension to the deadline to provide a hydrogeological assessment were granted.

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:

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 parcels which consider capability 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, 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 parcels are not consistent with the immediate vicinity which consists of large, rural parcels. It is further noted that the Electoral Area “A” OCP Bylaw had undergone an extensive review between 2019 and 2021, 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).

The proposal is seen to be contrary to growth management policy to not 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 17.4.1), 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.

Increasing development permissions in an area known to contain geo-technical hazards and sensitive, protected habitat is problematic, as there is an increased likelihood that variances will be sought 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 the potential reduction of water available to the Osoyoos Irrigation District that serves residences and agricultural operations on the east bench of Osoyoos, it should be acknowledged that the impact of additional wells on the aquifer is unknown but the precautionary principal should be considered when evaluating this proposal.

The applicant has submitted a Groundwater Feasibility Assessment which concluded that “the bedrock formation beneath the proposed subdivision has demonstrated sufficient water is available to supply the proposed development at full build-out”.

Alternative

This proposal does include a Conservation Area (CA) zone to help protect a 5.6 hectare portion of the parcel (i.e., “Proposed Strata Lot (SL) 6” as shown in Attachment Nos. 2 & 3) 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.

Since the original submission of this application, the easterly adjacent parcel has been purchased by the Southern Interior Land Trust (SILT) for conservation purposes. It is noted that the proposed conservation lot would be contiguous with this parcel.

Subject to final approval by SILT’s Board of Directors, SILT has indicated that it would be amenable to accepting a donation of the proposed 5.6 ha CA lot, if offered by the applicant, to manage the land in conjunction with the easterly adjacent parcel (i.e., via boundary adjustment). A SILT representative has further indicated that their acceptance of the proposed donation is based on their understanding that:

- 1. Groundwater well use, should the Lot 15 subdivision be approved, is unlikely to affect surface flow at nearby Bourguiba Spring.*
- 2. The Johnsens’ will transfer their existing surface water licence C050097 on Bourguiba Spring to SILT concurrent with the land donation.*
- 3. SILT will be both indemnified and held harmless in perpetuity against any loss, injury, or damages related to slope instability or rockfall in the area.*
- 4. Mr. Johnsen intends to covenant each of lots 1, 2, 3 and 4 to minimize site disturbance to maintain the natural vegetation and character of the landscape.*

Despite the proposed land donation and conditional acceptance by the SILT Board, it is the intent of OCP to avoid development in environmentally sensitive areas and hazard areas where possible, and to

direct residential growth to areas with services. In this case, the proposed subdivision would, in contrast, facilitate further development of lands identified as hazard areas and which are adjacent to environmentally sensitive conservation lands.

Further, while the donation of the land to SILT would increase the cumulative conservation land base, it does not negate the deleterious impacts that increased residential development may have on the lands.

Alternatives:

1. THAT Bylaw No. 2905.01, 2023, Electoral Area “A” Official Community Plan Amendment Bylaw and Bylaw No. 2800.23, 2023, Okanagan Valley 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 April 6, 2023, 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, 2023, in conjunction with its Financial and applicable Waste Management Plans;

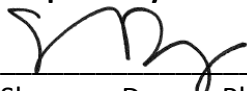
AND THAT the holding of a public hearing be delegated to Director Pendergraft;

AND THAT prior to scheduling a public hearing a statutory covenant be prepared for registration on the title of Lot 15, Plan KAP21789, Sublot 2, DL 2709, SDYD, Except Plan KAP90322, prior to the adoption of Amendment Bylaw No. 2800.23, 2023, stipulating that no building permit will be issued until a 5.6 ha area identified as “Proposed Strata Lot (SL) 6”, and as shown on Attachment Nos. 2 & 3 in the Administrative Report from the Chief Administrative Officer dated April 6, 2023, has been donated to the Southern Interior Land Trust (SILT) for conservation purposes.

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*.

