

City of Kelowna  
Regular Council Meeting  
AGENDA



Monday, November 4, 2013  
1:30 pm  
Council Chamber  
City Hall, 1435 Water Street

Pages

1. Call to Order

This meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.

2. Confirmation of Minutes

4 - 15

Regular PM Meeting - October 21, 2013  
Chauffeur's Permit Appeal Hearing - October 22, 2013  
Regular PM Meeting - October 28, 2013

3. Development Application Reports & Related Bylaws

3.1 Official Community Plan Bylaw Amendment Application No. OCP13-0012 and Rezoning Application No. Z13-0019 - 2049 Byrns Road, Margarita Littley

16 - 31

**Mayor to invite the Applicant, or Applicant's Representative to come forward.**

To consider a staff recommendation NOT to change the Future Land Use designation for the eastern portion of the property from the Resource Protection Area designation to Multiple Unit Residential (Low Density) designation; and for the western portion of the property from the Resource Protection Area designation to the Single/Two Unit Residential designation. To consider a staff recommendation NOT to rezone the eastern portion of the property from the A1 - Agriculture 1 zone to the RM1 - Four Dwelling Housing zone; and for the western portion of the property from A1 - Agriculture 1 zone the RU6 - Two Dwelling Housing zone.

3.2 Agricultural Land Reserve Appeal Application No. A13-0007 - 700 Hwy 33 E, Hillcrest Farm Market Inc./Chanchal Bal

32 - 54

**Mayor to invite the Applicant, or Applicant's Representative to come forward.**

To consider non-support of the application to the Agricultural Land Commission (ALC) under Section 20(3) of the Agricultural Land Commission Act

for a “non-farm use” within the Agricultural Land Reserve (ALR). Specifically, the owner/applicant is seeking to legalize an existing “food and beverage service lounge” (café) on the subject property.

3.3 Rezoning Application No. Z13-0033 - 868 Liban Ct, Laryn & Judith Penner 55 - 78

To rezone the subject property from the RU1 - Large Lot Housing Zone to the RU1c - Large Lot Housing with Carriage House Zone to allow the construction of a carriage house.

3.3.1 Bylaw No. 10894 (Z13-0033) - 868 Liban Court, Laryn & Judith Penner 79 - 79

To give Bylaw No. 10894 first reading.

3.4 Official Community Plan Bylaw Amendment Application No. OCP13-0015, Proposed Housekeeping Amendments (BL10887) 80 - 91

To proceed with housekeeping amendments to the Official Community Plan based on staff initiated policy and map changes.

3.4.1 Bylaw No. 10887 - OCP13-0015 Housekeeping Amendments 92 - 95

**Requires a majority of all Members of Council (5).**

To give Bylaw No. 10887 first reading.

3.5 Official Community Plan Bylaw Amendment Application No. OCP13-0016, Proposed Miscellaneous Amendments (BL10888) 96 - 107

To proceed with miscellaneous amendments to the Official Community Plan based on staff initiated policy and map changes.

3.5.1 Bylaw No. 10888 - OCP13-0016 Miscellaneous Amendments 108 - 114

**Requires a majority of all Member of Council (5).**

To give Bylaw No. 10888 first reading.

4. Non-Development Reports & Related Bylaws

4.1 Free Downtown Parking 115 - 117

To provide free parking in the downtown area on Saturdays for the month of December.

4.2 Rio Drive 118 - 122

To authorize staff to proceed with the installation of two traffic calming speed humps on Rio Drive, between Clear Pond Place and Clifton Road, which is contrary to Council Policy No. 300 Neighbourhood Traffic Management.

4.3 RCMP 2013 2014 Priorities - General 123 - 124

The RCMP is responsible for setting priorities with the local community in which

it serves. These priorities are to be reported to the Office of the Auditor General (OAC) as part of the RCMPs agreement with them.

- 4.4 Balcony Sprinklers** 125 - 127
- To provide an update on the legislative options and staff’s course of action for improving the fire protection requirements of the BC Building Code (BCBC) for balconies in new construction of four storey or less wood frame multifamily residential buildings.
- 4.5 Fire Prevention for Multi-Residential Structure Balconies** 128 - 130
- The purpose is to provide Council with an overview and analysis regarding KFD’s recommended approach to reduce the occurrence of balcony fires in multi-residential structures.
- 4.6 Wildfire Fuel Mitigation Program** 131 - 133
- To provide an update on the efforts completed by staff to reduce the wildfire hazard on City owned property and efforts made to provide assistance to landowners to reduce the wildfire risk on private property.
- 4.7 Rutland Skate Shop Lease** 134 - 170
- That Council approve the Lease Agreement for the Rutland Arena Skate Shop.
- 4.8 Stuart Park Skating Rink Contract** 171 - 195
- That Council approves the License of Occupation for the Stuart Park Ice Rink.
- 4.9 Regional District of Central Okanagan, Community Police Office** 196 - 212
- That Council approves the Lease Agreement with the Regional District of the Central Okanagan for a Community Police Office at 1450 KLO Road and approves the direction for the surplus property at 4065 Lakeshore Road.

**5. Mayor and Councillor Items**

**6. Termination**



## City of Kelowna Regular Council Meeting Minutes

Date: Monday, October 21, 2013  
Location: Council Chamber  
City Hall, 1435 Water Street

Council Members Present: Deputy Mayor Luke Stack\* and Councillors Colin Basran, Andre Blanleil, Maxine DeHart, Gail Given, Robert Hobson, Mohini Singh, and Gerry Zimmermann

Council Members Absent: Mayor Walter Gray

Staff Present: Deputy City Manager, Paul Macklem; City Clerk, Stephen Fleming; Property Officer, Tammy Abrahamson\*; Manager, Subdivision, Agriculture & Environmental Services, Todd Cashin\*; Planner, James Moore\*; Manager, Strategic Land Development, Graham Hood\*; and Council Recording Secretary, Sandi Horning

(\* denotes partial attendance)

### 1. Call to Order

Deputy Mayor Stack called the meeting to order at 1:31 p.m.

Deputy Mayor Stack advised that the meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.

Deputy Mayor Stack handed out bottles of water to Council as a reminder to drink water before and after you donate blood and noted that there are only ten (10) days left for the "Interior Drive for Life, Kelowna vs. Prince George Challenge".

## 2. Confirmation of Minutes

Moved By Councillor Singh/Seconded By Councillor Given

R658/13/10/21 THAT the Minutes of the Regular PM Meeting of October 7, 2013 be confirmed as circulated.

Carried

## 3. Development Application Reports & Related Bylaws

### 3.1. Agricultural Land Reserve Appeal Application No. A13-0010 - 3588 Benvoulin Rd, Vince, Juhlie & Lesah Curatolo

Staff:

- Summarized the application before Council and responded to questions from Council.

Deputy Mayor Stack invited the Applicant, or Applicant's Representative, to come forward.

Vince & Juhlie Curatolo, Applicants:

- Appreciates staff's comments and concerns.
- Provided the history of the farm practice and confirmed that it is their intention to amalgamate all of the farm practice operations within the 16 acres.
- Provided an overview the products that they grow and advised that they have employed brokers to promote their product, which has increased production and sales.
- Advised that they want to put in greenhouses on the portion of the land that is considered non-farmable.
- Confirmed that the entire family is involved in all the aspects of the farming operations.
- Advised that they purchased the property in 2010 and that it had not been farmed in over 30-40 years.
- Advised that after purchasing the property, it was determined that a portion of the site did not have good growing soil.
- Advised that they have tried to improve the soil capability.
- Advised that a second dwelling is required on the farm in order to assist with the farming operations which they considered to be a 24 hour/7 day a week operation.
- Confirmed that they would prefer to construct a second dwelling rather than place a modular home on the site.
- Believes that the construction costs for a second dwelling are significantly less than the cost of a modular home.
- Advised that the second dwelling would be for immediate family use only and would be willing to place a covenant on the title to that effect.
- Responded to questions from Council.
- Advised that the original structures will remain on the site and that an additional structure will need to be constructed for the sales associated with 'farm gate'.
- Confirmed that Juhlie will reside in the second dwelling and her main source of income is working the farm.

Moved By Councillor Zimmermann/Seconded By Councillor Blanleil

R659/13/10/21 THAT Agricultural Land Reserve appeal A13-0010 for Parcel 2 (Plan B1427) of District Lot 132 Osoyoos Division Yale District, located at 3588 Benvoulin Road, Kelowna, B.C. for a non-farm use of agricultural land in the Agricultural Land Reserve, pursuant to Section 20(3) of the Agricultural Land Commission Act, be supported by Municipal Council;

AND THAT Municipal Council forward the subject application to the Agricultural Land Commission.

Carried

### 3.2. Rezoning Application No. Z13-0032 - 325 Hartman Rd, Gary Martin Lupul

Staff:

- Summarized the application before Council.

Moved By Councillor Hobson/Seconded By Councillor Blanleil

R660/13/10/21 THAT Rezoning Application No. Z13-0032 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 1, Section 26, ODYD, Plan 20566, located on 325 Hartman Road, Kelowna, BC from the RU1 - Large Lot Housing zone to the RU6- Two Dwelling Housing zone be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch and the Black Mountain Irrigation District being completed to their satisfaction.

Carried

#### 3.2.1. Bylaw No. 10891 (Z13-0032) - 325 Hartman Road, Gary Martin Lupul

Moved By Councillor DeHart/Seconded By Councillor Zimmermann

R661/13/10/21 THAT Bylaw No. 10891 be read a first time.

Carried

### 3.3. Rezoning Application No. Z13-0035 - 341 Clifton Rd, Adrian Hazzi & Mandi Moore

Staff:

- Summarized the application before Council and responded to questions from Council.

Moved By Councillor Basran/Seconded By Councillor Singh

R662/13/10/21 THAT Rezoning Application No. Z13-0035 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 5 Section 31 Township 26 Osoyoos Division Yale District Plan 10686, located at 341 Clifton Road, Kelowna, BC, from the A1 zone to the RU1 - Large Lot Housing and RU2 - Large Lot Housing as shown on Map "A" attached to the Report of the Subdivision, Agriculture & Environment Services Branch dated October 3, 2013, be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch being completed to their satisfaction;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the issuance of a Preliminary Layout Review Letter by the Approving Officer;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered following the staff issuance of a Natural Environment Development Permit for the subject property.

Carried

3.3.1. Bylaw No. 10892 (Z13-0035) - 341 Clifton Road, Adrian Hazzi & Mandi Moore

Moved By Councillor Zimmermann/Seconded By Councillor DeHart

R663/13/10/21 THAT Bylaw No. 10892 be read a first time.

Carried

3.4. Rezoning Application No. Z12-0063, Extension Request - 835 Solly Crt, Kamalpreet Kaur Gill & Gurdev Singh Gill

Staff:

- Responded to questions from Council.
- Confirmed that the Applicant has been advised that this will be the last extension supported by staff.

Moved By Councillor Given/Seconded By Councillor Zimmermann

R664/13/10/21 THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Zone Amending Bylaw No. 10779, for Lot 3, Section 26, Township 26, Osoyoos Division Yale District, Plan 20566, located on 835 Solly Court, Kelowna, BC, be extended from November 27, 2013 to November 27, 2014.

Carried

4. Non-Development Reports & Related Bylaws

4.1. Housing Agreement - 550 Rowcliffe and 555 Buckland Ave, Davara Holdings Ltd.

Staff:

- Provided background information regarding the Housing Agreement.

Moved By Councillor Given/Seconded By Councillor Basran

R665/13/10/21 THAT Council receives, for information, the Report from the Strategic Land Development Manager dated October 15, 2013, regarding the proposed Housing Agreement with Davara Holdings Limited with respect to the properties located at 550 Rowcliffe Avenue and 555 Buckland Avenue;

AND THAT Bylaw No. 10850 authorizing a Housing Agreement between the City of Kelowna and Davara Holdings Limited, which requires the owner to designate a total

of thirty (30) affordable rental units on Lots 5 and 6, Plan KAP92715, located at 500 Rowcliffe Avenue and 555 Buckland Avenue be forwarded for reading consideration.

Carried

**4.1.1. Bylaw No.10850, Housing Agreement Authorization Bylaw - 550 Rowcliffe Road and 555 Buckland Avenue, Davara Holdings Ltd.**

Moved By Councillor Given/Seconded By Councillor DeHart

R666/13/10/21 THAT Bylaw No. 10850 be read a first, second and third time.

Carried

**4.2. Library Parkade Bistro**

Staff:

- Provided an overview of the proposed Lease for the bistro space at the Library Parkade and responded to questions from Council.

Moved By Councillor DeHart/Seconded By Councillor Zimmermann

R667/13/10/21 THAT Council approves the City entering into a five (5) year Commercial Lease, with 0937820 B.C. Ltd., and Mr. Youn Tae Kang for bistro space at the Library Parkade, with the option to renew for an additional five (5) year term, in the form attached to the Report of the Manager, Property Management, dated October 15, 2013;

AND THAT the Mayor and City Clerk be authorized to execute all documents related to the Commercial Lease.

Carried

**5. Bylaws for Adoption (Non-Development Related)**

**5.1. Bylaw No. 10855 - Road Closure Bylaw, Portion of Spall Road**

Deputy Mayor Stack invited anyone in the public gallery who deems themselves affected by the proposed road closure to come forward. No one came forward.

Moved By Councillor Blanche/Seconded By Councillor Basran

R668/13/10/21 THAT Bylaw No. 10855 be adopted.

Carried

**5.2. Bylaw No. 10889 - 2014 Permissive Tax Exemption Bylaw**

Deputy Mayor Stack declared a conflict of interest as the Society he works for has an interest in the 2014 Permissive Tax Exemption Bylaw and left the meeting at 2:25 p.m. Deputy Mayor DeHart took over as Chair of the meeting at 2:25 p.m.

Moved By Councillor Singh/Seconded By Councillor Hobson

R669/13/10/21 THAT Bylaw No. 10889 be adopted.

Carried

**6. Mayor and Councillor Items**

Deputy Mayor Stack returned to the meeting and took over as Chair from Deputy Mayor DeHart at 2:26 p.m.

Councillor Given:

- Commented on her attendance at 'V Day', an event to encourage youth to volunteer.

Councillor DeHart:

- Commented on her attendance, on behalf of the Mayor, at the Southern Interior Construction Awards last week.
- Thanked the Community and Council for the contributions to the 'Maxine DeHart Drive Thru Breakfast' and noted that, to date, over \$41,000.00 was raised.

Councillor Hobson:

- Commented on his attendance at the Municipal Pension Plan Annual General Meeting.

Deputy Mayor Stack:

- Commented on his attendance at the 50th Anniversary of the RCMP Auxilliary this past weekend.
- Commented on his attendance at Lions Park over the weekend in which new trees were planted in the Park.
- Read the note from the Rutland Residence Association thanking Council for the contribution to Lions Park and the Rutland area over the past few years.

Deputy City Manager:

- Encouraged the public to take part in the Okanagan Travel Survey ([www.oktravelsurvey.ca](http://www.oktravelsurvey.ca) or 1-877-778-8220).

**7. Termination**

This meeting was declared terminated at 2:41 p.m.

\_\_\_\_\_  
Deputy Mayor Stack

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Deputy Mayor DeHart

/slh



## City of Kelowna Chauffeur's Permit Appeal Hearing Minutes

Date: Tuesday, October 22, 2013  
 Location: Knox Mountain Meeting Room (#4A)  
 City Hall, 1435 Water Street

Council Members Present: Deputy Mayor Luke Stack and Councillors Colin Basran, Andre Blanleil, Gail Given, Robert Hobson, Mohini Singh and Gerry Zimmermann

Council Members Absent: Mayor Walter Gray and Councillor Maxine DeHart

Staff Present: Acting City Manager, Joe Creron; and City Clerk, Stephen Fleming

Guests: RCMP Central Okanagan Traffic Section, Constable Chris Neid; Appellant, Israel Star; and Kelowna Cabs Representative, Appearing on behalf of Israel Star

(\* denotes partial attendance)

### 1. Call to Order

Deputy Mayor Stack called the Hearing to order at 4:02 p.m.

### 2. Chauffeur's Permit Appeal Hearing

#### 2.1. Chauffeur's Permit Appeal Hearing

Constable Chris Neid, RCMP Central Okanagan Traffic Section:

- Outlined Mr. Star's traffic violations that lead to the decision to revoke Mr. Star's Chauffeur's Permit.
- Responded to questions from Council.

Israel Star, Appellant:

- Made representations as to why he should keep his licence.
- Agreed with everything said by Constable Neid.
- Made reference to a map of the downtown displayed on the wall in Meeting Room 4A, Knox Mountain.

- Described the connections he has made with his clients and the pressures this brings that have resulted in speeding while driving his cab.
- Feels pressure to deliver his clients quickly to their destinations; both from his clients and to ensure clients don't start calling other cab companies.
- Confirmed driving in the downtown core has resulted in 'near misses'.
- Has toned it down and slowed down since his interactions with the RCMP.
- Has been in Toronto for the past few weeks.

**Council:**

- Inquired as to whether Mr. Star had any 'near misses'.
- Inquired as to whether Mr. Star would, or if he has, conducted himself differently since he has received these warnings and revocation from the RCMP.
- Inquired as to why Mr. Star did not turn in his Chauffeur's Permit when requested to do so by the RCMP.

**Moved By Councillor Zimmermann/Seconded By Councillor Basran**

**CP001/13/10/22** THAT Council supports the decision of the RCMP Central Okanagan Traffic Section revoking Israel Star's Chauffeur's Permit.

**Carried**

**Council:**

- Appreciated Mr. Star's honesty.
- Noted that Mr. Star failed to hand in his Chauffeur's Permit when asked.
- Noted that Mr. Star did not appear to change his driving habits between the August 2012 letter and July 2013.
- Believes that community safety concerns are greater than trying to accommodate Mr. Star continuing in this occupation.
- Expressed a concern with how the pressures of the job lead to excessive speeding.
- Expressed a concern with excessive speeds over the posted limits.
- Agreed that an appropriate date for re-application is February 2015 and that the RCMP should take into consideration Mr. Star's driving record between now and February 2015, assuming there will be a BC driving history.

**3. Termination**

The Hearing was declared terminated at 4:52 p.m.

\_\_\_\_\_  
Deputy Mayor Stack

/scf/slh

\_\_\_\_\_  
City Clerk



## City of Kelowna Regular Council Meeting Minutes

Date: Monday, October 28, 2013  
 Location: Council Chamber  
 City Hall, 1435 Water Street

Council Members Present: Deputy Mayor Luke Stack and Councillors Colin Basran, Andre Blanleil\*, Maxine DeHart, Gail Given, Robert Hobson and Mohini Singh

Council Members Absent: Mayor Walter Gray and Councillor Gerry Zimmermann

Staff Present: Acting City Manager, Rob Mayne; City Clerk, Stephen Fleming; Divisional Director, Active Living & Culture, Jim Gabriel\*; Manager, Urban Planning, Ryan Smith\*; Revenue Manager, George King\*; Manager, Sport & Event Development, Don Backmeyer\*; Supervisor, Event Development, Mariko Siggers\*; and Council Recording Secretary, Sandi Horning

(\* denotes partial attendance)

### 1. Call to Order

Deputy Mayor Stack called the meeting to order at 1:32 p.m.

Deputy Mayor Stack advised that the meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.

### 2. Development Application Reports & Related Bylaws

- 2.1. Official Community Plan Bylaw Amendment Application No. OCP13-0012 and Rezoning Application No. Z13-0019 - 2049 Byrns Road, Margarita Littley

Deputy Mayor Stack advised that Agenda Item 2.1 is has been deferred at the request of the Applicant and will be put back on the Agenda at a later date.

**2.2. Rezoning Application No. Z13-0034 - 464 Cadder Avenue, Painchaud Family Holdings Inc.**

Councillor Blanleil joined the meeting at 1:34 p.m.

Staff:

- Displayed a PowerPoint Presentation summarizing the application before Council.

Moved By Councillor Hobson/Seconded By Councillor Basran

R682/13/10/28 THAT Rezoning Application No. Z13-0034 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 3, District Lot 14, ODYD Plan 1063, located on 464 Cadder Ave, Kelowna, BC from the RU1 - Large Lot Housing zone to the RU1c- Large Lot Housing with Carriage House zone be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration.

Carried

**2.2.1. Bylaw No. 10893 (Z13-0034) - 464 Cadder Avenue, Painchaud Family Holdings Inc.**

Moved By Councillor DeHart/Seconded By Councillor Given

R683/13/10/28 THAT Bylaw No. 10893 be read a first time.

Carried

City Clerk:

- Advised that this application will be scheduled for the November 19th Public Hearing.

**3. Bylaws for Adoption (Development Related)**

**3.1. Bylaw No. 10867 (OCP13-0014) - 1150 & 1200 Steele Road, No. 21 Great Projects Ltd.**

Moved By Councillor Given/Seconded By Councillor DeHart

R684/13/10/28 THAT Bylaw No. 10867 be adopted.

Carried

**3.2. Bylaw No. 10868 (Z13-0023) - 1150 & 1200 Steele Road, No. 21 Great Projects Ltd.**

Moved By Councillor Basran/Seconded By Councillor Singh

R685/13/10/28 THAT Bylaw No. 10868 be adopted.

Carried

#### 4. Non-Development Reports & Related Bylaws

##### 4.1. Utility Billing Customer Care, Water Meter and Meter Reading Services Contract

Moved By Councillor Hobson/Seconded By Councillor Singh

R686/13/10/28 THAT Council approves a twenty four (24) month extension of the Corix Utilities Inc. contract for Utility Billing Customer Care, Water Meter and Meter Reading Services from January 1, 2014 to December 31, 2015, with options to extend the contract for two further one year periods;

AND THAT Council approve billing utility customers bi-monthly starting in April, 2014;

AND FURTHER THAT the Mayor and City Clerk be authorized to sign an extension agreement.

Carried

##### 4.2. Center of Gravity

Staff:

- Displayed a PowerPoint Presentation and responded to questions from Council.

Moved By Councillor Basran/Seconded By Councillor Blanleil

R687/13/10/28 THAT Council invites Scott Emslie , representative of Wet Ape Productions, to address Council.

Carried

Scott Emslie, Wet Ape Productions:

- Provided comment regarding the Centre of Gravity event and the concerns raised by staff.
- Wants to ensure that the event remains in Kelowna for the next 10 years or so.
- Willing to move the event to another weekend.
- Responded to questions from Council.
- Advised that there has been a shuttle program for the athletes who are competing in event, however, he would like to expand the shuttle program to assist with event goers getting to and from the event.

Staff:

- Responded to questions regarding the 'neighbourhood patrols'.
- Advised that staff and the event organizer are still working on the fine details regarding the protocol for the 'neighbourhood patrols'.
- Confirmed that on-site security is the responsibility of the event organizer.
- Advised that parking should not be an issue as data collected supports the fact that the Chapman Parkade was not used to capacity during the entire event.
- Provided an overview of how the sports field in City Park is rehabilitated after the event.
- Confirmed that staff is currently in discussions with Wet Ape Productions with respect to a new date for the event in 2014.

Council:

- Requested that staff report back to Council once the final details have been agreed to with respect to the 2014 Centre of Gravity event.

Moved By Councillor Given/Seconded By Councillor Hobson

R688/13/10/28 THAT Council receives, for information, the report from the Sport and Event Development Manager dated October 23, 2013, regarding the 2013 Center of Gravity Festival.

Carried5. **Bylaws for Adoption (Non-Development Related)**

5.1. **Bylaw No.10850, Housing Agreement Authorization Bylaw - 550 Rowcliffe Road and 555 Buckland Avenue, Davara Holdings Ltd.**

Moved By Councillor Hobson/Seconded By Councillor Singh

R689/13/10/28 THAT Bylaw No. 10850 be adopted.

Carried

6. **Mayor and Councillor Items**

Councillor DeHart:

- Congratulated the Manager, Financial Planning, Genelle Davidson, on receiving her Certified Management Accountants certification.

Councillor Basran:

- Congratulated Deputy Mayor Stack and the Society of Hope on receiving a Kelowna Chamber of Commerce Award for business excellence.

Councillor Singh:

- Commented on the Indo-Canadian UBC-Okanagan Fundraising Event on Saturday.

Deputy Mayor Stack:

- Reminded the public that the 'Interior Drive for Life Kelowna vs. Prince George Challenge' is still on and to donate blood.
- Reminded the public that the 'Poppy Campaign' is underway.
- Thanked City staff for the event at City Hall last Friday with respect to Premier Clark's presentation.

7. **Termination**

This meeting was declared terminated at 2:27 p.m.

---

 Deputy Mayor Stack

---

 City Clerk

/slh

# REPORT TO COUNCIL



**Date:** October 23, 2013  
**RIM No.** 1210-21  
**To:** City Manager  
**From:** Todd Cashin, Subdivision, Agriculture & Environment Services Manager  
**Application:** OCP13-0012  
Z13-0019 **Owner:** Margarita Littley  
**Address:** 2049 Byrns Road **Applicant:** Tony Lockhorst  
**Subject:** Official Community Plan (OCP) Amendment and Z13-0019 Report to Council\_October 23  
**Existing OCP Designation:** Resource Protection Area (REP)  
**Proposed OCP Designation(s):** Single/Two Unit Residential (S2RES)  
Multiple Unit Residential (Low Density) (MRL)  
**Existing Zone:** A1- Agriculture 1  
**Proposed Zone(s):** RM1 - Four Dwelling Housing  
RU6 - Two Dwelling Housing

---

## 1.0 Recommendation

THAT Official Community Plan Bylaw Amendment No. OCP13-0012 to amend Map 4.1 of the Kelowna 2030 - Official Community Plan Bylaw No. 10500, by changing the Future Land Use designation of part of Lot 2, District Lot 130, Osoyoos Division Yale District, Plan 17289, Except Plan 22166, located at 2049 Byrns Road, Kelowna, BC, from the Resource Protection Area (REP) designation to the Multiple Unit Residential (Low Density) (MRL) designation, and part of Lot 2, District Lot 130, Osoyoos Division Yale District, Plan 17289, Except Plan 22166, located at 2049 Byrns Road, Kelowna, BC, from the Resource Protection Area (REP) designation to the Single/Two Unit (S2RES) designation as shown on Map "A" attached to the Report from the Land Use Planner dated July 19, 2013, NOT be considered by Council;

AND THAT Rezoning Application No. Z13-0019 to amend the City of Kelowna Zoning Bylaw No. 8000, by changing the zoning classification of a portion of Lot 2, DL 130, ODYD, Plan 17289 Except Plan 22166, located at 2049 Byrns Road, Kelowna, BC, from the A1-Agriculture 1 zone to the RU6-Two Dwelling Housing zone, and by changing the zoning classification of a portion of Lot 2, DL 130, ODYD, Plan 17289 Except Plan 22166, located at 2049 Byrns Road, Kelowna, BC, from the A1-Agriculture 1 zone to the RM1-Four Dwelling Housing zone, as shown on Map "B" attached to the Report from the Land Use Planner dated July 19, 2013, NOT be considered by Council;

AND FURTHER THAT Council direct Bylaw Services Staff to ensure that the existing illegal dwelling located in the accessory structure be decommissioned to the satisfaction of the City's Chief Building Official.

## 2.0 Purpose

The applicant is proposing to amend the Future Land Use (FLU) designation for the eastern portion of the property from Resource Protection to Multiple Unit Residential (Low Density) and for the western portion of the property to the Single/Two Unit Residential designation. It is also proposed that the zoning designation for the eastern portion of the property be amended from the A1 - Agriculture 1 zone to the RM1 - Four Dwelling Housing zone, and for the western portion to the RU6 - Two Dwelling Housing zone. The proposed amendments are to facilitate a two lot subdivision and develop two new dwellings on a newly created parcel. The rezoning would also bring the existing duplex and carriage house into conformance on the subject property.

## 3.0 Land Use Management

While the subject property is not within the Agricultural Land Reserve (ALR), the future land use designation is identified as Resource Protection Area consistent with either Agricultural or Rural Residential zoning. The property abuts productive ALR land and is outside of the City's Permanent Growth Boundary, meaning that Rural Residential is anticipated to be the most intensive use of the property.

The existing subject property is approximately 3,000 m<sup>2</sup> in size which is consistent with a Rural Residential property size on community sewer. The 0.3 ha property is not, however, large enough to subdivide into two rural residential (i.e. RR3) zoned lots, as the minimum parcel size for an RR3 lot on community sewer is 1600 m<sup>2</sup>.

The Official Community Plan amendment and rezoning of the subject property are being driven by a desire to subdivide the subject property to construct a new duplex dwelling on the western portion. The stated intent is to provide affordable housing for family members.

Three dwellings currently exist on the subject property. The principal dwelling was constructed with Building Permits from the Regional District as an up/down duplex in 1972 and is legally non-conforming (neither the A1 zone or the Rural Residential zones permit duplex housing) with the current zoning. The third dwelling does not, however, appear to have been authorized by way of Building Permits as the Building Permit was initially issued for a garage. The applicant claims however that the building has only been used as a residence since it was constructed. The applicants are now seeking a total of five dwellings (two on the western portion and three on the eastern). Staff have concerns with the proposed development for the following reasons:

- The City's Agriculture Plan discourages new urban growth within agricultural areas which creates additional pressure on the City's rural road network (see Section 5.2 below). An added benefit of discouraging new growth is that the low density rural character remains intact.
- From an agricultural perspective, the proposed development has the potential to worsen an existing urban/rural interface area. This is true as the number of individuals exposed to farm practices such as farm machinery, bird-scaring equipment, odours, and crop spraying would be significantly increased.
- Ideally, agricultural parcels are contiguous and relatively isolated from non-agricultural properties. This is especially true of commercial and residential uses which typically have

low compatibility with farm practices. Where urban-rural (i.e. agricultural) interface does exist, fewer units are preferred. Complaints with farm practices is expected to increase with density and further exacerbated by new arrivals not accustomed to normal farm practices.

- The question of whether additional density should be supported in rural areas was considered through the development of the Agriculture Plan (1998) which states:  
*Existing urban development within an agricultural area contributes to urban-rural conflict, adds to the speculative value of surrounding agricultural lands, and speculation weakens farmer capitalization. New urban development, even if appropriately buffered, also increases speculation and discourages farm investment. The City should not support extensions to existing developments or new development within agricultural areas, regardless of ALR status (p.124).*
- Rezoning to RM1 would allow for up to four units, though the applicant has not indicated that there would be an additional unit constructed on the eastern lot at this time, further compounding the above noted concerns.

### **Public Notification**

The proposal is consistent with an Official Community Plan Amendment - Major ("OCP Major") as per Council Policy 367 - Public Notification & Consultation for Development Applications. An OCP major involves a major change to the Future Land Use class (e.g. Resource Protection to Residential). The applicant has been advised of the requirements for this type of proposed development which include a Project Board, Neighbour Consultation, and Public Information Session.

The applicant is thus far unwilling to undertake the prescribed public notification. Instead, the applicant has provided evidence of notification of three adjacent property owners and one owner a short distance away. Further, the information contained within the notification is not consistent with the proposal being sought. That is to say that the proposal alludes to a RM1 zoning and subdivision, but it is not clear that the signatories would have understood that the plan calls for two new dwellings on the western parcel and three dwellings on the eastern parcel.

Should Council elect to forward this application to a Public Hearing, staff recommend that Council require the applicant to conduct additional neighbour consultation of all landowners within 150 metres of the subject property using content agreed to by staff to ensure accurate messaging.

### **Conclusions**

The provision of affordable housing for young families is an important planning consideration. In addition to the costs to rent or own housing, proximity to urban services is also very important. The development of future affordable housing should not, however, be at the expense of agriculture, or another niche housing stock (i.e. large lot, rural residential).

The Official Community Plan identifies extensive areas within the Permanent Growth Boundary that are available for the future development of three or four-plex housing. Much preferred is for this type of development to be located in areas of the City which already have the appropriate Future Land Use designation (e.g. MRL) in place. Introducing the MRL Future Land Use designation in this location will only serve to increase speculation for the other smaller lots along Byrns Road to Benvoulin Road.

Staff have suggested to the applicant that a more acceptable approach would be to consider a Single/Two Unit Residential FLU designation for the entire parcel and decommission either the suite in the existing dwelling or the non-conforming carriage house thereby limiting each lot to a maximum of two units. The applicant has advised, however, that they wish to pursue their original request at this time.

Should Council support development of this property, staff recommend an extensive landscape buffer be required on the subject properties. Specifically, staff recommend a minimum 15.0 metre landscape buffer consistent with the Ministry of Agriculture's Urban-Side Buffer (with berm) specification (see attached).

## 4.0 Proposal

### 4.1 Background/ Project Description

The subject property has a land use designation of Resource Protection Area in the City's Official Community Plan and is zoned A1-Agriculture. The property is also outside of the Permanent Growth Boundary.

The subject property contains a legal non-conforming up/down duplex which was permitted in 1973 by the Regional District. An accessory structure (garage) was also permitted at this time. In the time since, the garage has been converted to an illegal dwelling unit (i.e. without zoning and Building Permits). A resident alerted staff to the presence of the illegal third dwelling (i.e. Carriage House). While it is unclear how long this illegal dwelling has been occupied, a second garage was constructed in 1988 which may correspond with the conversion.

The current owner appears to have purchased what was likely a non-conforming property in 2007. When asked, the property owner acknowledged that the garage is occupied as a dwelling. The owner also remarked that the duplex dwelling is being used as a single dwelling with unrestricted access between the two floors. That said, by definition, three dwellings currently exist on the subject property while the A1 zone allows for a single dwelling with suite in the principal dwelling for a maximum of two dwellings. A site inspection to confirm the dwellings has not been undertaken at this time.

As background, the original proposal was to rezone the western portion of the approximately 0.3 ha site to the RM1 - Four Dwelling Housing zone to allow for up to four dwellings. The application has been modified as a result of public consultation with an adjacent neighbour who did not support the original proposal.

The proposed rezoning is a necessary precursor to achieving the applicant/owners goal of a two lot subdivision. The proposed rezoning to the RU6 and RM1 zone require an OCP amendment from the current Resource Protection Area designation to the Single/Two Residential and Multifamily Residential (Low Density) respectively.

As proposed, the existing garage appears to be located within the 2.0 metre minimum side yard setback distance of the RM1 zone. As such, should Council support the rezoning, a Development Variance Permit would be required prior to the two lot subdivision being authorized.

The application contains a stated intention of providing permanent and affordable accommodation for the families of the property owner.

### 4.2 Site Context

The subject property is located south of Byrns Road between Benvoulin and Burtch Roads. The 0.30 ha (0.74 ac) subject property is in a rural/agricultural area, outside of the City's Permanent

Growth Boundary. The subject property along with eight others fronting Byrns and Benvoulin Roads are legally non-conforming A1 - Agriculture zoned properties given their parcel size (all significantly less than 4.0 ha). The average parcel size of these properties is 0.18 ha which is consistent with the City’s Rural Residential Zones (i.e. RR1, 2 & 3) which provide for a range of lot sizes between 0.18 and 0.8 hectares when connected to community sewer (1.0 ha if not connected).

All but one property are connected to community water and all but two are currently connected to community sewer. Byrns Road is constructed to a rural standard and contains no storm sewer.

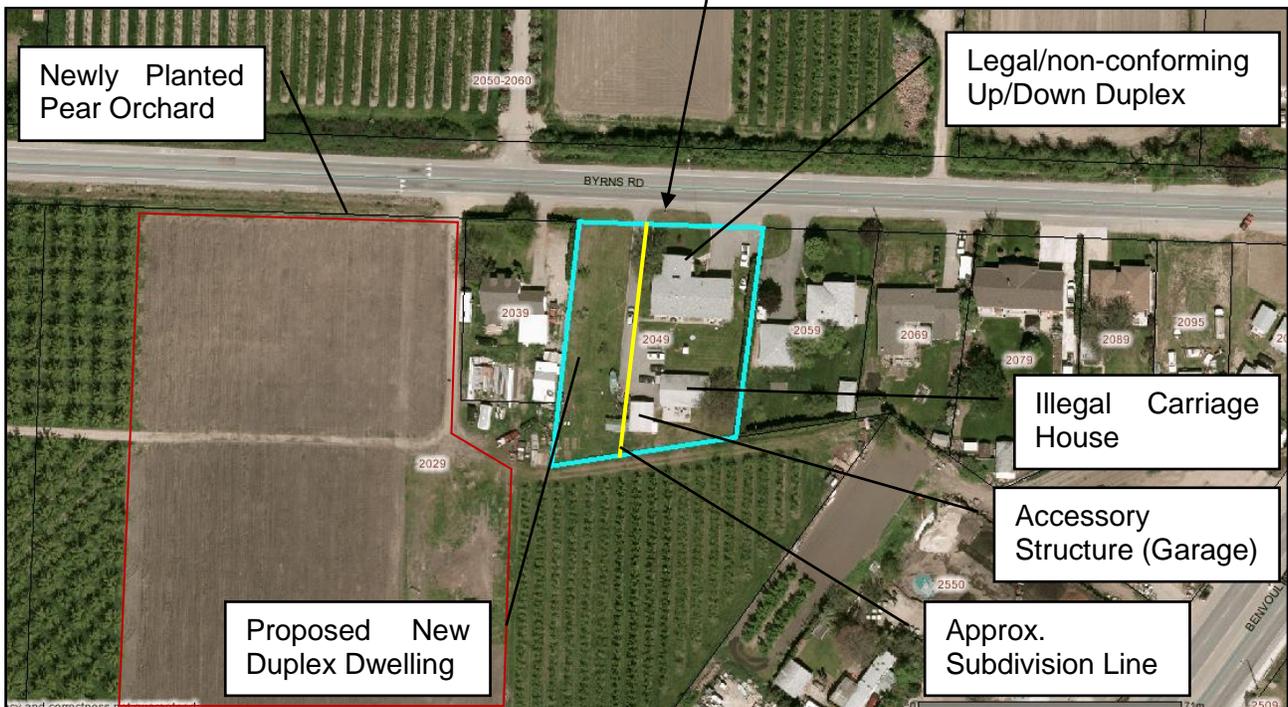
Properties to the north and south of the subject property are large agricultural properties, while properties to the east and west are rural residential in nature, consistent with the subject property.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	ALR (Yes/No)	Land Use
North	A1 - Agriculture 1	Yes	Agriculture (Ground Crops)
East	A1 - Agriculture 1	No	Rural residential
South	A1 - Agriculture 1	Yes	Agriculture (Orchard)
West	A1 - Agriculture 1	No	Rural residential

The subject property is located within a Development Permit Area for Farm Protection given its proximity to ALR land. Should Council endorse the proposal, Form & Character (Intensive Residential) Development Permits would also apply and would be authorized at the staff level.

Map 1 - Subject Property Map: 2049 Byrns Road



Map 2 - Photo Key

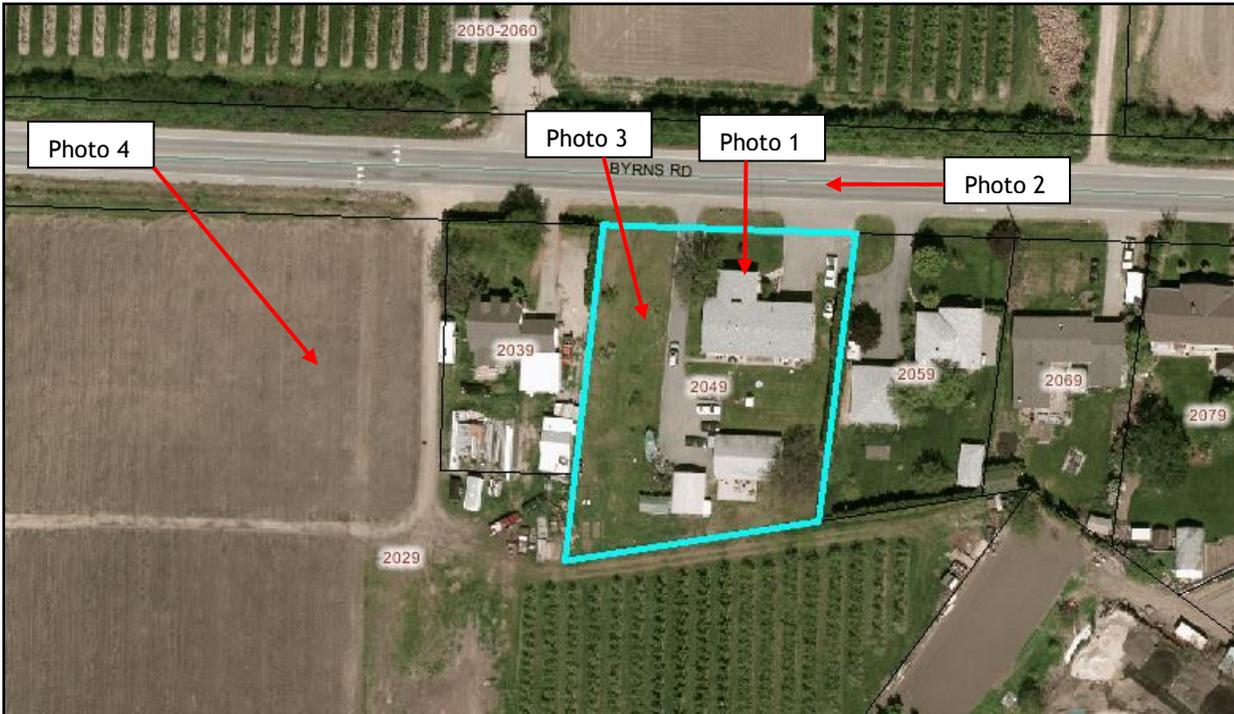


Photo 1: Subject Property and Existing Up/Down Duplex Looking South from Byrns Road (Google Street View - Date Unknown)



Photo 2: Byrns Road Looking West with Subject Property and Existing Dwelling in Foreground (Google Street View - Date Unknown)



Photo 3: Subject Property with Existing Dwelling in Foreground and "Carriage House" in Background (Google Street View - Date Unknown)



Photo 4: Byrns Road Looking Southeast with Newly Planted Pear Orchard Approximately 30 metres from Subject Property (May 30, 2013)



## 5.0 Current Development Policies

### 5.1 Kelowna Official Community Plan (OCP)

Objective 5.3 Focus development to designated growth areas<sup>1</sup>.

Policy .1 Permanent Growth Boundary. Establish a Permanent Growth Boundary as identified on Map 4.1 and Map 5.2. Support development of property outside the Permanent Growth Boundary for more intensive uses only to the extent permitted as per the OCP Future Land Use designations in place as of initial adoption of OCP Bylaw 10500, except as per Council's specific amendment of this policy. Resource Protection Area designated properties not in the ALR and outside the Permanent Growth Boundary will not be supported for subdivision below parcel sizes of 4.0 ha (10 acres). The Permanent Growth Boundary may be reviewed as part of the next major OCP update.

Policy .2 Compact Urban Form. Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs per ha located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

Objective 5.33 Protect and enhance local agriculture<sup>2</sup>.

Policy .3 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

Farm Protection DP Guidelines<sup>3</sup>

#### Objectives

- Protect farm land and farm operations;
- Minimize the impact of urban encroachment and land use conflicts on agricultural land;
- Minimize conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

#### Guidelines

1.1 On properties located adjacent to agricultural lands, design buildings to reduce impact from activities associated with farm operations. Design considerations include, but are not limited to maximizing the setback between agricultural land and buildings and structures, and reducing the number of doors, windows, and outdoor patios facing agricultural land.

1.3 On agricultural and non-agricultural lands, establish and maintain a landscape buffer along the agricultural and/or property boundary, except where development is for a permitted farm use that will not encourage public attendance and does not concern additional residences (including secondary suites), in accordance with the following criteria:

- 1.3.1 Consistent with guidelines provided by Ministry of Agriculture "Guide to Edge Planning" and the ALC report "Landscape Buffer Specifications" or its replacement.

1.5 Design any subdivision or urban development of land to reduce densities and the intensity of uses gradually towards the boundary of agricultural lands.

<sup>1</sup> City of Kelowna 2030 Official Community Plan (2011) - Farm Protection Development Permit Chapter; p. 15.2 - 15.4.

<sup>2</sup> City of Kelowna 2030 Official Community Plan (2011) - Development Process Chapter; p. 5.35.

<sup>3</sup> City of Kelowna 2030 Official Community Plan (2011) - Farm Protection Development Permit Chapter; p. 15.2 - 15.4.

## 5.2 City of Kelowna Agriculture Plan

### Transportation Policies<sup>4</sup>

New Growth Areas. Discourage the establishment of new growth areas within or beyond agricultural areas that create additional traffic pressure on the local rural road network.

### Urban-Rural/Agricultural Boundary Policies<sup>5</sup>

Farmland Preservation. Direct urban uses to land within the urban portion of the defined urban - rural / agricultural boundary, in the interest of reducing development and speculative pressure, toward the preservation of agricultural lands and discourage further extension of existing urban areas into agricultural lands;

Urban Buffers. Require new development, adjacent to agricultural areas, to establish setbacks, fencing and landscape buffers on the urban side of the defined urban - rural/agricultural boundary;

Parcel Size: Non - Agricultural Land. Discourage subdivision to smaller parcel sizes on lands beyond agricultural areas in order to reduce negative impacts on the farming community and encourage the Central Okanagan Regional District and the Ministry of Environment, Land and Parks to consider maintaining larger minimum parcel sizes for Crown Lands within and adjacent to the City in recognition of the provincial interest in retaining farming;

Isolated Development. In general, not support extensions to existing development or new development isolated within agricultural areas, regardless of ALR status.

## 6.0 Technical Comments

### 6.1 Building & Permitting Department

- With respect to legalizing the existing “carriage house” dwelling, staff would need to inspect the structure and plumbing & heating system to see if it meets the requirements of the current building code. An architect and/or engineer would need to submit a report and provide as-built drawings along with establishing if Code criteria is met. Areas of the house may need to be exposed to confirm the work meets Code and retrofit/repair any areas of non-compliance.
- The drawings and specifications are to be submitted as part of a building permit for validation of the work done without permit.

### 6.2 Development Engineering Department

- See attached.

### 6.3 Agricultural Advisory Committee

The rezoning was not formally considered by the AAC, but staff referred it to AAC as staff were seeking AAC comments with respect to mitigating the effects on adjacent agriculture should Council support the rezoning:

- AAC members noted that the adjacent farmer (to the south) has recently planted a new pear orchard;
- AAC members cited the potential increase in urban/rural conflict as their primary concern; and
- Should the rezoning be supported, AAC members suggested an extensive buffer zone (e.g. 15 - 20 metres with berm) and plantings to mitigate urban/rural conflict.

<sup>4</sup> City of Kelowna Agriculture Plan (1998); p. 99.

<sup>5</sup> City of Kelowna Agriculture Plan (1998); p. 131 & 132.

## 7.0 Application Chronology

Application Received:	April 25, 2013
AAC Referral Review:	May 9, 2013
Technical Comments Complete:	May 29, 2013
Applicant Submits Public Notification Summary:	June 12, 2013
Applicant Submits Revised Land Use Proposal:	July 11, 2013
Applicant Places File on Hold:	August 6, 2013

## 8.0 Alternate Recommendation

As an alternative solution to the applicants desire to provide duplex housing for family members consideration may be given to a FLU designation of Single/Two Unit Residential designation and RU6-Two Dwelling Housing zoning for the entire parcel which would limit both proposed lots to a maximum of two dwelling units per parcel and may lesson future speculation that multi-family housing would be appropriate in this area. Should Council choose to consider this approach the following recommendations would apply:

THAT Official Community Plan Bylaw Amendment No. OCP13-0012 to amend Map 4.1 of the Kelowna 2030 - Official Community Plan Bylaw No. 10500, by changing the Future Land Use designation of Lot 2 District Lot 130 Osoyoos Division Yale District Plan 17289 Except Plan 22166, located at 2049 Byrns Road, Kelowna, BC, from the Resource Protection Area (REP) designation to the Single/Two Unit Residential (S2RES) be considered by Council.

AND THAT Rezoning Application No. Z13-0019 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 2 District Lot 130 Osoyoos Division Yale District Plan 17289 Except Plan 22166, located at 2049 Byrns Road, Kelowna, BC, from the A1 - Agriculture 1 zone to the RU6 - Two Dwelling Housing zone be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of Development Engineering Branch being completed to their satisfaction.

AND FURTHER THAT Council Staff confirm that one of the existing dwellings located on eastern proposed lot be decommissioned to the satisfaction of the City's Chief Building Official.

### Report prepared by:

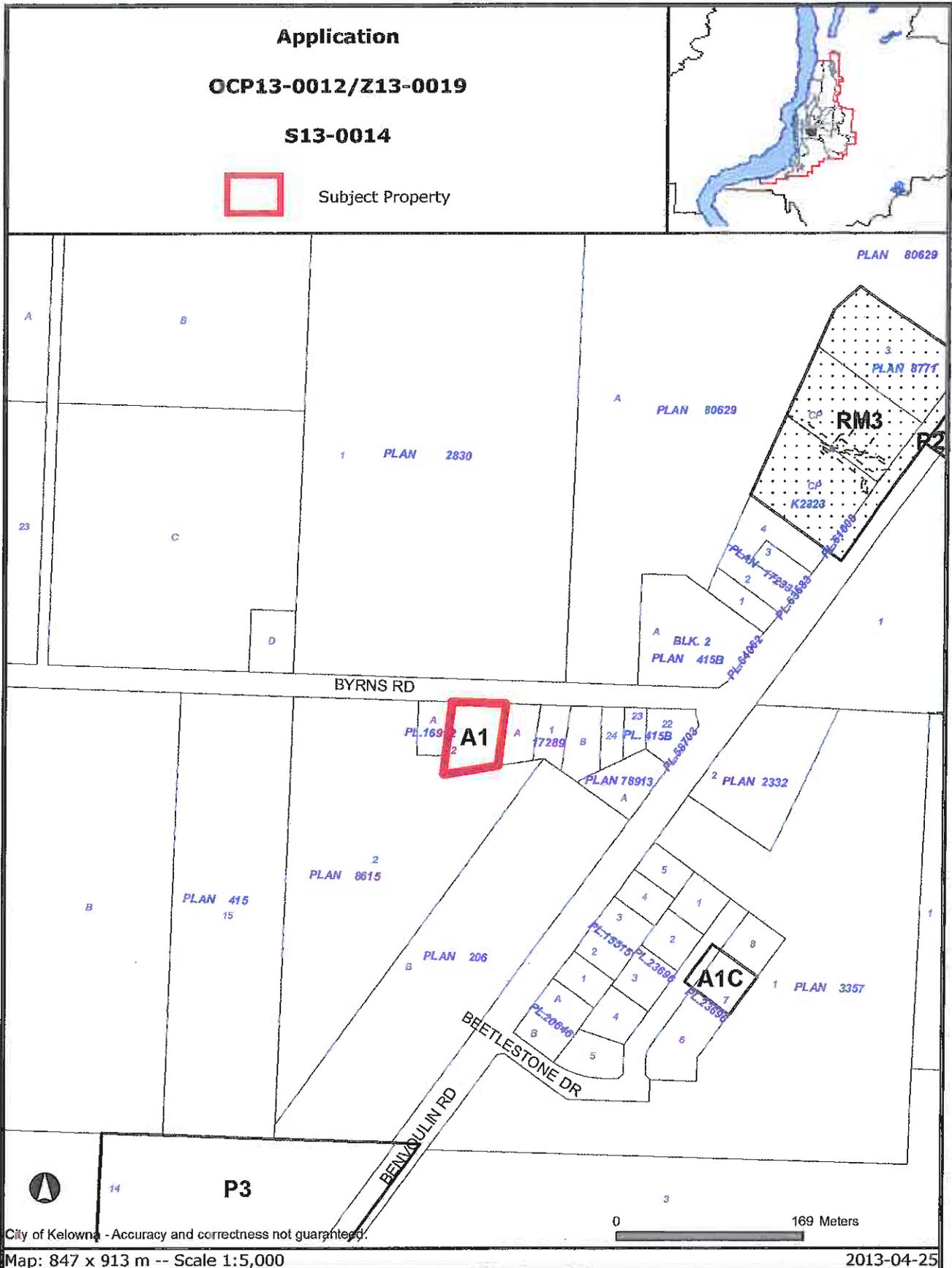
---

Todd Cashin, Subdivision, Agriculture & Environment Services Manager

Approved for Inclusion  S. Gambacort, Director

### Attachments:

Subject property/zoning map & ALR map (2 pages)  
Development Engineering Comments (1 page)  
Schedule "A" - Landscape Buffer (1 page)  
Map "A" - OCP Amendment (1 page)  
Map "B" - Proposed Zoning (1 page)  
Preliminary Lot Layout (1 page)



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.  
 The City of Kelowna does not guarantee its accuracy. All information should be verified.

