



REGIONAL DISTRICT OF CENTRAL OKANAGAN
BOARD OF VARIANCE
AGENDA

Tuesday, May 23, 2023
7:00 p.m.
Woodhaven Board Room
1450 K.L.O. Road, Kelowna, BC

Pages

1. CALL TO ORDER

Secretary to call the hearing to order.

2. LAND ACKNOWLEDGMENT

The RDCO acknowledges our presence on the traditional, ancestral, and unceded tm̓x̌wúlaʔx̌w (land) of the syilx / Okanagan people who have resided here since time immemorial. We recognize, honour, and respect the syilx / Okanagan lands upon which we live, work, and play.

3. APPOINTMENT OF CHAIR

To appoint the Chair of the Board of Variance for a three (3) year term ending in April 2026.

4. INTRODUCTION

The role of the Board of Variance is to hear and determine any application with respect to matters defined by Part 14, Division 15 of the *Local Government Act*.

Persons whose property is affected by an application to the Board of Variance have a right to be heard and give evidence at the hearing or may be represented by some other person authorized to represent them.

All hearings held by the Board of Variance are open to the public. A decision of all or the majority of the members of the Board is a decision of the Board and a decision of the Board of Variance is final.

5. APPEAL APPLICATION

A hearing of the Regional District of Central Okanagan Board of Variance is being convened for the purpose of considering the following:

5.1 **4401 Westside Road (Shelter Cove Estates)**

1 - 28

An appeal pursuant to Section 543 of the *Local Government Act* to consider whether the termination of Land Use Contract (LUC) #258 on May 30, 2023, will cause hardship to the owners of Shelter Cove Estates, and to consider postponing the LUC termination from May 30, 2023, to June 30, 2024.

6. ADJOURN

7. Procedures for each appeal

1. Chair requests Secretary to introduce the appeal and to advise of the notification and if any correspondence has been received from the Notice of Hearing.
2. Chair requests the Development Services Department staff to present their report.
3. Chair invites the appellant, or appellant's representative, to appear before the Board to speak to the appeal.
4. Chair invites anyone in the public gallery who deem themselves affected by the appeal under consideration to express their concerns.
5. Chair invites comments from Board of Variance members.
6. Board members consider resolution of Board of Variance.



Board of Variance Report

Request for Decision

To: Board of Variance
From: Manager of Development Services
Date: May 23, 2023
Subject: RDCO File: Z22/04
Exemption to Relieve Hardship from Early Termination of Land Use Contract #258
Shelter Cove Estates
Legal Description: Lot 1, District Lot 3546, ODYD, Plan KAP60766

Purpose: For the Board of Variance to consider whether the termination of Land Use Contract (LUC) #258 on May 30, 2023 will cause hardship to the owners of Shelter Cove Estates, and to consider postponing the LUC termination from May 30, 2023 to June 30, 2024.

Executive Summary:

The Shelter Cove community is currently developed with various seasonal residential accommodations in accordance with LUC #258. On May 30, 2022 the RDCO adopted resolutions terminating the LUC and amending the underlying zoning to RU5, Small Lot Country Residential. The resolutions are currently scheduled to come into force on May 30, 2023.

The property has a single legal title, but it is internally divided into 36 lots for exclusive use by the individual shareholders of Shelter Cove Estates. Of these allotments, 21 are currently developed with homes and 7 have recreational trailers, as permitted under the LUC. When the RU5 Zoning takes effect, the existing development will gain the benefit of legal non-conforming status. However, after May 30, 2023, due to the RU5 zone regulations, no further development of the property is likely to be possible unless the lot is subdivided, or alternative zoning is approved. Furthermore, the owners of a structure that is destroyed or damaged by more than 75% after May 30 will not be able to be rebuilt.

Under S.543 of the LGA, owners of land subject to a LUC who believe that the timing of termination would cause hardship, may apply to the Board of Variance for the LUC to be extended until June 30, 2024. Shelter Cove estates has applied for this extension to enable the owners to evaluate options such as a zoning amendment, subdivision application, or bare land stratification with the Ministry of Transportation and Infrastructure, which would increase the individual development rights for each shareholder.

Resolutions:

Option 1 (Board of Variance support for the applicant's proposal):

THAT pursuant to Section 543 of the *Local Government Act*, the Board of Variance finds that the timing of the termination of Land Use Contract 258, as set out in Land Use Contract Termination Bylaw No. LUC 258-06, would cause undue hardship to the applicant;

AND THAT the Board of Variance orders that despite the termination of Land Use Contract 258, and despite Zoning Amendment Bylaw No. 871-265, as it relates to Lot 1, District Lot 3546, ODYD, Plan KAP60766, the provisions of that land use contract continue to apply until June 30, 2024.

