



Request for Decision Bylaw Amendment Application

File No: P 723 101
Reference: Bylaw Nos. 3213 & 3214
Date: March 31, 2023

Subject: Bylaw No. 3213 & Bylaw No. 3214 (Lizard Creek / C H Nelson Holdings Ltd – Galloway Lands)
Applicant: CH Nelson Holdings Ltd
Agent: Richard Haworth, Haworth Development Consulting Ltd.
Location: Near Highway 3, between The Cedars development, Mount Fernie Provincial Park and Fernie Alpine Resort
Legal: Short Legal: The East 1/2 of District Lot 4129, The North 1/2 of District Lot 4126, the Remainder of District Lot 8900, and Part of the Remainder of District Lot 4130. (PIDs: 011-359-323, 011-359-404, 011-359-447, 011-359-471).

Proposal: Application to amend the Elk Valley OCP and zoning bylaw for four subject properties (185 ha) to accommodate development of an access road, approximately 90 residential acreages and creation of a 94 ha conservation / recreation parcel.

Proposed OCP amendments are:

- a) changing the existing land use designations of the properties to SH, Small Holdings and OSRT, Open Space, Recreation and Trails;
- b) adding two development permit areas applicable to the subject properties for the purpose of environmental protection and wildfire hazard mitigation; and
- c) amending applicable policies to reflect the proposed land use.

Proposed Zoning Bylaw amendments are:

- a) changing the existing zone designations of the properties to RS-4, Single Residential (Extensive) Zone and PG-4, Resort Open Space and Trails Zone; and
- b) providing clarity on the permitted uses under the PG-4 zone on the properties.

Development Agreement: The applicant is offering to register development commitments to provide clarity and assurance about how the land will be developed and accessed. Commitments offered in the interest of the RDEK are:

- The lands will be developed in substantial accordance with the Conceptual Plan;
- No residential lot can be created without community water and sewer servicing;
- No residential lots can be created until an access road is constructed between Snow Pines Drive and Lizard Creek Road which provides connection to Highway #3. A Statutory Right of Way (SRW) to allow the access road to be used by the public and emergency responders for emergency access and egress purposes will be registered on the title of the lands.

Development Agreement cont'd:

- No residential lots can be created until the conservation / recreation parcel is created by subdivision;
- A 'no build' covenant will be registered on each residential lot over the portion of the lot that lies outside of the identified building envelope;
- No parent parcel subdivision until a temporary SRW is registered over the conservation / recreation lands to ensure the continued ability for the public to access the land. (This agreement will be an interim measure used until the lands are transferred to the conservation agency).
- No parent parcel subdivision until a SRW is registered over the conservation / recreation lands for a connector trail between Mount Fernie Provincial Park and Fernie Alpine Resort. This SRW will start out as a blanket SRW but can be further refined to a specific corridor once a trail location and design is determined. The trail must be built to Whistler trail standard, type II or better.
- No residential lots until an Environmental Management Plan is completed which will include a requirement for an Environmental Monitor during construction of the development. The Environmental Management Plan will be submitted to the RDEK as part of the Environmentally Sensitive Areas (ESA) Development Permit application which will be required as part of the subdivision process.
- No subdivision or development of the lands until a covenant in favour of MOTI is registered to ensure a Traffic Impact Assessment acceptable to MOTI has been completed.

A Development Agreement containing the above commitments has been reviewed and agreed upon by RDEK staff. Compliance with the listed commitments can be ensured by the RDEK prior to adoption of zoning, ESA development permit issuance, subdivision sign-off and/or building permit issuance, all of which are customary times for the RDEK to check for compliance with any charges on title within which the RDEK is named as the charge holder.

In addition to the above noted Development Agreement commitments, the applicant is proposing to register a Statutory Building Scheme which includes architectural guidelines and building envelopes to reduce impacts to the natural environment within each residential acreage. The Building Scheme will also regulate and/or prohibit activities which attract wildlife such as garbage storage, composting, bird feeders, and fruit bearing trees. Enforcement of a Statutory Building Scheme is the responsibility of the Developer and the home owners.

Options:

1. THAT Bylaw No. 3213 cited as "Regional District of East Kootenay – Elk Valley Official Community Plan Bylaw No. 2532, 2014 – Amendment Bylaw No. 16, 2023 (Lizard Creek / CH Nelson Holdings Ltd – Galloway Lands)" be introduced and further, that the Board is satisfied that the OCP consultation identified in the staff report is appropriate.