---

**CITY OF KELOWNA**  
**MEMORANDUM**

---

**Date:** June 24, 2013  
**File No.:** Z13-0019

**To:** Land Use Management Department (GS)

**From:** Development Engineering Manager

**Subject:** 2049 Byrns Road *REVISED*      Lot 2 Plan 17289      A1 to RU6 & RM1

---

Development Engineering has the following comments and requirements associated with this application to rezone from A1 to RU6 & RM1.

1. Domestic Water and Fire Protection

Our records indicate that this property is serviced with a 19mm diameter copper water service. The current by-law requires that only one service be permitted for this application. *The service required for RM1 and RU6 will need to be sized adequately for each zoning. Larger new services and disconnection of the existing can be provided by City forces at the applicant's expense for the RM1 & RU6 future lot.* For estimate inquiry's please contact Sergio Sartori, by email [ssartori@kelowna.ca](mailto:ssartori@kelowna.ca) or phone, 250-469-8589.

2. Sanitary Sewer

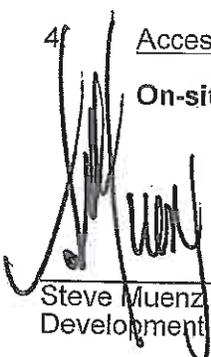
Our records indicate that this property is serviced with a 100mm-diameter sanitary sewer service complete with inspection chamber. *The service is adequate for either the RU6 future lot or the RM1 future lot.*

3. Road Improvements

Byrns Road must be upgraded to an urban standard along the full frontage of this property, including curb and gutter, piped storm drainage facilities, sidewalk, street lighting and pavement widening. A one-time cash payment in lieu of construction must be collected from the applicant for future construction by the City. The cash-in-lieu amount is determined to be **\$18,300.00** not including utility service costs

4. Access, Manoeuvrability and Parking Requirements

**On-site parking modules must meet bylaw requirements.**



---

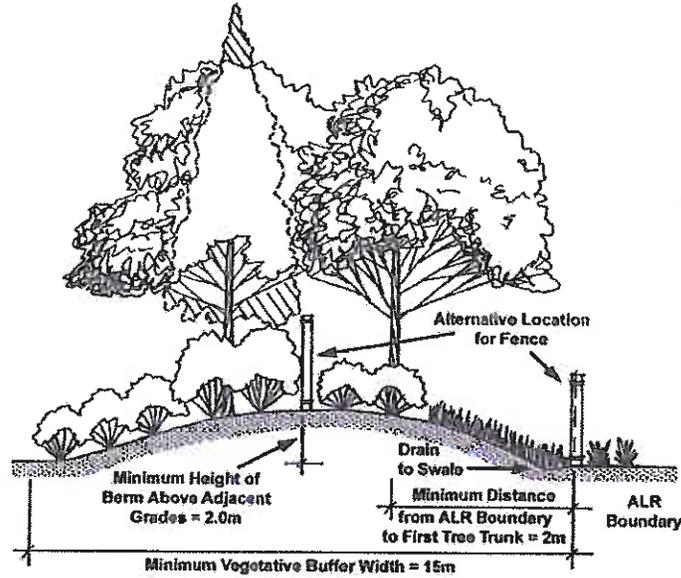
Steve Muenz P. Eng.  
Development Engineering Manager

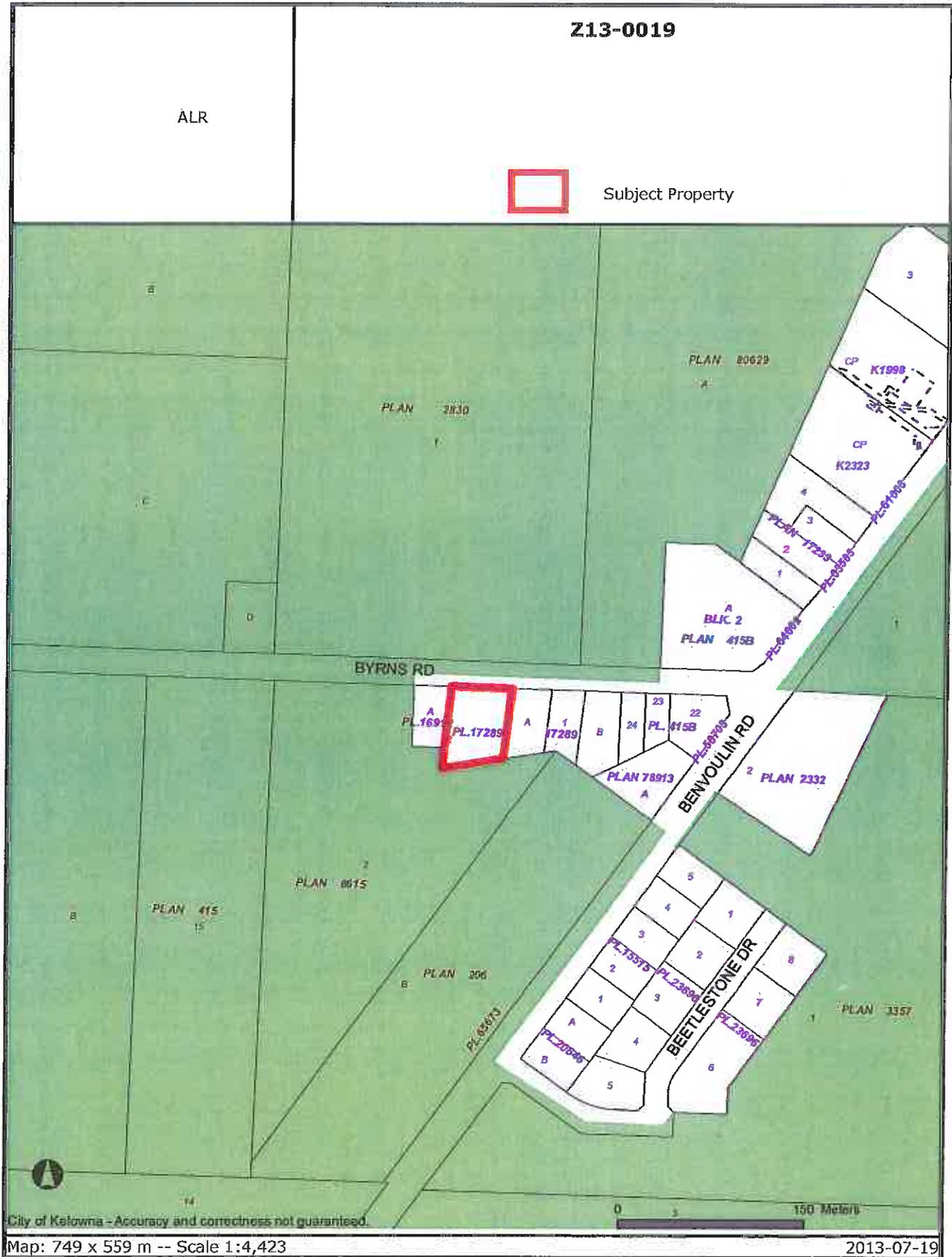
SS

## Schedule "A" - Landscape Buffer

### Urban-Side Buffer B (with berm) - Design specifications & layout

The Urban-side Buffer B includes all elements of Buffer A as well as a berm with minimum height 2 m above adjacent grades.





Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.  
 The City of Kelowna does not guarantee its accuracy. All information should be verified.



2190

1980

2050-2060

**Subject Property Note:**

Amend the OCP for a portion of the subject property from Resource Protection (REP) to Multiple Unit Residential (Low Density) (MRL).

1990

2090

BYRNS RD

2039

2049

2059

2069

2079

2089

2095

2099

2430

2029

2589

1909

**Subject Property Note:**

Amend the OCP for a portion of the subject property from Resource Protection (REP) to Single / Two Unit Residential (S2RES).

2509

2519

2510

2550

BENVOULIN RD

2529

2530

2539

**MAP "A" OCP AMENDMENT  
OCP13-0012**

-  Subject Property
-  Resource Protection
-  REP to MRL
-  REP to S2RES
-  Legal Parcel

This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.



N



1980

2190

2050-2060

**Subject Property Notes:**

Rezone a portion of the subject property from A1 Agriculture 1 to RM1 Four-plex Housing.

1990

2090

BYRNS RD

2039

2049

2059

2069

2079

2089

2095

2099

**A1**

2430

2029

**Subject Property Notes:**

Rezone a portion of the subject property from A1 Agriculture 1 to RU6 Two Dwelling Housing.

1909

2589

2509

2519

2510

2550

2529

BENVOULIN RD

2539

2530

**MAP "B" PROPOSED ZONING**

File #Z13-0019

-  Subject Property
-  A1 to RM1
-  A1 to RU6
-  Legal Parcel

This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.



# REPORT TO COUNCIL



**Date:** November 04, 2013  
**RIM No.** 1210-21  
**To:** City Manager  
**From:** Todd Cashin, Subdivision, Agriculture & Environment Manager  
**Application:** A13-0007 **Owner:** Hillcrest Farm Market Inc.  
**Address:** 700 Hwy 33 E **Applicant:** Chanchal Bal  
**Subject:** A13-0007 Report to Council  
**Existing OCP Designation:** Resource Protection Area  
**Existing Zone:** A1 - Agriculture

---

## 1.0 Recommendation

THAT Agricultural Land Reserve appeal A13-0007 for Lot A, Section 24, Township 26 Osoyoos Division Yale District Plan EPP7145, located at 700 Highway 33 E, Kelowna, B.C. for a non-farm use of agricultural land in the Agricultural Land Reserve, pursuant to Section 20(3) of the Agricultural Land Commission Act, NOT be supported by Municipal Council;

AND THAT the Municipal Council directs staff to forward the subject application to the Agricultural Land Commission for consideration.

## 2.0 Purpose

To consider non-support of the application to the Agricultural Land Commission (ALC) under Section 20(3) of the Agricultural Land Commission Act for a "non-farm use" within the Agricultural Land Reserve (ALR). Specifically, the owner/applicant is seeking to legalize an existing "food and beverage service lounge" (café) on the subject property.

## 3.0 Land Use Management

With respect to the existing agricultural and garden stand (i.e. Hillcrest Farm Market) and café, extensive policy and regulation has been developed by both the ALC and City of Kelowna for properties zoned for agriculture and located within the ALR.

ALC regulations recognize the use (i.e. farm retail sales) as a designated farm use (see attached ALC policy). As such, the City has the ability to further regulate farm retail sales, but may not outright prohibit the use. City zoning regulations have been revised following recommendations from the City's Agriculture Plan (1998) and now largely mirror the ALC regulations. The regulations provide for no limitation on gross floor area where all of the produce is produced onsite or on another site operated by the same producer. In cases where less than 100% of the

products being sold originate offsite by another producer, City zoning regulations and ALR use regulations are in place which state:

*“For sites within the Agricultural Land Reserve, the maximum gross floor area of agricultural and garden sales for produce produced off-site or off-farm products shall be the lesser of one-third of the total floor area of the agricultural and garden sales stand or 100.0 m<sup>2</sup>.”*

Neither the City nor the ALR regulations currently permit a “café or restaurant” in this zone. The City of Kelowna does allow for a “Food Primary Establishment” on parcels zoned for agriculture in conjunction with “Wineries and Cideries”. This approach is consistent with Agricultural Land Reserve Use, Subdivision and Procedure Regulation Section 2(1)(c) which permits a food and beverage service lounge as an ancillary use, if the area does not exceed 125 m<sup>2</sup> indoors and 125 m<sup>2</sup> outdoors.

A few examples of cafés/restaurants on agriculturally zoned land not as part of wineries and cideries have existed in Kelowna historically. These include the “Pioneer Country Market” (Pioneer/Benvoulin Road) and “The Jammery” (Hwy 97 N). The history of the approvals, if any, with respect to Pioneer Country Market is not known, but may have been approved under ALC Regulation 313/78. The Jammery meanwhile went through a series of ALC and City applications including a variance from the 50.0 m<sup>2</sup> of retail area permitted, to 378 m<sup>2</sup> in order to operate the restaurant in this location. The applicants also proposed to process jam commercially. The proposed variance was supported, based on the ALC approval.

City staff and policy are wholly supportive with respect to value-added agriculture and agritourism. As a result, proposals which are directed to improving farm conditions and raising the profile of agriculture are generally supported. However, regulations also seek to ensure that agricultural land is not developed as a much cheaper alternative to urban land, for commercial uses and that the playing field remains level for business owner/operators.

Should the ALC approve the proposed (existing) use to continue, the City will also need to take further corrective action to legitimize the use. Options include split-zoning the parcel with Agriculture and Commercial/Industrial zones; developing a “Comprehensive Development” zone that could be applied to this and potentially other similar properties, or pursuing a text amendment to the A1 zone which would permit the use.

Should the ALC not approve the café as a Non-Farm Use, the landowner will be required to ensure that the floor plan and land uses for the farm market are in conformance with City and ALC regulations.

### 3.1 Background/Project Description

The subject property is a mid-sized agricultural property which in addition to agricultural production (orchard) in the northern portion contains a number of farm and non-farm accessory buildings and structures. Buildings and structures currently include (refer to Map 2 below):

- a two storey structure housing the farm retail sales and café on the ground floor and four units of Bed and Breakfast (B&B) and the B&B operator’s unit on the second floor;
- a two storey structure containing a cooler on the main floor and 22 units of farm worker housing on the second floor;
- a cherry packing plant which includes office space and accommodation to house a farm worker on the second floor;
- a single family dwelling which can be used for farm worker housing (west side of Hwy 33 E); and
- a large free standing sign advertising both Hillcrest Farm Market and the Café.

Uses also include extensive paved surfaces including extensive vehicular car parking for the farm retail sales, café and B&B and a truck loading bay.

The subject property is part of a larger agricultural operation (three properties totalling approximately 35 hectares). While each parcel is in a productive state, the extent of agricultural production varies from parcel to parcel. In addition to these parcels, the owners of the subject property also own additional agricultural parcels elsewhere (i.e. McCurdy Road).

In November 2010, the landowner was issued a Building Permit to construct an approximately 800 m<sup>2</sup> accessory structure with two floors (i.e. ~400 m<sup>2</sup>/floor). The Building Permit plans (see attached) provided to the City reflected a main floor which was largely dedicated to the display and sale of fruit and vegetables with pie and jam preparation areas, large coolers and office space. All seating appeared as picnic tables outside under the covered entry. The second floor was shown with a four unit Bed & Breakfast facility with a manager/operator's suite as is required to conduct this use. Building Department staff reviewed the plans submitted and made the following conditions of the issued Building Permit:

*2. See attached ALC Policy #2 dated March 2003 ACTIVITIES DESIGNATED AS FARM USE: FARM RETAIL SALES IN THE ALR. Be advised that all of the farm product offered for sale must be produced on the farm on which the retail sales are taking place as the retail sales area exceeds the max 300 m<sup>2</sup>.*

Building Department staff correctly noted that due to the size, to operate the building as proposed, the landowners may only retail farm product produced on this parcel or others operated by them.

However, the development was not constructed as proposed. Rather, the southern portion of the structure was altered to a café format with interior seating (see attached as-built floor plan and photos). The café occupies approximately 276 ft<sup>2</sup> indoors and 372 ft<sup>2</sup> outdoor exclusively. The café also occupies other areas of the structure which is estimated by the applicant to be an additional 1,090 ft<sup>2</sup> with shared areas including the kitchen, pie preparation area and washrooms.

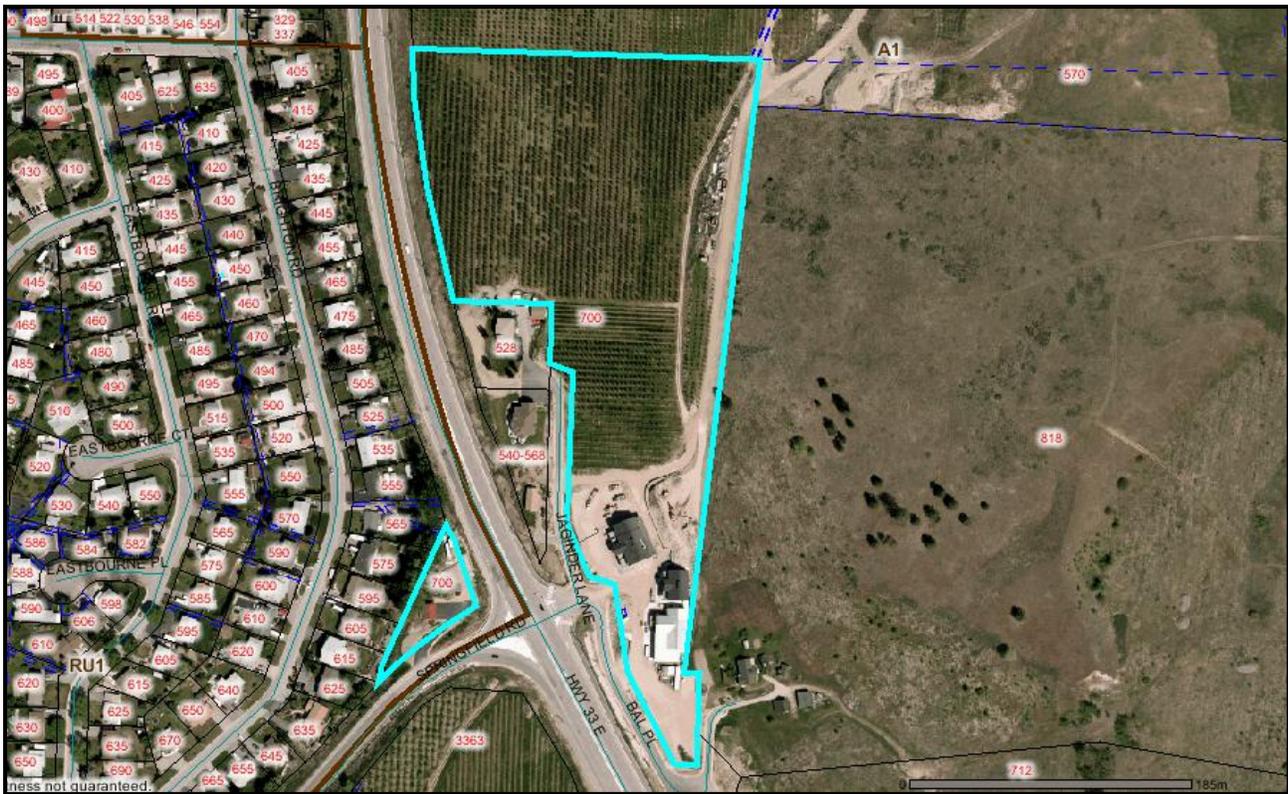
A café is a use consistent with a "Food Primary Establishment". The use is not however, permitted in the ALR or in the City's A1 - Agriculture zone. An exception is where a Food Primary Establishment is developed in conjunction with a winery or cidery.

The Hillcrest Farm Market Café as it is referred, began operating in the summer of 2012 and has been operating since that time. The business is being operated without a City issued business license which cannot be issued given the non-conforming use in the zone. City Bylaw Services staff have been seeking compliance for the past year. This application reflects the landowners wish to legalize the use. If successful with ALC approval, the use will also need to come into compliance with City zoning.

### 3.2 Site Context

The subject property is located east of Highway 33 E at the intersection with Springfield Road in the Rutland Sector. The site area is ~5.8 hectares (14.3 acres) and the site elevation varies between 457 and 493 metres. The subject property includes a ~0.22 ha hooked portion (across Hwy 33 E) which is zoned RU1 - Large Lot Housing.

**Map 1 - Subject Property - 700 Highway 33 E**

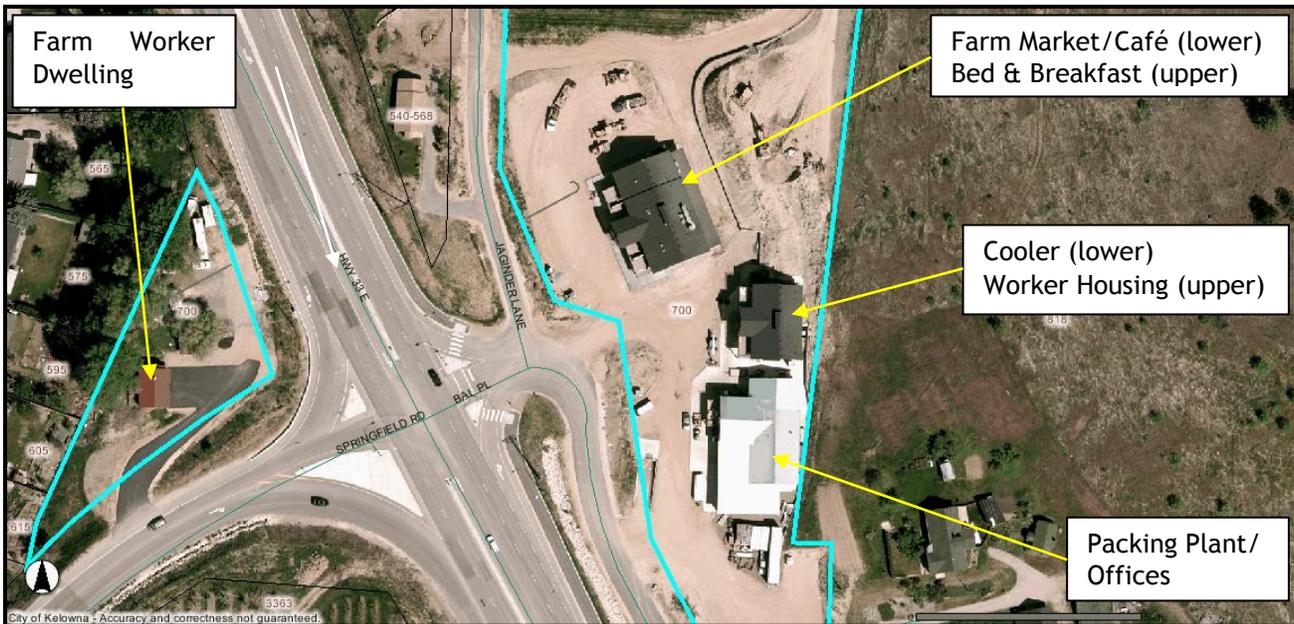


The subject property is at an urban/rural interface area with the Permanent Growth Boundary for urban uses ending at Highway 33. The large road cross section (averaging approximately 50 metres) does however provide extensive buffering from farm practices.

Zoning and land uses adjacent to the property are as follows:

Direction	Zoning	ALR	Land Use
North	A1 - Agriculture 1	Yes	Orchard
South	A1 - Agriculture 1 Roadway	No No	Rural Residential Highway
East	A1 - Agriculture 1	Yes	Rural/agricultural
West	A1 - Agriculture 1 RU1 - Large Lot Housing	Yes Yes/No	Rural/agricultural Residential

**Map 2 - Packing Plant, Cooler, Farm Worker Housing, Farm Market / Café and Bed & Breakfast**



From an agricultural capability perspective, the subject property is expected to be comprised of soil and climate conditions which render it “prime” agricultural land (i.e. Class 1 and 2 improved). Given the significant level of development on the subject property as described above, the southern approximately 1.1 hectares of the ~5.8 hectare property are not productive at this time.

### 3.3 Proposal

The applicant is seeking Council approval for a Non-Farm Use with respect to an existing café which was constructed on the property. The proposal seeks to legalize an existing illegal use. The applicant has provided an as-built drawing which illustrates how the main floor of the structure is being used. A comparison to the plans submitted for the Building Permit (2010) show the difference between what was originally proposed and approved to what was constructed and is now operating in this space.

Included is approximately 272 ft<sup>2</sup> of indoor and 372 ft<sup>2</sup> of outdoor seating for café customers, along with a display and retail sales area (see photos attached). The café also shares approximately 1,090 ft<sup>2</sup> with the farm market. The shared space includes the kitchen area, staff and public washrooms, storage and pie preparation areas.

## 4.0 Current Development Policies

### 4.1 2030 Official Community Plan: Greening Our Future

The subject property has a future land use designation of Resource Protection Area and relevant policies are included below:

Objective 5.33 Protect and enhance local agriculture<sup>1</sup>.

Policy. 1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of

<sup>1</sup> City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .3 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

Policy .7 Non-farm Uses. Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;
- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operations.

Objective 5.34 Preserve productive agricultural land<sup>2</sup>.

Policy .3 Homeplating. Locate buildings and structures, including farm help housing and farm retail sales area and structures, on agricultural parcels in close proximity to one another and where appropriate, near the existing road frontage. The goal should be to maximize use of existing infrastructure and reduce impacts on productive agricultural lands.

#### 4.2 City of Kelowna Agriculture Plan (1998)

##### Farm Retail Sales

For some time the use of agricultural land to sell products grown or reared on that farm operation has been permitted within the ALR. In addition, it was possible to receive permission from the Land Commission to sell products not produced on site under Regulation 313/78. In recognizing that farm retail sales contribute to the productive use of farmland without interfering or prohibiting agriculture the Land Commission has acknowledged the traditional role of marketing of farm products, particularly in the Okanagan. The Land Commission has established a policy that encourages retail activity associated with the direct sale of farm products, processed farm products, and some off-farm products subject to that portion of the retail sales building used for the sale of off farm products does not exceed one-third of the building floor area, up to a maximum of 100 square metres. In addition, where off-farm products are sold, farm products and processed farm products must also concurrently be offered for sale.

The Zoning Bylaw has recently been amended to allow farm retail sales as provided by the Land Commission Policy, including definitions of Farm Products, Farm Retail Sales, Off-Farm Products, and Processed Farm Products. However, the amount of floor space for sales of off-farm products has been restricted to 50 square metres. This limitation is due to concern expressed regarding the amount of floor space for off-farm retail sales with respect to the competition with other retail establishments throughout the City. Off farm sales may be perceived to have an unfair advantage, given the comparable tax rates, and retail lease rates, paid by merchants in urban commercial zones. On the other hand, farmers are faced with difficult economic conditions at this time, and a community objective to preserve farmland and farming activities is more difficult to achieve if the farmers are driven out of business.

In the interest of providing as much opportunity as possible for farmers to remain economically viable, the Zoning Bylaw should be amended to be consistent with Land Commission policy. The

<sup>2</sup> City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

definition of Farm Retail Sales should be amended to provide for a maximum floor space of 100 square metres or one-third of the farm building, whichever is less, for the sale of off-farm products, consistent with the Land Commission Certificate of General Order # 293/95.

#### ALR Application Criteria<sup>3</sup>

Exclusion, subdivision, or non-farm use of ALR lands will generally not be supported. General non-support for ALR applications is in the interest of protecting farmland through retention of larger parcels, protection of the land base from impacts of urban encroachment, reducing land speculation and the cost of entering the farm business, and encouraging increased farm capitalization.

#### Economic Enhancement Policies<sup>4</sup>

29. Integration. Support the establishment of a process to consider, in addition to the promotion of agri-tourism and direct farm marketing businesses within the community, an integrated approach that creates linkages to the cultural and heritage tourism sectors, in terms of marketing an identity of Kelowna.

### 4.3 Zoning Bylaw

11.1.7 (c) Agricultural and garden stands selling only produce grown on the site or another site operated by the same producer do not have a maximum area. The maximum gross floor area of stands selling produce that is produced off-site shall be 50.0 m<sup>2</sup>. For sites within the Agricultural Land Reserve, the maximum gross floor area of agricultural and garden sales for produce produced off-site or off-farm products shall be the lesser of one-third of the total floor area of the agricultural and garden sales stand or 100.0 m<sup>2</sup>.

### 4.4 Agricultural Land Reserve Use, Subdivision and Procedure Regulation

Section 2 (2) The following activities are designated as farm use for the purposes of the Act and may be regulated but must not be prohibited by any local government bylaw except a bylaw under Section 917 of the Local Government Act:

(a) farm retail sales if

- (i) all of the farm product offered for sale is produced on the farm on which the retail sales are taking place, or
- (ii) at least 50% of the retail sales area is limited to the sale of farm products produced on the farm on which the retail sales are taking place and the total area, both indoors and outdoors, used for the retail sales of all products does not exceed 300 m<sup>2</sup>;

Section 1 (1) "farm product" means a commodity that is produced from a farm use as defined in the Act or designated by this regulation.

Farm retail sales – means the retail sale to the public of tangible products grown or raised on a farm, from that farm and may include the sale of non-farm products as permitted by the regulation.

Retail sales area – means the floor area or dedicated outside area on which the farm retail sales are taking place and includes areas used for retail purposes inside buildings (indoors) and areas outside buildings (outdoors). It does not include parking, driveways, office space, washrooms or areas for processing or product storage.

<sup>3</sup> City of Kelowna Agriculture Plan (1998); p. 130.

<sup>4</sup> City of Kelowna Agriculture Plan (1998); p. 150 - 152.

## 5.0 Application Chronology

Application Received: April 23, 2013

Application Complete: August 1, 2013

Agricultural Advisory Committee: September 12, 2013

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting on September 12, 2013 and the following recommendations were passed:

THAT the Agricultural Advisory Committee recommends that Council support Agricultural Land Reserve Appeal Application No. A13-0007 for 700 Highway 33 East, Kelowna, BC for a non-farm use within the Agricultural Land Reserve pursuant to section 20(3) of the *Agricultural Land Commission Act* in order to legalize the existing food and beverage service lounge (café) on the subject property.

### Anecdotal Comments:

The Agricultural Advisory Committee expressed a preference for the established approval processes to be followed, though they supported Agricultural Land Reserve Appeal Application No. A13-0007 for the following reasons:

- the operation supports agriculture and agri-tourism in the community;
- the café attracts people to the farm market; and
- the café does not operate as a full-fledged restaurant (e.g. no wait staff).

Committee members feel that the Agricultural Land Commission should:

- provide clear direction to farmers and local governments on how to comply with regulations;
- clarify the distinction between farm retail sales, a farm market and a food and beverage service lounge; and
- provide farmers with the same opportunities as wineries and cideries with respect to food and beverage service lounges.

Committee members feel that Council should consider:

- providing leadership to create a better understanding of the realities of land valuation related to zoning and use and the issue of fair competition between non-farm retail businesses and agri-business operations.

The Agricultural Advisory Committee suggests that the following criteria should be implemented to limit or mitigate undesirable impacts of Food and Beverage Service Lounges located within the Agricultural Land Reserve within the City of Kelowna:

- the number of employees working in any food primary business should be considered as part of the distinction between farm retail sales and food and beverage service lounges.

## 6.0 Alternate Recommendation

THAT Agricultural Land Reserve appeal A13-0007 for Lot A, Section 24, Township 26 Osoyoos Division Yale District Plan EPP7145, located at 700 Highway 33 E, Kelowna, B.C. for a non-farm use of agricultural land in the Agricultural Land Reserve, pursuant to Section 20(3) of the *Agricultural Land Commission Act*, be supported by Municipal Council;

AND THAT the Municipal Council directs staff to forward the subject application to the Agricultural Land Commission for consideration.

**Report prepared by:**

---

Greg Sauer, Land Use Planner

**Reviewed by:**  T. Cashin, Subdivision, Agriculture & Environment Manager

**Approved by:**  S. Gambacort, Subdivision, Agriculture & Environment Director

**Attachments:**

Subject property/zoning & ALR map (2 pages)

Canada Land Inventory - Land Capability and Soil Classification (2 pages)

As-built Floor Plan (1 page)

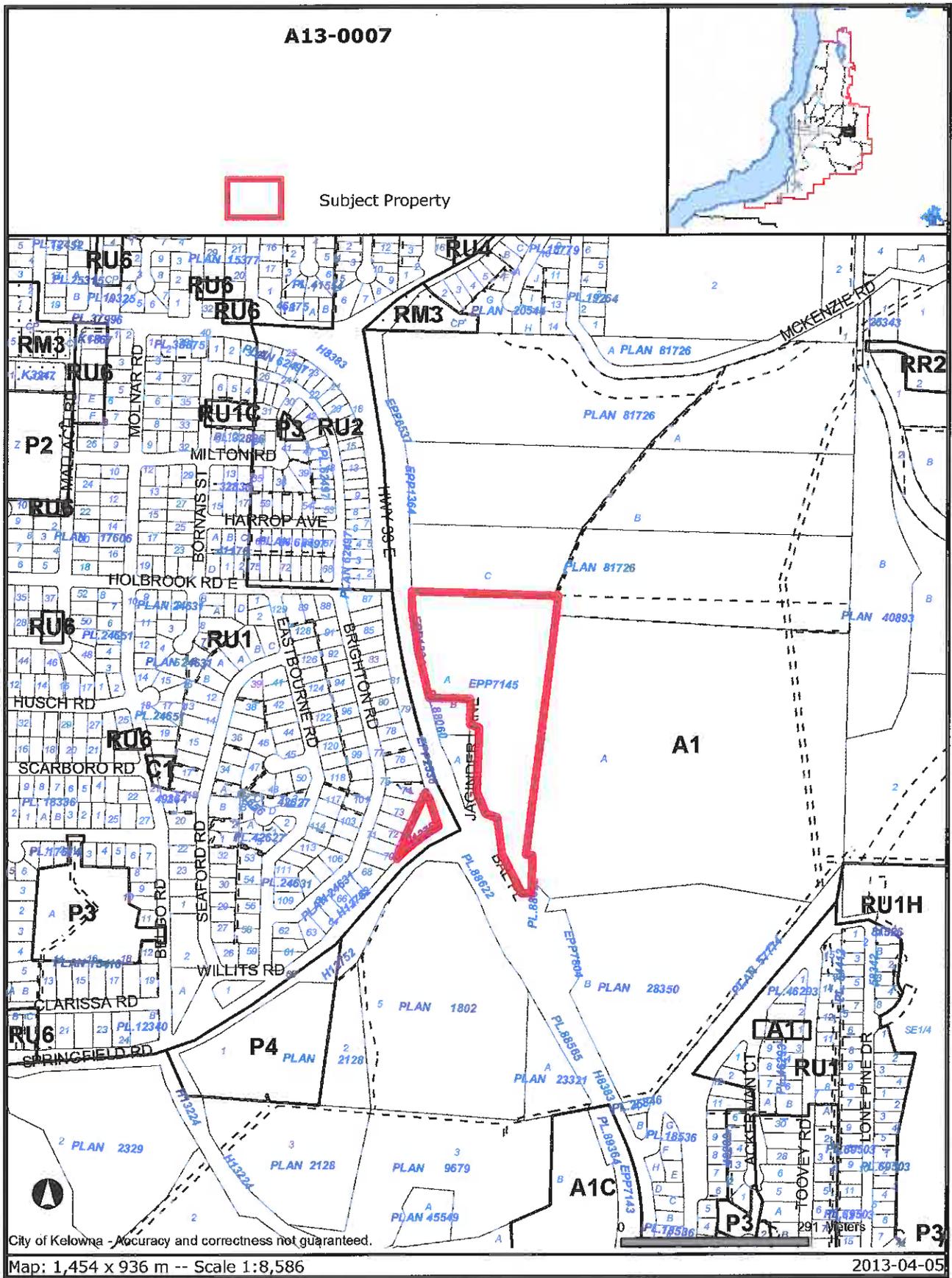
Café Photos (1 page)

Landowner Rationale (2 pages)

Building Permit Drawings

ALC Policy #2 Activities Designated as Farm Use: Farm Retail Sales in the ALR (2 pages)

ALC Policy #3 Activities Designated as Farm Use: Wineries and Cideries in the ALR (2 pages)



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.  
The City of Kelowna does not guarantee its accuracy. All information should be verified.

## APPLICATION BY LAND OWNER - Attached Pages

### OWNERSHIP OR INTERESTS IN OTHER LANDS WITHIN THIS COMMUNITY

#### Title Numbers:

- 560 Highway 33 East, Lot B, Plan KAP81726, Section 24, Township 26, Osoyoos Land District, Except Plan EPP1364 PID: 026-819-384
- 570 Highway 33 East, Lot C, Plan KAP81726, Section 24, Township 26, Osoyoos Div of Yale Land District, Except Plan EPP1364 PID: 026-819-392
- 1071 McKenzie Road: Lot A, Plan KAP81726, Section 24, Township 26, Osoyoos Div of Yale Land District, Except Plan EPP6537 PID: 026-819-376
- 1795 McCurdy Road East: Lot 1, Plan KAP77943, Section 25 & 36, Township 26, Osoyoos Div of Yale Land District, AND SECTIONS 30 & 31 TOWNSHIP 27, Manufactured Home Reg.# 9448 PID: 026-293-781
- 1136 Morrison Road: Lot 1, Plan KAP13040, Section 25, Township 26, Osoyoos Div of Yale Land District, Manufactured Home Reg. # 94869 PID: 007-589-735

### PROPOSAL

On our property, we have built a farm retail sales building in the hopes of adding value to the fruits and vegetables that are grown on our farm. We plant, grow, and harvest our crops so that the fresh and processed produce may be sold at our café and fruit stand. The purpose of our facility is to add value to our farm grown produce. Furthermore, we are finding it increasingly difficult to receive a reasonable return for the produce grown on our farm by wholesaling it through the Co-Operative. My family and I came to the realization that in order to continue farming and to make our operation viable, we must add value to our produce and sell directly to the consumer. The intent of this food outlet is to add value to our farm grown produce by selling it to the public on our farm. In the hopes of attracting people to our property, we have created a small area at our farm retail sales facility in which customers may purchase tea, coffee, cold beverages, as well as our real fruit smoothies while enjoying items that have been made using our farm products. More specifically, at our café and fruit stand we are looking to sell fresh fruits and vegetables, as well as many other value added products that we make such as our own fruit pies, strudels, apple turnovers, crumbles, muffins, loaves, tarts, carrot cakes, caramel apples, and many other fruit pastries, jams, syrups, dried fruits, and freshly squeezed and preserved juices. Additionally, we use vegetables in cooking many different kinds of dishes, sandwiches, canning, soups, relishes, chutneys, salads, salsas, hot sauces, herbs & spices including masalas, frozen ready to cook vegetables, pickling, etc. We use our farm grown produce in the preparation and processing of the above-mentioned items and our farm retail sales facility provides us with the opportunity to sell our farm produce and products to the community.

## **CURRENT USE OF LAND**

The uses of the parcels are for growing and farming the various tree crops and ground crops that we have planted and will continue to plant annually. Additionally, on the parcel we have a cherry packing and processing plant, cold storage coolers for our crops, farm worker accommodation, a residence, and the above mentioned farm retail sales unit.

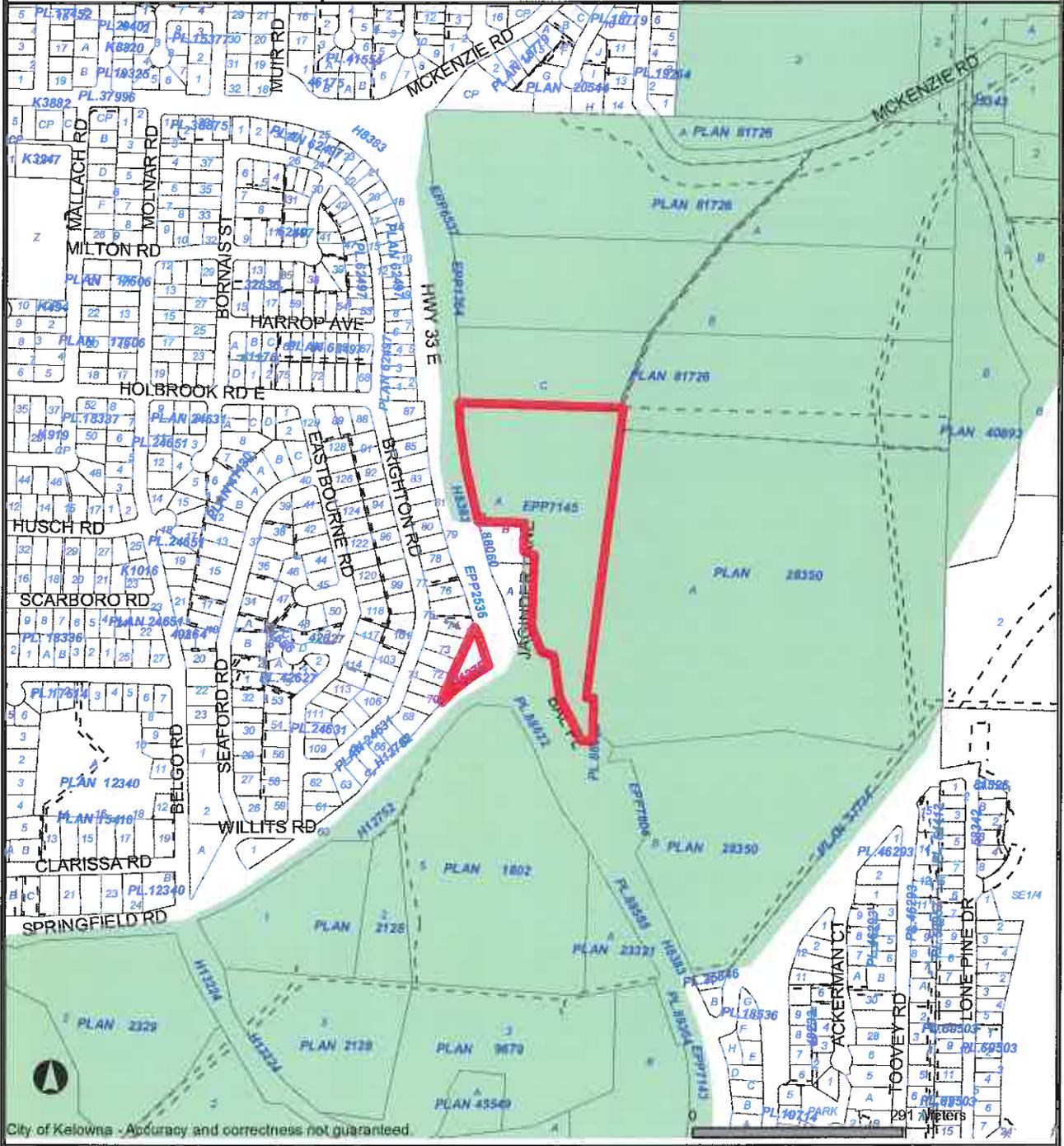


A13-0007

ALR



Subject Property



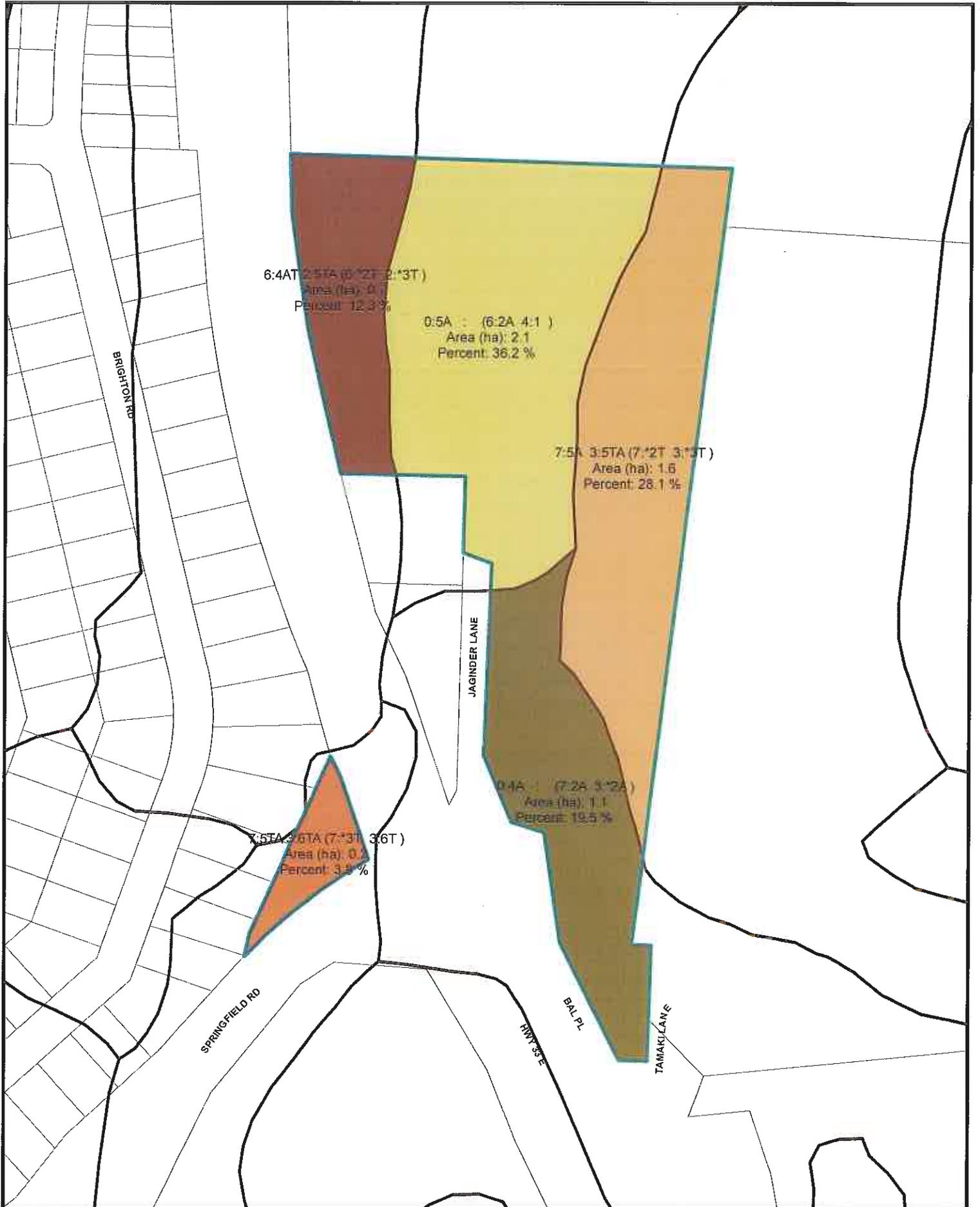
City of Kelowna - Accuracy and correctness not guaranteed.

Map: 1,454 x 936 m -- Scale 1:8,586

2013-04-05

Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.

Land Capability = Brown/ Soil Class = Green



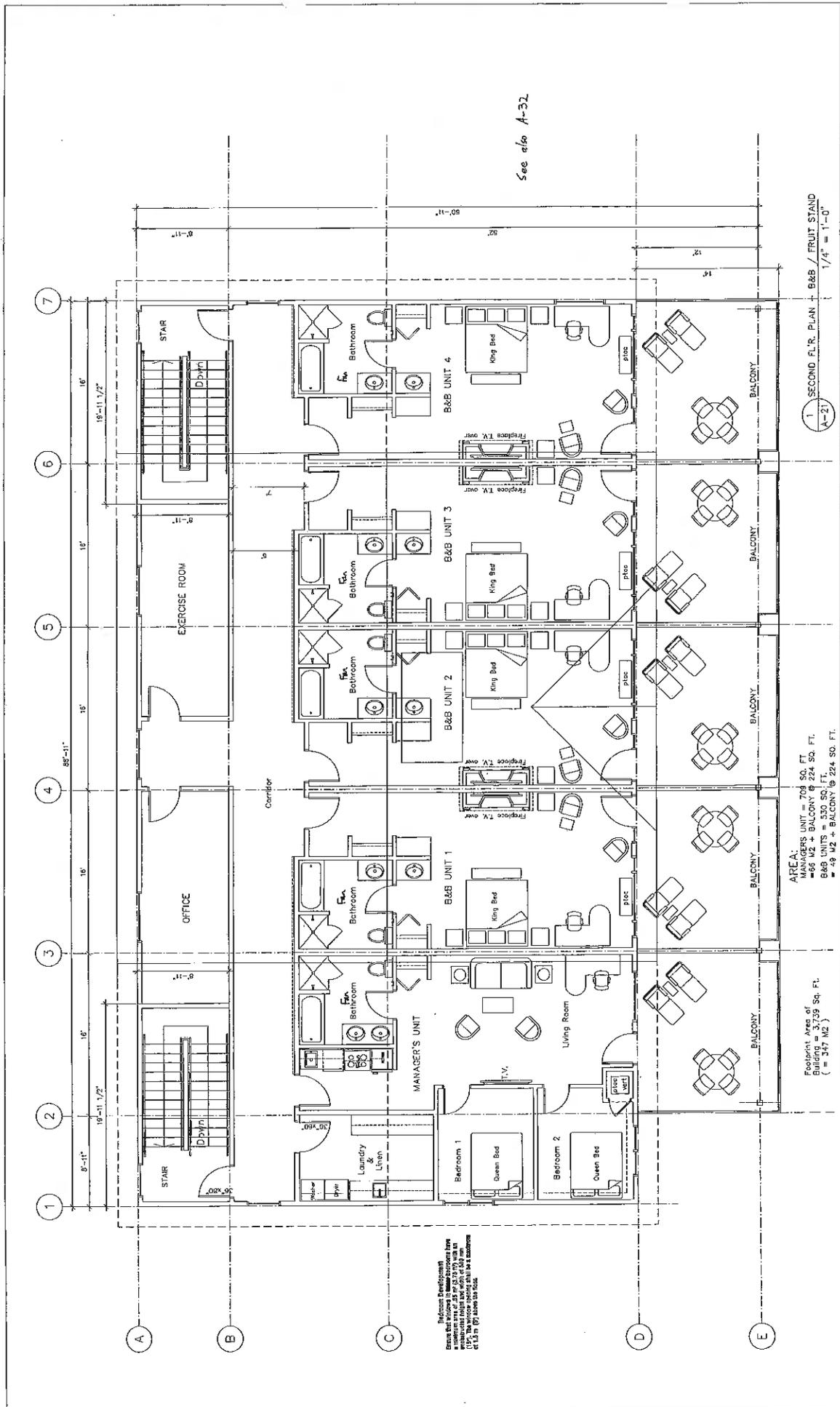
Land Capability = Brown/ Soil Class = Green











See also A-32

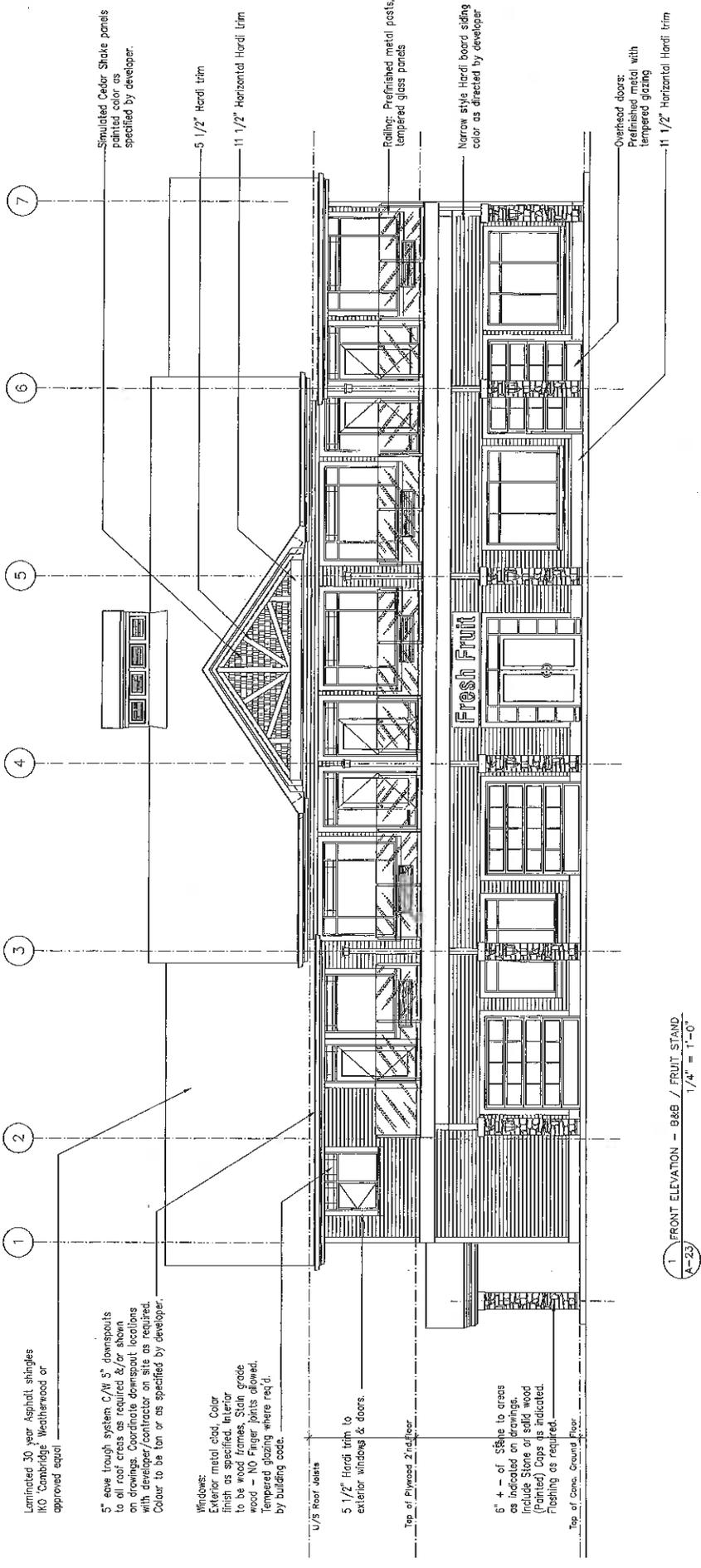
**Bedroom Development**  
 Since the width of the bedrooms is less than the width of the unit, the bedrooms are shown as 11'6" wide by 11'6" deep. The bedrooms are shown as 11'6" wide by 11'6" deep.

