

Feedback Form

Regional District of Okanagan Similkameen

101 Martin Street, Penticton, BC, V2A-5J9

Tel: 250-492-0237 / Email: planning@rdos.bc.ca

TO: Regional District of Okanagan Similkameen **FILE NO.:** D2018.059-ZONE

FROM: Name: Norm Davies
(please print)

Street Address: _____

RE: **Apex Zone Review**
Electoral Area "1" Official Community Plan Amendment Bylaw No. 2683.03
Electoral Area "1" Zoning Amendment Bylaw No. 2457.26

My comments / concerns are:

- I do support the proposed amendments to the Electoral Area "1" OCP & Zoning Bylaws.
- I do support the proposed amendments to the Electoral Area "1" OCP & Zoning Bylaws, subject to the comments listed below.
- I do not support the proposed amendments to the Electoral Area "1" OCP & Zoning Bylaws.

Written submissions received from this information meeting will be considered by the Regional District Board prior to 1st reading of Amendment Bylaw No. 2683.03 & 2457.26.

Feedback Forms must be completed and returned to the Regional District
no later than **February 14, 2020**

Protecting your personal information is an obligation the Regional District of Okanagan-Similkameen takes seriously. Our practices have been designed to ensure compliance with the privacy provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) ("FIPPA"). Any personal or proprietary information you provide to us is collected, used and disclosed in accordance with FIPPA. Should you have any questions about the collection, use or disclosure of this information please contact: Manager of Legislative Services, RDOS, 101 Martin Street, Penticton, BC V2A 5J9, 250-492-0237.

Christopher Garrish

From: Kerry Patemar
Sent: February 18, 2020 1:29 PM
To: Christopher Garrish
Cc: Ward Pateman; johnpateman@wicltd.com
Subject: Apex Mountain zoning

Hi Christopher,

We have just become aware of the proposed zoning plan for Apex Mountain Resort. I am not sure what the best way is, to have our comments heard - and hope this email will work. If not please advise. We just stopped in today and the planner mentioned that we should contact you with comments.

I am acting for Mountain Landco Ltd who own property at the corner of Snow Mountain Place and Creekview Road - addresses are 200 and 214 Creekview. In reviewing the proposed zoning map, it shows these lots as RM2 and we would like it to be zoned as the proposed RD2. This would be similar to the lots currently on Snow Mountain Place.

There has been no interest in developing multiple family residential on these two lots and we would like to subdivide for single family or duplex residential.

We had dropped in today to see about a rezoning to permit duplexes instead of multiple family. Please let me know what the process is to get this considered.

Thanks so much,

Kerry

Kerry Pateman, MCIP, Registered Professional Planner



Interior Health
Every person matters

January 8, 2020

Christopher Garrish
Regional District of Okanagan-Similkameen
101 Martin Street
Penticton, BC V2A 5J9
<mailto:planning@rdos.bc.ca>

Dear Christopher Garrish:

RE: File #: D2018.059-ZONE
Our interests are unaffected

The IH Healthy Built Environment (HBE) Team has received the above captioned referral from your agency. Typically we provide comments regarding potential health impacts of a proposal. More information about our program can be found at [Healthy Built Environment](#).

An initial review has been completed and no health impacts associated with this proposal have been identified. As such, our interests are unaffected by this proposal.

However, should you have further concerns, please return the referral to hbe@interiorhealth.ca with a note explaining your new request, or you are welcome to contact me directly at 1-855-744-6328 then choose HBE option.

Sincerely,

Mike Adams, CPHI(C)
Team Leader, Healthy Communities
Interior Health Authority

Thank you for the opportunity to review the proposed amendments to the OCP and zoning bylaws. Mountain Resorts Branch's (MRB's) review is in the context of Provincial approvals and authorizations on Crown land at Apex, given that:

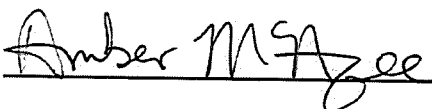
- The Province has a significant interest in the long term success of the resort, ensuring highest and best use of Crown land, balanced resort capacity and controlled, phased development in return for the investment in Crown land recreational infrastructure.
- The Province also has a significant interest in and remains committed to enabling growth and development of the resort in the future as per the Master Plan and the contractual obligations set out within the signed Master Development Agreement (MDA) between BC and Apex.