Option 2 (Board of Variance does not support the applicant's proposal):

THAT pursuant to Section 543 of the *Local Government Act*, the Board of Variance finds that the timing of the termination of Land Use Contract 258, as set out in Land Use Contract Termination Bylaw No. LUC 258-06, would not cause undue hardship to the applicant, and denies the application to postpone the land use contract termination from May 30, 2023, to June 30, 2024.

Respectfully Submitted:



Michael Ircandia
Manager of Development Services

Prepared by: Shaun O'Dea, Senior Planner

Attachments:

1. Location Map
2. LUC Termination Bylaw No. LUC 258-06
3. Applicant Letter
4. RU5 Zoning
5. Presentation Slides

Background:

Land Use Contracts (LUCs) are regulatory tools, similar to site-specific zoning bylaws, enacted under provincial legislation in the 1970's. Properties located within LUC areas are not governed by the Regional District's Zoning Bylaw No. 871 or Joe Rich Rural Land Use Bylaw No. 1195, and LUCs take precedence over other bylaws dealing with land use and development.

The Province of British Columbia amended the Local Government Act (LGA) in 2014 so that LUCs will automatically be terminated on June 30, 2024. Local governments with jurisdiction over land subject to LUCs were required to review and amend zoning regulations for affected properties prior to June 30, 2022. Following the legislated process, the RDCO Board adopted resolutions on May 30, 2022 to;

- Terminate LUC #258 on May 30, 2023 (Land Use Contract Amendment Bylaw No. 258-06)
- Change the land use designation for the subject property from Commercial Resort to Residential Low Density (Rural Westside Official Community Plan Amendment Bylaw No. 1247-09)
- Change subject property's underlying zoning from C5 (Campground, Cabin, Motel Commercial) to RU5 (Small Lot Country Residential) on May 30, 2023 (Regional District of Central Okanagan Zoning Amendment Bylaw No. 871-265).

Site Context:

The subject property is located in the Central Okanagan West Electoral Area, in the community of Wilson's Landing, just north of Lake Okanagan Resort on Westside Road. It is internally divided into 36 exclusive use lots and the shareholders of Shelter Cove Estates are each entitled to develop their portion of the property in accordance with LUC #258. The community is currently developed with various seasonal residential accommodation units, and a number of dock and water licences have been issued by the province.

Currently, LUC #258 allows for a range of development opportunities including up to 42 vacation home sites, various recreation, administration and maintenance buildings, pool facilities, and a sani-station. Because Shelter Cove is a single legal parcel, the RU5 zoning that is scheduled to take effect on May 30, 2023 will only allow for one single detached house for the entire parcel, and minor accessory uses.

Although existing homes will continue to be permitted as legal non-conforming structures under Part 14, Division 14 of the LGA, after the RU5 zoning takes effect, no new dwellings will be able to be built.

Proposal:

Section 543 of the Local Government Act gives landowners the opportunity to appeal to a Board of Variance, if they claim that the early termination of the LUC will result in hardship. The agents for Shelter Cove have applied to have the expiry date of the LUC changed from May 30, 2023 to June 30, 2024. The applicant's concern is that the impending expiry of the LUC and the limited development rights for a single RU5 lot will cause the owners hardship. Because the amount of development already exceeds what is permitted under the RU5 regulations, shareholders that have not developed their allotment will not be able to build. Furthermore, if any of the existing dwellings were to be damaged or destroyed by more than 75% of their value, they must not be repaired or reconstructed.

The rationale for hardship is that these circumstances materially impact the values of the shareholdings, and the owners' ability to market their property for sale, receive finance, and suitably insure their homes. The additional time granted will allow Shelter Cove and the RDCO to consider alternative options prior to the termination of the LUC including a subdivision or bare land stratification application that would give each shareholder legally recognized development rights over their portion of the property.

