

REPORT

To: Regional Board

From: Susan Stratis, Planning Consultant
Steven Olmstead, Manager of Planning and Development

Date: December 6, 2004

Re: Public Hearing - Bylaw 828, 2004
Ashlu Creek IPP

Recommendation:

THAT the Planning Department report regarding the public hearing on Bylaw No.828, 2004 be received for information;

AND THAT the Bylaw No.828 not be given third reading, and the rezoning application denied based on:

- a) The extent of community concern and objection to the project;
- b) Lack of an overall strategy for IPP development in the SLRD;
- c) Lack of conformance with Area D OCP policy and SLRD IPP policy regarding community support for IPP projects;
- d) High value of Ashlu Creek as a tourism/recreation resource; and
- e) Potential or uncertain impacts on grizzly bear habitat and use;

AND THAT no further Independent Power Projects (IPP's) be considered for approval on the Birkenhead River, Poole Creek, Elaho River, Sims Creek, Upper Squamish River (above Elaho Confluence), Sigurd Creek, Ryan River, Callaghan Creek, Ashlu Creek, Sloquet Creek, and Upper Soo River (above the current intake, including tributaries) until a consensus-based regional strategy is developed to predetermine which rivers are suitable for IPP development, in consultation with provincial agencies, area residents, recreation industry representatives, the energy sector and First Nations;

AND FURTHER THAT the Ministry of Energy and Ministry of Sustainable Resource Management be requested to initiate the regional IPP strategy as soon as possible.

Voting Rules

Who Votes: All; Count: Directors; Decision: Majority

Administrator's Comments:

Purpose:

To consider the input from the public hearing for Bylaw 828-2004 and determine whether the bylaw should be given third reading.

Background:

Bylaw 828 proposes to rezone a powerhouse site on Ashlu Creek from the Resource Use zone to Industrial 1 zone to allow construction of the Ashlu Creek independent power project. The bylaw also designates five areas of Crown land as temporary industrial permit areas. The SLRD gave first reading to the bylaw on August 25, 2003, and the first public hearing was held on May 17, 2004. New information was received at that hearing and in the months following, resulting in changes to the bylaw and a second public hearing. The Regional Board gave Bylaw 828 amended first and second reading on October 28th, 2004, and the public hearing was held on November 17, 2004.

Minutes of the Public Hearing

The Minutes from the public hearing on Bylaw 828 are attached as a separate agenda item. As indicated in the minutes, some 340 members of the public attended the hearing, as well as 6 members of the SLRD Board. The minutes indicate 48 speakers were in favour of Bylaw 828/Ashlu IPP project, and 63 speakers were opposed to the bylaw/project (excluding any speakers who spoke more than once).

The SLRD received numerous letters and emails prior to or at the public hearing, for a total of 161 written submissions. These are attached in full to the public hearing minutes. In total, nine written submissions were received in support and 152 submissions were opposed to Bylaw 828/Ashlu IPP. Several submissions also provided comments, but did not specifically support or oppose the bylaw. The major sources of written submissions were:

- Upper Squamish Valley residents (including 16 individual letters, 15 letters from the Upper Squamish Valley Citizens Group, and 10 form letters opposed to the Ashlu project). Two reference reports, one regarding the "*Myth of Hydroelectricity as Green Energy*" from the Canadian Society of Environmental Biologists, 2002, and the second titled "*Seeding Green Power: Community Pilot Project to Develop an International Green Standard for Small Scale Hydropower, Final Report, 2004*" were also submitted;
- Outdoor recreation/tourism associations - 15 written submissions were received including the B.C. Whitewater Kayaking Association, the Recreational Canoeing Association of B.C., American Whitewater, the Outdoor Recreation Council of B.C., the School of Tourism University of Cariboo, the Squamish Chamber of Commerce; Squamish Whitewater

Kayakers, Canadian Parks and Wilderness Society, and Tourism Whistler/Whistler Chamber of Commerce;

- One petition to “Save the Ashlu from IPP/Hydro development” was submitted with 198 signatures;
- Individual letters were received, including 61 letters of opposition, and nine letters of support.

In addition to the many submissions from the public, the following agency comments were also received and read into the record of the public hearing:

- (1) Email dated November 17, 2004 from Steve Rochetta, Ecosystem Specialist, Ministry of Water, Land and Air Protection (MWLAP) regarding the multiple grizzly bear sightings in the Ashlu Creek valley, and the Ashlu floodplain, and the need for completion of studies before impacts can be determined. (copy attached).
- (2) Letter dated November 16, 2004 Bill Valentine, Ministry of Sustainable Resource Management, providing response to the Notice of Objection filed by the Upper Squamish Valley Concerned Citizens Group stating that the objection does not warrant a hearing.

