

Kerri-Lynn Grell

From: Referrals <Referrals@fortisbc.com>
Sent: January 5, 2022 10:16 AM
To: Planning
Subject: FW: [External Email] - Comments requested: E2021.014-ZONE referral
Attachments: Bylaw Referral Sheet 2022-01-04.pdf

Hello,

FortisBC Energy Inc. has reviewed the subject proposal and has no objections or concerns.

Best regards,

Mai Farmer
Property Services Assistant
Property Services



From: Danielle DeVries <ddevries@rdos.bc.ca>
Sent: Tuesday, January 4, 2022 12:00 PM
To: ReferralAppsREG8@gov.bc.ca; FLNRDOSReferrals@gov.bc.ca; Referrals <Referrals@fortisbc.com>; HBE@interiorhealth.ca; planning@cord.bc.ca; development@penticton.ca
Subject: [External Email] - Comments requested: E2021.014-ZONE referral

CAUTION: This is an external email.
Do not respond, click on links or open attachments unless you recognize the sender.

Good morning,

Please see the bylaw referral sheet attached for project number E2021.014-ZONE for the subject properties at Chute Lake Lodge Resort.

Your comments are requested **by February 3rd** to planning@rdos.bc.ca

Thank you,
Danielle



Danielle DeVries • Planner I
Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC, V2A 5J9
p. 250.490.4213 • tf. 1.877.610.3737 • f. 250.492.0063
www.rdos.bc.ca • ddevries@rdos.bc.ca
[FACEBOOK](#) • [YOUTUBE](#) • Sign up for [REGIONAL CONNECTIONS](#)

I acknowledge that I work within the traditional, unceded territory of the syilx people in the Okanagan Nation.

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*"FortisBC" refers to the FortisBC group of companies which includes FortisBC Holdings Inc., FortisBC Energy Inc., FortisBC Inc., FortisBC Alternative Energy Services Inc. and Fortis Generation Inc.

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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:

E2021.014-ZONE (9540 Chute Lake Road)

FN Consultation ID:

L-E2021-014-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

Regional District of Okanagan Similkameen

Date Received:

Tuesday, January 4, 2022

File number:

E2021.014-ZONE

Civic Address:

9540 & 9550 Chute Lake Road

January 14, 2022

Attention: Danielle DeVries

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

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

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

1. Invoice Number: L-E2021-014-ZONE

Referrals Processing Fee

Sub Total \$ 500.00

Tax \$ 0.00

Total \$ \$500.00

INVOICE AMOUNT FOR PRELIMINARY OFFICE REVIEW \$500.00

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

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

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

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

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

limləmt,

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



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:

E2021.014-ZONE (9540 Chute Lake Road)

FN Consultation ID:

L-E2021-014-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

[Regional District of Okanagan Similkameen](#)

Date Received:

Tuesday, January 4, 2022

January 14, 2022

Attention: Danielle DeVries

File number: E2021.014-ZONE

RE: 40 (forty) day extension

Thank you for the above application that was received on 2022-01-04T00:00:00.

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

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

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

I appreciate your co-operation.

limlæmt,

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

Kerri-Lynn Grell

From: Penticton Indian Band Natural Resources Department <no-reply-snpinktn@knowledgekeeper.ca>
Sent: January 14, 2022 3:28 PM
To: Planning
Subject: E2021.014-ZONE (9540 Chute Lake Road)
Attachments: consultation-response-33125-l-e2021-014-zone-20220114-1527.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Danielle DeVries

The proposed project falls within the Okanagan/syilx territory and the Penticton Indian Band's area of responsibility. All lands and resources within the vicinity of this referral are subject to unextinguished Okanagan/syilx Nation Aboriginal Title and Rights.

Please review attached letter.

Please do not reply to this email message. Replies to this message will not be received as this is a no-reply email address. Please contact me at:

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



Bylaw Referral

Regional District of Okanagan-Similkameen

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

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

OFFICE USE ONLY	
Date:	January 4, 2021
Bylaw:	2458.17 & 2459.38
File:	E2021.014-ZONE

You are requested to comment on the attached bylaw for potential effect on your agency's interests. We would appreciate your response **WITHIN 30 DAYS**. If no response is received within that time, it will be assumed that your agency's interests are unaffected.

Please email your reply to planning@rdos.bc.ca by **February 3, 2021**.

PURPOSE OF THE BYLAWS: The applicant is seeking to amend the zoning of their to allow expansion of Chute Lake Lodge Resort onto surrounding leased Crown Land, formalize the campground use, and allow new building forms including cabins with cooking facilities. Specifically, it is being proposed to:

- amend the land use designation under Schedule 'B' (OCP Map) of the Electoral Area "E" Official Community Plan (OCP) Bylaw No. 2458, 2008, from part Parks and Recreation (PR), part Resource Area (RA), and part Commercial Tourism (CT) to Commercial Tourism (CT); and
- amend the zoning under Schedule '2' (Zoning Map) of the Electoral Area "E" Zoning Bylaw No. 2459, 2008, from part Parks and Recreation (PR), part Resource Area (RA), and part Commercial Tourist One (CT1) to Commercial Tourist One Site Specific (CT1s), with the site specific regulations to allow campground use, staff to live in RVs until a new building is completed, and cooking facilities in tourist cabins.

LEGAL DESCRIPTION: District Lot 511S, SDYD, COMMERCIAL RESORT AT CHUTE LAKE; and Lot 1, Plan KAP28183, Sublot 9, District Lot 2711, SDYD; together with portion Plan 1190 of Crown Land Parcel A, Plan KAP 63A, Sublot 9, District Lot 2711, SDYD, except Plan 28183, FOR RV CAMPSITE, PLAY GROUND & RENTAL CABIN PURPOSES FOR PARENT FOLIO C/REF 06829.001, Lease/Permit/License #325823; and approximately 1.9 ha portion of leased Crown Land Parcel A, Plan KAP 63A, Sublot 9, District Lot 2711, SDYD, except Plan 28183, TBD new lease #

CIVIC ADDRESS: 9540 & 9550 Chute Lake Road

PID: 006-691-285

AREA OF PROPERTY AFFECTED:	ALR STATUS:	OCP DESIGNATION:	ZONING DISTRICT:
4.3 ha	No	Part Parks and Recreation (PR), Resource Area (RA), and Commercial Tourism (CT)	Part Parks and Recreation (PR), Resource Area (RA), and Commercial Tourist One (CT1)

OTHER INFORMATION:

The nature of the site is already Commercial Tourist activities, and this rezoning request is mostly formalizing existing uses and the expanded leasehold areas. Chute Lake Lodge Resort has existed since the 1980s and is interested in restoring the environment from past impacts and preventing further harm with future expansion.

BC Assessment has classified the property as part "Residential" (Class 01), part "Business and Other" (Class 06), and part "Rec/Non Profit" (Class 08).

Additional information can be found at: <https://www.rdos.bc.ca/development-services/planning/current-applications-decisions/electoral-area-e/e2021-014-zone>

Please fill out the Response Summary on the back of this form. If your agency's interests are "Unaffected" no further information is necessary. In all other cases, we would appreciate receiving additional information to substantiate your position and, if necessary, outline any conditions related to your position. Please note any legislation or official government policy which would affect our consideration of this bylaw.


Danielle DeVries, Planner 1

Agency Referral List

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Interior Health Authority (IHA) | <input checked="" type="checkbox"/> Central Okanagan Regional District | <input checked="" type="checkbox"/> Fortis |
| <input checked="" type="checkbox"/> Ministry of Forest, Lands, Natural
Resource Operations & Rural
Development (Ecosystem Section) | <input checked="" type="checkbox"/> Ministry of Forest, Lands, Natural
Resource Operations & Rural
Development (Archaeology Branch) | <input checked="" type="checkbox"/> Ministry of Transportation and
Infrastructure |
| <input checked="" type="checkbox"/> City of Penticton | <input checked="" type="checkbox"/> Okanagan Nation Alliance (ONA) | <input checked="" type="checkbox"/> Penticton Indian Band (PIB) |

RESPONSE SUMMARY

AMENDMENT BYLAW NOS. 2458.17 & 2459.38

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

Please see attached letter.