Additional Information:

Applicant:	Shelter Cove Estates
Address:	4401 Westside Road N
Legal Descriptions:	Lot 1, District Lot 3546, ODYD, Plan KAP60766
Lot Size:	Shelter Cove: +/- 9.77 ha (24 acres)
Land Use Contract:	No. 258
OCP Designation:	Residential Low-density
Zoning	Current: C5 - Campground, Cabin, Motel Commercial After May 30, 2023: RU5 -Small Lot Country Residential
Surrounding Uses:	North: Residential Low-density South: Rural Residential East: Okanagan Lake West: Vacant, Large Holdings
ALR:	Outside of the ALR
Fire Protection:	Wilsons Landing Fire Protection Area
Water Supply:	Private water source
Wastewater Disposal:	On-site wastewater

Considerations:

External:	Written notices were mailed to all registered property owners of Lot 1, District Lot 3546, ODYD, Plan KAP60766, and to the owners of adjoining properties (LGA S. 543(2)). Any correspondence received from residents, or the public will be provided to the Board of Variance.
Legal/Statutory Authority:	Per Section 547(2) of the Local Government Act, a local government that has jurisdiction over land subject to a land use contract must, by June 30, 2022, adopt a zoning bylaw that will apply to the land on June 30, 2024.

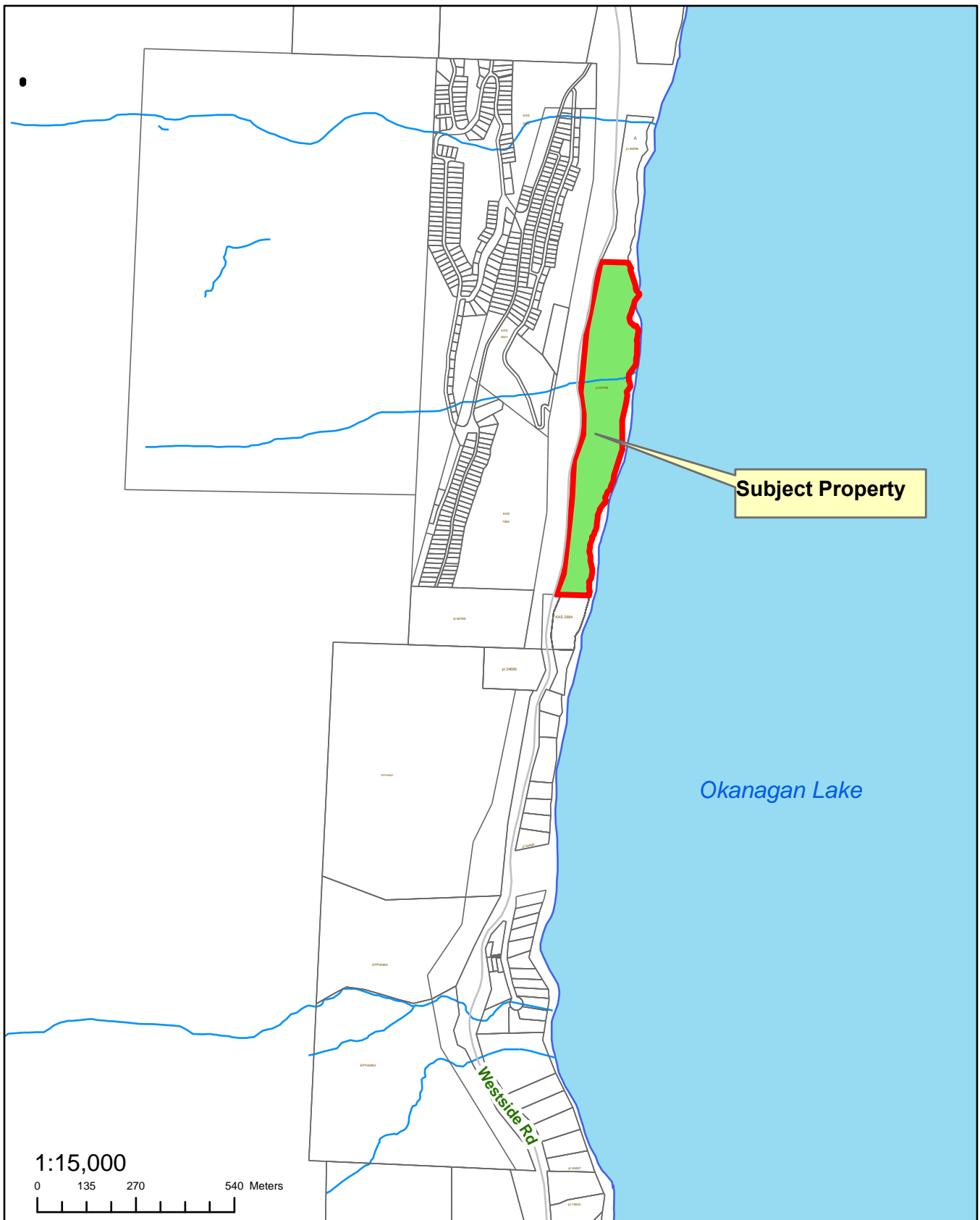
Despite section 547 of the Act, Section 548(2) allows the local government to adopt a bylaw to terminate a land use contract earlier than June 30, 2024.

