

Request for Decision Bylaw Amendment Application

File No: P 724 525
Reference: Bylaw Nos. 3334 & 3335
Date: April 25, 2025

Subject: Bylaw No. 3334 & Bylaw No. 3335 (Westside / 1129759 Alberta Ltd)
Applicant: 1129759 Alberta Ltd
Agent: Richard Haworth
Location: Johnson Road west of the District of Invermere
Legal: Lot 3 and Lot 4, District Lot 4596, Kootenay District, Plan NEP88930
(PIDs: 027-903-087 & 027-903-079)

Proposal: To amend the OCP and zone designations of the properties to accommodate residential development (35 lots proposed) and to create a conservation / recreation parcel.

Development Agreement: The applicant has offered to register a development agreement covenant which will commit them to the following:

- a) Development of the lands shall be substantially in accordance with the lot layout, building envelopes and road configuration as shown on the site plan submitted with the application.
- b) No building or fencing will be permitted within the natural area of each residential lot lying outside of the building envelope.
- c) No residential subdivision shall be permitted unless/until the conservation / recreation lands are also created as a separate parcel and unless/until that parcel is either dedicated as Park and transferred to the RDEK (it would be an unmaintained / unserviced park) or until a Statutory Right of Way (SRW) has been registered over the parcel to permit public access over and upon it for use of the recreational trails.*
- d) A restrictive covenant to limit each phase of development to no more than 15 lots, and to complete an assessment of any new wells drilled for each new phase to confirm there is no effect on neighbouring wells nor the overall water table. This assessment will include investigations into the impact of the previous water well construction and testing program, including the cumulative effect on the aquifer, and determination of the zone of influence of pumping using groundwater wells situated away from the owner's well. The hydrological assessments must be completed in accordance with guidance provided by a qualified professional.

* For additional clarity, the items in section 'c)' could occur as part of a subdivision approval process. The subdivision could register the conservation / recreation parcel and dedicate it to the RDEK as unmaintained Park, and during the same registration process, a SRW to allow public access could be registered).

Options:

1. THAT Bylaw No. 3334 cited as "Regional District of East Kootenay – Lake Windermere Official Community Plan Bylaw No. 2929, 2019 – Amendment Bylaw No. 15, 2024 (Westside / 1129759 Alberta Ltd)" be introduced and further, that the Board is satisfied that the OCP consultation identified in the staff report is appropriate.

2. THAT Bylaw No. 3335 cited as “Regional District of East Kootenay – Columbia Valley Zoning Bylaw No. 3255, 2023 – Amendment Bylaw No. 16, 2024 (Westside / 1129759 Alberta Ltd)” be introduced and further, that a development agreement containing the item identified in the April 25, 2025 staff report be registered on title prior to bylaw adoption.
3. THAT Bylaw No. 3334 cited as “Regional District of East Kootenay – Lake Windermere Official Community Plan Bylaw No. 2929, 2019 – Amendment Bylaw No. 15, 2024 (Westside / 1129759 Alberta Ltd)” not proceed.
4. THAT Bylaw No. 3335 cited as “Regional District of East Kootenay – Columbia Valley Zoning Bylaw No. 3255, 2023 – Amendment Bylaw No. 16, 2024 (Westside / 1129759 Alberta Ltd)” not proceed.

Recommendation: Options 3 & 4

While the proposal may address some of the OCP policies (creation of 50% open space, delineation and protection of many existing trails, and building envelopes to minimize disturbance); the proposal also represents a continuation of historical rural development patterns which have created vehicle reliant neighbourhoods and negative pressures on wildlife populations, diverse ecosystems and contiguous habitat. This type of development cannot be considered ‘infill’ which are generally smaller lots that are serviced with community water and sewer and in proximity to public transit, grocery stores, schools and other services.

While the development agreement offers an opportunity to maintain or enhance the recreational trail network and conserve environmental values, the proposal to transfer the conservation / recreation lands to the RDEK would require consideration of the ongoing ability to manage and fund the lands for recreation and conservation purposes. For example, the applicant identifies that the existing trail network includes trails that could be considered an on-going liability for the RDEK due to their difficult or black diamond trail rating classification.

Staff Note: Under new legislative requirements around Development and Amenity Cost Charges (DCCs and ACCs) voluntary amenity contributions are no longer suggested to applicants by the RDEK as a mitigation tool, therefore none are offered as part of this development application.

**Property
Information**

Current OCP Designations:

Most of the property is RR, Rural Resource, which supports agricultural, rural residential and rural resource land uses with parcel sizes 8.0 ha and larger. The RR designation also recognizes the use of these lands for public utility use, resource extraction, green space and recreation.