Signature:  _____

Signed By: Tanya Osborne

Agency: Interior Health

Title: Community Health Facilitator

Date: Feb 1, 2022



Interior Health

February 1, 2022
Danielle DeVries, Planner 1
Regional District of Okanagan-Similkameen
101 Martin Street
Penticton, BC, V2A-5J9

Sent via email: planning@rdos.bc.ca

RE: E2021.014-ZONE: 9540 & 9550 Chute Lake Road: District Lot 511S, SDYD, COMMERCIAL RESORT AT CHUTE LAKE; and Lot 1, Plan KAP28183, Sublot 9, District Lot 2711, SDYD; together with portion Plan 1190 of Crown Land Parcel A, Plan KAP 63A, Sublot 9, District Lot 2711, SDYD, except Plan 28183, FOR RV CAMPSITE, PLAY GROUND & RENTAL CABIN PURPOSES FOR PARENT FOLIO C/REF 06829.001, Lease/Permit/License #325823; and approximately 1.9 ha portion of leased Crown Land Parcel A, Plan KAP 63A, Sublot 9, District Lot 2711, SDYD, except Plan 28183, TBD new lease #

Dear Danielle:

Thank you for the opportunity to provide comments on this application. It is our understanding that the applicant is seeking to amend the OCP Future Land Use Designation from part Parks and Recreation (PR), part Resource Area (RA), and part Commercial Tourism (CT) to Commercial Tourism (CT); as well as amend the Zoning from part Parks and Recreation (PR), part Resource Area (RA), and part Commercial Tourist One (CT1) to Commercial Tourist One Site Specific (CT1s), with the site specific regulations to allow campground use, staff to live in RVs until a new building is completed, and cooking facilities in tourist cabins of the above referenced property. This referral has been reviewed from a Healthy Community Development and a Small Water Team perspectives. The following comments are for your consideration:

Healthy Community Development

A sewerage system file search was completed and no records were found. The additional information provided regarding the updated septic field was incomplete. Therefore we have concerns regarding the quality and capacity of the on site septic to sustain the large amount of development and the added pressure that will be put onto the current septic system. We advise that an [Authorized Person](#), under the BC [Sewerage System Regulation](#) [B.C. Reg. 326/2004] complete a performance inspection of the existing system to ensure the system is in good working order, and that a back up area of land for a future replacement sewerage system be identified.

Small Water Team

We recognize and acknowledge that we are collectively gathered on the traditional, ancestral, and unceded territories of the seven Interior Region First Nations, where we live, learn, collaborate, and work together. This region is also home to 15 Chartered Métis Communities. It is with humility that we continue to strengthen our relationships with First Nation, Métis, and Inuit peoples across the Interior.



Interior Health

The referral for expansion of the Chute Lake Lodge Water System is currently **not** recommended by the Small Water Team. The water system has been on a long term Boil Water Notice for untreated surface water supplied in the rental cabins. The water system does not meet the Drinking Water Protection Regulation Schedule B sampling requirement of 4 samples per month during operation. The Lodge has made no attempts to improve the water system since the public notification in 2019. Raw surface water is a known public health risk due to the unpredictable pathogenic load and potential contamination. Expanding the resort would put more of the public at risk.

Therefore we **strongly recommend** that the applicant improve the water system before, or in congruent with this rezoning application and that District staff further investigate the status of the onsite septic, prior to the Board approving this application.

Interior Health is committed to improving the health and wellness of all by working collaboratively with local governments and community partners to create policies and environments that support good health.

Sincerely,

Tanya Osborne
Community Health Facilitator
Healthy Communities Healthy Families

Keyana Bjornson
Environmental Health Officer
Health Protection

We recognize and acknowledge that we are collectively gathered on the traditional, ancestral, and unceded territories of the seven Interior Region First Nations, where we live, learn, collaborate, and work together. This region is also home to 15 Chartered Métis Communities. It is with humility that we continue to strengthen our relationships with First Nation, Métis, and Inuit peoples across the Interior.

Kerri-Lynn Grell

From: Osborne, Tanya <Tanya.Osborne@interiorhealth.ca>
Sent: February 1, 2022 12:46 PM
To: Planning
Subject: IH Referral Response E2021.014-ZONE
Attachments: 8077d189-7041-4359-8787-99dc83be2272.pdf; RDOS E2021.014-ZONE.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Danielle,
Please see attached land use referral response.
Thank you for the opportunity to provide comment.
Kind regards,

Tanya Osborne

Community Health Faciliator
(she/her/hers)

Interior Health

Community Health and Services Centre
505 Doyle Avenue, Kelowna, BC, V1Y 0C5

c: 778-214-0674

p: 250-769-7070 | **ext.** 12287

e: tanya.osborne@interiorhealth.ca

www.interiorhealth.ca



Interior Health

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Kerri-Lynn Grell

From: RDCO Planning Services <planning@rdco.com>
Sent: February 2, 2022 3:35 PM
To: Planning
Subject: FW: Comments requested: E2021.014-ZONE referral
Attachments: Bylaw Referral Sheet 2022-01-04.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good afternoon,

Thank-you for the opportunity to comment. RDCO staff have reviewed the application and have the following comments.

RDCO Community Services staff recommend that consideration be given to evacuation route planning for on-site and off-site road networks, including a permanent secondary access be established for emergency access.

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

Sincerely,

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

From: Danielle DeVries <ddevries@rdos.bc.ca>
Sent: January 4, 2022 12:00 PM
To: ReferralAppsREG8@gov.bc.ca; FLNRDOSReferrals@gov.bc.ca; referrals@fortisbc.com; HBE@interiorhealth.ca; RDCO Planning Services <planning@rdco.com>; development@penticton.ca
Subject: Comments requested: E2021.014-ZONE referral

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CAUTION: This message was sent from outside the organization. Please do not click links, open attachments, or respond unless you recognize the source of this email and know the content is safe.

Good morning,

Please see the bylaw referral sheet attached for project number E2021.014-ZONE for the subject properties at Chute Lake Lodge Resort.

Your comments are requested **by February 3rd** to planning@rdos.bc.ca

Thank you,
Danielle



Danielle DeVries • Planner I

Regional District of Okanagan-Similkameen

101 Martin Street, Penticton, BC, V2A 5J9

p. 250.490.4213 • tf. 1.877.610.3737 • f. 250.492.0063

www.rdos.bc.ca • ddevries@rdos.bc.ca

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Bylaw Referral

Regional District of Okanagan-Similkameen

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

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

OFFICE USE ONLY	
Date:	January 4, 2021
Bylaw:	2458.17 & 2459.38
File:	E2021.014-ZONE

You are requested to comment on the attached bylaw for potential effect on your agency's interests. We would appreciate your response **WITHIN 30 DAYS**. If no response is received within that time, it will be assumed that your agency's interests are unaffected.

Please email your reply to planning@rdos.bc.ca by **February 3, 2021**.

PURPOSE OF THE BYLAWS: The applicant is seeking to amend the zoning of their to allow expansion of Chute Lake Lodge Resort onto surrounding leased Crown Land, formalize the campground use, and allow new building forms including cabins with cooking facilities. Specifically, it is being proposed to:

- amend the land use designation under Schedule 'B' (OCP Map) of the Electoral Area "E" Official Community Plan (OCP) Bylaw No. 2458, 2008, from part Parks and Recreation (PR), part Resource Area (RA), and part Commercial Tourism (CT) to Commercial Tourism (CT); and
- amend the zoning under Schedule '2' (Zoning Map) of the Electoral Area "E" Zoning Bylaw No. 2459, 2008, from part Parks and Recreation (PR), part Resource Area (RA), and part Commercial Tourist One (CT1) to Commercial Tourist One Site Specific (CT1s), with the site specific regulations to allow campground use, staff to live in RVs until a new building is completed, and cooking facilities in tourist cabins.