New Information Received Prior to Public Hearing

Other information was also submitted to the SLRD after the October 28, 2004 Regional Board meeting, but prior to the public hearing. This information was briefly referenced in the staff opening remarks. New information consisted of:

- (1) A letter dated October 29, 2004 from Ledcor regarding an alternative tunnel waste disposal site proposed for D.L.1035 in order to avoid hauling through the Upper Squamish Valley;
- (2) The Final Submission from the LRMP Planning Forum dated October 18, 2004 which made recommendations to the Minister of Sustainable Resource Management (MSRM) regarding energy projects, including a recommendation from the majority of sectors that the Ashlu not be considered for energy projects (as well as 10 other rivers/streams);
- (3) A letter dated November 10, 2004 from Navigable Waters Protection Division (NWPD) forwarded to the SLRD by Ledcor on November 15, 2004 providing further clarification of a previous (September 10, 2004) letter submitted by NWPD. The new letter confirms that “the conclusion of the review was that the navigational values of the Ashlu River would be maintained and that kayaking could continue on the affected reaches of the river with the stated mitigation measures in place”. The letter also indicates that a draft report has been prepared by an independent consultant to provide an evaluation framework for navigational impact assessments, incorporating CEAA requirements and the NWP Act requirements. The letter states that the Ashlu Creek IPP meets the requirements of the draft guidelines.
- (4) A submission from Ledcor dated November 17, 2004 providing a copy of the draft final report titled “*Navigational Impact Assessment Requirements for Privately Operated Hydro Electric Facilities in British Columbia: Proponents Guidebook, February 2004*” prepared by Typlan Consulting for Department of Fisheries and Oceans Canada, Navigable Waters Protection Division (NWPD);

- (5) A submission dated November 15, 2004 from Ledcor, titled “*Ashlu Creek: Review of Navigational Issues and Proposed Mitigation*”, prepared by Typlan Consulting.

Items (1) and (2) above were submitted to the Regional Board through a staff report received at the EAD meeting of November 8, 2004. Item (3) is attached to this report. Due to the late date of submission, items (4) and (5) have not been reviewed or referenced by the SLRD staff/consultant, but are available at the SLRD offices for review.

Summary of Issues Raised at the Public Hearing

The following synopsis provides a brief overview of the key issues raised at the public hearing. For a more complete assessment of issues raised, the public hearing minutes and letters submitted should be reviewed in full, as the letters both give support for and raise numerous and complex concerns regarding the proposed project, the review process, the value of Ashlu Creek to residents and recreation users, and broader concerns regarding IPP developments in general. Key issues include:

- (1) **Importance Of The Ashlu Project To The Squamish Nation** - Several members of the Squamish Nation spoke with considerable emotion on the value of this project to their community. The project is clearly an important initiative for the Squamish Nation members, providing both job skills and meaningful employment, and an opportunity for longer-term economic benefit for the community when the project is fully owned by the Squamish Nation in 40 years. The project represents a chance to become contributors to society, and to realize benefits from development in their traditional territory. The project is considered environmentally responsible, in keeping with the social values of the Squamish, and speakers noted that Ledcor has treated them respectfully. Several speakers also mentioned that recreational use has not brought them any jobs, and kayakers have not sought their permission for use of the river.
- (2) **Impacts on Upper Squamish Valley residents** – Residents of the Upper Squamish Valley have participated in the review of this project since the initial public meetings were held, and have, overall, consistently opposed the project. Potential noise and traffic impacts during construction, proximity of the laydown areas to residences, and further industrialization of a highly scenic and valuable area were key issues mentioned. Many speakers also indicated that the information provided by Ledcor has been misleading regarding the size of weir/dam and reservoir being created, and that a project of this size should go through a full provincial Environmental Assessment. Residents also indicated the importance of the Ashlu for recreation use and businesses that flourish in the valley, and expressed concerns that there is no overall plan for IPP development. It is also noted that a very small number of speakers from this community spoke in favour of the project.
- (3) **Impacts on Kayaking and Recreational Use** – Many speakers and letters from individuals and recreation associations indicated the value of the Ashlu, particularly the box canyon, as a “gem” and as a world-class attraction that is widely known and used by the kayaking community, including many residents of the United States. Many also noted that the

mitigation measures proposed were not acceptable, and that the real attraction of the river is that it is free-flowing without dams or other structures. Other speakers also noted the growing economic importance of the recreation industry, and that there is no overall plan to determine which rivers should be protected. Many speakers also noted they were not against IPP development, but were opposed to a project on the Ashlu, which is more valuable left as is.

- (4) **Lack of Overall IPP/Energy Strategy** – this issue was raised throughout the hearing by many speakers, who reiterated the need for the LRMP process or other overall strategy to address the large number of potential IPP projects in the SLRD. Other speakers noted the current “gold rush” approach to approval of individual IPP’s does not consider the long-term or cumulative effects of the projects and transmission lines associated with up to 60 more IPP’s. An overall strategy is needed to prioritize the streams that are suitable for IPP developments.
- (5) **Level of Environmental Assessment for 49 KW size** – The need for a full provincial Environmental Assessment due to the project being submitted just below the 50 MW EA threshold was raised by numerous speakers. Speakers indicated that the EA process is transparent and includes a much broader level of input on social and economic issues. Ledcor also addressed this issue, indicating that the same provincial and federal agencies and criteria are used in both the CEAA and EA processes.
- (6) **Economic Value of the Project to the Local Economy** – A large number of employees, contractors and professionals associated with Ledcor and Peter Kiewit and Sons, as well as other individuals, spoke to the economic benefits of the project through local employment and purchase of goods and services, and indicated that the project has received all environmental approvals, and that the project can co-exist with recreation/tourism.
- (7) **Green Power** – A number of speakers stated support for the project on the basis that power was needed in the province, and that IPP’s provide clean, renewable energy and should be supported.

Discussion

This rezoning application has been a demanding process for all involved, and despite extensive consultation and meetings, there remains considerable opposition to the project from the public on many fronts. There have been two major Open Houses and two major public hearings for the Ashlu IPP, as well as other meetings with Upper Squamish Valley residents. Throughout this extended process, several hundred speakers including both residents, business organizations and recreational organizations have consistently voiced opposition to the project (although some support was also expressed for the project). The District of Squamish has also indicated they do not support an IPP project on the Ashlu.

Through the process, the proponents and the Squamish Nation have also consistently indicated the economic benefits of the project in terms of construction value and jobs (\$75-80 million, with some \$10 million to be spent locally on goods and services) and on-going tax benefits (\$1

million annually), have made direct offers to members of the public regarding possible provision of amenities or facilities as benefits to the local community, and have attempted to address concerns raised by the public with additional information.

On a technical basis, the key approval agencies involved in the CEAA screening review (DFO and NWRPD) have now indicated support for the project based on mitigation measures, which are attached as conditions of the approvals. From a wildlife/ecosystem point of view, however, there are still many uncertainties regarding the existing grizzly bear population, bear movements, and potential impacts of construction activities and/or permanent facilities on grizzly bear habitat or long-term use of the area.

From the SLRD perspective, the lack of full environmental assessment, whereby the SLRD was a full participant in the review, and the broader “socio-economic” issues raised by the public were more comprehensively addressed remains a concern. Equally importantly, the lack of “fit” with OCP policies that IPP’s must be “consistent with community values” is a major issue. And, the lack of higher-level resource use planning to manage and determine the most appropriate locations and rivers for IPP’s and their associated power lines remains an overriding concern.

Options

The options available to the Regional Board with respect to this bylaw are:

Option 1 – Defeat the bylaw; or

Option 2 – Give the bylaw 3rd reading and adoption; or

Option 3 – Leave the bylaw at 2nd reading until a comprehensive IPP/Energy strategy is completed.

Summary and Recommendations

Based on the input received at the public hearing, and review of all written submissions, it is recommended that Bylaw 828 not be given third reading, for the following key reasons:

1. Community Concerns and SLRD policy - Although some residents have indicated support for the project, the local resident community has expressed on-going opposition to the Ashlu IPP project, and indicated very strongly that the project is not consistent with community values. Several SLRD policies are relevant to this application and community concerns:
 - a) The Electoral Area D Official Community Plan states that the SRLD will permit non-polluting industrial development that is “*compatible with the surroundings and acceptable to the community*” (policy 4.13.1);
 - b) The SLRD IPP policy indicates that the Board will support development of green energy projects in the region “*when those facilities are located, designed and constructed in a manner that is consistent with the overall vision for the region and do not negatively*

impact on its primary economic activities (i.e. tourism in the Sea to Sky corridor)”(General policy).

