



Committee Report

Date of Report: April 3, 2024
Date & Type of Meeting: April 17, 2024, Rural Affairs Committee
Author: Stephanie Johnson, Planner
Subject: DEVELOPMENT VARIANCE PERMIT
File: V2405-62449.010-MCBLAIN-DVP00253
Electoral Area/Municipality B

SECTION 1: EXECUTIVE SUMMARY

The purpose of this report is for the Rural Affairs Committee and Regional Board to consider a Development Variance Permit (DVP) application.

This DVP seeks to vary Section 23.5 under the Agriculture One (AG1) Zone in the *Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316*, as follows:

- To allow a Farm Residential Footprint with a maximum depth of 140 metres from the front property line whereas the bylaw requires that the maximum depth of the Farm Residential Footprint shall not exceed 60 metres from the Front Lot Line.

Staff recommend that the Regional Board approve issuance of this DVP.

SECTION 2: BACKGROUND/ANALYSIS

GENERAL INFORMATION

Property Owner: Jody McBlain and Delaney McBlain
Property Location: 4328 – 40 th Street, Canyon, Electoral Area 'B'
Legal Description: LOT 174 DISTRICT LOT 812 KOOTENAY DISTRICT PLAN 921 (PID: 009-896-490)
Property Size: 4 hectares (ha)
Current Zoning: Agriculture One (AG1)
Current Official Community Plan Designation: Agriculture (AG)

SURROUNDING LAND USES

North: Agriculture One (AG1) / Agricultural Land Reserve (ALR) lands
East: Agriculture One (AG1) / ALR lands
South: Agriculture One (AG1) / ALR lands and 40 th Street
West: Agriculture One (AG1) / ALR lands

Background Information and Site Context

The subject property is surrounded on all sides by parcels within the ALR, designated Agriculture and zoned Agriculture One (AG1). The parcel has Farm Status and is currently used for hay production. An existing hay shed

is located in the rear (northwest) corner of the lot. The applicants seek to convert an existing workshop building on site into a dwelling unit (approximately 80.3 m² / 864 ft² in size), since there is already driveway access, and power, water and sewerage infrastructure to service this structure.