Section 543 of the Act permits owners of land subject to a LUC the ability to apply to the Board of Variance if the timing of the termination causes the owner hardship. The application must be submitted within 6 months of LUC termination bylaw adoption, and provided the Board of Variance has heard the applicant and finds that the timing of the termination would cause undue hardship, they may permit the continuation of the LUC for a specified period of time ending no later than June 30, 2024.

Considerations not applicable:

- Organizational
 - Financial
-

SCHEDULE 'A'



REGIONAL DISTRICT OF CENTRAL OKANAGAN

LUC-258-06

A Bylaw to terminate Land Use Contract No. 258

Being a Bylaw of the Regional District to authorize the Regional District of Central Okanagan to enter into an Agreement to terminate an existing Land Use Contract.

WHEREAS the Regional District of Central Okanagan pursuant to the *Local Government Act* may terminate a land use contract that is entered into and registered in a land title office subject to the terms and conditions therein set out;

NOW THEREFORE the Regional Board of the Regional District of Central Okanagan, in an open meeting enacts as follows:

1. This bylaw shall be cited as Regional District of Central Okanagan Land Use Contract Amendment Bylaw No. 258-06.
2. That Land Use Contract No. 258, 1978 is hereby terminated in its entirety from Lot 1, District Lot 3546, ODYD, Plan KAP60766, Lot A, District Lot 4499, ODYD, Plan EPP45863, Lot 1, District Lot 4499, ODYD, Plan EPP45865, Lot A, District Lot 4499, ODYD, Plan EPP45867, Lot 4, District Lot 3546, ODYD, Plan KAP60487, Strata Lots 1 - 70, District Lot 3546, ODYD, Plan KAS1964, Strata Lots 1 - 129, District Lot 3546, ODYD, Plan KAS2021, Strata Lots 1 - 159, District Lot 3546, ODYD, Plan KAS2022 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM 1 as shown on Schedule 'A' attached to and forming part of this bylaw.
3. That the Regional District of Central Okanagan Zoning Bylaw map being Schedule 'B' of the bylaw be AMENDED to depict the change.
4. That Regional District of Central Okanagan Land Use Contract Termination Bylaw No. 258-06 comes into force on May 30, 2023 pursuant to the Local Government Act, Part 14, Section 548.

This bylaw may be cited as Land Use Contract Termination Bylaw No. 258-06.

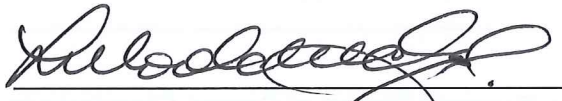
READ A FIRST TIME this 28th day of March 2022


PUBLIC HEARING HELD PURSUANT TO THE LOCAL GOVERNMENT ACT this 25th day of April, 2022

