



Committee Report

Date of Report: 08-23-2024
Date & Type of Meeting: 09-11-2024, Rural Affairs Committee
Author: Sadie Chezenko, Planner 1
Subject: DEVELOPMENT VARIANCE PERMIT
File: V2410B - McGinn
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 application seeks to vary Sections 23.5 and 23.6 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 151 metres from the front lot line whereas the bylaw requires that the maximum depth of the Farm Residential Footprint shall not exceed 60 metres from the Front Lot Line.
- Section 23.6: To permit a dwelling with a maximum Gross Floor Area (GFA) of 323 m² whereas the bylaw permits a maximum GFA of 300 m².

Staff recommend that the Board approve the request to vary Section 23.5 of the bylaw and not approve the request to vary Section 23.6 of the bylaw.

SECTION 2: BACKGROUND/ANALYSIS

GENERAL INFORMATION

Property Owner: Janice and Gregory McGinn
Property Location: 4560 – 44 th Street, Canyon, Electoral Area 'B'
Legal Description: PARCEL A (REFERENCE PLAN 113289I) LOT 145 DISTRICT LOT 812 (PID: 012-254-991)
Property Size: 3.5 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: Neighbourhood Commercial (C1) / ALR lands
West: Agriculture One (AG1) / ALR lands

Background Information and Site Context

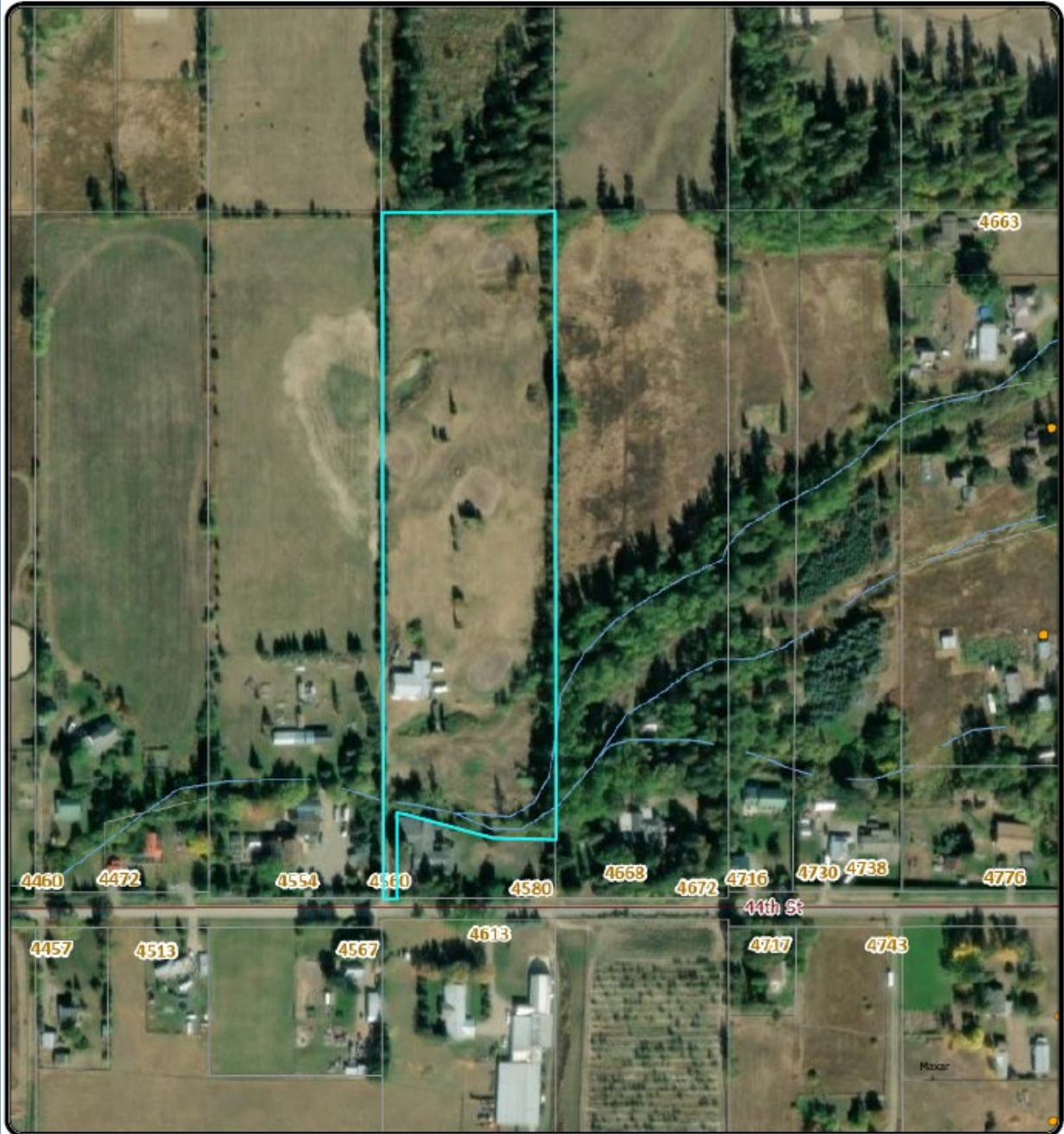
The subject property is surrounded on all sides by parcels within the Agricultural Land Reserve (ALR), designated Agriculture and zoned Agriculture One (AG1) except for the lot immediately to the south which lies within the ALR, but is designated and zoned General Commercial (GC).