2. THAT Bylaw No. 3214 cited as “Regional District of East Kootenay – Elk Valley Zoning Bylaw No. 829, 1990 – Amendment Bylaw No. 106, 2023 (Lizard Creek / CH Nelson Holdings Ltd – Galloway Lands)” be introduced; and further, that a development agreement containing the items identified in the March 31, 2023 staff report be registered on title prior to bylaw adoption.
3. THAT Bylaw No. 3213 cited as “Regional District of East Kootenay – Elk Valley Official Community Plan Bylaw No. 2532, 2014 – Amendment Bylaw No. 16, 2023 (Lizard Creek / CH Nelson Holdings Ltd – Galloway Lands)” not proceed.
4. THAT Bylaw No. 3214 cited as “Regional District of East Kootenay – Elk Valley Zoning Bylaw No. 829, 1990 – Amendment Bylaw No. 106, 2023 (Lizard Creek / CH Nelson Holdings Ltd – Galloway Lands)” not proceed

Recommendation: Options 1 & 2:

The majority of the lands have been designated for resort expansion. As the resort developer is not proposing to acquire the lands and is instead expanding the resort in a southerly direction, a change in OCP designation is appropriate.

The subject land is a large, high-profile property containing many environmentally sensitive areas and important wildlife attributes, in addition to supporting significant year-round public recreation use. There is presently no permanent mechanism in place for this privately-owned property to prevent clear cut logging, protect environmentally sensitive areas or ensure public access to the property. The application proposes to change this by: a) introducing parcel specific development permit requirements to help protect environmental sensitivities, b) including a no build covenant over the portion of each residential lot outside the building envelope, c) proposing to register statutory right of ways (SRW) to permit public recreational use including an SRW over a future trail corridor connecting Mount Fernie Provincial Park to Fernie Alpine Resort, and d) offering to transfer approximately 1/2 of the land area to a conservation group for ongoing conservation and recreation management, including conservation of the entire Lizard Creek corridor within the subject properties.

The OCP policies generally favour more compact development with opportunities for more efficient use of land; however, this proposal balances these OCP conservation objectives with rural residential development policies and accommodates continued public access to the lands for non-motorized recreation. The proposal is also improved by the provision of community servicing and by offering use of the main access road (proposed as a private road) as an emergency egress route under SRW with the RDEK for emergency responders, residents and public users of Fernie Alpine Resort.

Property Information: **Current OCP Designation:** RR, Rural Resource and RE, Resort Expansion

Proposed OCP Designation: SH, Small Holdings and OSRT, Open Space, Recreation and Trails

OCP Policies: The applicable OCP policies are numerous therefore they are attached separately.

Current Zone Designations:

RR-60, Rural Resource Zone - 60 ha minimum parcel size

RR-8, Rural Residential (Country) Zone – 8 ha minimum parcel size

Proposed Zone Designation:

Development land: RS-4, Single Residential (Extensive) Zone - 0.4 ha minimum parcel size

Conservation / Recreation land: PG-4, Resort Open Space and Trails Zone - no minimum parcel size

Parcel Size:

Total Application Area - 185 ha (457 ac)

Proposed Parcel Sizes - 0.4 ha to 2.7 ha (1 ac to 6.6 ac) residential acreages and one 94 ha (232 ac) conservation / recreation parcel

Density:

Existing: The parcel is currently vacant.

Proposed: The proposal is for a 90-lot residential subdivision plus one conservation / recreation lot. Each residential parcel is permitted one single family dwelling. A secondary suite is a permitted accessory use.

Potential: If the proposed RS-4 land was developed with all lots at the minimum size permitted by the RS-4 Zone, it could have approximately 195 lots, not including allowance for creeks, topography, roads etc. The applicant has stated that, because of topography and the required minimum useable site area, the maximum number of lots actually possible within the development lands (outside the conservation parcel) is consistent with the proposed conceptual plan.

ALR Status: A 5.6 ha portion of the remainder of DL 4130 lying on the east side of Highway 3 along the Elk River which is designated as ALR. Since no new lot boundaries are proposed within this ALR land, an application to the ALC is not required. This land is proposed to be consolidated with adjoining ALR land.

Interface Fire Hazard Rating: The majority of the property has a low fire hazard rating with some areas of moderate and high located primarily on the remainder of DL 4130.

The application proposes to add a wildfire hazard development permit requirement for the property consistent with the standard RDEK development permit requirements for wildfire hazard. The proposal includes two access / egress points for the development via Snow Pines

**Property
Information
cont'd:**

Drive and Lizard Creek Road. Additionally, the applicants propose to request that the proposed new residential lots be included in the Fernie Rural fire service area.

