

# Development Applications 2223 Westside Road

FEX-20-01, VP-20-03, DP-20-08

Regional Board Meeting  
April 26, 2021

---

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



# Proposal

- To consider a development proposal adjacent to Okanagan Lake and Westside Road requesting approval of a floodplain exemption, development variance permit, and development permit

Subject Property

2223 Westside Rd

Wilson Landing

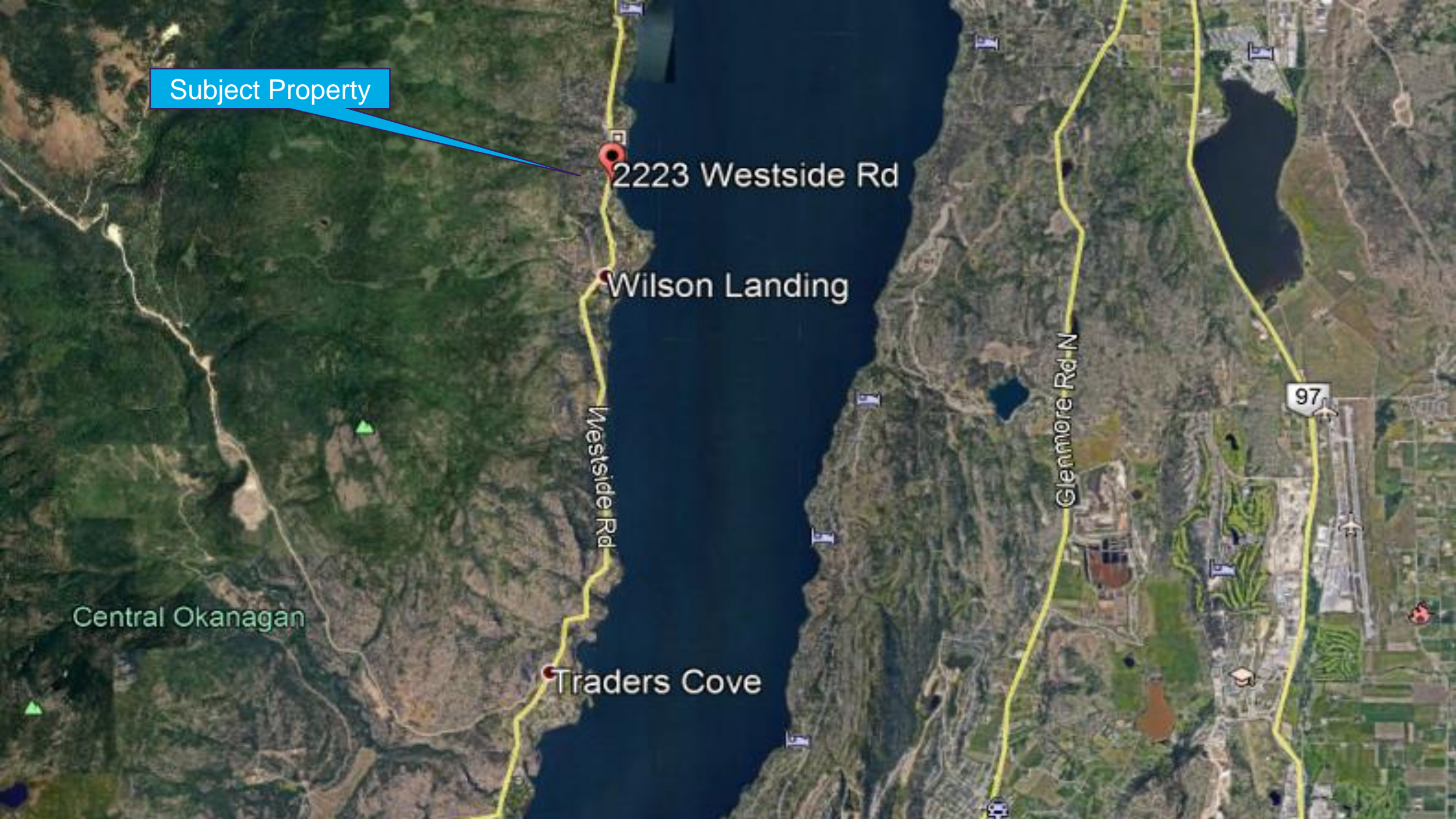
Westside Rd

Central Okanagan

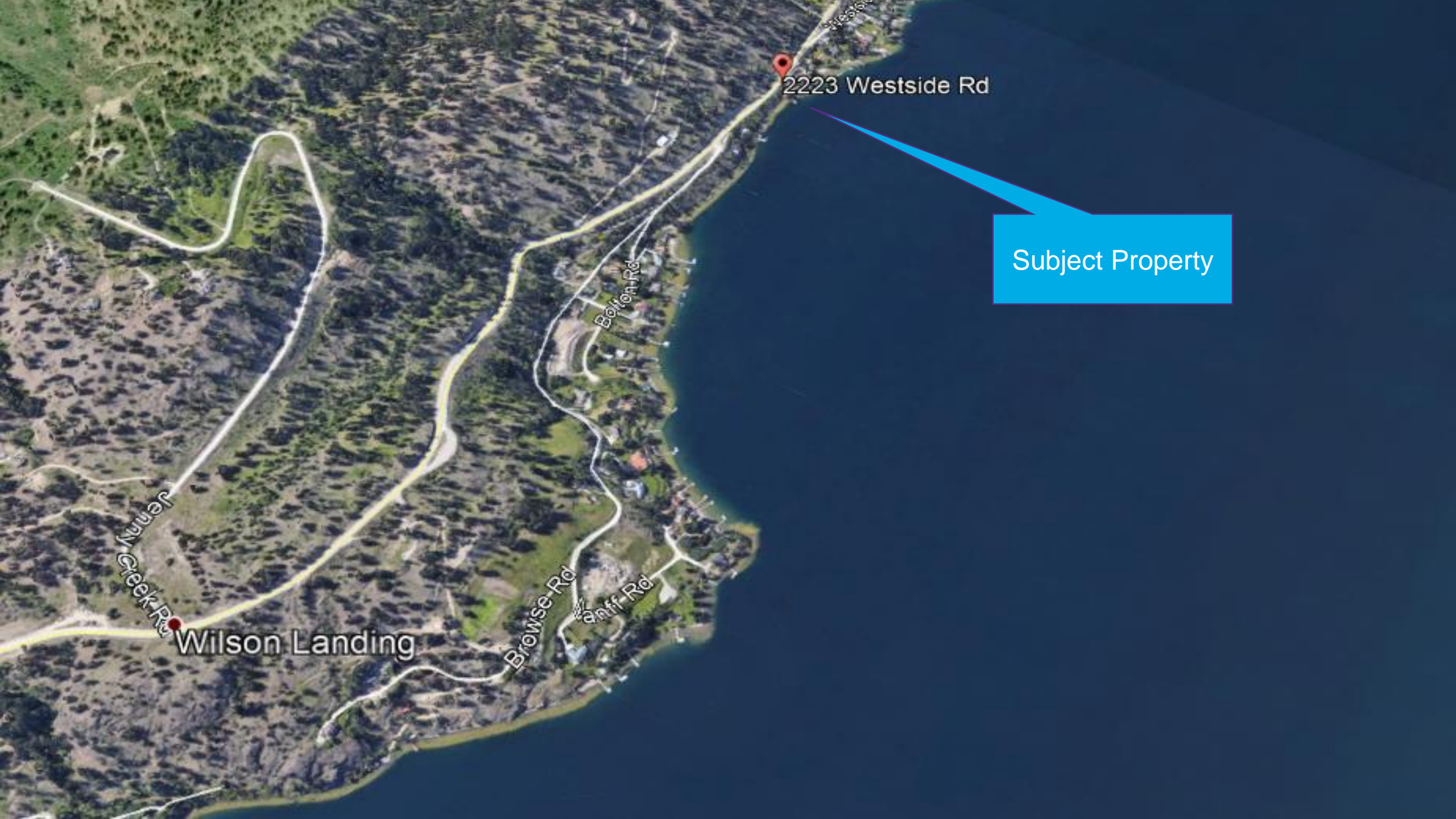
Traders Cove

Glenmore Rd N

97







2223 Westside Rd

Subject Property

Kuuep  
Creek Rd

Wilson Landing

Browse Rd

Bolton Rd

Sniff Rd





2225 Westside Rd

Subject Property





RU1  
(RDCO)

RU3  
(RDCO)

RU4  
(RDCO)