The subject property has a panhandle that is approximately 50m long. Two channels of Camp Run Creek run through the southern portion of the lot. Existing on the site are two accessory farm buildings, a driveway and a personal garden. The owners began site preparation in advance of their building permit application but halted immediately upon compliance review advising of the variance requirement.

The owners purchased the property in 2022 and have stated that they plan to do agricultural activities in the future. This includes expanding their personal garden into a market garden, planting fruit between the creek channels and raising and/or training a variety of animals.


The applicants are seeking two variances to construct a residence, which would exceed the maximum allowable floor area, on the subject property near the existing farm buildings. They assert that the location of the residence best supports the future planned agricultural activities and that the size of the building is necessary for their multi-generational family of five.

RDCK Map



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

-  Streams and Shorelines
-  Electoral Areas
-  RDCK Streets
-  Cadastre - Property Lines
-  Address Points

Map Scale:

1:4,514

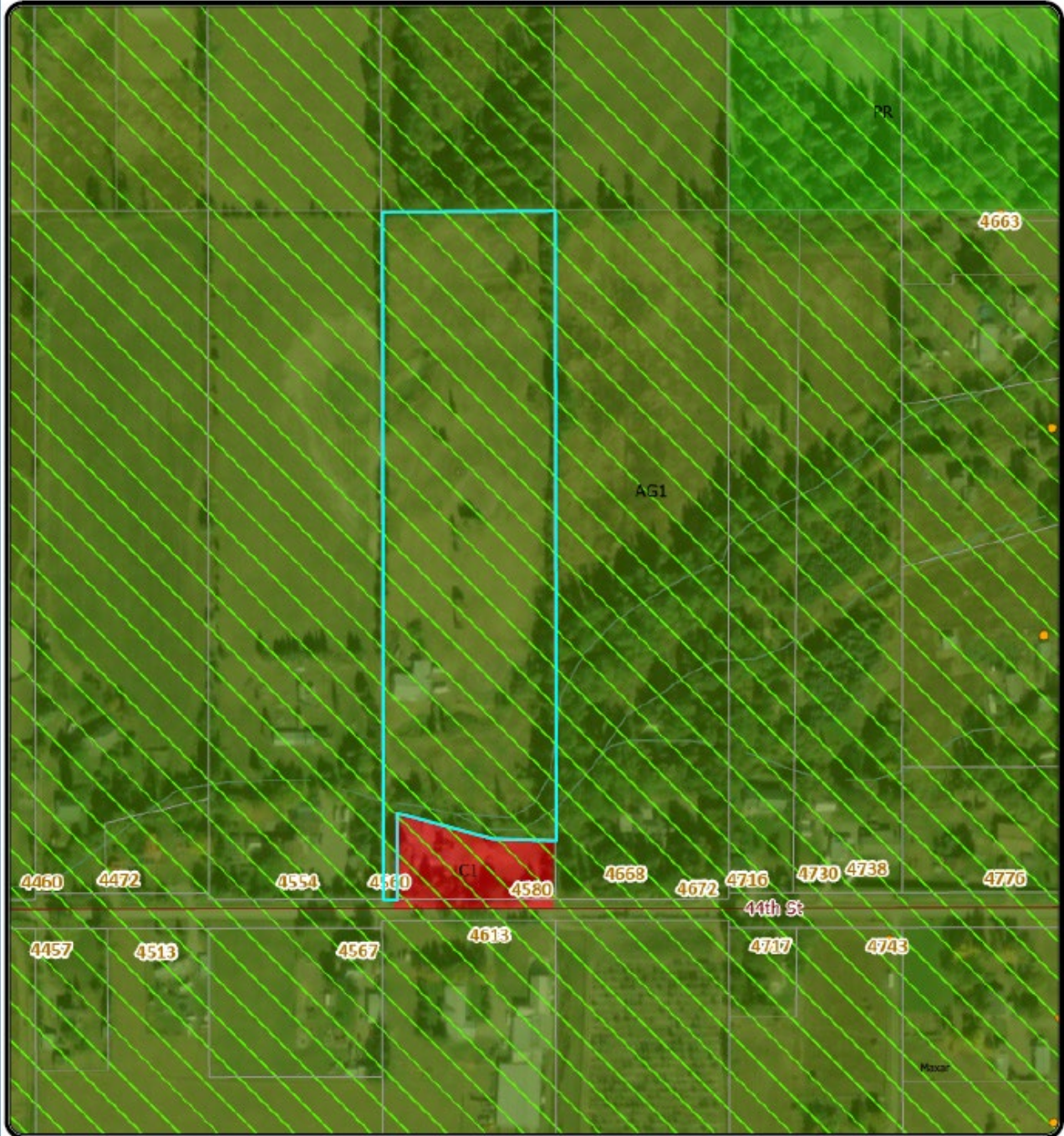
Date: August 9, 2024



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.

Figure 1: Subject Property

RDCK Map



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

Zoning Class

- Agriculture Land Reserve
- Agriculture
- Commercial
- Parks and Recreation
- Streams and Shorelines
- Electoral Areas
- RDCK Streets
- Cadastre - Property Lines
- Address Points

Map Scale:

1:4,514

Date: August 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.

