

Have Your Say.

Notice of Public Hearing

A Public Hearing will be held to receive input for a rezoning application in Area K, Whatshan Lake Area. The proposal seeks to rezone the property in order to facilitate small scale water extraction and sales.

Learn more.

Review the proposed amendments from October 7, 2021 to October 28, 2021.

Online: rdck.ca/LandUse/ active applications

In Person: At the RDCK office, 202 Lakeside Drive, Nelson BC

Mon – Fri: 8:30 am - 4:30 pm (closed 12:30 pm - 1:30 pm)

Tell us what you think.

Make a verbal submission at the Public Hearing, or

Send a written submissions before 4:00 pm on October 27, 2021

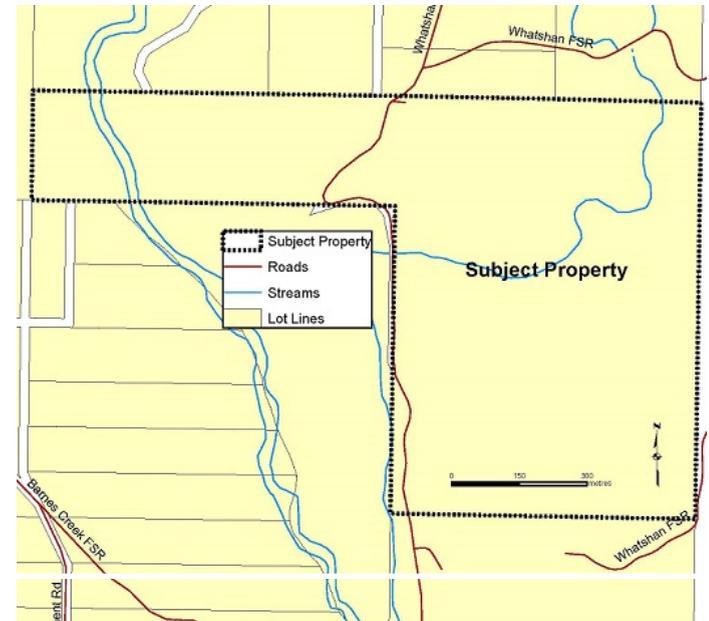
Attend a public hearing.

Thursday October 28, 2021 | 6pm

Online: Via Webex *Email esenyk@rdck.bc.ca for an access invitation by email, in advance of the hearing.*

Phone: 1.844 426-4405 | Access code: 2462 424 5767
(dial access code when prompted)

Visit rdck.ca/PublicHearings for further instructions on how to attend.



From: Resort Commercial (C6)

To: Resort Commercial 2 (C7)

Location and Legal Description:

645 Whatshan Lake Road, Electoral Area K
District Lot 8186 Kootenay Land District Except Plan Exp
PL 85896I (PID: 005-517-966)

Bylaw 2733: Being a bylaw to amend RDCK Zoning Bylaw 1675, 2004 from Resort Commercial (C6) to Resort Commercial 2 (C7) for the purpose of facilitating small scale water extraction and sales.

*All written submissions are public information pursuant to the Freedom of Information and Protection of Privacy Act.



rdck.ca/PublicHearings

Please direct enquiries to Eileen Senyk | 250.352.8190 | 1.800.268.7325 | esenyk@rdck.bc.ca



Committee Report

Date of Report: 07/13/2021
Date & Type of Meeting: 08/18/2021, Rural Affairs Committee
Author: Eileen Senyk, Planner
Subject: BYLAW AMENDMENT APPLICATION
File: Z2006K-01885.000-DHRS-BA000043
Electoral Area/Municipality: Electoral Area 'K'

SECTION 1: EXECUTIVE SUMMARY

The purpose of this report is to consider repealing Second Reading Bylaw No.2733 and give Second Reading to Bylaw 2733 as amended. A Site Specific amendment cannot be used to add a use to a property that does not exist in the bylaw. Bylaw 2733 has been amended to reflect this change, to define 'Small Scale Water Extraction and Sales' and to create a zone that would enable this accessory use on the Whatshan Lake Retreat. Bylaw 2733 as amended does not change the intended use identified in the staff report written for this property and dated April 14, 2021, but rather re-words the bylaw to ensure that it is lawful.

Staff recommend that Second Reading of Bylaw No. 2733 be repealed and that Bylaw No. 2733 as amended be given Second Reading and referred to a Public Hearing.