RU5  
(RDCO)

pl 14249

pl 39591

pl 39591

pl 5621

pl 5621

2223 N

2181 N

Westside Rd

Westside Pl

Okanagan Lake

2260 N

2247

N 1/2

S 1/2

1

2

2263

2

2259

1

2271

6

pl 5

N 1/2 2

S 1/2 2

2

1

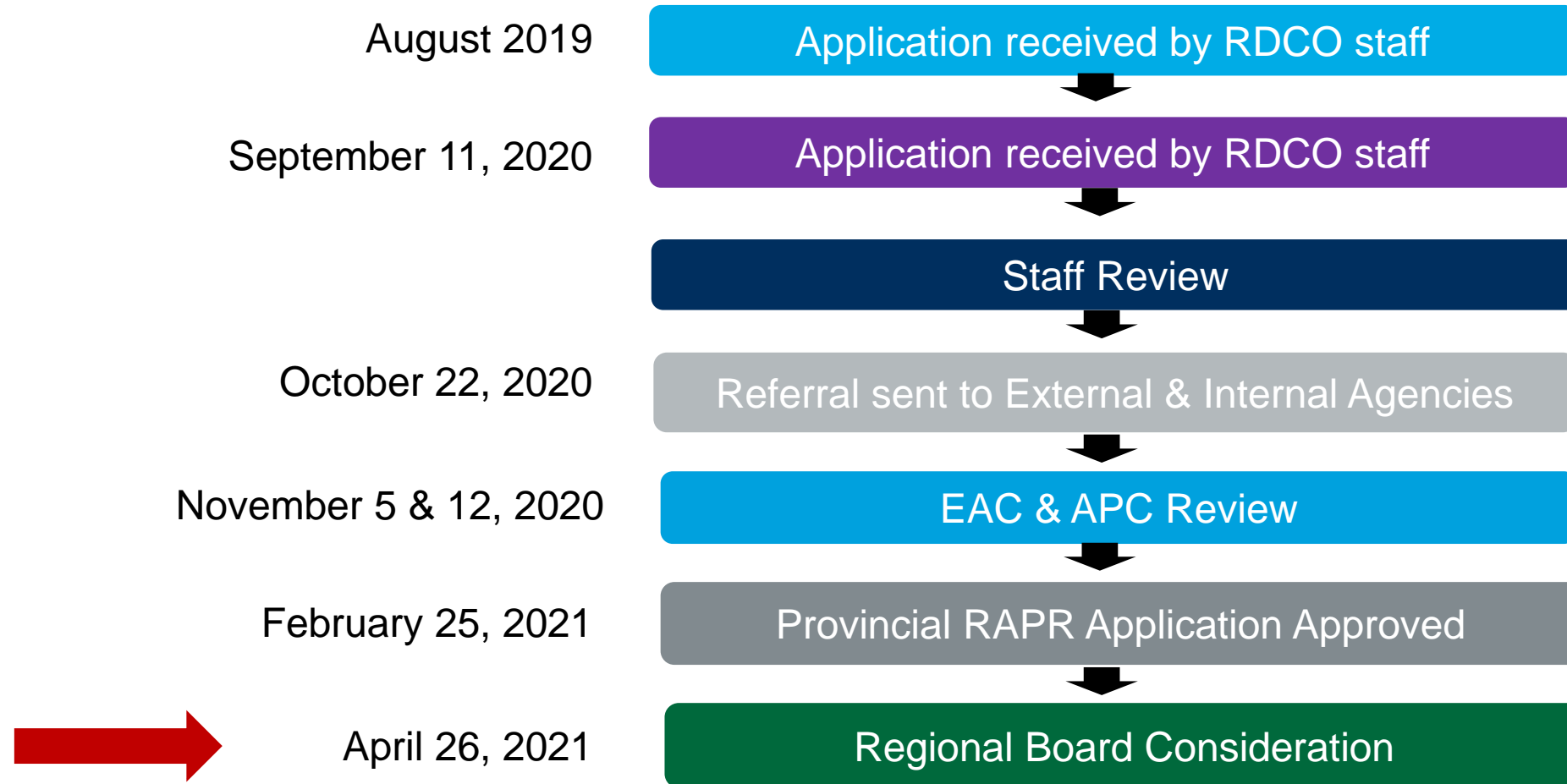
# Subdivision Plan



- Subdivision approved by MOTI in June 1951

- Prior to incorporation of the RDCO in 1967

# Application Process





# Background

- Previously developed and used for recreation
- No dwelling currently exists



















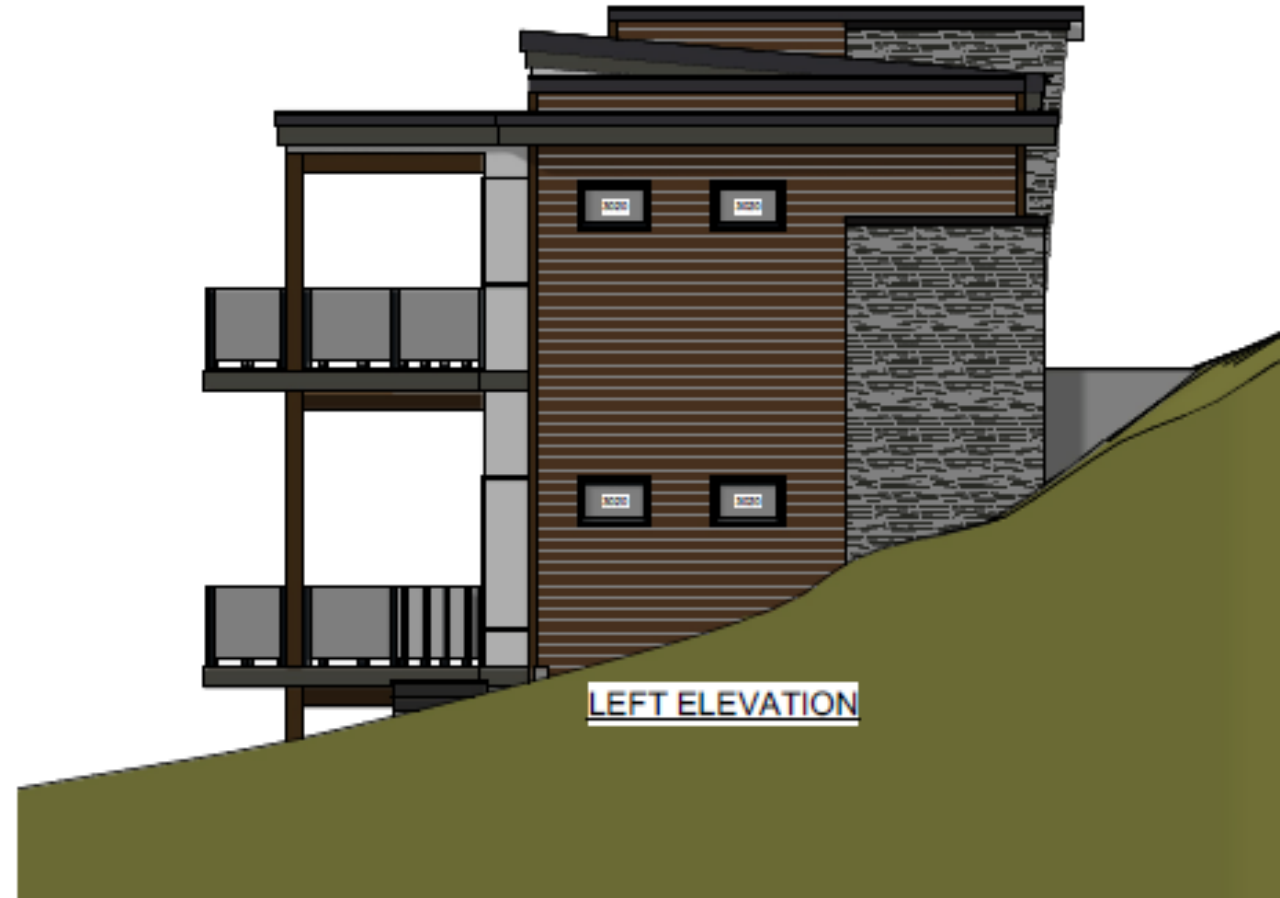
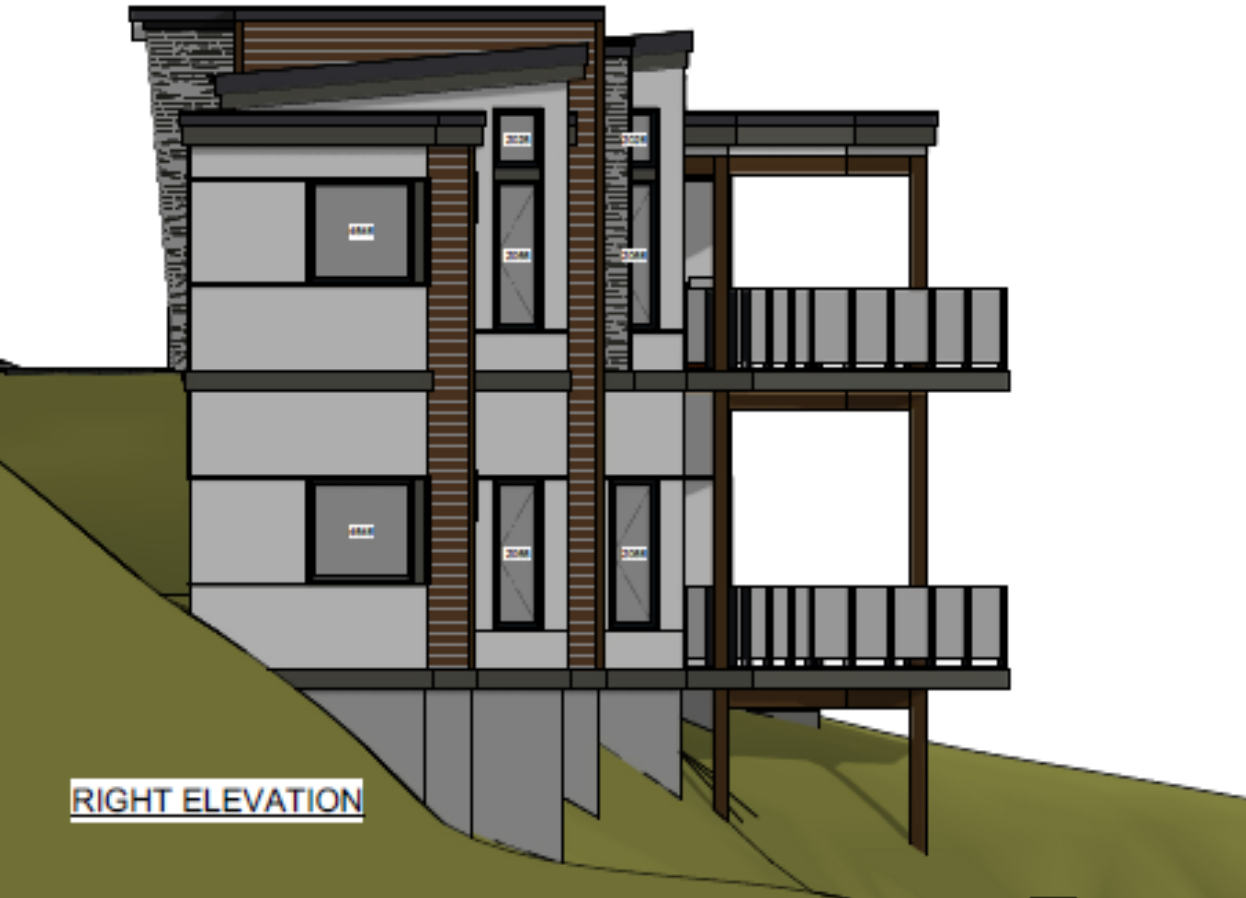






