

June 25, 2021

File #: F2021.008

Christopher Garrish
Planning Manager
Regional District of Okanagan Similkameen (RDOS)
101 Martin Street,
Penticton, BC, V2A 5J9
planning@rdos.bc.ca

Dear Mr. Garrish,

RE: Proposed Bylaw Amendments 2461.18 and 2790.02 (Bylaws to amend the Electoral Area "F" Official Community Plan Bylaw No. 2790 and Zoning Bylaw No. 2461) 619 and 625 Highway 97 and adjacent properties

The District of Summerland is in receipt of a referral (F2021.008) for these proposed amendment bylaw(s) on May 28, 2021. The subject property is located 5 km north of the District of Summerland's north boundary as it intersects Highway 97, and 2.6 km east of the District of Summerland's east boundary in proximity to Garnett Lake, within Electoral Area "F" of the Regional District of Okanagan-Similkameen (RDOS).

The applicant is proposing the consideration of these amendments to accommodate a 106 unit medium residential development across a total of 8 'terraced' 6 storey high residential buildings that are proposed to be terraced down the slope toward Okanagan Lake. In addition, the proposed development contemplates a clubhouse & restaurant, a pickleball and tennis court, and a community park. The applicant is proposing to construct a wastewater and water treatment plant on the west side of Highway 97 to allow for the development.

The District of Summerland notes the following in response to this referral:

1. The 'Greata Ranch' area is identified as a Rural Growth Area in the South Okanagan Regional Growth Strategy Bylaw 2770, 2017.
2. That the Electoral Area "F" Official Community Plan identifies the subject property to be located in the Rural Growth Area Containment Boundary (Figure 14, pg. 35) of the Greata Ranch Rural Growth Area.
3. Section 6.5.11 of Electoral Area "F" Official Community Plan states the following:

"Will review the suitability of Greata Ranch as a Rural Growth Area when the Regional Growth Strategy is reviewed or updated."

4. Currently, the RDOS, along with participating South Okanagan member municipalities, is undertaking a review of the South Okanagan Regional Growth Strategy. The planning review project was initiated in August of 2020 and is expected to be completed in November of 2021.
5. The RDOS has adopted a Liquid Waste Management Plan for Electoral Area 'F', and a Stage II amendment report by AECOM Canada Ltd. was prepared in March 24, 2009. This amendment report considered various options for managing liquid waste that was to be expected from the Greata Ranch rural growth area, including an on-site wastewater treatment plant, pumping to the District of Peachland, or pumping to the District of Summerland. The preferred solution to liquid waste management determined by the consultant was **Option #2: Pump Wastewater to Summerland WWTP**. This option was preferred due to its potential to provide the greatest benefit to the area north of Summerland along the Okanagan lakeshore, and greatest likelihood of implementation.

The following are comments from District of Summerland internal departments:

Planning & Development

- Given that the RDOS is currently undergoing a review of the South Okanagan Regional Growth Strategy, and that there is a policy recommendation (S. 6.5.11) in the recently adopted Electoral Area "F" Official Community Plan to "review the suitability of the Greata Ranch area as a Rural Growth Area", planning staff feel that this proposal is premature and the drafted amendment bylaws **should not** be considered by the Regional District Board for adoption until the completion of the review of the Regional Growth Strategy (expected November, 2021). Staff are aware of preliminary discussions of whether Greata Ranch should be considered as a future growth area and allowing this rezoning application to be approved at this time circumvents these growth management discussions from taking place holistically and at a regional level.
- The RDOS Electoral Area "F" Liquid Waste Management Plan identifies the preferred liquid waste management solution for the Greata Ranch Rural Growth Area to be pumping to the District of Summerland's Wastewater Treatment Plant (WWTP). Further investigation is required with regards to the costs and benefits to the District of Summerland to extending a sanitary sewer connection to the Greata Ranch area, including potential existing residential development and planned future development that could benefit from this connection.

Engineering/Public Works

- If a connection to the District of Summerland's Wastewater System will take place, the following will be required:
 - Sanitary modelling will be required to determine tie in location and additional upgrades required. The full cost of modelling will be placed on the developer as this area is outside the current municipal boundary.
 - Engineered drawings for approval with current and potential future flow to WWTP.
 - Sanitary sewer DCCs will be applicable to the developer.
 - The District will not own or maintain any infrastructure outside its boundary. Therefore, a servicing agreement or other mechanism stating

ownership, responsibility, and payment scheme will be required.

- The tie-in location in the RDOS's Liquid Waste Management Plan shows connection to the District's existing system in Crescent Beach. This proposed connection would require major downstream upgrades in the District's system and an alternative tie-in location to the District's system should be considered.

Electrical Utility

- BC Hydro currently services this area north of the District of Summerland for electrical service.
- The District of Summerland Electrical distribution system ends approximately 5.5 km south of this location.

Fire Department

- The subject property is located outside of the District of Summerland's fire response area. It is therefore classified as an unprotected area for the Fire Underwriters Survey.
- If structural fire protection was to be provided to this property, with the current make-up of the Summerland Fire Department, provision of timely and effective fire protection would be a challenge.
- Emergency responses to this area would negatively impact the Fire Department's ability to provide timely and effective fire protection to areas within our boundary.
- These factors may impact the overall fire protection grade rating for the District of Summerland, as assigned by Fire Underwriters Survey, and negatively impact fire insurance costs for the entire District.
- If this proposed development were to be provided fire protection, the fire department strongly recommends that the staffing provisions of the Summerland Fire Department be increased to provide daytime coverage of 4 career firefighters, 7 days per week. This would necessitate the hiring of an additional 6 career firefighters and would have significant budget ramifications.
- Water modeling and engineered design of a water system that can provide adequate water for firefighting will be required.