SECTION 2: BACKGROUND/ANALYSIS

GENERAL INFORMATION

North: Agricultural Land Reserve (Zoning Agriculture 2 and Agriculture 3), Environmental Reserve

South: Agricultural Land Reserve (Zoning Agriculture 2 and Agriculture 3)

East: Agricultural Land Reserve (Zoning Agriculture 3)

West: Agricultural Land Reserve (Zoning Agriculture 2 and Agriculture 3)

SURROUNDING LAND USES

Property Owner: Doukhobor Heritage Retreat Society

Property Location: 645 Whatshan Lake Road, Fauquier, BC

Legal Description: District Lot 8186 Kootenay Land District Except Plan Exp PL 85896I (PID: 005-517-966)

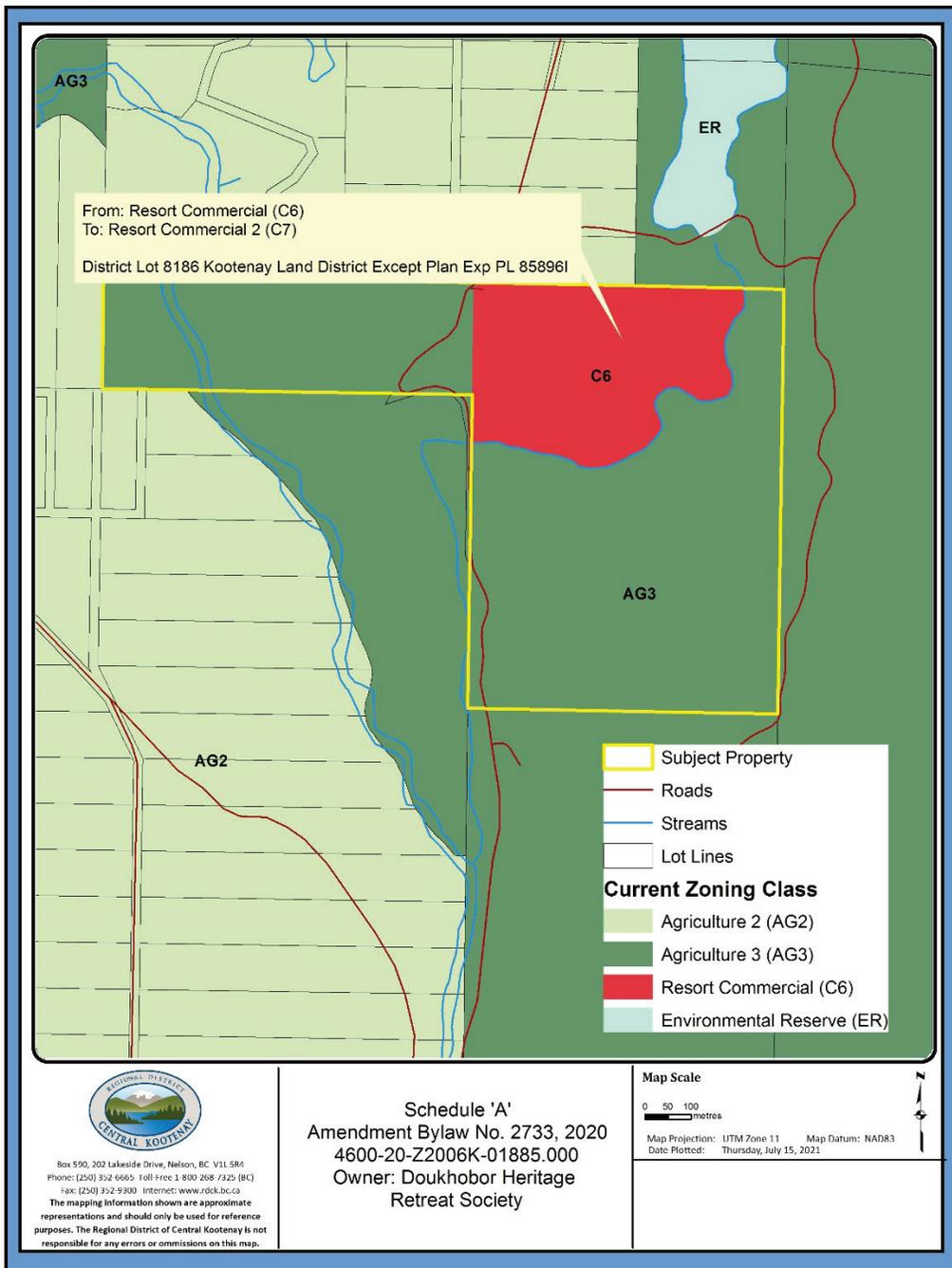
Property Size: 82 hectares (203 acres)