REAR ELEVATION







S 1/2 2

pl 5621

S 1/2

1

2235  
N

pl 14249

2

2

2223 N

Okanagan Lake

Westside Rd









# Proposal

1. Reduction of the minimum setback from Okanagan Lake from **15.0 m** (49.2 ft.) to **10.0 m** (32.8 ft.)
2. Reduction of the minimum front setback from **6.0 m** (19.7 ft.) to **2.29 m** (7.5 ft.)
3. To obtain a Development Permit

# Floodplain Exemptions

- Established for the safety of people and property
- The Regional District may exempt types of development from the requirements if the Regional Board:
  - Considers it advisable;
  - The exemption is consistent with Provincial guidelines;
  - Has received a report from a certified person that the land may be used safely for the use intended.



# Regional Board Strategic Priorities

- The Regional Board has identified and prioritized protection of the environment through various regional plans and actions:
  - Prioritizing a reduction in new construction in higher risk floodplain areas
  - Supporting efforts to reduce our environmental footprint and adapt to climate change



# Rural Westside OCP

- **Natural Environment Policy:**

- Provide and protect vegetated leave areas to water courses, control soil erosion and sediment in run-off water, control the rates of run-off to minimize impacts on the lake, prevent the discharge of deleterious substances into the lake

- **Aquatic Ecosystem Development Permit Guidelines:**

- A leavestrip for the protection and restoration of the riparian ecosystem is to remain undisturbed near watercourses
- The intention is that the leavestrip will be untouched by development and left in its natural condition, or, if damaged by previous use or construction, the ecosystem restored or enhanced

# Climate Projections

## for the Okanagan Region

February 2020



14% less by 2050s  
22% less by 2080s  
(on average)



10% more by 2050s  
20% more by 2080s  
(on average)



In partnership with



Natural Resources  
Canada

Ressources naturelles  
Canada





# Climate Projections – Impacts



INCREASED  
**HEAT  
STRESS**



INCREASED RISK OF  
**FLOODING**



INCREASED  
**RISK**  
TO VULNERABLE  
PEOPLE



INCREASED RISK OF  
**WILDFIRE**



INCREASED RISK  
OF MORE  
**EXTREME  
WEATHER**



**SHIFTING**  
ECOSYSTEMS

# Regional Floodplain Management Plan

- Purpose: reduce flood risk, improve emergency response, increase resiliency to climate change
- Central Okanagan is especially vulnerable to flood damage because of the density of population near flood prone creeks and lakeshores



# Flood Hazard Assessment

- Land is exposed to flood hazard
- Concern over integrity of existing retaining wall







# Flood Hazard Assessment

- Proposed residential building conforms to the required flood construction level (343.66 m)
- Approximately 2.5m of fill will be required
- Potential long-term risk of erosion from waves/storm surge to the toe of the building foundation is considered low
- A number of recommendations and mitigation strategies have been provided in order to reduce flood risk

# Geotechnical Hazard Assessment

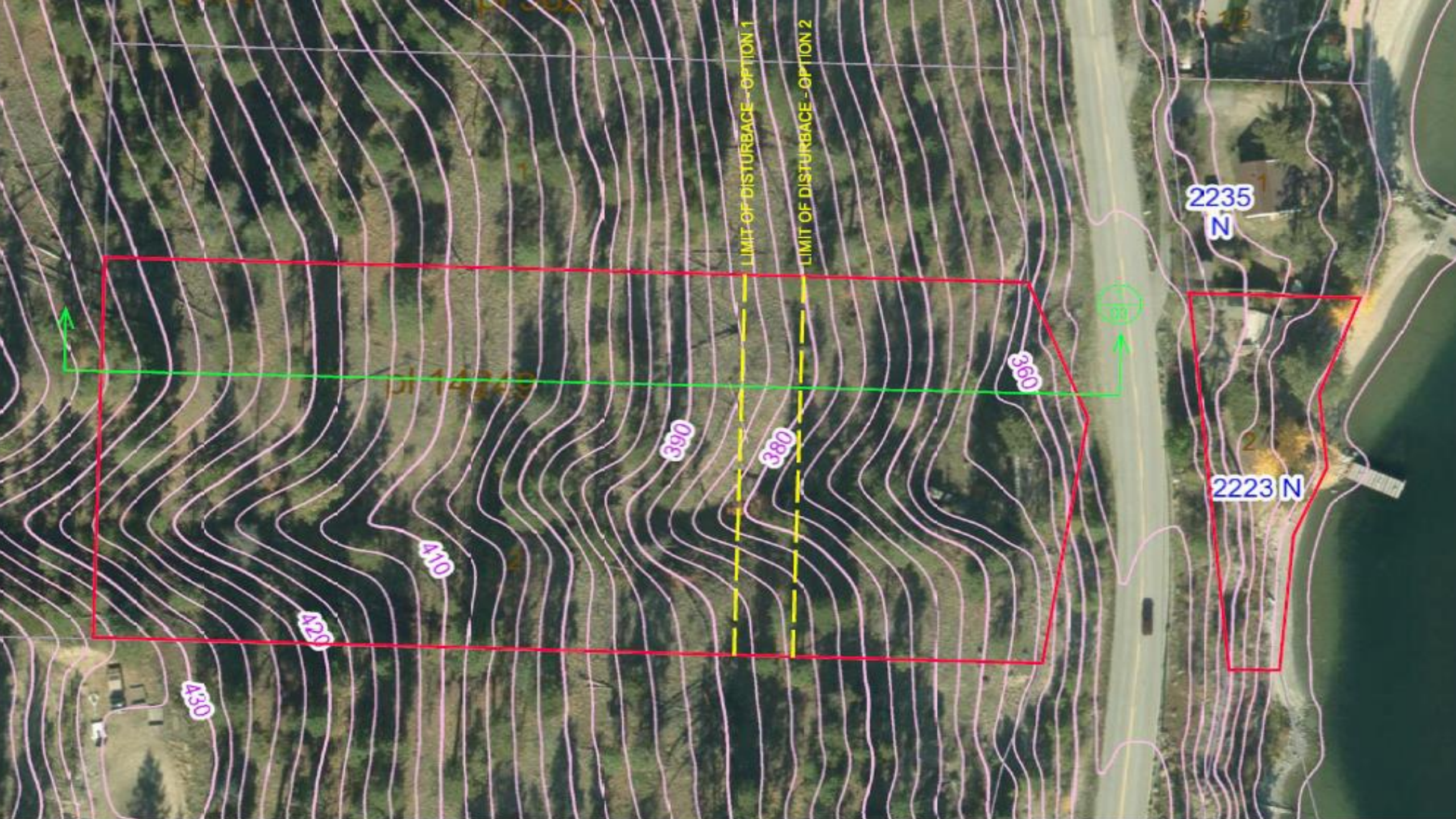
## Upland portion of the property:

- Contains steep slopes
- Drainage gully exists, no surface flows

## Lakeside portion of property:

- Bounded by Okanagan Lake and Westside Road
- A number of retaining walls, some appear to be failing
- Uncontrolled fill within building footprint







# Geotechnical Hazard Assessment

## Conclusion:

- Engineer considers upland undevelopable
- Little risk to the proposed house location from landslip, rock fall, or debris
- Subsurface investigation must be carried out prior to construction
- No build covenant recommended west of septic field infrastructure



# Environmental Impact Assessment

Lakeside portion of property:

- Moderate to high potential for juvenile fish rearing habitat

Upland portion of property:

- Provides high value terrestrial (species at risk) and wildlife habitat (mule deer)
- Proposed development is generally contained within a previously disturbed area





# Environmental Impact Assessment

## Conclusion

- Risks to the terrestrial environment outweigh those to the aquatic environment
- Recommends security bonding: \$18,188.00

# Inspections Services

- Building Permit applications required
- \$300.00 for removal of the Title Notice



# Environmental Advisory Commission:

Recommend the application be conditionally supported

## Condition:

- That the proponent works with staff on options for stronger long term protection of the upland area

# Environmental Advisory Commission (cont'd)

## Anecdotal Comments:

- The upland habitat and riparian area are both high value areas.
- Concerns over setting an unwanted precedent by recommending approval of floodplain exemptions
- Similar approved floodplain exemption applications in the past have failed to protect remaining natural areas along the lakeshore



# Advisory Planning Commission

- Recommend the application be supported

# Riparian Areas Protection Branch (MoF)

- Lot is subject to undue hardship as a result of undevelopable areas demonstrated by the qualified professionals
- Proposal meets the standards of RAPR



# Lands Branch (MoF)

- Unauthorized retaining wall on the foreshore
- Possible Crown land encroachments
- Shoreline erosion protection requires Section 11 approvals

# Ministry of Transportation

- **Permits Issued:**

- Controlled Access Highway Permit (access)
- Highway Setback Permit (front setback)
- Highway Construction Permit (sanitary sewer crossing)

- **Floodplain Exemption and Development Permit applications do not fall under the jurisdiction of the Ministry**



# Interior Health Authority

- No objections regarding the proposal
- Typically require a report from a hydrogeologist
- Sign off from authorized person

# Public Notification

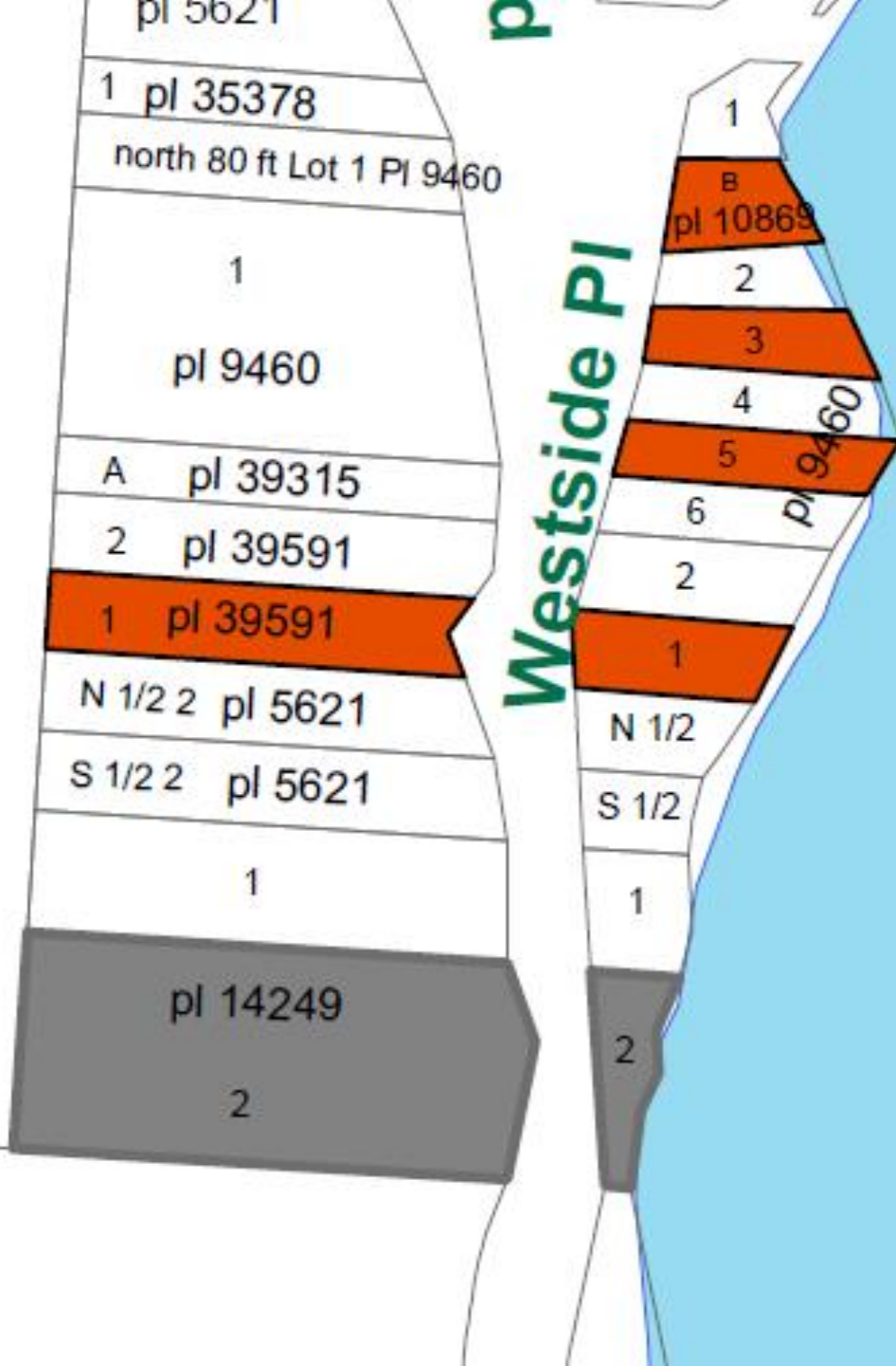
- Application sign posted on property
- 11 written notices mailed to neighbouring property owners



# Public Notification

- Four (4) letters of opposition
- Zero (0) letters of support

RDCO West E.A.





# Procedures Bylaw:

- Delegates the Director of Community to issue development permits only under the conditions noted below:
  - Meets the DP guidelines for protection of the natural environment or protection of development from hazardous conditions;
  - Must address the requirements of affected Provincial and/or Federal agencies;
  - Must address recommendations of RDCO staff and committees.

# Summary:

- Subdivided prior to RDCO incorporation
- History of flooding on Okanagan Lake
- Increased precipitation and more flooding is to be expected
- New construction proposed in a high risk floodplain area

# Summary (continued):

- Proposal does not meet OCP policies or DP Guidelines
- Large development footprint close to Westside Road and Okanagan Lake
- Concerns raised from neighbourhood