Figure 3: RDCK and ALR Zoning

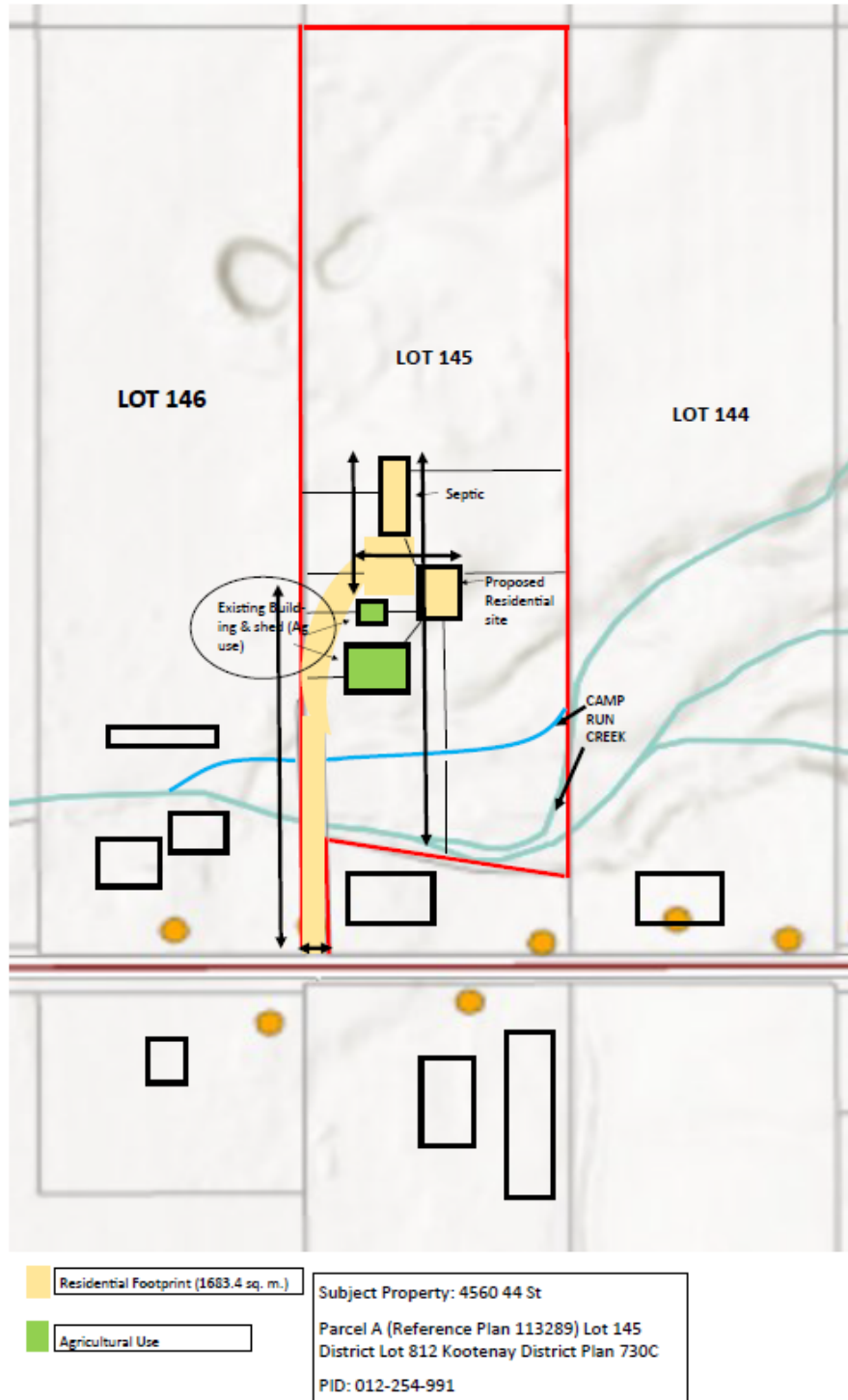


Figure 4: Site Plan



Figure 5: View of the existing farm building and stream from the driveway looking north



Figure 6: Proposed Build Site



Figure 7: Camp Run Creek

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.

- To recognize distinct agricultural areas reflecting unique historical development trends, soils and climate.

Agriculture Policies

The Regional Board:

- Directs that the principal use of land designated ‘Agriculture’ shall be for agricultural use.
- May require that new development adjacent to agricultural areas provide sufficient buffering in the form of setbacks, fencing or landscaping.
- 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

- 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 location of the residence would minimize the environmental impact of this development proposal by directing development away from the creek.

3.4 Social Considerations:

No negative social considerations are anticipated from the requested variance.

3.5 Economic Considerations:

No economic considerations are anticipated from the requested variance.

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, Directors, and Commissions for review. The following comments were received:

Agricultural Land Commission

ALC staff have no comments on the proposed variances to the Gross Floor Area and Farm Residential Footprint.

If the variances are approved and more than 1000 m2 of fill (which includes gravel) is needed, the submission of a Notice of Intent to the ALC would be required for the fill. As the combined footprint of the driveway, parking area, and house exceed 1000 m2, (and these uses typically require gravel) it is likely that an NOI would be necessary.

Area B Advisory Planning and Heritage Commission

Moved and seconded,

AND Resolved:

That the Area B Advisory Planning and Heritage Commission SUPPORT the Development Variance Permit Application to Greg and Janice McGinn for the property located 4560 – 44th St, Canyon, Electoral Area ‘B’ and legally described as PARCEL A (REFERENCE PLAN 113289I) LOT 145 DISTRICT LOT 812.