READ A SECOND TIME this 25th day of April, 2022

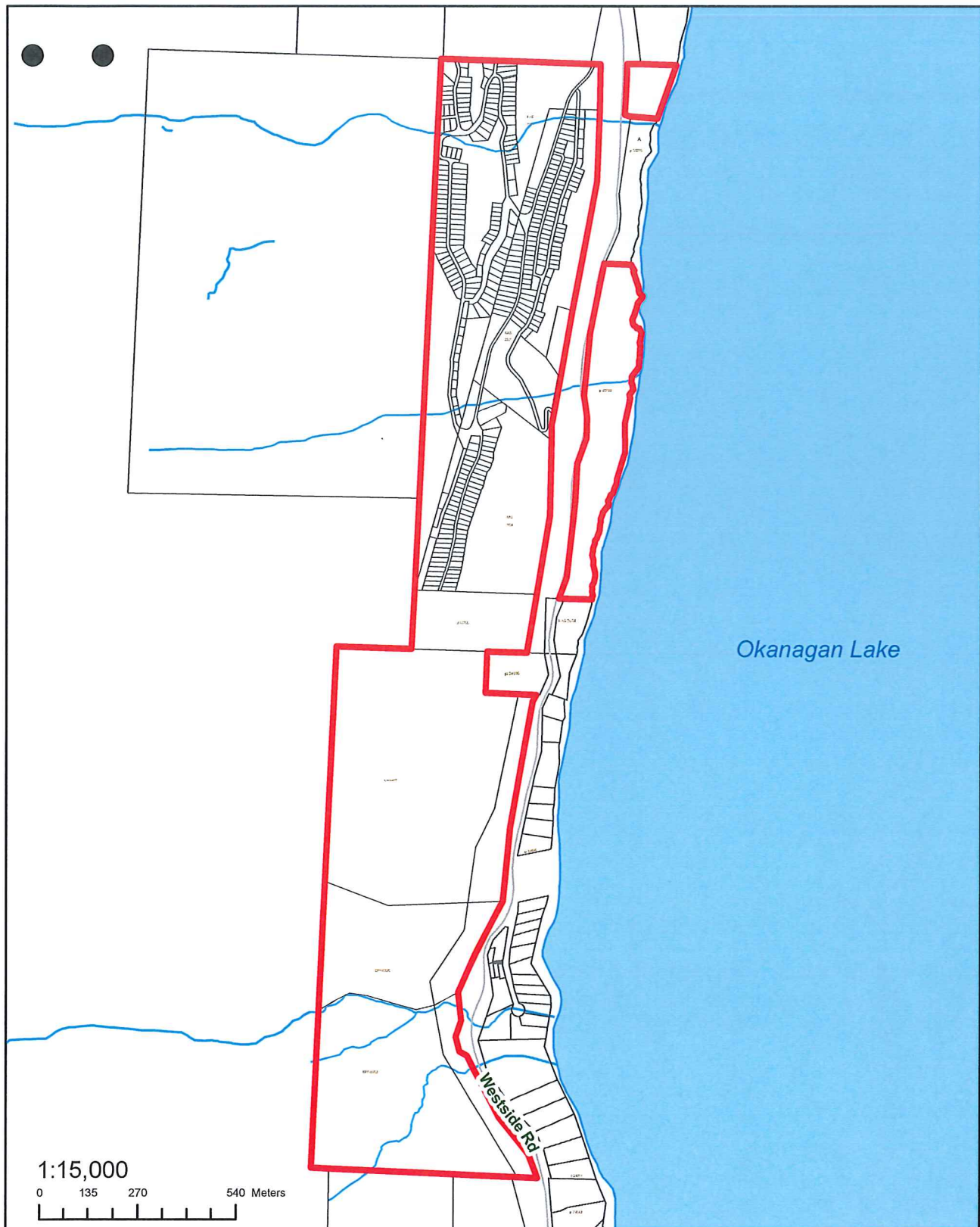
READ A THIRD TIME this 25th day of April, 2022

ADOPTED this 30th day of May, 2022


Chairperson


Corporate Officer

SCHEDULE 'A'



I hereby certify this to be a true and correct copy of Schedule 'A' as described in
Bylaw No. LUC 258-06 and read a third time by the Regional District of Central Okanagan
on the day of

Director of Corporate Services

Our File: TMA/29503.28

August 18, 2022

BY EMAIL

REGIONAL DISTRICT OF CENTRAL OKANGAN

1450 KLO Road
Kelowna, BC V1W 3Z4

Attention: Planning Department

Dear Sirs/Mesdames:

RE: Request for Exemption to Relieve Hardship from Bylaw 258-06 (RDCO File: Z20/07)
Property: Lot 1 District Lot 3546 Osoyoos Division Yale District Plan KAP60766
Civic: 4401 Westside Road, West Kelowna, BC
Shelter Cove: Registered Owners of the Property (see attachment)

We are the lawyers and appointed agent for Shelter Cove with respect to the subject matter.

This is a formal written letter pursuant to section 543 of the *Local Government Act*. On behalf of Shelter Cove, we are requesting an exemption to relieve hardship imposed by Land Use Contract Termination Bylaw 258-06 (the “**Bylaw**”) for the Property. The Bylaw terminates Land Use Contract 258 (the “**LUC**”) that currently applies to the Property on May 30, 2023. Upon termination, the Property will be re-zoned to Regional District of Central Okanagan (“**RDCO**”) RU5 Small Lot Country Residential zone, Zoning Bylaw 871 (“**RUS**”).

Shelter Cove requests that RDCO permit the continuation of the LUC until June 30, 2024, because the timing of the termination and application to the Property of the RU5 zone will cause hardship to the Shelter Cove.

As RDCO is aware, the Property is a shared interest in land arrangement. There is only one legal description for the Property, but it has been internally divided into 36 exclusive use lots (“**Lot**” or “**Lots**”) and an interest in the Property is held by Shelter Cove Estates Ltd., of which the Owners are shareholders, for the shared common areas within the Property.