# Recommendation:

**THAT** Floodplain Exemption Application  
FEX-20-01 not be approved.

**AND THAT** Development Variance Permit Application  
VP-20-03 not be approved.

**AND FURTHER THAT** Development Permit  
Application DP-20-08 not be approved.





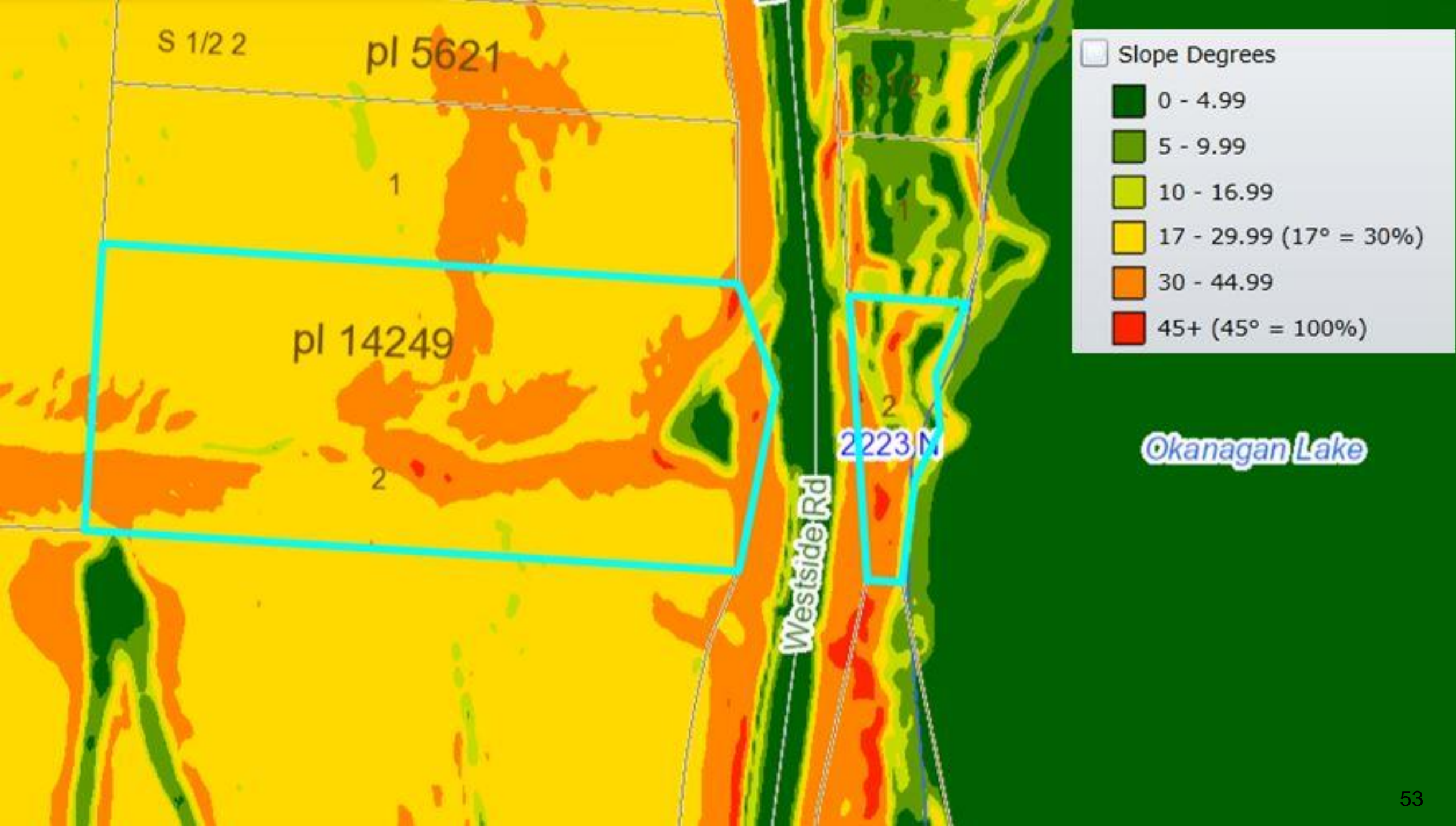




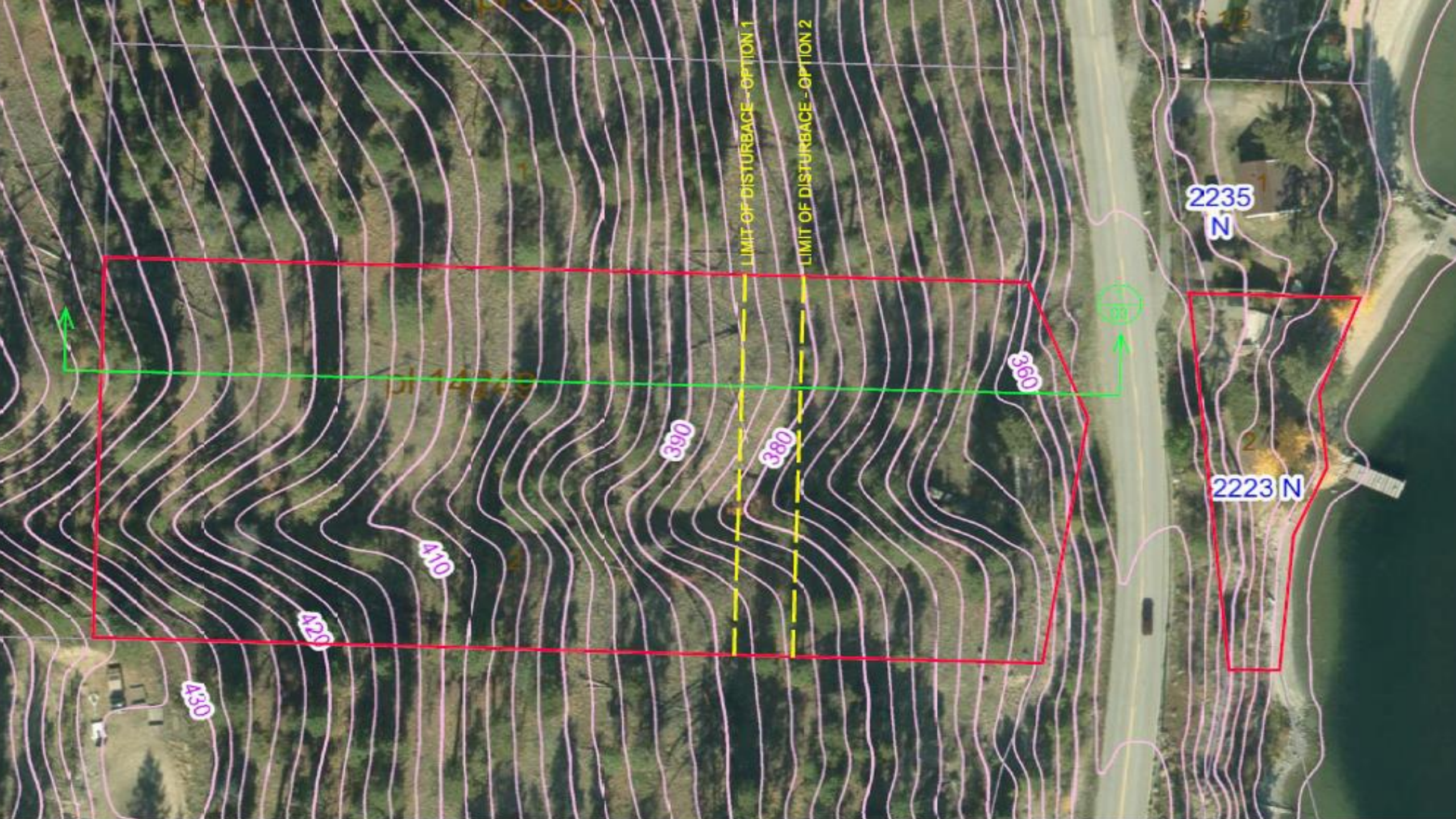