Some of the subject parcels being considered for zoning and bylaw amendments at Apex contain Crown land, and MRB would like the RDOS to consider that these parcels are located entirely within the Controlled Recreation Area and under the MDA for the resort. MRB encourages the RDOS to work with Apex to make sure that the proposed bylaw and zoning changes will not conflict with existing and future resort development interests. The subject parcels containing Crown land are shown on the following RDOS amendment schedules:

- Zoning Amendment Bylaw No. 2457.26, 2019
 - Schedule 'A'
 - Schedule 'E'
 - Schedule 'K'
- OCP Amendment Bylaw No. 2683.03, 2019
 - Schedule 'A'
 - Schedule 'C'

MRB will defer to the RDOS on the decision to make bylaw amendments to those surveyed lots at Apex that are privately owned. MRB's interests are unaffected by the amendment bylaw pertaining to the Twin Lakes area.

It has been noted that Schedule 'J' of the OCP amendment bylaw proposes to change three subject parcels from Medium Density Residential (MR) to Mixed Use Apex Alpine (RMU), which is contrary to the objective of deleting/replacing the RMU land use designation. This appears to be an error, given that the same three parcels are shown on Schedule 'A' as belonging to the Apex Village Centre (AVC) designation.

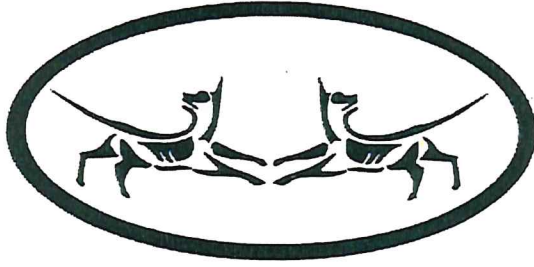
Signature: 

Signed By: Amber McAfee

Agency: Mountain Resorts Branch

Title: Licensed Land Officer

Date: January 30, 2020



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

Project Name:

Apex Bylaw Referral

FN Consultation ID:

L-200106-D2018059-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

[Regional District of Okanagan-Similkameen](#)

Date Received:

Wednesday, January 8, 2020

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

January 8, 2020

Applicant: Apex

Attention: Planning RDOS

File Number: D2018.059-ZONE

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

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

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

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

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

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

future negotiations or court actions.

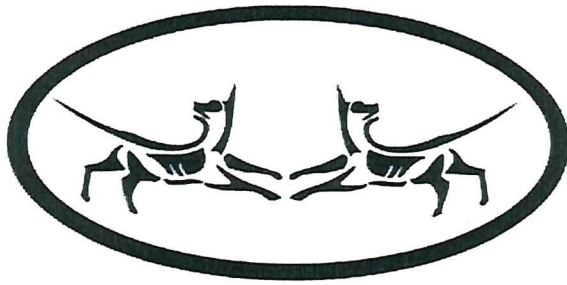
If you require further information or clarification, please do not hesitate to contact me.

limlæmt,

Maryssa Bonneau
Referrals Administrator

P: 250-492-0411

Referrals@pib.ca



Penticton Indian Band
Natural Resources Department
841 Westhills Drive | Penticton, B.C.
V2A 0E8
Referrals@pib.ca | www.pib.ca
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Planning RDOS

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[Regional District of Okanagan-Similkameen](#)

Date Received:

Wednesday, January 8, 2020

Activity No Payment

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

February 13, 2020

File number: D2018.059-ZONE

Attention: Planning RDOS

Re: Apex Bylaw Referral: 30 Day No Payment Activity

We write regarding your failure to pay invoice #L-200106-D2018059-ZONE to conduct a review to obtain additional information in the area of the above referral. To date, no payment has been received and we have therefore been unable to conduct a review of this referral; we must therefore put you on notice that we do not consent, agree or otherwise approve of the activity / development referred to by you in your letter to us dated January 6, 2020.