On April 25, 2022, representatives of Shelter Cove attended a public hearing and voiced concerns with respect to the intended termination of the LUC and corresponding re-zoning of Shelter Cove to RU5. In response to these concerns, RDCO staff clearly acknowledged that Shelter Cove would suffer harm upon the termination of the LUC and corresponding re-zoning. In particular, if the Property is re-zoned to RU5, it will remain as one legal lot, and although existing structures can be grandfathered in:

- The owners of an existing home that is destroyed or damaged more than 75% in the future will not be able to rebuild the structure, and

- The owners of a lot that is currently empty or that has a mobile dwelling on it would not be able to build a home on that lot in the future.

These limitations are not only prejudicial to individual owners within Shelter Cove, but will lead to a material decrease in the value. If a buyer of a Lot cannot build a dwelling on a Lot, the Lot becomes essentially unsellable. If an Owner cannot sell his/her Lot, not only would an Owner not be able to make reasonable use of the Lot for the purposes for which the Owner acquired the Lot, the Owner would lose all of his/her equity in the Lot potentially bankrupting an Owner. The same issue arises with the inability to replace a house destroyed by fire. This restriction again decreases the value of a Lot and makes it unsellable. This affects the marketability of all the Lots.

While it is understood that the RDCO is required by provincial statute to terminate the LUC and zoning be applied to the Property, Shelter Cove requests that an Exemption to Relieve Hardship be granted to permit the continuation of the LUC until June 30, 2024. The additional time granted will allow Shelter Cove and the RDCO to fully consider alternative options and attempt to implement those options prior to the termination of the LUC. Those options include, but are not limited to:

- Pursuing an application for rezoning and Official Community Plan amendment; or
- Re-opening and pursuing a subdivision or bareland stratification application with the Ministry of Transportation and Infrastructure.

Shelter Cove requires time to decide what the most suitable option is, and then will require further time to implement their desired option. The termination of the LUC on May 30, 2023 will drastically shorten the time available to Shelter Cove to decide upon, and then work towards, its desired option. Extending the timeframe in which Shelter Cove can pursue a solution to prevent that hardship is possible if an Exemption to Relieve Hardship is granted.

A list of the registered owners ("**Owner**" or "**Owners**") of the Property is included as **Appendix "A"** to this letter, together with copies of the title searches representing each Owner's interest in the Property. The Owners have signed the Owner's Authorization Form appointing the writer of this letter, Theresa Arsenault Q.C., as agent for the purposes of facilitating this request for an Exemption to Relieve Hardship. A copy of the completed Owner's Authorization Form is attached as **Appendix "B"** to this letter. Further correspondence with respect to this request for Exemption to Relieve Hardship can be directed to the writer of this letter by email (arsenault@pushormitchell.com) or by mail (c/o Pushor Mitchell, 301-1665 Ellis Street, Kelowna BC V1Y 2B3).

On behalf of Shelter Cove, we thank you for your time and consideration.

Yours truly,

PUSHOR MITCHELL LLP

Per:


THERESA M. ARSENAULT, Q.C.

**Providing services through a law corporation*

RLD/lxs

cc: Shelter Cove

6.5 SMALL LOT COUNTRY RESIDENTIAL

RU5

Purpose: To accommodate rural residential and limited home industry uses on smaller parcels of land that are 2500 square metres or greater and located outside the Land Reserve.

PERMITTED USES TABLE FOR RU5 ZONE

6.5.1 Permitted uses, buildings and structures:

- .1 *Single detached house;*
- .2 *Home based business, standard;* (see Section 3.19)
- .3 *Bed and breakfast accommodation;* (see Section 3.23)
- .4 *Accessory buildings and structures.* (see Section 3.17)
- .5 *Day care centre, minor*

Bylaw
871-25

Bylaw
871-125

REGULATIONS TABLE FOR RU5 ZONE

Column 1	Column 2
6.5.2 Minimum <i>parcel area</i>	2,500 m2 (26,911 sq. ft.)
6.5.3 Minimum <i>parcel frontage</i>	30.0 m (98.4 ft.)
6.5.4 Minimum <i>front setback</i>	6.0 m (19.7 ft.)
6.5.5 Minimum <i>side setback</i>	3.0 m (9.8 ft.)
6.5.6 Minimum <i>corner side setback</i>	4.5 m (14.8 ft.)
6.5.7 Minimum <i>rear setback</i>	3.0 m (9.8 ft.)
6.5.8 Minimum <i>setbacks from A1 Zone</i>	15.0 m (49.2 ft.) [see section 3.11]
6.5.9 Maximum <i>parcel coverage</i>	20% of the <i>parcel area</i>
6.5.10 Maximum number of <i>single detached houses</i>	1 per <i>parcel</i>
6.5.11 Minimum <i>building width of principal building</i>	5.5 m (18.0 ft.)
6.5.12 Maximum <i>building height:</i>	
.1 <i>Principal buildings</i>	3 <i>storeys</i> to a maximum of 9.0 m (29.5 ft.)
.2 <i>Accessory uses, buildings and structures</i> (see Section 3.17)	5.0 m (16.4 ft.)

