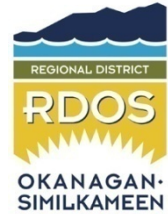


ADMINISTRATIVE REPORT



TO: Board of Directors
FROM: B. Newell, Chief Administrative Officer
DATE: March 17, 2011
RE: Zoning Bylaw Amendment Application – Electoral Area 'E'

Administrative Recommendation:

THAT [Bylaw No. 2458.03](#), 2011, Electoral Area 'E' Official Community Plan Amendment Bylaw and [Bylaw No. 2459.06](#), 2011, Electoral Area 'E' Zoning Amendment Bylaw be read a first and second time and proceed to public hearing;

AND THAT the Board considers the process, as outlined in the report from the Chief Administrative Officer dated March 17, 2011, to be appropriate consultation for the purpose of Section 879 of the *Local Government Act*;

AND THAT, in accordance with Section 882 of the *Local Government Act*, the Board has considered Amendment Bylaw No. 2458.03, 2011, in conjunction with its Financial and applicable Waste Management Plans;

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

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

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

AND THAT prior to the scheduling of a public hearing, the applicant prepare a Comprehensive Development Plan (CPD) in accordance with the requirements of Section 7.3.2 of the Electoral Area 'E' Official Community Plan Bylaw No. 2458, 2008;

AND THAT prior to adoption:

- (1) a transfer agreement between the property owner and the Regional District is entered into requiring that the area to be zoned Conservation Area is transferred to a conservation organization and/or local government within 12 months (with an option for a 12 month renewal) of the rezoning being adopted;**
- (2) a restrictive covenant is registered on all of that part of 3480 Arawana Road (being Lot A, Plan KAP58675, District Lot 3474, SDYD) currently zoned Small Holdings Two (SH2) to protect ungulate movements through this part of the property;**
- (3) a restrictive covenant is registered on that part of 3480 Arawana Road (being Lot A, Plan KAP58675, District Lot 3474, SDYD) and District Lot 3474, Except Plan KAP44343, KAP53674 and KAP59640, SDYD, to be zoned SH5 prohibiting subdivision until such time as:
 - (i) the wildlife corridor through that part of 3480 Arawana Road (being Lot A, Plan KAP58675, District Lot 3474, SDYD) currently zoned Small Holdings Two (SH2) is established in consultation with a suitably qualified wildlife professional;**
 - (ii) once established, an application be made to rezone this wildlife corridor to Conservation Area (CA); and**
 - (iii) this wildlife corridor is transferred to a conservation organization and/or local government (preferably the same organization as acquires the area to be zoned Conservation Area (CA) at 3440 Arawana Road).****

AND THAT the Board resolves that, at the time of subdivision, the Subdivision Approving Officer be requested to register a restrictive covenant on that part of 3480 Arawana Road (being Lot A, Plan KAP58675, District Lot 3474, SDYD) and District Lot 3474, Except Plan KAP44343, KAP53674 and KAP59640, SDYD, proposed to be zoned Small Holdings Five (SH5) that incorporates the recommendations of the “Wildland/Urban Interface Fire Hazard Assessment for the Naramata Benchlands Development” prepared by Swanson Forestry Services Limited and dated 19 May 2005;

AND THAT the Board resolves that no part of 3440 Arawana Road (being Plan 1190, District Lot 2711, Subsidy Lot 14, Except Plan A62, 29843, 38736, KAP44343, KAP45544, KAP46231, KAP54137, KAP57167, KAP86517, SDYD), and which is proposed to be zoned Conservation Area (CA) be accepted for the purposes of satisfying parkland dedication under the *Local Government Act*.

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

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

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

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

Proposed Development:

The purpose of this amendment application is to introduce a textual amendment to the Electoral Area ‘E’ Zoning Bylaw No. 2459, 2008, that would create a Small Holdings Five (SH5) Zone (which would establish a minimum parcel size of 2,020 m²) and then rezone an approximately 14.7 hectare (ha) area of land at 3480 Arawana Forestry Road and District Lot 3474 from Resource Area (RA) to Small Holdings Five Site Specific (SH5s) in order to facilitate a 41 lot subdivision. The site specific component would establish a maximum density of 41 parcels, with up to 8 of these 41 parcels having a maximum parcel size of not less than 1,500 m².