RCMP

- No concerns

For any additional information on these referral comments, please contact Brad Dollevoet, Director of Development Services at 250-404-4057 or bdollevoet@summerland.ca

Sincerely,



Brad Dollevoet,
Director, Development Services

cc: Graham Statt, CAO
District of Summerland Council



Your File #: F2021.008-
ZONE (Bylaw
2461.18) (Butler
Property)

eDAS File #: 2021-02879

Date: June 2, 2021

Regional District Okanagan Similkameen
101 Martin Street
Penticton, BC V2A 5J9

Attention: Lauri Feindell, Planning Secretary

**Re: Proposed Zoning Amendment Bylaw 2461.18 for:
DL5127, ODYD, Except Plan 36630 and Plan KAP75352
Amended Lot 10 (see 225248F) DL2536 ODYD Plan 621 Except Plans H578,
36630 and KAP75352
Lot 1, District Lot 2536, ODYD Plan KAP83579
Lot A, District Lot 2536, ODYD, Plan KAP83581
Lot 11, DL2536, ODYD, Plan 621 Except Plans H578, 366340 and KAP75352**

Preliminary Approval is granted for the rezoning for one year pursuant to section 52(3)(a) of the *Transportation Act*.

If you have any questions, please feel free to call Rob Bitte at (250) 490-2280.

Yours truly,

Rob Bitte
Development Officer

Local District Address
Penticton Area Office 102 Industrial Place Penticton, BC V2A 7C8 Canada Phone: (250) 712-3660 Fax: (250) 490-2231

Lauri Feindell

From: FPP.PAC.Enquiries / Renseignements.PPP.PAC (DFO/MPO) <XPAC.EnquiriesPacific@dfo-mpo.gc.ca>
Sent: May 26, 2021 9:17 AM
To: Lauri Feindell
Subject: RE: Bylaw Referral F2021.008-ZONE (F2021.008-ZONE)

Hi Lauri,

At this time, the Fish and Fish Habitat Protection Program (FFHPP) will not be participating in the Bylaw Referral F2021.008-ZONE (F2021.008-ZONE). The role of the DFO's FFHPP Program is to protect and conserve fish and fish habitat in support of Canada's coastal and inland fisheries resources, and to make regulatory decisions under the fisheries protection provisions of the *Fisheries Act*. The FFHPP is specifically responsible for reviewing projects for which a s.35(2) *Fisheries Act* Authorization is required.

If you feel that the project proposes works, undertakings or activities that may result in harm to fish or fish habitat, DFO's Projects Near Water website (<http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>) includes information for proponents on how to comply with the *Fisheries Act*, request a DFO review of a project, and request a *Fisheries Act* authorization.

If you have any further questions about DFO's regulatory process or need general information, contact DFO's Fish and Fish Habitat Protection Program toll free: 1-866-845-6776 or email: ReferralsPacific.XPAC@dfo-mpo.gc.ca.

Thanks,

Stephen Tessovitch (he/him)

Referrals and Client Services Coordinator

Regional Coordination

Fish & Fish Habitat Protection Program

Ecosystems Management Branch

Fisheries and Oceans Canada....><(((°°

985 McGill Place

Kamloops, BC V2C 6X6

E-mail: stephen.tessovitch@dfo-mpo.gc.ca

Telephone: (250)571-5435 **Fax:** (250)851-4951

From: Lauri Feindell <lfeindell@rdos.bc.ca>

Sent: Friday, May 21, 2021 3:44 PM

To: sara.huber@gov.bc.ca; HBE@interiorhealth.ca; 'fbclands@fortisbc.com' <fbclands@fortisbc.com>; christina.forbes@gov.bc.ca; info@summerland.ca; archdatarequest@gov.bc.ca; ReferralAppsReg8@gov.bc.ca; referrals@pib.ca; PAC FPP / PPP PAC (DFO/MPO) <DFO.PACFPP-PPPPAC.MPO@dfo-mpo.gc.ca>; onareception@syilx.org; rs@summer.com; planning@cord.bc.ca

Cc: Cory Labrecque <clabrecque@rdos.bc.ca>

Subject: Bylaw Referral F2021.008-ZONE (F2021.008-ZONE)

Good Afternoon,

Re: Bylaw 2461.18 and 2790.02

619 and 625 Highway 97 and adjacent properties



June 18, 2021

File: 0280-30

Local Government File: F2021.008-ZONE

Regional District of Okanagan-Similkameen

101 Martin St

Penticton BC V2A 5J9

Via Email: planning@rdos.bc.ca

Dear Cory Labrecque,

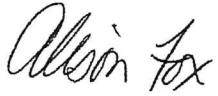
Re: Amendment to Zoning and OCP Designations of Subject Properties 619 and 625 Highway 97 (PIDS: 012-175-625; 012-175-641; 027-028-089; 027-028-119; and 011-787-422)

Thank you for providing the Ministry of Agriculture, Food and Fisheries (Ministry) staff the opportunity to comment on amendments to the zoning and OCP designations of the Subject Property to facilitate medium density residential development of 106 dwelling units. From an agricultural perspective, the Ministry offers the following comments:

- The Subject Property is situated on an old fluvial bench deposit above Okanagan Lake. The soils here are generally well drained and can be suited for agricultural crops, especially climatically adapted crops such as tree fruits and grapes but are limited by stoniness and adverse topography of the bench.
- The neighbouring property to the northwest is currently an operating vineyard on ALR land and so the ministry's [Guide to Edge Planning](#) recommends that any residential development adjacent to ALR land include a 30 metre building setback from any lot lines along the boundary of the ALR and a 15 metre vegetative buffer consistent with a Level 1 buffer as described in the Guide.
- Vineyards and wineries can be noisy operations and farm practice complaints may be made in response to the noise. Therefore, we recommend that a notice be placed on title of all homes within 300 metres of the ALR boundary that will notify property owners that they are located in a farming area and may be subject to disturbances such as noise, odour and dust.

Please contact ministry staff if you have any questions regarding the above comments.