BC Assessment: Managed Forest (vacant). The land has operated as managed forest for more than 16 years and the applicant plans to remove land from the private managed forest program on a phased basis as development of the property proceeds.

Water and Sewer Services: The development lands are proposed to be serviced with community water and sewer in cooperation with Fernie Alpine Resort and the Fernie Alpine Resort Utility Corporation. The application indicates that upgrades to both existing systems will be required and that these upgrades will be completed in accordance with subdivision requirements as the development proceeds. The proposed development agreement includes a prohibition on the creation of any residential lots without community servicing.

Flood Hazard Rating: The portion of DL 8900 that is east of Highway 3 is within the Elk River floodplain and is proposed as OSRT with no residential development.

A portion of DL 4130 along Lizard Creek is within a debris flow hazard zone and has a flood hazard rating of “G” which means this area has not been studied but is expected to experience deep water, high velocity flows and or debris impacts. The conceptual plan shows a bridge over Lizard Creek in this area, with no residential development occurring in the area. The applicant has indicated that the bridge will be a ‘clear span’ bridge with no portion of it in the wetted area of the creek.

**Professional
Studies:**

A **Transportation Impact Assessment** was completed by Bunt & Associates in 2021 based on a previous development proposal for 75 residential lots accessed solely from Snow Pines Drive. The TIA has not been updated to reflect the current plan as the original TIA demonstrated that the level of development proposed did not negatively impact the road network at the ski hill and the current proposal is for primary access from Lizard Creek Road (and Highway 3) with controlled (gated) access at Snow Pines Drive. The development agreement includes a covenant that requires that a new TIA will be completed as directed by the Ministry of Transportation and Infrastructure (MOTI) prior to creation of any residential lots. The new TIA will be based on the new proposed road network and any traffic issues or road improvements must be addressed to the satisfaction of MOTI.

A comprehensive **Assessment of Environmental and Wildlife Values** was completed by Cascade Environmental Resource Group (Cascade). The report is dated November 2, 2022. The report identifies several environmental constraints that should be considered by the applicant and it recommends preparation of an Environmental Management Plan including an Erosion and Sediment Control Plan prior to construction. It suggests that part of implementation of the Environmental Management Plan would be to appoint an Environmental Monitor to oversee and inspect development to ensure the Plan is followed. The application states that

**Professional
Studies – cont'd:**

Cascade's report was used to confirm development locations, setbacks from riparian areas, and to establish best management practices for the proposed development. In accordance with the development agreement offered, an Environmental Management Plan will be prepared and submitted to the RDEK with an ESA development permit application prior to subdivision of any residential lots.

Cascade's report concludes that, based on the information reviewed, the Galloway lands appear to be suitable for the proposed development provided that potential adverse impacts arising from construction and operation are mitigated following the strategies and general recommendations made in the report.

(The report is available if requested).

An **Assessment for Forest Fire Interface and Firesmart Community Development** was completed by BA Blackwell and Associates Ltd. in February of 2022. This report confirms that most of the property is rated a low interface fire hazard and makes recommendations for good practices for all new development in the RDEK. The application proposes that a development permit area for wildfire hazard be added to the OCP for the subject property to require FireSmart compliant building materials and reduction of fuel loads around residential buildings. The proposed Wildfire Hazard development permit area is consistent with this recommendation.

A **Geotechnical Assessment** for the property has not been completed to date. The application states that MOTI has indicated that a geotechnical assessment of the lands will be required as a condition of subdivision prior to the creation of any residential lots.

**Additional
Information:**

General

- Historical aerial photos were submitted with the application and are attached. These photos show that the managed forest was heavily logged in the 1980s / early 1990s. The forest has been growing back since that time and the land is currently used for public recreation including nordic skiing, mountain biking, hiking and other non-motorized recreational pursuits. Some of the existing trails and forestry access roads are evident on the 2019 aerial photo.
- The application indicates that the trails on the property are used year-round by several user groups and the public.
- The development is proposed to be phased based on market demand and the applicant anticipates creating 10-20 residential lots at a time.
- The application states that, if the bylaw amendment application is successful and the development proceeds, further rezoning applications will be submitted to rezone those areas within the development lands that are to be retained as greenspace under common ownership to PG-4.
- The Elk Valley OCP contemplates the subject lands for future resort expansion, not as future City of Fernie expansion.