Site Context:

The subject property is located at the south end of Whatshan Lake and north of the Needles Ferry crossing. It is 82 hectares in size and is subject to two different zoning classes: Agriculture 3 (AG3) and Resort Commercial (C6). The property serves as a retreat centre, and hosts programs for youth and adults as well as the Whatshan

Jam and 'Kamp' music festivals. The C6 portion of the property has been used for many years and offers camping facilities, cabins, a stage and a lodge that can be used for gatherings. Servicing is by on-site waste water disposal and a community water system operated by the Society. Whatshan River and Barnes Creek traverse the property; Whatshan Lake is north of the subject property.

The subject property is surrounded by the Agricultural Land Reserve to the north, south, east and west. Lands to the east, north east and south are zoned Agriculture 3 (AG3). To the north, west and south west are parcels zoned Agriculture 2 (AG2). The property is accessed via Forest Service Roads off Highway 6.



Background & Rationale for Application

The Doukhobor Heritage Retreat Society (DHRS) has hosted health and wellness programs on the subject property for several years. The Society now endeavours to add a Social Enterprise component to the facility. Revenue generated from the proposed water sales would pay for some operational costs for the facility and would also subsidize youth programs such as Freedom Quest.

The DHRS has an Operating Permit for the current water distribution system (IHA project file #C12001-059). Water is sent to the Interior Health Authority (IHA) for testing on a regular basis. The water does not require chlorination in order to meet IHA standards, however, the water must be continually circulated through the system in order to maintain its quality. There are times during the year when the operational water needs of the Retreat Center are low, and water cannot be circulated through the system quickly enough. The current water license allows for use of 106 cubic metres per day (1.23 litres/second) for purpose of Water Works. The DHRS proposes to sell the water that they do not use for two reasons:

1. To continue circulating the water and thereby maintaining the high water quality without chlorination;
2. To add a revenue stream to the Retreat Center which would in turn pay some operational costs and also help subsidize youth programs that take place on the subject property.

The infrastructure for the proposed operation is shown in Figures 6 & 7. A filling station is proposed to attach to the existing shipping container. It would be accessed by a road located in the north-west corner of the property that is separate from the main entrance. It would be constructed to IHA standards and require a permit pursuant the Drinking Water Act and Regulation. The filling station has not been constructed.

If the bylaw amendment application is successful, the water would be transported off the property by a vehicle (water truck) that is certified by IHA as a potable water vehicle. The Society will seek out a local contractor to do this. IHA authorization to haul the water are the responsibility of the water truck operator, and there is at least one contractor in the Naksup area that is currently offering this service.



Planning Policy

The purpose of this proposal is to enable bulk water extraction and wholesale water sales while maintaining the current permitted uses on the Whatshan Lake Retreat property. The Doukhobor Heritage Retreat Society is looking for additional revenue to cover operational costs and to expand their retreat programs for youth. The Official Community Plan policy and objectives highlighted the following issues of concern for the Board:

1. **Aquifer** – OCP Objective 12.2 “To maintain high water quality of groundwater and surface water sources of domestic water supply.” The Provincial aquifer database has no information on the potential productivity or vulnerability on the subject aquifer.

The Society has obtained a water license for the purpose of Water Works which allows for diversion of up to 106 cubic metres per day (1.23 litres/second).

The DHRS hired a Western Water Associates Ltd., Consultants in Hydrogeology and Environmental Sciences to act as their agent throughout the application for the water license.

A technical report associated with the license application showed that the aquifer recharges from Whatshan Lake and follows a hydraulic gradient (underground creek) which runs from Whatshan lake to Arrow Lake. There is one water license holder above the subject property and none between the subject property and Whatshan Lake. There are few wells in the area, and therefore there is minimal pressure and demand on the aquifer (pers. Communication Tom Cummings, MFLNRORD).