1 SECOND FLR. PLAN + B&B / FRUIT STAND  
 1/4" = 1'-0"  
 A-21

AREAS:  
 MANAGER'S UNIT = 704 SQ. FT.  
 B&B UNITS = 55 M2 + BALCONY @ 224 SQ. FT.  
 B&B UNITS = 530 SQ. FT.  
 48 M2 + BALCONY @ 224 SQ. FT.

Footprint Area of Building = 1,159 Sq. Ft. ( = 547 M2 )

PROJECT NAME		HIGHWAY 33 - FRUIT STAND - B&B BLDG.	
PROJECT ADDRESS		KELOWNA, B.C.	
DATE	SCALE	DATE	SCALE
APR. 15, 2010	1/4" = 1'-0"	APR. 15, 2010	1/4" = 1'-0"
DRAWN BY		A-21	



1 Laminated 30 year Asphalt shingles  
IKO 'Cambridge' Weatherwood or  
approved equal

2 5" sawe trough system C/W 5" downspouts  
to all roof crees as required &/or shown  
on drawings. Coordinate downspout locations  
with developer/contractor on site as required.  
Colour to be ten or as specified by developer.

3 Windows:  
Exterior metal clad, Color  
finish as specified. Interior  
to be wood frames, Stain grade  
wood - NO Finger joints allowed.  
Tempered glazing where req'd.  
by building code.

4 U/S Roof Joists

5 1/2" Hardi trim to  
exterior windows & doors.

6 Top of Plywood 2nd floor

7 6" + - of S/Side to areas  
as indicated on drawings.  
Include Stone or solid wood  
(Painted) Caps as indicated.  
Flashing as required.

Top of Conc. Ground Floor

8 Simulated Cedar Shake panels  
painted color as  
specified by developer.

9 5 1/2" Hardi trim

10 11 1/2" Horizontal Hardi trim

11 Railing: Prefinished metal posts,  
tempered glass panels

12 Narrow style Hardi board siding  
color as directed by developer

13 Overhead boxes:  
Prefinished metal with  
tempered glazing  
11 1/2" Horizontal Hardi trim

1 FRONT ELEVATION - B&B / FRUIT STAND  
1/4" = 1'-0"

PROJECT NAME:	HIGHWAY 33 - FRUIT STAND - B&B BLD'G.
LOCATION:	KELOWNA, B.C.
DATE:	APR. 13, 2010
SCALE:	1/4" = 1'-0"
SHEET:	A-23

# REPORT TO COUNCIL



**Date:** October 22, 2013  
**RIM No.** 1250-30  
**To:** City Manager  
**From:** Urban Planning Department, Community Planning and Real Estate (JM)  
**Application:** Z13-0033 **Owner:** Laryn & Judith Penner  
**Address:** 868 Liban Court **Applicant:** Lynn Welder Consulting  
**Subject:** 2013-11-04 Report Z13-0033 868 Liban Ct  
**Existing OCP Designation:** Single/Two Unit Residential  
**Existing Zone:** RU1 - Large Lot Housing  
**Proposed Zone:** RU1c - Large Lot Housing with Carriage House

---

## 1.0 Recommendation

THAT Rezoning Application No. Z13-0033 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 4, Section 29, Township 26, Osoyoos Division Yale District, Plan 25918, located on 868 Liban Court, Kelowna, BC from the RU1 - Large Lot Housing zone to the RU1c- Large Lot Housing with Carriage House zone be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch being completed to their satisfaction.

## 2.0 Purpose

To rezone the subject property from the RU1 - Large Lot Housing Zone to the RU1c - Large Lot Housing with Carriage House Zone to allow the construction of a carriage house.

## 3.0 Urban Planning Department

Urban Planning staff are generally supportive of the proposal. City policy supports the sensitive densification of established single family residential neighbourhoods. The proposed carriage house represents a positive example of such intensification, being only a single storey structure that will not be visible from the street. Also, the proposal has demonstrated compliance with all the minimum requirements for carriage houses set by City staff.

Staff acknowledge that the introduction of any change into established neighbourhoods may result in existing residents expressing significant concerns. Nevertheless, the OCP supports this

form of development, and the Development Permit tool is used in order to ensure that the design of carriage houses complements their context.

It is further acknowledged that pick-up/drop-off traffic from the adjacent school site increases traffic volume in the area and may cause on-street parking issues. However, the proposed development has satisfied all required parking on site, and the cumulative development of carriage houses in the area over time is anticipated to have a minor impact on the overall function of the transportation network.

## **4.0 Proposal**

### **4.1 Background**

In advance of Council consideration, the applicant has conducted Neighbour Consultation in accordance with Council Policy No. 367. Of the 22 surrounding properties contacted, 11 did not respond to the information provided, 10 were opposed, and one was in favour of the proposal.

Those opposed to the proposal noted concerns regarding increased traffic, parking problems, and noted that the addition of carriage houses to their neighbourhood would negatively affect its character.

### **4.2 Project Description**

The applicant is proposing to develop a single storey carriage house at the rear of the subject property. The carriage house is planned to contain two bedrooms, with direct pedestrian entry from the lane. The total floor area of the carriage house is 83.9m<sup>2</sup> in area.

Parking for the principal dwelling is contained via an existing driveway accessed from Liban Court, where the proposed carriage house has a second access from the existing laneway, which also provides the required parking.

Private open space for the carriage house is located between the proposed building and the principal dwelling. It is well defined with fencing and landscaping. A detailed assessment of the form and character of the proposed carriage house will be completed through a Development Permit, which will be executed at a staff level.

### **4.3 Site Context**

The subject property is located mid-block on the west side of Liban Court. Recreational amenities, schools, shopping and transit are all in close proximity to the site. The subject property is designated as Single/Two Unit Residential in the Official Community Plan. The adjacent land uses in all directions are RU1- Large Lot Housing.

#### 4.4 Subject Property Map: 868 Liban Court



#### 4.5 Zoning Analysis Table

The proposed application meets the requirements of RU1c - Large Lot Housing with Carriage House as follows:

Zoning Bylaw No. 8000		
CRITERIA	PROPOSAL	RU1c ZONE REQUIREMENTS
Subdivision Regulations		
Lot Area	819 m <sup>2</sup>	550 m <sup>2</sup>
Lot Width	19 m	15 m
Lot Depth	42.65 m	30 m
Site Coverage (buildings)	21 %	40%
Site Coverage (buildings/parking)	38.31%	50%
Principal Dwelling		
Height	6.72 m / 1.5 storeys	2 ½ storeys / 9.5 m
Front Yard	13.37m	4.5m or 6m to garage with front vehicular access
Side Yard (n)	3.66 m	2.0 m (1 - 1 ½ storey) 2.3 m (2 - 2 ½ storey)
Side Yard (s)	2.67 m	2.0 m (1 - 1 ½ storey)
Rear yard	17 m	7.5m

Carriage House		
Height	1 storey / 3.34 m	1 ½ storeys / 4.5 m
Side Yard (n)	2.3 m	2.0 m (1 - 1 ½ storey)
Side Yard (s)	4.22 m	2.0 m (1 - 1 ½ storey)
Rear yard	1.5 m	1.5m
Distance between dwellings	4.5 m	4.5m
Floor Area of principal dwelling ratio	Principal dwelling: 150.03 m <sup>2</sup> Carriage House: 83 m <sup>2</sup> 55%	Lesser of 90m <sup>2</sup> or 75% of the for principal dwelling
Other Requirements		
Parking Stalls (#)	3 spaces	3 spaces

## 5.0 Current Development Policies

### 5.1 Kelowna Official Community Plan (OCP)

#### Development Process

**Policy 5.2.3 Complete Suburbs.**<sup>1</sup> Support a mix of uses within Kelowna's suburbs (see Map 5.1 - Urban Core Area), in accordance with "Smart Growth" principles to ensure complete communities. Uses that should be present in all areas of the City (consistent with Map 4.1 - Future Land Use Map), at appropriate locations, include: commercial, institutional, and all types of residential uses (including affordable and special needs housing) at densities appropriate to their context.

**Policy 5.3.2 Compact Urban Form.**<sup>2</sup> Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

**Policy 5.22.6 Sensitive Infill**<sup>3</sup> Encourage new development or redevelopment in existing residential areas to be sensitive to or reflect the character of the neighborhood with respect to building design, height and siting.

**Policy 5.22.7 Healthy Communities**<sup>4</sup> Through current zoning regulations and development processes, foster healthy, inclusive communities and a diverse mix of housing forms, consistent with the appearance of the surrounding neighbourhood.

<sup>1</sup> Official Community Plan Objective 5.2 Community Sustainability

<sup>2</sup> Official Community Plan Objective 5.3 Focus development to designated growth areas.

<sup>3</sup> Official Community Plan Objective 5.22 Residential Land Use Policies.

<sup>4</sup> Official Community Plan Objective 5.22 Residential Land Use Policies.

**6.0 Technical Comments**

**6.1 Development Services Department**

- 1) Development Cost Charges (DCC's) are required to be paid prior to issuance of any Building Permits.
- 2) Operable bedroom windows required as per the 2012 edition of the British Columbia Building Code (BCBC 12).
- 3) Full Plan check for Building Code related issues will be done at time of Building Permit applications.

**6.2 Development Engineering Department**

See Attached.

**6.3 Fire Department**

Requirements of section 9.10.19 Smoke Alarms of the BCBC 2012 are to be met. If a fence is ever constructed between the dwellings a gate with a clear width of 1100mm is required. Any gate is to open with out special knowledge. Additional visible address is required from Liban Ct. Emergency access is from the main roadway and not the lane.

**6.4 Fortis - Electric**

There are primary distribution facilities within the laneway adjacent to the subject's west property line. The applicant is responsible for costs associated with any change to the subject property's existing service, if any, as well as the provision of appropriate land rights where required. Otherwise, FortisBC Inc. (Electric) has no concerns with this circulation.

**7.0 Application Chronology**

Date of Application Received: August 13, 2013  
Public Notification and Consultation received: September 23, 2013

**Report prepared by:**

---

James Moore, Urban Planner

**Reviewed by:**



Danielle Noble, Urban Planning Manager

**Approved for Inclusion:**



Doug Gilchrist, Divisional Director,  
Community Planning and Real Estate

**Attachments:**

Subject Property Map

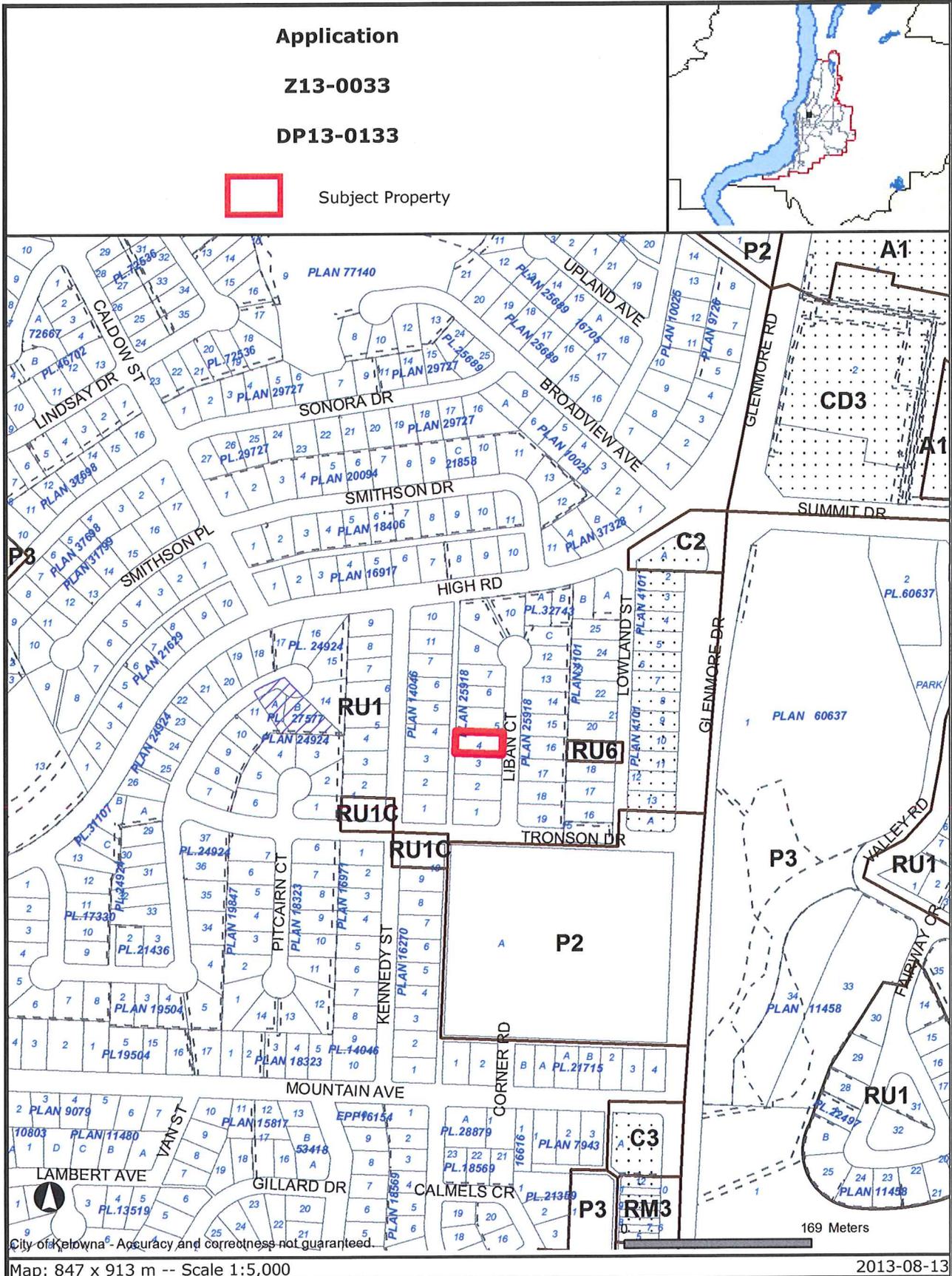
Site Plan

Conceptual Elevations

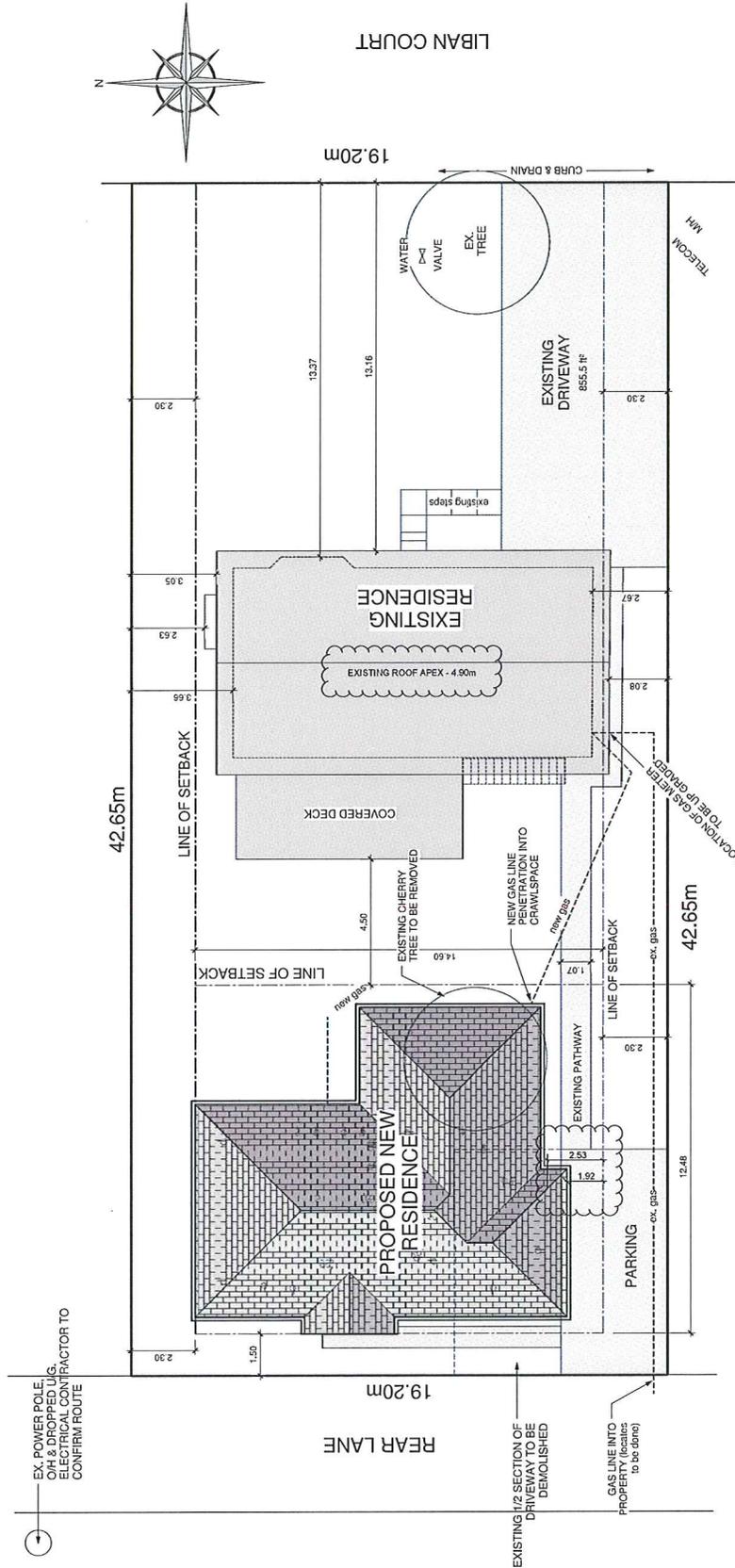
Landscape Plan

Context/Site Photos

Development Engineering Memorandum, dated August 20, 2013



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.  
 The City of Kelowna does not guarantee its accuracy. All information should be verified.



**SITE COVERAGE:**  
 OVERALL SITE.....8,814 SF  
 EXISTING STRUCTURE.....847 SF  
 EXISTING DRIVEWAYS & PATHWAYS.....1,527 SF  
 OVERALL COVERAGE.....3,377 SF = 38.31%

Sheet Number	Revision	Drawn	Checked	Scale	Sheet Name
1-100	1	J. M. BAKER	J. M. BAKER	1/8" = 1'-0"	EXISTING PLAN
1-100	2	J. M. BAKER	J. M. BAKER	1/8" = 1'-0"	PROPOSED PLAN
1-100	3	J. M. BAKER	J. M. BAKER	1/8" = 1'-0"	PROPOSED PLAN
1-100	4	J. M. BAKER	J. M. BAKER	1/8" = 1'-0"	PROPOSED PLAN
1-100	5	J. M. BAKER	J. M. BAKER	1/8" = 1'-0"	PROPOSED PLAN
1-100	6	J. M. BAKER	J. M. BAKER	1/8" = 1'-0"	PROPOSED PLAN
1-100	7	J. M. BAKER	J. M. BAKER	1/8" = 1'-0"	PROPOSED PLAN
1-100	8	J. M. BAKER	J. M. BAKER	1/8" = 1'-0"	PROPOSED PLAN
1-100	9	J. M. BAKER	J. M. BAKER	1/8" = 1'-0"	PROPOSED PLAN
1-100	10	J. M. BAKER	J. M. BAKER	1/8" = 1'-0"	PROPOSED PLAN

**Michael John Paul**  
 INCORPORATED  
 15000 Highway 101, West Melbourne, FL 32909  
 (321) 939-1100  
 michaeljohnpaul.com

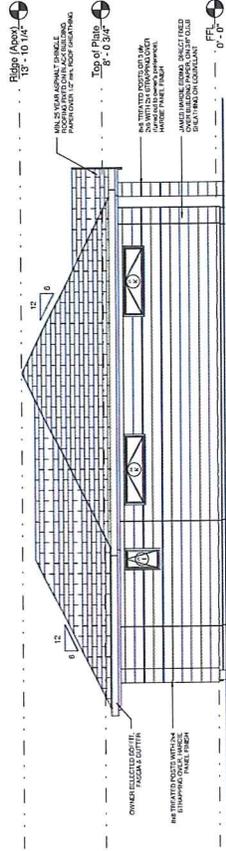
Project Name: PENNER CARRIAGE  
 Project Number: 15000

Used: Proposed LOT 4, SEC. 29, TP. 28 N. R. 17 E. S. 31, TOWN OF WINDY HILLS, FLA. CONTRACT TO BE COMPLETED BY NOV. 2021

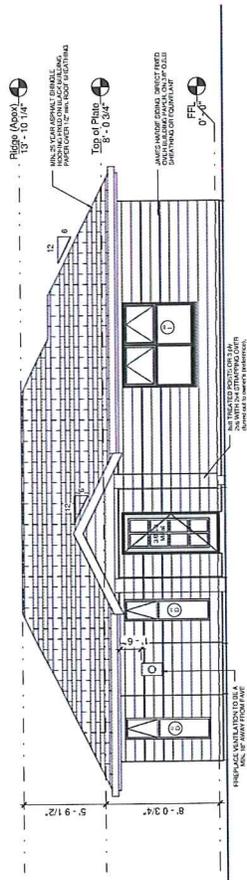
Scale: 1/8" = 1'-0"  
 Date: 03/26/16  
 Drawn: JMB  
 Check: JMB

**SITE PLAN**  
**A - 100**

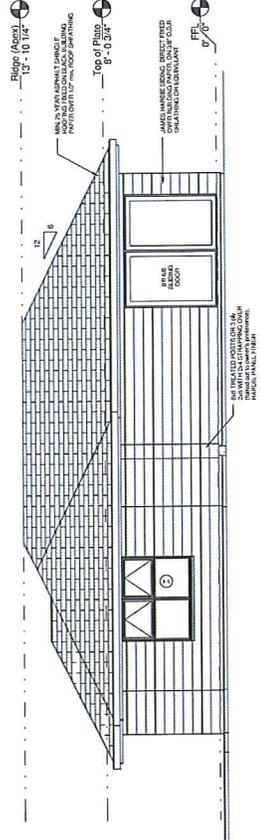




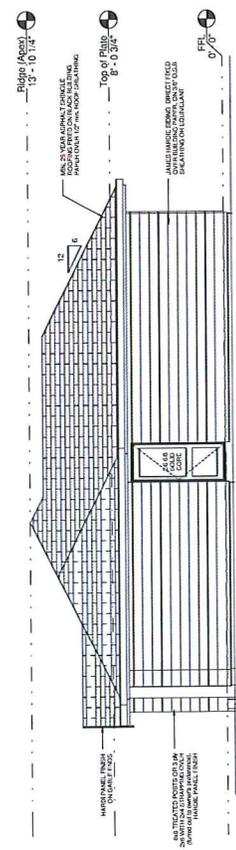
1 NORTHERN ELEVATION



2 WESTERN ELEVATION

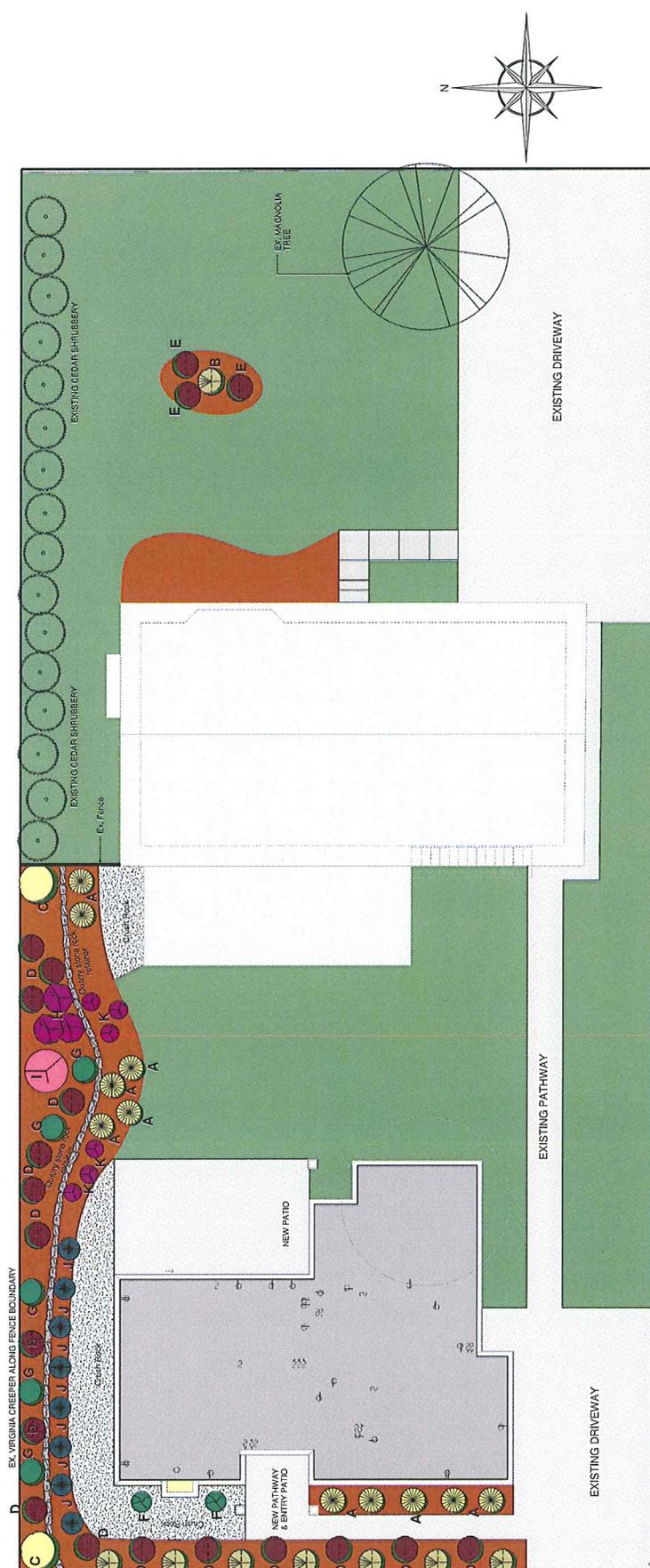


3 EASTERN ELEVATION



4 SOUTHERN ELEVATION

	Project Name	Lot 4, SEC 28, T122N, R103W, PD, PLAN 20111	Scale	1/4" = 1'-0"	ELEVATIONS Sheet: A - 500
	Client	PENNER CARRIAGE	Date	2012.02.06	
	Project Number	12000	Author	RP	
NOTE: SUBJECT TO OWNER APPROVAL. CONTRACTOR TO VERIFY THE COMPLETION OF WORK.					



**1 Landscape Plan**

PLANT LIST - 868 Liban Court, Kellowna

Key	Botanical Name	Common Name	Height	Width	Comments
A	Stella Supreme Daylily	'Stella Supreme'	12-24"	12-24"	
B	Heimerdall's Daylily	'Heimerdall's'	12-24"	12-24"	
C	Golden Pincushion	'Golden Pincushion'	6-10"	6-12"	Ornamental grass
D	Northern Gold Forsythia	'Northern Gold'	3-4'	3'	
E	Berberis Thunbergii 'Basilone'	'Basilone'	12-24"	24"	
F	Berberis Thunbergii 'Cherry Bomb'	'Cherry Bomb'	12-24"	24"	
G	Dart's Gold Ninebark	'Dart's Gold'	5-6'	5-6'	
H	Caragana Fruitex 'Globosa'	'Globosa'	3'	2'	
I	Echinacea Purpurea	'Purple Coneflower'	24-36"	18-24"	Drought tolerant
J	Summer Glow Spirea	'Summer Glow'	12-18"	10-15"	Ornamental Grass
K	Festuca Glauca 'Elijah Blue'	'Elijah Blue'	12-18"	12-18"	
L	Lavandula angustifolia 'Hiccole'	'Hiccole Lavender'	12-18"	12-18"	

**PLANTING SCHEDULE**



**Michael John Paul**  
 142005 Spring Lake Way, N.W., Atlanta, GA 30327  
 404.487.1111  
 michaeljohnpaul.com

Project Title: **FENNER CARRIAGE**  
 Project Number: **19009**

Legal Description: **LOT 4, SEC 28, T28S, R12E, S1E, CO. OF WYOMING, DISTRICT OF COLUMBIA**

Scale: **1/8" = 1'-0"**

Drawn: **JP**

Check: **AK**

Date: **2/25/19**

Revision:

LANDSCAPE PLAN

Sheet: **L-100**

**CONTEXT PHOTO**



View of 868 Liban Court from the street

---

CITY OF KELOWNA  
MEMORANDUM

---

Date: August 20, 2013  
File No.: Z13-0033  
To: Urban Planning Department (BD)  
From: Development Engineering Manager  
Subject: 868 Liban Court RU1c

---

Development Engineering has the following requirements associated with this rezoning application.

1. Domestic Water and Fire Protection

This property is currently serviced with a 19mm-diameter copper water service. The service will be adequate for this application. One metered water service will supply both the main residence and the suite.

2. Sanitary Sewer

Our records indicate that this property is currently serviced with a 100mm-diameter sanitary sewer service. An inspection chamber (IC) complete with brooks box must be installed on the service at the owner's cost. Service upgrades can be provided by the City at the applicant's cost. **The applicant will be required to sign a Third Party Work Order for the cost of the service upgrade.** For estimate inquiry's please contact Sergio Sartori, by email [ssartori@kelowna.ca](mailto:ssartori@kelowna.ca) or phone, 250-469-8589.

3. Development Permit and Site Related Issues

On-site parking modules must meet zoning bylaw requirements.

Direct the roof drains into on-site rock pits.

4. Electric Power and Telecommunication Services

It is the applicant's responsibility to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for service upgrades to these services which would be at the applicant's cost.

  
-----  
Steve Muenz, P. Eng.  
Development Engineering Manager

SS

**Z13-0033**

**STAFF COMMENTS**

868 Liban Court

## PURPOSE OF APPLICATION:

- ▶ The applicant is seeking to rezone the subject property to the RU1c - Large Lot Housing with Carriage House zone to facilitate the construction of a carriage house.

## SITE CONTEXT

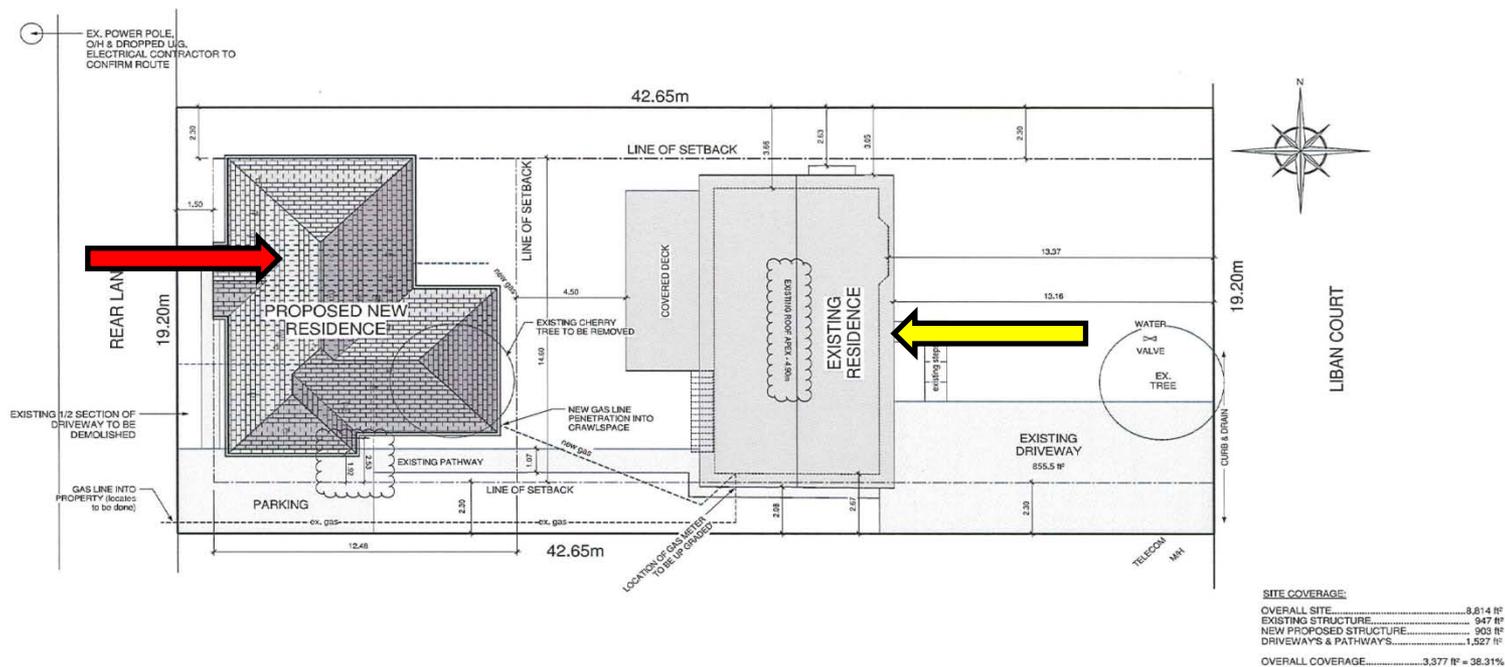
- ▶ Mid-Block location on west side of Liban Court (South of High Road)
- ▶ Recreational amenities, schools (Glenmore Elementary), shopping and transit are in close proximity.
- ▶ Subject property and surrounding land uses are all Single Family Residential (RU1)

# SUBJECT PROPERTY: 868 LIBAN CT.



City of Kelowna - Accuracy and correctness not guaranteed.

# SITE PLAN



**SITE COVERAGE:**

OVERALL SITE	8,814 SF
EXISTING STRUCTURE	947 SF
NEW PROPOSED STRUCTURE	963 SF
DRIVEWAYS & PATHWAYS	1,527 SF
<b>OVERALL COVERAGE</b>	<b>3,377 SF = 38.31%</b>

Sheet Number / Revision	Sheet Name	Other Sheet Links
A-100	SITE PLAN	01/21/18
A-101	PROPOSED STRUCTURE	01/21/18
A-102	EXISTING STRUCTURE	01/21/18
A-103	DRIVEWAYS & PATHWAYS	01/21/18
A-104	UTILITY PLAN	01/21/18
A-105	LANDSCAPE PLAN	01/21/18

<b>Michael Lehr Paul</b> INCORPORATED 100-8950 Glenora Street Kelowna, BC V1Y 1A1 TEL: 250.860.1000	Project No: <b>PRINER CARRIAGE</b>	Lot/Development: <b>LDT 4, SEC 26, T2S</b> O.D.V.D. PLAN 201818	NOTES: 1. REFER TO LOCAL APPROVALS 2. USE MEASUREMENTS FOR DIMENSIONS UNLESS OTHERWISE NOTED ON THE DRAWINGS OR AS SHOWN	Scale: 1/8" = 1'-0" Date: 01/21/18 Revision: 00	SITE PLAN Sheet: <b>A - 100</b>
	Project Number: 130003 Project Name: PRINER CARRIAGE				

## KEY INFO

- ▶ Proposed carriage house will meet Zoning Bylaw requirements for size and setback
- ▶ Form and character of proposed carriage will complement the existing single family home

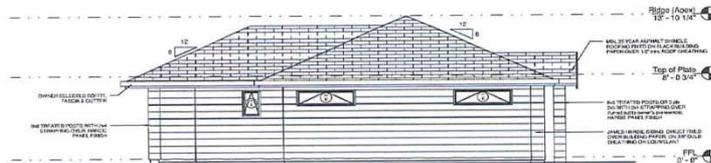
# EXISTING BUILDING



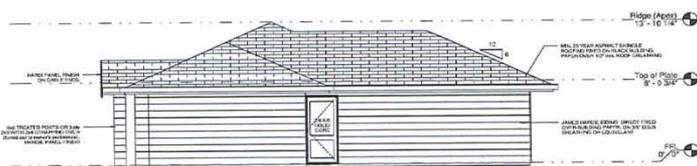
# PROPOSED CARRIAGE HOUSE



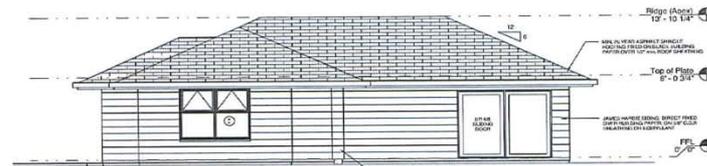
2 WESTERN ELEVATION



1 NORTHERN ELEVATION



4 SOUTHERN ELEVATION



3 EASTERN ELEVATION

<b>Michael John Paul</b> ARCHITECT 120-2000 Riverside Dr., Kelowna, BC V1Y 1S9 Tel: 250-860-1100	Project: THE PENNER CARRIAGE Project Number: 12003	Land Occupancy: LOT 4, SEC 29, T22E O.D.V.D. PLAN 22016	NOTES: - TO BE SUBJECT TO ZONING APPROVAL - ALL MEASUREMENTS TO BE COURTESY OF SURVEY - EXCEPTED THEREIN TO THE CONTRARY OF ANY RIGHTS	Date: 1st - 4th Date: 2018-11-15 Project: 120	ELEVATIONS Sheet: A - 500
---	--	--	---	---	------------------------------

## RELEVANT POLICY

- ▶ Proposal is consistent with OCP policy direction for sensitive densification of established single family residential neighbourhoods.

## PUBLIC CONSULTATION

- ▶ Public consultation/notification information received on September 23, 2013
- ▶ Of the 22 properties contacted, 11 did not respond and 10 were opposed, and 1 was in favour
- ▶ Concerns related to increased traffic, parking troubles, negative impacts to established neighbourhood character

## STAFF RECOMMENDATION

- ▶ Staff support the application for rezoning to the RU1 "C" zone
- ▶ Recommend that Council consider the application and that it be forwarded to a Public Hearing

**CITY OF KELOWNA**  
**BYLAW NO. 10894**  
**Z13-0033 - Laryn & Judith Penner**  
**868 Liban Court**

---

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 4, Section 29, Township 26, ODYD, Plan 25918 located on 868 Liban Court, Kelowna, B.C., from the RU1 - Large Lot Housing zone to the RU1c - Large Lot Housing with Carriage House zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

# Report to Council



**Date:** November 4, 2013  
**Rim No.** 1200-30 OCP13-0015 / BL 10887  
**To:** City Manager  
**From:** Graham March, Planner Specialist  
**Subject:** 2013-11-04 Report - OCP13-0015 Proposed Housekeeping Amendments (BL10887)

---

## **Recommendation:**

THAT OCP Bylaw Text Amendment No. OCP13-0015 to amend Kelowna 2030 - Official Community Plan Bylaw No. 10500 as outlined in the Report of the Planner Specialist dated November 4, 2013 be considered by Council;

AND THAT Council considers the public process outlined in the Report of the Planner Specialist dated November 4, 2013 to be appropriate consultation for the purpose of Section 879 of the Local Government Act;

AND FURTHER THAT OCP Bylaw Text Amendment No. OCP13-0015 be forwarded to a Public Hearing for further consideration;

## **Purpose:**

To proceed with housekeeping amendments to the Official Community Plan based on staff initiated policy and map changes.

## **Background:**

As a result of the continued growth and evolution of the city, including new land acquisitions, previous Council direction with respect to outdated plans and the social framework and on-going development approvals, staff have identified minor changes that are necessary to the OCP to keep pace. The full list of proposed amendments is itemized in Attachment 1.

At the May 28, 2013 Council meeting, Council endorsed the Community Climate Action Plan. Therefore, the wording needs to be changed in Chapter 1 - Introduction, to reflect that the plan has been adopted (Attachment 1 - Item 1).

Council rescinded endorsement of outdated Sector and Neighbourhood Plans (SR 247267) in January 2013. The OCP needs to be amended to remove reference to these plans. As part of this, amendments are being proposed to amend the OCP for Chapter 3 - Growth Projections,

Chapter 9 - Arts, Culture & Heritage and Chapter 10 - Social Sustainability (Attachment 1 - Items 2, 9, 10).

The next proposed amendment is a text edit to Policy 5.1.2 (Processing Time) to reflect the current Official Community Plan bylaw number. This proposed amendment is correcting an editing error to match the current OCP Bylaw number (Attachment 1 - Item 3).

The next two proposed OCP amendments are a result of the Social Policy Update that Council endorsed in January 2013. To fully incorporate Council's direction relating to endorsement of the Social Policy Update, two new policies (Entrepreneurial initiatives and Joint Use) are being recommended for inclusion in the OCP (Attachment 1 - Items 5, 8).

The following proposed OCP amendment would remove the Agri-Tourism Accommodation policy from Chapter 5 - Development Process of the OCP. Agri-tourism accommodation is currently well addressed by both the Agricultural Land Commission (ALC) regulations as well as the Zoning regulations, therefore staff considers it unnecessary to also have this in the OCP (Attachment 1 - Item 6).

The next proposed OCP amendment is to edit the pull quote in Chapter 5 - Development Process, to reflect Council's support of the ALC's decision to no longer use the "no net loss" language when referring to agricultural land. Council already deleted the "no net loss" language from OCP Policy 5.33.1 (Attachment 1 - Item 7).

The next two proposed OCP amendments are to reflect more positive language. Both proposed amendments are for Chapter 10 - Social Sustainability (Attachment 1 - Items 11, 12).

As refinements to the GIS legal lots layer occur, amendments are recommended to ensure that the Future Land Use mapping matches the revised GIS lots layer. Refinements are also suggested to ensure maps reflect recent park land acquisitions. The proposed mapping changes are not considered substantive in nature and are therefore being included in the housekeeping amendment package. Proposed mapping changes are indicated in Attachments 2 through 7 (Attachment 1 - Items 13 through 18).

**Internal Circulation:**

Divisional Director, Community Planning & Real Estate  
Director, Subdivision, Agriculture & Environment Services  
Manager, Urban Planning  
Manager, Parks & Public Spaces

**Legal/Statutory Authority:**

Local Government Act Part 26: Division 2 - Official Community Plans, Sections 875 - 882.

**Legal/Statutory Procedural Requirements:**

Local Government Act Section 879 (1) specifies that a local government must, during the development, repeal or amendment of an official community plan, provide one or more opportunities it considers appropriate for consultation with persons, organizations and authorities it considers will be affected. This consultation is in addition to the required public hearing.

**External Agency/Public Comments:**

The requirement for consultation under Section 879 (1) of the Local Government Act, was addressed by advertising in the October 11, 2013 Capital News, posting the information on the website as well as sending letters to property owners deemed impacted.

No comments were received for the proposed amendments.

**Existing Policy:**

Kelowna OCP 2030 Bylaw 10500

**Financial/Budgetary Considerations:**

**Personnel Implications:**

**Communications Comments:**

**Alternate Recommendation:**

**Considerations not applicable to this report:**

Submitted by:

Graham March,  
Planner Specialist, Policy and Planning

Gary Stephen,  
Manager of Long Range Planning

Approved for inclusion:



Danielle Noble-Brandt,  
Department Manager, Policy & Planning

Attachment 1 - 2013-11-04 Proposed OCP Housekeeping Amendments

Attachments 2 - 7 - 2013-11-04 Proposed Future Land Use Map Amendments

cc: Divisional Director, Community Planning & Real Estate  
Community Planning Manager  
Urban Land Use Manager  
Manager, Parks & Public Spaces

## Attachment #1

### Staff Initiated OCP Amendments - Housekeeping (OCP13-0015) (New wording underlined; wording to be deleted in ~~striketrough~~)

1. Amend **Chapter 1 – Introduction – Greenhouse Gas (GHG) Reductions** (proposed new wording is underlined; wording to be deleted in ~~striketrough~~) to reflect adoption of the Climate Action Plan.

In this OCP, Kelowna makes a commitment to reduce our greenhouse gas emissions by 33% below 2007 emission levels by 2020 in order to minimize the city's impact on climate change. ~~This target will be reviewed as part of a forthcoming Climate Action Plan.~~

2. Amend **Chapter 3 – Growth Projections – 20 Year Development Projection** (proposed new wording is underlined; wording to be deleted in ~~striketrough~~)

The development of new housing between 2010 and 2030 is projected to occur as a function of both development / redevelopment in some areas, and development initiatives in new growth areas. Based on ~~related Sector and Neighbourhood Plan~~ previous planning initiatives, and approved projects within the community, a pattern of housing growth is projected to occur on a distribution of 57% multiple unit and 43% single / two unit as shown in Table 3.5.

3. Amend **Chapter 5 – Development Process – Policy 5.1.2 Processing Time** (proposed new wording is underlined; wording to be deleted in ~~striketrough~~)

**Processing Time.** Award processing time advantages such as waiving the Public Hearing for Development applications consistent with Future Land Uses, as well as the OCP policies and Development Permit guidelines adopted by Bylaw ~~8600~~ 10500 over applications which are inconsistent.

4. Amend **Chapter 5 – Development Process - Table 5.1 Linear Park Public Access**

Francis Creek / Both Sides under Reach should read "Sumac Rd to Mill Creek"

Gopher Creek / Both Sides under Reach should read "Springfield Rd to N/E of Old Joe Rich Rd"

5. Add a new policy under Objective 5.32 as Policy 5.32.8 and renumber remainder of policies accordingly – **Chapter 5 – Development Process**. Also add the Economic Sustainability, Social Sustainability, and Cultural Sustainability icons as follows (proposed new wording is underlined):

Joint Use. Continue to encourage joint use of community facilities and services for non-profit purposes.

6. Delete existing Policy 5.33.6 – **Chapter 5 - Agri-Tourism Accommodation** (deleted in ~~strikethrough~~). Policies following deleted policy will need to be renumbered accordingly.

~~**Agri-tourist Accommodation.** Agri-tourist accommodation will only be approved and operated in a manner that supports agricultural production and which limits the impact on agricultural land, City services and the surrounding community.~~

7. Amend pull quote (page 5.35) – **Chapter 5 – Development Process** (proposed new wording is underlined; wording to be deleted in ~~strikethrough~~)

Retain the agricultural land base by supporting a no net loss approach the ALR and by protecting agricultural lands from development, except as otherwise noted in the Agriculture Plan.

8. Add a new policy under Objective 8.4 as Policy 8.4.5 – **Chapter 8 – Economic Development** (proposed new wording is underlined). Also add the Economic Sustainability icon.

**Entrepreneurial Initiatives.** Continue to encourage self-employment initiatives, including home-based business, while ensuring neighborhood fit through the zoning regulations, and work with pertinent agencies to raise awareness of these opportunities.