**Additional
Information
cont'd:**

Environment and Natural Hazards

- The proposed new ESA development permit provisions in the Elk Valley OCP for the subject land are very similar to the development permit requirements in other RDEK OCPs, such as the Panorama Area OCP adopted in 2020. Additional review and approval steps will be required prior to alteration of the land and in conjunction with subdivision review.
- The proposed development permit requirements will apply to the subject properties only. No other Elk Valley properties will be affected.
- The proposed main access road crosses Lizard Creek in an area designated as an alluvial & geomorphic fan. The applicant has stated that their intention is for a clear span bridge. Engineering will be required by MOTI for design of the bridge and the Association of Engineers and Geoscientists of BC (APEGBC) require their members to consider the effects of climate change in their work.
- Portions of the subject lands have steep slopes. Natural hazards must be addressed by the applicant to the satisfaction of MOTI in conjunction with subdivision review.

Access, Roads, and Emergency Egress

The proposal is for a private main access road from the end of Lizard Creek Road via a bridge over Lizard Creek and a secondary private gated access from Fernie Alpine Resort via Snow Pines Drive. The Snow Pines Drive entrance is proposed to be gated to restrict traffic and all roads within the development are proposed to be private. A covenant is offered to ensure that the main access road across Lizard Creek will be completed, prior to creation of any residential lots, to permit all construction traffic (including trades vehicles) to access the property directly from Lizard Creek Road and the highway. The applicant is also offering to register a SRW over their main access road so it can serve as emergency access/egress for emergency responders and residents of Fernie Alpine Resort in an emergency.

- The application states that:
 - All roads will meet MOTI requirements and/or engineering best practices (as required by MOTI) for design and construction and will be asphaltic pavement with gravel shoulder and open ditches.
 - Creek crossings will be constructed in accordance with MOTI requirements and as required by other agencies having jurisdiction.
 - Improvements to Lizard Creek Road, Highway #3 and the road network within Fernie Alpine Resort (including pedestrian improvements) will be provided as required by MOTI.

Conservation / Recreation Lot

- The applicant has identified that they are working with several conservation organizations who have expressed interest in becoming the owner of the proposed conservation / recreation lot. The applicant has advised that the final organization has not been determined and

**Additional
Information
cont'd:**

the organizations wish to remain anonymous until after this bylaw amendment application process has concluded.

- The application states that the conservation organization chosen will be an established entity with a mandate to protect the lands while permitting public access for non-motorized recreational use consistent with maintenance of the lands' conservation values.
- The applicant will require the conservation organization to enter into a lease or other agreement with Fernie Nordic Society to allow for access, maintenance, design, and development of ski trails, including a new trail to the south to replace those Nordic trails lost within the development parcel, and to ensure that trails meet suitable grade requirements and are serviceable by grooming equipment. The conservation organization must also be willing to enter into a lease or other agreement with an appropriate local trail group for the purposes of assessing the existing mountain bike trails and developing and implementing a trails master plan.
- The application states that the conservation organization must be willing to work with local partners and trail groups to ensure that access for recreational purposes does not negatively impact sensitive conservation values of the conservancy lands.
- The Lizard Creek area is proposed to be considered 'off limits' for recreational development. Development of new trails or amenities will not be permitted in this area.
- Limited additional trails are proposed to be developed within the greenspace areas of the residential development to connect with the conservation / recreation lands and the greater Fernie area trail system.
- The proposed PG-4 zone on the subject properties is proposed to be amended as per the following: cabins accessory to wildland use will not be permitted and Park will be included as a permitted use.

Consultation:

Section 475 of the *Local Government Act* requires that local government consider the depth and breadth of consultation to be undertaken with persons or organizations that it considers may be affected by the proposed OCP amendment. Consultation completed to date for this amendment includes referral of the bylaw to the following organizations. In addition to the consultation done by the RDEK, the applicant has met individually with the City of Fernie and community interest groups and hosted two public open house events to share information about the proposal and answer questions.

APC Area A: Support recommended.

**Consultation
cont'd:**

Referral Agencies

(Responses are summarized here – full responses are attached):

- **Interior Health Authority:** The amendments are not endorsed because of the disconnect between current and projected housing needs in the area and the proposed development density. Although many improvements have been made to the proposal since the previous application considered in 2022, it still proposes low-density, single-family homes on 'green-field' lands which require a vehicle to access daily amenities. IHA would like to see connected neighbourhoods with more diverse housing options that achieve healthy built environment principles and help alleviate challenges related to the current housing crisis.
- **Transportation & Infrastructure:** The Ministry has determined that there may be impacts to their interests. The Ministry has stated that they are prepared to accept a suitably worded Section 219 covenant which restricts any subdivision or development until such time as a traffic impact study has been completed to the satisfaction of the Ministry.