The Okanagan Nation Alliance responded to the referral and expressed concern regarding the aquifer. The ONA previously received the referral for the water license application and had no objection. The applicant is in the process of engaging with the ONA to discuss and address their concerns.

2. **Rural character** –Objective 8.2 “To ensure that industrial uses are located in a manner which reduces impacts on neighboring properties and the natural environment.” The proposed bulk water extraction is not customarily considered a ‘tourist commercial’ use. However the visual impact on the land would be negligible, as the water filling station would be sited in an existing shipping container. The proposal area is setback a significant distance from neighboring agricultural properties.

3. **Agriculture** – Objective 5.4 “To encourage the agricultural sector’s improvement and expansion 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 security.” The Ministry of Agriculture provided the following comment: *“The Ministry believes that the proposal is unlikely to have a significant negative impact on the water supply availability to agricultural operations in the Edgewood area.”*

SECTION 3: DETAILED ANALYSIS

3.1 Financial Considerations – Cost and Resource Allocations:

Included in Financial Plan:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Financial Plan Amendment:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Debt Bylaw Required:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Public/Gov’t Approvals Required:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

The application fee was received in accordance with the Planning Procedures and Fees Bylaw No. 2457, 2015.

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

This application was processed in accordance with the Planning Procedures and Fees Bylaw No. 2547, 2015. The applicant was required to re-apply and pay the application fee a second time as the first application expired when the proponent was waiting for issuance of the water license.

3.3 Environmental Considerations

To extract a maximum of 106 cubic metres of groundwater per day. Other considerations are impact to wildlife as a result of water trucks using the roads.

3.4 Social Considerations:

If successful, the proposal would generate revenue for a Social Enterprise that would subsidize youth programs that are run on the property. One of these programs is 'Freedom Quest' programming – a program that benefits youth exposed to substance abuse.

In times of emergency, water would be made available to the Edgewood and Fauquier fire halls.

3.5 Economic Considerations:

If successful, the revenue generated from the water sales would pay some operational costs on the subject property.

3.6 Communication Considerations:

This application was not re-referred as the intent of the amending bylaw has not changed.

Since the amending bylaws received First and Second readings in April, the applicant has had an opportunity to make a presentation to the Okanagan Nation Alliance's (ONA) Natural Resource Council in order to address the concerns raised in the letter from the Syilx Okanagan Nation Chief's Executive Council dated October 22, 2020. The presentation was made on May 6th, 2021. RDCK staff have contacted the ONA to ask for input from the ONA but have not yet received a response. The ONA will be advised of the Public Hearing date in order to have opportunity to provide a formal submission.

3.7 Staffing/Departmental Workplace Considerations:

As required for a public hearing and bylaw adoption.

3.8 Board Strategic Plan/Priorities Considerations:

The RDCK Strategic Plan states that the RDCK will protect water sources by developing comprehensive watershed management plans with all stakeholders and include them in OCP. This strategic goal should be considered when making decisions regarding this file. The Ministry of Agriculture and the Ministry of Forests, Lands Natural Resource Operations and Rural Development have communicated that extraction of 106 cubic litres per day will have minimal impact on the aquifer. The Okanagan Nation Alliance has expressed concerns regarding the impact of the proposal on the aquifer.

SECTION 4: OPTIONS

Planning Discussion

This application was made to amend RDCK Zoning Bylaw No. 1675 in order to enable small-scale water extraction and sales on the subject property. This would be an accessory use to the principal uses enabled under the proposed Resort Commercial 2 (C7) zone. Originally, Amending Bylaw No. 2733 was drafted to make a 'site specific amendment' to the Resort Commercial (C6) zone. However, drafting a new zone that adds Small-Scale Water Extraction and Sales as an accessory use is a better solution from a legal perspective.

Staff therefore recommend that Second Reading of Bylaw No. 2733 be repealed and that Bylaw No. 2733 as amended be given Second Reading and referred to a Public Hearing.

Option 1

1. That SECOND reading of *Regional District of Central Kootenay Zoning Amendment Bylaw No. 2733, 2020* be RESCINDED.
2. That the *Regional District of Central Kootenay Zoning Amendment Bylaw No. 2733, 2020* be read a SECOND time, as amended, and referred to a PUBLIC HEARING.
3. THAT in accordance with Regional District of Central Kootenay Planning Procedures and Fees Bylaw No. 2457, 2015 that Electoral Area K Director Paul Peterson is hereby delegated the authority to chair the Public Hearing on behalf of the Regional District Board.