LEGAL DESCRIPTION: District Lot 511S, SDYD, COMMERCIAL RESORT AT CHUTE LAKE; and Lot 1, Plan KAP28183, Sublot 9, District Lot 2711, SDYD; together with portion Plan 1190 of Crown Land Parcel A, Plan KAP 63A, Sublot 9, District Lot 2711, SDYD, except Plan 28183, FOR RV CAMPSITE, PLAY GROUND & RENTAL CABIN PURPOSES FOR PARENT FOLIO C/REF 06829.001, Lease/Permit/License #325823; and approximately 1.9 ha portion of leased Crown Land Parcel A, Plan KAP 63A, Sublot 9, District Lot 2711, SDYD, except Plan 28183, TBD new lease #

CIVIC ADDRESS: 9540 & 9550 Chute Lake Road

PID: 006-691-285

AREA OF PROPERTY AFFECTED:	ALR STATUS:	OCP DESIGNATION:	ZONING DISTRICT:
4.3 ha	No	Part Parks and Recreation (PR), Resource Area (RA), and Commercial Tourism (CT)	Part Parks and Recreation (PR), Resource Area (RA), and Commercial Tourist One (CT1)

OTHER INFORMATION:

The nature of the site is already Commercial Tourist activities, and this rezoning request is mostly formalizing existing uses and the expanded leasehold areas. Chute Lake Lodge Resort has existed since the 1980s and is interested in restoring the environment from past impacts and preventing further harm with future expansion.

BC Assessment has classified the property as part "Residential" (Class 01), part "Business and Other" (Class 06), and part "Rec/Non Profit" (Class 08).

Additional information can be found at: <https://www.rdos.bc.ca/development-services/planning/current-applications-decisions/electoral-area-e/e2021-014-zone>

Please fill out the Response Summary on the back of this form. If your agency's interests are "Unaffected" no further information is necessary. In all other cases, we would appreciate receiving additional information to substantiate your position and, if necessary, outline any conditions related to your position. Please note any legislation or official government policy which would affect our consideration of this bylaw.


Danielle DeVries, Planner 1

Agency Referral List

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> Interior Health Authority (IHA) | <input checked="" type="checkbox"/> Central Okanagan Regional District | <input checked="" type="checkbox"/> Fortis |
| <input checked="" type="checkbox"/> Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Ecosystem Section) | <input checked="" type="checkbox"/> Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch) | <input checked="" type="checkbox"/> Ministry of Transportation and Infrastructure |
| <input checked="" type="checkbox"/> City of Penticton | <input checked="" type="checkbox"/> Okanagan Nation Alliance (ONA) | <input checked="" type="checkbox"/> Penticton Indian Band (PIB) |

RESPONSE SUMMARY

AMENDMENT BYLAW NOS. 2458.17 & 2459.38

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

Please review the attached letter.

Signature: Maryssa Bonneau

Signed By: Maryssa Bonneau

Agency: Penticton Indian Band

Title: Referrals Coordinator

Date: February 3, 2021

Kerri-Lynn Grell

From: FLNR DOS Referrals CSNR:EX <FLNRDOSReferrals@gov.bc.ca>
Sent: February 3, 2022 2:45 PM
To: Planning
Subject: E2021.014-ZONE referral - 9540 & 9550 Chute Lake Road - MFLNRORD District Okanagan Shuswap Comments

Good day,

MFLNRORD District Okanagan Shuswap Comments:

DOS Lands Team

Lands interests are overseen by Kamloops Lands Team who currently have a Crown Land Tenure 3413606 under review.

Mary Ellen Grant, Lands NR Specialist, 250-558-6273, MaryEllen.Grant@gov.bc.ca

Regards,

Patricia Shatzko

Authorizations Administrator

DOS Referrals Coordinator

Okanagan Shuswap Natural Resource District

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

2501 14th Ave | Vernon, BC V1T 8Z1

Tel (VOIP): 778-943-6850 | Fax: 250-549-5485

FLNRDOSReferrals@gov.bc.ca



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From: Danielle DeVries <ddevries@rdos.bc.ca>

Sent: January 4, 2022 12:00 PM

To: Referral Apps REG8 FLNR:EX <ReferralAppsREG8@gov.bc.ca>; FLNR DOS Referrals CSNR:EX <FLNRDOSReferrals@gov.bc.ca>; referrals@fortisbc.com; HBE@interiorhealth.ca; planning@cord.bc.ca; development@penticton.ca

Subject: E2021.014-ZONE referral

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

Good morning,

Please see the bylaw referral sheet attached for project number E2021.014-ZONE for the subject properties at Chute Lake Lodge Resort.

Your comments are requested **by February 3rd** to planning@rdos.bc.ca

Thank you,
Danielle



Danielle DeVries • Planner I
Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC, V2A 5J9
p. 250.490.4213 • tf. 1.877.610.3737 • f. 250.492.0063
www.rdos.bc.ca • ddevries@rdos.bc.ca
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I acknowledge that I work within the traditional, unceded territory of the syilx people in the Okanagan Nation.

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**A PRELIMINARY FIELD RECONNAISSANCE (PFR) REPORT FOR A
PROPOSED DEVELOPMENTS AT CHUTE LAKE LODGE, NARAMATA, BC**

WFN Cultural Heritage Permit 2020-10-06-001



**Megan Harris, MA RPA
Similkameen Consulting
October 16, 2020**

Prepared For:
Pat Field
Chute Lake Lodge
9540 Chute Lake Rd. Naramata, BC V0H 1N0

Similkameen Consulting
Box 21 Hedley, BC V0X 1K0
similkameenconsulting@gmail.com

Credits

Project Administrator:	Megan Harris (MA, RPA Similkameen Consulting) Pat Field (Chute Lake Lodge)
Project Coordinators:	Brenda Gould
Field Personnel:	Cassidy Lecoy (Penticton Indian Band) Megan Harris (Similkameen Consulting)
Report Author:	Megan Harris
Report Editing and Quality Assurance:	Brenda Gould

Acknowledgements

We would like to thank Pat Field of Chute Lake Lodge for retaining us to conduct this preliminary field reconnaissance (PFR) study. We would also like to thank Maryssa Bonneau and James Pepper of the Penticton Indian Band Natural Resources Department for helping to coordinate the field assessment and Cassidy Lecoy from Penticton Indian Band for his participation in the fieldwork. We would also like to thank Nancy Bonneau for her review of a WFN Cultural Heritage Permit.

Synopsis

On October 8, 2020, Similkameen Consulting conducted a preliminary field reconnaissance (PFR) for proposed developments at Chute Lake Lodge. This development was an undertaking of Chute Lake Lodge. Megan Harris of Similkameen Consulting and Cassidy Lecoy of Penticton Indian Band conducted the fieldwork for this study. This work was conducted under Westbank First Nation Cultural Heritage Permit number 2020-10-06-001.

The PFR identified the whole Study area as having moderate or greater archaeological site potential with three areas of potential (AOP) for subsurface deposits overlapping with current development plans having been identified. It is our professional opinion that there is still the possibility for buried cultural deposits and that the property warrants further archaeological investigation (i.e., an archaeological impact assessment [AIA]) conducted under a “Heritage Conservation Act Section 12.2 Site Inspection Permit” prior to any land-altering activities. Recommendations that will ensure proper future management of any archaeological resources that exist within the proposed upgrade project impact zones are provided in Section 5.0 of this report.

Similkameen Consulting is solely responsible for any errors and/or shortcomings in this PFR report. The results, opinions, and interpretations presented herein are ours, and do not necessarily reflect those of Penticton Indian Band, Westbank First Nation other local First Nation communities and agencies, the Archaeology Branch in Victoria, Chute Lake Lodge, or any other stakeholders. The PFR fieldwork and subsequent reporting was conducted, prepared, and presented without prejudice to issues pertaining to aboriginal rights and title, and the results do not define, limit or delimit the rights and title of any First Nation Agencies.