Shelter Cove LUC Expiry Extension Application Z22/04

Regional District of Central Okanagan Board of Variance

May 23, 2023

1450 K.L.O. Road
Kelowna, BC, V1W 3Z4
rdco.com



A person may apply to the BoV to...

LGA
S. 540

Relieve hardship created
by restrictions on...

- (a) the siting or dimension of buildings
- (b) servicing standards in agricultural and industrial zones
- (c) alterations to buildings with legal non-conforming uses
- (d) tree cutting bylaws

LGA
S. 543

Receive hardship relief from the early termination of a LUC

LGA
S. 544

Set aside a Building Inspector's determination of the extent of
damage to a legally non-conforming building

Background

Land Use Contracts (LUCs)

- Site-specific land use agreements
- 9 LUCs in the RDCO
- Legislation enacted in 2014
 - Will cause all LUCs to be terminated by June 30th, 2024
 - Required Local Governments to establish zoning prior to June 30, 2022

Background

LUC #258 (Shelter Cove & Timber Ridge)

- Per LGA s.584 Board resolved to terminate LUC #258 on May 30th, 2022
 - Rezoned
 - From - C5 Campground, Cabin And Motel Commercial
 - To - RU5 Small Lot Country Residential
- Effective May 30th, 2023

Proposal

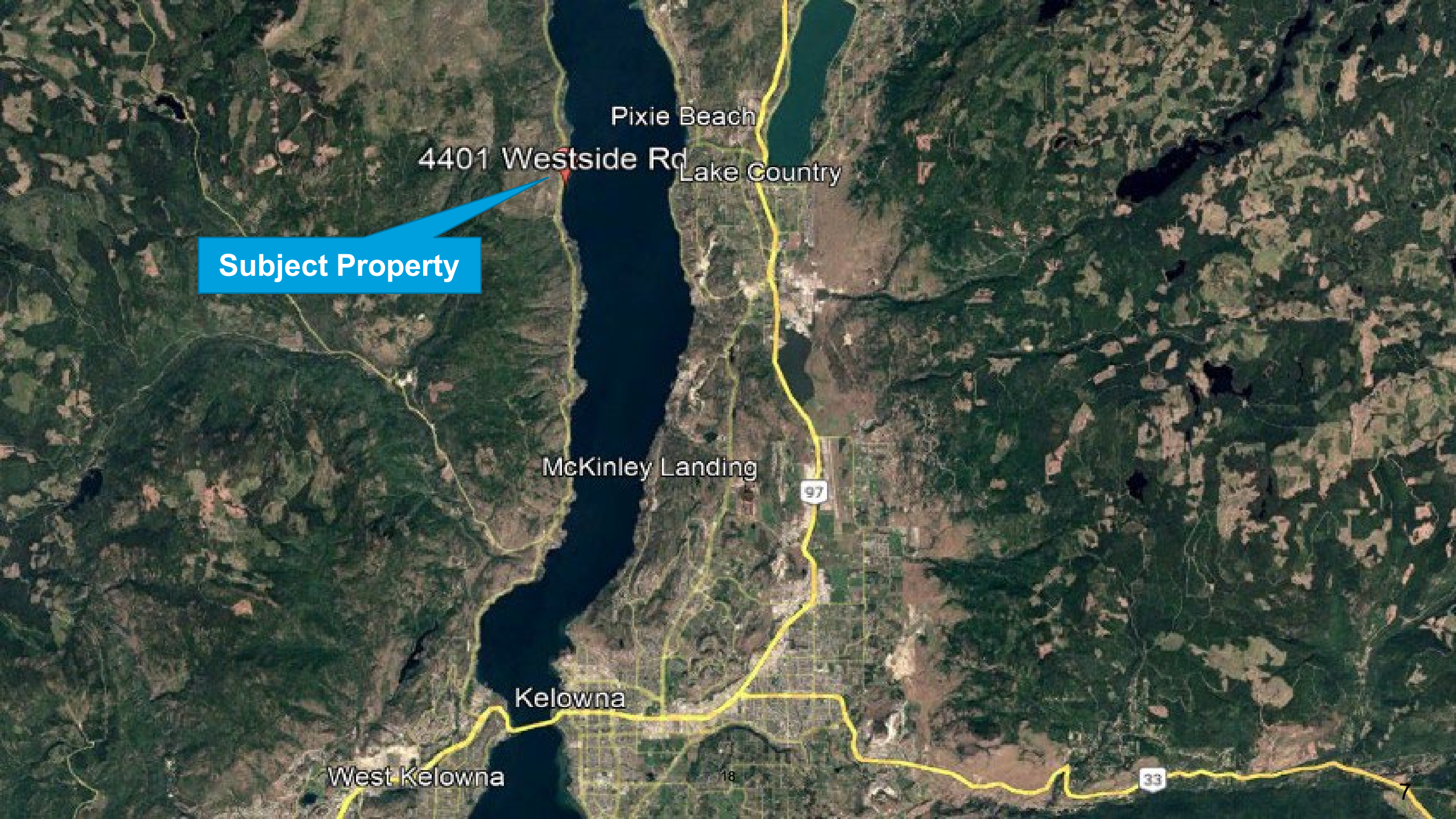
Exemption to relieve hardship from early termination of land use contract