Respectfully submitted:



Shannon Duong, Planner II

Endorsed By:



C. Garrish, Planning Manager

Attachments: No. 1 – Agency Referral List

No. 2 – Applicant’s Site Plan

No. 3 – Applicant’s Site Plan (with ESA 2 Areas)

No. 4 – Aerial Photo (2022)

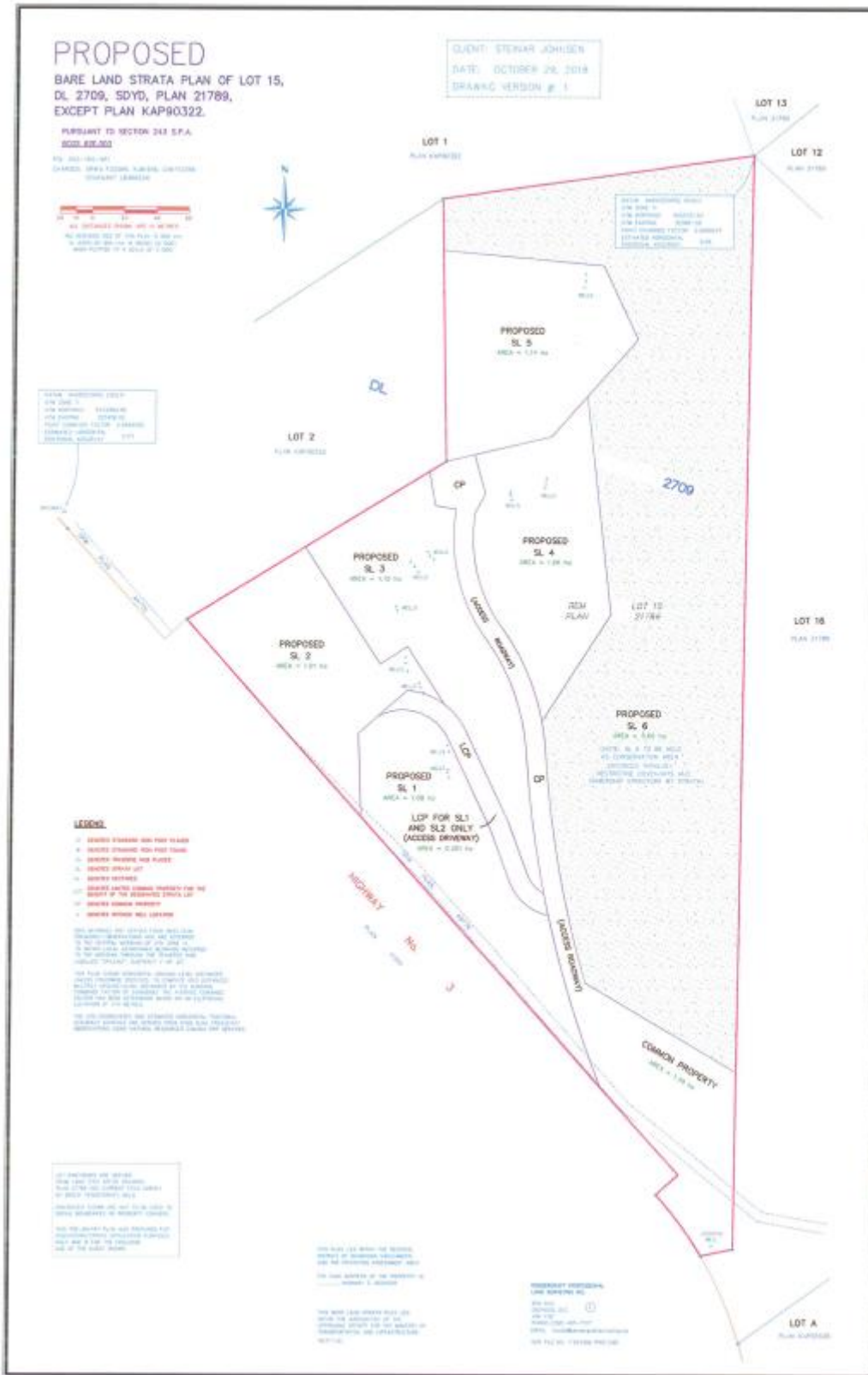
No. 5 – Site Photo

Attachment No. 1 – Agency Referral List