9. Amend **Chapter 9 - Arts, Culture & Heritage – Policy 9.1.6 Cultural Resource Management** (proposed new wording is underlined; wording to be deleted in ~~strikethrough~~)

**Cultural Resource Management.** Require cultural resource management to be integrated in the development and review of pertinent plans ~~Area Structure Plans, Neighbourhood Plans, Sector Plans, Parks Plans and Transportation Plans.~~

10. Amend **Chapter 9 - Arts, Culture & Heritage – Policy 9.2.2 Heritage Resource Management** (proposed new wording is underlined; wording to be deleted in ~~strikethrough~~)

**Heritage Resource Management.** Require heritage resource management to be integrated in the development and review of pertinent plans ~~Area Structure Plans, Neighbourhood Plans, Sector Plans and Parks Plans and Transportation Plans.~~

11. Replace cover page text - **Chapter 10 – Social Sustainability – Cover page** (proposed new wording is underlined; wording to be deleted in ~~strikethrough~~)

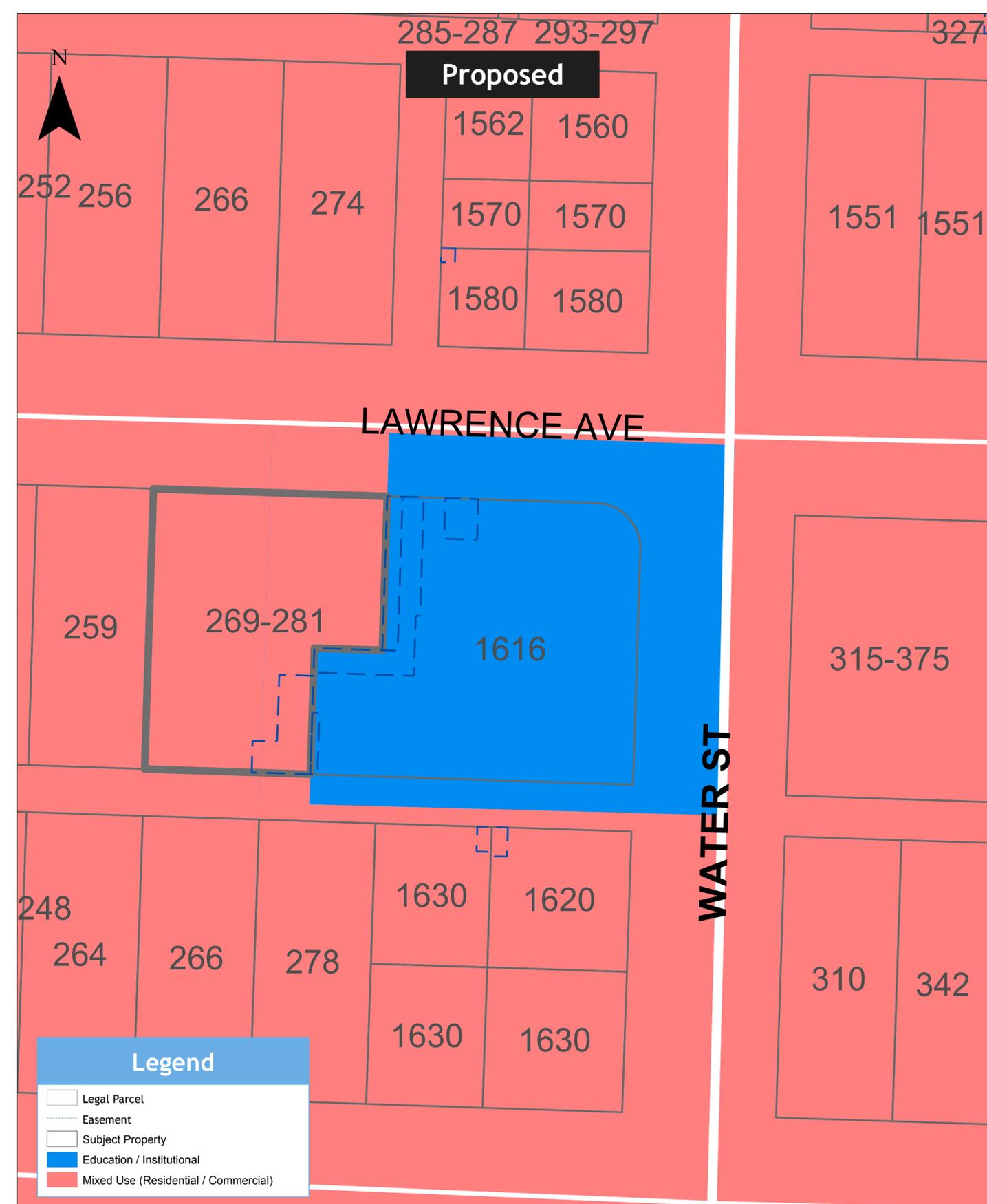
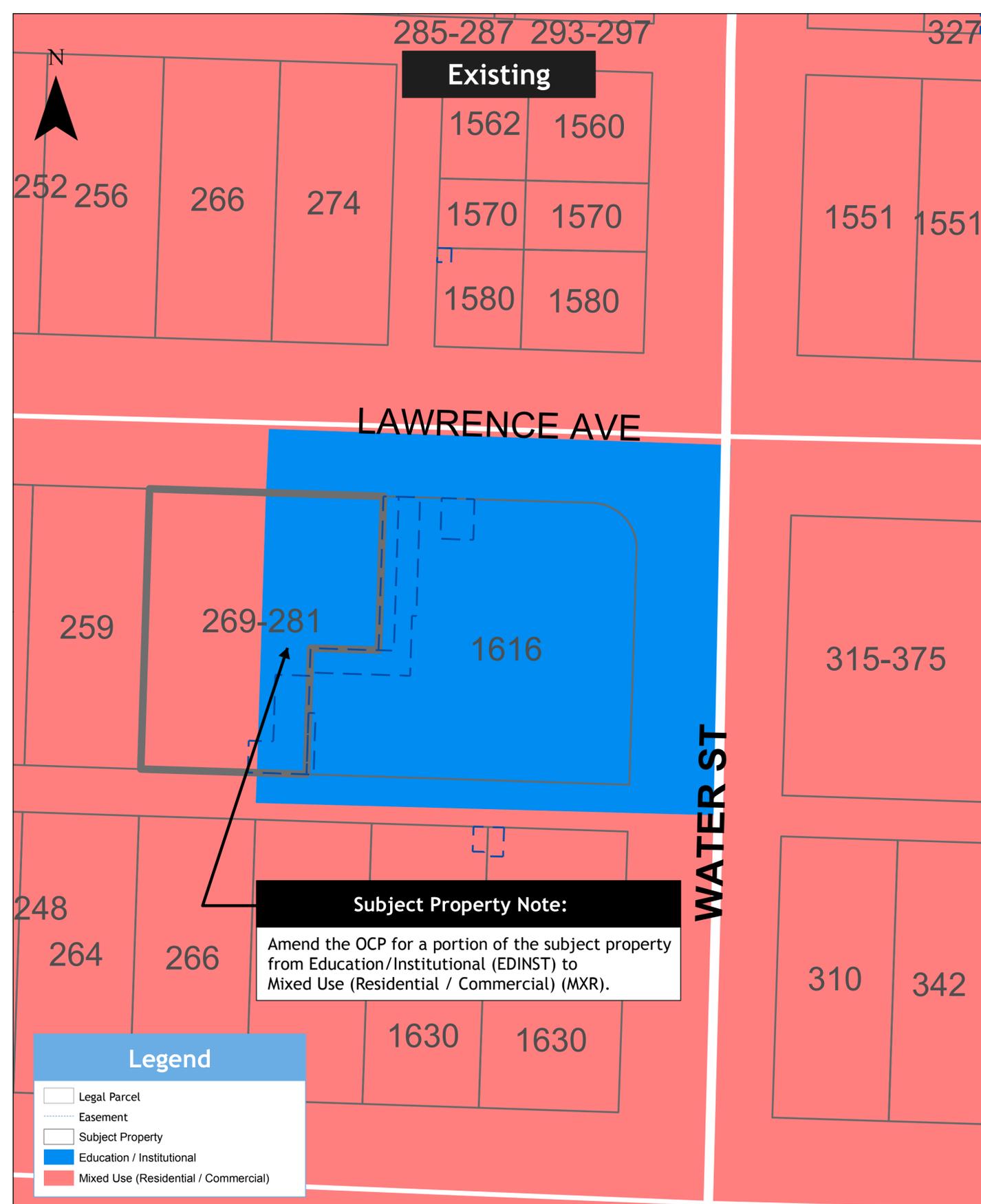
~~Delete: Urban Planning and development has long been focused on a community's physical infrastructure – roads, sewers, utilities and parks.~~

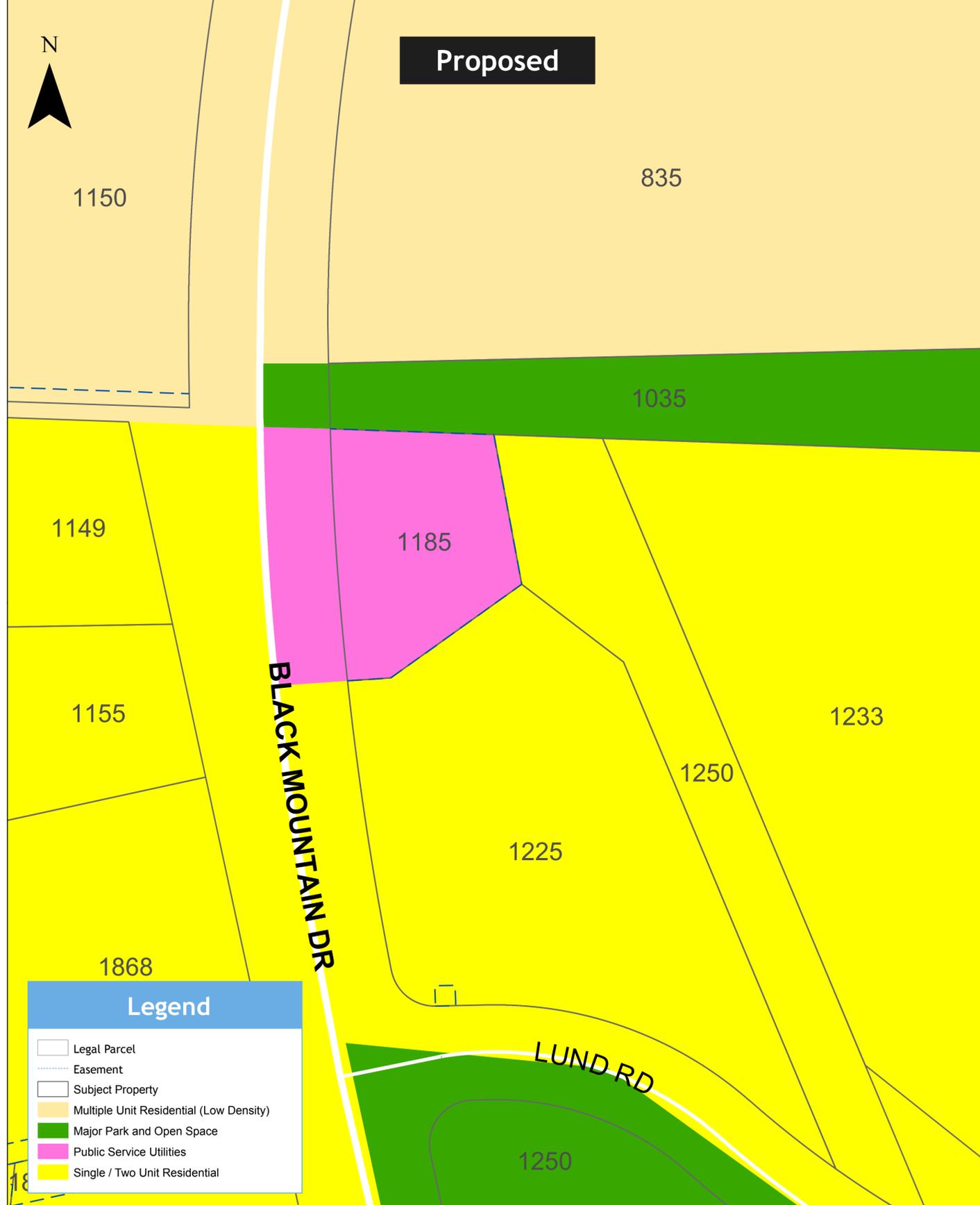
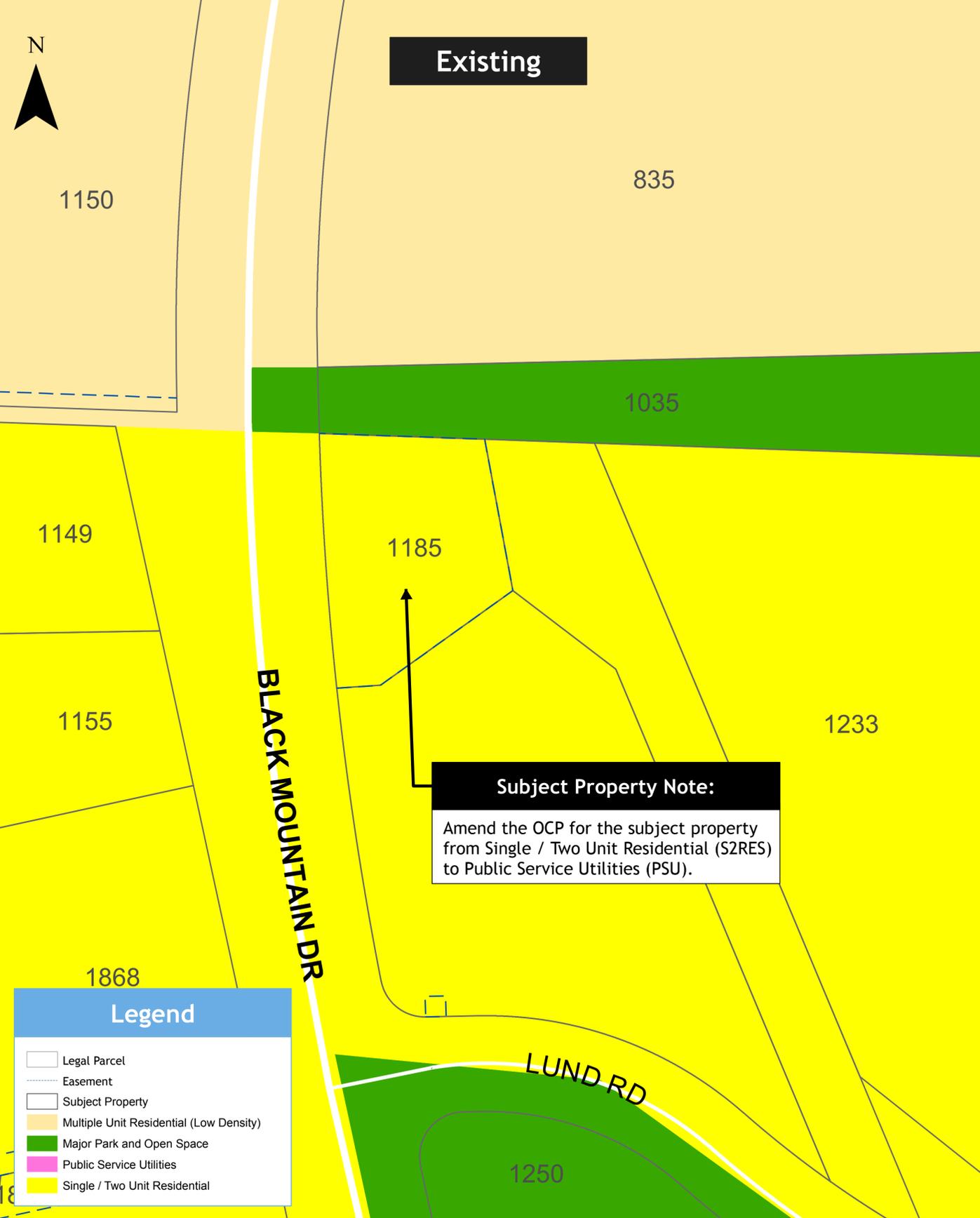
Replace with: A community is as much a social environment as a physical environment, and to be successful communities must be socially sustainable.

12. Amend 3<sup>rd</sup> bullet on Page 10.1 - **Chapter 10 – Social Sustainability** (proposed new wording is underlined; wording to be deleted in ~~strikethrough~~)

- maintains or enhances, ~~or at least does not impair,~~ the physical, mental and social wellbeing of the population;

13. Amend **Map 4.1 – Generalized Future Land Use** to adjust the FLU boundary between 1616 Water St and 265 Lawrence Ave to match lot lines (Attachment 2)
14. Amend **Map 4.1 – Generalized Future Land Use** to change FLU for 1185 Black Mountain Dr from Single / Two Unit Residential to Public Service Utilities (Attachment 3)
15. Amend **Map 4.1 – Generalized Future Land Use** to adjust the FLU boundary at 3935 Lakeshore Rd, 3929-3933 Lakeshore Rd, and 650 Lexington Dr to reflect the 15m required setback along Mission Creek as per OCP Table 12.1. (Attachment 4)
16. Amend **Map 4.1 – Generalized Future Land Use** to change FLU for 855 Bernard Ave from Major Park / Open Space (public) to Single / Two Unit Residential (Attachment 5)
17. Amend **Map 4.1 – Generalized Future Land Use** to change FLU for (North OF) Fullmer Rd from Single / Two Unit Residential Major to Park / Open Space (public) (Attachment 6)
18. Amend **Map 4.1 – Generalized Future Land Use** to change FLU for 4765 Gordon Dr from Major Park / Open Space (public) to Single / Two Unit Residential and to change Crown property adjacent 4765 Gordon Dr from Single / Two Unit Residential Major to Park / Open Space (public) (Attachment 7)



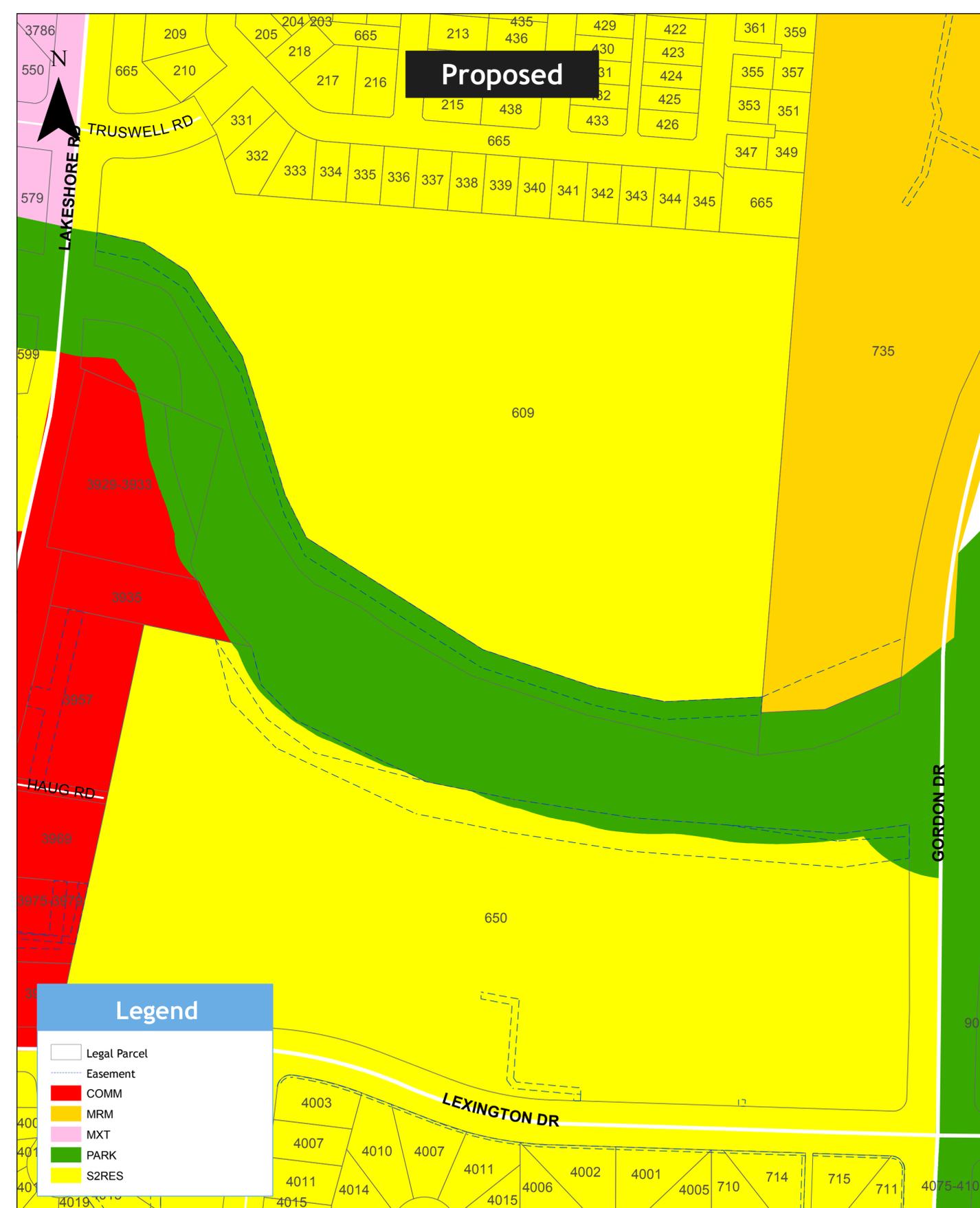
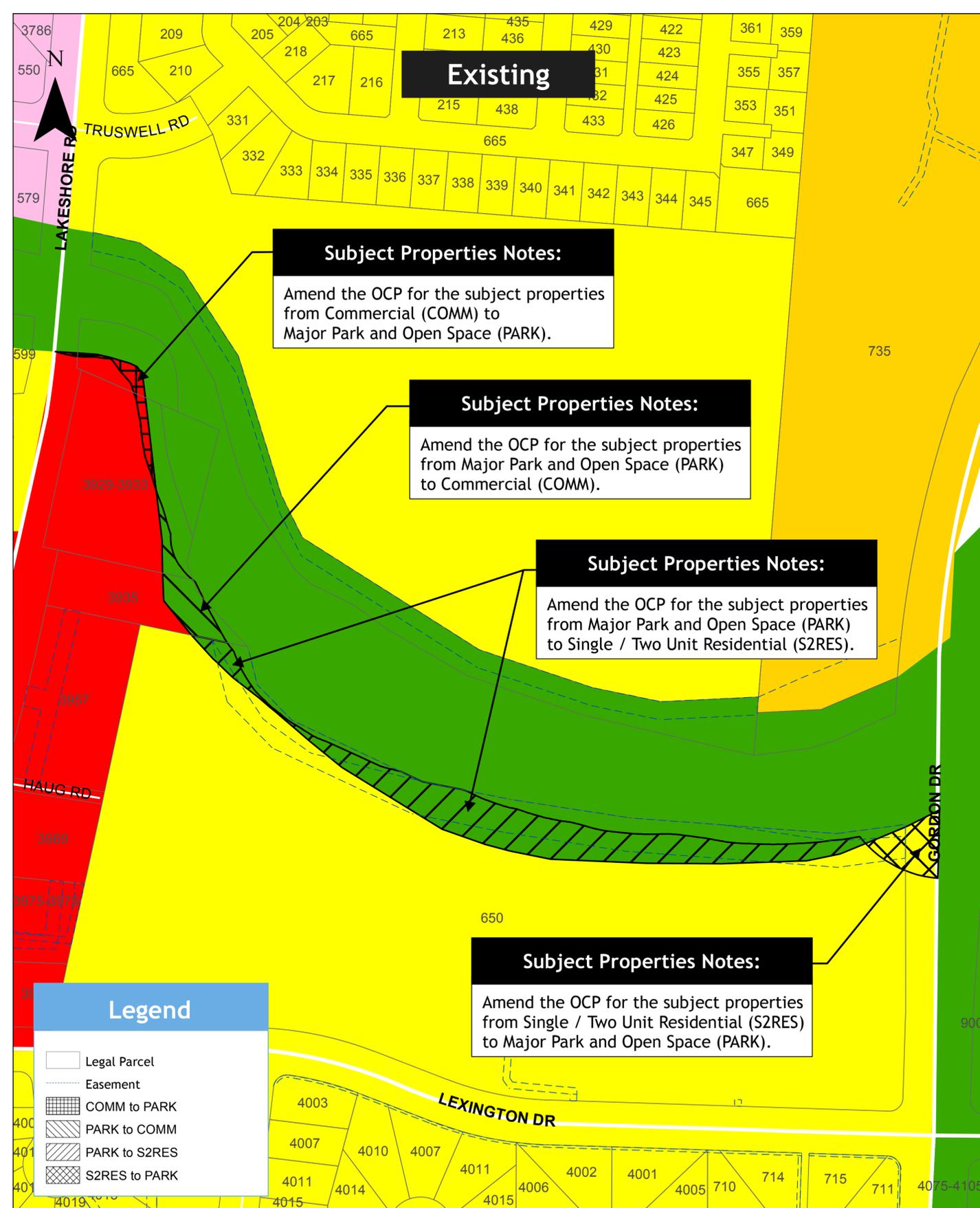


# Proposed OCP Land Use Amendments

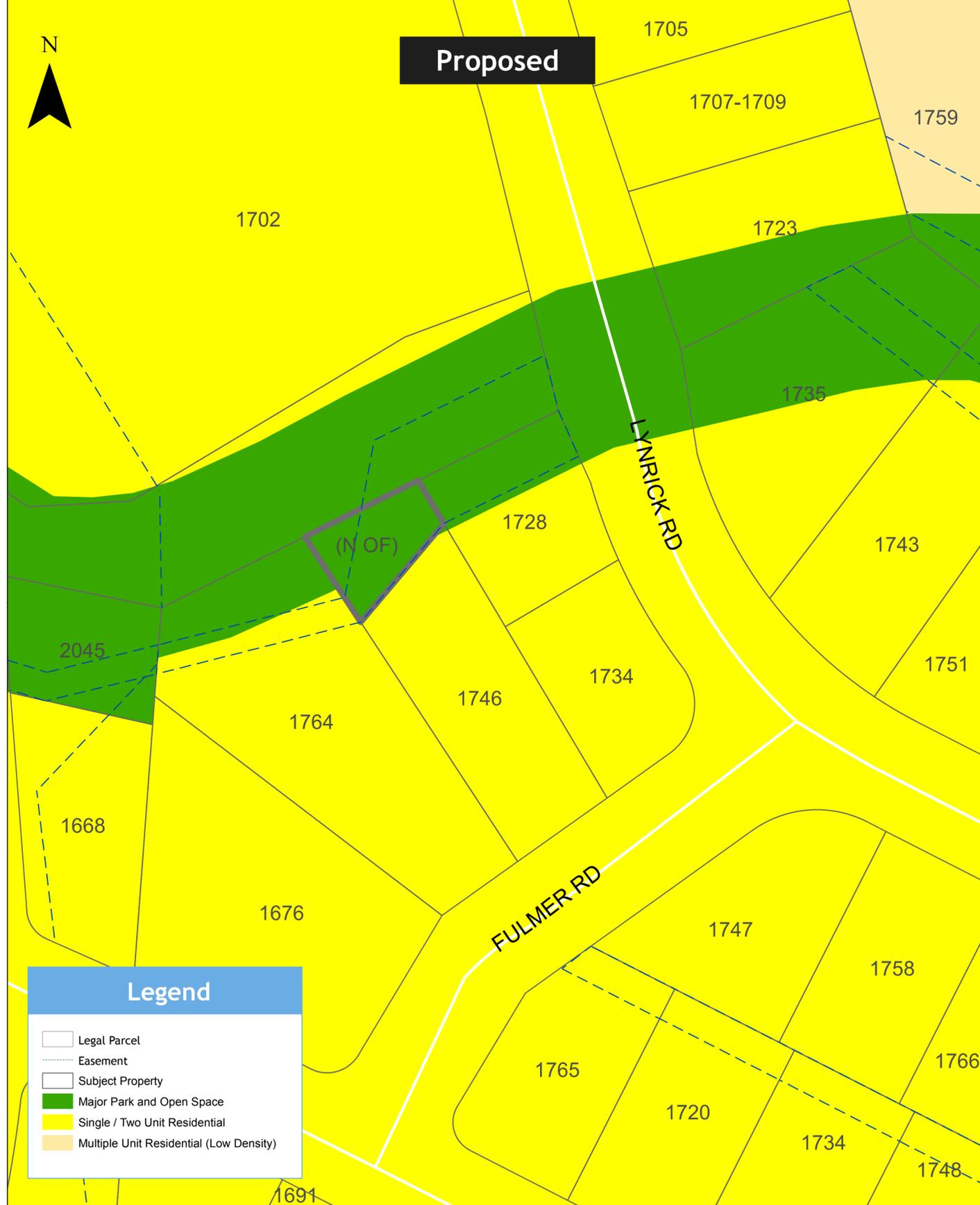
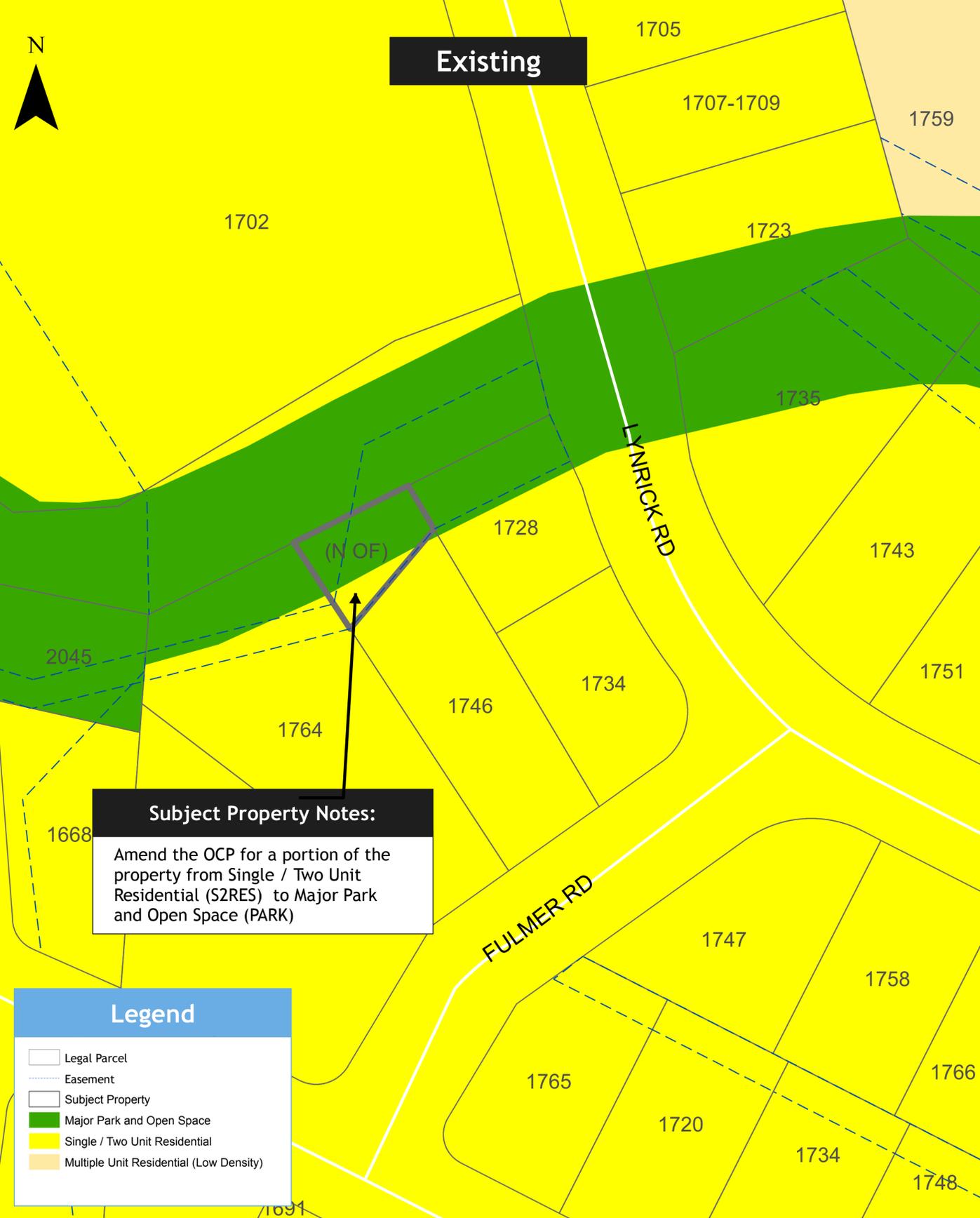
Bylaw 10887 - Attachment # 3

October 2013







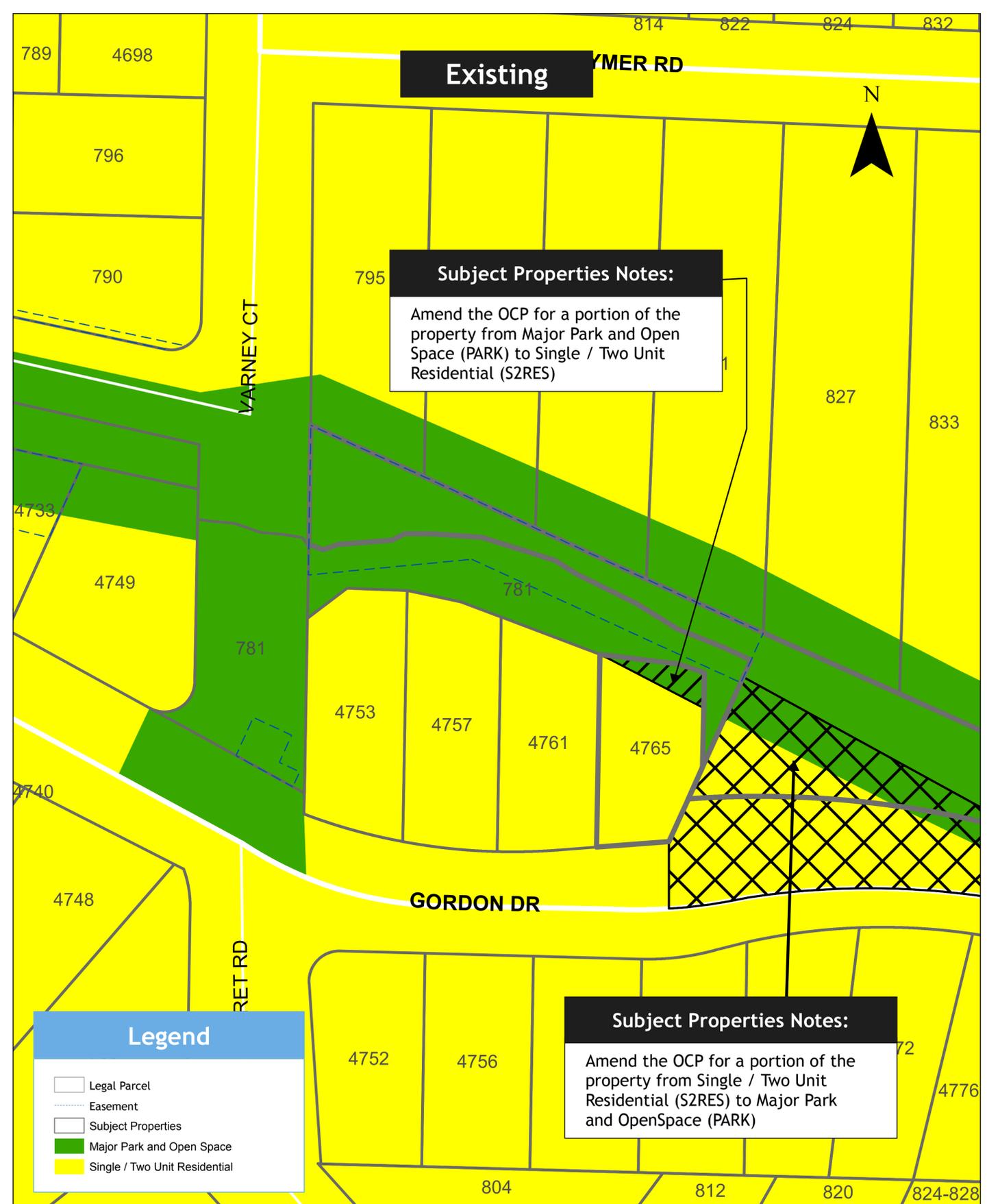


# Proposed OCP Land Use Amendments

Bylaw 10887 - Attachment # 6

October 2013





# Proposed OCP Land Use Amendments

## Bylaw 10887 - Attachment # 7

October 2013



# CITY OF KELOWNA

## BYLAW NO. 10887

### OCP13-0015 -Housekeeping Amendments

---

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that the "Kelowna 2030 - Official Community Plan Bylaw No. 10500" be amended as follows:

1. THAT **Chapter 1 - Introduction, Greenhouse Gas (GHG) Reductions** be amended by deleting the sentence in the first paragraph that reads "This target will be reviewed as part of a forthcoming Climate Action Plan."

2. AND THAT **Chapter 3 - Growth Projections - 20 Year Development Projection** be amended by deleting:

"The development of new housing between 2010 and 2030 is projected to occur as a function of both development / redevelopment in some areas, and development initiatives in new growth areas. Based on related Sector and Neighbourhood Plan initiatives, and approved projects within the community, a pattern of housing growth is projected to occur on a distribution of 57% multiple unit and 43% single / two unit as shown in Table 3.5."

and replacing it with:

"The development of new housing between 2010 and 2030 is projected to occur as a function of both development / redevelopment in some areas, and development initiatives in new growth areas. Based on previous planning initiatives, and approved projects within the community, a pattern of housing growth is projected to occur on a distribution of 57% multiple unit and 43% single / two unit as shown in Table 3.5."

3. AND THAT **Chapter 5 - Development Process** be amended by:

a) deleting "8600" after the words "Development Permit guidelines adopted by Bylaw" in **General, Objective 5.1 Ensure new development is consistent with OCP goals, Policy .2 Processing Time** and replacing it with "10500";

b) deleting from **Table 5.1 - Linear Park - Public Access** the following:

- i) "Sumac Rd to Mill Creek Springfield Rd to N/E" under **Reach** and replacing it with "Sumac Rd to Mill Creek"; and
- ii) "of Old Joe Rich Rd" under **Reach** and replacing it with "Springfield Rd to N/E of Old Joe Rich Rd"

c) adding a new Policy **.8 Joint Use**, with the Economic, Social and Cultural Sustainable icons and re-numbering subsequent Policies under **INSTITUTIONAL LAND USE POLICIES, Objective 5.32 Ensure the development of institutional facilities meets the needs of residents** that reads:

"Policy **.8 Joint Use**. Continue to encourage the development of joint use of community facilities and services for non-profit purposes."

- d) deleting Policy .6 **Agri-Tourist Accommodation** and re-numbering subsequent Policies under **AGRICULTURAL LAND USE POLICES, Objective 5.33 Protect and enhance local agriculture** in its entirety that reads:

“Policy .6 **Agri-tourist Accommodation.** Agri-tourist accommodation will only be approved and operated in a manner that supports agricultural production and which limits the impact on agricultural land, City services and the surrounding community.”

- e) deleting the quote under **AGRICULTURAL LAND USE POLICES**, that reads:

“Retain the agricultural land base by supporting a no net loss approach, except as otherwise noted in the Agricultural Plan.”

and replacing it with:

“Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the Agriculture Plan.”

4. AND THAT **Chapter 8 - Economic Development** be amended by adding a new Policy.5 with the **Economic Sustainability** icon under **Objective 8.4 Encourage a positive investment climate** that reads:

“Policy .5 **Entrepreneurial Initiatives.** Continue to encourage self-employment initiatives, including home-based business, while ensuring neighbourhood fit through the zoning regulations, and work with pertinent agencies to raise awareness of these opportunities.”

5. AND THAT **Chapter 9 - Arts, Culture & Heritage** be amended by:

- a) Deleting under **ARTS AND CULTURE POLICES, Objective 9.1 Provide public art & cultural opportunities**, Policy .6 that reads:

“**Cultural Resource Management.** Require cultural resource management to be integrated in the development and review of pertinent Area Structure Plans, Neighbourhood Plans, Sector Plans, Parks Plans and Transportation Plans.”

and replacing with:

“**Cultural Resource Management.** Require cultural resource management to be integrated in the development and review of pertinent plans.”

- b) Deleting under **HERITAGE POLICES, Objective 9.2 Identify and conserve heritage resources**, Policy .2 that reads:

“**Heritage Resource Management.** Require heritage resource management to be integrated in the development and review of pertinent Area Structure Plans, Neighbourhood Plans, Sector Plans and Parks Plans and Transportation Plans.”

and replacing with:

“**Heritage Resource Management.** Require heritage resource management to be integrated in the development and review of pertinent plans.”

6. AND THAT Chapter 10 - Social Sustainability be amended by:
  - a) deleting the cover text in its entirety that reads:
 

“Urban planning and development has long been focused on a community’s physical infrastructure - roads, sewers, utilities and parks.”

and replacing it with:

“A community is as much a social environment as a physical environment, and to be successful communities must be socially sustainable.”
  - b) deleting the third bullet in its entirety that reads:
 

“enhances, or at least does not impair, the physical, mental and social wellbeing of the population;”

and replacing it with:

“maintains or enhances the physical, mental and social wellbeing of the population;”
7. AND THAT Map 4.1 Generalized Future Land Use Map be deleted in its entirety and replaced with a new Map 4.1 Generalized Future Land Use Map as attached to and forming part of this bylaw as Schedule “A”.
8. This bylaw may be cited for all purposes as “Bylaw No. 10887, being OCP13-0015 - Miscellaneous Housekeeping Amendments.
9. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

# Schedule "A"

## Legend

--- Permanent Growth Boundary

### Land Use Designations

- Commercial (COMM)
- Education / Institution (EDINST)
- First Nations Reserve (FNR)
- Future Urban Reserve (FUR)
- Health District (HLTH)
- Industrial (ID)
- Industrial - Limited (ID-L)
- Industrial - Transition (ID-T)
- Major Park and Open Space (PARK)
- Mixed Use (Residential / Commercial) (MTR)
- Mixed Use Tourism (MXT)
- Multiple Use Residential - Cluster Housing (MRC) (Associated uses: care centres, minor public services/offices, neighbourhood park)
- Multiple Use Residential - Low Density (MRL) (Associated uses: care centres, minor public services/offices, neighbourhood park)
- Multiple Use Residential - Medium Density (MRM) (Associated uses: care centres, minor public services/offices, neighbourhood park)
- Multiple Use Residential - High Density (MRH) (Associated uses: care centres, minor public services/offices, neighbourhood park)
- Private Recreational (PREC)
- Public Service Offices (PSO)
- Transportation Corridor (TRVY)
- Resource Protection Area (REPA)
- Service Commercial (SC)
- Single / Two Unit Residential - Single (SRED) (Associated uses: care centres, minor public services/offices, commercial facility & neighbourhood park)
- Single / Two Unit Residential - Mixed (SREM) (Associated uses: care centres, minor public services/offices, neighbourhood park)

Future Land Use Boundaries on lots with more than one Land Use Designation are conceptual only and may change based on development proposals.

### NOTES

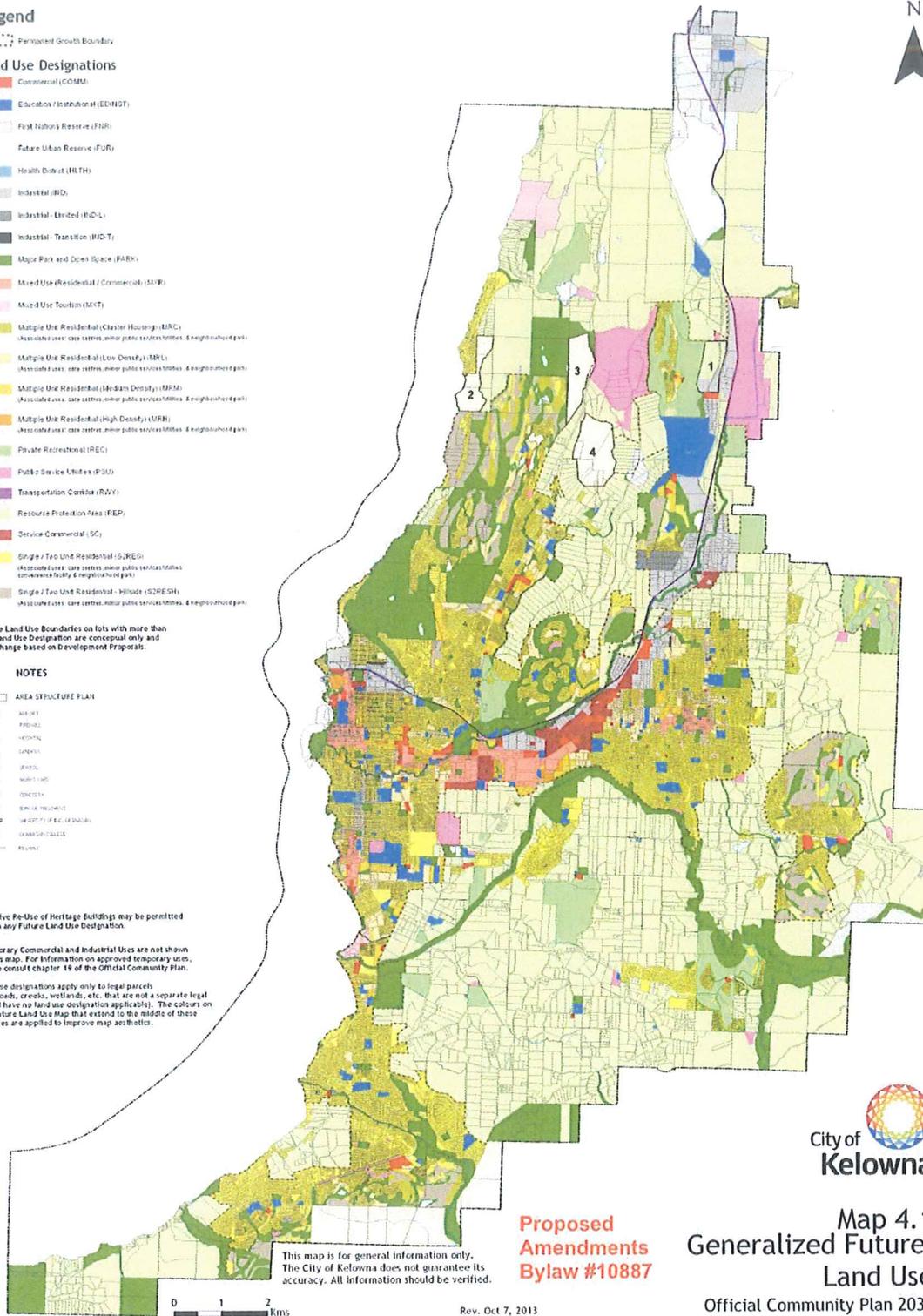
AREA STRUCTURE PLAN

- A AGRICULTURE
- F FOREST
- H HERMITAGE
- L LANDSCAPE
- S SPECIAL
- N NATURELAND
- IE INDUSTRIAL
- SP SPECIAL PURPOSE
- SRB SPECIAL RECREATION
- SC SERVICE COMMERCIAL
- RES RESIDENTIAL

Adaptive Re-Use of Heritage Buildings may be permitted within any Future Land Use Designation.

Temporary Commercial and Industrial Uses are not shown on this map. For information on approved temporary uses, please consult chapter 19 of the Official Community Plan.

Landuse designations apply only to legal parcels (i.e. roads, creeks, wetlands, etc. that are not a separate legal parcel have no land use designation applicable). The colours on the Future Land Use Map that extend to the middle of these features are applied to improve map aesthetics.



0 1 2 Kms

This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.

**Proposed  
Amendments  
Bylaw #10887**



**Map 4.1  
Generalized Future  
Land Use**  
Official Community Plan 2030

Rev. Oct 7, 2013

# Report to Council



**Date:** Date  
**Rim No.** 1200-30 OCP13-0016 / BL 10888  
**To:** City Manager  
**From:** Graham March, Planner Specialist  
**Subject:** 2013-11-04 Report - OCP13-0016 Proposed Miscellaneous Amendments (BL10888)

---

## **Recommendation:**

THAT OCP Bylaw Text Amendment No. OCP13-0016 to amend Kelowna 2030 - Official Community Plan Bylaw No. 10500 as outlined in the Report of the Planner Specialist dated November 4, 2013 be considered by Council;

AND THAT Council considers the public process outlined in the Report of the Planner Specialist dated November 4, 2013 to be appropriate consultation for the purpose of Section 879 of the Local Government Act;

AND FURTHER THAT OCP Bylaw Text Amendment No. OCP13-0016 be forwarded to a Public Hearing for further consideration;

## **Purpose:**

To proceed with miscellaneous amendments to the Official Community Plan based on staff initiated policy and map changes.

## **Background:**

As a result of the continued growth and evolution of the city, including new land acquisitions, alignment with Council and provincial policy, and on-going development approvals staff have identified changes that are necessary to the OCP to keep pace. The full list of proposed amendments is itemized in Attachment 1.

The first proposed amendment is to replace the first paragraph of Policy 5.15.4 (Habitat Management Hierarchy) to reflect it as a policy and not a regulation (Attachment 1 - Item 1).

The next proposed amendment is to delete Policy 5.19.9 (Truswell Rd. Area) from Chapter 5 - Development Process. This amendment will remove the developer funded design charette requirement for the Truswell Rd. Area (Attachment 1 - Item 2).

The following proposed amendment is to the ALR Exclusions policy (Policy 5.33.2) in Chapter 5 - Development Process. The intent of this amendment is to reflect that the ALC makes the ultimate decisions when it comes to ALR exclusions. While the City has the discretion on whether or not to send applications to the ALC, our policy should not fetter Council's ability to make that decision (Attachment 1 - Item 3).

The following proposed amendment is for Policy 5.36.1 (Hydro-Geologically Sensitive Areas) to soften the requirements for when a hydro-geological assessment is required on slopes greater than 20%. The intent is to only require an assessment when deemed necessary (Attachment 1 - Item 4).

The intent of the next proposed amendment is to ensure that where possible there are active transportation connections through future strata developments (Policy 5.36.2 - Permeability) (Attachment 1 - Item 5).

The next proposed amendment is to Policy 5.37.1 (Foreshore Structures) to ensure public access and safety along the foreshore. Essentially any foreshore structure that obstructs public access along the foreshore should be brought into compliance with current regulations prior to subdivision for the upland parcel (Attachment 1 - Item 6).

The following proposed OCP amendment would remove the non-sewered lots language (Objective 5.38 and Policy 5.38.1 and Policy 5.38.2) from Chapter 5 - Development Process of the OCP. Septic system language is currently regulated in the Subdivision and Development Servicing Bylaw (Attachment 1 - Item 7)

As refinements to the GIS legal lots layer occur, amendments are recommended to ensure that the Future Land Use mapping matches the revised GIS lots layer. Refinements are also suggested to ensure maps reflect recent park land acquisitions as well as changes in development permit areas. Proposed mapping changes are shown in Attachments 2 through 7 (Attachment 1 - Items 8 through 13).

The proposed amendment to include Innovation Dr as part of the Comprehensive Development Permit Area (Attachment 5) is being proposed to ensure quality and consistency of buildings in the Airport Business Park.

The next proposed amendment is to correct a previous mapping error to include all commercially designated properties in The Ponds neighbourhood as part of the Comprehensive Development Permit Area (Attachment 6).

The final proposed mapping amendment is to reduce the number of properties requiring a Character Neighbourhood Development Permit (Attachment 7).

**Internal Circulation:**

Divisional Director, Community Planning & Real Estate  
Director, Subdivision, Agriculture & Environment Services  
Manager, Urban Planning

**Legal/Statutory Authority:**

Local Government Act Part 26: Division 2 - Official Community Plans, Sections 875 - 882.

**Legal/Statutory Procedural Requirements:**

Local Government Act Section 879 (1) specifies that a local government must, during the development, repeal or amendment of an official community plan, provide one or more opportunities it considers appropriate for consultation with persons, organizations and authorities it considers will be affected. This consultation is in addition to the required public hearing.

**External Agency/Public Comments:**

The requirement for consultation under Section 879 (1) of the Local Government Act, was addressed by advertising in the October 11, 2013 Capital News, posting the information on the website as well as sending letters to property owners deemed impacted.

Three requests for more information were received but no specific comment was provided.

**Existing Policy:**

Kelowna OCP 2030 Bylaw 10500

**Considerations not applicable to this report:**

Financial/Budgetary Considerations:

Personnel Implications:

Communications Comments:

Alternate Recommendation:

Submitted by:

Graham March,  
Planner Specialist, Policy and Planning

Gary Stephen,  
Manager of Long Range Planning

Approved for inclusion:



Danielle Noble-Brandt,  
Department Manager, Policy & Planning

Attachment 1 - 2013-11-04 Proposed OCP Miscellaneous Amendments

Attachments 2 - 7 - 2013-11-04 Proposed Future Land Use Map Amendments

cc: Divisional Director, Community Planning & Real Estate  
Community Planning Manager  
Urban Land Use Manager  
Manager, Parks & Public Spaces

## Attachment #1

### Staff Initiated OCP Amendments - Miscellaneous (OCP13-0016) (New wording underlined; wording to be deleted in ~~strikethrough~~)

1. Amend Objective 5.15 Policy .4 - Chapter 5 – **Development Process - Habitat Management Hierarchy** to replace first paragraph (proposed new wording is underlined; deleted wording in ~~strikethrough~~):

~~**Habitat Management Hierarchy.** Require that all City projects and private development proposals adhere to the following sequence of management actions, as identified in a Development Permit, to achieve the “no net loss/net gain” principle of ESA ’s:~~

**Habitat Management Hierarchy.** Ensure the following sequence of management actions for all public or private projects be adhered to, as identified in a Development Permit, to achieve the “no net loss/net gain” principle of ESA ’s:

2. Delete existing Objective 5.19 and related Policy .9 – **Chapter 5 – Development Process – Area Specific Considerations.** (wording to be deleted in ~~strikethrough~~). All policies following will need to be renumbered accordingly:

~~**Truswell Rd. Area.** A developer-funded design charette providing for neighbourhood and professional input will be required before any re-zoning or variances allowing for increased building height in the mixed use tourism commercial area near Truswell Rd. will be considered by Council.~~

3. Amend Policy 5.33.2 - Chapter 5 – **Development Process – Agricultural Land Use Policies** (proposed new wording is underlined; deleted wording in ~~strikethrough~~):

**ALR Exclusions.** The City of Kelowna will not ~~forward~~ support ALR exclusion applications to the ALC except in extraordinary circumstances where such exclusions are otherwise consistent with the goals, objectives and other policies of this OCP. Soil capability alone should not be used as justification for exclusion.

4. Amend Policy 5.36.1 – Chapter 5 – **Development Process – Hydro-Geologically Sensitive Areas** (proposed new wording is underlined; deleted wording in ~~strikethrough~~):

~~**Hydro-Geologically Sensitive Areas.** Require an assessment of potential ground and surface water seepage as part of any subdivision on hillside lands in excess of 20% slope. Require Reduce or no eliminate irrigation water use in areas where limited or no infiltration capacity exists based on hydro-geological assessments of sensitive areas. An assessment of potential ground and surface water seepage may be required as part of any subdivision on hillside lands in excess of 20% slope.~~

5. Amend Policy 5.36.2 – Chapter 5 – **Development Process – Permeability** (proposed new wording is underlined; deleted wording in ~~strikethrough~~):

~~**Permeability.** Improve the permeability of strata developments by ensuring that active transportation connections can occur by setting a maximum ratio for direct travel to a road outside the development.~~

**Pedestrian Connectivity.** Improve the permeability of strata developments by ensuring that active transportation connections are facilitated where possible.

6. Amend Policy 5.37.1 – Chapter 5 – **Development Process – Foreshore Structures** (proposed new wording is underlined; deleted wording in ~~strikethrough~~):

~~**Foreshore Structures.** Require that foreshore structures be brought into compliance with current regulations prior to subdivision application on the upland parcel being approved.~~

**Foreshore Structures.** Ensure foreshore structures that obstruct public access along the foreshore be brought into compliance with current regulations prior to subdivision application on the upland parcel being approved.