S 1/2 2

pl 5621

S 1/2

1

2235  
N

pl 14249

2

2

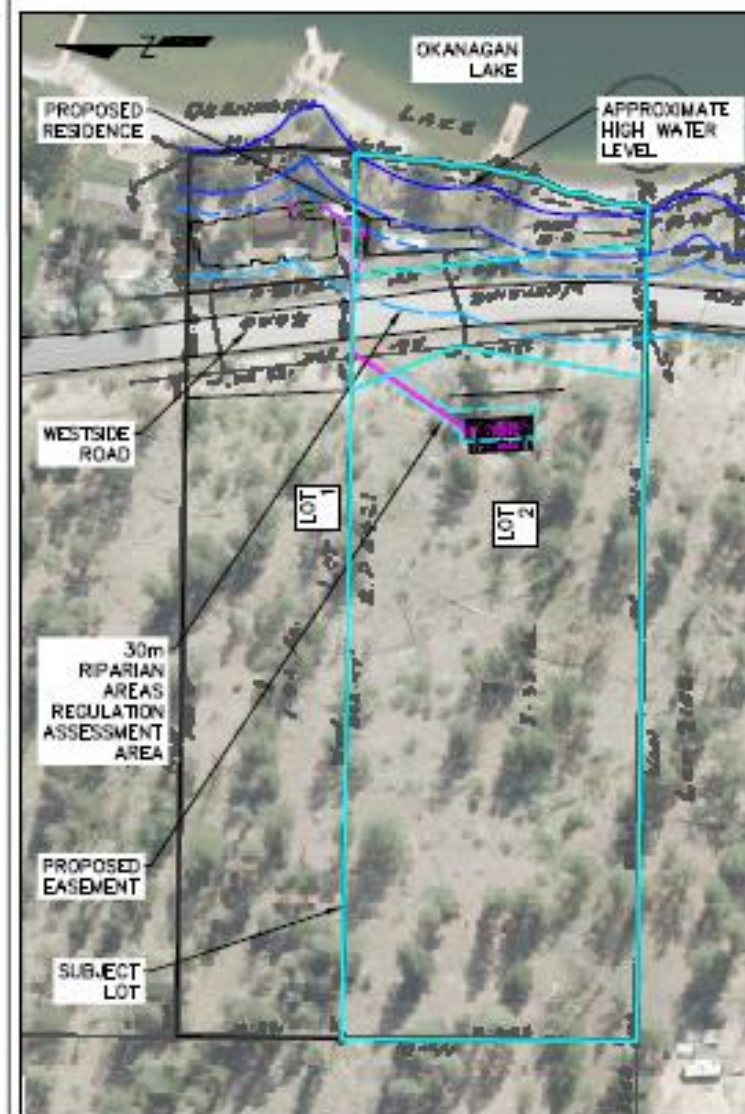
2223 N

Okanagan Lake

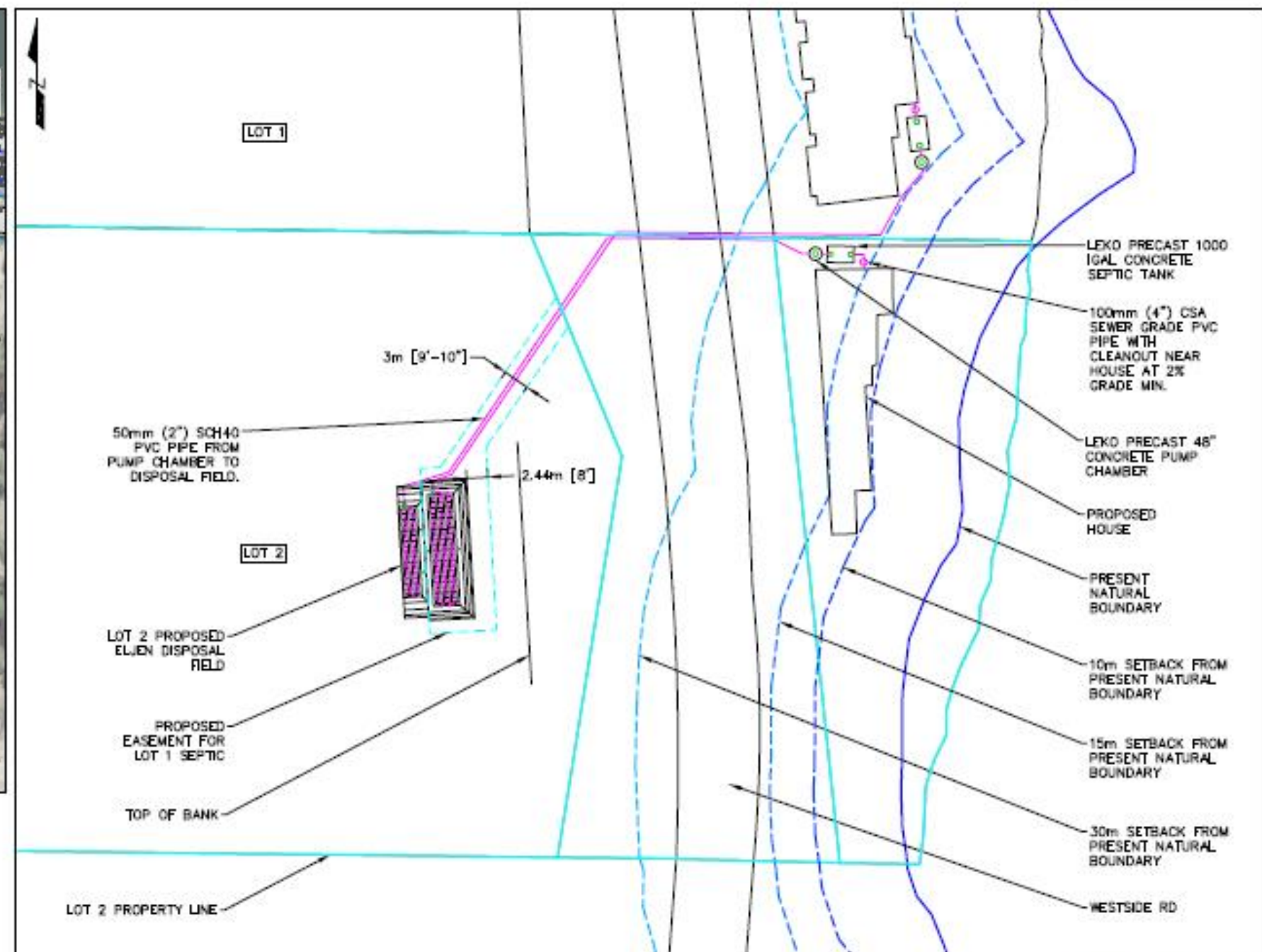
Westside Rd







SITE PLAN  
SCALE: 1:1500



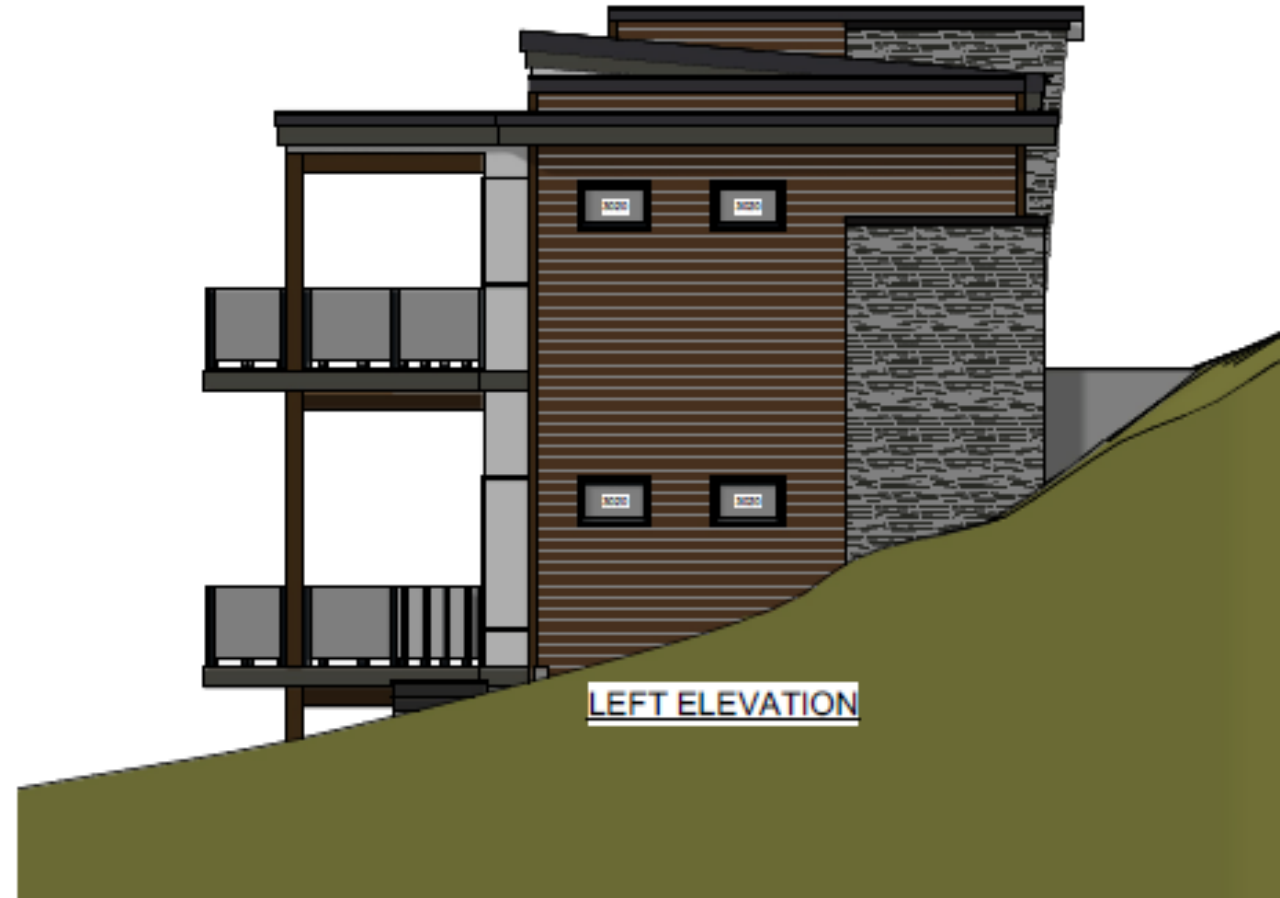
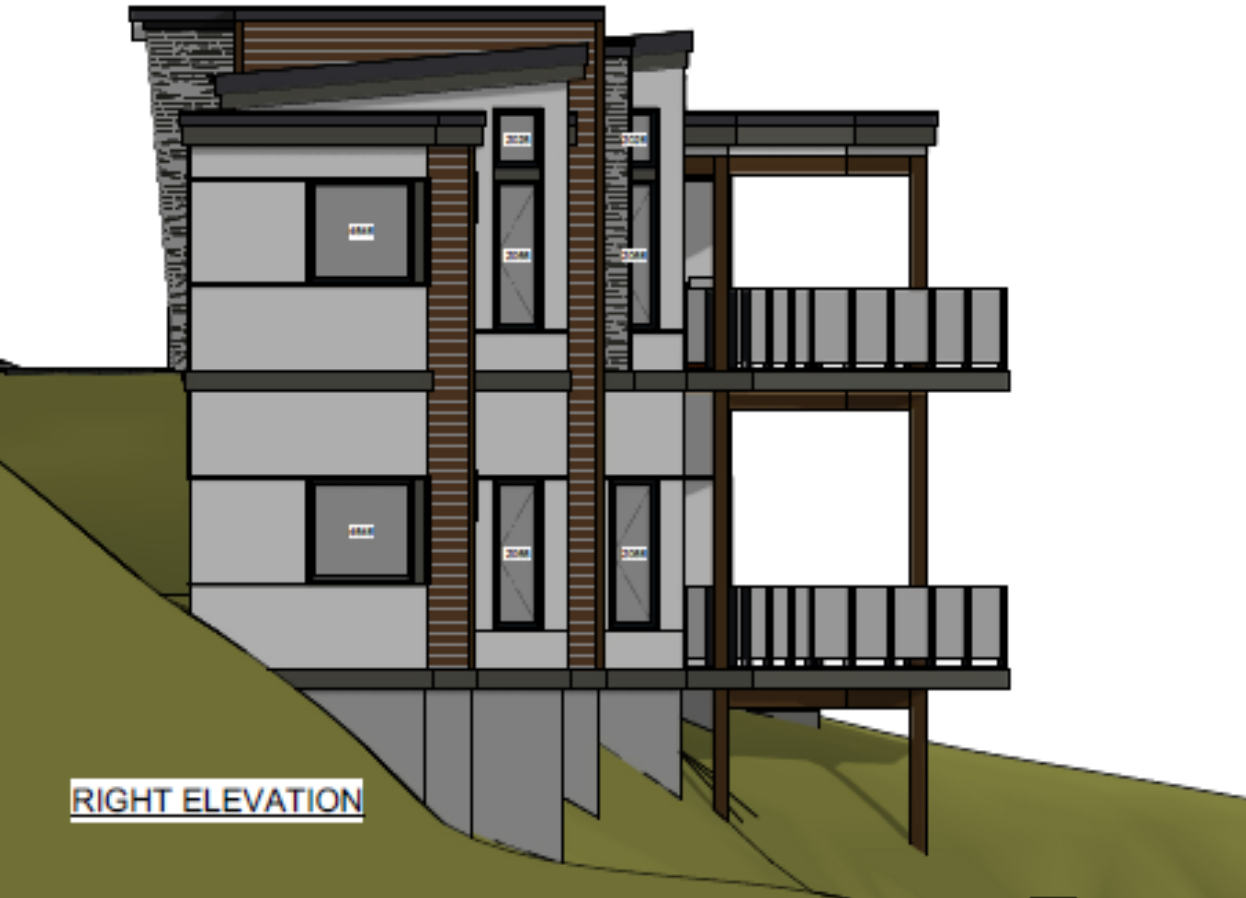
SYSTEM LOCATION  
SCALE: 1:500