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A PRELIMINARY FIELD RECONNAISSANCE (PFR) REPORT FOR PROPOSED DEVELOPMENTS AT CHUTE LAKE LODGE, NARAMATA, BC

WFN Cultural Heritage Permit 2020-10-06-001

1.0 INTRODUCTION

On October 8, 2020, Similkameen Consulting conducted a brief in-field assessment as a part of a preliminary field reconnaissance (PFR) for proposed developments at Chute Lake Lodge (the Study Area), Naramata, BC on behalf of Chute Lake Lodge (the Lodge) (Figure 1). Megan Harris of Similkameen Consulting and Cassidy Lecoy of Penticton Indian Band conducted the fieldwork for this study. Pat Field was also present during the fieldwork to guide where developments would be at the Lodge. This work was conducted under Westbank First Nation Cultural Heritage Permit number 2020-10-06-001.

The primary objectives of this PFR were: **(1)** consult the BC Archaeology Branch's Remote Access Archaeological Database (RAAD) to determine the presence of previously recorded sites; **(2)** to identify (locate and map) areas with medium or greater potential within the proposed development impact zones; **(3)** to determine the nature, extent, intensity, and duration of proposed land-altering activities relating to the study area and assess how they could potentially affect any intact cultural deposits; and **(4)** formulate and present recommendations that will ensure effective management, assessment, protection, and/or mitigations of any significant archaeological deposits within the potential proposed impact zones.

1.1 Natural Setting

The Study area is located within the MS dm1 biogeoclimatic zone. This zone occupies the mid-elevation area of the Southern Interior Plateau, specifically the Okanagan Valley above the Interior Douglas Fir zone (Hope et al. 1991). Drier portions of the MS zone occupy elevations between 1,200 m to 1,700 m asl. This zone is characterized by mountainous terrain where wetlands are uncommon. Creeks and runoff systems are common, and this zone experiences cold winters with moderately short, warm summers. Climax stands consist of shade resistant white spruce and sub-alpine fir with several stands dominated by lodgepole pine and Douglas fir. Numerous berry species, red-stemmed feathermoss, rattlesnake plantain, and prince's pine are common. Several stands of lodgepole pine create a habitat for summer and fall populations of ungulates.

The Study area is located at 1,180-1,230 asl and comprises a portion the western shore of Chute Lake and a series of rocky benches and a cliff face. A forest consisting of fir and spruce was present in areas where there had not been previous development. The understory consists of alder, willow snowberry, saskatoon (xiya), soopalallie (sxwusəm), kinnikinnick, falsebox, Oregon grape, grasses, rose, yarrow, and various grasses. The study area is generally rocky and poorly drained.

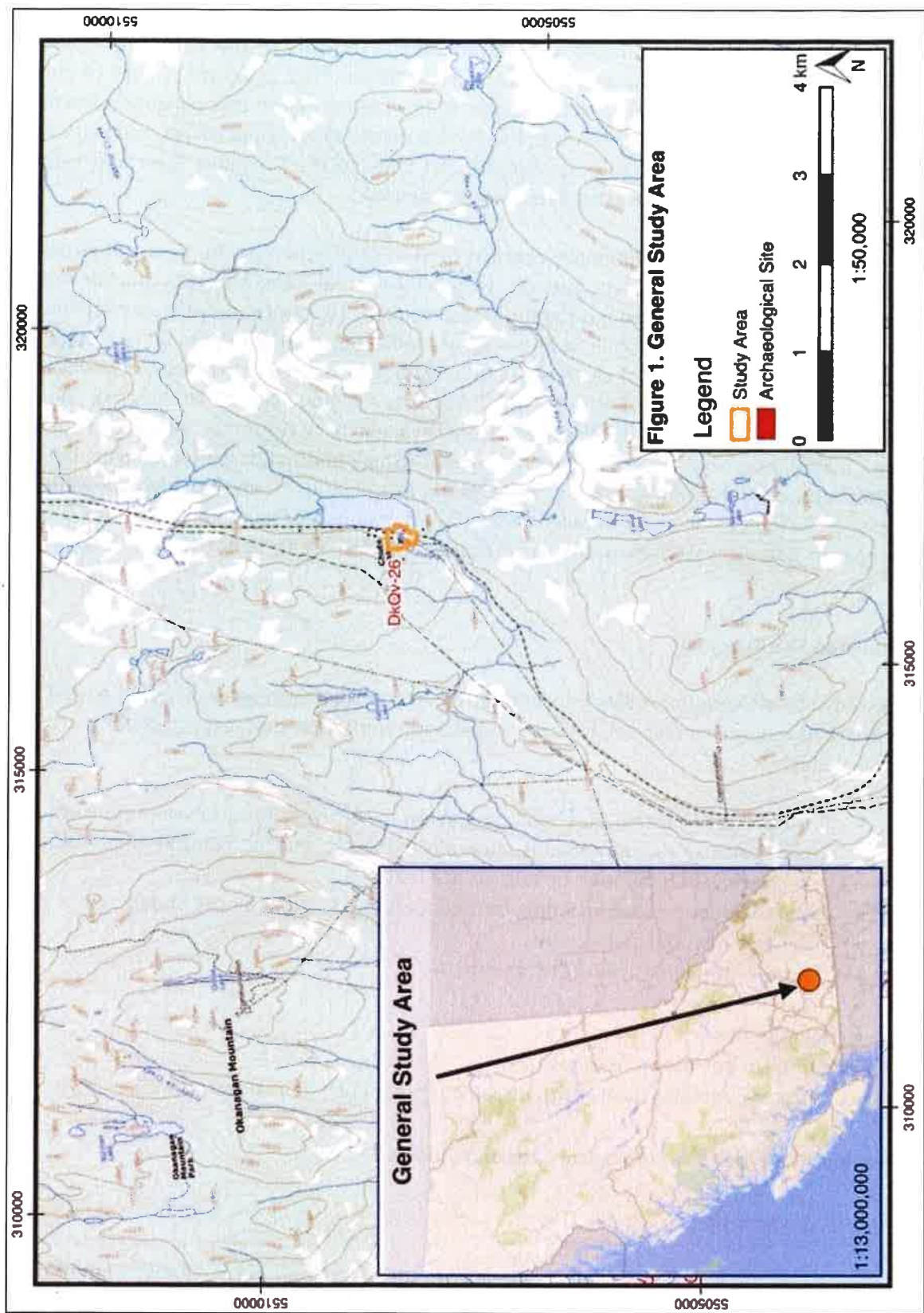


Figure 1. Map showing the general location of the proposed subdivision in Penticton, BC.

1.2 Ethnographic Background

The study area is situated in the asserted traditional territory of the Syilx (Okanagan), specifically Penticton Indian Band and Westbank First Nation. The Syilx are a part of the Okanagan-Collville language group, which is a part of the Interior-Salish ethnolinguistic family (Turner et al. 1980). Their territory extends to the Similkameen Valley, Upper Nicola, and Salmon River watersheds to the north, south into Washington State to the Columbia River and Lake Chelan; east to the Selkirk range, west to the Cascades summit.

Syilx peoples have been traditionally characterized as semi-sedentary hunters, gatherers, and fishers. From early spring to late autumn, they lived in small family groups. Smaller mat lodges were constructed above ground for spring and summer residence, housing two families or less (Hudson 1990; Teit 1930:227). In winter they resided at permanent villages in river valleys or around lakes, which consisted of clusters of pithouses and/or semi-subterranean mat lodges with associated storage facilities (Hudson 1990:68; Kennedy and Bouchard 1998:242-243). Their annual subsistence cycle was dictated by the seasonal availability of resources. Lower elevation areas (i.e., river valleys and lake shores) were used for fishing and major winter villages; base camps for hunting and plant collecting were more inland and in mid to high elevation environments. Resource collection entailed family-based resource procurement locations (i.e., base camps) to gather seasonally available resources (Hudson 1990; Kennedy and Bouchard 1998).