Figure 1: Site Location Overview Map

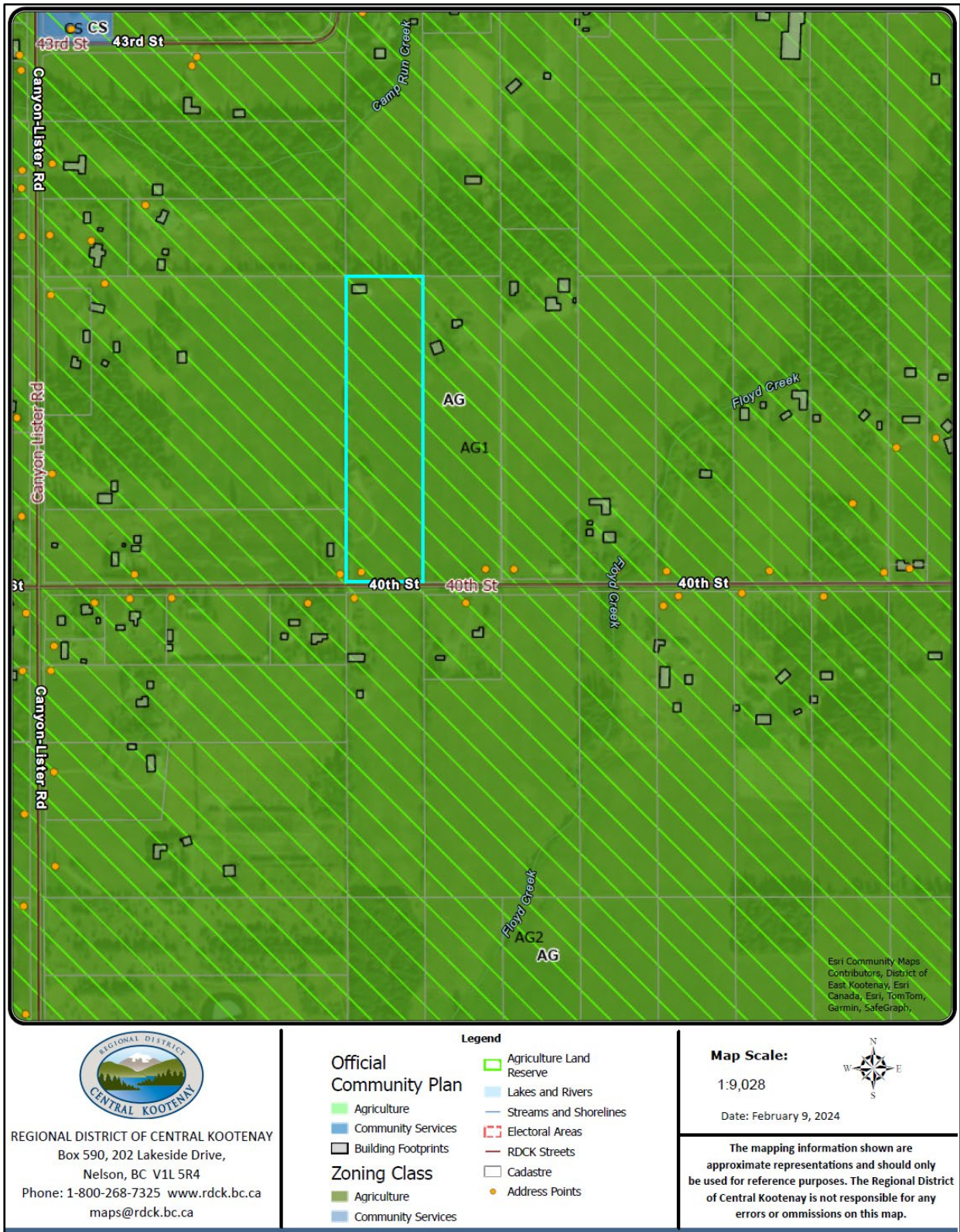


Figure 2: Zoning, ALR and Building Footprint Map

Development Proposal

The applicants seek to convert an existing accessory building currently used as a workshop on site into a dwelling unit (approximately 80.3 m² / 864 ft² in size). The intent is to utilize the current driveway providing access to the structure, and existing power, water and sewerage infrastructure to service the proposed new residence. This DVP seeks to vary Section 23.5 in the Agriculture One (AG1) Zone under the *Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316*, as follows:

Section 23.5: To allow a Farm Residential Footprint with a maximum depth of 140 metres from the front property line whereas the bylaw requires that the maximum depth of the Farm Residential Footprint shall not exceed 60 metres from the Front Lot Line.