(Note: The development agreement offered by the applicant includes provision for this covenant for the MOTI).

- **Environment:** Approval not recommended. The project area provides valuable habitat for multiple species and is currently relatively undisturbed. This project would permanently remove functional habitat. If the proposal goes forward, the mitigation measures recommended in the environmental report will need to be adhered to especially that of having an Environmental Monitor on site providing updated recommendations on timing of activities and ensuring new trails / roads are not developed around the project.
- **City of Fernie:** The City would like to see updates to both their OCP and the Elk Valley OCP as well as significant public engagement before consideration of amendments of this magnitude being proposed.

The City's OCP (2014) currently considers the subject area as a long-term boundary expansion study area (10+ years) to potentially accommodate future growth with opportunities to promote efficient use of land, provide greater transportation choices, reduce public servicing costs, and reduce sprawl into rural areas. Since the proposed development is not consistent with this vision, it may need to be removed from the long-term expansion study area.

The City's OCP speaks to working with major employers including Fernie Alpine Resort with regard to provision of employee housing and, since this is largely a regional issue, city staff would like to see the RDEK consider a requirement for provision of staff housing or a housing allowance to aid in housing affordability in conjunction with applications.

The City does not foresee being able to provide servicing (particularly sewer services) for this development and therefore the development must fit within the capacities of the Fernie Alpine Resort systems.

**Consultation
cont'd:**

City of Fernie cont'd:

The City's letter also includes commentary on wildlife connectivity, aquatic habitat, asset management and full cost recovery for provision of municipal services (such as fire service) to areas outside municipal boundaries.

- **BC Parks:** The efforts to confine proposed homesites to the areas south of the northerly unnamed tributary to Lizard Creek are appreciated. The creation of the conservation / recreation parcel is supported and compliments the conservation and recreation values of Mount Fernie Park. The proposed 90 new homes along with closure of existing trails within the development lands will likely increase recreational pressure on Mount Fernie Park. BC Parks suggest that the proponent develop a trails strategy that integrates surrounding lands and community recreation partners to help offset the recreation pressures. Because of the importance of Lizard Creek as a habitat feature and tributary to the Elk River, development should occur in the least impactful way possible. A Qualified Professional should be retained to assess and mitigate impacts which is particularly important for long ranging species like ungulates and grizzly bears.

(See attached letter).

- **Resorts of the Canadian Rockies:** RCR is supportive of development in the Fernie region because any increase in residents and visitors has a net benefit to the resort. RCR supports this proposal and requests that any approvals do not negatively affect RCR's ability to develop the resort to the full extent contemplated by the Fernie Alpine Resort OCP.

There is mutual support between the developer and RCR and a number of agreements are in discussion and require finalization. The developer has agreed to fund required improvements to the Resort's water and sewer servicing systems so that provision of servicing to the proposed development will not impact current ski hill residents and RCR's support for the development is conditional on the servicing agreement being in place. Additionally, RCR is supportive of the new proposed road alignment between Lizard Creek Road and Snow Pines Drive subject to the developer providing detailed design on improvements that the developer will make to Snow Pines Drive and Highline Drive.

- **Ktunaxa Nation Council:** No comments to date.
- **Yaq'it ?a·knuq'it (Tobacco Plains):** No comments to date.
- **School District No. 5:** No comment to date.
- **Telus:** No issues.

In addition to the referral agencies listed above, a comment was received from the **Managed Forest Council:** The Council recommends removal of the managed forest designation from the development lands as a condition of bylaw adoption. (The applicant has stated that they will remove the managed forest designation from the lands in stages as development proceeds).

**Consultation
cont'd:**

Reminder emails were sent on March 10 and March 23 to any referral agencies who had not yet responded. Since the Ktunaxa Nation processes referrals through their referral website which indicated this referral was 'in the assessment stage' staff followed up via email on March 29 when a response had still not been received. Late bylaw referral comments received prior to the public hearing are included with the public hearing report for consideration

**Documents
Attached:**

- Bylaws
- Location Map
- Land Use Map
- OCP Designation Map
- OCP Policies (attached separately)
- Zone Designation Map
- Zone Regulations (attached separately)
- Conceptual Plans
- Bylaw Referral Responses

(The professional reports submitted are available by request).

**RDEK
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