Approximately 9.4 acres in the southwest corner is WP, Watershed Protection, which identifies lands that are part of an existing or potential community watershed and that require protection from development that

**Property
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could impair the quality of the domestic water supply obtainable from the watershed.

Proposed OCP Designations:

SH, Small Holdings, which supports low density residential development with minimum parcel sizes in the range of 0.2 ha to 2.0 ha.

OSRT, Open Space, Recreation & Trails, which supports greenspaces, recreational amenities, agricultural use, local, regional and provincial parks and other protected areas, such as wildlife corridors, wetlands and riparian areas.

General OCP Policies Related to Residential Development:

- A mix of residential densities is supported within the plan area.
- Development of new residential areas should include internal non-motorized trails and identify connections with existing trail networks. Where existing trail networks are not yet established, connectivity with parks, open space, recreational amenities and commercial services should be demonstrated.
- Bylaw amendment applications for residential development should address the following:
 - (a) compatibility of the proposed development with surrounding land uses, parcel sizes, local rural character and lifestyle;
 - (b) access to the development and proposed internal road networks;
 - (c) demonstrate the use of Conservation Subdivision Design principles where appropriate, such as:
 - (i) identifying and establishing buffers from features such as riparian areas, wetlands, Class 1 ungulate winter range, wildlife corridors, wildlife habitat areas, natural hazard areas, woodlands and agricultural land;
 - (ii) clustering development into nodes of smaller lots in order to preserve larger contiguous environmentally sensitive areas and agricultural zones; and
 - (iii) utilizing compact neighbourhood design with dwelling units built in close proximity to each other to minimize the overall development footprint and required infrastructure.
 - (d) integrate FireSmart principles.
- Development is encouraged to recognize and integrate opportunities to retain and maximize the viewscales.

Policies Related to the Subject Lands specifically:

- A development proposal for the lands shown in Figure 6 [which includes the subject lands] must demonstrate how it will achieve the following:
 - (a) A cap of 188 dwelling units be applied to the entirety of the lands;
 - (b) The Toby Creek escarpment is an important environmentally sensitive area with significant wildlife connectivity and habitat

**Property
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values, including mountain goat habitat. Permanent protection of the environmentally sensitive area along the Toby Creek escarpment in order to maintain ecosystem connectivity by way of Sec. 219 covenant or other instrument acceptable to the RDEK is a required condition of development. A qualified environmental professional may be used to verify the extent of the environmentally sensitive area;

- (c) A report from a qualified professional to determine potential development impacts on the present and future use of Paddy Ryan Lakes reservoir area if requested by the District of Invermere;
 - (d) Voluntary community amenity contributions are not a requirement of rezoning but will be negotiated with the developer at time of rezoning in order to reduce the impact of new development on amenities and services. Voluntary community amenity contributions will be negotiated for:
 - (i) Mitigating development impacts on the District of Invermere's road network, services and amenities; and
 - (ii) Mitigating development impacts on recreational services and amenities within the RDEK.
 - (e) Retention of an open space and trail network for public use is required and it must be demonstrated how the natural character of the open space network will be preserved and maintained for trail users. Trails must be protected for public use in perpetuity through the use of a Sec. 219 Covenant, statutory right-of-way, transfer of ownership to the District of Invermere or another legal instrument amenable to the RDEK.
- Application of the following Conservation Subdivision Design principles in order to provide conventional development densities while retaining a network of contiguous undeveloped open space for wildlife, recreation and potential future expansion of the District of Invermere:
- (a) Retaining approximately 50% of the total area of the lands shown in Figure 6 as undeveloped space and not parcelized is preferred.
 - (b) The area designated as undeveloped open space should not be parcelized, contain the highest value wildlife habitat and most significant existing trails found on the parent parcel;
 - (c) Cluster development parcels;
 - (d) Minimize the construction of new roads by utilizing existing roads and disturbed area as much as possible;
 - (e) The number of parcels in development clusters should be approximately the same as the number of parcels that would be provided on the parent parcel through a conventional rural subdivision. This is achieved by permitting smaller parcels in development clusters than would be provided in a conventional rural subdivision; and
 - (f) To achieve higher densities in the development clusters, provision of community sewer and water services may be required.

**Property
Information
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Current Zoning:

A-1, Rural Resource
W-1, Watershed Protection

Proposed Zoning:

Development nodes: SH-2, Small Holding Semi-Rural Zone
Conservation / recreation nodes: P-2, Parks and Open Space Zone
W-1, Watershed Protection zoned area is not proposed for any changes

Parcel Sizes:

Lot 3: 60.0 ha (148.3 ac)
Lot 4: 60.1 ha (148.5 ac)

Density:

Existing: The parcels are currently vacant.