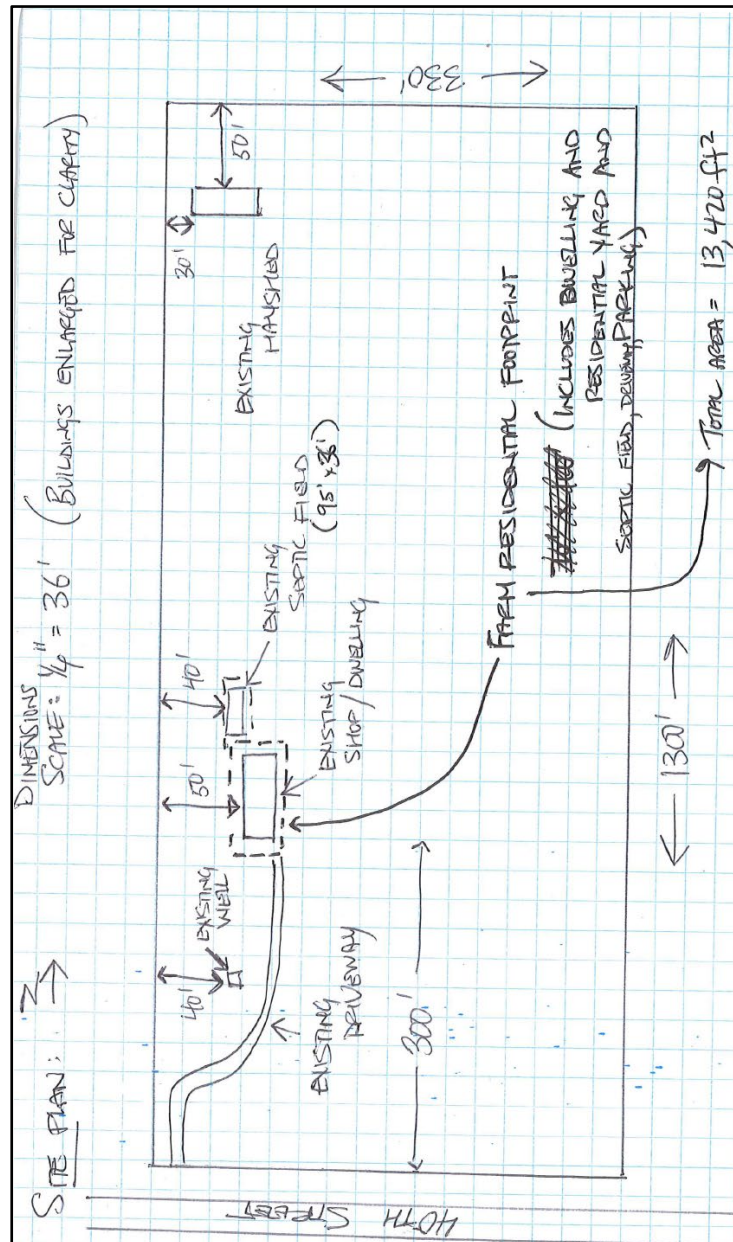


Figure 3: Site Plan



Figure 4: Conceptual Farm Residential Footprint Map

Planning Policy

Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316, 2013

Agriculture Objectives

1. To preserve and promote the use of agricultural land for current and future agricultural production, and to protect this land from uses which are inconsistent with agricultural use or are incompatible with existing agricultural uses in the area.
2. To encourage the agricultural sector's viability by pursuing supportive land use policies within and adjacent to farming areas and to ensure adequate water and land resources for agricultural purposes with recognition of the importance of local food production.

3. To support agricultural land use practices that do not adversely affect the surrounding environment not compromise the capability of the land for future food production.
4. To support agricultural land use practices within and adjacent to farming areas that seek to minimize conflicts between agriculture and other land uses.
5. To support a strategy for diversifying and enhancing farm income by creating opportunities for uses secondary to and related to agricultural use.
7. To recognize distinct agricultural areas reflecting unique historical development trends, soils and climate.

Agriculture Policies

The Regional Board:

9. Directs that the principal use of land designated ‘Agriculture’ shall be for agricultural use.
14. May require that new development adjacent to agricultural areas provide sufficient buffering in the form of setbacks, fencing or landscaping.
16. Supports directing intensive agricultural operations to larger lots or increasing building setbacks and other possible mitigation measures to prevent potential conflicts with adjacent land uses.
17. Supports the use of minimum and maximum setback distances for residential development and the clustering of built structures on agricultural lands to reduce the impact to agricultural potential and operations.

**Community Specific Policies
Canyon**

9. Recognizes that the community is primarily characterized by a mix of small residential parcels and medium lot agricultural parcels, the majority of which are located within the ALR and will allow for a mix of parcel sizes dependent of type of land use and agricultural activity.

SECTION 3: DETAILED ANALYSIS

3.1 Financial Considerations – Cost and Resource Allocations:

Included in Financial Plan: Yes No **Financial Plan Amendment:** Yes No
Debt Bylaw Required: Yes No **Public/Gov’t Approvals Required:** Yes No

The DVP application fee has been paid in full pursuant to the *Planning Fees and Procedures Bylaw No. 2457, 2015*.

3.2 Legislative Considerations (Applicable Policies and/or Bylaws):

Under Section 498 of the *Local Government Act*, the Board has the authority to vary provisions of a Zoning Bylaw other than use or density through a DVP.

3.3 Environmental Considerations

The proposed conversion of an existing structure, driveway access and servicing would minimize the environmental impact of this development proposal.

3.4 Social Considerations:

No negative social considerations are anticipated from the requested variance.

3.5 Economic Considerations:

No economic considerations are anticipated from this proposed DVP application.

3.6 Communication Considerations:

In accordance with the LGA and the RDCK's Planning Procedures and Fees Bylaw No. 2457, 2015 a sign describing the proposal was posted on the subject property, and notices were mailed to surrounding neighbours within a 100 metre radius of the subject property. To date, no comments have been received in response to from the above notification.