Option 2

THAT no amendments be made to *Regional District of Central Kootenay Zoning Amendment Bylaw No. 2733, 2020*, and that staff proceed as per Board Resolution No. 331/21 and No. 332/21 (see Attachment B).

SECTION 5: RECOMMENDATIONS

1. That SECOND reading of *Regional District of Central Kootenay Zoning Amendment Bylaw No. 2733, 2020* be RESCINDED.
2. That the *Regional District of Central Kootenay Zoning Amendment Bylaw No. 2733, 2020* be read a SECOND time, as amended, and referred to a PUBLIC HEARING.
3. THAT in accordance with Regional District of Central Kootenay Planning Procedures and Fees Bylaw No. 2457, 2015 that Electoral Area K Director Paul Peterson is hereby delegated the authority to chair the Public Hearing on behalf of the Regional District Board.

Respectfully submitted,
Originally signed by

Eileen Senyk – Planner

CONCURRENCE

Planning Manager – Digitally approved by Nelson Wight.

General Manager of Development and Community Sustainability – Digitally approved by Sangita Sudan.

Corporate Administrative Officer – Digitally approved by Stuart Horn.

ATTACHMENTS:

Attachment A – Bylaw 2733

Attachment B – Resolution 332/21

REGIONAL DISTRICT OF CENTRAL KOOTENAY

Bylaw No. 2733

A Bylaw to amend Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004.

WHEREAS it is deemed expedient to amend the Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004 and amendments thereto.

NOW THEREFORE the Board of the Regional District of Central Kootenay, in open meeting assembled, HEREBY ENACTS as follows:

APPLICATION

- 1 Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004 **DIVISION 5 INTERPRETATION** is hereby amended by inserting the following definition after **Small Scale Food Processing** and before **Standard Cultivation, Cannabis**:

SMALL SCALE WATER EXTRACTION AND SALES means the extraction of no more than 106 cubic metres of water per day that is distributed within the Province of BC for the purpose of bulk sales.

- 2 Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004 **DIVISION 6 GENERAL REGULATIONS** Section 619 **Zone Designations** is hereby amended by adding the following to the list of zoning designations:

ZONE**SHORT FORM**

Resort Commercial 2

(C7)

- 3 That Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004 is hereby amended by inserting the following zoning regulations pertaining to the Resort Commercial 2 (C7) zone after the Resort Commercial (C6) zone and before the Light Industrial (MI) zone and re-numbering the Divisions of Bylaw No. 1675 accordingly:

DIVISION 39**Resort Commercial 2 (C7)****Permitted Uses**

3800 Land, building and structures in the Resort Commercial (C6) zone shall be used for the following purposes only:

Cluster Development
One-Family Dwelling

Two-Family Dwelling
 Multi-Family Dwelling
 Lodges and Seasonal Resorts
 Hotels
 Cabins
 Campgrounds
 Pubs
 Restaurants
 Spa, Health Club and Wellness Facilities
 Personal Service Establishments
 Recreation Facilities *including tennis, basketball, badminton and volley ball courts, bicycle, walking, cross country skiing, and horse riding trails, water craft facilities, playgrounds and other similar facilities but shall not include the following; a casino or similar gaming facility, off-road motorized recreation vehicle trails other than snow mobile trails, gun range, skeet shooting range or any activity that disturbs the peaceful enjoyment of the property by residents and tourists*
 Accessory Uses:
 Maintenance and Infrastructure Buildings and Facilities
 Employee Accommodation.
 Small scale water extraction and sales.

Development Regulations

3901

- 1 All development in the C7 zone used for residential habitation and/or tourist accommodation, except where providing un-serviced campground sites, shall be serviced by a community water system and community sewer system installed, operated and maintained in accordance with Provincial requirements and regulations.
- 2 Development in this zone may be subject to the requirements of a Development Permit.
- 3 Lot coverage meaning the area of a lot covered by buildings, structures, driveways, parking and loading areas and outdoor storage shall not exceed 50 percent of the lot area.
- 4 Unless otherwise stated in this bylaw, no building or structure except a fence may be located within:
 - a. 7.5 m (25 ft) of a front or exterior side lot line;
 - b. 2.5 m (8.2 ft) of any other lot line; and/or
 - c. a minimum separation distance of 6 metres (20 feet) shall be maintained between all buildings used for residential habitation or tourist accommodation.
- 5 In addition to the parking requirements specified under sections 611 and 612, the following off-street parking requirements shall apply:

One-family dwelling	1.5 parking stalls/unit
Two-family dwelling	1.5 parking stalls/unit

Multi-family dwelling	1.0 parking stalls/unit
Cabins	1.0 parking stalls/cabin
Campground	1.0 parking stalls/site

6 Cluster development shall be defined as development consisting of a combination of one-family dwellings, two-family dwellings and/or cabins arranged in clusters with a minimum of four dwelling units.