Sincerely,



Alison Fox, P.Ag.
Land Use Agrologist
BC Ministry of Agriculture, Food
and Fisheries
Email: Alison.Fox@gov.bc.ca
Phone: (778) 666-0566



Philip Gyug, P.Ag.
Regional Agrologist
BC Ministry of Agriculture, Food
and Fisheries
Email: Philip.Gyug@gov.bc.ca
Phone: 250-378-0573

Email copy: Sara Huber, Regional Planner, Agricultural Land Commission –
Sara.Huber@gov.bc.ca

Nikita Kheterpal

From: Cooper, Diana FLNR:EX <Diana.Cooper@gov.bc.ca>
Sent: June 11, 2021 3:11 PM
To: Cory Labrecque
Cc: Lauri Feindell
Subject: RE: Bylaw Referral F2021.008-ZONE (F2021.008-ZONE)

Hello Cory,

Thank you for your referral regarding proposed development of 619 and 625 Highway 97 and adjacent properties, legally described as:
AMENDED LOT 10 (SEE 225248F) DISTRICT LOT 2536 OSOYOOS DIVISION YALE DISTRICT PLAN 621 EXCEPT PLANS H578, 36630 AND KAP75352, PID 012175625;
LOT 11 DISTRICT LOT 2536 OSOYOOS DIVISION YALE DISTRICT PLAN 621 EXCEPT PLANS H578, 36630 AND KAP75352, PID 012175641;
LOT 1 DISTRICT LOT 2536 OSOYOOS DIVISION YALE DISTRICT PLAN KAP83579, PID 027028089;
LOT A DISTRICT LOT 2536 OSOYOOS DIVISION YALE DISTRICT PLAN KAP83581, PID 027028119 and
DISTRICT LOT 5127 OSOYOOS DIVISION YALE DISTRICT EXCEPT PLAN 36630 AND PLAN KAP75352, PID 011787422.

Please review the screenshot of the properties below (outlined in yellow) and notify me immediately if it does not represent the properties that are listed in your referral.

Results of Provincial Archaeological Inventory Search

According to Provincial records, there are no known archaeological sites recorded on any of the properties.

However, archaeological potential modelling for the area indicates that all the subject properties on the East side of Highway 97, and parts of the properties on the West side of Highway 97 have high potential to contain unknown/unrecorded archaeological deposits, as indicated by the brown areas shown in the screenshot below.

Archaeological potential modelling is compiled using existing knowledge about archaeological sites, past indigenous land use, and environmental variables. Models are a tool to help predict the presence of archaeological sites but their results may be refined through further assessment.

Archaeology Branch Advice

If land-altering activities (e.g., home renovations, property redevelopment, landscaping, service installation) are planned for the subject properties, a Provincial heritage permit is not required prior to commencement of those activities.

However, a Provincial heritage permit will be required if archaeological materials are exposed and/or impacted during land-altering activities. Unpermitted damage or alteration of a protected archaeological site is a contravention of the *Heritage Conservation Act* and requires that land-altering activities be halted until the contravention has been investigated and permit requirements have been established. This can result in significant project delays.

Therefore, the Archaeology Branch strongly recommends engaging an eligible consulting archaeologist prior to any land-altering activities. The archaeologist will review the proposed activities, verify archaeological records, and possibly conduct a walk-over and/or an archaeological impact assessment (AIA) of the project area to determine whether the proposed activities are likely to damage or alter any previously unidentified archaeological sites.

Please notify all individuals involved in land-altering activities (e.g., owners, developers, equipment operators) that if archaeological material is encountered during development, they **must stop all activities immediately** and contact the Archaeology Branch for direction at 250-953-3334.

Rationale and Supplemental Information

- There is high potential for previously unidentified archaeological deposits to exist on the subject properties.
- Archaeological sites are protected under the *Heritage Conservation Act* and must not be damaged or altered without a Provincial heritage permit issued by the Archaeology Branch. This protection applies even when archaeological sites are previously unidentified or disturbed.
- If a permit is required, be advised that the permit application and issuance process takes approximately 8-12 weeks; the permit application process includes referral to First Nations and subsequent engagement.
- The Archaeology Branch must consider numerous factors (e.g., proposed activities and potential impacts to the archaeological site[s]) when determining whether to issue a permit and under what terms and conditions.
- The Archaeology Branch has the authority to require a person to obtain an archaeological impact assessment, at the person's expense, in certain circumstances, as set out in the *Heritage Conservation Act*.
- Occupying an existing dwelling or building without any land alteration does not require a Provincial heritage permit.

How to Find an Eligible Consulting Archaeologist

An eligible consulting archaeologist is one who can hold a Provincial heritage permit to conduct archaeological studies. To verify an archaeologist's eligibility, ask an archaeologist if he or she can hold a permit in your area, or contact the Archaeology Branch (250-953-3334) to verify an archaeologist's eligibility. Consulting archaeologists are listed on the BC Association of Professional Archaeologists website (www.bcapa.ca) and in local directories.

Questions?

For questions about the archaeological permitting and assessment process, please contact the Archaeology Branch at 250-953-3334 or archaeology@gov.bc.ca.

For more general information, visit the Archaeology Branch website at www.gov.bc.ca/archaeology.

Please let me know if you have any questions regarding this information.

Kind regards,







Please note that subject lot boundaries (yellow) and areas of archaeological potential (brown) indicated on the enclosed screenshot are based on information obtained by the Archaeology Branch on the date of this communication and may be subject to error or change.



Diana Cooper

Archaeologist/Archaeological Information Administrator

Archaeology Branch | [Ministry of Forests, Lands, Natural Resource Operations and Rural Development](#)

Phone: (250) 953-3343 | Email: diana.cooper@gov.bc.ca | Website www.gov.bc.ca/archaeology

From: Lauri Feindell <lfeindell@rdos.bc.ca>

Sent: May 21, 2021 3:44 PM

To: Huber, Sara ALC:EX <Sara.Huber@gov.bc.ca>; HBE@interiorhealth.ca; 'fbclands@fortisbc.com' <fbclands@fortisbc.com>; Forbes, Christina D AFF:EX <Christina.Forbes@gov.bc.ca>; XT:Summerland, District ENV:IN <info@summerland.ca>; Arch Data Request FLNR:EX <ArchDataRequest@gov.bc.ca>; Referral Apps REG8 FLNR:EX <ReferralAppsREG8@gov.bc.ca>; referrals@pib.ca; ReferralsPacific@dfo-mpo.gc.ca; onareception@syilx.org; XT:Shongrunden, Ron FIN:IN <rs@summer.com>; planning@cord.bc.ca

Cc: Cory Labrecque <clabrecque@rdos.bc.ca>

Subject: Bylaw Referral F2021.008-ZONE (F2021.008-ZONE)

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Good Afternoon,

Re: Bylaw 2461.18 and 2790.02
619 and 625 Highway 97 and adjacent properties

Please find attached a Bylaw Referral for the above noted properties as well a link to the application documentation below. Please review and if you have any questions, please contact the file manager Cory Labrecque at clabrecque@rdos.bc.ca.