1.3 Expected Site Typology

The assessed area is a series of rolling benched terrain overlooking Okanagan Lake to the west. Following a review of archaeological, historic, and ethnographic literature, expected site typology includes:

- Pre-contact habitation sites consisting of low to high density surface and subsurface lithic scatters, faunal remains, fire altered rock, and/or cultural depressions associated with habitation or subsistence features;
- Isolated lithic artifacts, including formed tools and singular pieces of debitage;
- Lithic raw material quarry sites;
- Culturally Modified Trees (CMTs);
- Trails;
- Pictographs;
- Cairns or petroform features; and
- Ancestral remains (likely cairn burial, but potentially talus slope burials).

1.4 Previous Recorded Archaeological Sites and Studies

1.4.1 Archaeological Sites

There are no previously recorded archaeological sites on the property. Within 5 km of the Study area, there is one previously recorded archaeological site (DkQv-26). DkQv-26 is a rock shelter. There are no associated lithic or faunal remains associated with the site. It was recorded

in 1975 as a part of a broad scale inventory undertaken by Okanagan College in the Okanagan Valley (Baker 1975). The site was recorded as a rock shelter measuring 4 m by 12 m. Wooden poles were observed closing a gap between two boulders. Baker mentions “recent use evidence” in the rock shelter, and the author implies more modern historic uses of the shelter (Baker 1975:6). However, there is no mention any materials (pre-contact or historic) observed at the site. Additionally, there are no photographs or a discussion of landforms in the area to indicate potential for archaeological sites and cultural features. It is difficult to speak to the nature of the site.

1.4.2 Previous Studies

No previous assessments were found to directly overlap with the Study area. A general assessment by Okanagan College was conducted within the broader area resulting in the identification of DkQv-26 (Baker 1975). The purpose of Okanagan College’s survey was to consolidate past archaeological work in the Okanagan Valley through visits to known sites and surveys of new areas. These newly assessed areas were based on ethnographic information, details from the Okanagan Historical Society, the local community input.

An archaeological overview model does exist for the area. The resulting GIS model indicates that the Study area has moderate to high archaeological site potential. Additional information regarding the archaeological, physiographical, environmental, and cultural history of the region can be found in the AOA report (Brolly et al. 1997).

1.5 Historic Occupation and Use of the Area

A portion of the Kettle Valley Railway (KVR) crosses the eastern portion of the Study area. It is well documented and associated with early to mid-20th century events. Because it was built after 1846, it is not afforded automatic protection under the Heritage Conservation Act, but sections of the right of way are protected by the Heritage Branch.

The previous Chute Lake Sawmill is within the Study area. The sawmill was constructed between 1915-1920. Because of its location between Naramata and Kelowna, a bunkhouse was constructed at the same time. Shortly after the mill’s construction, a station along the KVR was constructed to service the area. The mill remained operation until the 1970s. The mill building was torn down, but the bunkhouse remains to the day (Plates 1-3).



Plate 1. Photo of the sawmill at Chute Lake c. 1915-1920. Photo from the Penticton Archives.



Plate 2. Photo of the Chute Lake sawmill from the eastern shore of Chute Lake c.1925. Photo from the Penticton Archives.



Plate 3. Aerial photo of Chute Lake Lodge from 1972. Photo from the Penticton Archives.

2.0 PROPOSED DEVELOPMENTS

Currently, the Lodge is proposing to construct at least 19 new bunkhouses, ten new RV locations, and one "glam-tent" location (Figure 2). Associated infrastructure (e.g., sewer, electric) associated with these developments would be above ground. Land-altering impacts to the Study area would include:

- 1) Vegetation removal and grubbing;
- 2) Construction of foundation platforms for at least five new bunkhouses;
- 3) Drilling of posts for at least 14 new stilt-style bunkhouses;
- 4) Importation of fill for the construction of ten new RV locations; and
- 5) Ancillary machine movement associated with these developments

Each of the above-proposed activities and any post-development impacts could pose a potential threat of direct impact to any cultural deposits that may be on the property.

3.0 IN-FIELD ASSESSMENT OBJECTIVES AND METHODS

The main objectives of this PFR were to gather background information and identify previously recorded sites associated with the proposed project impact zones and assess archaeological site potential for the proposed impact zones. Also taken into consideration are existing scholarly resources, ethnographic land-use information, and the results of an in-field assessment. The archaeological site potential assessments are based on a collective consideration of the nature and location of previously identified archaeological sites, environmental and geological context, and the nature and location of nearby natural resources.

Our archaeological site potential rating is as follows:

Nil/Low archaeological site potential (e.g., areas on extreme slopes, dense vegetation (riparian marshes/swamps and other inaccessible areas, distance from food and natural resources, on exposed sterile sediments, on recently disturbed and man-made landforms, etc.)

Moderate archaeological site potential (e.g., relatively flat areas near extinct and extant aquatic features and natural resources, on reasonably developed soils, in habitable sedimentary environments, on moderately flat and accessible landforms, along natural travel corridors, etc.)

High archaeological potential (e.g., areas in very close proximity to aquatic features and drainages, water bodies, and natural resources, on flat benches and raised terraces, with optional directional orientation [south facing aspect], with suitable sedimentary environments and good sandy soil development, etc.)

A complete and systematic PFR was employed throughout the development. The PFR included a judgmental pedestrian foot survey by a two-person crew, focusing the impact areas. The pedestrian foot survey targeted topographic features conducive to attracting human occupation and/or use.

4.0 RESULTS

On October 8, 2020, Megan Harris and Cassidy Lecoy conducted a brief in-field assessment for proposed developments at Chute Lake Lodge. This field inspection also included Pat Field of Chute Lake Lodge.

The in-field visual inspection and assessment included a pedestrian survey of two to three crew members spaced between 1 – 5 m with a survey coverage range of 30 m (Figures 3 and 4; Plates 4 and 5). Crew inspected the ground surface for any surficial evident cultural materials features (i.e., artifacts, cultural depressions, culturally modified trees, rock art); none were recovered or observed.

This in-field visual inspection and assessment focused on the overlap between the Study area and proposed developments. The visual inspection allowed us to identify specific associated areas (area of potential [AOP]) that we consider to have moderate or greater potential for buried subsurface deposits (Figure 5; Plates 6 – 8). A total of three areas of potential were identified.

AOP 1 is defined as a low-lying level bench on the southeast shore of Chute Lake (Plate 6). Vegetation is generally sparse with grasses present. Previous disturbances to the area included the sawmill that was previously there and light recreational uses by the Lodge.

AOP 2 is defined as a discrete, rocky gently sloping east-facing bench abutted by a rockface (Plate 7). Chute Lake is located approximately 200 m to the east of the landform, and the landform has large boulders present throughout. Vegetation is consistent with the MS biogeoclimatic zone. Previous disturbances to the area included light recreational use (i.e., occasional overnight camping and day use observed through surface refuse) and the 2003 forest fire.

AOP 3 is defined as a discrete gently sloping east-facing bench abutted by a rockface (Plate 8). Chute Lake is located approximately 230 m to the east of the landform. Vegetation is consistent with the MS bio geoclimatic zone. Previous disturbances to the area include the 2003 forest fire.