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

Site Context:

The area under application is comprised of three separate legal titles, two of which have civic addresses, while the third is comprised as part of a District Lot. In order to ensure clarity and consistency throughout this report, these three parcels have been labelled on Attachment No. 2 as follows:

- ‘**Lot 1**’ (being Plan 1190, District Lot 2711, Subsidy Lot 14, Except Plan A62, 29843, 38736, KAP44343, KAP45544, KAP46231, KAP54137, KAP57167, KAP86517, SDYD);
- ‘**Lot 2**’ (being Lot A, Plan KAP58675, District Lot 3474, SDYD); and
- ‘**Lot 3**’ (being District Lot 3474, SDYD, Except Plans KAP44343 and KAP59640)

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

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

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

Background:

Under the Electoral Area 'E' Zoning Bylaw No. 2459, 2008, the area under application comprises a number of different zones, including a Resource Area (RA) Zone over all of Lot 3; an RA and Small Holdings Two (SH2) zoning over Lot 2; and a Single Family Residential One (RS1) and a Single Family Residential One Site Specific Zone at 'Lot 1'.

The property is also the subject of a Watercourse Development Permit (WDP) Area under the Electoral Area 'E' Official Community Plan (OCP) Bylaw No. 2459, 2008.

Historically, these properties were part of the Blackwell Stores Limited development. The western part of 'Lot 1' was rezoned from the equivalent of Resource Area (RA) to Single Family Residential One (RS1) in 1992. This zoning was subsequently amended to the equivalent of an RS1 Site Specific zoning in 1994. The remainder of the parcel was rezoned the equivalent of RS1 sometime in the early 1990s.

In 2006, the property at 3480 Arawana Road as well as the adjacent District Lot were the subject of a rezoning proposal that sought to create approximately 295 parcels over eleven phases, but which was withdrawn after consideration by the Electoral Area 'E' Advisory Planning Commission (APC).

Referrals:

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

Pursuant to Section 882 of the *Local Government Act*, after first reading the regional Board must consider the proposed OCP amendment in conjunction with Regional District's current financial and waste management plans. The proposed OCP amendment has been reviewed by the Public Works Department and Finance Department, and it has been determined that the proposed bylaw is consistent with RDOS's current waste management plan and financial plan.

Public Process:

This proposal was considered by the Electoral Area 'E' APC at its meeting of January 10, 2010, and again on February 16, 2011, when it was resolved to recommend to the RDOS Board that the subject development application be approved, subject to a number of conditions, some of which may be summarised as follows:

- (1) That a restrictive covenant is registered on that part of the property north of Arawana Road to protect ungulate movements;

-
- (2) That prior to any subdivision of 3480 Arawana Road the wildlife corridor through this part of the property is established in consultation with a suitably qualified wildlife professional; and an application be made to rezone this area to Conservation Area (CA);
 - (3) That a restrictive covenant is registered on that part of the property to be zoned SH5 incorporating the recommendations of the "Wildland/Urban Interface Fire Hazard Assessment for the Naramata Benchlands Development" prepared by Swanson Forestry Services Limited and dated 19 May 2005;
 - (4) That prior to the scheduling of a Public Hearing, the applicant obtains confirmation from the Ministry of Transportation that it is prepared to allow new development beyond the existing paved area of Arawana Road.

On March 7, 2011, a public open house was held at the Old Age Pensioners (OAP) Hall in Naramata in relation to the proposed amendments.

Consideration by the APC, the public open house, along with a formal referral to the agencies listed at Attachment No. 1, should be considered appropriate consultation for the purpose of Section 879 of the *Local Government Act*.

Alternatives:

THAT the Amendment Application to the Electoral Area 'E' Zoning and OCP Bylaws be denied.

Analysis:

This is a complex application and each component is assessed below.

CONSERVATION AREA DESIGNATION

In support of the proposal to rezone part of 3440 Arawana Road to Conservation Area, the applicant has submitted an "Ecological Assessment of Proposed Housing Development of Naramata Benchlands" that was prepared by Okanagan Wildlife Consulting in July of 2005 in relation to the previous proposal to develop 295 parcels over 'Lot 1' and 'Lot 2'.

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

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

This is supported by the OCP which specifically speaks to encouraging "the retention of existing wildlife corridors within and outside Environmentally Sensitive Areas" (Section 15.3.2.15). Residential land uses do not appear to be congruent with the environmental attributes of this particular area.

To ensure continuity of the corridor, the applicant is proposing to register an "interim covenant" to protect ungulate movements through that part of 3480 Arawana Road situated on the north side of the road dedication with "the final corridor protection [to] be done after proper consultation with wildlife experts" at the time of subdivision. This corridor should then be zoned as Conservation Area (CA).

Wildlife Corridor

The assessment by Okanagan Wildlife Consulting noted that, in 2005, 75% of the wildlife corridor from Okanagan Mountain Park to Penticton Creek was situated on private lands. The absence of a broader strategic plan to preserve a wildlife corridor through this area will ultimately impinge upon the long-term utility of the "conservation area" contemplated by the current application and, at some point, a

wildlife corridor linking Okanagan Mountain Park to the Penticton Creek area should be addressed through the OCP

Park Land Dedication

Under the *Local Government Act*, an owner of land being subdivided must provide, without compensation, park land or cash in lieu in an amount not exceeding 5% of the land being proposed for subdivision. The land is intended to be used “to provide sites for parks to serve new residential subdivisions or to establish trail corridors” (OCP – Section 15.2.2.2), while the Provincial Best Practices Guide advises that “environmentally sensitive areas not intended for public access should be excluded from the [calculation of parkland dedication].” If the lands are intended for public access, then the Board could accept those environmentally sensitive areas as part of the parkland dedication.

The applicant has suggested that part of the land to be designated Conservation Area be considered as fulfilling the requirement for park land dedication under the Act for the Benchlands development. Public access through an important wildlife corridor would seem to contradict the public use intent and it is not clear what recreational opportunities (passive or active) the wildlife corridor area would afford residents of the adjacent Benchlands development. Further, the conservation land is intended to be donated to a conservation organisation for the purposes of an eco-gift which would make it ineligible for the purposes of parkland dedication.

When conservation areas are taken as “park” by a local government, it is not uncommon for the area to be in excess of the 5% required under the Act.

SMALL HOLDINGS DESIGNATION

In considering the second component of this application, reference is made to the Green Bylaws Toolkit (a resource product for local governments in British Columbia), which states that an “appropriate mechanism for conserving sensitive ecosystems if the existing zoning allows an inappropriate level of density is to zone designated areas as rural conservation zones and to use amenity density bonus programs.” The Naramata Benchlands Phase III Development is not considered inappropriate, but there is further development projected adjacent to this area which may raise a subject of discussion.

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

The area proposed for conservation zoning in the Naramata Benchlands Development is encumbered by two significant rights-of-ways related to Terasen and Fortis infrastructure, is subject to riparian area setbacks as well as slopes in excess of 30%. The creation a 14.7 ha Small Holdings designation at 3480 Arawana Road and District Lot 3474 with a potential density of 41 parcels *could* be seen as an appropriate exchange for the applicant contributing land to a wildlife corridor.

Comprehensive Development Plan (CDP)

When considering the creation of a new designation that would create in excess of five (5) new parcels, the OCP states that it is a policy of the Regional Board that a Comprehensive Development Plan (CDP) be developed (Section 7.3.2). The applicant objects to this policy.

A current legal opinion advises that adopting a zoning amendment to permit more than 5 dwelling units without requiring the applicant to prepare a CDP would be inconsistent with Section 7.3.2 of the OCP, and thus invalid. Should the Board consider that a CDP is not warranted in this instance, an amendment to the OCP exempting the subjecting properties from Section 7.3.2 would be required.

Sewer System

Under the Zoning Bylaw, the definition of a “utility use” specifically excludes “sewage treatment plants”. The applicant is proposing to construct such a plant on ‘Lot 2’, and rezoning to Resource Area Site Specific (RAs) over the remainder of ‘Lot 2’ to accommodate this development.

Water System

An existing community water reservoir found on ‘Lot 2’ will be unable to supply domestic or fire flows to the majority of the proposed 41 parcels due to insufficient pressure within the system, and will require upgrading. The design of the system will be addressed by the Naramata Water Advisory Committee.

Legal Access

Although Arawana Road provides general access to the subject area, where it passes through ‘Lot 2’ it is principally an “undeveloped road dedication” that is currently constructed to forestry road standards before reverting to an actual forestry road beyond the western boundary of ‘Lot 2’. Access to ‘Lot 3’ is seen to be indirect via easement over Crown land from the Arawana Forestry Road, which may have implications for the development of the proposed parcels numbered 1 to 11 (see Attachment No. 4).

The Ministry of Transportation (MoT) has advised that the grades found beyond the existing pavement on Arawana Road are in the 10.5% to 13.5% range whereas Ministry standards require that grades not exceed 8.0%.

Fire Hazard

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

Respectfully submitted:



C. Garrish, Planner

Attachments: Attachment No. 1 – Agency Referral List

Attachment No. 2 – Context Maps

Attachment No. 3 – Aerial Photo

Attachment No. 4 – Applicant’s Site Plan

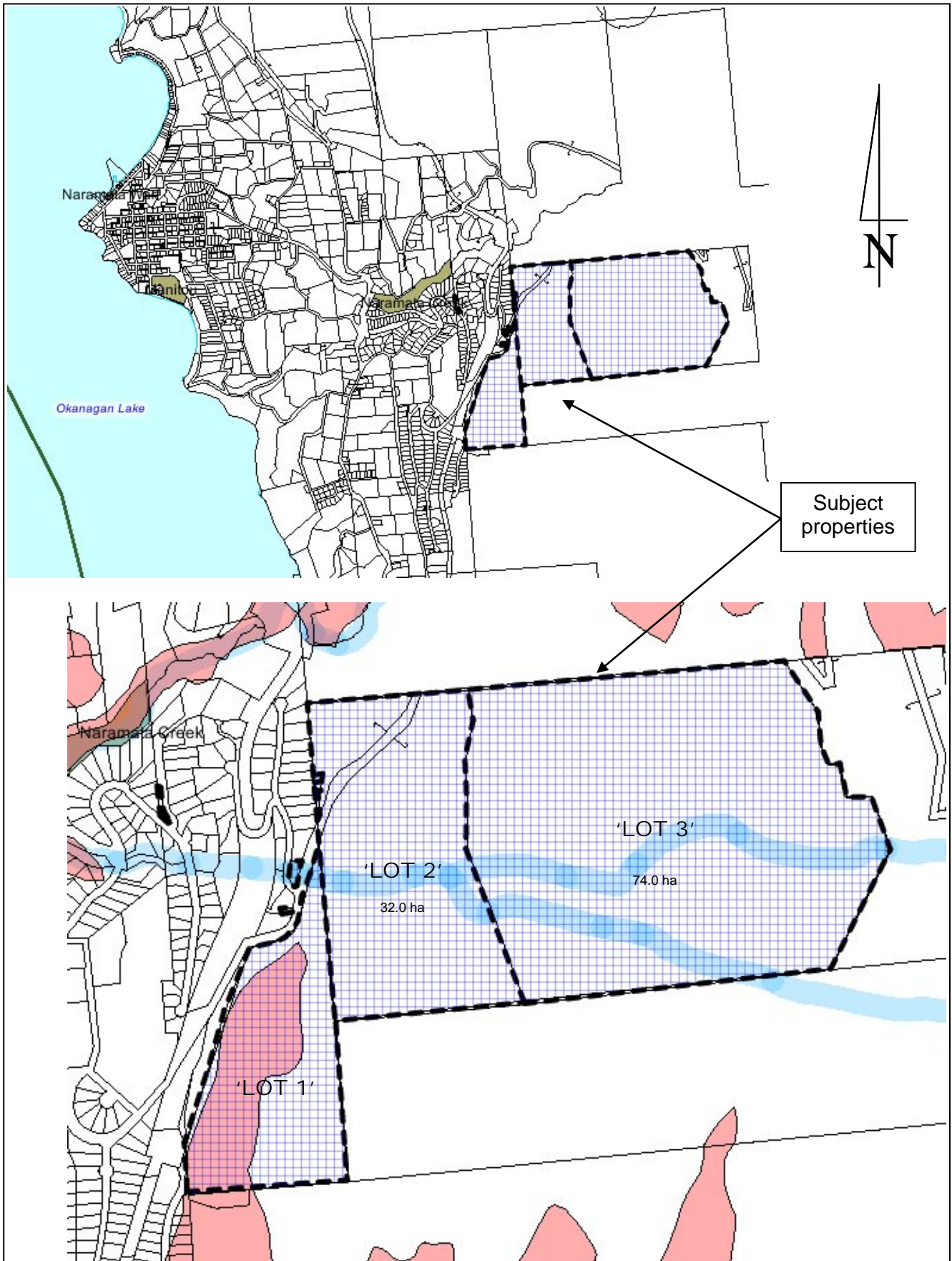
Attachment No. 5 – “Sensitive Ecosystems of the Naramata Benchlands site” (2005)

Attachment No. 1 – Agency Referral List

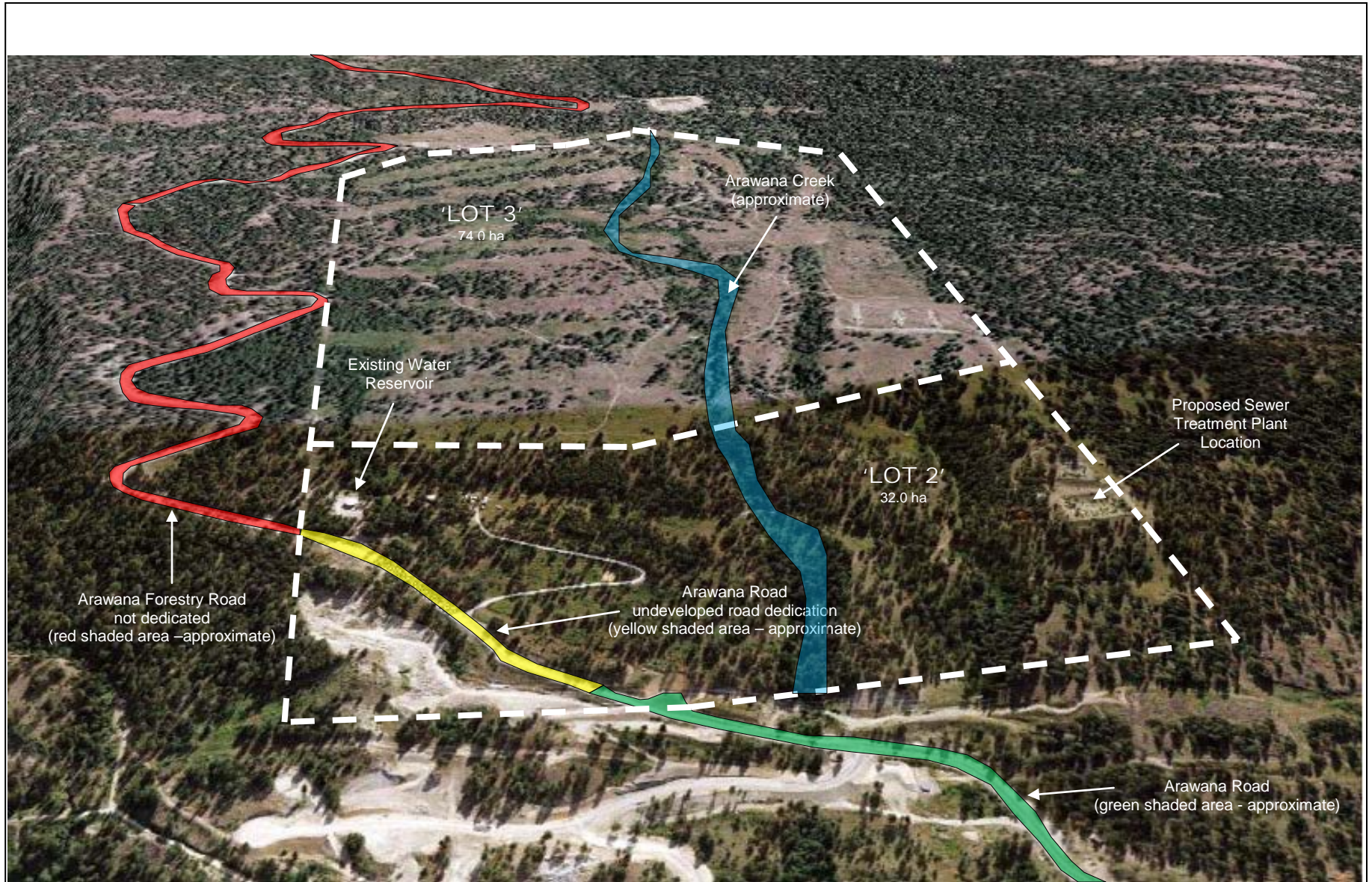
Proposed referrals to be sent to the following proposed agencies as highlighted with a , should the Board approve first reading of Amendment Bylaw Nos. 2458.03, 2011, & No. 2459.06, 2011.

<input checked="" type="checkbox"/>	Agricultural Land Commission (ALC)	<input type="checkbox"/>	City of Penticton
<input checked="" type="checkbox"/>	Interior Health Authority (IHA)	<input type="checkbox"/>	District of Summerland
<input checked="" type="checkbox"/>	Ministry of Agriculture and Land	<input type="checkbox"/>	Town of Oliver
<input type="checkbox"/>	Ministry of Community, Sport and Cultural Development	<input type="checkbox"/>	Town of Osoyoos
<input type="checkbox"/>	Ministry of Energy, Mines & Petroleum Resources	<input type="checkbox"/>	Town of Princeton
<input checked="" type="checkbox"/>	Ministry of Environment	<input type="checkbox"/>	Village of Keremeos
<input checked="" type="checkbox"/>	Ministry of Forest and Range	<input checked="" type="checkbox"/>	Okanagan Nation Alliance (ONA)
<input checked="" type="checkbox"/>	Ministry of Tourism, Culture and Arts (Archaeology Branch)	<input checked="" type="checkbox"/>	Penticton Indian Band (PIB)
<input checked="" type="checkbox"/>	Ministry of Transportation and Infrastructure	<input type="checkbox"/>	Osoyoos Indian Band (OIB)
<input checked="" type="checkbox"/>	Integrated Land Management Bureau	<input type="checkbox"/>	Upper Similkameen Indian Bands (USIB)
<input type="checkbox"/>	BC Parks	<input type="checkbox"/>	Lower Similkameen Indian Bands (LSIB)
<input type="checkbox"/>	School District #53 (Okanagan Similkameen)	<input type="checkbox"/>	Environment Canada
<input type="checkbox"/>	School District #58 (Nicola Similkameen)	<input type="checkbox"/>	Fisheries and Oceans Canada
<input checked="" type="checkbox"/>	School District #67 (Okanagan Skaha)	<input type="checkbox"/>	