<https://www.rdos.bc.ca/development-services/planning/current-applications-decisions/electoral-area-f/f2021-008-zone/>

Once reviewed, please forward any comments or concerns to planning@rdos.bc.ca by **June 21, 2021**.

Kind Regards



Lauri Feindell, Administrative Assistant,
Planning Services

RDOS

Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC V2A 5J9
p. 250.490.4107 • tf. 1.877.610.3737 • f. 250.492.0063

OKANAGAN-
SIMILKAMEEN

www.rdos.bc.ca • lfeinde!!@rdos.bc.ca

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Nikita Kheterpal

From: Danielson, Steven <Steven.Danielson@fortisbc.com>
Sent: June 16, 2021 4:43 PM
To: Planning
Subject: Highway 97, 619 & 625, RDOS (F2021.008-ZONE)

With respect to the above noted file,

There are no FortisBC Inc (Electric) ("FBC(E)") facilities affected by this application. As such FBC(E) has no concerns with this circulation.

If you have any questions or comments, please contact me at your convenience.

Regards,

Steve Danielson, AACI, SR/WA

Contract Land Agent | Property Services | FortisBC Inc.

2850 Benvoulin Rd

Kelowna, BC V1W 2E3

Mobile: 250.681.3365

Fax: 1.866.636.6171

FBCLands@fortisbc.com



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JoAnn Peachey

From: RDCO Planning Services <planning@rdco.com>
Sent: June 16, 2021 11:11 AM
To: Planning
Subject: FW: Bylaw Referral F2021.008-ZONE (F2021.008-ZONE)
Attachments: Referral F2021.008-ZONE (Diamonds).pdf

Good morning,

Thanks for the opportunity to provide comments on the subject referral. Planning Services has reviewed the proposal and provide the following comments from an environmental planning perspective for staff at RDOS to consider:

- The subject properties are not located within a fire protection area or in an area with community water or community wastewater. Additional density in these areas should not be supported.
- The subject properties are located adjacent to Okanagan Lake. The protection of Okanagan Lake and ecological attributes is of critical importance, as further described below.
- It appears that the proposed 'Clubhouse' and 'Restaurant' are located past the edge of the cliff and within the 30m riparian setback area. This leave strip is for the protection and restoration of the riparian ecosystem and should remain undisturbed near watercourses and other aquatic features. The intention is that the leave strip will be untouched by development and left in its natural condition; or, if damaged by previous use or construction, the ecosystem restored or enhanced. Human settlement or other development within or adjacent to riparian areas is strongly discouraged.
- Foreshore and riparian areas are important to fish and wildlife species, including species at risk. Consideration should be given to ensuring that any works do not impose direct or long term cumulative impacts to fish and wildlife species and their habitats. Most of the foreshore areas adjacent to the subject property are recognized as being very important for the long-term maintenance of Kokanee productivity in Okanagan Lake. Should development proceed, a no-build/no disturb area along the foreshore should be secured as determined by a Qualified Environmental Professional.
- Maintain natural or pre-development hydrologic regimes. Changes to surface and ground water flow can negatively impact aquatic, riparian, and wetland ecosystems. Trails and road construction and development should be designed to maintain the hydrology of these ecosystems.
- The section of Highway 97 is known for slope instability and has seen landslides and slope failure events in the past. Development should be set back a minimum of 10 metres from the top of ridgelines, cliffs or ravines. Existing vegetation should be maintained to control erosion and protect slopes. Any recommendations from the Ministry of Transportation and Infrastructure should also be considered.
- The pattern of development should be responsive to the varied topography and natural landscape. Cluster developments on steep slopes in a manner which responds to the site's natural contours and preserves more unbuilt open space for conservation or recreation/amenity space. Changes to existing terrain should be kept to a minimum.
- A plan of site remediation including but not limited to; sensitive grading, revegetation (reflecting the Okanagan landscape), erosion control, and soil amelioration, prepared by appropriate qualified professional (registered landscape architect, professional forester) should be provided in advance of any site grading or removal of vegetation.

Should you have questions, please contact Planning Services at 250-469-6227.

Sincerely,

Planning Services
Regional District of Central Okanagan
250-469-6227 | planning@rdco.com
Connect with us | rdco.com



Agricultural Land Commission
 201 – 4940 Canada Way
 Burnaby, British Columbia V5G 4K6
 Tel: 604 660-7000 | Fax: 604 660-7033
 www.alc.gov.bc.ca

June 2, 2021

Reply to the attention of Sara Huber
 ALC Issue: 52252
 Local Government File: F2021-008-ZONE

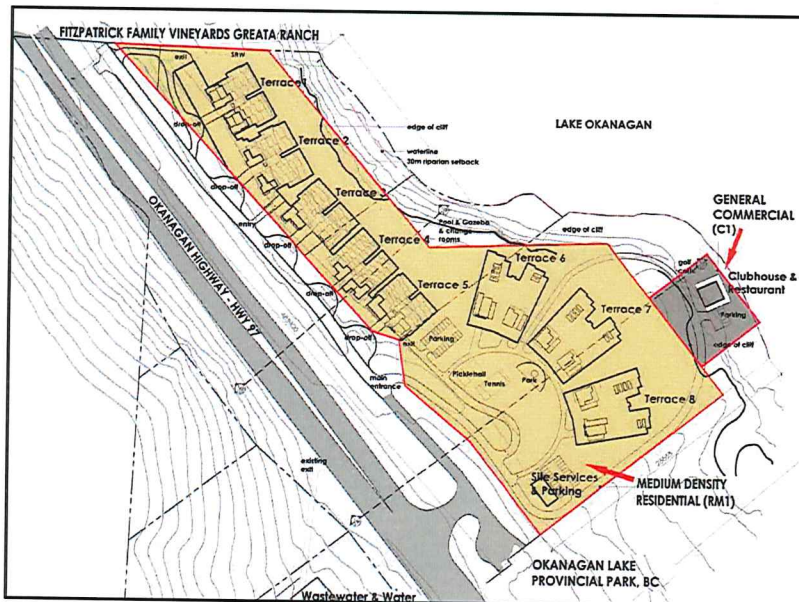
Cory Labrecque
 Planner 2, RDOS
planning@rdos.bc.ca