Proposed: The proposal is for 35 residential acreage lots ranging in area from 1.0 ha – 1.8 ha (2.47 ac – 4.45 ac), 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 residential acreages were developed at the 1.0 ha minimum size permitted by the proposed zone, there could be approximately 39 acreage lots (which does not account for topography, roads, or creek corridors). The applicant states that when all the actual site factors are considered, the conceptual plan submitted reflects the approximate maximum density.

ALR Status: Not within the ALR

Interface Fire Hazard Rating: Ranging from moderate to high, not within a fire protection area

BC Assessment: Managed Forest (vacant)

Water and Sewer Services: Individual onsite servicing is proposed.

**Professional
Studies:**

None

**Additional
Information:**

- The development land represents approximately 37.2% of the total land area. The concept plan shows that approximately 80.9 ha (58.9% of the total land area) will be conservation / recreation lands. Building envelopes are proposed to limit the development area on each residential lot (which protects an additional 6.3% of the land from building development and fencing).
- The application states that the recreational trails on this property are advanced (black diamond or double-black diamond) and although not all existing trails will remain, most will be retained, and some new ones are intended to be built by the applicant. The applicant states that the trails in this area do not receive the heavy use that others to the north have.

**Additional
Information
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- The applicant identifies that there are steep slopes and an old gravel pit on the property. There are also areas of environmental significance such as wetlands, grasslands, areas with potential for old growth forest and wildlife connectivity corridors. Many of the environmentally sensitive areas are proposed to remain free from development as per the proposed site plan, and a development permit application for environmental sensitivities will be required prior to subdivision which is when protection of these areas can be further refined.
- Natural hazards will be addressed by the Ministry of Transportation and Transit during the subdivision application review stage, which follows rezoning.
- The property owner has completed some wildfire mitigation work within the proposed development nodes.
- The application states that the development will utilize existing roads. The roadway within the development was constructed several years ago and did not require MOTT approvals. The road did require an application to the RDEK for a development permit for environmental sensitivities (ESA DP), however no application was made. An ESA DP will be required for the proposed development and the application will be required to include details about the previously constructed internal access road.
- The applicant has offered that the conservation / recreation lands be dedicated as Park and transferred to the RDEK at the time of subdivision. The RDEK is currently determining if a 'Park' owned by the RDEK can remain unmaintained wild land where there are trails available for use by the public. The RDEK has requested legal advice on implications, liabilities and benefits. Will offered as a development agreement commitment, to date, the future ownership / management method for the proposed conservation / recreation land remains undetermined.

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, there will be opportunity for discussion with the public prior to the commencement of the public hearing.

APC Areas F & G: Refusal recommended. Concerns include road access (one way in and out), wildfire hazard, and urban sprawl. Also, badgers have been seen in this area and the development proposed is not the type of housing needed.

Referral Agencies:

- **Interior Health Authority:** See attached letter.

**Consultation -
cont'd:**

- **Ministry of Transportation & Transit:** No concerns with this bylaw referral. The Ministry will comment when a subdivision application is submitted.
- **Environment:** Any works in and about a stream will be subject to the *Water Sustainability Act*.
- **Ktunaxa Nation Council:** An AOA (Archaeological Overview Assessment) for the property and a covenant to ensure completion of an assessment of any new wells drilled for each new phase to confirm there is no effect on neighbouring wells nor the overall water table was requested. Also, concerns were expressed about septic systems affecting surface water quality. (The concerns expressed by the Ktunaxa have been addressed. An AOA was completed in 2009 and the RDEK will advise the MOTT during the subdivision application process that an AIA (Archaeological Impact Assessment) should be considered prior to any subsurface disturbance within the three areas found as having moderate to high archaeological potential).
- **ʔAkisq̓nuk First Nation:** No comments to date
- **Shuswap Band:** Not supported - See attached letter and 'Issue Tracker' which outline the Band's concerns and the proponent's responses. The Shuswap Band requested deferral of a decision until after a government-to-government meeting between the Shuswap Band and the RDEK. The application was deferred as requested however the application was not added to the meeting agenda and therefore no further discussions have occurred.
- **School District No. 6:** No comments to date
- **District of Invermere:** Concerns about the current quality of road access including culverts and what maintenance and level of service will be ensured due to more usage on Johnson Road.
- **Telus:** No comments to date

**Documents
Attached:**

- Bylaws
- Location Map
- Land Use Map
- Aerial Photo
- OCP Designation Map
- Zoning Map
- Excerpts from the application, including numerous maps
- IHA Referral Response
- Shuswap Band Referral Response
- Shuswap Band Issue Tracker

**RDEK
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