Attachment No. 2 — Context Maps

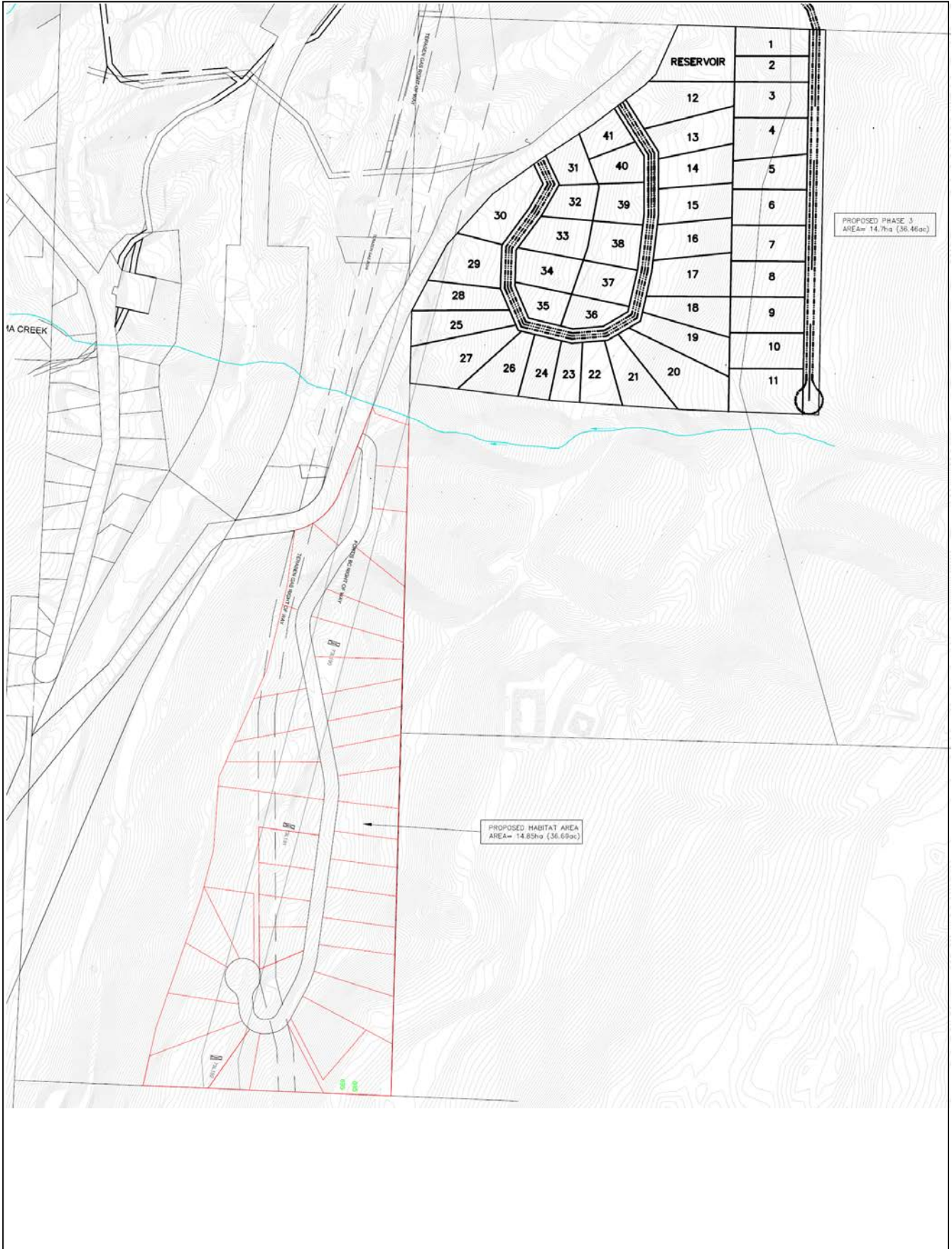


Attachment No. 3 — Aerial Photo



Property boundaries shown are approximate

Attachment No. 4 — Applicant's Site Plan



Attachment No. 5 — “Sensitive Ecosystems of the Naramata Benchlands site” (February 2005)