Re: Regional District of Okanagan Similkameen Electoral Area F Official Community Plan and Zoning Amendment Bylaw Nos. 2461.18 and 2790.02

Thank you for forwarding a draft copy of Regional District of Okanagan Similkameen (RDOS) Electoral Area F Official Community Plan (OCP) and Zoning Amendment Bylaw Nos. 2461.18 and 2790.02 (the “Amendment Bylaws”) for review and comment by the Agricultural Land Commission (ALC). The following comments are provided to help ensure that the Amendment Bylaws are consistent with the purposes of the *ALC Act*, the Agricultural Land Reserve (ALR) General Regulation, the ALR Use Regulation, and any decisions of the ALC.

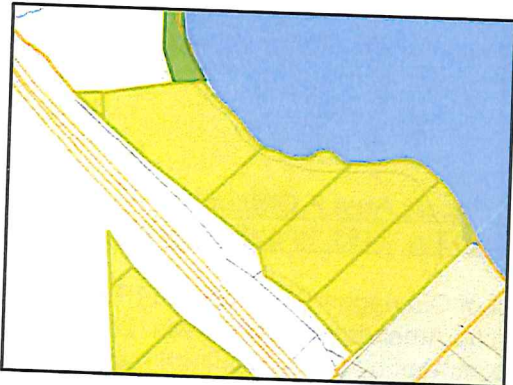
The Amendment Bylaws propose to amend the zoning and OCP designations of the portions of five properties below Highway 97 (i.e. PID: 012-175-625; PID: 012-175-641, PID: 027-028-089, PID: 027-028-119, and PID: 011-787-422, collectively referred to as the “Properties”) in order to facilitate a medium density residential development with a total of 106 dwelling units, within eight terraced apartment structures, as well as a clubhouse and restaurant. The Amendment Bylaws would amend the OCP designation from Commercial Tourist (CT) to part Medium Density Residential (MR) and part Commercial (C) and the zoning would be amended from Campground Commercial Zone (CT2s) to part Medium Density Residential (RM1) and part General Commercial (CT1).

Proposal Sketch:



The ALC recognizes that the Properties are not within the ALR; however, a small portion of the western boundary of the proposed development is directly adjacent to ALR lands (approximately 40 m in length).

ALR Context Map:



While ALC staff would typically recommend considering the setback and buffer requirements outlined in the [Guide to Edge Planning](#); given the small area of the development adjacent to the ALR, it may not be necessary.

For this reason, ALC staff have no objection to the Amendment Bylaws.

The ALC strives to provide a detailed response to all referrals affecting the ALR; however, you are advised that the lack of a specific response by the ALC to any draft provisions cannot in any way be construed as confirmation regarding the consistency of the submission with the ALCA, the Regulations, or any decisions of the Commission.

This response does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

If you have any questions about the above comments, please contact the undersigned at 236-468-3258 or by e-mail (Sara.Huber@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

A handwritten signature in black ink, appearing to be 'Sara Huber', written over a white background.

Sara Huber, Regional Planner

Enclosure: Referral of RDOS F2021-008-ZONE

CC: Ministry of Agriculture – Attention: Alison Fox (Alison.Fox@gov.bc.ca)

52252m1



Penticton Indian Band
Natural Resources Department
841 Westhills Drive | Penticton, B.C.
V2A 0E8
Referrals@pib.ca | www.pib.ca
Telephone: 250-492-0411
Fax: 250-493-2882

Project Name:

Bylaw Referral F2021.008-ZONE (F2021.008-ZONE)

FN Consultation ID:

L-210521-F2021-008-ZONE

Consulting Org Contact:

Cory Labrecque

Consulting Organization:

[Regional District of Okanagan-Similkameen](#)

Date Received:

Friday, May 21, 2021

Company Project ID (province/proponent ID):

F2021.008-ZONE

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

Attention: Cory Labrecque,

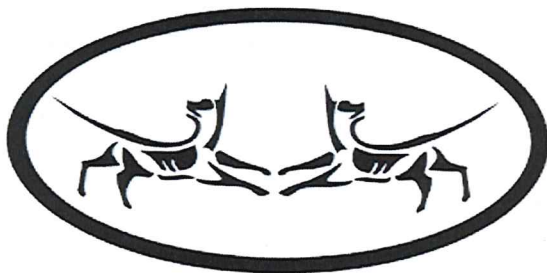
We are in receipt of the above referral. The proposed activity is located within Syilx (Okanagan) Nation Territory and the Penticton Indian Band (PIB) Area of Interest. All lands and resources within the vicinity of the proposed project are subject to our unextinguished Aboriginal Title and Rights. The Penticton Indian Band has now had the opportunity to review the proposed project. Our preliminary office review has indicated the proposed project is located within an area of cultural significance and has the potential to impact PIB *tmx^wulax^w* (lands), *siw^tk^w* (water, the lifeblood of the land) and syilx cultural heritage. Our *tmx^wulax^w* and *siw^tk^w* is sacred to the syilx nation and it is PIB's responsibility to take care of all lands, waters and living things within the PIB Area of Interest.

As the proposed activity has the potential to impact irreplaceable syilx cultural heritage, the PIB is requiring a Cultural Heritage Resource Assessment be undertaken by qualified PIB Cultural Heritage Technicians to determine the nature and extent of any potential impacts. The PIB CHRA process involves in-field pedestrian surveys using either systematic or judgmental site sampling techniques undertaken by qualified PIB Technicians to assess the archaeological, cultural, and environmental resource potential of the study area, and to identify the need for project modifications and/or appropriate scope of further field studies if required.

The Penticton Indian Band makes information-based decisions and without a CHRA, we do not have enough information on potential impacts to syilx cultural heritage. Therefore, if our requirements are not fulfilled, we will have no other option but to reject the proposed project.

Please note that our participation in the referral and consultation process does not define or amend PIB's Aboriginal Rights and Title, or limit any priorities afforded to Aboriginal Rights and Title, nor does it limit the positions that we may take in future negotiations or court actions.

Please contact me at your earlier convenience to discuss.



Penticton Indian Band
Natural Resources Department
841 Westhills Drive | Penticton, B.C.
V2A 0E8
Referrals@pib.ca | www.pib.ca
Telephone: 250-492-0411
Fax: 250-493-2882

Project Name:

Bylaw Referral F2021.008-ZONE (F2021.008-ZONE)

FN Consultation ID:

L-210521-F2021-008-ZONE

Consulting Org Contact:

Cory Labrecque

Consulting Organization:

[Regional District of Okanagan-Similkameen](#)

Date Received:

Friday, May 21, 2021

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

June 2, 2021

Attention: Cory Labrecque

File number: F2021.008-ZONE

RE: 40 (forty) day extension

Thank you for the above application that was received on 2021-05-21T00:00:00.

This letter is to inform you that due to current levels of internal capacity, we are unable to review your referral in your proposed timeline. With additional time, the Penticton Indian Band will be able to ensure that an informed review process will occur. We are setting the new timeline to be 40 days from the existing timeline.

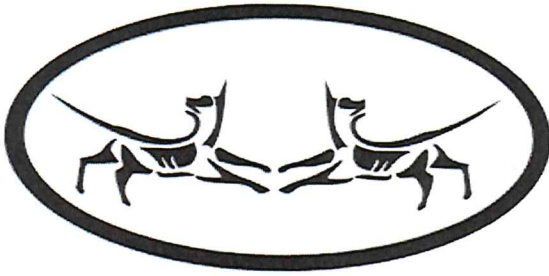
Most recently, the Supreme Court of Canada in the Tsilquot'in case confirmed that the province has been applying an incorrect and restrictive test to the determination of Aboriginal Title, and that Aboriginal Title includes the exclusive right of a First Nation to decide how that land is used and the right to benefit economically from those uses.

Please note that not receiving a response regarding a referral from Penticton Indian Band in the pre-application, current or post-application stage does not imply our support for the project.

I appreciate your co-operation.

limləmt,

Heather McDougall
Referrals Clerk
Natural Resources Department
Penticton Indian Band
P: 250-492-0411
Referrals.clerk@pib.ca



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Project Name:

Bylaw Referral F2021.008-ZONE (F2021.008-ZONE)

FN Consultation ID:

L-210521-F2021-008-ZONE

Consulting Org Contact:

Cory Labrecque

Consulting Organization:

[Regional District of Okanagan-Similkameen](#)

Date Received:

Friday, May 21, 2021

Company Project ID (province/proponent ID):

F2021.008-ZONE

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

Attention: Cory Labrecque

We are in receipt of the above referral. This proposed activity is within the PIB Area of Interest within the Okanagan Nation's Territory, and the lands and resources are subject to our unextinguished Aboriginal Title and Rights.

The Supreme Court of Canada in the *Tsilhqot'in* case has confirmed that the province and Canada have been applying an incorrect and impoverished view of Aboriginal Title, and that Aboriginal Title includes the exclusive right of Indigenous People to manage the land and resources as well as the right to benefit economically from the land and resources. The Court therefore concluded that when the Crown allocates resources on Aboriginal title lands without the Indigenous peoples' consent, it commits a serious infringement of constitutionally protected rights that will be difficult to justify.

PIB has specific referral processing requirements for both government and proponents which are integral to the exercise of our management right and to ensuring that the Crown can meet its duty to consult and accommodate our rights, including our Aboriginal title and management rights. According to this process, proponents are required to pay a \$500 processing fee for each referral. This fee must be paid within 30 days. Proper consultation and consideration of potential impacts cannot occur without the appropriate resources therefore it is only with payment that proper consultation can begin and the proposed activity/development can be reviewed.

1. Invoice Number: L-210521-F2021-008-ZONE

Referrals Processing Fee

Sub Total \$ 500.00

Tax \$ 0.00

Total \$ 500.00

INVOICE AMOUNT FOR PRELIMINARY OFFICE REVIEW \$500.00

Please make cheque or cash payable to Penticton Indian Band. re: P.C.132 and send to 841 Westhills Drive, Penticton, British Columbia, Canada V2A 0E8

Upon receipt of the processing fee, we will commence our review. You may then expect to receive a letter from us notifying you of the results of our review of potential impacts of the project within 30 to 90 days.

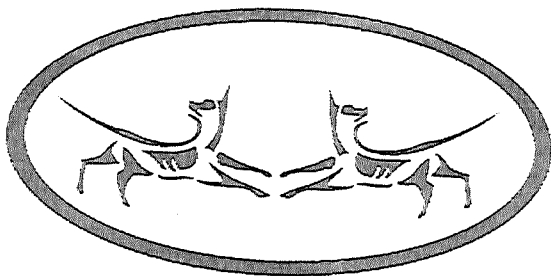
If the proposed activity requires a more in-depth review, PIB will notify the proponent and all parties will negotiate a memorandum of agreement regarding a process for review of the proposed activity.

Please note that our participation in the referral and consultation process does not define or amend PIB's Aboriginal Rights and Title, or limit any priorities afforded to Aboriginal Rights and Title, nor does it limit the positions that we may take in future negotiations or court actions.

If you require further information or clarification, please do not hesitate to contact me.

limlæmt,

Heather McDougall
Referrals Clerk
Natural Resources Department
Penticton Indian Band
W: 250-492-0411
Referrals.clerk@pib.ca



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Telephone: 250-492-0411
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Project Name:

Bylaw Referral F2021.008-ZONE (F2021.008-ZONE)

FN Consultation ID:

L-210521-F2021-008-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

Regional District of Okanagan Similkameen

Date Received:

Friday, May 21, 2021

File number:

F2021.008-ZONE

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

Attention: Planning RDOS,

Re: Bylaw Referral F2021.008-ZONE (F2021.008-ZONE) Invoice # -L-210521-F2021-008-ZONE

We write regarding your failure to pay invoice -L-210521-F2021-008-ZONE- to conduct a review to obtain additional information in the area of the above referral. To date, no payment has been received and we have therefore been unable to conduct a review of this referral; we must therefore put you on notice that we do not consent, agree or otherwise approve of the activity / development referred to by you in your letter to us dated May 21, 2021.

Invoice Number: L-210521-F2021-008-ZONE

Subtotal Tax Total

Referral Processing \$ 500.00 \$ 0.00 \$ 500.00

Total \$ 500.00 \$ 0.00 \$ 500.00

INVOICE AMOUNT FOR PRELIMINARY OFFICE REVIEW \$500.00

Furthermore, the Regional District of South Okanagan has not responded to the three letters sent out by the PIB including a request for a Cultural Heritage Resource Assessment. The consultation process conducted around this referral has been exceedingly questionable. This is not in-line with the 'process of reconciliation' promised by both the provincial and federal governments. This is not in line with the Constitution Act, of 1982. The province and the Regional District of Okanagan Similkameen are not abiding by the Tsilhqot'in decision. In fact, the province and the Regional District of Okanagan Similkameen are allowing developers to continue its history of colonial attack upon our people by excluding us from our lands and our sacred spaces. The Penticton Indian Band does not consent to the current process employed by the provincial government to approve activities on our unceded lands and waters.

The syilx/Okanagan Nation holds unextinguished aboriginal title to the land and resources within our traditional territory. The above-noted activity / development is within PIB's Area of Responsibility within syilx/Okanagan territory and as such, is

subject to syilx/Okanagan title, jurisdiction, rights and interests, and PIB decision making and responsibility.

Over the last two decades, the Supreme Court of Canada has clarified the law respecting the rights of aboriginal people in British Columbia, which includes the Penticton Indian Band, syilx/Okanagan Nation. The Court has clarified that Aboriginal title continues to exist in British Columbia, and is protected by s. 35 of the Constitution Act, 1982.

In June 2014, the Supreme Court of Canada in the Tsilhqot'in case set out the following characteristics and implications of Aboriginal title:

- Aboriginal title is not limited to intensively used sites; it extends to lands physically occupied and lands over which Indigenous peoples exercised control. Regular use of territories for hunting, fishing, trapping and foraging, with an intention and capacity to control the lands, grounds Aboriginal title.
- The Crown has no beneficial interest (the right to use, enjoy and profit from the economic development of lands) in Aboriginal title lands and resources; the beneficial interest is held by the Aboriginal title holding group. Allocations of Aboriginal title lands or resources to third parties are serious infringements of Aboriginal title.
- Aboriginal title includes the right to proactively use and manage the resources.
- Once Aboriginal title is "established", the constitution prohibits incursions without the consent of the Aboriginal title holders unless the Crown can justify the infringement, which in turn requires a compelling and substantial public purpose as well as consistency with the Crown's fiduciary duty to the Aboriginal title holders, requiring the involvement of the Aboriginal title holding group in decisions.
- Before Aboriginal title is "established", the only way to ensure certainty is to obtain consent; in the absence of consent, the Crown must consult and accommodate. If consultation or accommodation is inadequate, the Crown decision can be suspended or quashed. Moreover, fulfilling the duty to consult and accommodate does not provide the certainty that consent provides; once Aboriginal title is established, the Crown may be required to cancel projects where there was no consent and the justification test noted above cannot be met.

Most recently, in November 2019, the province of British Columbia implemented the United Nations Declaration on the Rights of Indigenous Peoples which aims to emphasize the Indigenous peoples' rights to live in dignity, to maintain and strengthen Indigenous institutions, cultures and traditions and to pursue self-determined development, in keeping with Indigenous needs and aspirations. The United Nations Declaration on the Rights of Indigenous Peoples ("the Declaration") recognizes and affirms:

- Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
- Article 8(2): States shall provide effective mechanisms for prevention of, and redress for: (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
- Article 26(2): Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
- Article 32(2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources particularly in connection with the development, utilization or exploitation of minerals, water or other resources.

At this time there has been no reconciliation of our interests with those of the Province of British Columbia and Canada and no process in place to adequately recognize and negotiate co-existence or accommodation of our jurisdiction and title. The Province continues to act as though we have no beneficial interest or authority, and it takes for itself the revenues derived from our lands and resources. The payment of the referral fee is necessary in order for us to assess your proposal, assess potential impacts and determine whether it should be approved and if so, on what conditions. Because we are unable to undertake such an assessment, we must at this time advise you that we are opposed to your proposed development/activity.

limlám,

Heather McDougall
Referrals Clerk
Natural Resources Department
Penticton Indian Band
P: 250-492-0411
Referrals.clerk@pib.ca



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Project Name:

Bylaw Referral F2021.008-ZONE (F2021.008-ZONE)

FN Consultation ID:

L-210521-F2021-008-ZONE

Consulting Org Contact:

Cory Labrecque

Consulting Organization:

[Regional District of Okanagan-Similkameen](#)

Date Received:

Friday, May 21, 2021

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

June 2, 2021

Attention: Cory Labrecque

File number: F2021.008-ZONE

RE: 40 (forty) day extension

Thank you for the above application that was received on 2021-05-21T00:00:00.

This letter is to inform you that due to current levels of internal capacity, we are unable to review your referral in your proposed timeline. With additional time, the Penticton Indian Band will be able to ensure that an informed review process will occur. We are setting the new timeline to be 40 days from the existing timeline.

Most recently, the Supreme Court of Canada in the Tsilquot'in case confirmed that the province has been applying an incorrect and restrictive test to the determination of Aboriginal Title, and that Aboriginal Title includes the exclusive right of a First Nation to decide how that land is used and the right to benefit economically from those uses.

Please note that not receiving a response regarding a referral from Penticton Indian Band in the pre-application, current or post-application stage does not imply our support for the project.

I appreciate your co-operation.

lilmləmt,

Heather McDougall
Referrals Clerk
Natural Resources Department
Penticton Indian Band
P: 250-492-0411
Referrals.clerk@pib.ca

RESPONSE SUMMARY

AMENDMENT BYLAW NOS. 2461.18 & 2790.02

Approval Recommended for Reasons Outlined Below

Interests Unaffected by Bylaw

Approval Recommended Subject to Conditions Below

Approval Not Recommended Due to Reasons Outlined Below

See attached letter.

Signature:  _____

Signed By: Tanya Osborne

Agency: Interior Health

Title: Community Health Facilitator

Date: June 16, 2021



Interior Health
Every person matters

June 16, 2021

JoAnn Peachey
Planning Department
Regional District of Okanagan-Similkameen
101 Martin Street
Penticton, BC V2A-5J9

RE: F2021.008-ZONE: 619 & 625 Highway 97 and adjacent properties: District Lot 5127, ODYD, Except Plan 36630 KAP75352; Lot A, Plan KAP83581, District Lot 2536, ODYD; Lot 1, Plan KAP83579, District Lot 2536, ODYD; Lot 11, Plan KAP621, District Lot 2536, ODYD, Except Plan H578 36630 KAP75352; and Lot 10, Plan KAP621, District Lot 2536, ODYD, Except Plan H578, AMD LOT & EXC PL 36630, KAP75352

Dear JoAnn Peachey,

Thank you for the opportunity to comment on the above named proposal. It is my understanding that the applicant is seeking to amend the zoning and OCP designations for the subject properties in order to facilitate a medium density residential development. The Electoral Area 'F' OCP amendment would be from Commercial Tourist (CT) to part Medium Density Residential (MR) and part Commercial (C). The Zoning Bylaw amendment would be from Campground Commercial Zone (CT2) to part Medium Density Residential (RM1) and part General Commercial (CT1). This application has been reviewed using a Healthy Community Development and Environmental Public Health lens. The following comments are for your consideration:

Healthy Community Development

We are pleased to see the proposed creation of additional housing options for the community, as housing is a key determinant of health and can affect many aspects of our wellbeing. It is important to ensure, however, that the right type of housing is being built that meets the needs of the community. According to the [RDOS 2020 Housing Needs Assessment](#) there is a great need for housing for families (2+ bedroom), especially affordable housing for families, that which is accessible for those with special needs and purpose-built seniors housing. Very few of these needs are addressed within this development proposal.

The [Healthy Built Environment Linkages Toolkit](#) is an evidence based resource that articulates planning principles with health outcomes. The Toolkit supports complete, compact and connected community planning. While this property has been identified as a Rural Growth Area, it is a fair distance from any key amenities, which will likely compel residents to use private vehicles which are often single occupancy. This not only eliminates opportunities for physical activity, but adds to community emissions, further impacting climate change. In addition, it is only connected via highway infrastructure, which does not support safe recreational active transportation modes.

This development proposal is adjacent to Fitzpatrick Family Vineyards. Conflict can result when residential, agricultural and/or industrial uses are mixed. Typically, the complaints Interior Health – Environmental Public Health receive from residents living in proximity to industry and agriculture relate to odor, dust, noise, application of soil amendments and/or chemicals. Agriculture can also negatively affect air quality through contributions to particulate matter and volatile compounds. Although these types of activities are causing stress to the complainants, it is difficult to address them using the BC Public Health Act because it is difficult to have evidence to support they are health hazards directly affecting the public, as defined in the Act. Buffers can benefit neighboring residents by reducing

Bus: 250-469-7070 x12287
Tanya.Osborne@interiorhealth.ca
www.interiorhealth.ca

POPULATION HEALTH
505 Doyle Avenue
Kelowna BC V1Y 0C5

noise, dust, and odors. However, in our experience, it is best if potential conflict situations can be addressed by community planning.

Environmental Public Health

It is our understanding that the subject parcel is proposed to be serviced by a well for drinking water and an onsite sewerage system is proposed. From an Environmental Public Health perspective, the following legislation will apply to this proposal:

- [Sewerage System Regulation](#): Prescribes any buildings in which domestic sewage is produced must be connected to the sanitary sewer system or a sewerage system. See [IH Onsite Sewerage webpage](#) for more information. If the daily flows are greater than 22,700 litres per day, the Municipal Wastewater Regulation will apply. The Ministry of Environment and Climate Change Strategy is responsible for permitting those systems.
- [Food Premises Regulation](#): Prior to the construction of a food service establishment, the applicant requires health approval from the local Environmental Health Officer (Penticton office for Environmental Public Health: 250-770-5540). See [IH Health Approval and Permits](#) for more information.
- [Pool Regulations](#): Prior to the construction of a commercial pool, the applicant will require a Construction Permit from Interior Health. See [IH Recreational Water Resources](#) for more information on how to apply for a Construction Permit as well as a Permit to Operate. For more information or to speak with the local Public Health Engineer, please call: 1-855-743-3550
- The developer (water system owner) will be required obtain a water / well license from FLNRO. After that license had been issued the developer (water system developer) must apply for a water system operating permit, water source evaluation and construction permits. See [IH Permits, Approvals and Plans](#) for the permitting process.
- All new water systems are required to meet [BC Drinking Water Treatment Objectives](#).
- Additional requirements may apply as more information about the water system are provided by the applicant.

Interior Health is committed to improving the health and wellness of all by working collaboratively with local governments and community partners to create policies and environments that support good health. Please do not hesitate to reach out to Tanya Osborne, Community Health Facilitator at Tanya.Osborne@interiorhealth.ca or 250-469-7070 x12287 if you require clarification or have questions.

Sincerely,



Tanya Osborne, BAHS
Community Health Facilitator