Planning staff referred the application to all relevant government agencies, internal RDCK departments, the Director for Electoral Area 'B' Advisory Planning and Heritage Commission (APHC) for review. The following comments were received:

RDCK Building Services

"...Building has no objections to the proposed variance on the condition that the owner/applicant satisfactorily submits all documentation and completes all work required to convert the structure in accordance with requirements of BP28224 (if and when it is issued) and the BC Building Code".

Electoral Area 'B' APHC

It was resolved, *"That the Area B Advisory Planning Commission SUPPORT the Development Variance Permit Application to Jody McBlain for the property located at 4328 – 40th Street, Canyon (ELECTORAL AREA 'B') and legally described as LOT 174 DISTRICT LOT 812 KOOTENAY DISTRICT PLAN 921".*

Ministry of Agriculture

"Ministry staff recognize that converting the existing workshop to a residence minimizes the impact on the Subject Property given that the workshop is serviced with existing water, power and septic infrastructure and is accessed by an existing driveway. From the information provided, it appears that no additional land will be impacted by the proposed conversion.

Ministry staff understand and support the applicant's rationale for requesting a variance to the maximum depth of the Farm Residential Footprint given that the proposed location does not impact any of the existing land under agricultural production and ultimately, view this application as beneficial for both the current and any future agricultural use of the Subject Property".

Ministry of Transportation and Infrastructure

"The Ministry has no concerns with the proposed Development Variance Permit. Should the applicant be conducting farming operations on the property resulting in larger equipment frequently utilizing the driveway access, it is requested that they apply for an agricultural access permit".

Fortis BC

"Land Rights Comments -

- *There are no immediate concerns or requests for additional land rights, however there may be additional land rights requested stemming from changes to the existing FortisBC Electric ("FBC(E)") services, if required.*

Operational & Design Comments -

- *There are FortisBC Electric ("FBC(E)") primary distribution facilities along 40 Street.*
- *All costs and land right requirements associated with changes to the existing servicing are the responsibility of the applicant.*

- *The applicant and/or property owner are responsible for maintaining safe limits of approach around all existing electrical facilities within and outside the property boundaries*
- *For any changes to the existing service, the applicant must contact an FBC(E) designer as noted below for more details regarding design, servicing solutions, and land right requirements.*

In order to initiate the design process, the customer must call 1-866-4FORTIS (1-866-436-7847)".

Agricultural Land Commission (ALC)

"The [ALC] has no concerns about this setback variance considering it's an existing building".

3.7 Staffing/Departmental Workplace Considerations:

Should the Regional Board approve issuance of the requested variance, staff would issue the Permit and register a Notice of Permit on the property's Title. Submission of a Building Permit application would then be required for the conversion of the structure in to a dwelling unit.

3.8 Board Strategic Plan/Priorities Considerations:

This application falls under the operational role of Planning Services.

SECTION 4: OPTIONS

Planning Discussion

The Agriculture Policy Review project (Phase Two - 2023) considered current legislation, existing plans and best management practices, as well as, input from farmers, technical advisors and the public to amend RDCK land use regulations with the goal of supporting farming and protecting farmland in the Regional District. This project identified that the DVP application process would be the best tool for the RDCK to consider site specific circumstances when the agricultural residential footprint regulations would not result in the desired objective of protecting farmland. This application is one such case, and why Staff recommend the DVP be approved.

Staff cite the following rationale in support of the recommendation:

- The proposal is consistent with the relevant agricultural objectives and policies in the *Electoral Area 'B' Comprehensive Land Use Bylaw (CLUB) No. 2316, 2013*, and all other zoning regulations in the CLUB, including farm residential footprint at less than 2,000 m² (please see Figure 4).
- The variance requested proposes the conversion and use of an existing structure, which would create no net loss of agriculture on the parcel.
- In accordance with comments from the Ministry of Agriculture, staff concur with and *"support the applicant's rationale for requesting a variance to the maximum depth of the Farm Residential Footprint given that the proposed location does not impact any of the existing land under agricultural production and ultimately, view this application as beneficial for both the current and any future agricultural use of the subject property"*.
- No comments were received in response to the notice of development proposal letter sent to adjacent property owners within 100 metres of the subject property.

It is for the above reasons that Planning Services recommends that the Regional Board proceed with issuance of this DVP.