REAR ELEVATION









FRONT ELEVATION

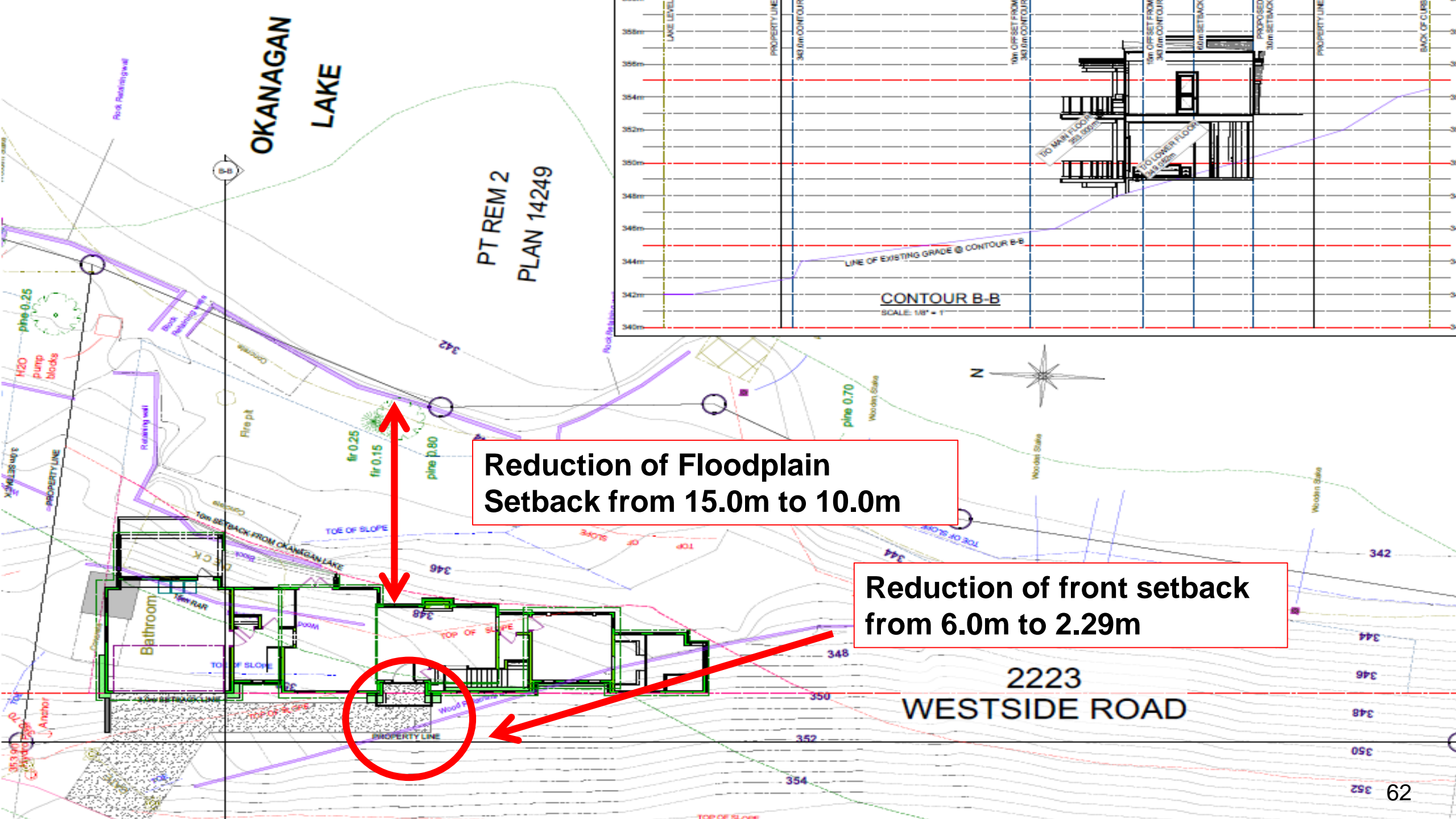








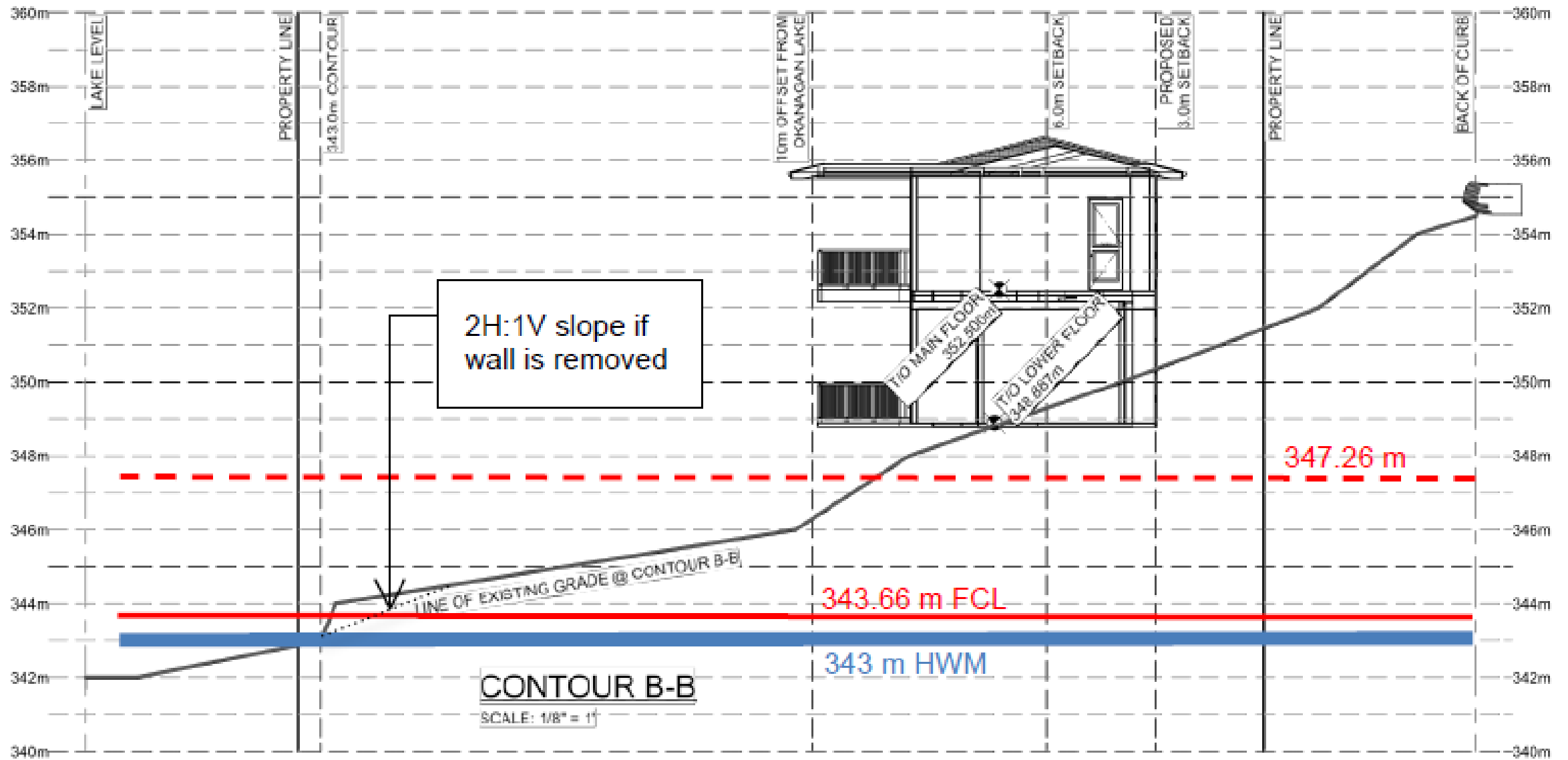




**Reduction of Floodplain  
Setback from 15.0m to 10.0m**

**Reduction of front setback  
from 6.0m to 2.29m**





## Undue hardship

11 (1) In this section, "**variance**" means any of the following:

- (a) a variance that a board of variance may order to be permitted under section 542 [*board powers on application*] of the *Local Government Act*;
- (b) a variance that a local government may permit under section 498 [*development variance permits*] of the *Local Government Act*;
- (c) an amendment to a zoning bylaw.

(2) A site is subject to undue hardship for the purposes of this regulation if

- (a) the site was created by subdivision in accordance with the laws in force in British Columbia at the time the site was created,
- (b) the developer has sought and received a decision on every variance that would reduce the legally restricted area of the site, and
- (c) the developable area of the site is less than the allowable footprint for the site.

(3) The allowable footprint for a site subject to undue hardship is the following:

- (a) if the area of human disturbance on the site is less than or equal to 70% of the area of the site, the allowable footprint is 30% of the area of the site;
- (b) if the area of human disturbance on the site is greater than 70% of the area of the site, the allowable footprint is 40%.



# Alternate Recommendation

**THAT** the Regional Board approve Floodplain Exemption Application FEX-20-01 to exempt the subject property from Section 3.28 Floodplain Regulations of Zoning Bylaw No. 871 by allowing a reduction of the minimum setback from Okanagan Lake from 15.0 metres (49.2 ft.) to 10.0 metres (32.8 ft.).

# Alternate Recommendation

- **AND THAT** the Regional Board approve Development Variance Permit Application VP-20-03 for Maloney Construction Ltd. (owner), located at 2223 Westside Road to vary Section 6.3.4 of Zoning Bylaw No. 871 by allowing a reduction of the minimum front setback from 6.0 m (19.7 ft.) to 2.29 m (7.5 ft.) to permit the construction of a single family dwelling based on the June 3, 2020 Design Drawings prepared by Mullins Design Group.



# Alternate Recommendation

**AND FURTHER THAT** the Regional Board conditionally approve DP-20-08 and that the DP be subject to the following conditions specified in 'Schedule A'

# Schedule 'A' Conditions

## Adherence to Development Plans:

- No further or variance in construction of, addition to or alteration of a building or structure; or alteration or clearing of land is to occur within the Development Permit Areas as outlined in the Rural Westside Official Community Plan Bylaw No. 1274 without prior notification and approval by RDCO; other than that recognized and approved in this Development Permit.
- No further buildings, structures or improvements of any kind shall be constructed nor located within the 15m setback from the High Water Mark of Okanagan Lake. Any works proposed within the 15m setback may require approvals from the Province in accordance with the *Riparian Areas Protection Regulation*. And further, there shall be no removal or disturbance of any soil, vegetation, or trees (with the exception of weeds) from within the 30 m setback area without first obtaining the written consent of the RDCO.
- Further modifications including changes in and about a stream, construction/alteration of retaining walls, groynes, and substrate modification must not occur at any time without further environmental assessment being conducted and appropriate approvals received from the Province in accordance with the BC *Water Sustainability Act* (Section 11).
- Development Permit (DP-20-08) has been issued exclusively for works associated with the demolition of the existing wooden retaining wall, cement block retaining wall, concrete pads, wooden patio/sundeck, and wooden shed; and construction of a single family dwelling, garage, covered deck, and septic field, as well as associated environmental monitoring and mitigation works.



# Schedule 'A' Conditions

## Professional Reports:

- All construction, land clearing, mitigation, and restoration activities must be completed as per the July 1, 2020 Floodplain Exemption Application Report prepared by Clarke Geoscience Ltd., the January 30, 2021 Geotechnical Hazard Assessment conducted by Beacon Geotechnical Ltd., the February 26, 2021 Environmental Assessment conducted by Ecoscape Environmental Consultants, the June 3, 2020 Design Drawings prepared by Mullins Design Group, the September 17, 2020 Septic System Design Drawings prepared by Franklin Engineering Ltd., and the October 8, 2019 Topographical Site Survey prepared by Runnalls Denby.

## Monitoring:

- The land owner shall obtain the services of an Environmental Monitor to ensure the recommendations of the Development Permit are implemented and in accordance with the following schedule and conditions:
  - Pre-construction meeting with the contractor, Engineer, and Environmental Monitor;
  - Submit monitoring reports to RDCO as indicated by the Environmental Monitor;
  - Prepare a substantial completion report and submit to RDCO upon completion of construction and restoration works indicating substantial completion of the conditions and requirements of the Development Permit have been carried out;
  - In the event that greater disturbance occurs due to unforeseen circumstances, the Environmental Monitor will recommend further measures to protect/restore the natural integrity of the site and report on these measures to the RDCO.

# Schedule 'A' Conditions

## Security:

- The applicant shall post a letter of credit or bank draft in the amount of \$18,188.00 in order to ensure completion of works and associated remediation landscaping within 1 year of the issuance of the Development Permit.
- Ninety per cent (90%) of this amount is refundable upon completion of said works and receipt of a substantial completion report signed by a registered professional, and to the satisfaction of Regional District Community Services staff.
- The remainder of the bond shall be held for a minimum of two (2) years (growing seasons) to ensure that the required mitigation has been fully implemented and demonstrated to function (ecologically or as designed). The maintenance bond may be held for longer periods if, throughout the initial 2-year period the persistent failure of the works is documented.



# Schedule 'A' Conditions

## Further Conditions or Restrictions:

- The landowner/applicant must apply for and receive a building permit for the proposed works as well as an application for the removal of the Notice of Bylaw Contravention on title to the satisfaction of the RDCO Building Inspection Services.
- A Registered Professional Engineer must be retained at time of site preparation and subsurface investigation, excavation, and subgrade works to ensure that the structural considerations of soil, including slope stability, site drainage, and erosion and sediment control will be supervised and approved by the Engineer.
- The building footprint area must be surveyed, staked, and clearly delineated to prevent encroachment.
- The riparian setback area must be surveyed, staked, and clearly delineated to prevent encroachment.
- Prior to any disturbance on site, the contractor is required to install silt fencing around the development footprint adjacent to the 10m riparian setback area to prevent encroachment and to provide erosion and sediment control.
- Construction debris and materials must not be stored or deposited within the riparian setback and must be removed from the property on a regular basis.
- A Site Survey / Building Location Certificate is required to be submitted to the RDCO at time of footings and foundation.
- Best Management Practices are to be used as a means to protect the riparian area of Okanagan Lake.

# Schedule 'A' Conditions

## Further Conditions or Restrictions:

- Registration of a restrictive (Floodplain) covenant under Section 219 of the Land Title Act identifying that there has been an indication of flood concern relating to the development of the lands as set forth in a report prepared by Clarke Geoscience Ltd., dated July 1, 2020.
- Registration of a restrictive no-build / no-disturb (Geotechnical) covenant under Section 219 of the Land Title Act identifying that there has been an indication of geotechnical concern relating to the development of the lands as set forth in a report prepared by Beacon Geotechnical Ltd., dated January 30, 2021 and February 23, 2021.
- Registration of a restrictive (Environmental) covenant under Section 219 of the Land Title Act identifying that there has been an indication of environmental concern relating to the development of the lands as set forth in a report prepared Ecoscape Environmental Consultants Ltd., dated February 2021. The development of the lands shall be in strict accordance with the recommendations contained within the environmental report.
- A detailed and formal landscape plan must be prepared by a qualified professional and submitted to and approved by the RDCO prior to commencement of any landscape works.



# Schedule 'A' Conditions

## Further Conditions or Restrictions:

- Should clearing activities be required during the identified avian nesting period (March 31 – August 15), pre-clearing surveys must be conducted by the EM to identify active nests and other critical habitat features. Clearing and other construction activities must be conducted within 72 hours following the completion of the pre-clearing nest surveys. Additional buffers and no-disturbance zones may be required at this time.
- In accordance with the RDCO Noxious Weed Control Bylaw No. 179, the owner or occupier of the land shall prevent the infestation of noxious weeds and cut down or otherwise destroy and mulch or remove all noxious weeds and plant with native grasses or other native vegetation.