- LGA s.543: If the timing of termination would cause hardship, owners may apply for the LUC to extend until June 30, 2024.

Proposal

**To consider whether to postpone the
expiry of LUC #258**

- **From: May 30, 2023**
- **To: June 30, 2024**



Pixie Beach

4401 Westside Rd

Lake Country

Subject Property

McKinley Landing

97

Kelowna

West Kelowna

18

33



Shelter Cove

An aerial photograph of a waterfront property, likely a marina or resort, divided into 36 individual lots. The lots are numbered 1 through 36 and are arranged in a curved, semi-circular pattern along the shoreline. A road, labeled 'Westside Rd', runs along the top of the property. The shoreline is visible on the right side of the image, with a body of water. The property is surrounded by dense green trees and vegetation. The lots are separated by narrow paths or roads. The overall layout suggests a shared ownership arrangement for a waterfront development.

Single legally titled lot under
shared ownership arrangement

- 2012 owners agreement created 36 *lots*.
- Operationally relevant with individual tax assessments
- Not recognized by LUC #258 or Land Titles Office

Current status, up until May 30, 2023

LUC #258 applies

- Up to 42 vacation home sites
- Recreation, admin and maintenance buildings
- Retreat building (110 persons)
- Pool and building
- Lodge with staff quarters
- Sani-station

There are currently;

- 21 homes
- 7 recreation trailers
- 8 vacant *lots* (4 being developed)

Opportunities for additional development

After May 30, 2023

Existing development

- Legal non-conforming status

RU5 Zoning (single lot)

- Single detached house
- Home based business
- Bed and breakfast
- Accessory buildings
- Day care centre, minor

There are currently;

- 21 homes
- 7 recreation trailers
- 8 vacant *lots* (4 being developed)

No further development

Rationale

Additional time allows owners to consider:

- Applying for development variance permits, or a rezoning and OCP amendment; and
- Subdivision application options

Board of Variance Powers

Local Government Act Section 543

- (5)...the board of variance may order that, despite the termination of the LUC and despite any zoning bylaw, the provisions of that LUC continue to apply for a time ending no later than June 30, 2024, if the board of variance
- a) has heard the applicant, and
 - b) finds that the timing of the termination of the land use contract by the bylaw would cause undue hardship to the applicant.

Resolution Option 1 (Board of Variance support for the applicant's proposal)

THAT pursuant to Section 543 of the *Local Government Act*, the Board of Variance finds that the timing of the termination of Land Use Contract 258, as set out in Land Use Contract Termination Bylaw No. LUC 258-06, would cause undue hardship to the applicant;

AND THAT the Board of Variance orders that despite the termination of Land Use Contract 258, and despite Zoning Amendment Bylaw No. 871-265, as it relates to Lot 1, District Lot 3546, ODYD, Plan KAP60766, the provisions of that land use contract continue to apply until June 30, 2024.

Resolution Option 2 (Board of Variance does not support the applicant's proposal)

THAT pursuant to Section 543 of the *Local Government Act*, the Board of Variance finds that the timing of the termination of Land Use Contract 258, as set out in Land Use Contract Termination Bylaw No. LUC 258-06, would **not** cause undue hardship to the applicant, and denies the application to postpone the land use contract termination from May 30, 2023, to June 30, 2024.