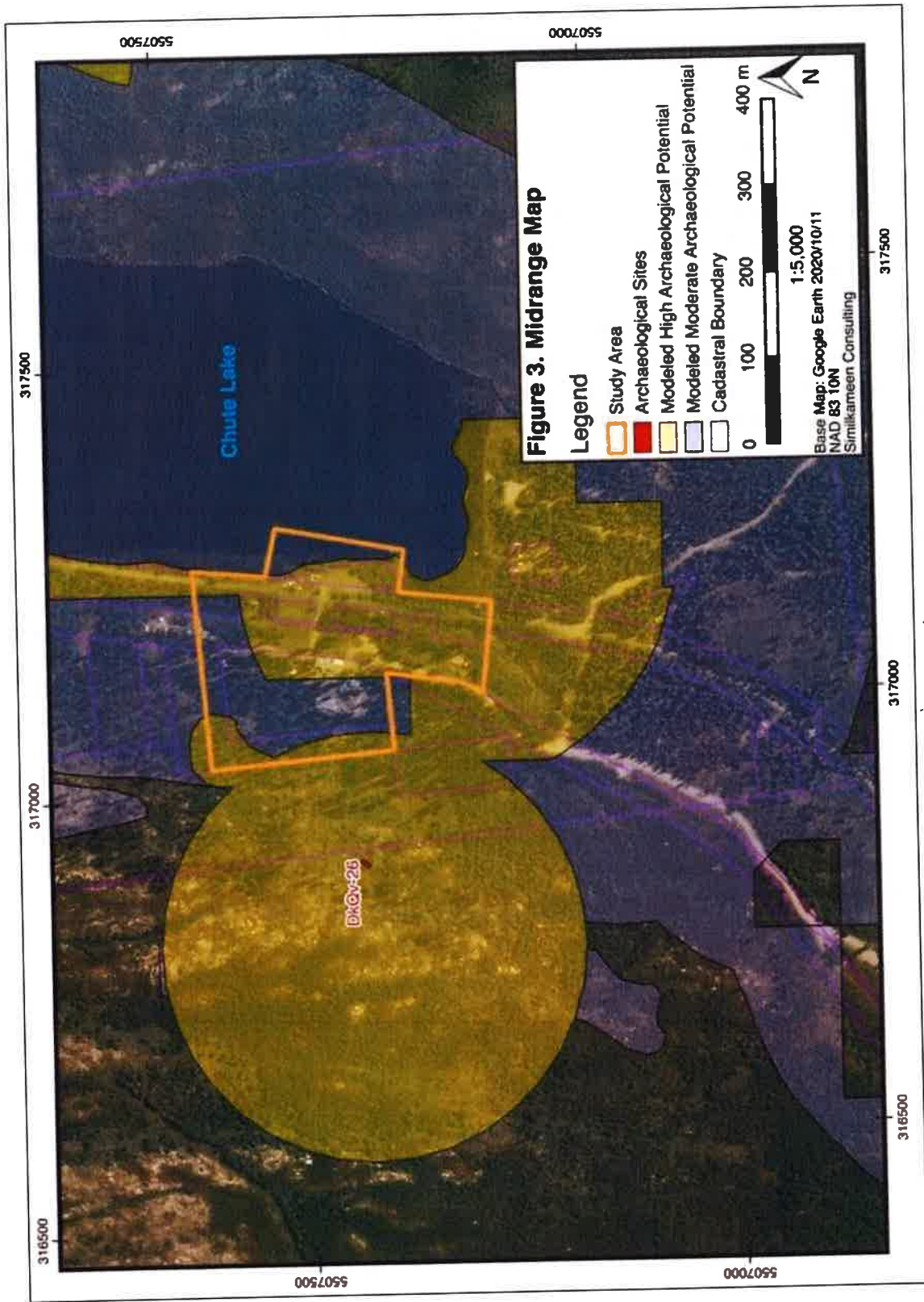


Figure 3. Midrange map showing modeled areas of potential for the study area.

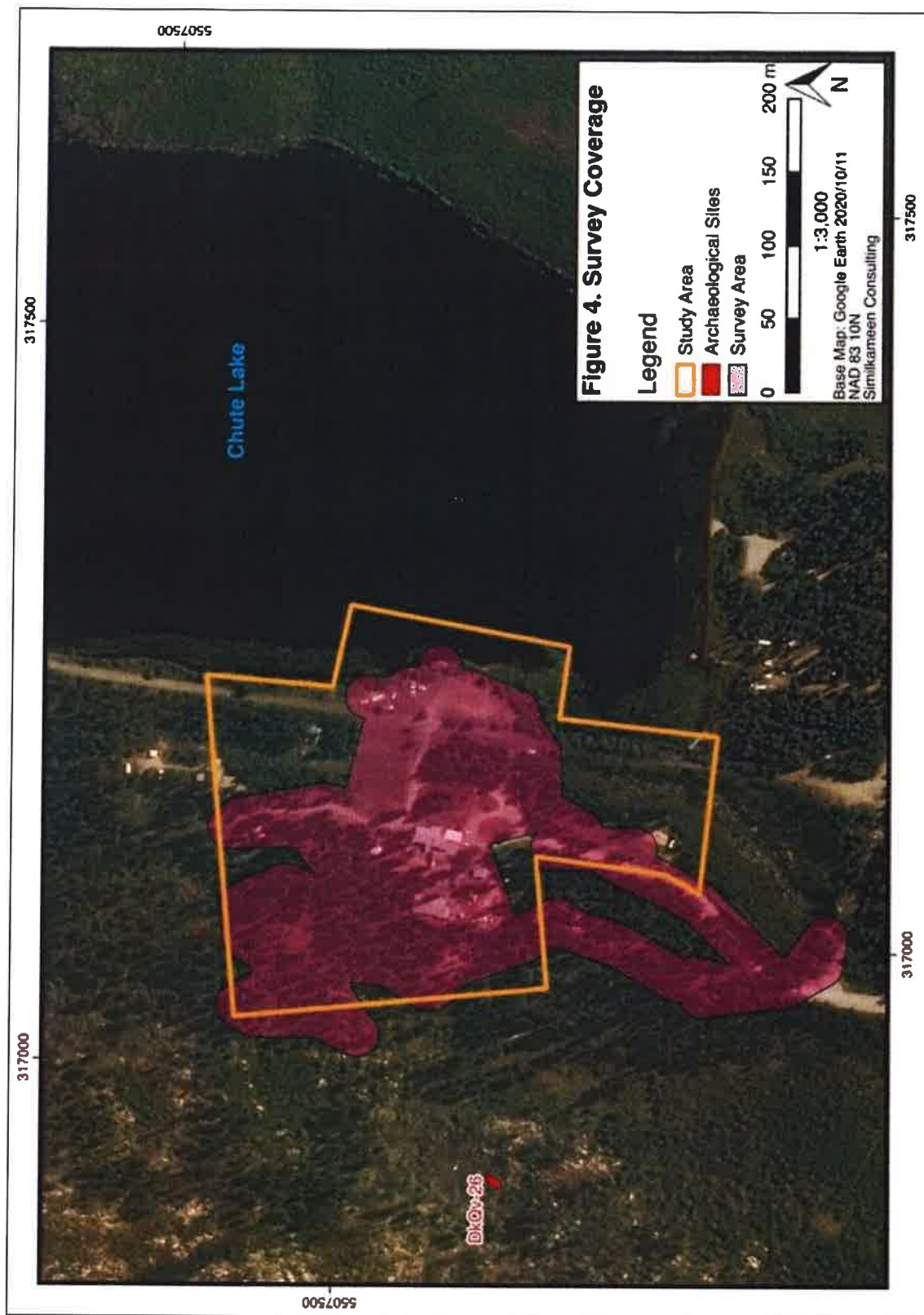


Figure 4. Map showing survey coverage.