Option 1

That the Board APPROVE the issuance of Development Variance Permit V2405B to Jody McBlain and Delaney McBlain for the property located at 4328 – 40th Street and legally described as LOT 174 DISTRICT LOT 812 KOOTENAY DISTRICT PLAN 921 (PID: 009-896-490) to vary Section 23.5 in the *Rural Creston Electoral Area ‘B’ Comprehensive Land Use Bylaw No. 2316, 2013*, as follows:

- From a 60 metre maximum depth from the Front Lot Line for a Farm Residential Footprint to allow a Farm Residential Footprint with a maximum depth of 140 metres from the Front Lot Line to permit the conversion of an existing structure in to a dwelling unit.

Option 2

That the Board NOT APPROVE the issuance of Development Variance Permit V2405B to Jody McBlain and Delaney McBlain for the property located at 4328 – 40th Street and legally described as LOT 174 DISTRICT LOT 812 KOOTENAY DISTRICT PLAN 921 (PID: 009-896-490) to vary Section 23.5 in the *Rural Creston Electoral Area ‘B’ Comprehensive Land Use Bylaw No. 2316, 2013*, as follows:

- From a 60 metre maximum depth from the Front Lot Line for a Farm Residential Footprint to allow a Farm Residential Footprint with a maximum depth of 140 metres from the Front Lot Line to permit the conversion of an existing structure in to a dwelling unit.

SECTION 5: RECOMMENDATIONS

That the Board APPROVE the issuance of Development Variance Permit V2405B to Jody McBlain and Delaney McBlain for the property located at 4328 – 40th Street and legally described as LOT 174 DISTRICT LOT 812 KOOTENAY DISTRICT PLAN 921 (PID: 009-896-490) to vary Section 23.5 in the *Rural Creston Electoral Area ‘B’ Comprehensive Land Use Bylaw No. 2316, 2013*, as follows:

- From a 60 metre maximum depth from the Front Lot Line for a Farm Residential Footprint to allow a Farm Residential Footprint with a maximum depth of 140 metres from the Front Lot Line to permit the conversion of an existing structure in to a dwelling unit.

Respectfully submitted,

Stephanie Johnson

CONCURRENCE

Planning Manager – Nelson Wight
General Manager Development & Sustainability – Sangita Sudan
Chief Administrative Officer – Stuart Horn

ATTACHMENTS:

Attachment A – Development Variance Permit

Attachment B – Excerpt from *Electoral Area ‘B’ Comprehensive Land Use Bylaw No. 2316, 2013*



Development Variance Permit

V2405B (McBlain)

Date:

Issued pursuant to Section 498 of the *Local Government Act*

TO: Delaney McBlain and Jody McBlain

ADMINISTRATION

1. This Development Variance Permit (DVP) is issued subject to compliance with all of the bylaws of the Regional District of Central Kootenay (RDCK) applicable thereto, except as specifically varied or supplemented by this Permit.
2. The land described shall be developed strictly in accordance with the terms and conditions and provisions of this DVP, and any plans and specifications attached to this Permit that shall form a part thereof.
3. This DVP is not a Building Permit.

APPLICABILITY

4. This DVP applies to and only to those lands within the RDCK described below, and any and all buildings, structures and other development thereon, substantially in accordance with Schedules '1' and '2':

Address: 4328 – 40th STREET

Legal: LOT 174 DISTRICT LOT 812 KOOTENAY DISTRICT PLAN 921

PID: 009-896-490

CONDITIONS

5. Development Variance

Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316, 2013 Sections 23.5 is varied as follows:

Section 23.5: FROM a maximum depth of the Farm Residential Footprint of 60 metres to the Front Lot Line **TO** allow a Farm Residential Footprint with a maximum depth of 140 metres from the Front Lot Line.

As shown on Scheduled '1' and '2'.

6. Schedule

If the holder of the DVP does not substantially start any construction or does not register the subdivision with respect to which the permit was issued within two years after the date it is issued, the permit lapses.

7. Other

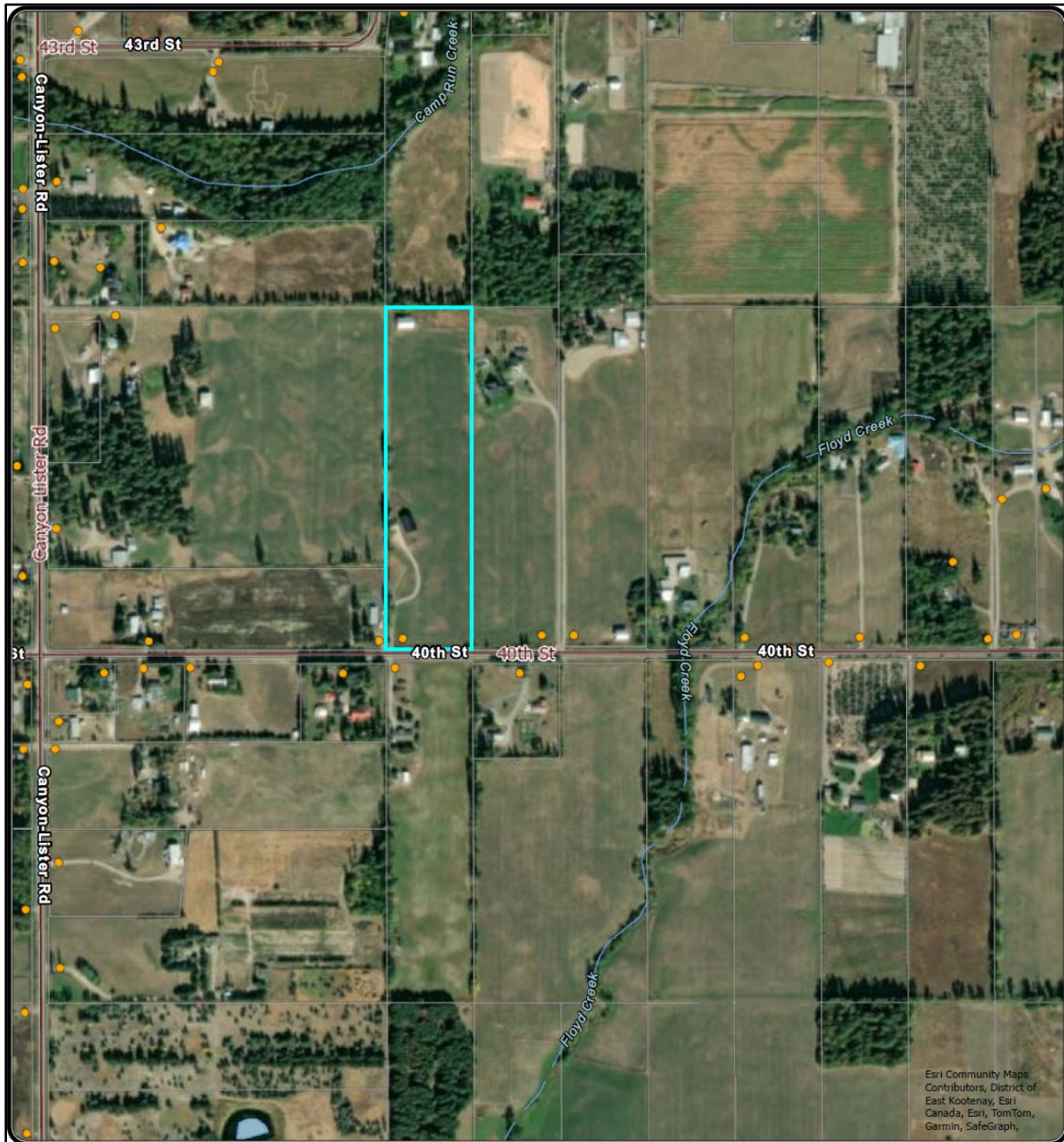
Authorized resolution [*enter resolution number*] passed by the RDCK Board on the _____ day of _____, 202_.