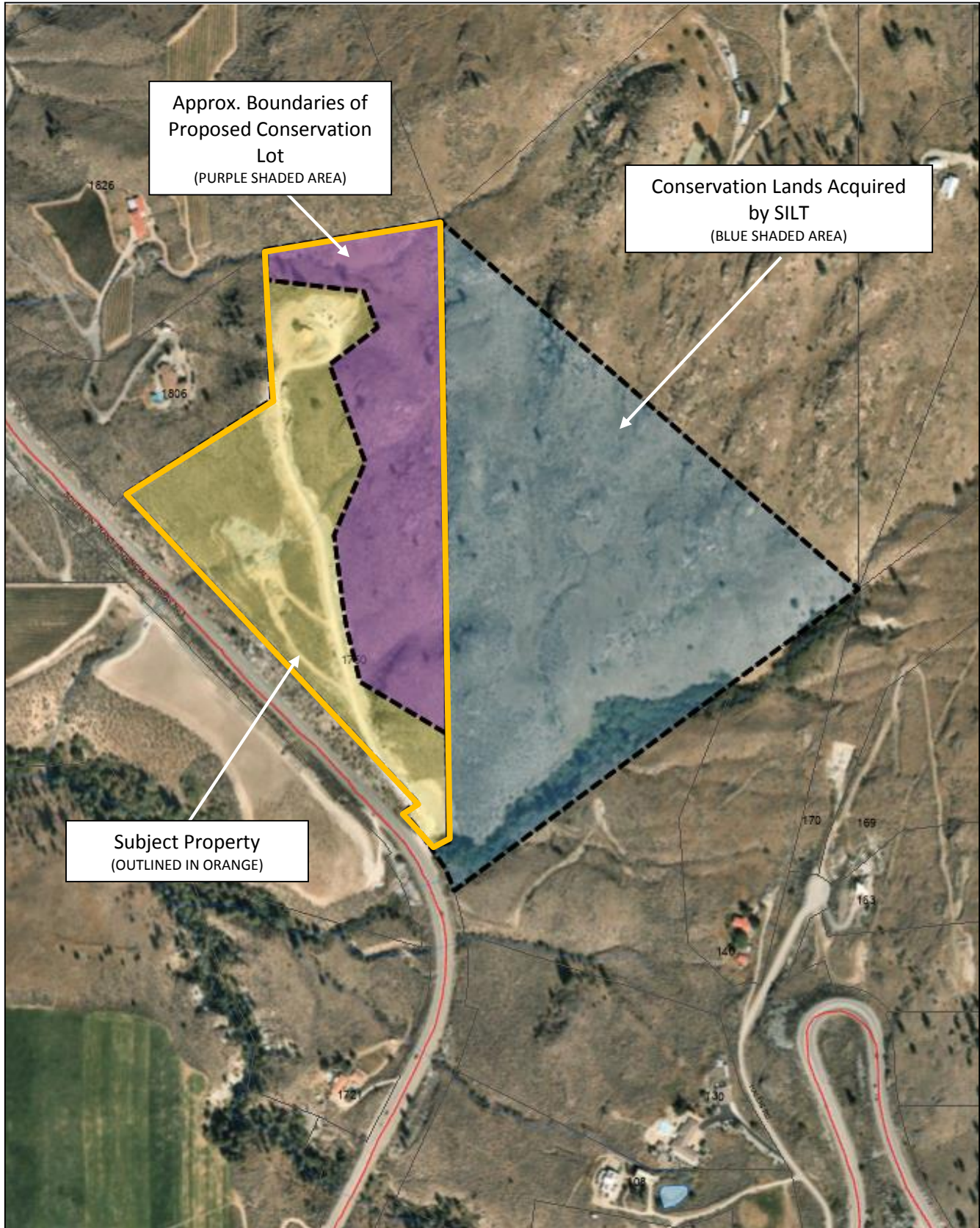
Referrals have been sent to the following agencies as highlighted with a , regarding Amendment Bylaw No. 2905.01, 2021:

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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. 4 – Aerial Photo (2022)



Attachment No. 5 – Site Photo