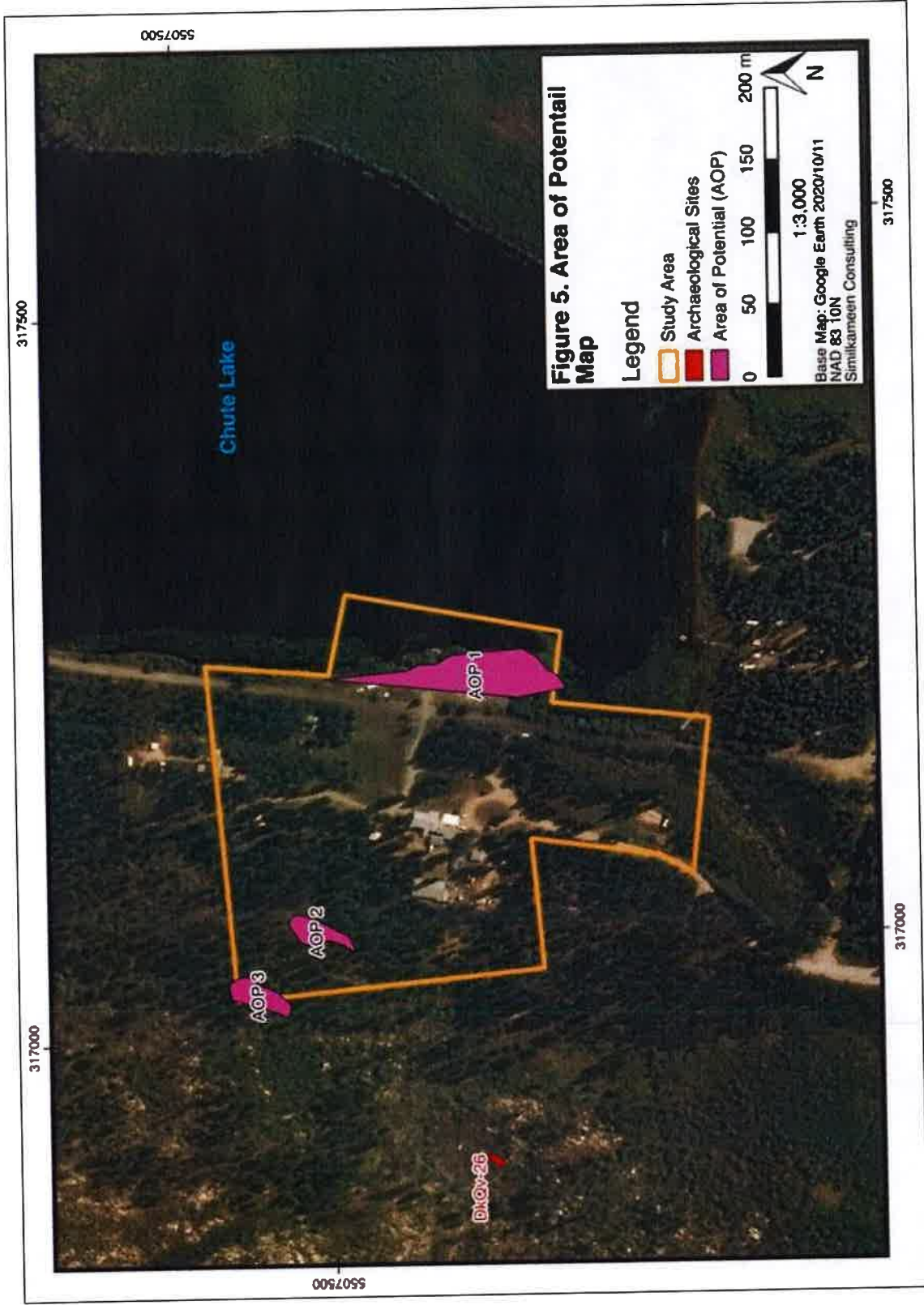


Figure 5. Map showing identified areas of potential (AOPs).



Plate 4. Photo showing the terrain for the southern portion of the Study area. There are no developments planned in this area. Its current use is for RV camping.



Plate 5. Photo showing terrain of the southern portion of the Study area. Exposed sediments are predominantly sandy.



Plate 6. Photo showing the terrain for AOP 1, looking south. Currently, there are plans for five bunkhouses at this location. Ground disturbance would be minimal based on the sawmill that was previously at this location.

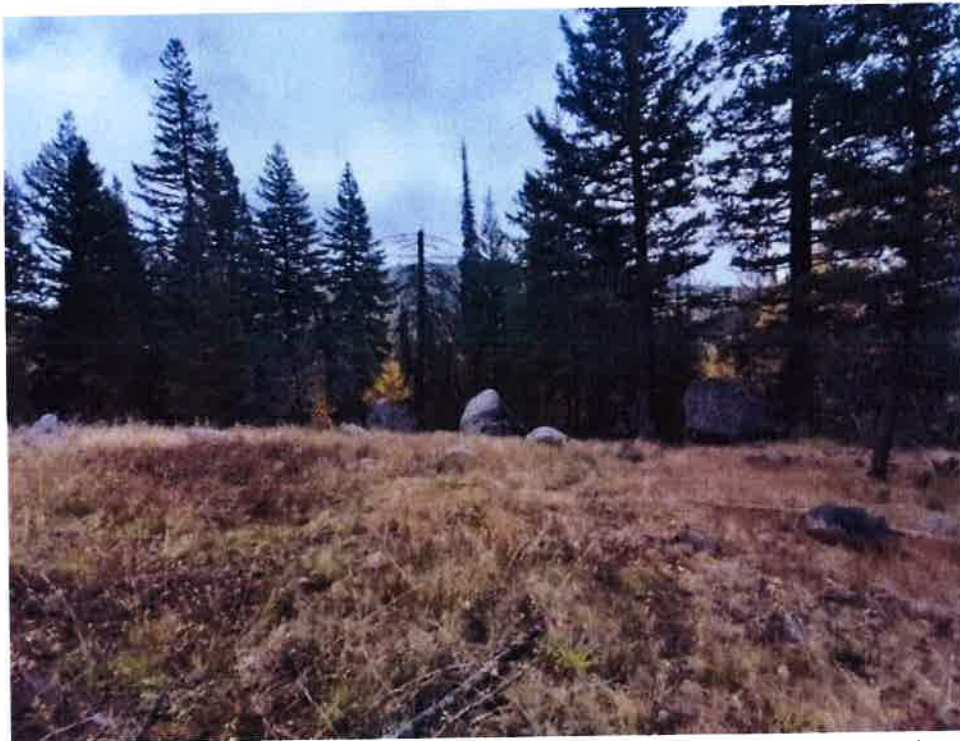


Plate 7. Photo of AOP 2, looking east. Currently, there are plans for off-grid style cabins at this location.



Plate 8. Photo of AOP 3, looking north. Currently, there are plans for off-grid style cabins at this location.

5.0 MANAGEMENT RECOMMENDATIONS AND CLOSING COMMENTS

Our 2020 PFR examined the Study area and the proposed lodge upgrades currently being considered for this property. Land-altering impacts associated with the construction of a bunkhouses, RV camping locations, and a “glamp tent” area could impact potentially the three identified areas of potential. Developments that pose a threat to or direct adverse impact to areas of moderate or greater potential for subsurface archaeological deposits should be subjected to a future detailed archaeological impact assessment (AIA) under a Heritage Conservation Act Section 12.2 Inspection Permit. If additional developments are considered outside the scope of these proposed developments, then those area will need to be assessed for archaeological potential and could be added to the AIA scope.

Specifically, it is recommended that the AIA include another ground surface inspection and an intensive subsurface testing program that focuses on impact zones considered to have potential for buried pre-contact period lithic scatters or features. Such a study would determine the presence, nature and distribution of any significant cultural deposits, and would provide the basis for any future required archaeological management actions.

5.1 Closing Comments

In the event that machine operators and/or construction crew members encounter any (pre-contact or post-contact period) cultural materials or features, a chance find procedure would be initiated. The contractor is obligated to halt machine activity and contact a qualified archaeologist. The archaeologist will then visit the site to inspect the identified concern and formulate appropriate management recommendations. If it is suspected that further impacts to cultural deposits may occur and artifact recovery is an insufficient management solution, a visual monitoring or systematic data recover program may be required prior to resuming machine activity. The Archaeology Branch and appropriate First Nation governing agencies will be consulted in cases of chance finds.