The Corporate Seal of
THE REGIONAL DISTRICT OF CENTRAL KOOTENAY
was hereunto affixed in the presence of:

Aimee Watson, Board Chair

Mike Morrison, Corporate Officer

Schedule 1: Subject Property



REGIONAL DISTRICT OF CENTRAL KOOTENAY
 Box 590, 202 Lakeside Drive,
 Nelson, BC V1L 5R4
 Phone: 1-800-268-7325 www.rdck.bc.ca
 maps@rdck.bc.ca

Legend

- Lakes and Rivers
- Streams and Shorelines
- Electoral Areas
- RDCK Streets
- Cadastre
- Address Points

Map Scale:

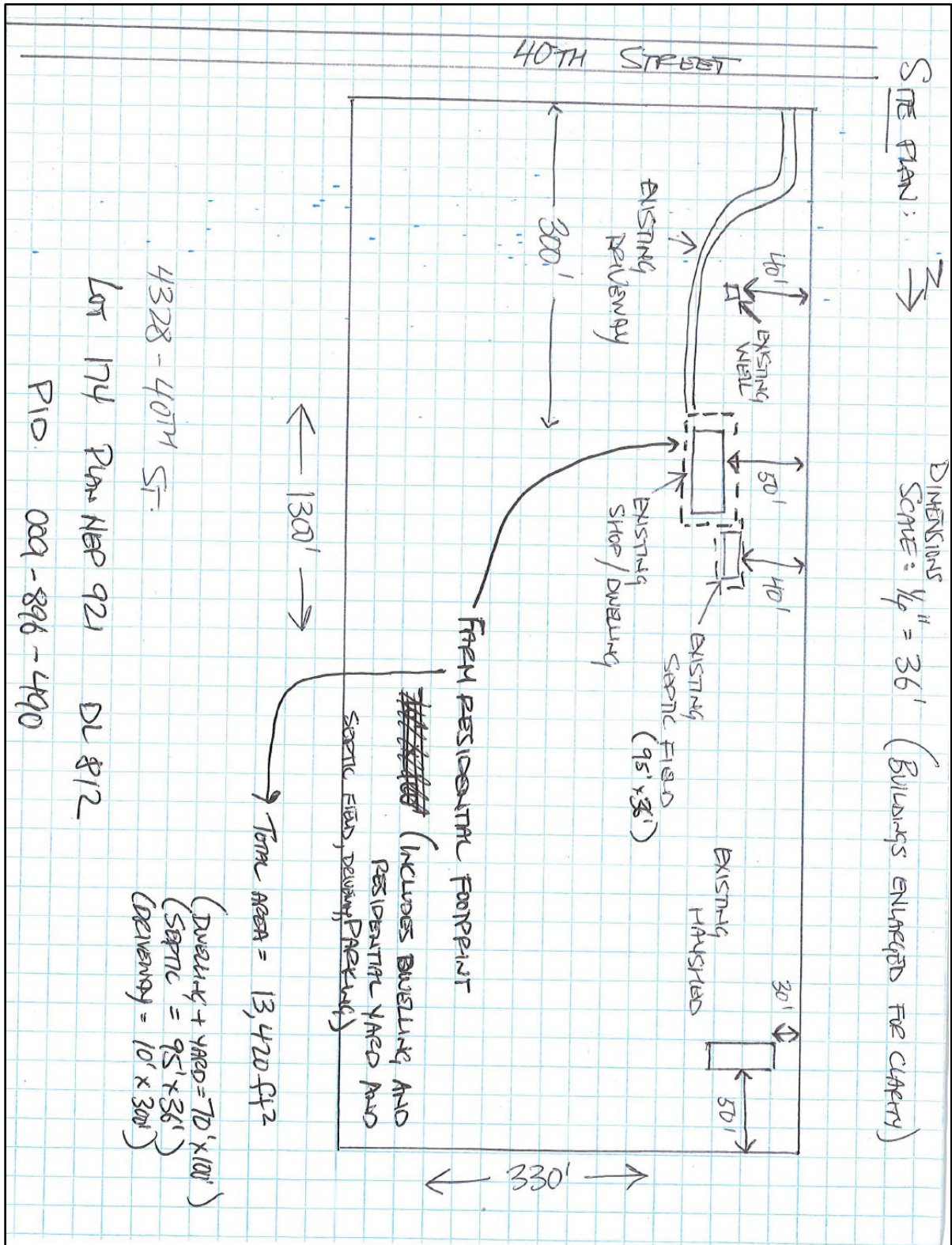
1:9,028

Date: February 9, 2024



The mapping information shown are approximate representations and should only be used for reference purposes. The Regional District of Central Kootenay is not responsible for any errors or omissions on this map.

Schedule 2: Site Plan



23.0 AGRICULTURE 1 (AG1)

Permitted Uses

1. Subject to the *British Columbia Agricultural Land Commission Act, Agricultural Land Reserve Use Regulation* and Orders, land, buildings and structures in the Agriculture 1 (AG1) zone shall be used for the following purposes only:

Agriculture

All activities designated as "Farm Use" as defined in the *Agricultural Land Commission Act* and Part 2 of the *Agricultural Land Reserve Use Regulation* as amended or replaced from time to time

Kennel

Micro Cultivation, Cannabis

Micro Processing, Cannabis

Nursery, Cannabis

Nursery, Greenhouses and Florist

Single Family Dwelling

Standard Cultivation, Cannabis

Standard Processing, Cannabis

Veterinary Clinic (*may require ALC non-farm use approval*)

Accessory Uses:

- Accessory Buildings or Structures
- Accessory Tourist Accommodation
- Home Based Business
- Farm Product Processing of farm product from another parcel in the Regional District of Central Kootenay (*may require ALC non-farm use approval*)
- Farmworker Dwelling Unit
- Portable Sawmills for processing of material harvested on site only
- Secondary Suite
- Temporary Farmworker Housing (*may require ALC non adhering residential use approval*)

Development Regulations

2. The minimum lot area shall be 4 hectares.
3. The maximum site coverage permitted shall be 35 percent of the lot area unless an area not larger than 60 percent of the lot is covered with greenhouses.
4. The maximum Farm Residential Footprint shall be a maximum of 2000 square meters where one dwelling unit is permitted plus 500 square meters per additional permitted dwelling unit.
5. The maximum depth of the Farm Residential Footprint shall not exceed 60.0 metres measured from the Front Lot Line or Exterior Side Lot Line.
6. The Maximum Gross Floor Area of the Single Family Dwelling is 300.0 square metres.
7. A Farmworker Dwelling Unit is permitted on a lot provided that all of the following apply:
 - a. The maximum Gross Floor Area is 90.0 square metres;

- b. The lot is classified as a farm under the Assessment Act;
 - c. The lot is larger than 2 hectares; and
 - d. The Farm Business has been operation for at least 3 years.
8. Temporary Farmworker Housing is permitted on a lot provided that all of the following apply:
- a. The lot is classified as a farm under the Assessment Act;
 - b. The lot is larger than 1.2 hectares;
 - c. The minimum setback is 6.0 metres from the Front Lot Line and Exterior Lot Line and 15.0 metres from other lot lines; and
 - d. The minimum setback from the nearest exterior wall of a dwelling unit on another lot is 30.0 metres, or where a landscape screen comprised of a thick hedge of hardy shrubs or evergreen trees not less than 1.8 metres in height and 1.5 metres in width and maintained in a healthy growing condition is provided, the minimum setback from the nearest exterior wall of a dwelling unit shall not be required.
9. No building, structures or enclosures used for housing farm animals; no drinking or feeding troughs and no manure piles may be located within 5 metres of a lot line.
10. Section (9) does not apply to fences adjacent to lot lines that are used for enclosures for the grazing of farm animals.
11. Farm Product processing that involves processing livestock:
- a. must be located on a minimum 2 hectare site outside the Agricultural Land Reserve; and
 - b. must be located at least 30 meters from the nearest business or residence on another parcel.
12. The minimum setback for a kennel building shall be 30 metres from any lot line. All kennel operations shall ensure that dogs are held within the kennel building between the hours of 8 pm and 7 am.

Cannabis Regulations

13. Any building or structure for the purposes of cannabis micro cultivation, cannabis micro processing or cannabis nurseries shall be a minimum of 15 metres from all property lines, with the exception of a structure that has a base entirely of soil which may be located within 7.5 metres of a property line.
14. Any building or structure for the purposes of cannabis standard cultivation or cannabis standard processing shall be a minimum of 30 metres from all property lines, with the exception of a structure that has a base entirely of soil which may be located within 7.5 metres of a property line.
15. The maximum height of any building or structure for the purposes of cannabis standard cultivation, cannabis standard processing, cannabis micro cultivation, cannabis micro processing or cannabis nurseries shall be 15 metres.
16. The maximum footprint of any building or structure for the purposes of cannabis standard cultivation, cannabis standard processing, cannabis micro cultivation, cannabis micro processing or cannabis nurseries shall not exceed 250 square metres.