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

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

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

- Aboriginal title is not limited to intensively used sites; it extends to lands physically occupied and lands over which Indigenous peoples exercised control. Regular use of territories for hunting, fishing, trapping and foraging, with an intention and capacity to control the lands, grounds Aboriginal title.
- The Crown has no beneficial interest (the right to use, enjoy and profit from the economic development of lands) in Aboriginal title lands and resources; the beneficial interest is held by the Aboriginal title holding group. Allocations of

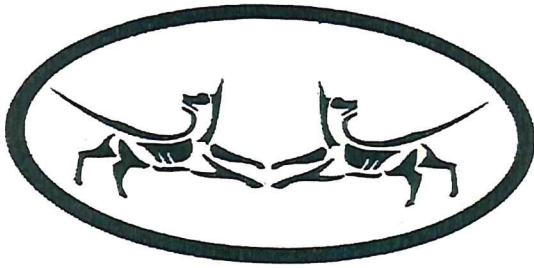
Aboriginal title lands or resources to third parties are serious infringements of Aboriginal title.

- Aboriginal title includes the right to proactively use and manage the resources.
- Once Aboriginal title is “established”, the constitution prohibits incursions without the consent of the Aboriginal title holders unless the Crown can justify the infringement, which in turn requires a compelling and substantial public purpose as well as consistency with the Crown’s fiduciary duty to the Aboriginal title holders, requiring the involvement of the Aboriginal title holding group in decisions.
- Before Aboriginal title is “established”, the only way to ensure certainty is to obtain consent; in the absence of consent, the Crown must consult and accommodate. If consultation or accommodation is inadequate, the Crown decision can be suspended or quashed. Moreover, fulfilling the duty to consult and accommodate does not provide the certainty that consent provides; once Aboriginal title is established, the Crown may be required to cancel projects where there was no consent and the justification test noted above cannot be met.

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

lilməmt,

Maryssa Bonneau
Referrals Administrator
P: 250-492-0411
Referrals@pib.ca



Penticton Indian Band
Natural Resources Department
841 Westhills Drive | Penticton, B.C.
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[Regional District of Okanagan-Similkameen](#)

Date Received:

Wednesday, January 8, 2020

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

January 8, 2020

Applicant: Apex

Attention: Planning RDOS

File number: D2018.059-ZONE

RE: 40 (forty) day extension

Thank you for the above application that was sent on January 6, 2020.

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

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

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

I appreciate your co-operation.

limlɛmt,

Maryssa Bonneau
Referrals Administrator
P: 250-492-0411
Referrals@pib.ca



Feedback Form

Regional District of Okanagan Similkameen
101 Martin Street, Penticton, BC, V2A-5J9
Tel: 250-492-0237 / Email: planning@rdos.bc.ca

TO: Regional District of Okanagan Similkameen FILE NO.: D2018.059-ZONE

FROM: Name: ROBERT ROSS

Street Address: _____

RE: **Apex Zone Review**
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Electoral Area "I" Zoning Amendment Bylaw No. 2457.26

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RESPONSE SUMMARY

AMENDMENT BYLAW NO. 2683.03 & 2457.26

- Approval Recommended for Reasons Outlined Below
- Approval Recommended Subject to Conditions Below
- Interests Unaffected by Bylaw
- Approval Not Recommended Due to Reasons Outlined Below

Communication with Residents by R.D.O.S. - to give clarity to purpose of Bylaws.

RECEIVED
Regional District

JAN 30 2020

101 Martin Street
Penticton BC V2A 5J9

Signature: _____

[Handwritten Signature]

Agency: _____

A.P.O.A.

Date: _____

JAN 18 / 2020

Signed By: _____

ARNIE ERICKSON
President

Title: _____

President