Creston Valley Agricultural Advisory Commission

Moved and seconded,

AND Resolved:

That the Creston Valley Agricultural Advisory Commission SUPPORT the Development Variance Permit to Greg and Janice McGinn for the property located 4560-44th Street, Canyon and legally described as PARCEL A (REFERENCE PLAN 113289I) LOT 145 DISTRICT LOT 812 to vary Sections 23.5 of Electoral Area ‘B’ Comprehensive Land Use Bylaw No. 2316 to allow a Farm Residential Footprint with a maximum depth of 151 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

Moved and seconded,

AND Resolved:

That the Creston Valley Agricultural Advisory Commission SUPPORT the Development Variance Permit to Greg and Janice McGinn for the property located 4560-44th Street, Canyon and legally described as PARCEL A (REFERENCE PLAN 113289I) LOT 145 DISTRICT LOT 812 to vary Sections 23.6 of Electoral Area ‘B’ Comprehensive Land Use Bylaw No. 2316 to permit a dwelling with a maximum Gross Floor Area (GFA) of 323 m2 whereas the bylaw permits a maximum GFA of 300 m2.

FortisBC

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 44 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). Please have the following information available in order for FBC(E) to set up the file when you call.

Electrician’s Name and Phone number

FortisBC Total Connected Load Form

Other technical information relative to electrical servicing

For more information, please refer to FBC(E)'s overhead and underground design requirements:

FortisBC Overhead Design Requirements

<http://fortisbc.com/ServiceMeterGuide>

FortisBC Underground Design Specification

<http://www.fortisbc.com/InstallGuide>

Ministry of Agriculture and Food

Thank you for providing Ministry of Agriculture and Food (Ministry) staff the opportunity to comment on File V2410B that proposes to vary Sections 23.5 and 23.6 in the Agriculture One (AG1) Zone in Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316. From an agricultural planning perspective, Ministry staff offer the following comments:

Ministry staff recognize that due to the panhandle nature of the Subject Property and that the southern portion of the Subject Property in the vicinity of Camp Run Creek appears to be capable and a desirable location for agricultural production, locating the residence beyond 60 metres from the front lot line is necessary and logical.

Ministry staff note that the proposed location for the residence utilizes an existing driveway which minimizes the impact on the Subject Property. Ministry staff also recognize the importance of clustering buildings and note that the residence is proposed to be constructed in close proximity to two existing buildings that the applicant states will be used for agricultural purposes.

To reduce the impact on any future farming activity that may occur on the Subject Property, Ministry staff understand and support the applicant's rationale for requesting a variance to the maximum depth of the Farm Residential Footprint.

However, Ministry staff note that no agricultural rationale has been supplied to justify an increase to the Maximum Gross Floor Area of the proposed residence. Further, the applicant has only indicated that they will 'plant' a small portion of the Subject Property in the vicinity of Camp Run Creek.

Ultimately, Ministry staff support the proposed location of the new residence but not the increase to the Maximum Gross Floor Area.

Ministry of Transportation and Infrastructure (MoTI)

MoTI has no concerns with the variance described in the referral package.

RDCK Building Department

The placement of the building will have to comply to 9.10 of the BC building code.

RDCK Fire Services

The length of the driveway is a concern as driveways on private property do not have to meet the BC Building Code requirements for fire department access. In the event of an emergency, suppression tactics may be delayed as they have to be started from the road.

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. Once registered, staff would inform the Building Department to proceed with the applicant's Building Permit.

3.8 Board Strategic Plan/Priorities Considerations:

This application falls under the operational role of Planning Services.

SECTION 4: OPTIONS & PROS / CONS

According to the RDCK Agricultural Area Plan, only 2.5% of the RDCK's land base is suitable for agriculture. To protect agricultural land, the RDCK updated its policies and regulations following the 2022 Agriculture Policy Review, which included input from farmers, experts and the public. As a result, agricultural zoning regulations in Electoral Area B now limit the size of residences and the depth of Farm Residential Footprints (FRF). The applicants are seeking variances to these regulations.

Regarding the FRF variance request, staff note that the property's 50m panhandle access complicates building within 60m of the front lot line. In addition, Camp Run Creek is within this 60m area, making it less suitable for construction and more desirable for agriculture. The applicants state that they intend to plant fruit in this area. The alternative residence location proposed is clustered with existing buildings and utilizes an existing access. This reduces the impact to agricultural potential and operations and thus supports agriculture.

Regarding the size variance request, staff note that the intent of residential size limits is to preserve land for farming and maintain its affordability for future generations.

Although the applicants have plans to farm in the future, the property is not currently classified as a farm under the Assessment Act, nor does it have agricultural activity beyond that for personal use. As such, there is not a basis for increasing the GFA based on current agricultural operations. Should farming activities commence in the future and remain established for three years, the bylaw would permit a 90m² "Farmworker Dwelling Unit" to support the agricultural operation.

Given this information, issuing the variance at this time would favor residential preferences over the intended agricultural protections, contrary to the recent bylaw changes. Consequently, staff find that the applicants' rationale does not adequately support the proposed increase in GFA.

For the reasons noted above, planning staff support the variance to the maximum depth of the FRF but do not support the variance to the size of the residence.

Option 1

That the Board APPROVE the issuance of the Development Variance Permit to Greg and Janice McGinn for the property located 4560-44th Street, Canyon and legally described as PARCEL A (REFERENCE PLAN 113289I) LOT 145 DISTRICT LOT 812 (PID: 012-254-991) to vary Section 23.5 of Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316 to allow a Farm Residential Footprint with a maximum depth of 151 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.

That the Board NOT APPROVE the issuance of the Development Variance Permit to Greg and Janice McGinn for the property located 4560-44th Street, Canyon and legally described as PARCEL A (REFERENCE PLAN 113289I) LOT

145 DISTRICT LOT 812 (PID: 012-254-991) to vary Section 23.6 of Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316 to permit a dwelling with a maximum Gross Floor Area (GFA) of 323 m2 whereas the bylaw permits a maximum GFA of 300m2.

Option 2

That the Board APPROVE the issuance of the Development Variance Permit to Greg and Janice McGinn for the property located 4560-44th Street, Canyon and legally described as PARCEL A (REFERENCE PLAN 113289I) LOT 145 DISTRICT LOT 812 (PID: 012-254-991) to vary Section 23.5 and Section 23.6 of Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316 to allow a Farm Residential Footprint with a maximum depth of 151 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 and to permit a dwelling with a maximum Gross Floor Area (GFA) of 323 m2 whereas the bylaw permits a maximum GFA of 300m2.

Option 3

That the Board NOT APPROVE the issuance of the Development Variance Permit to Greg and Janice McGinn for the property located 4560-44th Street, Canyon and legally described as PARCEL A (REFERENCE PLAN 113289I) LOT 145 DISTRICT LOT 812 (PID: 012-254-991) to vary Section 23.5 and Section 23.6 of Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316 to allow a Farm Residential Footprint with a maximum depth of 151 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 and to permit a dwelling with a maximum Gross Floor Area (GFA) of 323 m2 whereas the bylaw permits a maximum GFA of 300m2.

SECTION 5: RECOMMENDATIONS

That the Board APPROVE the issuance of the Development Variance Permit to Greg and Janice McGinn for the property located 4560-44th Street, Canyon and legally described as PARCEL A (REFERENCE PLAN 113289I) LOT 145 DISTRICT LOT 812 (PID: 012-254-991) to vary Section 23.5 of Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316 to allow a Farm Residential Footprint with a maximum depth of 151 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.

That the Board NOT APPROVE the issuance of the Development Variance Permit to Greg and Janice McGinn for the property located 4560-44th Street, Canyon and legally described as PARCEL A (REFERENCE PLAN 113289I) LOT 145 DISTRICT LOT 812 (PID: 012-254-991) to vary Section 23.6 of Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316 to permit a dwelling with a maximum Gross Floor Area (GFA) of 323 m2 whereas the bylaw permits a maximum GFA of 300m2.

Respectfully submitted,

Originally signed

Sadie Chezenko, Planner 1

CONCURRENCE

Planning Manager – Nelson Wight Digitally approved

General Manager Development & Sustainability – Sangita Sudan Digitally approved

Chief Administrative Officer – Stuart Horn Digitally approved

ATTACHMENTS:

Attachment A – Development Variance Permit

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



Development Variance Permit

V2410B (McGinn)

Date: August 23, 2024

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

TO: Janice and Gregory McGinn

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: 4560 – 44th Street, Canyon

Legal: PARCEL A (REFERENCE PLAN 113289I) LOT 145 DISTRICT LOT 812

PID: 012-254-991

CONDITIONS

5. Development Variance

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

From:

The maximum depth of the Farm Residential Footprint shall not exceed 60.0 metres measured from the Front Lot Line

To:

The maximum depth of the Farm Residential Footprint shall not exceed 151.0 metres measured from the Front Lot Line

As shown on Schedules '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

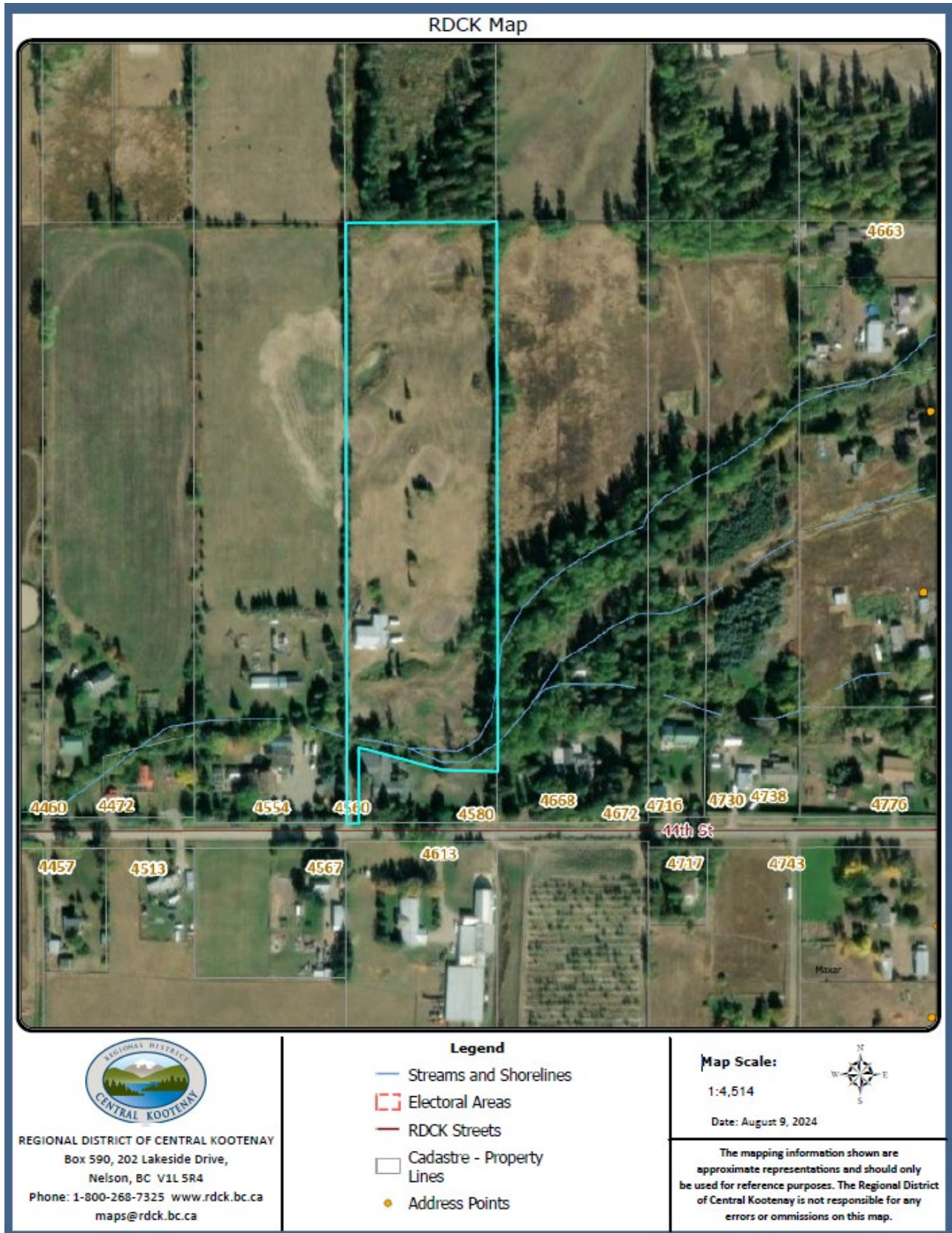
Authorized resolution ~~--~~**/24** passed by the RDCK Board on the 12 day of September, 2024.

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

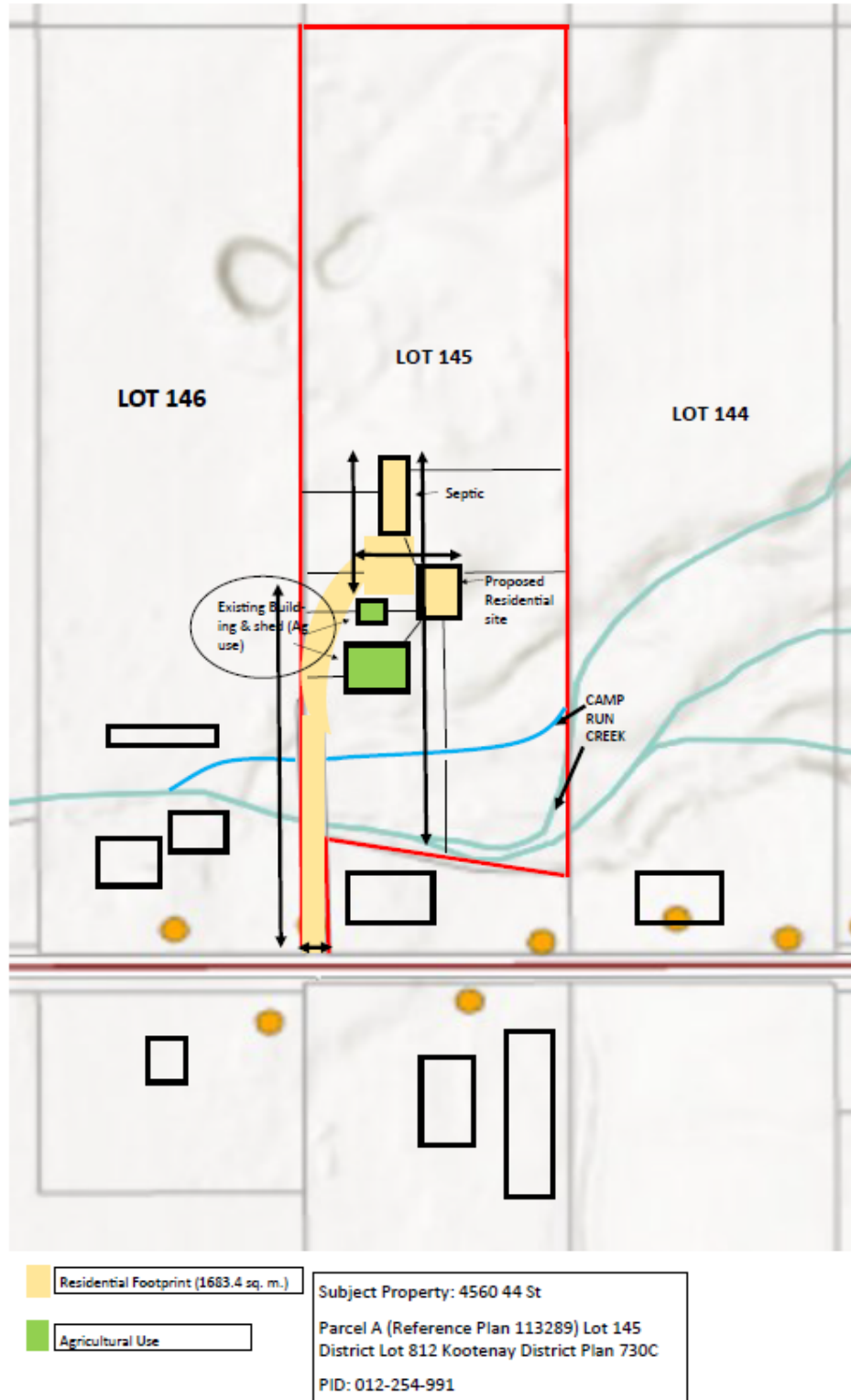
Aimee Watson, Board Chair

Mike Morrison, Corporate Officer

Schedule 1: Subject Property



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;