As part of the professional heritage compliance sector the authors adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to our corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

- i. A commitment to meaningful consultation, project collaboration, and obtaining the free, prior, and **informed** consent of Aboriginal peoples before proceeding with heritage resource compliance projects and products.
- ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the heritage compliance sector, and that Aboriginal communities gain long-term sustainable benefits from all heritage compliance projects and all research endeavours.

- iii. A commitment to **educate** management, staff, and proponents on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations.

This study has been undertaken without prejudice to Aboriginal Title and Rights and was undertaken with the free, prior, and informed consent of the Penticton Indian Band and Westbank First Nation.

6.0 REFERENCES CITED

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Penticton Indian Band
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Referrals@pib.ca | www.pib.ca
Telephone: 250-492-0411
Fax: 250-493-2882

Project Name:

E2021.014-ZONE (9540 Chute Lake Road)

FN Consultation ID:

L-E2021-014-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

Regional District of Okanagan Similkameen

Date Received:

Tuesday, January 4, 2022

Company Project ID (province/proponent ID):

E2021.014-ZONE

February 3, 2022

Attention: Planning RDOS,

The Penticton Indian Band acknowledges receipt of your referral dated 01/04/2022. The syilx (Okanagan) Nation holds unextinguished aboriginal title and rights to the land and resources within our Territory. Our lands and our jurisdiction over our lands have never been ceded. Our responsibilities to the lands, waters and all living things within our Territorial boundaries were given to us by the Creator; they are the truth; an unending truth and cannot be given or taken away. All activities on the land including zoning amendments are exclusively subject to syilx (Okanagan) title, jurisdiction, rights, interests, and syilx (Okanagan) decision making and responsibility.

As such, we write to affirm our position of rejection; the Penticton Indian Band does not approve, consent or in any other manner agree to the proposed activity for the following reasons:

1. The proposed activity is located within a culturally significant area for the Penticton Indian Band, syilx Nation. Current and past use of this area have been identified by PIB and syilx knowledge indicate that the area is highly significant. These activities represent an infringement on our aboriginal rights and title and will have a lasting impact on our people's ability to harvest plants and animals for food, social or ceremonial purposes. Our people are being systematically and purposefully excluded from our sacred lands, our hunting areas, our gathering areas, and our places of ceremony.
2. The proposed activity is located within a high archaeological potential area. The archaeological significance of the proposed activity is outlined in the Proposed Development at Chute Lake Lodge Preliminary Field Reconnaissance report (WFN Cultural Heritage Permit 2020-10-06-001). The Preliminary Field Reconnaissance (PFR) report was conducted by Similkameen Consulting alongside Penticton Indian Band and Westbank First Nation. The results of the PFR report identify the high archaeological potential within the study area and strongly recommend an archaeological impact assessment to identify potential archaeological sites, their extent, potential impacts, and mitigation measures prior to any further expansion activities. To date, the archaeological impact assessment has not been undertaken.
3. The developer will receive substantial economic benefit from the proposed development while we, the Title and Rights

holders, will receive no economic benefit for the loss of our lands and must bear all of the impacts to our lands and our people activities with the proposed works.

4. The Regional District of Okanagan-Similkameen does not have the right or jurisdiction to issue or approve activities on our lands or waters without acquiring consent from the Penticton Indian Band, Syilx Nation. Consideration of activities within Syilx Territory requires deep, lasting, and high-level consultation. This is true for all lands within our Territory and is not limited in any way by size, type, scope, or purpose. The referral-consultation process conducted around this referral has been exceedingly questionable. This is not in-line with the 'process of reconciliation' promised by both the provincial and federal governments. This is not in line with the Constitution Act, of 1982. The province is not abiding by the Tsilhqot'in decision. In fact, the province is allowing companies to continue its history of colonial attack upon our people by excluding us from our lands and our sacred spaces. The Penticton Indian Band does not consent to the current process employed by the provincial government to approve activities on our unceded lands and waters.

Over the last two decades, the Supreme Court of Canada has clarified the law respecting the rights of indigenous peoples 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. In June 2014, the Supreme Court of Canada in the Tsilhqot'in case set out the following characteristics and implications of Aboriginal title:

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

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

- Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.
- Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
- Article 8(2): States shall provide effective mechanisms for prevention of, and redress for: (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources.
- Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

- Article 26(2): Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
- Article 32(2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

The provincial government's consultation framework, land use referral policy and administrative system are insufficient to uphold our interests in the land and resources within our traditional territory or to meet the fiduciary obligations of British Columbia. 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 title and jurisdiction. Compliance with provincial processes, legislation, regulations, and requirements therefore does not ensure that our interests are adequately accommodated.

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

Please contact me at your earliest convenience to discuss.

Maryssa Bonneau
Referrals Coordinator
Natural Resources Department
Penticton Indian Band
W: 250-492-0411
C: 250-486-3241
referrals@pib.ca

Kerri-Lynn Grell

From: Maryssa Bonneau <mbonneau@pib.ca>
Sent: February 3, 2022 2:36 PM
To: Planning
Subject: E2021.014-ZONE (9540 Chute Lake Road) Bylaw Referral Response
Attachments: bylaw-referral-sheet-2022-01-04.pdf; consultation-response-33125-l-e2021-014-zone-20220203-1132.pdf; Chute Lake Lodge PFR Report-FINAL.pdf

Importance: High

Good day,

The following proposed project falls within the Okanagan/syilx territory and the Penticton Indian Band's area of responsibility. All lands and resources within the vicinity of this referral are subject to unextinguished Okanagan/syilx Nation Aboriginal Title and Rights.

Please review attached letters.

Thank you.

Maryssa Bonneau

sisi matk^w

Referral Coordinator



Penticton Indian Band

Natural Resources

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UNDRIP: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

10 Principles: <http://www.justice.gc.ca/eng/csj-sjc/principles.pdf>



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Kerri-Lynn Grell

From: Penticton Indian Band Natural Resources Department <no-reply-snpinktn@knowledgekeeper.ca>
Sent: January 14, 2022 3:25 PM
To: Planning
Subject: E2021.014-ZONE (9540 Chute Lake Road)
Attachments: consultation-response-33125-l-e2021-014-zone-20220114-1525.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Danielle DeVries

The proposed project falls within the Okanagan/syilx territory and the Penticton Indian Band's area of responsibility. All lands and resources within the vicinity of this referral are subject to unextinguished Okanagan/syilx Nation Aboriginal Title and Rights.

Please review attached letter.

Please do not reply to this email message. Replies to this message will not be received as this is a no-reply email address. Please contact me at:

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



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:

E2021.014-ZONE (9540 Chute Lake Road)

FN Consultation ID:

L-E2021-014-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

Regional District of Okanagan Similkameen

Date Received:

Tuesday, January 4, 2022

File number:

E2021.014-ZONE

February 15, 2022

Attention: Danielle DeVries

Re: E2021.014-ZONE (9540 Chute Lake Road)

Invoice # -L-E2021-014-ZONE

We write regarding your failure to pay invoice L-E2021-014-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 4, 2022.

Invoice Number: L-E2021-014-ZONE

Subtotal Tax Total

Referral Processing \$ 500.00 \$ 0.00 \$ 500.00

Total \$ 500.00 \$ 0.00 \$ 500.00

INVOICE AMOUNT FOR PRELIMINARY OFFICE REVIEW \$500.00

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

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

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

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

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

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

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

limlæmt,

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

Kerri-Lynn Grell

From: Penticton Indian Band Natural Resources Department <no-reply-snpinktn@knowledgekeeper.ca>
Sent: February 15, 2022 5:53 PM
To: Planning
Subject: E2021.014-ZONE (9540 Chute Lake Road)
Attachments: consultation-response-33125-l-e2021-014-zone-20220215-1752.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Danielle DeVries

The proposed project falls within the Okanagan/syilx territory and the Penticton Indian Band's area of responsibility. All lands and resources within the vicinity of this referral are subject to unextinguished Okanagan/syilx Nation Aboriginal Title and Rights.

Please review attached letter.

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