7 All development shall be subject to the following minimum site area requirements:

One-family dwellings	400 square metres (4306 square feet)
Two-family dwellings	300 square metres (3229 square feet)
Cabins (no kitchen facility)	250 square metres (2691 square feet)
Campgrounds	4000 square metres (1.0 acre)
Lodges, Seasonal Resorts and Hotels	60 units/gross ha (24.3 units/gross acre)
Multi-family Dwelling	30 units/gross ha (12.15 units/gross acre)

8 Excluding underground parking areas; no lodge, seasonal resort, hotel or multi-family dwelling building shall have a height greater than 25 metres (82 feet) above the natural ground elevation on which the building is located.

CITATION

3 This Bylaw may be cited as “Regional District of Central Kootenay Zoning Amendment Bylaw No. 2733, 2021”

READ A FIRST TIME this 15th day of April, 2021.

READ A SECOND TIME this 15th day of April, 2021.

SECOND READING RESCINDED 19TH day of August, 2021

SECOND READING AS AMENDED 19TH day of August, 2021

WHEREAS A PUBLIC HEARING was held this [Date] day of [Month], 20XX.

READ A THIRD TIME this [Date] day of [Month], 20XX.

ADOPTED this [Date] day of [Month], 20XX.

Aimee Watson, Board Chair

Mike Morrison, Corporate Officer

Carried

Moved and seconded,
And Resolved:

- 330/21 That in accordance with Section 33(1) of the Cannabis Control and Licensing Act, the Regional Board recommends support of an application from Ekstasis Valley Holdings Ltd. for a proposed non-medical cannabis retail licence at 1290 Highway 6, Crescent Valley (Lot A, Plan NEP20340, District Lot 303, Kootenay Land District) with operating hours from 9:00 am to 9:00 pm Monday to Saturday, and 9:00 am to 8:00 pm on Sunday;

And that the Regional Board comments are as follows:

- I. The proposed store is located in an area with no Official Community Plan or Zoning Bylaw;
- II. The Board has included recommended hours of operation to mirror those approved by the LCRB for the rural liquor store agency located across the street at 1303 Highway 6;
- III. The Board requests that Ekstasis Valley Holdings Ltd. apply for a new Highway Access Permit with the Ministry of Transportation and Infrastructure to address any potential traffic and safety issues including parking availability;
- IV. No significant impact on the community is anticipated if the application is approved;
- V. The Board provide opportunity for residents to submit their views on the licence application. Public notice indicating that the Board would accept written comments on the application until March 22, 2021 was published in the Valley View, posted on the RDCK's website from February 18, 2021, and mailed to owners and tenants within 100 metres of the subject parcel on February 18, 2021. Further, a notification sign was posted on the store front at 1290 Highway 6 from February 18, 2021 until the Board considered the application on April 14, 2021;
- VI. The views of the residents were considered by the Board at its April 15 Regular Board meeting or delivered as late items if correspondence was received after the agenda was published;

And further that the Regional Board direct staff to forward the above recommendation to the Liquor and Cannabis Regulation Branch (LCRB).

Carried

Moved and seconded,
And Resolved:

- 331/21 That *Regional District of Central Kootenay Zoning Amendment Bylaw No. 2733, 2020* being a bylaw to amend *Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004* is hereby given FIRST and SECOND reading and referred to a PUBLIC HEARING.

Carried

Moved and seconded,
And Resolved:

- 332/21 That in accordance with Regional District of Central Kootenay Planning Procedures and Fees Bylaw No. 2457, 2015 that Electoral Area K Director Paul Peterson is hereby delegated the authority to chair the Public Hearing on behalf of the Regional District Board.

Carried

Moved and seconded,
And Resolved: