

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:

RDOS Electoral Area "D" Development Permit Review

FN Consultation ID:

EV-220112-D2021-022-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

[Regional District of Okanagan Similkameen](#)

Date Received:

Wednesday, January 12, 2022

File number:

D2021.022-ZONE

February 15, 2022

Attention: Shannon Duong

Re: RDOS Electoral Area "D" Development Permit Review

Invoice # EV-220112-D2021-022-ZONE

We write regarding your failure to pay invoice EV-220112-D2021-022-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 12, 2022.

Invoice Number: EV-220112-D2021-022-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.

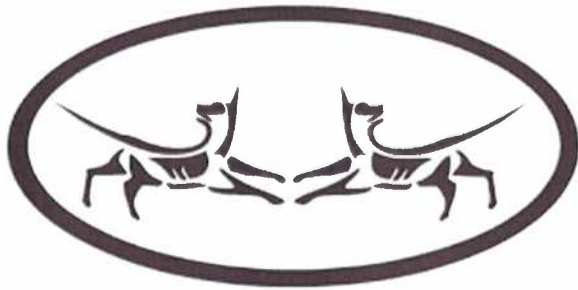
Most recently, in November 2019, the province of British Columbia implemented the United Nations Declaration on the Rights of Indigenous Peoples which aims to emphasize the Indigenous peoples’ rights to live in dignity, to maintain and strengthen Indigenous institutions, cultures and traditions and to 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



Penticton Indian Band
Natural Resources Department
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Project Name:

RDOS Electoral Area "D" Development Permit Review

FN Consultation ID:

EV-220112-D2021-022-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

[Regional District of Okanagan Similkameen](#)

Date Received:

Wednesday, January 12, 2022

File number:

D2021.022-ZONE

January 18, 2022

Attention: Planning RDOS

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: EV-220112-D2021-022-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.

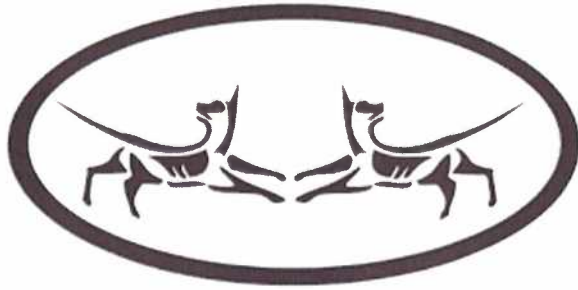
If the proposed activity requires a more in-depth review, PIB will notify the proponent and all parties will negotiate a memorandum of agreement regarding a process for review of the proposed activity.

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.

limlāmt,

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



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Project Name:

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EV-220112-D2021-022-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

[Regional District of Okanagan Similkameen](#)

Date Received:

Wednesday, January 12, 2022

January 18, 2022

Attention: Planning RDOS

File number: D2021.022-ZONE

RE: 40 (forty) day extension

Thank you for the above application that was received on 2022-01-12T00:00:00.

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.

lilmləmt,

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

Lauri Feindell

From: Amanda Anderson <aanderson@oib.ca>
Sent: February 17, 2022 4:28 PM
To: Shannon Duong; Planning Group
Subject: RE: Bylaw Referral - OCP Amendment - Electoral Area "D"

Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon,

RE: Amendment Bylaw No. 2603.23

Bylaw: 2603.23

File: D2021.022-ZONE

Attention: Shannon Duong

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

Due to an administrative error the proposed OCP Amendment was sent to our junk mail.

The Osoyoos Indian Band 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 and government entities can meet its duty to consult and accommodate our rights, including our Aboriginal title and management right.

All properties within the proposed application area are within high potential Archaeological areas and have potential to contain an Archeological site. Archaeological sites are protected under the Heritage Conservation Act. Before any ground altering or development activities occur within the subject area it is imperative that all land owners or the Regional District Planning Staff submit a Archaeological Information Request to the BC Archaeology Branch at <https://www.archdatarequest.nrs.gov.bc.ca> or engage a professional consulting archaeologist via www.bcapa.ca.

Proper consultation and consideration of potential impacts to the Osoyoos Indian Bands Aboriginal Title and Rights cannot occur without an Archaeological Assessment or direction from the BC Archaeology Branch.

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. Aboriginal Title includes the exclusive right to 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 Indigenous people's consent, it commits a serious infringement of constitutionally protected rights that will be difficult to justify.

Please note that our participation in the referral and consultation process does not define or amend the Osoyoos Indian Band'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.

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

Thank you,

Amanda Anderson

Referrals Officer



Osoyoos Indian Band

P: 250.498.3444 Ext. 3033

F: 250.498.6577

referrals@oib.ca

www.oib.ca/

From: Shannon Duong <sduong@rdos.bc.ca>

Sent: January 12, 2022 11:50 AM

To: 'McBurnie, Michael ALC:EX' <Michael.McBurnie@gov.bc.ca>; 'hbe@interiorhealth.ca' <hbe@interiorhealth.ca>; 'christina.forbes@gov.bc.ca' <christina.forbes@gov.bc.ca>; 'ReferralAppsREG8@gov.bc.ca'

<ReferralAppsREG8@gov.bc.ca>; 'jcvitko@sd53.bc.ca' <jcvitko@sd53.bc.ca>; 'okfallschief@gmail.com' <okfallschief@gmail.com>; 'ofid@telus.net' <ofid@telus.net>; OIB-Referrals <referrals@oib.ca>

Cc: Lauri Feindell <lfeindell@rdos.bc.ca>

Subject: Bylaw Referral - OCP Amendment - Electoral Area "D"

Re: Amendment Bylaw No. 2603.23

Project Webpage: [Electoral Area "D" Development Permit Review | RDOS](#)

The Regional District of Okanagan-Similkameen (RDOS) is seeking input from agencies whose interests may be affected by an Official Community Plan amendment bylaw.

Please find attached a referral for a Official Community Plan Amendment Bylaw and a link above to the project webpage, draft amendment bylaw, and related documents. Please review this information and if you have any questions, please do not hesitate to contact me.

Once reviewed, if you have any comments/concerns, please forward them to planning@rdos.bc.ca by **February 11, 2022**.

Regards,



Shannon Duong, MRM • Planner I

Regional District of Okanagan-Similkameen

101 Martin Street, Penticton, BC V2A 5J9

p. 250.490.4384 • t.f. 1.877.610.3737 • f. 250.492.0063

sduong@rdos.bc.ca • [RDOS](#)

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Lauri Feindell

From: HBE <HBE@interiorhealth.ca>
Sent: January 18, 2022 2:26 PM
To: Planning
Subject: RE: Bylaw Referral - OCP Amendment - Electoral Area "D" - Amendment Bylaw No. 2603.23

Hello Shannon,

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

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

If you have any questions, please feel free to contact me at 778-220-6967.

Kind regards,

Misty

Misty Palm, B.Tech. CPHI(C)

Environmental Health Officer – Healthy Communities Healthy Families

Interior Health

p: 250-851-7347

c: 250-320-0495

e: misty.palm@interiorhealth.ca

www.interiorhealth.ca



Interior Health

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.

From: Shannon Duong <sduong@rdos.bc.ca>

Sent: Friday, January 14, 2022 2:13 PM

To: 'McBurnie, Michael ALC:EX' <Michael.McBurnie@gov.bc.ca>; HBE <HBE@interiorhealth.ca>; 'christina.forbes@gov.bc.ca' <christina.forbes@gov.bc.ca>; 'ReferralAppsREG8@gov.bc.ca'

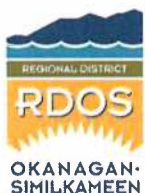
<ReferralAppsREG8@gov.bc.ca>; 'jcvitko@sd53.bc.ca' <jcvitko@sd53.bc.ca>; 'okfallschief@gmail.com' <okfallschief@gmail.com>; 'ofid@telus.net' <ofid@telus.net>; 'referrals@oib.ca' <referrals@oib.ca>

Subject: RE: Bylaw Referral - OCP Amendment - Electoral Area "D"

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For further clarity, please see the attached context map which indicates, in yellow and purple, the lands which are the subject of this project.

Regards,



Shannon Duong, MRM • Planner I
Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC V2A 5J9
p. 250.490.4384 • t.f. 1.877.610.3737 • f. 250.492.0063
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[FACEBOOK](#) • [YOUTUBE](#) • Sign up for [REGIONAL CONNECTIONS](#)

From: Shannon Duong

Sent: Wednesday, January 12, 2022 11:50 AM

To: 'McBurnie, Michael ALC:EX' <Michael.McBurnie@gov.bc.ca>; 'hbe@interiorhealth.ca' <hbe@interiorhealth.ca>; 'christina.forbes@gov.bc.ca' <christina.forbes@gov.bc.ca>; 'ReferralAppsREG8@gov.bc.ca' <ReferralAppsREG8@gov.bc.ca>; 'jcvitko@sd53.bc.ca' <jcvitko@sd53.bc.ca>; 'okfallschief@gmail.com' <okfallschief@gmail.com>; 'ofid@telus.net' <ofid@telus.net>; 'referrals@oib.ca' <referrals@oib.ca>

Cc: Lauri Feindell <lfeindell@rdos.bc.ca>

Subject: Bylaw Referral - OCP Amendment - Electoral Area "D"

Re: Amendment Bylaw No. 2603.23

Project Webpage: [Electoral Area "D" Development Permit Review | RDOS](#)

The Regional District of Okanagan-Similkameen (RDOS) is seeking input from agencies whose interests may be affected by an Official Community Plan amendment bylaw.

Please find attached a referral for a Official Community Plan Amendment Bylaw and a link above to the project webpage, draft amendment bylaw, and related documents. Please review this information and if you have any questions, please do not hesitate to contact me.

Once reviewed, if you have any comments/concerns, please forward them to planning@rdos.bc.ca by **February 11, 2022**.

Regards,



Shannon Duong, MRM • Planner I
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Agricultural Land Commission
201 – 4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000 | Fax: 604 660-7033

February 3, 2022

Reply to the attention of Michael McBurnie
ALC Planning Review: 52476
Local Government File: D2021.022-ZONE

Shannon Duong
Planner I, Regional District of Okanagan-Similkameen
sduong@rdos.bc.ca

Re: Electoral Area "D" Development Permit Review

Thank you for forwarding a draft copy of the OCP Amendment Bylaw No. 2603.23 for review and comment by the Agricultural Land Commission (ALC). The following comments are provided to help ensure that the bylaw amendment is consistent with the purposes of the *ALC Act*, the Agricultural Land Reserve (ALR) General Regulation, the ALR Use Regulation, and any decisions of the ALC.

The bylaw proposes to amend the Electoral Area "D" Official Community Plan to clarify the types of activities which require Multiple Family Development Permits and Industrial Development Permits.

ALC Staff note that four ALR properties are affected by this bylaw:

1. 1604 Cedar Street (PID 005-687-306)
2. 1544 Maple Street (PID 008-933-561)
3. 1604 Maple Street (PID 008-370-656)
4. 1668 Maple Street (PID 004-187-296)

1604 Cedar Street is zoned RD1 and is within the Multiple Family Development Permits area. However, ALC staff have been unable to find any prior ALC applications or endorsements that support non-farm uses (including multi-family development) on this property. ALC staff recommend this parcel be zoned for agricultural use to reflect its status in the ALR and removed from the Multiple Family Development permit area.

1544 Maple Street and 1604 Maple Street are zoned AG1. ALC staff have also been unable to find any prior ALC applications or endorsements that support non-farm uses (including industrial uses) on this property. ALC staff recommend these parcels be removed from the Industrial Development Permit area to avoid confusion with what uses are permitted in the ALR and speculation on ALR land that may result from its inclusion within the Industrial Development Permit area.

1668 Maple Street is partially within the ALR, but was approved for exclusion by ALC Resolution #393/2020. While the exclusion has yet to be completed, considering the

approval and the current uses on the property, ALC staff don't see an issue with including it in the Industrial Development Permit area.

The ALC strives to provide a detailed response to all referrals affecting the ALR; however, you are advised that the lack of a specific response by the ALC to any draft provisions cannot in any way be construed as confirmation regarding the consistency of the submission with the ALCA, the Regulations, or any decisions of the Commission.

This response does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

If you have any questions about the above comments, please contact the undersigned at 236-468-3246 or by e-mail (michael.mcburnie@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION



Michael McBurnie, Regional Planner

Enclosure: Referral of Electoral Area "D" Development Permit Review

CC: Ministry of Agriculture – Attention: Alison Fox

52476m1