7. Delete existing Objective 5.38 and related Policy .1 and Policy .2 - Chapter 5 – **Development Process** (wording to be deleted in ~~strikethrough~~). All objectives in Chapter 5 following Objective 5.37 will need to be renumbered accordingly:

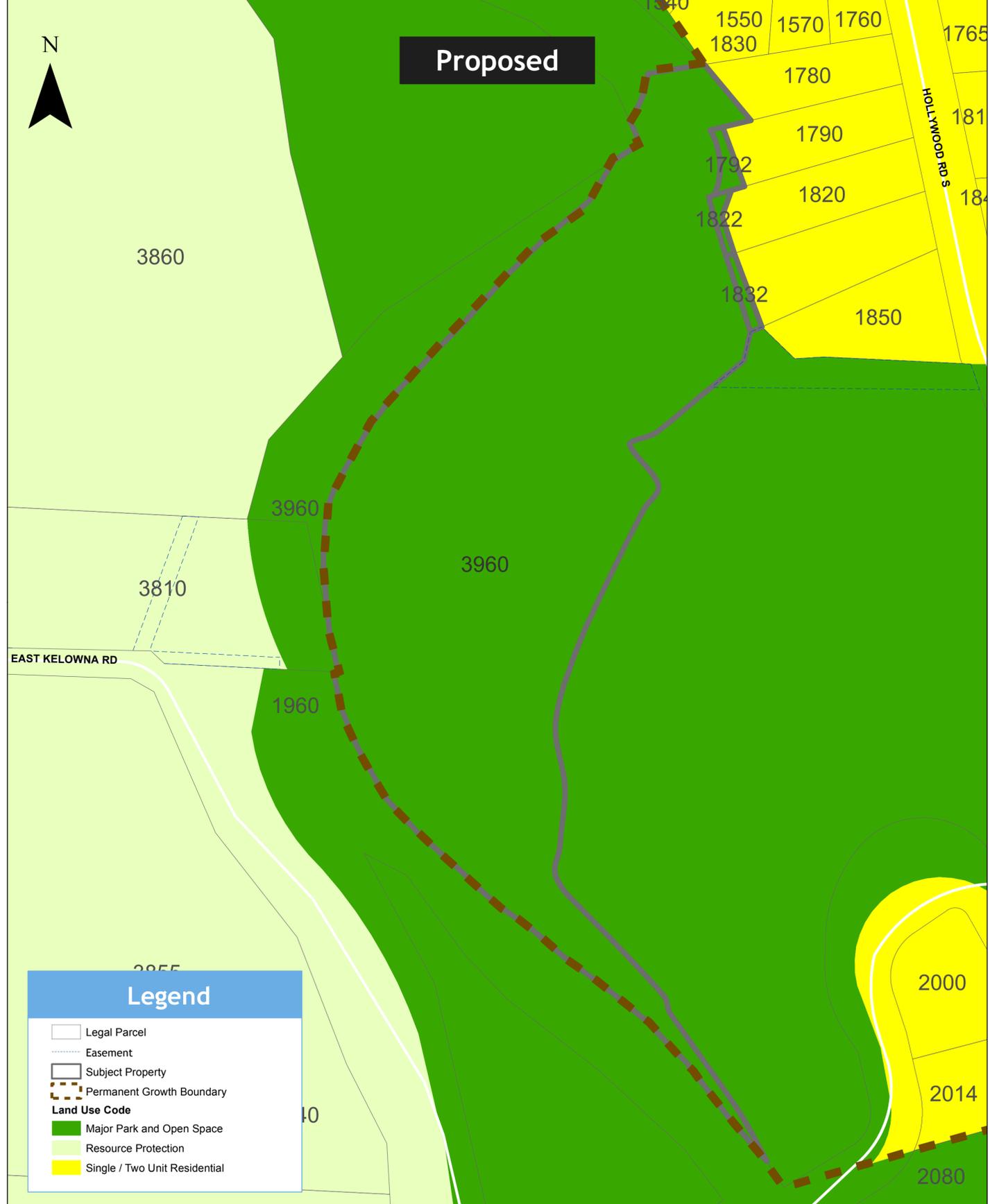
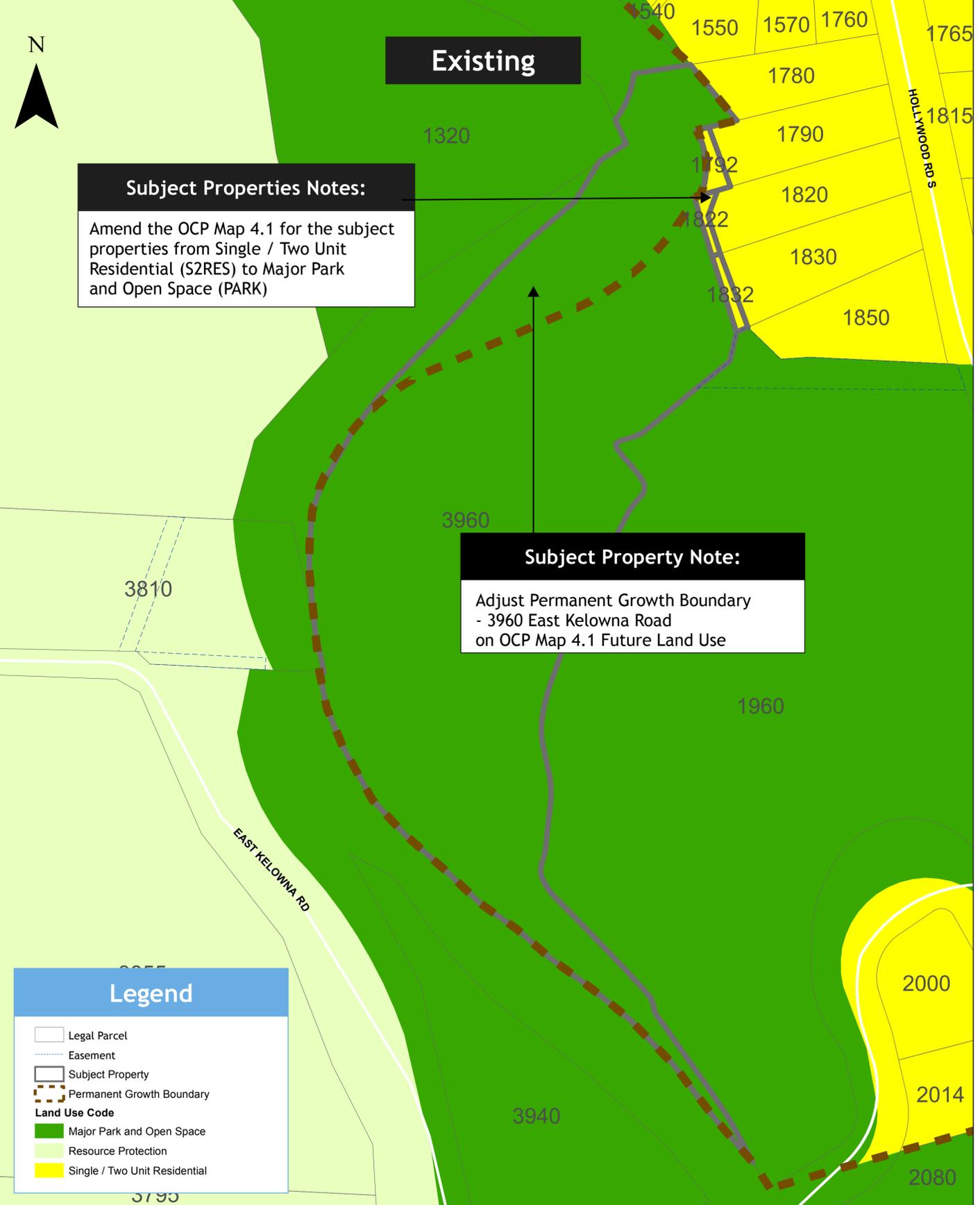
~~Objective 5.38 Ensure non-sewered lots do not cause harm to the environment.~~

~~**Policy .1 Minimum Lot Size for Septic Systems.** Require that any lot created and serviced by an approved septic disposal system shall be a minimum of 1.0 ha (2.5 acres) in size, except where such lot is created with the approval of the appropriate Provincial ministry or agency as a home-site severance or a lot in lieu of a home-site severance.~~

~~**Policy .2 Un-Sewered Lots in ESA's.** Require that subdivisions must meet the Ministry of Health's criteria for placing septic tank systems within Environmentally Sensitive Areas.~~

8. Amend **Map 4.1 – Generalized Future Land Use** to adjust Permanent Growth Boundary (PGB) for 3960 East Kelowna Rd and change FLU for 1790, 1822 and 1832 Hollywood Rd S from Single / Two Unit Residential to Major Park / Open Space (public) (Attachment 2)
9. Amend **Map 5.2 – Permanent Growth Boundary** to adjust PGB for 3960 East Kelowna Rd (Attachment 3)
10. Amend **Map 5.4 – Sector Map** to adjust Sectors for 3960 East Kelowna Rd (Attachment 4)

11. Amend **Map 5.8 – Urban Design DP Area Designation** to add a red line to a portion of Innovation Dr between 1411 and 1708 as part of a Comprehensive (Industrial) DP (Attachment 5)
12. Amend **Map 5.8 - Urban Design DP Area Designation** to extend the red line further along Gordon Dr to capture other commercial sites as part of a Comprehensive (Industrial) DP (Attachment 6)
13. Amend **Map 5.8 - Urban Design DP Area Designation** to adjust the boundaries of the Character Area DP to remove sites that are zoned and/or with existing development of commercial, multiple unit residential (RM4/5/6), parks and utilities (Attachment 7)

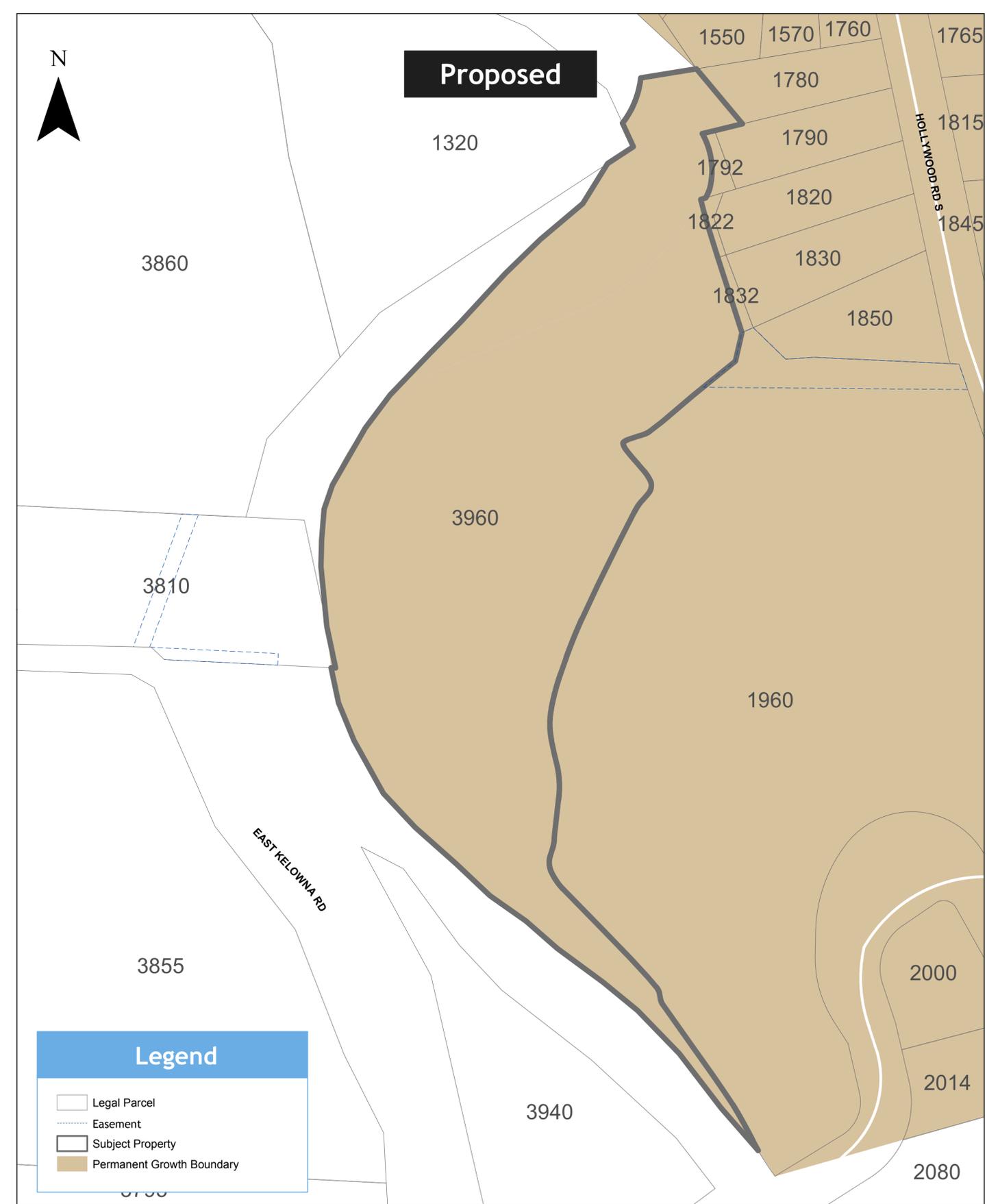
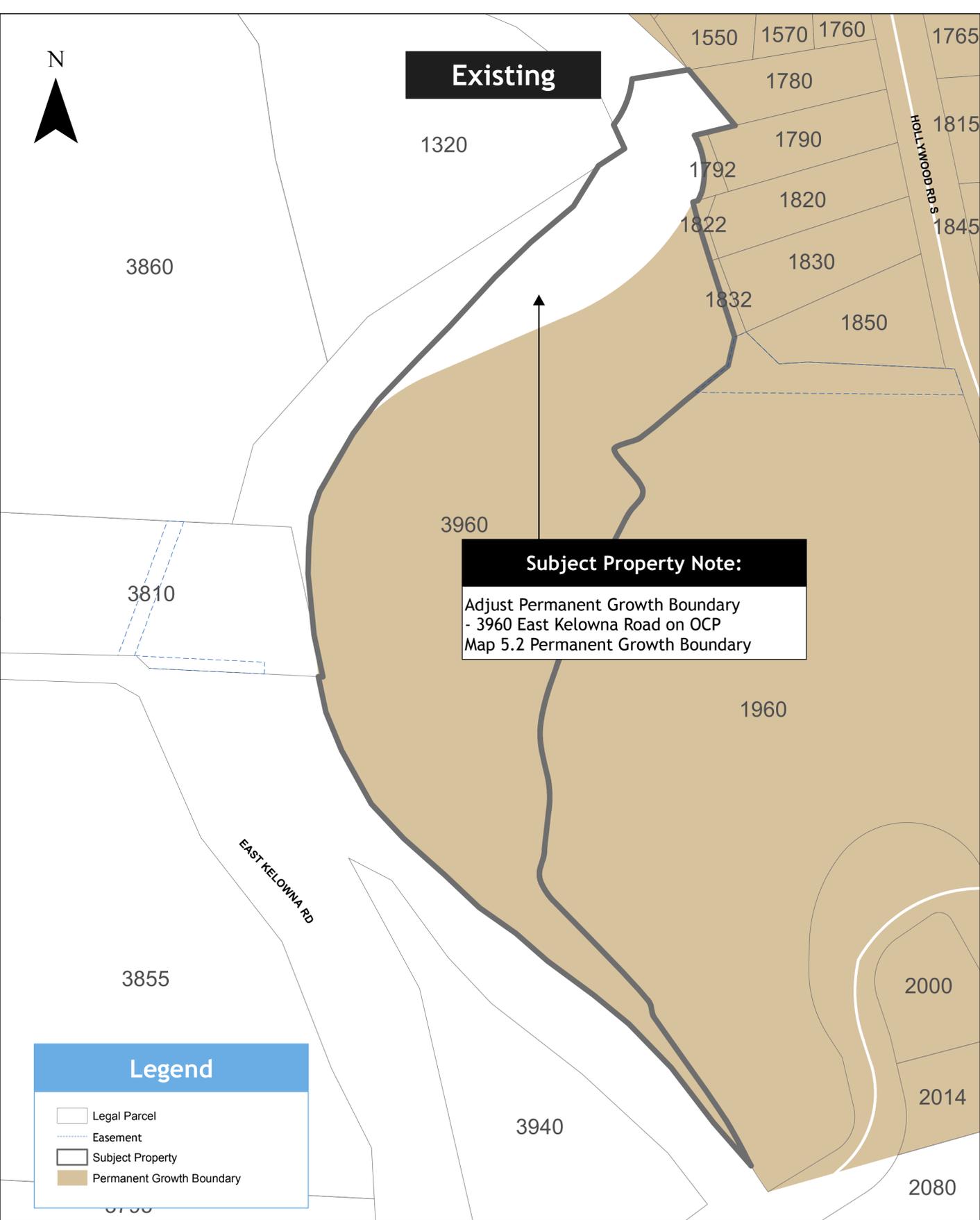


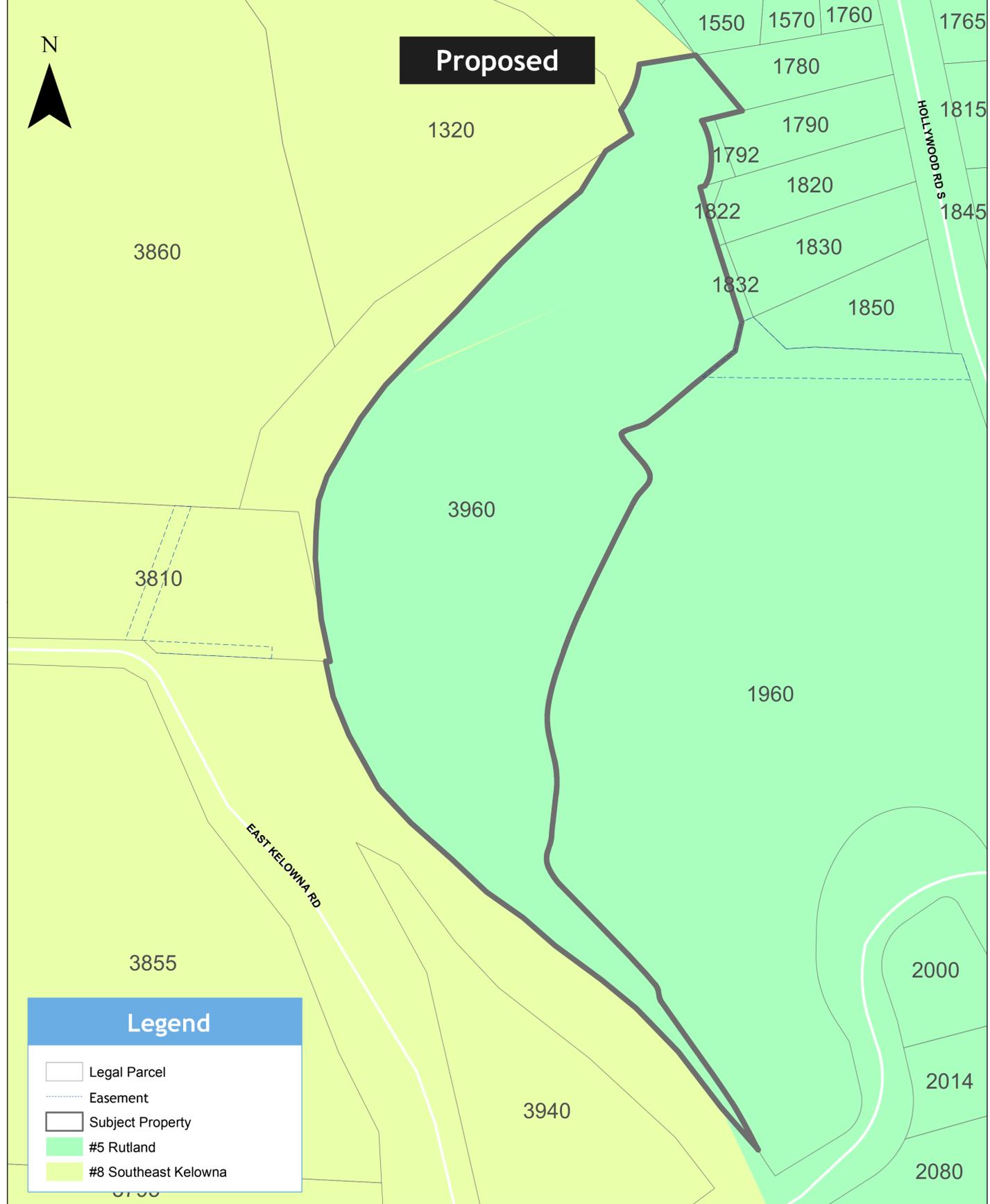
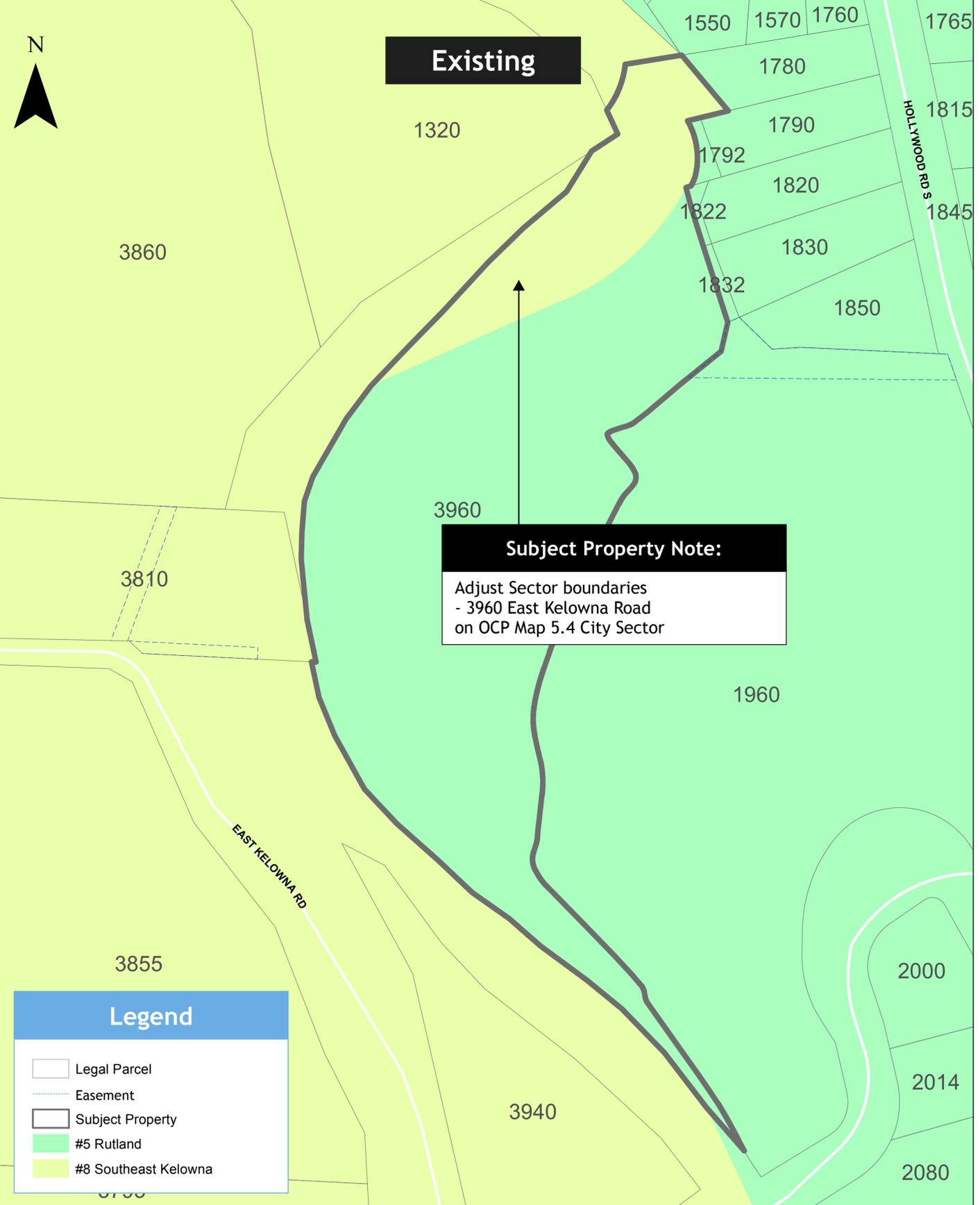
# Proposed OCP Land Use Amendments

## Bylaw 10888 - Attachment # 2

October 2013





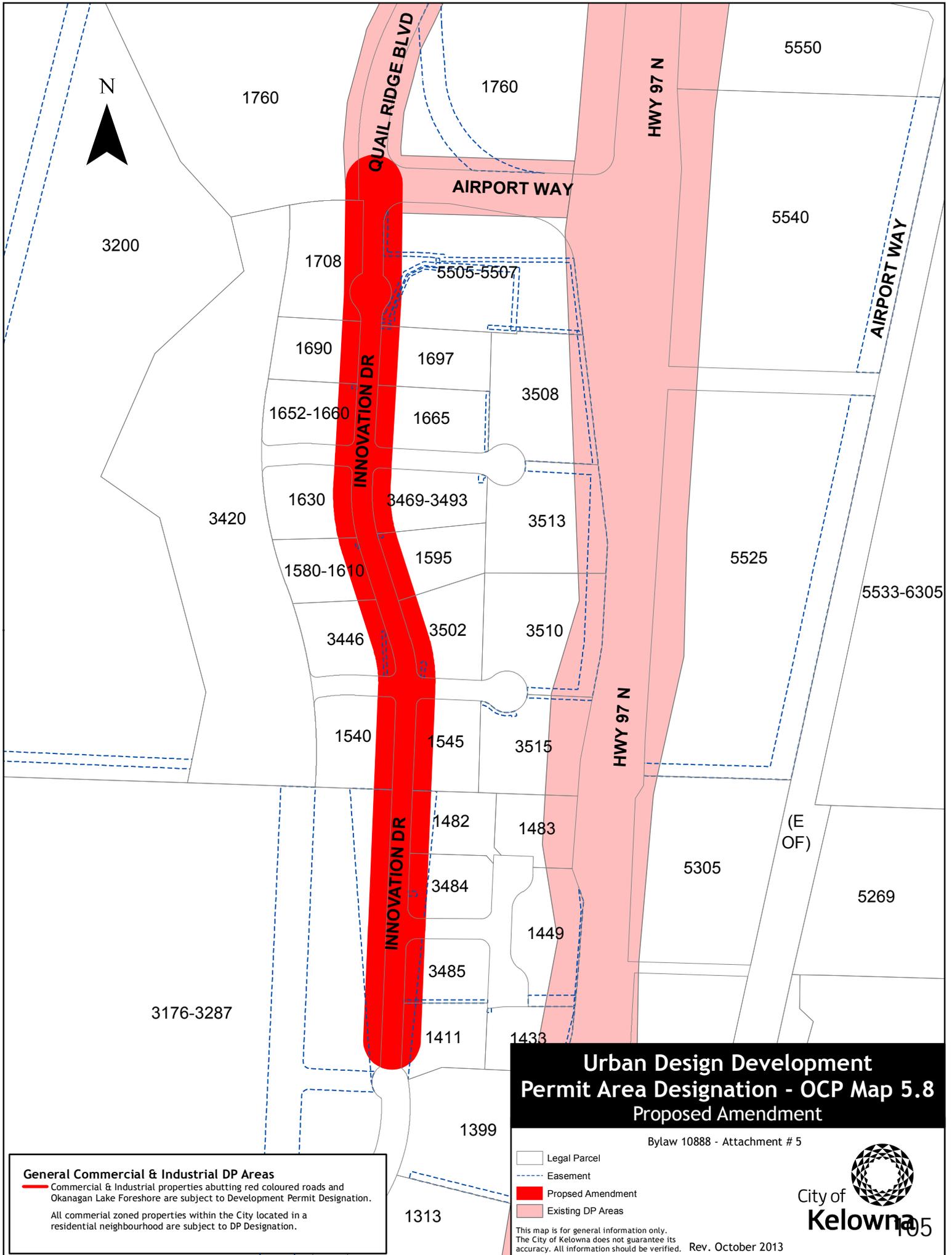


# Proposed OCP City Sector Amendments

Bylaw 10888 - Attachment # 4

October 2013





**General Commercial & Industrial DP Areas**

Commercial & Industrial properties abutting red coloured roads and Okanagan Lake Foreshore are subject to Development Permit Designation.

All commercial zoned properties within the City located in a residential neighbourhood are subject to DP Designation.

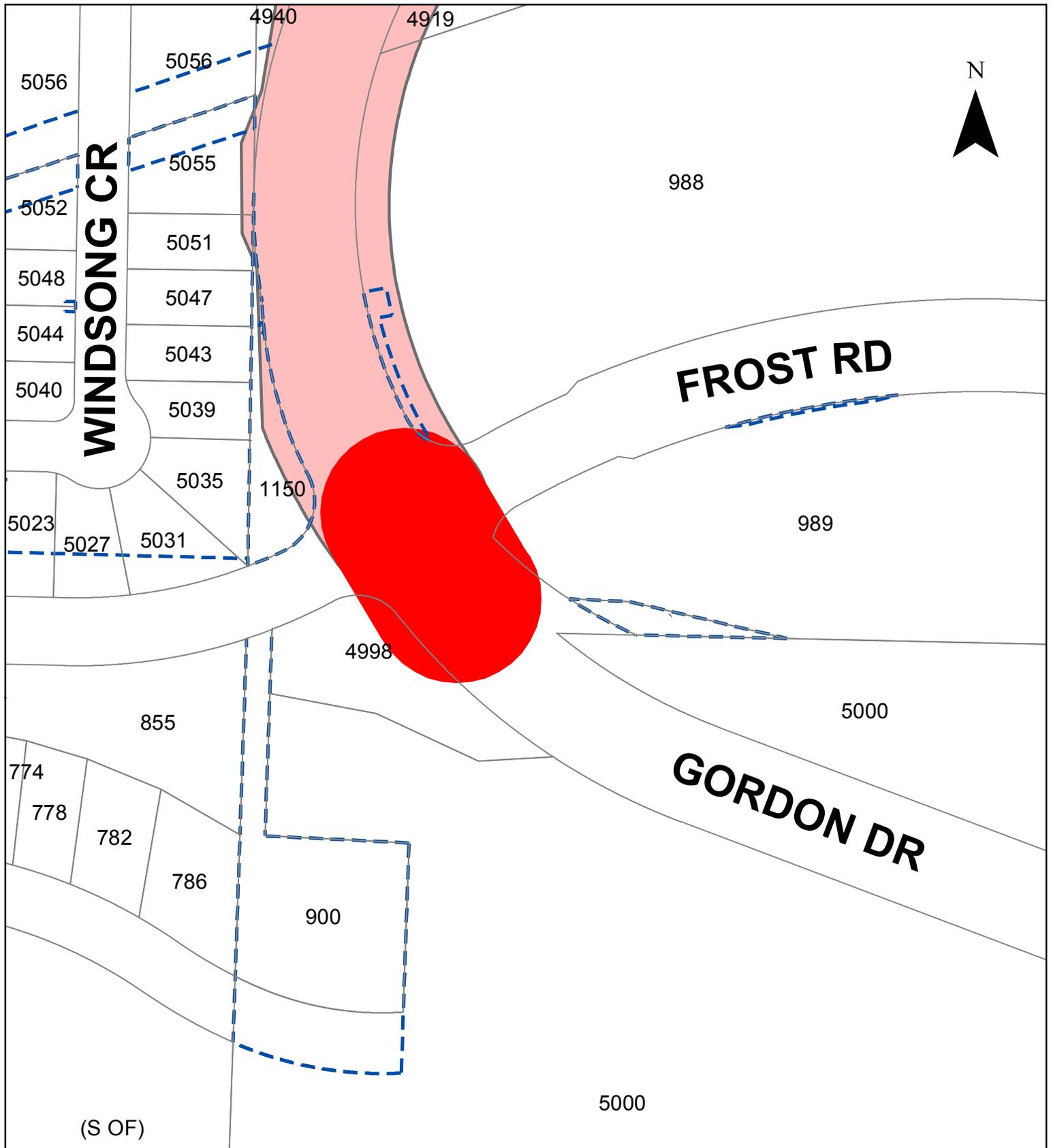
**Urban Design Development  
Permit Area Designation - OCP Map 5.8  
Proposed Amendment**

Bylaw 10888 - Attachment # 5

-  Legal Parcel
-  Easement
-  Proposed Amendment
-  Existing DP Areas

This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified. Rev. October 2013





**General Commercial & Industrial DP Areas**  
 Commercial & Industrial properties abutting red coloured roads and Okanagan Lake Foreshore are subject to Development Permit Designation.  
 All commercial zoned properties within the City located in a residential neighbourhood are subject to DP Designation.

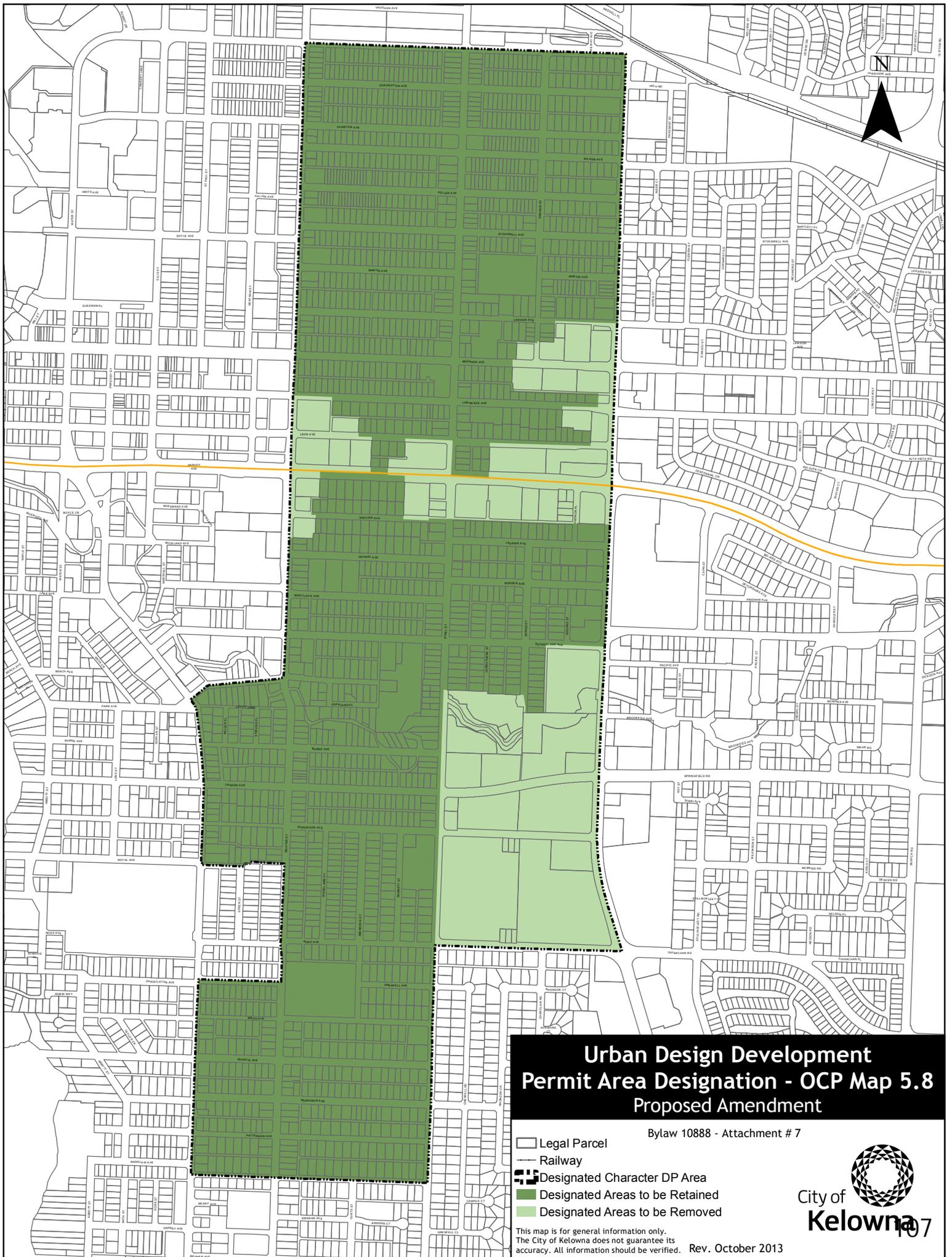
**Urban Design Development  
 Permit Area Designation - OCP Map 5.8  
 Proposed Amendment**

Bylaw 10888 - Attachment # 6

- Legal Parcel
- Easement
- Proposed Amendment
- Existing DP Areas

This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified. Rev. October 2013





# Urban Design Development Permit Area Designation - OCP Map 5.8 Proposed Amendment

Bylaw 10888 - Attachment # 7

-  Legal Parcel
-  Railway
-  Designated Character DP Area
-  Designated Areas to be Retained
-  Designated Areas to be Removed



This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified. Rev. October 2013

# CITY OF KELOWNA

## BYLAW NO. 10888

### OCP13-0016 - Miscellaneous Amendments

---

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that the "Kelowna 2030 - Official Community Plan Bylaw No. 10500" be amended as follows:

1. THAT Chapter 5 - Development Process, GENERAL be amended by:
  - a) Objective 5.15 Ensure environmentally sustainable development, Policy .4 Habitat Management hierarchy be deleted that reads:

**"Habitat Management Hierarchy.** Require that all City projects and private development proposals adhere to the following sequence of management actions, as identified in a Development Permit, to achieve the "no net loss/net gain" principle of ESA's:"

And replaced with:

**"Habitat Management Hierarchy.** Ensure the following sequence of management actions for all public or private projects be adhered to, as identified in a Development Permit, to achieve the "no net loss/net gain" principle of ESA 's:"
  - b) Objective 5.19 Ensure development is compatible with surrounding land uses, Policy .9 Truswell Rd. Area be deleted in its entirety and all subsequent Policies be re-numbered that reads:

**"Truswell Rd. Area.** A developer-funded design charette providing for neighbourhood and professional input will be required before any re-zoning or variances allowing for increased building height in the mixed use tourism commercial area near Truswell Rd. will be considered by Council."
  - c) AGRICULTURAL LAND USE POLICIES, Objective 5.33 Protect and enhance local agriculture, Policy .2 ALR Exclusions be amended by deleting the word "forward" after the words "The City of Kelowna will not" and replacing it with the word "support";
  - d) SUBDIVISION APPLICATIONS, Objective 5.36 Ensure subdivisions are consistent with sustainability goals, Policy .1 Hydro-Geologically Sensitive Areas, be deleted in its entirety that reads:

**"Hydro-Geologically Sensitive Areas.** Require an assessment of potential ground and surface water seepage as part of any subdivision on hillside lands in excess of 20% slope. Require or no irrigation water use in areas where limited or no infiltration capacity exists based on hydro-geological assessments of sensitive areas."

and replaced with:

**“Hydro-Geologically Sensitive Areas.** Reduce or eliminate irrigation water use in areas where limited or no infiltration capacity exists based on hydro-geological assessments of sensitive areas. An assessment of potential ground and surface water seepage may be required as part of any subdivision on hillside lands in excess of 20% slope.”

- e) **SUBDIVISION APPLICATIONS, Objective 5.36 Ensure subdivisions are consistent with sustainability goals, Policy .2 Permeability,** be deleted in its entirety that reads:

**“Permeability.** Improve the permeability of strata developments by ensuring that active transportation connections can occur by setting a maximum ratio for direct travel to a road outside the development.”

And replaced with:

**“Pedestrian Connectivity.** Improve the permeability of strata developments by ensuring that active transportation connections are facilitated where possible.”

- f) **SUBDIVISION APPLICATIONS, Objective 5.37 Reduce non-compliant foreshore structures, Policy .1 Foreshore Structures,** be deleted in its entirety that reads:

**“Foreshore Structures.** Require that foreshore structures be brought into compliance with current regulations prior to subdivision application on the upland parcel being approved.”

And replaced with:

**“Foreshore Structures. Ensure** foreshore structures that obstruct public access along the foreshore be brought into compliance with current regulations prior to subdivision application on the upland parcel being approved.”

- g) **SUBDIVISION APPLICATIONS, Objective 5.38 Ensure non-sewered lots do not cause harm to the environment,** be deleted in its entirety that reads:

**“Objective 5.38 Ensure non-sewered lots do not cause harm to the environment.**

**Policy .1 Minimum Lot Size for Septic Systems.** Require that any lot created and serviced by an approved septic disposal system shall be a minimum of 1.0 ha (2.5 acres) in size, except where such lot is created with the approval of the appropriate Provincial ministry or agency as a home-site severance or a lot in lieu of a home-site severance.

**Policy .2 Un-Sewered Lots in ESA’s.** Require that subdivisions must meet the Ministry of Health’s criteria for placing septic tank systems within Environmentally Sensitive Areas.”

2. AND THAT **Map 4.1 Generalized Future Land Use** be deleted in its entirety and replaced with a new **Map 4.1 Generalized Future Land Use** as attached to and forming part of this bylaw as Schedule “A”.
3. AND THAT **Map 5.2 Permanent Growth Boundary** be deleted in its entirety and replaced with a new **Map 5.2 Permanent Growth Boundary** as attached to and forming part of this bylaw as Schedule “B”.

4. AND THAT **Map 5.4 City Sector Map** be deleted in its entirety and replaced with a new **Map 5.4 City Sector Map** as attached to and forming part of this bylaw as Schedule "C".
5. AND THAT **Map 5.8 Urban Design DP Area Designation** be deleted in its entirety and replaced with a new **Map 5.8 Urban Design DP Area Designation** as attached to and forming part of this bylaw as Schedule "D".
6. This bylaw may be cited for all purposes as "Bylaw No. 10888, being OCP13-0016 - Miscellaneous Housekeeping Amendments.
7. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

# Schedule "A"

## Legend

-  Permanent Growth Boundary
- Land Use Designations**
-  Commercial (COMM)
-  Education / Institutional (ED/IST)
-  First Nations Reserve (FNR)
-  Future Urban Reserve (FUR)
-  Health District (HLTH)
-  Industrial (IND)
-  Industrial - Limited (IND-L)
-  Industrial - Transition (IND-T)
-  Major Park and Open Space (PARK)
-  Mixed Use (Residential / Commercial) (M/R)
-  Mixed Use Tourism (M/T)
-  Multiple Unit Residential (Cluster Housing) (MRC)  
(Associated uses: care centres, minor public services/utilities, & neighbourhood park)
-  Multiple Unit Residential (Low Density) (MLR)  
(Associated uses: care centres, minor public services/utilities, & neighbourhood park)
-  Multiple Unit Residential (Medium Density) (MRM)  
(Associated uses: care centres, minor public services/utilities, & neighbourhood park)
-  Multiple Unit Residential (High Density) (MRH)  
(Associated uses: care centres, minor public services/utilities, & neighbourhood park)
-  Private Recreational (REC)
-  Public Service Utilities (PSU)
-  Transportation Corridor (RWY)
-  Resource Protection Area (REP)
-  Service Commercial (SC)
-  Single / Two Unit Residential (S2RES)  
(Associated uses: care centres, minor public services/utilities, convenience facility & neighbourhood park)
-  Single / Two Unit Residential - Hillside (S2RESH)  
(Associated uses: care centres, minor public services/utilities, & neighbourhood park)

Future Land Use Boundaries on lots with more than one Land Use Designation are conceptual only and may change based on Development Proposals.

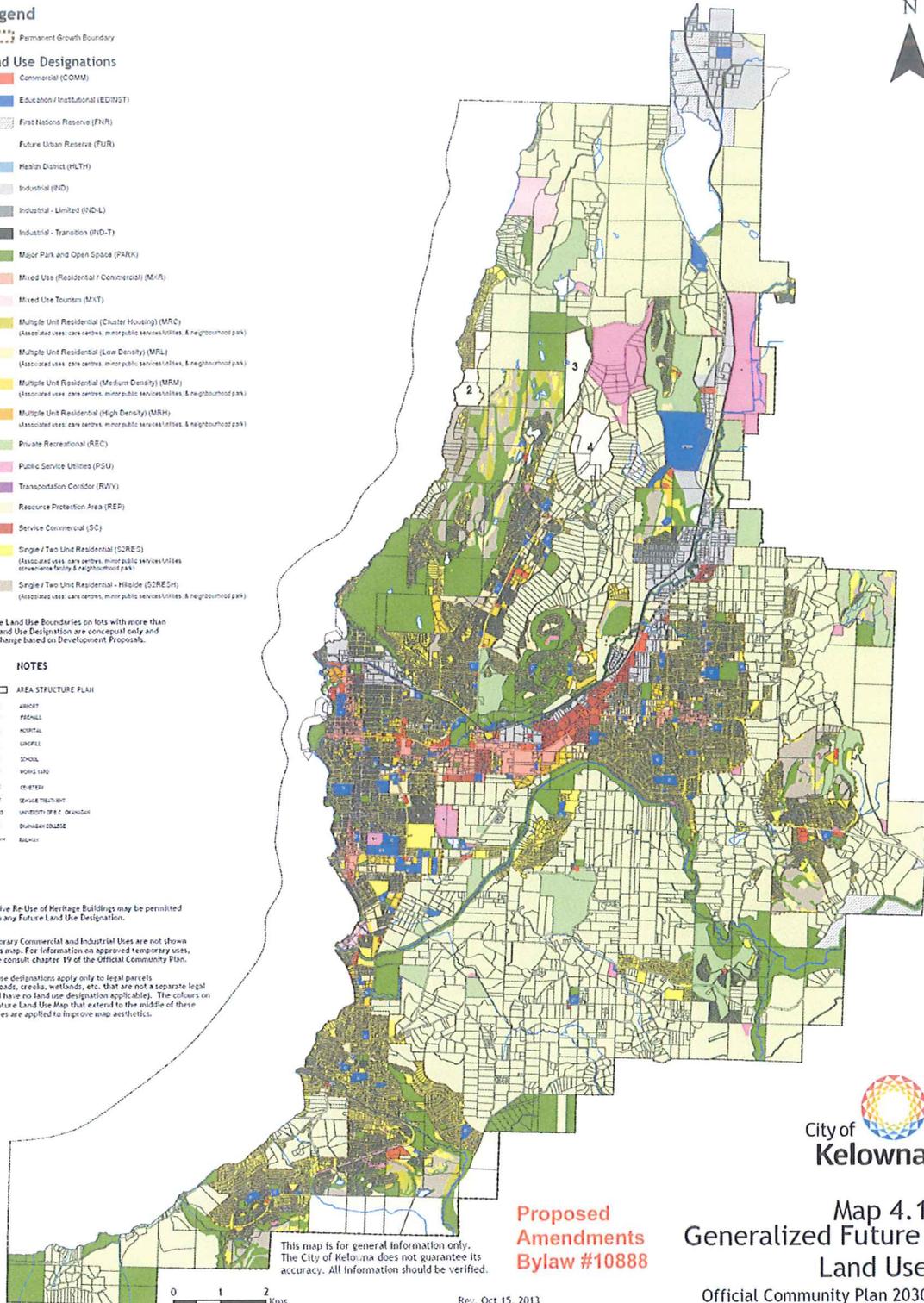
### NOTES

-  AREA STRUCTURE PLAN
- A AIRPORT
- F FRESHWATER
- H HOSPITAL
- L LANDFILL
- S SCHOOL
- W WASTE WATER
- CE CELESTIAL
- ST STEADY FLOW
- SCS SCOUR CONTROL
- CC COUNCIL CHAMBER
- RR RR

Adaptive Re-use of Heritage Buildings may be permitted within any Future Land Use Designation.

Temporary Commercial and Industrial Uses are not shown on this map. For information on approved temporary uses, please consult chapter 19 of the Official Community Plan.

Land use designations apply only to legal parcels (i.e. roads, creeks, wetlands, etc. that are not a separate legal parcel have no land use designation applicable). The colours on the Future Land Use Map that extend to the middle of these features are applied to improve map aesthetics.



This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.

**Proposed Amendments Bylaw #10888**

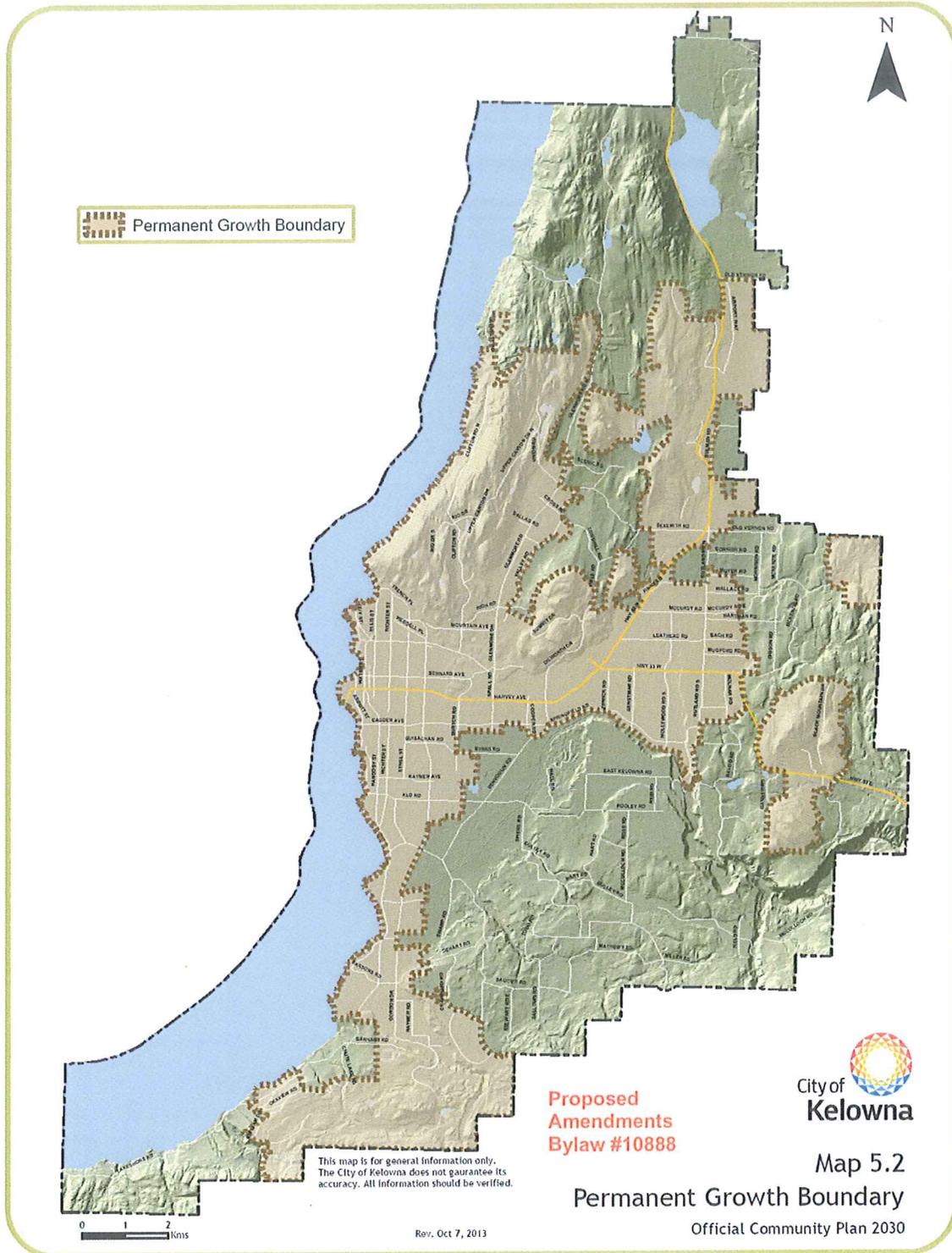


City of Kelowna

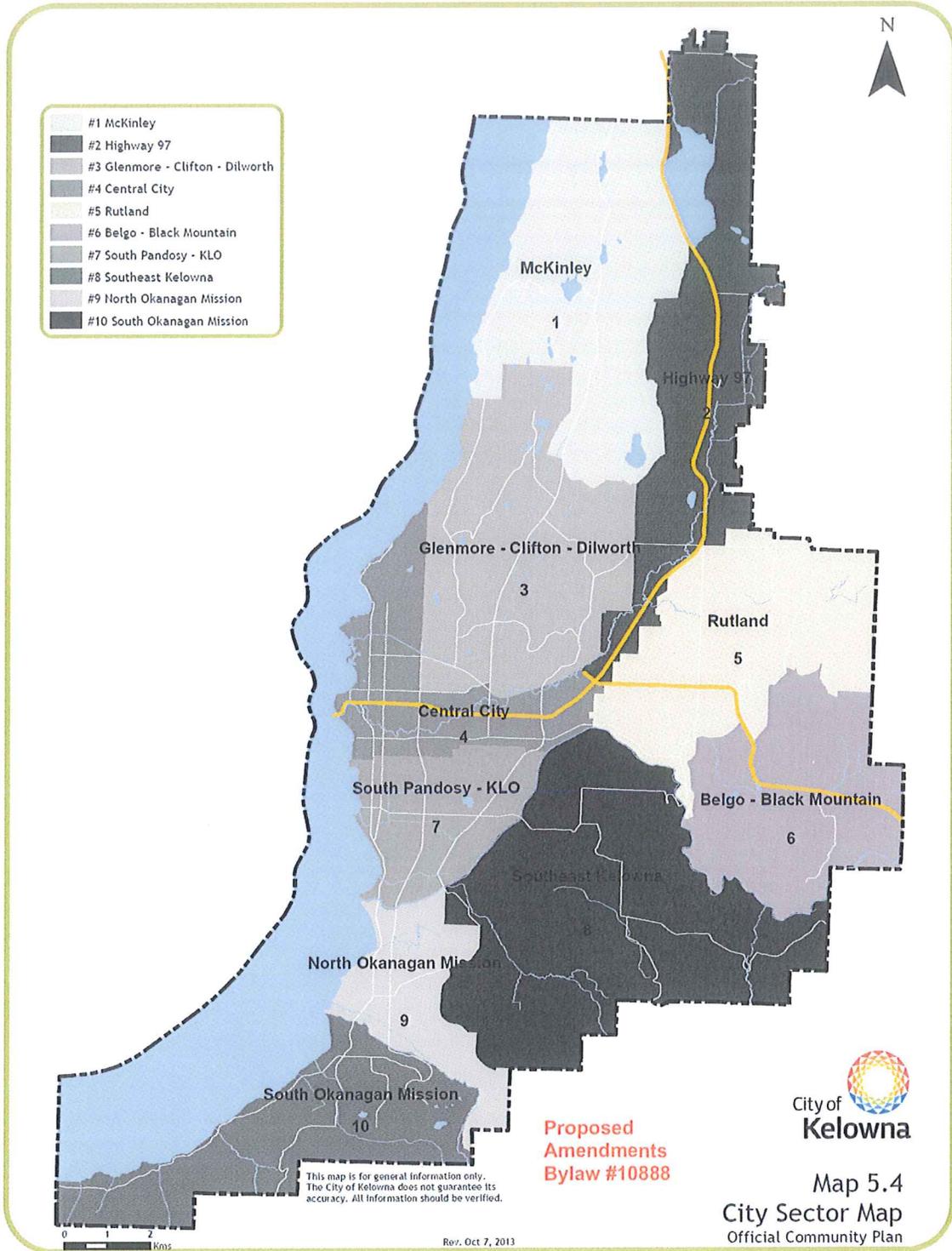
**Map 4.1**  
**Generalized Future Land Use**  
Official Community Plan 2030

Rev. Oct 15, 2013

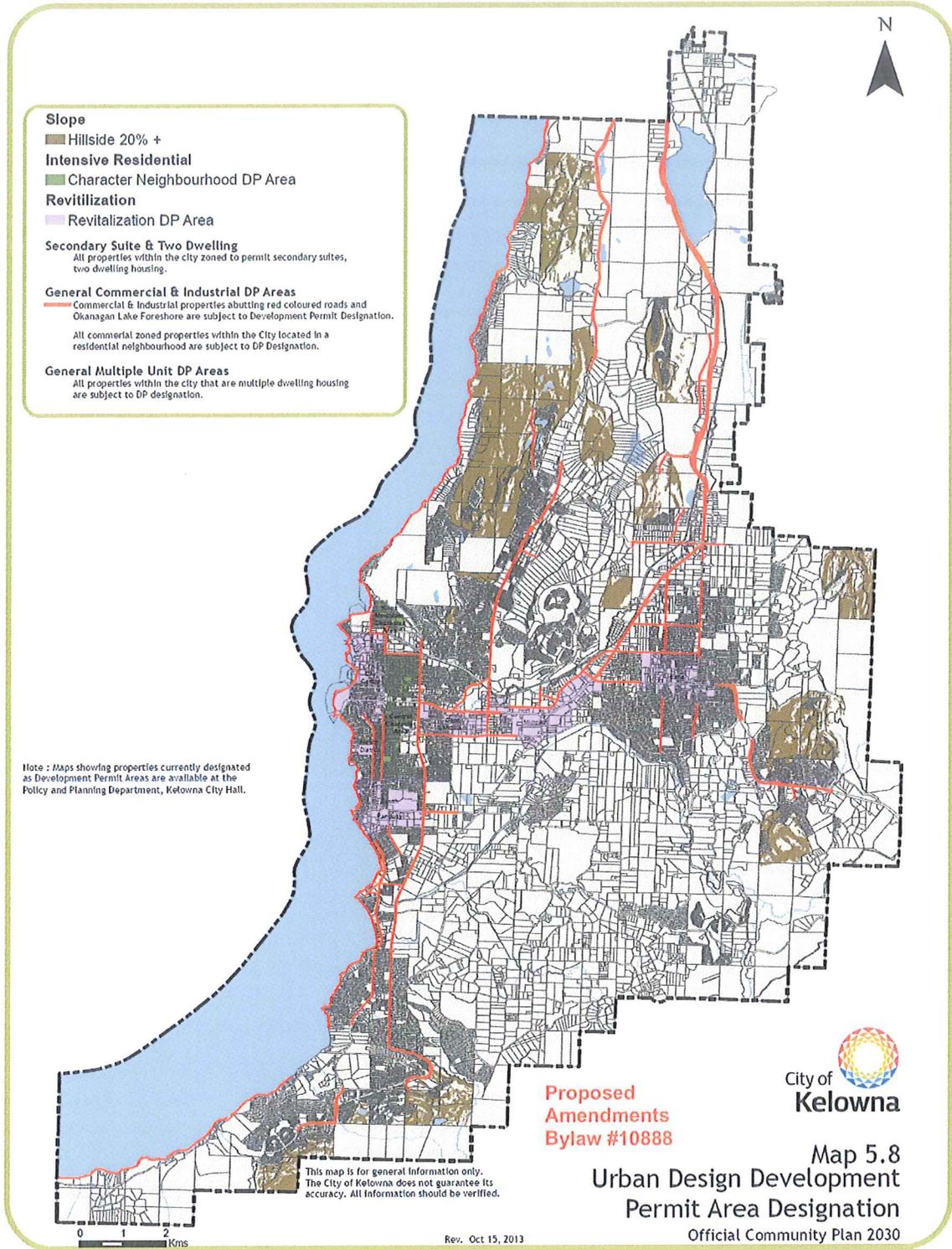
Schedule "B"



Schedule "C"



Schedule "D"



# Report to Council



**Date:** October 21, 2013  
**Rim No.** 1862-01  
**To:** City Manager  
**From:** D. Edstrom, Director, Real Estate  
**Subject:** Council Report - Free Downtown Parking

Report Prepared by: D. Duncan, Operations Coordinator, Parking Management

---

## **Recommendation:**

THAT Council receives for information, the report from the Director of Real Estate dated October 21, 2013, with respect to Free Downtown Parking on Saturdays in December;

AND THAT Council approves free on-street parking in the Downtown area on the following Saturdays in 2013:

December 7,  
December 14,  
December 21, and  
December 28.

## **Purpose:**

To provide free parking in the downtown area on Saturdays for the month of December.

## **Background:**

For the past eighteen (18) years, the City has approved free on-street Saturday parking during December in the Downtown area. This has been done as a Christmas promotion, at the request of the Downtown Kelowna Association. Off street parking in City owned parking lots is already free on Saturdays, with the exception of the Water Street Boat Launch lot.

The Association has requested the City's approval for free parking again this year. A copy of their letter is attached.

## **Communications Comments:**

Press release to notify the public

**Considerations not applicable to this report:**

Internal Circulation:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

External Agency/Public Comments:

Alternate Recommendation:

**Submitted by:** D. Edstrom, Director, Real Estate

**Approved for inclusion:** D. Gilchrist, Divisional Director, Community Planning & Real Estate

**Attachments:**

1. Letter from Peggy Athans, Executive Director, Downtown Kelowna Association

**cc:** C. Stephens, Director, Communications  
G. Wise, Bylaw Services Manager  
K. Kay, Communications Consultant, Bernard Avenue Revitalization Project

# DOWNTOWN KELOWNA

September 13, 2013

Derek Edstrom  
City of Kelowna  
435 Water Street  
Kelowna, BC V1Y 1J4

**Re: Free Saturday Parking in December for Downtown Kelowna Visitors**

Dear Mr. Edstrom,

Please accept this letter as our amended request to offer free Saturday parking for the month of December to our holiday shoppers and visitors.

As part of our holiday marketing and promotions, as we have in years past, we would like to offer free Saturday parking in Downtown Kelowna, on-street and in City owned lots. This is a very important value added initiative for our Downtown retailers, services and restaurants during the busy holiday shopping season.

We would like to request complimentary Downtown parking beginning on Saturday December 7, 2013 and continuing through until December 28, 2013 (four Saturdays in total). We would appreciate Council's support and approval on this important program.

Please do not hesitate to call if you have any questions or concerns. Thank you in advance for your time and attention to this request.

Sincerely,



Peggy Athans EXECUTIVE DIRECTOR

CC: Dave Duncan, Councillor Luke Stack

# Report to Council



**Date:** November 4, 2013

**Rim No.** 1861-02

**To:** City Manager

**From:** Darryl Astofooroff, Public Works Manager

**Subject:** Rio Drive Report to Council

Report Prepared by: Engineering Traffic Technician, Laurens Campbell

---

## **Recommendation:**

THAT Council receives the report from the Public Works Manager dated November 4th, 2013.

AND THAT Council direct staff to install two temporary speed humps on Rio Drive as outlined by the report.

## **Purpose:**

To authorize staff to proceed with the installation of two traffic calming speed humps on Rio Drive, between Clear Pond Place and Clifton Road, which is contrary to Council Policy No. 300 Neighbourhood Traffic Management.

## **Background:**

Rio Drive is located east of Clifton Road and has provided access to the Terrace/Rio/Rodondo neighbourhood since its development in the early 1970's. In 2007, the Clear Pond phase of the Wilden development was constructed. The upper 'Skylands' development in Wilden has proceeded and in 2012, Upper Canyon Drive was connected to Rio Drive.

Initial plans for the Wilden development had Upper Canyon Drive connecting to Clifton Road via Cara Glen Way. Since then, the plan has changed and the primary access for the community, for the foreseeable future, is Rio Drive.

Rio Drive is currently a two lane road with gravel shoulders and no sidewalks. It is classified as a major collector road and has traffic volumes of 1167 vehicles per day. Rio Drive at Terrace Drive has an average car speed of 52.7 km/hr and the average truck speed is 59.9 km/hr. Eight-five percent of traffic drives at or below 69.5 km/hr (85<sup>th</sup> percentile speed). In addition there is a significant crest on Rio Drive between Terrace Road and Rialto Drive, which creates a very limited sightline. This crest is at the bottom of a long section of road with a grade of 10 per cent.

The City has received many service requests for traffic calming on Rio Drive and it ranks as a high priority, however, Council Policy No. 300 - Neighbourhood Traffic Management, discourages the use of traffic calming on arterial and major collector classes of roads. Rio Drive is a major collector class of road.

The City's Development Services Department and the Wilden Development are currently working together to redesign Rio Drive. The redesign will include curbing, sidewalk and sanitary sewer. Construction is expected to take place in 2014; however, a public meeting is planned for November 2013 in order to inform the neighbourhood of the upgrades. The City has asked Wilden to design the road in a manner that would calm traffic passing through the older neighbourhood.

Considering the increase of traffic through the older neighbourhood, limited visibility, the lack of pedestrian facilities and the high speeds, it is felt that temporary traffic calming in the form of two speed humps would reduce traffic speeds to an acceptable level until road upgrades take place.

**Internal Circulation:**

Infrastructure Planning  
Development Services  
Fire Department  
Communications and Information Services

**Legal/Statutory Authority:**

Recommendation is contrary to Council Policy No. 300

**Existing Policy:**

Council Policy 300 - Neighbourhood Traffic Management; consistent with OCP Transportation objectives 7.6 and 7.10.1

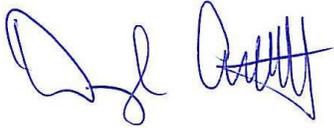
**External Agency/Public Comments:**

Rio Drive residents have already been consulted and there was no opposition to proposed speed humps.

**Considerations not applicable to this report:**

Legal/Statutory Procedural Requirements  
Financial/Budgetary Considerations  
Personnel Implications  
External Agency/Public Comments  
Communications Comments  
Alternate Recommendation

Submitted by:



**Manager of Public Works  
Civic Operations**

Approved for inclusion:



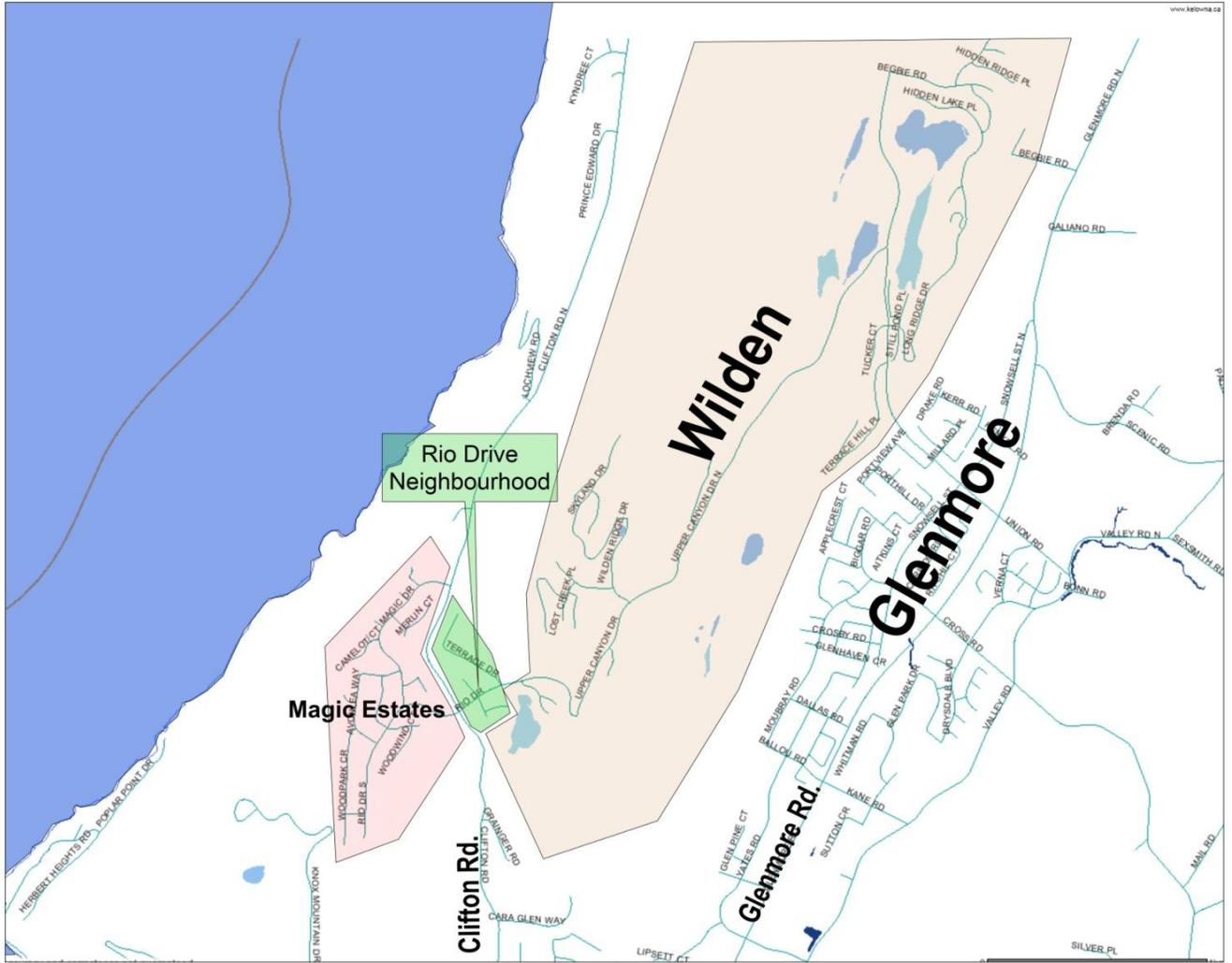
Joe Creron, Divisional Director, Civic Operations

Attachments:

Area Plan

Crest Curve

cc: Infrastructure Planning, Development Services, Fire Department



Key Plan

# Area Plan



# Report to Council



**Date:** November 4, 2013  
**Rim No.** 1920-70  
**To:** City Manager  
**From:** Rob Mayne, Director Corporate and Protective Services  
**Subject:** 2013-11-04 - RCMP 2013 2014 Priorities- General

---

## **Recommendation:**

THAT Council receives the report regarding the 2013/2014 RCMP Priorities from the Director of Corporate and Protective Services dated October 30, 2013.

AND THAT the priorities set for 2013/2014 collectively be Organized Crime, Police and Community Relations, Road Safety and Family Violence.

AND FURTHER THAT Council direct staff to continue to include Council, City Staff and key stakeholders in discussions regarding the setting of future policing priorities.

**Purpose:** The RCMP is responsible for setting priorities with the local community in which it serves. These priorities are to be reported to the Office of the Auditor General (OAC) as part of the RCMPs agreement with them.

## **2013/2014 RCMP Priorities**

### **Background:**

The 2013/2014 priorities set for the RCMP were determined thru consultation with various stakeholder groups, staff and members of Council. The consultation determined four focus areas for the RCMP over the years 2013 and 2014. These priorities assist the Superintendent in deploying resources and managing case files.

Agreement on the priorities is required as part of the agreement with the local government and the Office of the Auditor General. Council's endorsement of the priorities will meet the contractual agreement with the OAC.

### **Internal Circulation:**

Director Communications & Information Services  
RCMP - Supt. Nick Romanchuk  
Police Services Manager

**Considerations not applicable to this report:**

**Legal/Statutory Authority:**

**Legal/Statutory Procedural Requirements:**

**Existing Policy:**

**Financial/Budgetary Considerations:**

**Personnel Implications:**

**External Agency/Public Comments:**

**Communications Comments:**

**Alternate Recommendation:**

Submitted by:

**R. Mayne, Director Corporate and Protective Services**

cc: Director Communications & Information Services  
RCMP - Supt. Nick Romanchuk  
Police Services Manager

# Report to Council



**Date:** November 04/2013  
**Rim No.** 0940-20  
**To:** City Manager  
**From:** Mo Bayat, Development Services Director  
**Subject:** Report to Council - Deck Sprinkler

---

## **Recommendation:**

THAT Council receives for information, the report from Development Services Director, dated November 04/2013, with respect to the condominium fires and balcony sprinklers update for new constructions.

## **Purpose:**

To provide an update on the legislative options and staff's course of action for improving the fire protection requirements of the BC Building Code (BCBC) for balconies in new construction of four storey or less wood frame multifamily residential buildings.

## **Background:**

The recent fires in Kelowna that originated on balconies have raised some concerns with respect to the lack of BCBC requirements for fire protection of exterior spaces, such as balconies or decks. In general, BCBC's fire spread and protection requirements are similar to other provincial Building Codes which are all based on the National Building Code (NBC) model.

The requirements for wood frame multifamily residential buildings up to four storeys are enforceable in accordance with National Fire Protection Association (NFPA) standards of NFPA 13R. Contrary to the requirements of NFPA 13 for five and six storey wood frame residential construction, NFPA 13R excludes the installation of sprinkler protection in unheated or exterior spaces such as balconies, decks, attics and crawl spaces.

In addition, the BCBC allows combustible cladding for wood frame buildings up to four stories. Consequently, a fire initiated at the balcony level moves vertically and spreads along the

exterior combustible siding into the attic where again there is no extinguishing system required.

Prior to the effective date of Community Charter (CC) on January 1, 2004, municipal governments were able to deviate from the technical standards of the BCBC. Therefore, those municipalities with sprinkler Bylaws in place at the time were grandfathered. However, part 9 of CC introduced "Spheres of Concurrent Authority" for five areas in which both the local and the provincial governments share an interest in regulating activities. Building Standards covered by provincial building regulation is one of the areas of concurrent authority and a local government bylaw that alters the technical standards of application of the BCBC must be reviewed and supported by Building Safety Standards Branch for approval by the Minister of Natural Gas Development and the Minister Responsible for Housing.

Overall, the Province has not been in support of Municipal deviation from the technical requirements of the BCBC. City of Kelowna staff experienced this firsthand when the Fire Department's (FD) 2012 draft Bylaw amendment, which included sprinkler requirements for balconies and for all future buildings located outside the FD response time, was denied by the Province.

City Staff have proposed Building Code amendment options with sensitivity to the increased costs of construction, relative to the return on life safety and property protection to Provincial and Federal authorities. In the latest reply, dated October 01, 2013, Ms. Christine Webb, Provincial Manager of Building Policy and Codes Development indicated to staff that the Building Safety Standard Branch has prioritized the City of Kelowna's request. The Building Policy Branch office is working with the national counterpart to adapt a new fire protection standard (NFPA 13R- version 2013) in the NBC. Revisions should occur in the next month and the Branch staff intend on adapting it in BCBC as soon as they receive the package from Ottawa. This change in the 2013 National Fire Protection Association (NFPA) 13R, *Standard for the Installation of Sprinkler Systems in Low-rise Residential Occupancies*, will address the issue of balcony fire protection in new construction by requiring sprinkler(s) on the balconies.

The focus would then shift to addressing the existing wood frame multifamily residential buildings up to four stories. In this case, the proposed options to mitigate the risk of balcony fires are identified in the Fire Chief Council Report Dated November 4, 2013.

Internal Circulation:

Fire Chief, City Clerk

Existing Policy:

City of Kelowna Building Bylaw 1993, No. 7245

External Agency/Public Comments:

Ministry of Natural Gas Development and Ministry of Housing

Buildings and Safety Standards Branch

Legal/Statutory Authority:

British Columbia Building Code (BCBC)

National Fire Protection Association (NFPA) 13R Standards for the Installation of Sprinkler Systems in Low-Rise Residential Occupancies

Considerations not applicable to this report:

Legal/Statutory Procedural Requirements:

Financial/Budgetary Considerations:

Personnel Implications:

Communications Comments:

Alternate Recommendation:

Submitted By:

Mo Bayat, Director Development Services

Approved for inclusion:



Doug Gilchrist,

Division Director Community Planning & Real Estate

# Report to Council



**Date:** November 04, 2013  
**File:** 0610-50  
**To:** City Manager  
**From:** Jeff Carlisle, Fire Chief  
**Subject:** Report to Council - Fire Prevention for Multi-Residential Structure Balconies.v2  
Report Prepared by: Jeff Carlisle

---

## **Recommendation:**

THAT Council receives for information, the Kelowna Fire Department (KFD) approach to reducing multi-family residential building balcony fires on existing structures.

AND THAT, KFD expands the public education focus to include workshops for strata managers, strata councils and building owners with an emphasis on balcony fire safety.

## **Purpose:**

The purpose is to provide Council with an overview and analysis regarding KFD's recommended approach to reduce the occurrence of balcony fires in multi-residential structures.

## **Background:**

Over the past ten years, Kelowna has experienced thirty-seven multi-residential fires with the point of origin being the exterior balcony. Between April 2<sup>nd</sup> and October 3<sup>rd</sup> of this year, KFD responded to five working fires on balconies. While not conclusive, the probable cause in the majority of these fires was related to smoker's materials whereas only three had another probable cause including one caused by a candle, one by an electrical cord and one by a barbecue. On 26 August 2013, Council requested that staff provide recommendations that would improve public safety and the reduction of multi-residential fires that occur on the exterior balconies.

Based upon the fire prevention foundation of engineering, education and as a last option enforcement, the following analysis is provided:

On 22 July 2013, Council received information from the Director of Development Services regarding deviations from the minimum requirements of the British Columbia Building Code (BCBC) that would allow municipalities the authority to evoke mandatory sprinklers in these

types of structures. In 2012, during the development of the KFD Fire and Life Safety Bylaw No. 10760, the BC Building Standards branch denied the request for the City to have the authority to enforce mandatory sprinklers on multi-family residential structures. However, recent changes in the National Fire Protection Association's (NFPA) standard 13R: Standard for the Installation of Sprinkler Systems in Low-rise Residential Occupancies, requires sprinkler protection on balconies in these structures. Both the National and Provincial Building Codes have adopted NFPA 13R and the standard for residential sprinklers. The next step would be the formal adoption of the new NFPA 13R by these statutes. As presented in the Director of Development Services' report on 4 November 2013, a concerted effort has been placed upon the expedient adoption of the revised standard by both the Federal and Provincial governments. This change will significantly reduce the consequence of balcony fires in new construction.

The efforts of the Kelowna Development Services Department in spearheading the expedient adoption of these changes at the provincial and federal level are most noteworthy.

A study conducted by the University of Fraser Valley determined that of all the multi-residential fires reported to the Office of the Fire Commissioner between October 2006 and October 2011, 2,638 fires originated from the outside (balcony, deck or open porch). This represents approximately ten percent of all the multi-residential fires reported. There were no fatalities recorded as having been associated with these outside-origin fires, and there was no difference in the frequency of injury associated with outside fires (in relation to all others). The damage associated with outside fires was 2.4 times greater than the average loss associated with all other multi-residential structure fires.

Currently, there are only four multi-residential buildings in Kelowna that have sprinkler protected balconies. The remaining challenge for KFD is the current inventory of approximately 490 multi-residential buildings that have balconies and are not protected by a sprinkler system. The Community Charter (CC) under section 66 (Fire Chief Powers) and section 63 (Protection of Persons and Properties) delegates authority to the Fire Chief through Council, to take measures to prevent and suppress fires. While the majority of these fires are deemed to be related to smokers' materials, it is possible to enact a City bylaw that prohibits barbecues on balconies in multi-family residential structures. The same could also apply in the case of prohibiting smoking on balconies and restricting storage of combustible materials. While this appears to be a very pragmatic solution that would lead to a reduction of balcony fires, the challenge is obviously adequate enforcement to make this an effective option. In addition, resistance from the public could be substantial given the convenience and enjoyment residents have historically had in use of this space.

It must be noted that smoking, barbecuing and storage on balconies is a legitimate use of this area. A better approach for Kelowna's existing inventory of multi-residential structures, compared to enforcement, would be through public education programs that influences safer practices within multi-residential structures.

In August of 2013 (after the Legacy 2 fire), KFD's public education program coordinator held an information/education workshop to discuss recent balcony fires. The intent of this meeting was to provide information regarding the safe disposal of smokers' materials, limiting the type and amount of storage on balconies, barbecuing safety and alternatives such as centralized smoking and barbecuing areas outside. The meeting was attended by three condominium management companies representing thirty-one strata properties with a total of

sixty-seven people in attendance. This educational workshop was successful and more meetings like this will continue and will include information regarding the Strata or Condominium Associations' ability to restrict barbecues, smoking or combustible storage by Association Bylaws in accordance with the Strata Property Act.

**Internal Circulation:** Deputy City Manager

**Considerations not applicable to this report:**

- Legal/Statutory Authority:** N/A
- Legal/Statutory Procedural Requirements:** N/A
- Existing Policy:** N/A
- Financial/Budgetary Considerations:** N/A
- Personnel Implications:** N/A
- External Agency/Public Comments:** N/A
- Communications Comments:** N/A
- Alternate Recommendation:** N/A

Submitted by:

---

J. Carlisle, CFO, MA, CD  
Fire Chief, Kelowna Fire Department

**Approved for inclusion:**  P. Macklem, Deputy City Manager

# Report to Council



**Date:** November 4, 2013  
**Rim No.** 0710-70  
**To:** City Manager  
**From:** Andrew Hunsberger, Urban Forest Health Technician  
**Subject:** 2013-11-04 Report - Wildfire Fuel Mitigation Program1

---

## **Recommendation:**

THAT Council receives for information the November 4th, 2013 report of the Urban Forest Health Technician regarding the status of the Wildfire Fuel Mitigation Program.

## **Purpose:**

To provide an update on the efforts completed by staff to reduce the wildfire hazard on City owned property and efforts made to provide assistance to landowners to reduce the wildfire risk on private property.

## **Background:**

In 1998, the City established its Wildfire Fuel Mitigation Program that recognizes the potential challenges and risks related to population growth, changing land use patterns and liability. The City committed to becoming a "FireSmart" community, leading by example towards ensuring the safety of its citizens, buildings and infrastructure. This vision will be accomplished strategically over time, recognizing both the need to support sustainable development while protecting the natural values that help to define the City.

Through this program, priority treatment areas were identified with the assistance of the Community Wildfire Protection Plan. These priority areas have been treated and will require ongoing maintenance overtime. As development continues into the Wildland Urban Interface, our development permitting process is ensuring developers deal with the wildfire hazard in the subject areas.

In 2013, the program completed several projects with the funding support from the City, Union of British Columbia Municipalities (UBCM) and Human Resources and Skills Development Canada.

## **2013 Project Summary**

### ***UBCM Funded Projects***

The UBCM projects involve the development of fuel management prescriptions followed by fuel mitigation operations on government properties with the use of provincial and municipal funds. This funding allowed staff and contactors to treat a large property in north Glenmore and work towards establishing a wildfire fuel break in South East Kelowna, which is scheduled to be complete this winter. A summary of the 2013 projects include the following:

- a) Prescriptions (*75 per cent funded by UBCM\**)
  - i. Bredin Farms - 40 hectares (approx - \$10,000 and completed by Staff);
  - ii. Gallagher's Canyon Crown land - 10.5 hectares (approx -\$5,000 and completed by consultant); and
  - iii. Gallagher's Canyon SEKID - 8.5 hectares (approx - \$5,000 completed by consultant).
  
- b) Operations (*90 per cent funded by UBCM\**)
  - i. Bredin Farms - Total project cost = \$167,000 (Completed by staff and contractor);
  - ii. Gallagher's Canyon Crown land (waiting for funding approval); and
  - iii. Gallagher's Canyon SEKID (waiting for funding approval).

\*The remaining funding for these projects were provided in the form of in-kind contributions which includes; public consultation, professional services, administrative duties and operational assistance.

### ***Okanagan Training and Development Council (OTDC) - Return to Work through Fuel Management Program***

The sub-program consisted of two 18 person seasonal crews (16 crewmembers and two supervisors) working from April 1 through September 30 on over 50 project sites. Over the course of the 2013 season, the crews have thinned out high wildfire hazard areas, removed hazard trees, disposed of trees affected by forest health agents (pine beetle, tussock moth, budworm, pitch moth etc.) and planted 5400 seedlings in our naturalized park areas. This is the second year of a three year commitment. Human Resources and Skills Development Canada is providing the majority of the project funding which, over the three year commitment, is \$1,280,000; however, the City contributes \$50,000 in-cash and \$127,000 of in-kind contributions.

***Private Land consultation***

In 2013, staff sent letters and completed site visits to large private land holders who were identified in the CWPP as having a moderate to extreme wildfire hazard. These letters are sent to encourage land holders to reduce the hazard through established fuel mitigation efforts. Parcels with forest health issues were specifically targeted in 2013 due to the increased wildfire hazard once the trees die, dry out and begin to contribute to an increased wildfire hazard. Staff has also been offering assistance to connect the affected landowners with local professionals and contractors that may be able to aid them in their wildfire mitigation efforts.

**Internal Circulation:**  
Communications

**Considerations not applicable to this report:**

- Legal/Statutory Authority:
- Legal/Statutory Procedural Requirements:
- Existing Policy:
- Financial/Budgetary Considerations:
- Personnel Implications:
- External Agency/Public Comments:
- Communications Comments:
- Alternate Recommendation:

Submitted by:



A.Hunsberger, Urban Forest Health Technician

Approved for inclusion:



Joe Creron, Director, Civic Operations

cc: Ian Wilson, Park Services Manager  
Lance Kayfish, Risk Manager  
Fire Department

# Report to Council



**Date:** October 30, 2013  
**Rim No.** 1140-51  
**To:** City Manager  
**From:** Ron Forbes, Manager, Property Management  
**Subject:** Council Report Rutland Skate Shop Lease - Nov 4  
Report Prepared by: T. Abrahamson, Property Officer

---

## **Recommendation:**

THAT Council approves the City entering into a two (2) year Lease Agreement, with Ms. Una Mak, for the Rutland Arena Skate Shop, with three (3) further one (1) year renewals, in the form attached to the report of the Manager, Property Management, dated October 30, 2013;

AND THAT the Mayor and City Clerk be authorized to execute the Lease document.

## **Purpose:**

That Council approve the Lease Agreement for the Rutland Arena Skate Shop.

## **Background:**

In October 2013, the Property Management branch of Community Planning & Real Estate issued a Request for Proposals for the Rutland Arena Skate Shop. The leasing opportunity was advertised in local newspapers and on the City's website. An optional information meeting was held with a closing date for sealed bids of 3:00pm, October 17, 2013.

The proposed Lessee, Ms. Una Mak, is the current operator of the Rutland Arena Skate Shop and was the sole bidder coming forward with a new proposal. Based on the successful operation of the skate shop by the current Lessee, staff is recommending a new lease to Ms. Mak for a term of two (2) years with three (3), one (1) year renewal terms at the City's sole discretion.

## **Legal/Statutory Authority:**

Community Charter, Sec. 26 - Disposal of Municipal Property

## **Legal/Statutory Procedural Requirements:**

Community Charter, Sec. 94 - Notice Requirements

## **Financial/Budgetary Considerations:**

\$1,000.00 per year

**Considerations not applicable to this report:**

Internal Circulation  
Existing Policy  
Personnel Implications  
External Agency/Public Comments  
Communications Comments  
Alternate Recommendation

In light of the above, the Property Management branch of the Community Planning & Real Estate department request Council's support of this Lease.

**Submitted by:** Ron Forbes, Manager, Property Management

**Approved for inclusion:** D. Edstrom, Director, Real Estate & Property Services

cc: Director, Financial Services

**Attachments:**

1. Lease

DOCUMENT APPROVAL			
<b>Facility Lease</b>			
Cir.	Dept.	Date	Int.
	RE&BS		
	Risk Mgmt		

BETWEEN:

**CITY OF KELOWNA**, a municipal corporation having  
 Offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "Landlord")

OF THE FIRST PART

AND:

**UNA MAK**  
 1800 Gallagher Road  
 Kelowna, B.C. V1P 1G7

(the "Tenant")

OF THE SECOND PART

## TABLE OF CONTENTS

1. Basic Terms, Schedules and Definitions
2. Premises
3. Term
4. Rent
5. Tenant's Covenants
6. Landlord's Covenants
7. Repair, Damage and Destruction
8. Taxes and Other Costs
9. Utilities and Additional Services
10. Licenses, Assignments and Subletting
11. Fixtures and Improvements
12. Insurance and Liability
13. Environmental Matters
14. Subordination, Attornment, Registration, and Certificates
15. Occurrence of Default
16. Tenant's Default, Remedies of Landlord and Surrender
17. Miscellaneous

THIS LEASE, dated the 1st day of November 2013, is made and entered into by the Landlord and the Tenant named herein who, in consideration of the covenants herein contained, agree as follows:

## 1. BASIC TERMS, SCHEDULES, AND DEFINITIONS

### Basic Terms:

- |     |                                     |  |
|-----|-------------------------------------|--|
| (a) | Landlord:<br>Address of Landlord:   | CITY OF KELOWNA<br>City Hall, 1435 Water Street<br>Kelowna, B.C. V1Y 1J4<br>Fax: 250-862-3349<br>Email: rforbes@kelowna.ca   |
| (b) | Tenant:<br>Address of Tenant:       | Una Mak, dba Rutland Skate Shop<br>1800 Gallagher Road, Kelowna, BC V1P 1G7  |
| (c) | Premises:                           | That portion of the Rutland Arena identified as the skate shop on Schedule A attached, and located at 645 Dodd Road, Kelowna, BC   |
| (d) | License Area:                       | NA   |
| (e) | Initial Term:<br>Commencement Date: | Two (2) years<br>November 1, 2013  |
| (f) | Renewal Term (if any):              | Three (3), one (1) year terms  |
| (g) | Annual Base Rent + Tax:             | \$1,000.00/annum plus GST<br>Nov. 1/13 - \$500.00 + GST<br>Mar. 1/14 - \$500.00 + GST<br>Nov. 1/14 - \$500.00 + GST<br>Mar. 1/15 - \$500.00 + GST                                |
| (h) | Property Taxes:                     | Payable by Tenant if assessed  |
| (i) | Utilities:                          | Utility costs included in Annual Base Rent   |
| (j) | Permitted Use:                      | Skate Rental Shop and Pro-Shop (skate sharpening and miscellaneous skating or hockey items for sale) or such activity as may be properly authorized, in writing, by the Landlord |

The foregoing Basic Terms are approved by the parties. Each reference in this Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully set forth.

### 1.2 Schedules

All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:

SCHEDULE	SUBJECT
A	Site Plan of Premises
B	Definitions
C	Landlord & Tenant Responsibility Checklist
D	Certificate of Insurance

### 1.3 Definitions

In this Lease, the words, phrases and expressions set forth in Schedule B are used with the meanings defined therein.

## 2. PREMISES

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed, and performed, the Landlord hereby demises and leases to the Tenant, and the Tenant leases from the Landlord, the Premises.

## 3. TERM

### 3.1 Term

The Term of this Lease, and the related License, shall be for the initial term of two (2) years, beginning on the Commencement Date, and subject to earlier termination or renewal on the terms and conditions as set out herein.

### 3.2 Option to Renew

The Landlord covenants with the Tenant that if:

- (a) the Tenant gives notice to the Landlord that the Tenant wishes to obtain renewal of this Lease, such notice to be given not later than 12 months prior to the expiration of the initial Term of two (2) years; and
- (b) at the time of giving such notice, the Tenant is not in breach of any covenant or condition herein contained and which has not been remedied within the time provided for in this Lease; and
- (c) the Tenant has duly and regularly throughout the initial Term of two (2) years observed and performed the covenants and conditions herein contained

then the Landlord shall grant to the Tenant at the Tenant's expense a renewal lease of the Premises for three (2) Renewal Term(s) of one (1) year each upon the same terms and conditions, excluding Annual Base Rent and Additional Rent as are herein contained.

The lease may be renewed three (3) times for a total lease term of five (5) years including the original term.

## 4. RENT

### 4.1 Rent

The Tenant shall yield and pay to the Landlord, in the manner outlined in clause 4.2, at the office of the Landlord's accounts payable division, or at such other place as the Landlord may direct in writing, during the Term in lawful money of Canada without any set-off, abatement,

compensation, or deduction whatsoever on the days and at the times hereinafter specified, Rent which shall include the aggregate of the sums specified in sub-clauses (a) and (b) below:

(a) Annual Base Rent

Annual Base Rent in the amount per annum set out in sub-clause 1.1(g) for each respective Lease Year.

(b) Additional Rent

In addition, but subject to any operating costs the Landlord expressly agrees to pay for its own account, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the including all applicable real estate taxes and other charges.

#### 4.2 Payment of Rent

The Rent provided for in this Article shall be paid by the Tenant as follows:

(a) Annual Base Rent

The Annual Base Rent shall be paid in equal consecutive monthly instalments, in the amounts set out in sub-clause 1.1(g), in advance on the first day of each and every month during the Term. The first monthly instalment of the Annual Base Rent shall be paid by the Tenant on the Commencement Date. Where the Commencement Date is the first day of a month such instalment shall be in respect of such month; where the Commencement Date is not the first day of a calendar month, the Annual Base Rent for the period from the Commencement Date to the first day of the next ensuing calendar month shall be pro-rated on a per diem basis and paid on the Commencement Date and the first regular instalment of the Annual Base Rent shall be paid on the first day of the first full calendar month of the Term. Thereafter, subsequent monthly instalments shall each be paid in advance on the first day of each ensuing calendar month during the Term.

(b) Additional Rent Payments

In addition, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises including all applicable real estate taxes and other charges.

(c) Payment Format

The Tenant agrees to pay the Annual Base rent via Bank Transfer on a monthly basis.

#### 4.3 Rent for Irregular Periods

All Rent reserved herein shall be deemed to accrue from day-to-day, and if for any reason it shall become necessary to calculate the Annual Base Rent for irregular periods of less than one year an appropriate pro-rata adjustment shall be made on a daily basis in order to compute the Annual Base Rent for such irregular period.

#### 4.4 Waiver of Offset

The Tenant hereby waives and renounces any and all existing and future claims, offsets, and compensation against any Rent and agrees to pay such Rent regardless of any claim, offset, or compensation which may be asserted by the Tenant or on its behalf.

#### 4.5 Application of Payments

All payments by the Tenant to the Landlord under this Lease shall be applied toward such amounts then outstanding hereunder as the Landlord determines and the Landlord may subsequently alter the application of any such payment.

#### 4.6 Net Lease

The Tenant Acknowledges and agrees that it is intended that this Lease shall be a completely net lease for the Landlord except as shall be otherwise provided in the specific provisions contained in this Lease, and that the Landlord shall not be responsible during the Term for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the specific provisions contained in this Lease, shall pay all charges, impositions, and costs of every nature and kind relating to the Premises whether or not referred to herein and whether or not within the contemplation of the Landlord or the Tenant, and the Tenant covenants with the Landlord accordingly.

#### 4.7 Interest on Overdue Rent

Overdue Rent payments shall be interest at the current Bank of Canada lending rate effective from the date the amount is due.

### 5. TENANT'S COVENANTS

#### 5.1 Tenant's Covenants

The Tenant covenants with the Landlord as follows:

(a) Rent

To pay the Rent on the days and in the manner provided herein and to pay all other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord or to others under this Lease.

(b) Occupancy and Permitted Use

To take possession of and occupy the Premises and commence to carry on business in all or substantially all of the Premises no later than 30 days after the Commencement Date, to use the Premises only for the purpose set out in clause 1(j) herein and not for any other purpose.

(c) Waste and Nuisance

Not to commit or permit: any waste or injury to the Premises including the Leasehold Improvements and the trade fixtures therein; any overloading of the floors thereof; any conduct which impedes or, in the opinion of the Landlord acting reasonably, could constitute a nuisance to the Landlord or anyone else; any other use or manner of use which, in the opinion of the Landlord acting reasonably, may have an adverse impact on the reputation of the Premises.

(d) Insurance Risks

Not to do, omit to do, or permit to be done or omitted to be done upon the Premises anything which would cause the Landlord's cost of insurance to be increased (and, without waiving the foregoing prohibition, the Landlord may demand, and the Tenant shall pay to the Landlord upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of insurance to be subject to cancellation.

(e) Cleanliness

Not to permit the Premises to become untidy, unsightly, or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein, and at the end of each business day to leave the Premises in a clean and neat condition, to the satisfaction of the Landlord.

(f) Compliance with Laws

To comply at its own expense with all municipal, provincial, and federal laws, bylaws, regulations, and requirements pertaining to the operation and use of the Premises the condition of the Leasehold Improvements, trade fixtures and equipment installed therein, and the making by the Tenant of any repairs, changes or improvements therein.

(g) Installations

To permit the Landlord during the Term, at the Tenant's cost, to install any equipment in or make alterations to the Premises necessary to comply with the requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in sub-clause 5.1(f) and imposed after completion of the Landlord's original construction of the Premises.

(h) Overholding

That if the Tenant shall continue to occupy the Premises after the expiration of this Lease without any further written agreement and without objection by the Landlord, the Tenant shall be a monthly tenant at a monthly base rent equal to 125% of the Annual Base Rent payable by the Tenant as set forth in Article 4 during the last month of the Term. The monthly tenancy shall be (except as to the length of tenancy) subject to the provisions and conditions herein set out.

(i) Signs

Not to display, place, or affix any sign except in accordance with the regulations of the Landlord.

(j) Inspection and Access

To permit the Landlord at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Premises for the purpose of inspection or making repairs, alterations, or improvements to the Premises as the Landlord may deem necessary or desirable, or as the Landlord may be required to make by law. The Landlord shall be allowed to take into the Premises all material which may be required for such purpose and the rent

reserved shall in no way abate while such repairs, alterations or improvements are being made by reason of interruption of the business of the Tenant. The Landlord shall exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operation.

(k) Showing Premises

To permit the Landlord and its authorized agents and employees to show the Premises to prospective tenants during the normal business hours of the last three months of the Term.

(l) Conduct of Business

Recognizing that it is in the best interests of the Landlord and the Tenant that the Tenant should have use of the Premises only for the purpose described in 1.1(j), the Tenant agrees with the Landlord as follows:

- i. To operate a skate rental and sharpening service that will appropriately service public skating and regular or special events at the Rutland Arena (including private rentals such as school rentals);
- ii. The Tenant shall be on site and open for business including skate rental at least 20 minutes before any public skating event or rental group is scheduled to be allowed on the ice;
- iii. The Tenant shall maintain all equipment to such standards as will as ensure safety for skaters;
- iv. To use only professionally fabricated signs on the Premises, which have been approved by the landlord, as to quality, content and location;
- v. The Tenant will clean and maintain the area surrounding the concession to the satisfaction of the Landlord and at the end of each business day leave the Premises in a clean and neat condition;
- vi. Not to erect any structure on the Premises except those approved by the Landlord;
- vii. Regular operating hours must be posted on the skate shop door;
- viii. The Tenant will be responsible for the cost and maintenance of all leasehold improvements and fixtures;
- ix. No food may be sold on the Premises; and
- x. The Tenant is responsible for obtaining all Licenses and Permits required to operate the skate rental concession, and comply with all regulations related to fire, traffic and safety.

**6. LANDLORD'S COVENANTS**

6.1 Landlord's Covenants

The Landlord covenants with the Tenant as follows:

(a) Quiet Enjoyment

Provided the Tenant pays the Rent hereby reserved and performs its other covenants herein contained, the Tenant shall and may peaceably possess and enjoy the Premises for the Term hereby granted, without any interruption or disturbance from the Landlord or its assigns, or any other person or persons lawfully, claiming by, from, through, or under the Landlord.

## 7. REPAIR, DAMAGE, AND DESTRUCTION

### 7.1 Landlord's Repairs

The Landlord covenants with the Tenant that the major building components will be maintained in a good and reasonable state of repair, consistent with the general standards of structures of similar age and character in Kelowna. This includes the main structure, roof and mechanical systems.

### 7.2 Tenant's Repairs

The Tenant covenants with the Landlord:

- (a) subject to sub-clause 7.1 and 7.3(b) to keep in a good and reasonable state of repair subject to reasonable wear and tear, the Premises including all Leasehold Improvements and all trade fixtures therein and all glass including all glass portions of exterior walls;
- (b) that the Landlord may enter and view the state of repair (without having any obligation to do so), and that the Tenant will repair according to notice in writing, and that the Tenant will leave the Premises in a good and reasonable state of repair, allowing for reasonable wear and tear.

### 7.3 Abatement and Termination

It is agreed between the Landlord and the Tenant that in the event of damage to the Premises:

- (a) if the damage is such that the Premises or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of 10 days, then:
  - (i) unless the damage was caused by the fault of negligence of the Tenant or its employees, invitees, or others under its control and the damage is not covered by insurance, from and after the date of occurrence of the damage and until the Premises are again reasonably capable of use and occupancy as aforesaid, Rent shall abate from time to time in proportion to the part or parts of the Premises not reasonably capable of use and occupancy; and
  - (ii) unless this Lease is terminated as hereinafter provided, the Landlord or the Tenant, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with all reasonable diligence, but to the extent that any part of the Premises is not reasonably capable of such use and occupancy by reason of damage which the Tenant is obligated to repair hereunder, any abatement of Rent to which the Tenant is

otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Landlord, repairs by the Tenant ought to have been completed with reasonable diligence; and

- (b) if the Premises are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Landlord they cannot be repaired or rebuilt (based on standard hours of construction work) within 240 days after the occurrence of the damage or destruction, then either the Landlord or Tenant may at its option, exercisable by written notice to the Tenant or Landlord, given within 60 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Landlord nor the Tenant shall be bound to repair as provided in clauses 7.1 and 7.2, and the Tenant shall instead deliver up possession of the Premises to the Landlord with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Tenant may be entitled under sub-clause 7.3(a) by reason of the Premises having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Landlord or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence.

#### 7.4 Service Interruptions

The Tenant acknowledges to the Landlord that the operation of systems and the availability of facilities for which the Landlord is responsible under clause 7.1 may be interrupted from time to time in cases of accident and emergency, in order to carry out maintenance, repairs, alterations, replacements, and upgrading, or for any other reasonable reason required by the Landlord.

### 8. TAXES AND OTHER COSTS

#### 8.1 Tenant Tax Obligation

The Tenant covenants with the Landlord:

- (a) to pay when due, all Property Taxes, business Taxes, business license fees, and other Taxes, rates, duties or charges levied, imposed, or assessed by lawful authority in respect of the use and occupancy of the Leased Premises by the Landlord, the business or businesses carried on therein, or the equipment, machinery, or fixtures brought therein by or belonging to the Tenant, or to anyone occupying the Leased Premises with the Tenant's consent, or from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, and to pay the Landlord upon demand the portion of any tax, rate, duty, or charge levied or assessed upon the Premises that is attributable to any equipment, machinery, or fixtures on the Premises which are not the property of the Landlord or which may be removed by the Tenant;
- (b) to pay promptly to the Landlord when demanded or otherwise due hereunder all Taxes in respect of all Leasehold Improvements in the Premises; and

## 8.2 Goods and Services Tax

In accordance with the applicable legislation the Goods and Services Tax applies to this Lease.

## 9. UTILITIES AND ADDITIONAL SERVICES

### 9.1 Utilities

Utilities costs are included in the Annual Base Rent payable pursuant to clause 4.1.

## 10. LICENSES, ASSIGNMENTS, AND SUBLETTING

### 10.1 General

It is understood and agreed that the Tenant may not assign this Lease, or sublease the Premises to another party without the written consent of the Landlord, such consent not to be unreasonably withheld. Unless the Landlord has consented to such sub-tenancy, assignment or transfer in accordance with this Article 10, the acceptance of any Rent or the performance of any obligation hereunder by any person other than the Tenant shall not be construed as an admission by the Landlord of any right, title, or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of the Tenant.

### 10.2 Licenses, Franchises, and Concessions

The Tenant shall not suffer or permit any part of the Premises to be used or occupied by any persons other than the Tenant, any sub-tenants or licensees permitted under this Article, and the employees and invitees of the Tenant, and any such permitted sub-tenant, or suffer or permit any part of the Premises to be used or occupied by any licensee, franchisee, or concessionaire, or suffer or permit any persons to be upon the Premises other than the Tenant, such permitted sub-tenants and licensees, and their respective employees, customers, and others having lawful business with them.

### 10.3 Assignment and Subletting

The Tenant shall not, without first obtaining the written consent of the Landlord, assign this Lease or sublet the whole or any part of the Premises unless:

- (a) it shall have received or procured a bona fide written offer to take an assignment or sub-lease which is not inconsistent with, and the acceptance of which would not breach any provision of, this Lease if this clause is complied with, and which the Tenant has determined to accept subject to this section being complied with; and
- (b) it shall have first requested and obtained the consent in writing of the Landlord thereto.

### 10.4 Request for Consent

Any request for such consent shall be in writing and accompanied by a true copy of such offer, and the Tenant shall furnish to the Landlord all information available to the Tenant and requested by the Landlord as to the responsibility, reputation, financial standing, and business of the proposed assignee or sub-tenant. Within 30 days after the receipt by the Landlord of

such request for consent and of all information which the Landlord shall have requested hereunder (and if no such information has been requested, within 30 days after receipt of such request for consent) the Landlord shall have the right upon written notice to the Tenant to:

- (a) in the case of a proposed sub-lease, either sublet from the Tenant any portion of the Premises proposed to be sublet for the Term for which such portion is proposed to be sublet but at the same Annual Base Rent and Additional Rent as the Tenant is required to pay to the Landlord under this Lease for such portion or, if the proposed sub-lease is for all or substantially all of the remainder of the Term, terminate this Lease as it pertains to the portion of the Premises so proposed by the Tenant to be sublet; or
- (b) in the case of a proposed assignment, terminate this Lease.

#### 10.5 If Landlord Terminates

If the Landlord terminates this Lease in accordance with clause 16.4 with respect to all or a portion of the Premises such termination shall be effective on the date stipulated in the notice of termination which shall not be less than 60 days or more than 90 days following the giving of such notice, and the Tenant shall surrender the whole or part, as the case may be, of the Premises in accordance with such notice, and Rent shall be apportioned and paid to the date of surrender and, if a part only of the Premises is surrendered, Rent payable under clause 4.1 shall thereafter abate proportionately.

#### 10.6 If Landlord Consents

If the Landlord consents to any proposed assignment or subletting, the Tenant shall assign or sublet, as the case may be, only upon the terms set out in the offer submitted to the Landlord as aforesaid and not otherwise. As a condition of the Landlord's consent, the assignee or sub-tenant, as the case may be, shall agree (and will be deemed to have agreed) with the Landlord to observe the obligations of the Tenant under this Lease as the same relate to the space assigned or sublet (except, in the case of a sub-lease, the Tenant's covenant to pay Rent) by entering into an assumption agreement with the Landlord and the Tenant, in the Landlord's then-standard form, and shall pay the Landlord's then-current processing charge and solicitor's fees and disbursements for preparing such agreement. The Tenant further agrees that if the Landlord consents to any such assignment or subletting, the Tenant shall be responsible for improvements and all other expenses, costs, and charges with respect to or arising out of any such assignment or subletting. Notwithstanding any such consent being given by the Landlord and such assignment or subletting being effected, the Tenant shall remain bound to the Landlord for the fulfilment of all the terms, covenants, conditions, and agreements herein contained. Any consent by the Landlord to any assignment or subletting shall not constitute a waiver of the requirement for consent by the Landlord to any subsequent assignment or subletting by either the Tenant or any assignee or sub-tenant.

#### 10.7 Landlord Not to Unreasonably Withhold Consent

If the Tenant complies with clauses 10.3 and 10.4 and the Landlord does not exercise an option provided to the Landlord under clause 10.4, then the Landlord's consent to a proposed assignment or sublet shall not be unreasonably withheld. The Tenant acknowledges that the Landlord shall not be liable to the Tenant in damages, where, in giving good faith consideration to any request of the Tenant hereunder, it withholds its consent to a proposed assignment or sublease.

## 10.8 Terms of Consent

If the Landlord consents in writing to an assignment or sub-lease as contemplated herein, the Tenant may complete such assignment or sub-lease subject to the following covenants and conditions:

- (a) no assignment or sub-lease shall be valid and no assignee or sub-tenant shall take possession of the Premises or any part thereof until an executed duplicate original of such assignment or sub-lease has been delivered to the Landlord; and
- (b) all "Excess Rent", as hereinafter defined, derived from such assignment or sub-lease shall be payable to the Landlord. The Excess Rent shall be deemed to be and shall be paid by the Tenant to the Landlord as Rent. The Tenant shall pay the Excess Rent to the Landlord immediately as and when such Excess Rent is receivable by the Tenant.

As used herein, "Excess Rent" means the amount by which the total money and other economic consideration to be paid by the assignee or sub-tenant as a result of an assignment or sub-lease, whether denominated as Rent or otherwise, exceeds, in the aggregate, the total amount of Annual Base Rent and Additional Rent which the Tenant is obligated to pay to the Landlord under this Lease, pro-rated for the portion of the Premises being assigned or sublet, less the reasonable costs paid by the Tenant for additional improvements installed in the portion of the Premises subject to such assignment or sub-lease by the Tenant at the Tenant's sole cost and expense for the specific assignee or sub-tenant in question, reasonable leasing costs (such as brokers' commissions and the fees payable to the Landlord under clause 10.1) paid by the Tenant in connection with such assignment or sub-lease, and the amount of Annual Base Rent and Additional Rent the Tenant is obligated to pay the Landlord under this Lease, pro-rated for the portion of the Premises being assigned or sublet that is not occupied or used by the Tenant, until the date of such assignment or sub-lease. In determining the amounts to be deducted from Excess Rent in each monthly payment period in respect of the Tenant's costs of assigning or sub-leasing, such costs shall be amortized without interest over the Term (in the case of an assignment) or Term of the sub-lease (in the case of a sub-lease) on a straight line basis.

## 11. FIXTURES AND IMPROVEMENTS

### 11.1 Installation of Fixtures and Improvements

The Tenant will not make, erect, install, or alter any Leasehold Improvements in the Premises, any safe or special lock in the Premises, or any apparatus for illumination, air conditioning, cooling, heating, refrigerating, or ventilating the Premises, in any case without having requested and obtained the Landlord's prior written approval, which the Landlord shall not unreasonably withhold. In making, erecting, installing, or altering any Leasehold Improvements the Tenant shall comply with the tenant construction guidelines as established by the Landlord from time to time, and shall obtain all required building and occupancy permits and comply with all laws of all authorities having jurisdiction. The Tenant's request for any approval hereunder shall be in writing and be accompanied by a reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications. All work to be performed in the Premises shall be performed by competent contractors and subcontractors and shall be performed and completed in a good and workmanlike manner.

### 11.2 Liens and Encumbrances on Fixtures and Improvements

In connection with the making, erection, installation, or alteration of Leasehold Improvements and trade fixtures, and all other work or installations made by or for the Tenant in the

Premises the Tenant shall comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c. 45 and amendments thereto, and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks), shall permit the Landlord to take all steps to enable the Landlord to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, shall promptly pay all accounts relating thereto. The Tenant shall not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 and amendments thereto, or other encumbrance in respect of its Leasehold Improvements or trade fixtures, or permit any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Premise.

### 11.3 Discharge of Liens and Encumbrances

If and when any builders' or other lien for work, labour, service, or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefore shall arise or be filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance shall attach, the Tenant shall within 20 days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Landlord may in addition to all other remedies hereunder avail itself of its remedy under clause 16.1 and may make any payments required to procure the discharge of any such liens or encumbrances, and shall be entitled to be reimbursed by the Tenant as provided in clause 16.1, and its right to reimbursement shall not be affected or impaired if the Tenant shall then or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off, or defence.

### 11.4 Removal of Fixtures and Improvements

All Leasehold Improvements in or upon the Premises shall immediately upon affixation be and become the Landlord's property without compensation therefore to the Tenant. Except to the extent otherwise expressly agreed by the Landlord in writing, no Leasehold Improvements shall be removed by the Tenant from the Premises or License Area either during or at the expiration or sooner termination of the Term, except that:

- (a) the Tenant may at the end of the Term remove its trade fixtures;
- (b) the Tenant shall at the end of the Term remove such of the Leasehold Improvements and trade fixtures as the Landlord shall require to be removed; and
- (c) the Tenant shall remove its furniture and equipment at the end of the Term, and also during the Term in the usual and normal course of its business where such furniture or equipment has become excess for the Tenant's purposes or the Tenant is substituting therefore new furniture and equipment.
- (d) all Leasehold Improvements shall be insured by the Tenant as described in Section 12.2 (b) unless otherwise agreed in writing by the Landlord.

The Tenant shall, in the case of every removal either during or at the end of the Term, immediately make good any damage caused to the Premises or License Area by the installation and removal.

## 11.5 Alterations by Landlord

The Landlord reserves the right from time to time to make alterations and additions to the Premises, provided that in exercising any such rights, the Landlord will take reasonable steps to minimize any interference cause to the Tenant's operations in the Premises but by exercising any such rights, the Landlord shall not be deemed to have constructively evicted the Tenant or otherwise to be in breach of this Lease, nor shall the Tenant be entitled to any abatement of Rent or other compensation from the Landlord.

## 12. INSURANCE AND LIABILITY

### 12.1 Landlord's Insurance

The Landlord shall be deemed to have insured (for which purpose it shall be a co-insurer, if and to the extent that it shall not have insured) the Premises and all improvements and installations made by the Landlord in the Premises except to the extent hereinafter specified, in respect of perils and to amounts and on terms and conditions which from time to time are insurable at a reasonable premium and which are normally insured by reasonably prudent owners of properties similar to the Premises, as from time to time determined at reasonable intervals (but which need not be determined more often than annually) by insurance advisors selected by the Landlord, and whose written opinion shall be conclusive. Upon the request of the Tenant from time to time the Landlord will furnish a statement as to the perils in respect of which and the amounts to which it has insured the Premises. The Landlord may maintain such other insurance in such amounts and upon such Terms as would normally be carried by a prudent owner.

### 12.2 Tenant's Insurance

The Tenant shall take out and keep in force during the Term:

- (a) comprehensive general liability (including bodily injury, death and property damage) insurance on an occurrence basis with respect to the business carried on, in, or from the Premises and the Tenant's use and occupancy thereof, of not less than \$2,000,000 per occurrence, which insurance shall include the Landlord as a named insured and shall protect the Landlord in respect of claims by the Tenant as if the Landlord were separately insured, shall include a cross liability clause and have a deductible of not more than \$5,000 per occurrence or claim; and
- (b) insurance in such amounts as may be reasonably required by the Landlord in respect of fire and other such perils, including sprinkler leakage, as are from time to time defined in the usual extended coverage endorsement covering the Tenant's trade fixtures and the furniture and equipment of the Tenant and (except as to Insured Damage) all Leasehold Improvements in the Premises, and which insurance shall include the Landlord as a named insured as the Landlord's interest may appear with respect to the insured Leasehold Improvements and provided that any proceeds recoverable in the event of loss to Leasehold Improvements;

and if the Landlord shall require the same from time to time, then also:

- (c) tenant's fire legal liability insurance in an amount not less than the actual cash value of the Premises; and

- (d) insurance upon all plate glass in or which forms a boundary of the Premises in an amount sufficient to replace all such glass; and
- (e) motor vehicle insurance for all motor vehicles used by the Tenant in the conduct of its business shall have a minimum public liability and third party property damage insurance coverage of at least \$2,000,000.

All insurance required to be maintained by the Tenant hereunder shall be on terms and with insurers to which the Landlord has no reasonable objection and shall provide that such insurers shall provide to the Landlord 30 days' prior written notice of cancellation or material alteration of such terms.

The Tenant shall furnish to the Landlord the completed certificate as set out in Schedule D or other evidence acceptable to the Landlord as to the insurance within 14 days of the execution of this agreement. Failure to provide such documents shall constitute default resulting in termination of this agreement. The Tenant shall also furnish to the Landlord certificates of other evidence acceptable to the Landlord as to the insurance from time to time required to be effected by the Tenant and its renewal or continuation in force, either by means of a certified copy of the policy or policies which, in the case of comprehensive general liability insurance, shall provide such information as the Landlord reasonably requires. If the Tenant shall fail to take out, renew and keep in force such insurance the Landlord may do so as the agent of the Tenant and the Tenant shall repay to the Landlord any amounts paid by the Landlord as premiums forthwith upon demand.

### 12.3 Limitation of Landlord's Liability

The Tenant agrees that:

- (a) the Landlord shall not be liable for any bodily injury to or death of, or loss or damage to any property belonging to, the Tenant or its employees, invitees, or licensees or any other person in, on, or about the Premises, or for any interruption of any business carried on in the Premises, and, without limiting the generality of the foregoing, in no event shall the Landlord be liable:
  - (i) for any damage other than Insured Damage or for bodily injury or death of anyone which results from fire, explosion, earthquake, flood, falling plaster, steam, gas, electricity, water, rain, snow, dampness, or leaks from any part of the Premises or from the pipes, appliances, electrical system, plumbing works, roof, sub-surface, or other part or parts of the Premises of property, or from the streets, lanes, and other properties adjacent thereto;
  - (ii) for any damage, injury, or death caused by anything done or omitted by the Tenant or any of its servants or agents or by any other person;
  - (iii) for the non-observance or the violation of any provision of any of the rules and regulations of the Landlord in effect from time to time or of any lease by another tenant or premises in the same building or on the same property or any concessionaire, employee, licensee, agent, customer, officer, contractor, or other invitee of any of them, or by anyone else;
  - (iv) for any act or omission (including theft, malfeasance, or negligence) on the part of any agent, contractor, or person from time to time employed by it to perform janitorial services, security services,

supervision, or any other work in or about the Premises or the property;

(v) for the failure to do anything required to be done by the Landlord.

(b) The Tenant releases and discharges the Landlord from any and all action, causes of action, claims, damages, demands, expenses, and liabilities which the Tenant now or hereafter may have, suffer, or incur which arise from any matter for which the Landlord is not liable under sub-clause 12.3(a), notwithstanding that negligence or other conduct of the Landlord or anyone for whose conduct the Landlord is responsible may have caused or contributed to such matter.

#### 12.4 Indemnity of Landlord

The Tenant agrees to indemnify and save harmless the Landlord in respect of all claims for bodily injury or death, property damage, or other loss or damage arising from the conduct of any work by or any act or omission of the Tenant or any assignee, sub-tenant, agent, employee, contractor, invitee, or licensee of the Tenant, and in respect of all costs, expenses, and liabilities incurred by the Landlord in connection with or arising out of all such claims including the expenses of any action or proceeding pertaining thereto, and in respect of any loss, costs, expense, or damage suffered or incurred by the Landlord arising from any breach by the Tenant of any of its covenants and obligations under this Lease. This indemnity shall survive the expiry or termination of this Lease.

### 13. ENVIRONMENTAL MATTERS

#### (a) Definitions

For the purposes of this Section and Agreement, the following terms shall have the following meanings:

(i) **"Contaminants"** means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;

(ii) **"Environment"** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, ground water and surface water);

(iii) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Premises now or hereafter in force with respect in any way to the Environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and

(iv) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

(b) Tenant's Representations and Warranties

The Tenant represents and warrants to the City, and acknowledges that the City is relying on such representations and warranties in entering into this Agreement, that as of the date of this Agreement:

(i) except as disclosed to the City in writing, the Tenant is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, remediation order or any other or proceeding under any Environmental Laws; and

(ii) except as disclosed to and approved in writing by the City, the Tenant's business at the Premises does not involve the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with any Contaminants.

If any of the representations and warranties contained in this section are untrue or incorrect in any material respect, the same shall constitute a breach of this Agreement by the Tenant and shall be subject to the provisions of Section 6.01 of this Agreement.

(c) Condition of Premises

The Tenant acknowledges and agrees that the City has made no representations or warranties with respect to the environmental condition of the Premises and is leasing the Premises to the Tenant under this Agreement on an "as is, where is" basis with respect to their environmental condition. Prior to taking possession of the Premises under this Agreement, the Tenant has performed such investigations of the Premises as it considered appropriate and is satisfied as to their environmental condition.

(d) Use of Contaminants

The Tenant shall not use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with, any Contaminants, without the prior written consent of the City, which consent may be unreasonably and arbitrarily withheld. Without limiting the generality of the foregoing, the Tenant shall in no event use, and does not plan or intend to use, the Premises to dispose of, handle or treat any Contaminants in a manner that, in whole or in part, would cause the Premises, or any adjacent property to become a contaminated site under Environmental Laws.

(e) Compliance with Environmental Laws

The Tenant shall promptly and strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises under or pursuant to this Agreement, including without limitation obtaining all required permits or other authorizations.

(f) Evidence of Compliance

The Tenant shall promptly provide to the City a copy of any environmental site investigation, assessment, audit or report relating to the Premises conducted by or for the Tenant at any time before, during or after the Term (or any renewal thereof). The Tenant shall, at its own cost at the City's request from time to time, obtain from an independent environmental consultant approved by the City an environmental site investigation of the Premises or an

environmental audit of the operations at the Premises, the scope of which shall be satisfactory to the City and shall include any additional investigations that the environmental consultant may recommend. The Tenant shall, at the City's request from time to time, provide the City with a certificate of a senior officer of the Tenant certifying that the Tenant is in compliance with all Environmental Laws and that no adverse environmental occurrences have taken place at the Premises, other than as disclosed in writing to the City.

(g) Confidentiality of Environmental Reports

The Tenant shall maintain all environmental site investigations, assessments, audits and reports relating to the Premises in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the Tenant's professional advisers and lenders on a need to know basis or with the prior written consent of the City, which consent may be unreasonably withheld.

(h) Records

The Tenant shall maintain at the Premises all environmental and operating documents and records, including permits, licences, orders, approvals, certificates, authorizations, registrations and other such records, relating to the operations at the Premises, which may be reviewed by the City at any time during the Term on twenty-four (24) hours' prior written notice, except in the case of an emergency, when no prior notice shall be required.

(i) Access by City

Without relieving the Tenant of any of its obligations under this Agreement, the Tenant shall, at such reasonable times as the City requires, permit the City to enter and inspect the Premises and the operations conducted at the Premises, to conduct tests and environmental investigations, to remove samples from the Premises, to examine and make copies of any documents or records relating to the Premises, to interview the Tenant's employees and to take such steps as the City deems necessary for the safety and preservation of the Premises.

(j) Authorizations

The Tenant shall promptly provide to the City on request such written authorizations as the City may require from time to time to make inquiries of any governmental authorities regarding the Tenant's compliance with Environmental Laws.

(k) Notices

The Tenant shall promptly notify the City in writing of:

- (i) any Release of a Contaminant or any other occurrence or condition at the Premises, or any adjacent property which could subject the Tenant, the City or the Premises to any fines, penalties, orders or proceedings under Environmental Laws;
- (ii) any charge, order, investigation or notice of violation or non-compliance issued against the Tenant or relating to the operations at the Premises under any Environmental Laws; and
- (iii) any notice, claim, action or other proceeding by any third party against the Tenant or in respect of the Premises concerning the Release or alleged Release of Contaminants at or from the Premises.

(iv) the Tenant shall notify the appropriate regulatory authorities of any Release of any Contaminants at or from the Premises in accordance with Environmental Laws and failure by the Tenant to do so shall authorize, but not obligate, the City to notify the regulatory authorities.

(l) Removal of Contaminants

Prior to the expiry or earlier termination of this Agreement or at any time if requested by the City or required by any governmental authority pursuant to Environmental Laws, the Tenant shall, promptly at its own cost and in accordance with Environmental Laws, remove from the Premises any and all Contaminants, and remediate any contamination of the Premises, or any adjacent property resulting from Contaminants, in either case brought onto, used at or Released from the Premises by the Tenant or any person for whom it is in law responsible. [For greater certainty, the foregoing obligations of the Tenant shall include, without limitation, the treatment of water (including surface and ground water) and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation by the applicable governmental authority, being with respect to soils, the standard applicable to property used for [commercial/industrial] purposes and with respect to water, as determined by the governmental authority given the character and use of water in the area of the Premises. Any soil so removed shall be promptly replaced by soil free of Contaminants at concentrations above the standard described in the preceding sentence.] The Tenant shall provide to the City full information with respect to any remedial work performed pursuant to this section and shall comply with the City's requirements with respect to such work. The Tenant shall use a qualified environmental consultant approved by the City to perform the remediation. The Tenant shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment, Lands & Parks in respect of the remediation as are required under Environmental Laws or required by the City, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry. The Tenant agrees that if the City reasonably determines that the City, its property, its reputation or the Premises is placed in any jeopardy by the requirement for any such remedial work, the City may, but shall be under no obligation to, undertake itself such work or any part thereof at the cost of the Tenant.

(m) Ownership of Contaminants

Notwithstanding any rule of law to the contrary, any Contaminants or leasehold improvements or goods containing Contaminants brought onto, used at, or Released from, the Premises by the Tenant or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the City, notwithstanding the degree of their affixation to the Premises and notwithstanding the expiry or earlier termination of this Agreement. This section supersedes any other provision of this Agreement to the contrary.

(n) Indemnity

The Tenant shall indemnify and save harmless the City and its directors, officers, shareholders, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including without limitation, the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Premises, and any adjacent property) which may be paid by, incurred by or asserted against the City or its directors, officers, shareholders, employees, agents, successors or assigns, during or after the Term (or any renewal thereof), arising from or in connection with any breach of or non-compliance with the provisions of this Section by the Tenant or arising from or in connection with:

(i) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including without limitation any governmental authority, against any one or more of them pursuant to or under Environmental Laws; or

(ii) any Release or alleged Release of any contaminants at or from the Premises into the Environment,

related to or as a result of the use and occupation of the Premises by the Tenant or those for whom it is in law responsible or any act or omission of the Tenant or any person for whom it is in law responsible.

(o) Survival of Tenant's Obligations

The obligations of the Tenant under this Section (including, without limitation, the Tenant's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Agreement. The obligations of the Tenant under this Section are in addition to, and shall not limit, the obligations of the Tenant contained in other provisions of this Agreement.

**14. SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES**

14.1 Tenant's Covenants

The Tenant agrees with the Landlord that:

(a) Sale or Financing of Building

The rights of the Landlord under this Lease may be mortgaged, charged, transferred, or assigned to a purchaser or purchasers, or to a mortgagee or trustee for bond holders, and in the event of a sale or of default by the Landlord under any mortgage, trust deed, or trust indenture and the purchaser, mortgagee, or trustee, as the case may be, duly entering into possession of the Premises, the Tenant agrees to attorn to and become the tenant of such purchaser or purchasers, mortgagee, or trustee under the terms of this Lease.

(b) Registration

The Tenant agrees that the Landlord shall not be obliged to deliver this Lease in form registrable under the *Land Title Act*, R.S.B.C. 1996, c. 250 and covenants and agrees with the Landlord not to register this Lease. If the Tenant desires to register under the *Land Title Act*, then all costs of preparing and registering all documents in connection therewith are to be borne by the Tenant.

(c) Certificates

The Tenant agrees with the Landlord that the Tenant shall promptly whenever requested by the Landlord from time to time execute and deliver to the Landlord and, if required by the Landlord, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the Landlord) a certificate in writing as to the status of this Lease at that time, including as to whether it is in full force and effect, is modified or unmodified, confirming the rental payable hereunder and the state of the accounts between the Landlord and Tenant, the existence or non-

existence of defaults, and any other matters pertaining to this Lease as to which the Landlord shall request a certificate. If the Tenant fails to do so within seven days after the Tenant receives the form of certificate, the Tenant hereby irrevocably and conclusively authorizes the Landlord to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Tenant.

(d) Assignment by Landlord

In the event of the sale by the Landlord of the Premises or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder, and to the extent that such purchaser or assignee has assumed the covenants and obligations of the Landlord hereunder, the Landlord shall, without further written agreement, be freed and relieved of liability upon such covenants and obligations.

**15. OCCURRENCE OF DEFAULT**

15.1 Unavoidable Delay

Except as herein otherwise expressly provided, if and whenever and to the extent that either the Landlord or the Tenant shall be prevented, delayed, or restricted in the fulfilment of any obligations hereunder in respect of the supply or provision of any service or utility, the making any repair, the doing of any work or any other thing (other than the payment of Rent) by reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfill such obligation or by reason of any statute, law, or regulation of or inability to obtain permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfilment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfilment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfilment thereof, and the other party to this Lease shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor shall Rent abate; but nevertheless the Landlord will use reasonable efforts to maintain services essential to the use and enjoyment of the Premises.

15.2 No Admission

The acceptance of any Rent from or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the Landlord of any right, title, or interest of such person as a sub-tenant, assignee, transferee, or otherwise in the place and stead of the Tenant.

15.3 Part Payment

The acceptance by the Landlord of a part payment of any sums required to be paid hereunder shall not constitute waiver or release of the right of the Landlord to payment in full of such sums.

**16. TENANT'S DEFAULT, REMEDIES OF LANDLORD, AND SURRENDER**

16.1 Remedying by Landlord, Non-payment, and Interest

In addition to all the rights and remedies of the Landlord available to it in the event of any default hereunder by the Tenant, either by any other provision of this Lease or by statute or

the general law, and the event of default is not remedied within the respective time period for doing so, the Landlord:

- (a) shall have the right at all times to remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Premises to do any work or other things therein, and in such event all expenses of the Landlord in remedying or attempting to remedy such default together with an administrative charge equal to 15% of the total of such expenses shall be payable by the Tenant to the Landlord forthwith upon demand;
- (b) shall have the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of non-payment of Rent; and
- (c) shall be entitled to be reimbursed by the Tenant, and the Tenant shall forthwith pay the Landlord, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor and own-client basis) incurred by the Landlord in connection with the default or in efforts to enforce any of the rights, or to seek any of the remedies, to which the Landlord is or may be entitled hereunder.

#### 16.2 Remedies Cumulative

The Landlord and the Tenant may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant or the Landlord, as the case may be, either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord or the Tenant, as the case may be, by statute or the general law.

#### 16.3 Right of Re-entry on Default

Provided and it is expressly agreed that:

- (a) if and whenever the Rent hereby reserved or other moneys payable by the Tenant or any part thereof, whether lawfully demanded or not, are unpaid and the Tenant shall have failed to pay such Rent or other moneys within five days after the Landlord has given to the Tenant notice requiring such payment; or
- (b) if the Tenant shall breach or fail to observe and perform any of the covenants, agreements, provisos, conditions, rules, regulations or other obligations on the part of the Tenant to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the Landlord has given the Tenant notice thereof; or
- (c) if without the written consent of the Landlord the Premises shall be used by any other persons than the Tenant or its permitted assigns or permitted sub-tenants or for any purpose other than that for which the Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease; or
- (d) if the Premises shall be vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or

- (e) if any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment; or
- (f) if a receiver or receiver-manager is appointed of the business or property of the Tenant, or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or
- (g) if any policy of insurance upon the Premises from time to time effected by the Landlord shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Premises by the Tenant or any assignee, sub-tenant, or licensee of the Tenant or anyone permitted by the Tenant to be upon the Premises and the Tenant after receipt of notice in writing from the Landlord shall have failed to take such immediate steps in respect of such use or occupation as shall enable the Landlord to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or
- (h) if the Landlord shall have become entitled to Terminate this Lease or to re-enter the Premises under any provision hereof;

then and in every such case it shall be lawful for the Landlord thereafter to enter into and upon the Premises or any part thereof in the name of the whole and the same to have again, repossess, and enjoy as of its former estate, anything in this Lease to the contrary notwithstanding. The Landlord may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Premises and the Tenant hereby releases the Landlord from all actions, proceedings, claims, and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith.

#### 16.4 Termination and Re-entry

If and whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease, the Landlord, in addition to all other rights and remedies, shall have the right to terminate this Lease by giving to the Tenant or by leaving upon the Premises notice in writing of such termination. Thereupon, this Lease and the term shall terminate, and the Tenant shall immediately deliver up possession of the Premises to the Landlord in accordance with clause 16.9.

#### 16.5 Right of Termination - No Default

In the event that the Landlord requires the use of the Premises for whatever reason, the Landlord shall have the right to terminate this Lease after giving the Tenant ninety (90) days written notice of the Landlord's intention to terminate.

#### 16.6 Certain Consequences of Termination and Re-entry

If the Landlord re-enters the Premises or if this Lease is terminated by reason of any event set out in clause 16.3 or 16.5, then without prejudice to the Landlord's other rights and remedies:

- (a) the provisions of this Lease which relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions which occurred prior to the termination, shall all survive such termination;

- (b) in addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Lease, Rent for the current month and the next ensuing three months shall immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and
- (c) the Tenant or person then controlling the affairs of the Tenant shall pay to the Landlord on demand such reasonable expenses as the Landlord has incurred, and a reasonable estimate of the Landlord of expenses the Landlord expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Premises in good order, and the expenses of repairing the Premises and preparing them for re-letting.

#### 16.7 Waiver of Distress and Bankruptcy

The Tenant waives the benefit of any present or future statute taking away or limiting the Landlord's right of distress and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears. The Tenant will not sell, dispose of, or remove any other fixtures, goods, or chattels of the Tenant from or out of the Premises during the Term without the consent of the Landlord, unless the Tenant is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become excess for the Tenant's purposes; and the Tenant will be the owner or lessee of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Tenant agrees that it will not, without the Landlords' consent, repudiate or disclaim this Lease in any bankruptcy, insolvency, re-organization, or other proceeding or court application, and if required by the Landlord, waives in favour of the Landlord the benefit of s. 65.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, and any provision of similar import.

#### 16.8 Re-letting and Sale of Personalty

Whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease, the Landlord, in addition to its other rights, shall have the right as agent of the Tenant to enter the Premises and re-let them (for a term or terms shorter or longer than the balance of the Term, granting reasonable concessions in connection therewith), and to receive the Rent therefore, and as the agent of the Tenant to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any rent derived from re-letting the Premises upon account of the Rent due and to become due under this Lease, and the Tenant shall be liable to the Landlord for the deficiency, if any.

#### 16.9 Surrender on Termination

Forthwith upon the termination of this Lease, whether by effluxion of time or otherwise, the Tenant shall vacate and deliver up possession of the Premises in a neat and tidy state and in good and substantial repair in accordance with the Tenant's obligation under this Lease to repair the Premises but subject to the Tenant's rights and obligations in respect of removal in accordance with clause 11.4, and subject to reasonable wear and tear. At the same time the Tenant shall surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices which provide access to the Premises or any part thereof and shall inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Premises.

## 17. MISCELLANEOUS

### 17.1 Notices

Any notice required or contemplated by any provision of this Lease shall be given in writing, and if to the Landlord, either delivered to an executive officer of the Landlord or delivered or mailed (by prepaid registered mail) to the Landlord at the address set out in sub-clause 1.1(a), or if the Landlord has given the Tenant notice of another address in Canada to which notices to the Landlord under this Lease are to be given, then to the last such address of which the Tenant has been given notice; and if to the Tenant, either delivered to the Tenant personally (or to a partner or officer of the Tenant if the Tenant is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Tenant at the Premises. Every such notice shall be deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered.

### 17.2 Extraneous Agreements

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease, the Premises save as expressly set out in this Lease and in any agreement to lease in writing between the Landlord and the Tenant pursuant to which this Lease has been executed. In the event of any conflict between the terms of this Lease and such agreement to lease, the terms of this Lease shall prevail. This Lease may not be modified except by an agreement in writing executed by the Landlord and the Tenant, and no verbal agreements or conversations with any officer, agent, or employee of the City, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.

### 17.3 Time of Essence

Time shall be of the essence in this Lease.

### 17.4 Enurement

This Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Tenant.

### 17.5 References to Tenant

References to the Tenant shall be read with such changes in gender as may be appropriate, depending upon whether the Tenant is a male or female person or a firm or corporation. If the Tenant is comprised of more than one person or entity, then each such person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Tenant herein and any notice given or deemed to have been given at any time to any such person or entity shall be deemed to have been given at the same time to each other such person and entity.

### 17.6 Frustration

Notwithstanding the occurrence or existence of any event or circumstance or the non-occurrence of any event or circumstance, and so often and for so long as the same may occur or continue which, but for this clause, would frustrate or void this Lease, and notwithstanding

any statutory provision to the contrary, the obligations and liability of the Tenant hereunder shall continue in full force and effect as if such event or circumstance had not occurred or existed.

#### 17.7 Waiver

No condoning, excusing, or overlooking by the Landlord or Tenant of any default, breach, or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant herein in respect of any such continuing or subsequent default or breach, and no acceptance of Rent by the Landlord subsequent to a default by the Tenant (whether or not the Landlord knows of the default) shall operate as a waiver by the Landlord, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only express waiver in writing.

#### 17.8 Governing Law and Severability

This Lease shall be governed by and construed in accordance with the laws in force in the province of British Columbia. The venue of any proceedings taken in respect of or under this Lease shall be Kelowna, British Columbia as long as such venue is permitted by law, and the Tenant shall consent to any application by the Landlord to change the venue to Kelowna, British Columbia of any proceedings taken elsewhere. The Landlord and the Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

#### 17.9 Captions

The captions appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Lease or of any provision thereof.

#### 17.10 Acceptance

The Tenant accepts this Lease, to be held by it as tenant, and subject to the conditions, restrictions, and covenants above set forth. The acceptance of possession of the Premises shall be conclusive evidence as against the Tenant that at the Commencement Date of the Term the Landlord had duly completed all work required to be completed by the Landlord prior to the Commencement Date of the Term and the Premises were in good order and satisfactory condition for the commencement of the work and business of the Tenant.

#### 17.11 Deposit

If the Landlord is holding any deposit in connection with this Lease, then unless the Landlord agreed in writing to different arrangements at the time the Landlord received the deposit, the deposit shall be held by the Landlord on a non-interest bearing basis to be applied to the Annual Base Rent for that month of the Term during which Annual Base Rent is first payable hereunder.

17.12 Expropriation

If at any time during the Term the interest of the Tenant under this Lease or the whole or any part of the Premises shall be taken by any lawful power or authority by the right of expropriation, the Landlord may at its option give notice to the Tenant terminating this Lease on the date when the Tenant or Landlord is required to yield up possession thereof to the expropriating authority. Upon such termination, or upon termination by operation of law, as the case may be, the Tenant shall immediately surrender the Premises and all its interest therein, Rent shall abate and be apportioned to the date of termination, the Tenant shall forthwith pay to the Landlord the apportioned Rent and all other amounts which may be due to the Landlord up to the date of termination, and clause 16.9 shall apply. The Tenant shall have no claim upon the Landlord for the value of its property or the unexpired Term of this Lease, but the parties shall each be entitled to separately advance their claims for compensation for the loss of their respective interests in the Premises, and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Landlord specifically includes an award to the Tenant, the Landlord shall account therefore to the Tenant. In this clause the word "expropriation" shall include a sale by the Landlord to an authority with powers of expropriation, in lieu of or under threat of expropriation.

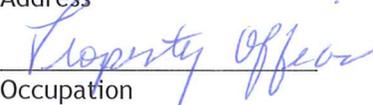
17.13 Statutory Functions

Nothing contained herein shall impair or affect in any way the exercise by the Landlord of its functions and authority under any enactment, constating document, law, bylaw, resolution or other source of authority.

IN WITNESS WHEREOF the parties have executed this Lease.

SIGNED, SEALED AND DELIVERED by the Landlord in the presence of:

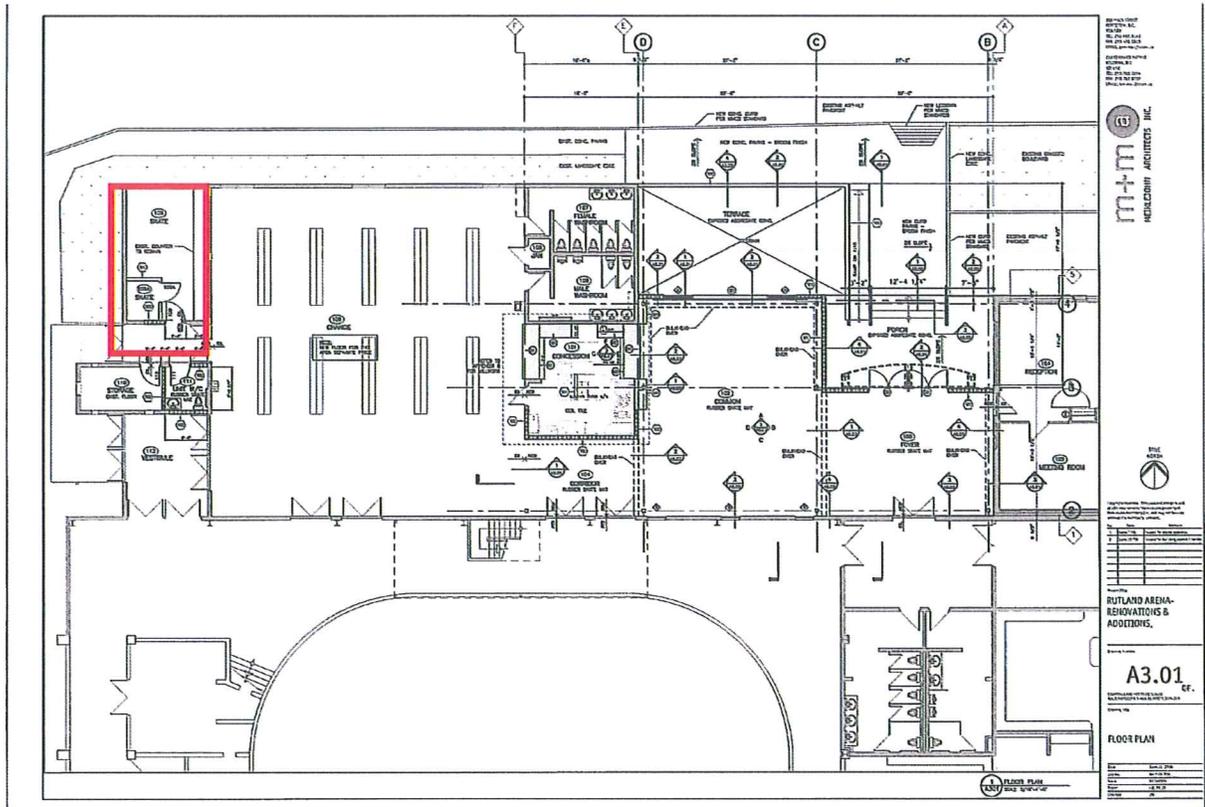
The City of Kelowna, by its Authorized Signatories:	)	_____
	)	Witness
_____	)	
Mayor	)	_____
	)	Address
_____	)	
City Clerk	)	_____
	)	Occupation

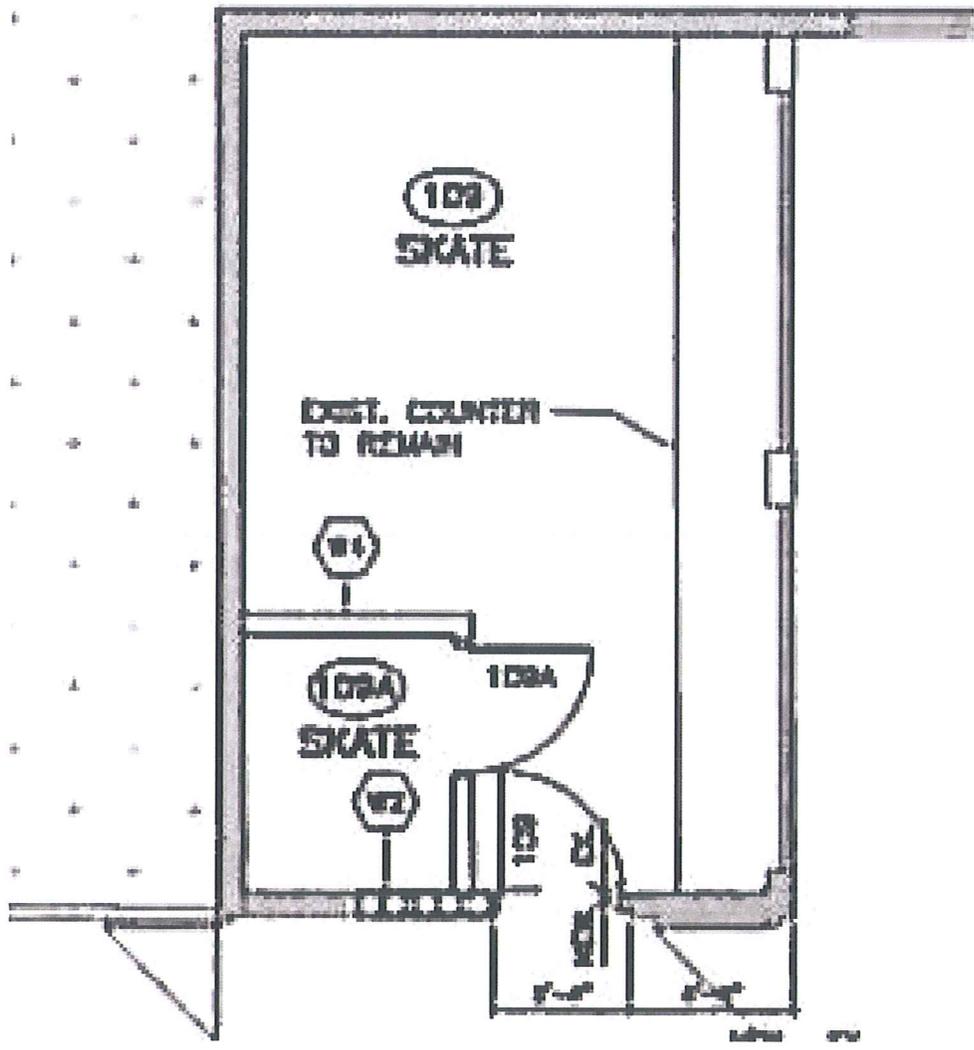
UNA MAK by its Authorized Signatories:	)	
	)	Witness
	)	_____
	)	1435 Water St, Kelowna
	)	Address
_____	)	
	)	Occupation

SCHEDULE A

PLAN OF THE LEASED PREMISE

The premises are located at the Rutland Arena at 645 Dodd Rd, Kelowna, B.C., as shown outlined in red on the drawing also attached hereto as Schedule "A".





## DEFINITIONS

In this Lease the following expressions shall have the following meanings:

“Additional Rent” means all sums of money to be paid by the Tenant, whether to the Landlord or otherwise under this Lease, except for Annual Base Rent and Goods and Services Tax payable by the Tenant.

“Annual Base Rent” means the annual Rent set out in sub-clause 1.1(g) and payable by the Tenant as set forth in clause 4.2.

“Basic Terms” means those terms set out in clause 1.1.

“Commencement Date” means the date the term commences as set forth in or determined under sub-clause 1.1(e) and subject to clause 3.2.

“Goods and Services Tax” or “GST” means and includes any and all sales Taxes, value added Taxes, business transfer Taxes, or any other Taxes imposed on the Landlord or the Tenant from time to time in respect of the Rent payable by the Tenant to the Landlord under this Lease or the Rental of the Premises or the provision of any goods, services, or utilities whatsoever by the Landlord to the Tenant under this Lease, whether characterized as a Goods and Services Tax, sales Tax, value added Tax, business transfer Tax, or otherwise.

“Insured Damage” means that part of any damage occurring to any portion of the Premises for which the Landlord is responsible, of which the entire cost of repair is actually recoverable by the Landlord under a policy of insurance in respect of fire and other perils from time to time effected by the Landlord, or, if and to the extent that the Landlord has not insured and is deemed to be a co-insurer or self-insurer under clause 12.1, would have been recoverable had the Landlord effected insurance in respect of perils, to amounts and on terms for which it is deemed to be insured.

“Land” means that parcel of land at 645 Dodd Street in the City of Kelowna, British Columbia, more particularly described as Lot 1, Plan 91112.

“Lease Year” means, in the case of the first Lease Year, the period beginning on the Commencement Date and terminating 12 months from the last day of the calendar month in which the Commencement Date occurs (except that if the Commencement Date occurs on the first day of a calendar month, the first Lease Year shall terminate on the day prior to the first anniversary of the Commencement Date) and, in the case of each subsequent Lease Year, means each 12-month period after the first Lease Year.

“Leasehold Improvements” means all fixtures, improvements, installations, alterations, and additions now and from time to time hereafter made, erected or installed, whether by the Tenant, and the Landlord or anyone else, in the Premises, including all partitions however fixed (including movable partitions) and all wall-to-wall carpeting with the exception of such carpeting where laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage, but excluding trade fixtures and unattached free-standing furniture and equipment.

“Premises” means the Rutland Arena Skate Shop at 645 Dodd Road, Kelowna, BC, V1P 1G7 as set out in sub-clause 1.1(c) and shown on Schedule A.

removable without damage, but excluding trade fixtures and unattached free-standing furniture and equipment.

“Premises” means the Rutland Arena Skate Shop at 645 Dodd Road, Kelowna, BC, V1P 1G7 as set out in sub-clause 1.1(c) and shown on Schedule A.

“Prime Rate” means the rate of interest declared from time to time by the main branch, Bank of Montreal, Kelowna, British Columbia, to the Landlord as the annual rate of interest.

“Rent” means and includes the Annual Base Rent, Additional Rent, and all other sums payable by the Tenant to the Landlord under this Lease except for Harmonized Sales Tax payable by the Tenant.

“Taxes” means all Taxes, rates, duties, levies, and assessments whatsoever, whether municipal, parliamentary, or otherwise, which are levied, imposed, or assessed against or in respect of the Premises, the Land, which are from time to time levied, imposed or assessed in the future in addition or in lieu thereof, including, without limitation, those levied, imposed, or assessed for education, schools and local improvements.

“Tax Cost” for any calendar year means an amount equal to the aggregate, without duplication, of all Taxes in respect of such calendar year.

Tenant’s Share” means the proportion of Taxes attributed to the Premises.

“Term” means the Term of this Lease set forth in sub-clause 1.1(e) and any renewal or extension thereof and any period of permitted overholding.

SCHEDULE C

<b>Tenant Responsibility Checklist</b>	Provided by the City, Cost borne by the City	Provided by the City, Cost borne by the Tenant	Provided by the Tenant, Cost borne by the City	Provided by the Tenant, cost borne by the tenant	Does not apply
Boiler operating permits					X
Electrical field safety representative					X
Electrical operating permit					X
Electrical system preventative maintenance					X
Electrical system repairs					X
Electrical/lights - lamp & tube replacement				X	
Elevator equipment repairs					X
Elevator maintenance contract					X
Elevator operating permits					X
Emergency lighting testing & repairs	X				
Exterior doors, windows, facades, etc.	X				
Fire alarm system repairs	X				
Fire alarm system testing & inspection contracts	X				
Fire extinguisher monthly & annual inspections	X				
Fire safety plan and fire drills				X	
Fire sprinkler system repairs	X				
Fire sprinkler system testing and inspection contracts	X				
Furnishings (maintain & replace)				X	
Garbage removal				X	
HVAC preventative maintenance	X				
HVAC repairs	X				
Insurance - automotive				X	
Insurance - liability				X	
Insurance - property, building	X				
Insurance - tenant owned furnishings & fixtures				X	
Insurance - tenant owned operation equipment, computers, & furnishings				X	
Interior walls, flooring, doors, ceilings, etc.				X	
Internet				X	
Janitorial services & supplies				X	
Kitchen Exhaust Hood preventative maintenance (See appendix "E")					X

Kitchen Exhaust Hood repairs					X
Kitchen Hood Fire suppression system preventative maintenance					X
Kitchen Hood Fire suppression repairs					X
Kitchen Hood Fire suppression testing					X
Landscape maintenance					X
Licences & permits				X	
Parking lots - lighting, parking lines, sweeping, asphalt, signage, drainage etc.	X				
Pest control				X	
Plumbing system preventative maintenance	X				
Plumbing system repairs	X				
Recycling program	X				
Roof inspection & maintenance	X				
Roof repairs	X				
Security system					X
Signage				X	
Snow removal	X				
Taxes				X	
Telephone				X	
Tenant improvements				X	
Tenant improvements - Maintenance				X	
Tree removal	X				
Utilities - electricity	X				
Utilities - natural gas	X				
Utilities - propane	X				
Utilities - water, sewer	X				
Vandalism (exterior)	X				
Vandalism (interior)	X				
Window Cleaning (exterior)	X				
Window Cleaning (interior)	X				

Appendix "A,B,C,D,E" contains a list of equipment specific to the building in question. The tenant, as per the lease agreement, must provide a detailed maintenance program to the City.

Document Revision History:

Revision			
1	Description	Revised by	Date



# Report to Council



**Date:** October 30, 2013  
**Rim No.** 1140-51  
**To:** City Manager  
**From:** R. Forbes, Manager, Property Management  
**Subject:** Council Report Stuart Park Skating Rink Contract - Nov 4  
Report Prepared by: T. Abrahamson, Property Officer

---

## **Recommendation:**

THAT Council approves the City entering into a one (1) year License of Occupation, with Bladez Skate Shop and Mr. Kevin Laflamme, for the Stuart Park Ice Rink, with four (4) further one (1) year renewals, in the form attached to the Report of the Manager, Property Management, dated October 30, 2013;

AND THAT the Mayor and City Clerk be authorized to execute the License of Occupation.

## **Purpose:**

That Council approves the License of Occupation for the Stuart Park Ice Rink.

## **Background:**

In October 2013, the Property Management branch of Community Planning & Real Estate issued a Request for Proposals for a skate rental concession at the Stuart Park Ice Rink. The opportunity was advertised in local newspapers and on the City's website. An optional information meeting was held with a closing date for sealed bids of 3:00pm, October 17, 2013.

The proposed contractor, Bladez Skate Shop and Mr. Kevin Laflamme, was the sole bidder coming forward with a proposal. The bid successfully addressed the City's criteria for operating a high quality, service oriented venture. Based on the quality of the submission, staff is recommending a License of Occupation to Bladez Skate Shop and Mr. Kevin Laflamme for a term of one (1) year with four (4), one (1) year renewal terms at the City's sole discretion.

The Bladez Skate Shop will be operating from 11 am - 8 pm Sunday - Saturday with the exception of Christmas and Boxing Day. He will be situated on Water Street fronting Stuart Park to the north of the food cart location.

The shop will offering Men's, Ladies and Children's skates, helmets as well as E-Z Bars (assistance for new skaters)

**Internal Circulation:**  
Risk & Claims Analyst

**Legal/Statutory Authority:**  
Community Charter, Sec. 26 - Disposal of Municipal Property

**Legal/Statutory Procedural Requirements:**  
Community Charter, Sec. 94 - Notice Requirements

**Financial/Budgetary Considerations:**  
\$800.00 per year

**Considerations not applicable to this report:**  
Existing Policy  
Personnel Implications  
External Agency/Public Comments  
Communications Comments  
Alternate Recommendation

In light of the above, the Property Management branch of the Community Planning & Real Estate department request Council's support of this License of Occupation.

**Submitted by:** R. Forbes, Manager, Property Management

**Approved for inclusion:** D. Edstrom, Director, Real Estate & Property Services

cc: Director, Financial Services

**Attachments:**  
1. Lease

**LICENSE OF OCCUPATION**  
**Mobile Concession Service - Stuart Park Skate Rental**

BETWEEN:

**CITY OF KELOWNA**  
1435 Water Street  
Kelowna, British Columbia V1Y 1J4

OF THE FIRST PART

AND:

**KEVIN LAFLAMME dba BLADEZ SKATE RENTAL SHOP**  
1695 Stayman Road  
Kelowna, British Columbia V1P 1B2

(the "Contractor")

OF THE SECOND PART

WHEREAS the City desires to appoint the services of the Contractor to provide Mobile Concession services (the "Services") at Stuart Park, Kelowna, BC.

NOW THEREFORE this Agreement witnesses that the parties hereby covenant and agree with each other as follows:

**Services**

The Contractor shall provide services on the terms and conditions set out in this Agreement and are binding upon the parties.

**Appendices**

The following attached Appendices are a part of this Agreement:

- Appendix A - Insurance Requirements
- Appendix B - Scope of Services
- Appendix C - Fees - Schedule
- Appendix D - Premise
- Appendix E - Stuart Park Skate Rental Concession Bid Package

If there is any inconsistency or conflict between the provisions of the Agreement and the Appendices, the Agreement shall govern and take precedence over all other Contract Documents.

**AGREEMENT TERMS AND CONDITIONS**

**1.0** Definitions (For purposes of this Agreement, the following terms shall have the meanings set forth below):

“**Agreement**” means the executed agreement between the City and the successful Contractor on the terms and conditions set out in this document;

“**Agreement Administrator**” refers to the individual appointed by the Manager, Property Management to administer this Agreement on behalf of the City, and any participating members and other authorized purchasers;

“**City’s Representative**” means the Manager, Property Management or designate;

“**Department**” means the Real Estate & Building Services department of the City of Kelowna

“**Department Representative**” means the Manager, Property Management, who shall represent all City Departments for the purposes of this Agreement, or, such other person who may subsequently be appointed in writing by the Department Representative and notified to the Contractor;

“**Event of Default**” references Article 6.1(c);

“**Force Majeure**” shall mean failures which occur for reasons beyond the reasonable control of the non-performing party, which include acts of God, acts of any governmental authority, strikes, blacklisting, embargo, and lockouts or other industrial disturbances not related to that Party, acts of the public enemy, wars, blockades, insurrections, explosions, rebellions, revolutions, riots, epidemics, landslides, lightning, earthquakes, storms, subsidence, floods, fires, high waters, washouts, orders or acts of civil or military authorities, or civil disturbances, but it shall not include: any inability to fulfill its financial obligations or financial difficulty or condition, insolvency, or any court protection from creditors or any other occurrence similar to those recited, which is beyond the reasonable control of the non-performing party;

“**G.S.T.**” means any Goods and Services Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

“**Term**” means the term as specified in Section 5.0;

“**Schedule**” means a schedule to this agreement;

## 2.0 Interpretations

- (a) “Authorized”, “directed”, “required”, “requested”, “approved”, “ordered”, “sanctioned”, and “satisfactory” shall, unless some other meaning is obvious from the context, respectively mean authorized, directed, required, requested, approved, ordered or sanctioned by, or satisfactory to, the City;

- (b) “Determination” shall mean the written documentation of a decision of the City’s Representative including findings of fact to support a decision. A Determination becomes part of the procurement file to which it pertains;
- (c) the Heading and Subheadings inserted in this Agreement are designed for convenience only and do not form a part of this Agreement nor are they intended to interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof;
- (d) the word “including”, when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, as amended and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplement or superseding the same;
- (f) no approval, authorization, sanction or permission required to be provided hereunder shall be unreasonably or arbitrarily withheld or delayed by the party providing same; and
- (g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and words importing individuals shall include firms and corporations, and vice versa.

### **3.0 Representations of Contractor**

#### **3.1 The Contractor covenants, represents and warrants to the City that:**

- (a) Contractor is a duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) Contractor has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (c) all necessary proceedings have been taken to authorize Contractor to enter into this Agreement and to execute and deliver this Agreement;

- (d) this Agreement has been properly executed by Contractor and is enforceable against Contractor in accordance with its terms;
- (e) any statement, representation or information, whether oral or written, made furnished or given by Contractor, its directors, officers or anyone acting on behalf of Contractor, to the City in connection with this Agreement is materially correct and accurate;
- (f) Contractor has no knowledge of any fact that materially adversely affects or, so far as it can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it or a default by it under any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on, its contracting documents, or any contract or agreement to which it is a party;
- (h) Contractor is neither a party to nor threatened with any litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this Agreement;
- (i) Contractor has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers' Compensation legislation and other similar legislation to which it is subject and has paid all taxes, fees and assessments due by Contractor under those laws as of the reference date of this Agreement;
- (j) Contractor holds all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law to conduct its business;
- (k) Contractor's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation or information made or given by or on behalf of the City;
- (l) Contractor accepts the risks assigned within this Agreement identified as being borne by Contractor;
- (m) Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub-contractual agreements in place and available to enable it to fully perform the work;

- (n) Contractor pays punctually as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;
- (o) Contractor has investigated and satisfied itself of every condition affecting the work including labour, equipment and material to be provided; but not limited to, the standards, responsibilities, task schedules and subsequent written instructions if any, all as prepared by the City;
- (p) Contractor acknowledges that it has the responsibility for informing itself of all aspects of the work and all information necessary to perform the work;
- (q) Contractor will comply with all the requirements of the Agreement and will perform all work and supply all labour, equipment and materials necessary to do so;
- (r) Contractor is an independent Contractor and not the servant, employee, partner, or agent of the City;
- (s) Contractor will not, in any manner whatsoever, commit or purport to commit the City to the payment of any money to any person;
- (t) no partnership, joint venture, or agency involving the City is created by this Agreement or under this Agreement;
- (u) the City may, from time to time, give such instructions to Contractor as the City considers necessary in connection with provision of the work, which instructions Contractor will comply with, but Contractor will not be subject to the control of City with respect to the manner in which such instructions are carried out;
- (v) all employees and sub-contractors employed by Contractor to provide the work are at all times the employees and sub-contractors of Contractor and not of the City. Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee, and
- (w) Contractor has independently reviewed all labour relations issues related to the performance of Contractor's obligations under this Agreement.

#### **4.0 General Obligations of Contractor**

##### **4.1 Contractor shall:**

- (a) offer Mobile Concession services, as set out in the Scope of Services attached as Schedule "B";

- (b) perform and contract in its own name and for its sole account for all things necessary or desirable for the proper and efficient provision of Mobile Concession services during the term;
- (c) use its best endeavours to provide the services to the City in a timely manner and in accordance with the terms of the Contract;
- (d) ensure that all its employees engaged in this contract are suitably qualified and experienced, and act to the best of their skills and ability and in accordance with accepted Mobile Concession standards for persons having those qualifications and experience;
- (e) follow all instructions of the City's Manager, Property Management in respect of the performance by Contractor of its obligations under this contract and as set out in the Mobile Skate Rental Vending Concession Bid Package submitted by Kevin Laflamme dated October 21, 2013 and attached as Schedule "E" and cooperate fully with the various departments and act in good faith towards the City;
- (f) maintain clear communication lines with staff in order to offer the best customer service;
- (g) comply with all laws; and
- (h) only use the facilities provided by the City for the purposes of this Contract.

## 5.0 Term

5.1 Collectively, the Initial Term and Renewal Term are referred to as the "Seasonal Term".

### 5.2 Initial Term

The term of the "Agreement" shall be for a three (3) month period running from **December 1<sup>st</sup>, 2013 to February 28<sup>th</sup>, 2014**, and will expire no later than **March 1<sup>st</sup>, 2014** subject to specific termination rights in this document and subject to a first option to extend the Agreement at the sole and exclusive discretion of the Manager, Property Management.

### 5.3 Renewal Term

The City agrees that prior to entering into discussions with any third party with respect to the supply and/or advertising of a Mobile Concession for the period commencing after the end of the Initial Term, the City may in its sole discretion with respect to each renewal term renew this Agreement for an additional year to a maximum of **four (4), one (1) year** renewals following the completion of the Initial Term.

No later than ninety (90) days prior to the start of the optional second consecutive term of the Agreement (**December 1<sup>st</sup>, 2014**), the City may exercise an option to renew for an additional season in 2014, provided the Contractor is in total compliance with all the terms and conditions of the Agreement.

The City of Kelowna shall notify the Contractor of its intentions to exercise the aforementioned option in writing.

## **6.0 Termination - City**

### **6.1 This Agreement will terminate:**

- (a) at the expiration of the initial term, unless extended by mutual agreement; or
- (b) If at any time there occurs an Event of Default (defined below), the City may give written notice (“Notice of Complaint”) to Contractor specifying in reasonable detail the Event of Default. If Contractor shall fail to perform or observe any covenant, condition or agreement to be performed or observed herein and such Event of Default continues unremedied for a period of seven (7) days after receiving the Notice of Complaint thereof from the City, then the City may, at its option, terminate this Agreement forthwith without prejudice to any other rights it may have in law or equity. If this Agreement is terminated by the City, Contractor shall be entitled to an immediate pro-rata refund of all unearned monies paid in advance to the City, as determined by mutual agreement.
- (c) For the purposes hereof, “Event of Default” shall mean any one or more of the following:
  - (i) if Contractor fails to observe, perform and keep each and every one of the covenants, agreements, provisions, stipulations and conditions to be observed, performed and kept by Contractor in this Agreement, or any agreement entered into pursuant to any such agreements;
  - (ii) if Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;
  - (iii) if Contractor has made an assignment of the Agreement without the required consent of the City; and
  - (iv) if Contractor fails to provide Mobile Concession services as required under the terms of this Agreement.
- (d) The City may conduct inspections, audits, and assessments of Contractor’s performance to verify that all duties, financial records,

responsibilities and obligations of Contractor are being performed in accordance with the provisions of this Agreement and to the quality standards set out in this Agreement.

## 7.0 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim or controversy arising out of this agreement or related to this agreement (“Dispute”) using the dispute resolution procedures set out in this section.

### (a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

### (b) Mediation

If all or any portion of a dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Kelowna, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs and each party will bear its own costs of participating in the mediation.

## 8.0 Compensation to the City

8.1 The initial Agreement, with an optional renewal for the following years, will commence immediately upon authorization of an Agreement for Mobile Concession at Stuart Park. **The Proponent will pay a monthly fee as detailed in Appendix C Fees Schedule.**

## 9.0 Independent Contractor

9.1 Nothing in this Agreement shall be construed as to constitute a partnership between the City and Contractor. The duties to be performed and the obligations assumed by Contractor under this Agreement shall be performed and assumed by it as an independent Contractor and not an agent or in any other way a representative of the City. In no circumstances shall Contractor have any authority to represent or contract on behalf of or otherwise bind the City.

9.2 Contractor is and shall at all times during the performance of this Agreement be an independent Contractor, and at no time shall Contractor be considered

an agent, servant, or partner of the City; and all persons employed by Contractor to perform its obligations under the Agreement shall be its employees or servants and not the employees, servant, or agents of the City.

### 9.3 Employees

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned, and shall devote only his best-qualified personnel to work on this project. Should the City deem anyone employed on the work incompetent or unfit for his duties, and so inform the Contractor, Contractor shall immediately remove such person from work under this contract and he/she shall not again, without written permission of the City, be assigned to work under this contract. All Contractor employees working in the City must complete and clear a criminal record check.

### 10.0 Liaison

10.1 Each party shall maintain liaison with the other party in accordance with their respective obligations under this Agreement. In particular:

- Contractor shall appoint a representative (“Contractor’s Representative”) who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of Contractor’s Representative; and
- The City shall appoint a representative (“City’s Representative”) who shall have the duty of instituting and maintaining liaison with Contractor as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of the City’s Representative.

10.2 Each party’s representative shall have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party’s obligations hereunder and each party’s representative may be relied upon by the other party as the official representative of such party. Meetings between the Contractor Representative and the City’s Representative may be held by telephone with the consent of all parties participating in such meetings. Each party may change their respective representative or alternative representative by written notice to the other.

### 11.0 Governing Law

11.1 This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability

hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.

11.2 Notwithstanding any provisions herein, the Contractor(s) shall in the performance of the contract comply with provisions of The Employment Standards Act and Regulations of British Columbia and City of Kelowna Policies and By-laws and Parks, Recreation and Cultural Services Policies and By-laws and any amendment thereto and without limiting the generality of the foregoing, the Contractor(s) shall pay all of the Contractor(s) employees as required by the Act and the regulations then in force.

#### **12.0 Waiver - City**

12.1 Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.

12.2 No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

#### **13.0 Waiver - Contractor**

13.1 Any failure of the Contractor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Contractor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.

13.2 No action or want of action on the part of the Contractor at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the Contractor of any of its said rights or remedies.

#### **14.0 Subcontractors**

14.1 Contractor shall not subcontract the whole of the work nor shall any part of the work be subcontracted without the prior written consent of the City's Representative, which consent may not be arbitrarily withheld in the City Representative's sole discretion.

14.2 The subcontracting of any of its duties, obligations or responsibilities of Contractor under this Agreement shall not relieve it of the responsibility for the proper commencement, execution or completion of the duties, obligations or responsibilities as set out herein and Contractor shall be fully responsible for the acts, omissions and debts of its subcontractors.

#### **15.0 Amendments**

No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

#### **16.0 Survival of Covenants**

All obligations of each of the parties which expressly or by their nature survive termination or expiration or assignment of this Agreement including, without limitation, the indemnities in section 20.0 shall continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

#### **17.0 Confidentiality of Information**

The Contractor should be aware that the City of Kelowna is a “public body” defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

#### **18.0 Non Assignability**

This Agreement may not be assigned by Contractor without the prior written consent of the City. For the purpose of this Agreement, a change in the corporate control of Contractor, shall be deemed to be an assignment requiring the consent of the City pursuant to the terms hereof.

#### **19.0 Joint and Several**

If this Agreement is executed by more than one person, firm or Corporation, it is understood and agreed that all persons, firms or Corporations executing this Agreement are jointly and severally liable under and bound by this Agreement.

#### **20.0 Force Majeure**

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by Contractor arises out of a default of its subcontractor, and if such default arose out of causes beyond the control of both Contractor and subcontractor, and without the fault

or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the products or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule, (where provided).

## 21.0 Insurance & Indemnity

### 21.1 Indemnity Save Harmless

Contractor agrees to indemnify and save harmless the City, its elected officials, officers, employees and agents, from and against all claims, liabilities, demands, actions, proceedings, loss and expense (including legal costs) whatsoever for damage to or destruction or loss of property and loss of use thereof, and injury to or death of any person or persons arising directly or indirectly out of (i) the installation, operation, use, relocation, removal, maintenance and/or repair of any/all equipment or of property of Contractor (ii) the performance, purported performance or non-performance of this Agreement, or (iii) any act of negligence, willful misconduct or omission by Contractor, its employees subcontractors and agents except only where such death, injury to persons or damage to property is due to the sole negligence of the City.

### 21.2 Insurance

The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to the City as detailed in Appendix A

### 21.3 Compliance with Statutes, By-laws & Regulations

The Contractor shall in the performance of the Agreement, comply with all applicable City By-laws, and all amendments thereto and The Consumer Protection Act, R.S.B.C. 1996, c.69, and any other applicable acts or regulations.

All equipment/vehicles used for the work outlined in the Agreement must comply with the Motor Vehicle Act, R.S.B.C. 1996, Chapter 318 and Regulations, as amended and the Commercial Transport Act, R.S.B.C. 1996, Chapter 58 and Regulations, as amended.

All principal vehicles of the Contractor will be identified with signs setting out its name and telephone number. Employee owned vehicles, which may be periodically used for company business, will not necessarily be marked.

## 22.0 Occupational Health and Safety

22.1 The Contractor agrees that it is the Prime Contractor for the purposes of the *Workers Compensation Act*. The Contractor shall have an occupational health and safety program acceptable to the WorkSafe BC Board and shall ensure that all WorkSafe BC Health & Safety Regulations are observed during performance

of this Contract, not only by the Contractor, but by all workers, subcontractors, employees, personnel, servants and others engaged in the performance of this Contract.

- 22.2 The Contractor and its workers, subcontractors, employees, personnel, servants and others engaged in the Services shall conform to all current occupational health and safety laws, by-laws, or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Contractor, suspend the Services hereunder immediately as a result of failure to install such devices or because the conditions of immediate danger exist that would be likely to result in injury to any person. Such suspension will continue until the default or failure is corrected.
- 22.3 Without limiting the generality of any other indemnities granted by the Contractor herein, the Contractor shall indemnify and save harmless the City against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Contractor, its agents or employees, or any subcontractors of the Contractor, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations mentioned above.

### **23.0 WorkSafe BC Coverage**

- 23.1 The Contractor agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for full WorkSafe BC coverage for itself and all workers, subcontractors, employees, personnel, servants and others engaged in or upon any Services. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the WorkSafe BC premiums, assessments or penalties in respect of the Services done or Services performed in fulfilling this Contract have been paid in full.
- 23.2 The Contractor shall provide the City with the Contractor's WorkSafe BC registration number and a letter from the WorkSafe BC confirming that the Contractor is registered in good standing with the WorkSafe BC and that all assessments have been paid to the date thereof prior to the City having any obligations to pay monies under this Contract.
- 23.3 The Contractor shall indemnify and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by WorkSafe BC.

## 24.0 Conflict of Interest

A council member or any employee of the City shall not have a direct or indirect interest in a Company or own a Company that is the successful Contractor.

The Contractor shall disclose to the City prior to accepting the contract, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its sole discretion, withhold the contract from the Contractor until the matter is suitably resolved. And further, that if during the conduct of the contract, the Contractor is retained by another client giving cause to a potential conflict of interest, then the Contractor shall so inform the City. If a significant conflict of interest is deemed by the City to exist, then the Contractor shall refuse the contract or shall take such steps as are necessary to remove the conflict of interest.

Contractor shall disclose to the City Representative, prior to awarding of the Contract, any actual, potential or apparent conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the Contract from the Contractor until the matter is resolved to the satisfaction of the City.

Contractor will upon request, provide all pertinent information regarding ownership of their company. This information to be supplied within forty-eight (48) hours after request.

## 25.0 Non-liability of City Officials

Under no circumstances shall any officer, employee, or agent of the City of Kelowna acting within the course and scope of his/her City responsibility be personally liable to the Contractor, or any party claim through or on behalf of the Contractor, with regards to the contract, including but not limited to its negotiation, execution, performance, or termination.

## 26.0 Protection and Security

- a) **Acknowledgment of Proprietary Materials/Limitations on Use.** Contractor acknowledges that the records are unpublished work for purposes of copyright law and embodies valuable confidential and secret information of the City. The Contractor will treat such information so received in confidence and will not use, copy, disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under the Agreement. Notwithstanding the above, nothing herein shall prevent the Contractor from utilizing same or similar information, if it is independently provided by a third party or independently developed in-house.
- b) **Property Rights.** Each party acknowledges and agrees that the other party's products and all other material related thereto constitute valuable trade secrets of the party furnishing the products or materials, or proprietary and confidential information of such party, and title thereto remains in such party.

All applicable copyrights, trade secrets, patents and other intellectual and property rights in the products and related material are and remain in the party furnishing such products. All other aspects of the products and related material, including without limitation, technologies, procedures, programs, methods of processing, specific design and structure of individual programs and their interaction.

## **27.0 Business Licence**

The Contractor shall have or obtain a City of Kelowna Business License and shall keep the license current for the duration of the contract term.

## **28.0 Contractor Performance Review**

Contractor's performance will be evaluated by the City no less than annually on the following criteria:

- ❖ Volume of customer complaints.
- ❖ Service levels.
- ❖ Cleanliness of sites.
- ❖ Adherence to the terms and conditions of this agreement.

## **29.0 Business Review & Planning**

29.1 Contractor agrees to conduct annual business review meetings with Property Management Department Representatives if required.

## **30.0 Enurement**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

## **31.0 Service of Notices**

31.1 All notices and other communications required or permitted to be given hereunder shall be in writing and may be given by (i) facsimile transmission, if the matter is urgent or immediate; (ii) personally delivered; or (iii) transmitted by prepaid registered mail, to the party to whom such notice or communications is being given at the following address or fax number:

To the City

(City Representative)

Attention: Ron Forbes

Manager, Property Management

City of Kelowna

1435 Water Street, Kelowna, British Columbia V1Y 1J4

Telephone: 250-469-8669  
E-mail: rforbes@kelowna.ca

Fax No.: 250-862-3349

**(Contractor Representative)**

Name of Contractor: Kevin Laflamme  
Business Name: Bladz Skate Shop  
Address: 1695 Stayman Road, Kelowna, BC V1P 1B2  
Telephone: 250-765-5722 Fax No.: \_\_\_\_\_  
E-mail: kevbev@hotmail.ca

31.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

IN WITNESS WHEREOF the parties hereto, by their respective representatives duly authorized in that behalf, have caused this Agreement to be executed on the day and year indicated below.

Accepted on behalf of :

KEVIN LAFLAMME dba BLADEZ SKATE RENTAL SHOP  
by its authorized signatory:



Print Name: Kevin Laflamme

CITY OF KELOWNA  
by its authorized signatories:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Date Executed: \_\_\_\_\_

## Appendix A - Insurance Requirements

### 1. Contractor To Provide

The Contractor shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the Work or Services, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Work or Services until total completion of the Work or Services or such longer period as may be specified by the City.

### 2. Insurance

As a minimum, the Contractor shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- 2.1 WorkSafe BC Insurance covering all employees of Contractor engaged in the Work or Services in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.
- 2.2 Comprehensive General Liability Insurance
  - (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
  - (ii) providing for all sums which the Contractor shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Work or Services or any operations carried on in connection with this Contract;
  - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
  - (iv) providing for Completed Operations Liability to continue for a period of 24 months after total completion of the Work or any part of the Work.
  - (v) providing for the use of explosives for blasting; vibration from pile driving or caisson work; the removal of, or weakening of support of such property, building or land, whether such support shall be natural or otherwise; demolition; or any other work below ground level.
  - (vi) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgment made against any other Insured.
- 2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Contractor directly or indirectly in the performance of the Work or Services. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

2.4 All Risks Insurance for loss of or damage to all Contractor's equipment, owned, leased or for which Contractor may otherwise be responsible and used or to be used in the performance of the Work. This insurance shall be for an amount not less than the replacement cost value of the equipment. In the event of loss or damage, Contractor shall if so requested by the City, forthwith replace such lost or damaged equipment. Such All Risks Insurance shall be endorsed to waive all rights of subrogation against the City.

3. **The City Named As Additional Insured**

The policies required by sections 2.2 and 2.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

4. **Contractor's Subcontractors**

The Contractor shall require each of its subcontractors to provide comparable insurance to that set forth under section 2.

5. **Certificates of Insurance**

The Contractor agrees to submit Certificates of Insurance, in the form of Appendix A-1, attached hereto and made a part hereof, for itself and for all of its subcontractors to the Risk Management Department of the City prior to commencing the Work or providing the Services. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.

6. **Other Insurance**

After reviewing the Contractor's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Contractor's expense.

7. **Additional Insurance**

The Contractor may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The Contractor shall ensure that all of its subcontractors are informed of and comply with the City's requirements set out in this Appendix A.

8. **Insurance Companies**

All insurance, which the Contractor is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

9. **Failure to Provide**

If the Contractor fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Contractor. The Contractor expressly authorizes the City to deduct from any monies owing the Contractor, any monies owing by the Contractor to the City.

10. Non-payment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor or any subcontractor shall not be held to waive or release the Contractor or subcontractor from any of the provisions of the Insurance Requirements or this Contract, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Contractor as stated in section 9.



## APPENDIX B - SCOPE OF SERVICES

### General Scope of Services of the Contractor

Seasonal Concession: during the period of December 1<sup>st</sup>, 2013 to February 28<sup>th</sup>, 2014, the Contractor will provide service at the concession location at a minimum between 11:00am to 2:00pm and 5:00pm to 8:00pm, 7 days per week, weather permitting.

The Contractor is to supply this service for a one (1) year period with the option of extending for four (4) additional one (1) year terms at the sole discretion of the City.

1. The vehicle(s) must be fully self-contained.
2. There is no access to water at this location.
3. The Contractor will pay all permits, taxes and licenses
4. The Contractor will pay utility charges, if any.
5. The Contractor will provide a list of items that will be offered for rent.
6. The Contractor will clean and maintain the area surrounding the mobile unit to the satisfaction of the City, including clean-up of litter from the immediate area (a radius of 30 meters from the mobile concession unit.) All paper products used shall be clearly identifiable with the contractor's operation. The Contractor will arrange for regular garbage pick-up.
7. The Contractor shall comply with all regulations regarding fire, traffic, safety and sanitation and shall acquire all necessary permits.
8. The Contractor will remove the vehicle from the site each day.
9. The Contractor shall move the vehicle when requested by City staff.
10. No outside advertising will be permitted without the consent of the City.
11. The Contractor will have the exclusive right to operate a skate rental concession within the designated site, subject only to the City maintaining the right to lease or otherwise permit operation of "other concessions" within the individual sites for a maximum of five (5) days each season in conjunction with special events.
12. The Contractor must seek to minimize any conflict with adjacent property owners.
13. The Contractor shall be allowed to display one professionally made sign at the space allotted. The sign is subject to City approval prior to posting.
14. The Contractor may not sublet, nor assign the contract without the written consent of the City which shall be at the City's sole discretion. The minimum amount for such assignment shall be \$500.00 payable from the Contractor to the City.
15. The Contractor is required to supply a bid deposit in the form of a certified cheque payable to the City of Kelowna in the amount of \$1,000. The deposit of the successful Contractor will be retained as a "performance deposit" and the City will place it into an interest bearing account with the interest accruing to the depositor.

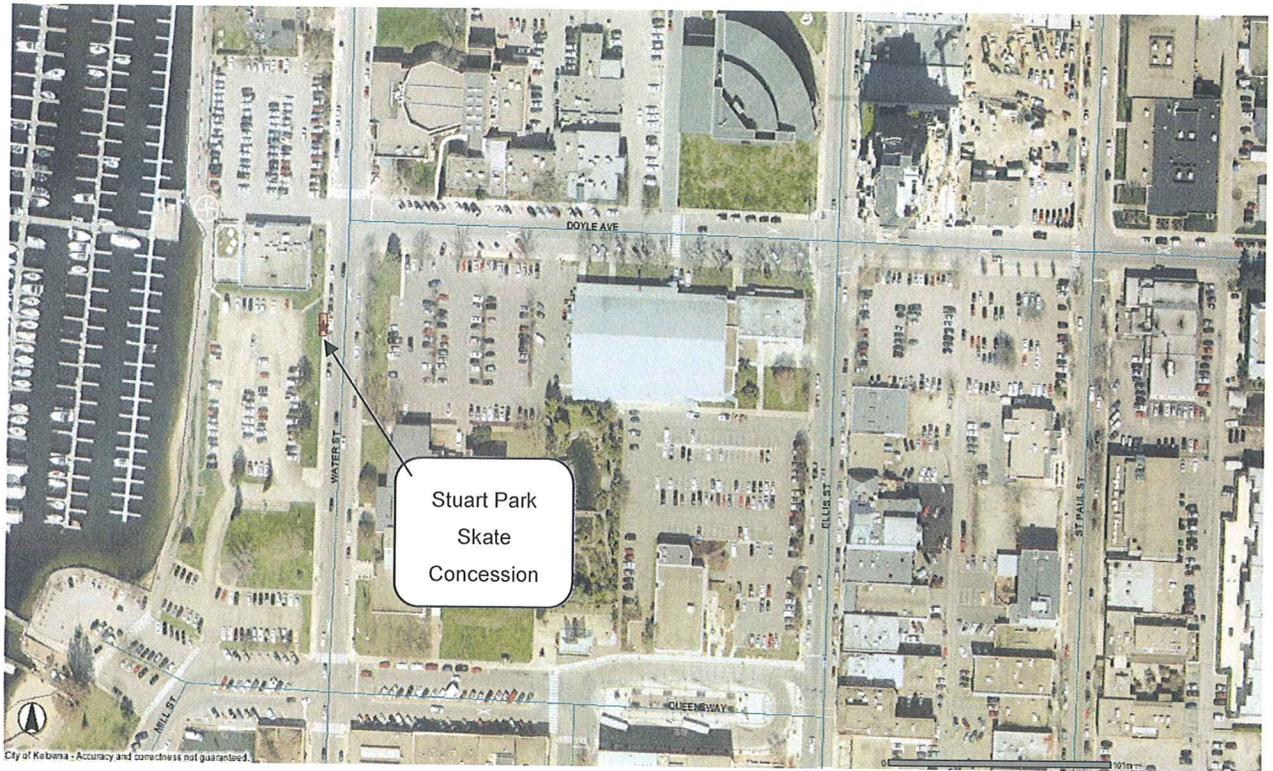
## APPENDIX C - FEE SCHEDULE

### 2013/2014

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$800.00 for December 1<sup>st</sup>, 2013 to February 28<sup>th</sup>, 2014 plus GST**. Payment will be on or before as follows:

		<b>Total Instalment</b>
Dec. 1, 2013	\$200.00 + 5% (tax) \$10.00	= <b>\$210.00</b>
January 1, 2014	\$300.00 + 5% (tax) \$15.00	= <b>\$315.00</b>
February 1, 2014	\$300.00 + 5% (tax) \$15.00	= <b>\$315.00</b>

APPENDIX D - PREMISE



City of Kalamazoo - Accuracy and completeness not guaranteed.

# Report to Council



**Date:** October 30, 2013  
**Rim No.** 1140-50  
**To:** City Manager  
**From:** R. Forbes, Manager, Property Management  
**Subject:** Council Report RDCO Community Police Office Nov 4 13

---

## **Recommendation:**

THAT Council approves the City entering into a five (5) year Lease Agreement, with the Regional District of the Central Okanagan with the option to renew for an additional five (5) year term, in the form attached to the Report of the Manager, Property Management, dated October 30, 2013;

AND THAT the 2013 Financial Plan be amended for the monthly lease cost and estimated \$81,000 of improvements with funding from existing RCMP contract budget, and that the on-going lease requirements be included in the 2014 Provisional Budget;

AND THAT Council reaffirms the future use of a portion of 4065 Lakeshore Road as parkland as designated in the Official Community Plan for the extension of Belmont Park;

AND THAT Council direct staff to demolish the current building using funds from the Land Sales Reserve;

AND THAT Council directs staff to bring forward the necessary subdivision and rezoning applications in order to subdivide the remainder portion of 4065 Lakeshore Road and to rezone that portion of 4065 Lakeshore Road from the P1 - Major Institutional zone to the RU1 - Large Lot Housing zone;

AND THAT Council directs staff to dispose of the subdivided and rezoned parcel at a price of no less than market value as determined by the Manager, Real Estate Services with the proceeds being used to replenish the Land Sales Reserve for demolition costs and any remainder to the Water Utility;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute all documents to complete the transactions.

**Purpose:**

That Council approves the Lease Agreement with the Regional District of the Central Okanagan for a Community Police Office at 1450 KLO Road and approves the direction for the surplus property at 4065 Lakeshore Road.

**Background:**

The citizens of Kelowna, the RCMP and the City of Kelowna are best served by having a strong protective service presence in different sectors of the community. One of the major focuses of policing is to reach out to the community and to build strong connections in the neighbourhoods. There are currently two community police stations; one in Rutland (2,900 sq. ft.) and one in the Mission (2,800 sq. ft.). The Rutland Community Police Station operates very well and is currently at capacity with 7 permanent members working out of the space.

The Mission Community Police Station is not functioning well. The services are provided out of a building that is costly to maintain and it does not have high speed data communication lines to allow police officers to use the various data bases required for their duties. Consequently, there are no permanent members working out of that office.

The main Kelowna Detachment is currently over capacity with working space at a premium. A more usable Mission Police Station would relieve capacity from the main detachment and also provide an RCMP presence in the south and east sections of the city currently absent due to the building situation. The Mission Community Police Station has been at its present location, 4065 Lakeshore Road, since 2001. Renovations, including a fibre optic line, to make the present location suitable for increased use are estimated to cost \$180,000.

To find a better functioning facility, several alternative locations in the Mission were researched (CNC, Mission Mall, Upper Mission). However, they were either deemed to be unsuitable or there was no space available for lease. It is important that the Community Police Station be in an area of high visibility and easy accessibility. The existing site is in a reasonable location however maintenance and renovation costs are substantial.

A lease opportunity is available at the Regional District office with approximately 2,600 sq. ft. available on the main floor where the Economic Development group was located. This also includes a meeting room that would be dedicated for the policing requirements. The location is suitable for a Mission Community Police Station as it provides easy access to many areas of the City off of KLO Road; to Benvoulin Road, Gordon Drive, and Pandosy/Lakeshore Road.

Visitations to the site were made by the City of Kelowna Community Policing Coordinators, RCMP Senior Management, RCMP Physical Security Department and City of Kelowna Building Services. All agreed the Regional District space would serve the needs of the Community and the Detachment very well. The space is well suited for policing needs; however some upgrades for security would be required. Renovations to the space are estimated at \$41,000 and furniture costs are estimated at \$40,000.

This office space will allow for the complete relocation of the Mission Community Police Station. The Crime Prevention Unit would be relocated from the main detachment to the RDCO space freeing up four workstations in the main detachment for other uses. The transcribing unit would also be relocated to the lease site and free up another office in the detachment. The space at the main detachment would be used by the additional RCMP members approved under the Crime Reduction Strategy financial resourcing plan.

Staff have negotiated with staff from the RDCO. The basic terms are:

Rent	\$42,570 / year
Estimated operating costs (based on 2012)	\$ 7,301 / year
Sub Total	\$49,871 / year
RDCO Overhead 15% of Subtotal	\$ 7,481 / year
Total	\$57,352 / year

Plus applicable taxes.

Term - Five (5) years.

Renewal Option - One (1) option for an additional five (5) years,

Belmont Park is located at 4444 Belmont Road. It was acquired by the City in 2000 for a local neighbourhood park, green space and trail connection between Lakeshore Road and Gordon Drive. It was envisioned that when the RCMP no longer required the building at 4065 Lakeshore Road that the property would be converted to park as an extension to Belmont Park. The critical road frontage along Lakeshore Road will provide the park with an improved entrance, enhanced sightlines for surveillance and higher community profile.

The existing Community Police Office building on Lakeshore Road is in poor shape and past its useful life. The intent is to subdivide the property along the lines designated in the Official Community Plan as outlined in Map 1. The north portion of the lands would be designated as park while the remaining section to the south would be disposed. Proceeds from the sale would be used to demolish the building and replenish the Water Utility.

#### **Internal Circulation**

Director, Financial Services  
Police Services Manager  
Manager, Parks & Public Places

#### **Financial/Budgetary Considerations**

The current estimate of the lease cost at the Regional District is \$57,200 per year and this funding can be transferred from existing budget that was established for an RCMP member salary increase that does not appear to be required (court decision). The renovation costs are estimated at a maximum of \$81,000 and this one time cost can be funded in 2013 from existing member vacancies.

#### **Considerations not applicable to this report:**

Legal/Statutory Authority:  
Existing Policy

Personnel Implications  
External Agency/Public Comments  
Alternate Recommendation  
Legal/Statutory Procedural Requirements:  
Communications Comments

**Submitted by:** R. Forbes, Manager, Property Management

**Approved for inclusion:** D. Edstrom, Director, Real Estate

cc: N. Romanchuk, RCMP Superintendent  
K. Grayston, Director, Financial Services  
K. Solinsky, Police Services Manager  
T. Barton, Manager, Parks & Public Places

Attachment:

1. Lease
2. Map of current Community Police Station - Belmont Park

**THIS Lease** made as of the \_\_\_\_ day of \_\_\_\_\_ 2013

**BETWEEN:** Regional District of Central Okanagan  
1450 KLO Road  
Kelowna, B.C. V1W 3Z4  
  
(the "Landlord");

**AND:** City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4  
  
(the "Tenant");

**WHEREAS** the Landlord has the right to occupy the premises at 1450 KLO Road, Kelowna, British Columbia;

**AND WHEREAS** the parties wish to enter into this Agreement for the purposes of the Tenant entering into occupation of a portion such premises;

**NOW THEREFORE**, in consideration of the rents covenants and agreements hereinafter reserved and contained, the Landlord and the Tenant hereby agree as follows:

1. In this Agreement the following words and phrases shall have the meanings set out below:
  - (a) "Building" shall mean the buildings and improvements located on the Lands;
  - (b) "Common Areas" shall mean public parking areas, common loading and service areas and other facilities of the Lands and Buildings from time to time for the common use of the Tenant and other tenants of the Building, their employees, agents and invitees;
  - (c) "Lands" shall mean the property located at 1450 KLO Road, Kelowna, British Columbia, V1W 3Z4, more particularly known and described as Lot 1, District Lot 131, O.D.Y.D., Plan KAP53338;
  - (d) "Operating Costs" shall mean the aggregate of the following:
    - i. all real property taxes, including local improvement rates and school taxes levied or assessed by any competent authority upon or in respect to the Premises, the Building, and the Lands;
    - ii. the cost of building insurance provided by the Landlord;

- iii. all rates and charges for utilities provided by the Landlord for which the Tenant is not separately metered and charged by the provider of such service;
  - iv. all operating costs and expenses of the Lands and the Building, which operating costs and expenses shall be deemed to include any and all expenses properly chargeable against income incurred by the Landlord in connection with the operation, maintenance or repair of the Lands and the Building, and by way of example without limiting the generality of the foregoing shall include the costs of the following:
    - (1) heating, ventilation, air-conditioning, electricity, water and sewer used throughout the Lands and the Building;
    - (2) the care of, security in, maintenance of, cleaning of or operation of the Lands and the Building;
    - (3) gardening and landscaping, maintenance of parking areas and driveways, and the removal of snow and garbage; and
    - (4) all repair costs of any mechanical systems for the Building;
    - (5) use of the Landlord's office amenities: staff room, parking amenities.
- (e) "Premises" shall mean a portion of the Building consisting of approximately 2,580 square feet, as outlined in cross-hatch highlighting on the sketch plan attached to this Agreement as Schedule "A"; and
- (f) "Tenant's Proportionate Share" shall mean that portion that equals the fraction that the proportion of the square footage of the Premises bears to the total square footage of the Building.
2. The Landlord hereby leases the Premises to the Tenant. The Landlord grants to the Tenant, its employees, agents and invitees, the right in common with the Landlord and all others having a like right, the free use of all the Common Areas.
3. The Tenant shall have and hold the Premises for and during the term of five (5) years commencing on the 1st day of December, 2013 and ending on the 31<sup>st</sup> day of December, 2018. If during the term of this Agreement, the Tenant has not defaulted in the performance or observance of any of its obligations under the terms of this Agreement, the Tenant is hereby given the option to renew this Lease for a further period of up to five (5) years on terms and conditions to be agreed upon at that time and upon giving written notice to the Landlord not less than three months prior to the end of the term herein created.

4. During the term of this Agreement, the Tenant agrees to pay the Landlord as follows:

- a) **Rent** for the Premises, the sum of **Forty Two Thousand Five Hundred and Seventy Dollars** (\$42,570.00) per annum, payable in equal consecutive monthly instalments on the first day of each and every month in advance. If the term commences on a date other than the first day of a month, or ends on a date other than the last day of a month, then the foregoing rental amount shall be prorated from such commencement date or to such end date, as the case may be.
- b) The Tenant shall also pay as additional rent any and all sums of money or additional charges required to be paid by the Tenant to the Landlord under this Agreement, whether or not the same be designated as additional rent. If the Tenant fails to pay any additional rent, as when due, the Landlord shall have the same remedies for the collection of additional rent as it has for the recovery of basic rent in arrears.
- c) The Tenant shall pay to the Landlord the Tenant's Proportionate Share of the Operating Costs.

The Tenant shall pay the amount of the Tenant's Proportionate Share of the Operating Costs on the basis of the Landlord's estimate of those costs for each twelve (12) month period of this Agreement. As of March 1 in each calendar year, the Landlord shall create a statement showing the actual amount of the Tenant's Proportionate Share of the Operating Costs for the immediately preceding year, which statement shall be provided to the Tenant within thirty (30) days of that date. In the event that the actual amounts of the Tenant's Proportionate Share of the Operating Costs for the preceding year exceed the amount that have been collected from the Tenant in the preceding year, then the Tenant shall pay such sum to the Landlord within thirty (30) days of receipt of such statement by the Tenant. In the event that the actual amount of the Tenant's Proportionate Share of the Operating Costs for the preceding year are less than the amount that have been collected from the Tenant in the preceding year, then the Landlord shall pay such sum to the Tenant within thirty (30) days of the receipt of such statement by the Tenant. Included with such statement from the Landlord shall be an estimate of the Tenant's Proportionate Share of the Operating Costs for the upcoming year period and the Tenant agrees to pay such sum to the Landlord for the then current twelve (12) month lease period, on a 1/12 estimated basis on the first day of each calendar month.

The Landlord estimates the Tenant's Proportionate Share of the Operating Costs for the next twelve month period to be **Seven Thousand, Three Hundred and One Dollars** (\$7,301).

- d) The Tenant shall pay to the Landlord Overhead Costs of 15% of the combined amount of rent and operating costs which amounts to **Seven Thousand Four Hundred and Eighty One** (\$7,481.00), subject to review at the end of year one of this lease.

This means a total monthly cost to the Tenant for rent, operating costs and overhead is estimated at **Four Thousand Seven Hundred and Seventy Nine Dollars and Thirty Three Cents** (\$4,779.33) per month.

Calculation of total monthly payment, is attached to this Agreement as Schedule "B".

5. During the term of this Agreement and any extension of it, the Tenant shall pay goods and services tax from time to time levied in respect of:
  - (a) goods and services which the Landlord provides or causes to be provided, exclusively to or for the sole benefit of the Tenant, to the Landlord upon request and upon receipt of evidence from the Landlord that the Landlord has paid for such goods and services;
  - (b) goods and services which the Landlord provides or causes to be provided to or for the benefit of the Common Areas, to the Landlord as part of Common Area Costs to the extent only of the Tenant's Proportionate Share of such costs; and
  - (c) rent, to the extent only that the Tenant, and not the Landlord, is obliged at law to pay such tax on rent.
6. It is the Tenant's responsibility to ensure that the rent is paid on the first day of each and every month by delivering a cheque for the rent and Tenant's Proportionate Share of the Operating Costs due to the offices of the Landlord set out at the beginning of this Agreement.
7. If the area occupied under this Lease increases, the Tenant agrees to pay to the Landlord additional rent in proportion to the increase in area of the Premises and the Tenant's Proportionate Share of the Operating Costs shall also be increased accordingly.
8. The Tenant agrees to use the Premises as a **Community Police Office** and the surrounding grounds for parking purposes by its employees, volunteers and visitors attending to business of the Tenant.
9. The Tenant agrees to abide by:
  - (a) all rules and regulations for the use of the Lands and Building, as may be created by the Landlord from time to time; and
  - (b) all laws that are applicable to the conduct of the Tenant's affairs and the use of the Premises.
10. The Landlord agrees to pay all the property taxes and keep the Premises free of any encumbrances which would adversely impact the Tenant's use thereof.
11. The Tenant covenants not to assign this Agreement or sublet any portion of the Premises.

12. This Agreement may be terminated by either party giving the other party One hundred and eighty days (180) days (approximately six months) written notice of such termination.
13. The Tenant agrees to remove from the Premises all fixtures, furnishings, and equipment that is installed by the Tenant, upon expiration or earlier termination of this Agreement, and leave the space in good repair and in an ordinary state of cleanliness, reasonable wear and tear excepted.
14. The Tenant agrees to repair damages caused to the Premises, the Lands or the Building by the negligence or wilful act of the Tenant, its employees, agents or invitees. The Tenant shall not make any structural alterations or leasehold alterations without the prior written approval of the Landlord. Such approval will be requested in writing and shall not be unreasonably withheld.
15. The Tenant shall be responsible for the costs of all leasehold alterations, once approval has been received from the Landlord.
16. The Landlord agrees to keep the Lands and Building in good repair and tenable condition and comply with the health and safety standards required under the law.
17. The Tenant agrees to well and sufficiently repair, maintain and keep the Premises with appurtenances and fixtures, in good and substantial repair. It is agreed that the Landlord (**only those staff that have a Security Clearance or if they are escorted by the Tenant**) shall be entitled to enter the Premises at any reasonable time by giving at least a 24 hours notice to the Tenant to view the state of repair and make such alterations as necessary.
18. The Tenant agrees to take good care of the Premises and keep the same in a tidy and healthy condition.
19. The Tenant agrees that it will use the Premises in a manner which does not constitute a nuisance to any other occupants of the Building or the Lands.
20. Insurance and Indemnity Provisions:
  - (a) The Tenant will indemnify and save harmless the Landlord and its elected officials, directors, officers, employees and agents (together, the "Indemnities") from and against all claims, demands, losses, damages, costs, liabilities, expenses, fines, penalties, assessments and levies, including fees of solicitors and other professional advisors, made against or incurred, suffered or sustained by any of the Indemnities at any time or times (whether before or after the expiration or termination of this Agreement) where the same or any of them are based upon or arise out of:
    - i. any breach, violation or non-performance by the Tenant of any covenant, condition or term in the Agreement, or

- ii. any bodily injury, death or property damage or loss of use thereof occurring or happening in, on or off the property in any way relating to this Agreement or by virtue of the use or occupation of the property by the Tenant under this Agreement; or
  - iii. any act or omission taken or maintained or the exercise of any rights by the Tenant (or others for whom the Tenant is responsible at law) pursuant to any provision in this Agreement.
- (b) The indemnity contained in this section will survive the expiration or termination of this Agreement.
- (c) The Tenant, at the sole expense of the Tenant, will obtain and maintain in force during the term:
  - i. commercial general liability insurance including non-owned automobile and contractual liability insurance, including liability arising out of completed operations, blanket written contractual liability contingent employers liability, non-owned automobile liability and liability assumed by the Tenant in connection with and applicable to this Agreement, with inclusive limits of not less than five million (\$5,000,000) dollars for bodily injury, death and Property damage and including loss of use thereof, which may arise directly or indirectly out of the acts or omissions of the Tenant in any way relating to the use and occupation of the Property, including under this Agreement and arising from an accident or occurrence, which policy shall name the Landlord (Regional District of Central Okanagan) as additional insured;
  - ii. all risks tenants legal liability insurance to a limit sufficient to repair or rebuild the portion of the premises occupied by the Tenant, but in no event to be less than \$150,000. The deductible in said tenants legal liability insurance is not to exceed \$2,500.00 and the deductible will be the responsibility of the Tenant in the event of a claim;
- (d) The Tenant will deliver to the Landlord prior to execution of this Agreement by the parties, evidence of insurance issued to comply with the insurance requirements outlined in this Agreement, by way of:
  - i. a duly executed Regional District of Central Okanagan Certificate of Insurance; and
- (e) The Tenant will ensure that the insurance described in this Agreement may not be cancelled, reduced, altered or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 days prior written notice to the Landlord by registered mail to the following address:

**Regional District of Central Okanagan  
1450 K.L.O. Road  
Kelowna, B.C. V1W 3Z4**

- (f) In the event of any third party loss or damage or any physical loss or damage to the building, equipment, apparatus, improvements or fixtures of the Tenant, the settlement or payment of the subsequent claim shall be made without the right of subrogation against the Landlord or any of its respective directors, officers, employees, servants or agents.
21. In the event the Tenant continues to occupy the Premises after the expiration or earlier termination of this Agreement or any extensions thereof without any further written agreement, the Tenant shall be deemed to be a tenant from month to month at the monthly rental hereinbefore set out and on the same terms and conditions contained in this Agreement except as to the length of tenancy.
22. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors, and assigns.
23. If and whenever the rents reserved by this Agreement or any part of them are in arrears or unpaid for ten (10) days after any of the days in which the same ought to have been paid, although no formal or other demand shall have been made for such rent, or in case there be default or breach or non-performance of any of the other covenants or agreements in this Agreement contained on the part of the Tenant and such default continues for thirty (30) days after notice thereof to the Tenant, then and in any of such cases, it shall be lawful for the Landlord at any time thereafter without notice to re-enter the Premises and the same to have again, repossess and enjoy as of its former estate, anything herein contained to the contrary notwithstanding, provided always that in the event of a default by the Tenant which is capable of being cured, and which is cured within the period of the notice of such default from the Landlord, then such Lease shall not terminate.
24. If the Landlord re-enters the Premises by reason of the default of the Tenant prior to the expiry of the term of this lease, the Tenant will be liable to the Landlord for the amount of rent for the remainder of the term as if such re-entry had not been made, less the actual amount received by the Landlord after such re-entry from any subsequent tenant leasing the Premises during the remainder of the term after deducting his costs of re-letting.
25. Upon the Landlord becoming entitled to re-enter upon the Premises, the Landlord shall have the right in addition to all other rights, to immediately determine this Agreement by giving notice in writing to the Tenant and thereupon rent shall be apportioned and paid to the date of such determination and the Tenant shall immediately deliver up possession of the Premises and the Landlord may re-enter and take possession of the same.
26. If the term of this Agreement or any extension of it shall at any time be seized or taken in execution or attachment by any creditor of the Tenant or if the Tenant shall make any assignment for the benefit of creditors or shall become bankrupt or insolvent or shall take the benefit of any bankruptcy or insolvency legislation or in case the Premises shall become vacant or unoccupied for a period of ten (10) days, the then current months' rent together with the rent accruing for the balance of the term or the next three months, whichever is less, shall

immediately become due and payable and the term of this Agreement or any extension of it shall at the option of the Landlord become forfeited and void.

Neither this Agreement nor any interest in it nor any estate created by this Agreement shall pass to or enure to the benefit of any trustee in bankruptcy or any receiver of any assignee for the benefit of creditors or otherwise by operation of law.

27. Whensoever the Landlord shall be entitled to levy distress against the goods and chattels of the Tenant it may use such force as it may deem necessary for that purpose and for gaining admittance to the Premises without being liable in any action in respect of such action, or for any loss or damage occasioned by such action and the Tenant expressly releases the Landlord from all actions, proceedings, claims or demands whatsoever for or on account of or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection with such forcible entry.
28. The waiver by the Landlord of any breach by the Tenant of any covenant or condition contained in this Agreement shall not be construed as or constitute a waiver of any further or other breach of the same or any other covenant or condition, and the consent or approval of the Landlord to or of any act by the Tenant requiring the Landlord's consent or approval shall not be deemed to waive or render unnecessary the Landlord's consent or approval to any subsequent act, similar or otherwise, by the Tenant.
29. If the Tenant shall fail to perform any of the covenants or obligations of the Tenant under or in respect of this Agreement the Landlord may from time to time at its discretion perform or cause to be performed any such covenants or obligations or any part thereof and for such purpose may do such things as may be required and may enter upon the Premises to do such things and all expenses incurred and expenditures made by or on behalf of the Landlord shall be paid immediately by the Tenant to the Landlord and if the Tenant fails to pay the same the Landlord may add the same to the rent and recover the same by all remedies available to the Landlord for the recovery of rent in arrears; provided that if the Landlord commences or completes either the performance or causing to be performed of any of such covenants or obligations or any part thereof, the Landlord shall not be obliged to complete such performance or causing to be performed or be later obliged to act in a like fashion. The Tenant shall not be entitled to any claim or compensation for any inconvenience, nuisance, discomfort or loss of business occasioned directly or indirectly from any action of the Landlord under this Paragraph.
30. The Tenant shall pay to the Landlord interest at twenty-four (24%) percent per annum, compounded semi-annually, on all payments of rent, and other sums required to be paid under this Agreement from the date upon which the same were due until actual payment thereof.

31. The Landlord may distrain for the rent reserved by this Agreement including additional rent, by distress upon the goods and chattels of the Tenant wherever situated and upon any premises to which the same are removed. The Tenant agrees that it shall remain liable for any deficiency should a distress sale not yield sufficient monies to pay all rent due and owing.
32. Whenever in this Agreement it is required or permitted that notice or demand be given or served by either party to this Lease to or on the other, the same shall be in writing and shall be sufficiently communicated if sent by Priority Post,

To the **Tenant** at the following address:

City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4

And

To the **Landlord** at the following address:

Regional District of Central Okanagan  
1450 KLO Road  
Kelowna, B.C. V1W 3Z4

and, if forwarded by Priority Post, shall be deemed to have been served on the third business day following the date it was mailed.

33. Time is of the essence in this Agreement.

**IN WITNESS WHEREOF** the parties hereto have executed this Lease as follows:

Signed by Regional District of Central Okanagan this \_\_\_\_ day of \_\_\_\_\_, 2013

**(For Landlord)**

\_\_\_\_\_  
Witness                      Name

\_\_\_\_\_  
Robert Hobson, Chair

\_\_\_\_\_  
Brian Reardon, Director of Corporate Services

Signed by the City of Kelowna this \_\_\_\_ day of \_\_\_\_\_, 2013.

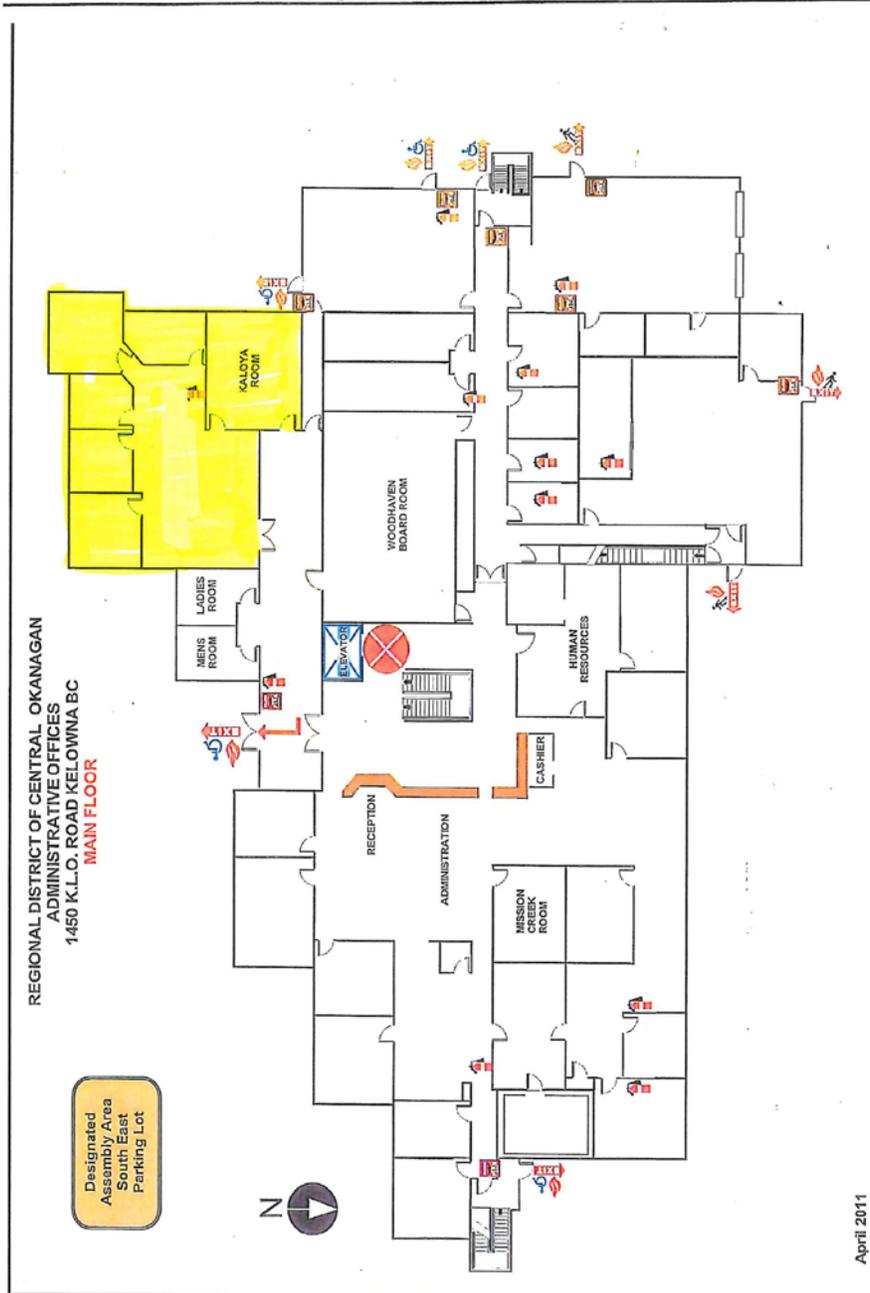
**(For Tenant)**

\_\_\_\_\_  
Witness                      Name

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

SCHEDULE 'A'  
Lease Agreement - OFFICE LAYOUT



**SCHEDULE "B"**  
**Regional District of Central Okanagan**  
**TENANT Lease Agreement**

---

Office/Meeting Space

Lease:	2,580 sq. ft. @ \$16.50/sq. ft.	\$42,570/year
Operating Costs:	2,580 sq. ft. @ \$2.83/sq. ft.	<u>7,301/year</u>
	SUB-TOTAL	\$49,871/year
RDCO Overhead:	\$49,871 x 15% = \$7481/year	
	TOTAL	<u>\$57,352</u>

**MONTHLY PAYMENTS DUE:**

Office/Meeting Space

Lease, Operating & Overhead	\$57,352 divided by 12 =
<b>TOTAL MONTHLY DUE:</b>	<b>\$4,779.33</b>

*Note:* Operating costs (based on 2012 values) include: gas, electric, garbage pickup, water & sewer, grounds maintenance, parking maintenance, and insurance.

Overhead charges include but are not limited to: daily janitorial service, no charge parking, lunchroom access and no charge coffee/tea, availability to use meeting rooms (when available), limited reception service.

City of Kelowna will be responsible for IT and telephone service

---

**Map of the Current Community Police Office Location  
4065 Lakeshore Road**



The above map of the property shows the future land use designation. The green is designated as a future park and the yellow is designated as single / two unit residential as approved in the Official Community Plan Bylaw 10500.