- c) The SLRD IPP policy also states that “*The SLRD Board will protect the community values and vision, including the scenic and tourism value of the region, and will establish and enforce scenic quality objectives in areas of high sensitivity, as defined in the OCP’s*”(IPP policy #4);

Based on input to the public hearing, the project is not considered to be consistent with the intent of these SLRD policies.

2. First Nations - The importance of this project to the Squamish First Nation is recognized as considerable, both in terms of job creation/experience for young members, and as a longer-term source of revenue (based on the plant being owned by the Squamish First Nation after 40 years). This is one of the most compelling reasons to support the project. However, given that almost all of the SLRD is within the traditional territories of the Squamish Nation or other First Nations, it is expected that all future energy projects will provide opportunity for partnership and economic benefits for the First Nation communities. It is also noted that the recreation community has bridges to build with the First Nations in terms of access through their lands, and provision of job opportunities related to recreation/tourism.
3. Lack of Overall Strategy for IPP/Energy Sector – Given the importance of the energy sector within the SLRD, the lack of higher level planning to provide a framework for development of this resource is a major issue. The SLRD has historically been an energy producing area, with 11 generating facilities currently operating, including 3 major dams and 8 more recent IPP facilities. However, the prospect of up to 64 additional applications, together with their associated transmission lines, requires a more systematic and comprehensive approach that is not reliant on responding to individual development applications. The recommendations of the LRMP Planning forum that “a multi-stakeholder Regional Energy Infrastructure Development Strategy planning process be completed to recommend areas where energy development is more appropriate, or not” is fully supported as the best mechanism to address this gap in policy. Without an overall strategy, IPP projects will continue to be the source of on-going conflict and controversy, especially on those streams where high values for multiple uses exist.
4. Environmental Assessment Process – The SLRD shares concerns regarding the lack of a comprehensive Environmental Assessment (EA) process, and the reduced scope of evaluation conducted under the CEAA screening review. The CEAA review is only a “screening” level of assessment, triggered by the need for federal approvals under the Fisheries Act and Navigable Waters Act, and is not a full and comprehensive environmental impact assessment. While it is agreed that the same federal and provincial agencies are involved in both types of review, there are many significant differences in the EA process, notably the formal requirement for public consultation; the role of the public and the SLRD in determining the scope of assessment; the independence of the EA office; the broader and comprehensive scope of assessment in the EA process; the posting of all documents and correspondence on the EA website; and the more formal structure for ensuring all agencies

remain informed. The SLRD has not been a full participant in the CEAA screening and there was no formal inter-agency review process in place.

Further, the legislation allows existing projects that were approved at 49 MW to again avoid EA assessment if they modify the facility, provided the modification involves an increase in capacity of less than 49 MW, which heightens the concern about the level of assessment. Post-approval changes have already been recognized as a major area of concern in the SRLD IPP policy. While the SLRD does not have the resources or the mandate to question the ultimate project capacity, this issue does raise concerns that projects can circumvent the intent of the EA legislation.

5. Exceptional Quality of Ashlu Creek as a Recreation/Tourism Resource – This is a very subjective evaluation, and the valid question has been raised as to whether the recreational uses can co-exist with the IPP project on the Ashlu. Based on the information received from the LRMP Planning Forum, the Sea to Sky Whitewater Stream Inventory, area residents and recreational users, in the case of the Ashlu, the answer appears to be “no”. The box canyon, in particular, is a spectacular scenic resource, labeled a “gem” and “world class” attraction, among other descriptions during public hearings. While the kayaking mitigation proposals have proved acceptable to retain river navigation to the satisfaction of NWPD, the larger issue of stewardship of a spectacular and unique natural feature must also be addressed.
6. Grizzly Bear Impacts – Although the CEAA screening decision incorporates a number of mitigation measures intended to mitigate impacts on the proposed building locations and temporary use areas, the larger questions of grizzly bear distribution and numbers, grizzly bear migration routes and movements to forage on salmon in the late summer-fall are still not known. For that reason, the long-term impacts of the project and impacts of major construction activity over a 2-3 year period are not fully understood. Although the project changes to move the temporary construction area further away from Ashlu Creek may help mitigate impacts, the full pattern of grizzly bear usage and full impacts have not yet been assessed.. It appears premature to consider project approvals and major construction until this information is available.

Respectfully submitted,

Susan Stratis, Planning Consultant

Steven Olmstead, Manager of Planning and Development

SQUAMISH-LILLOOET REGIONAL DISTRICT

BY-LAW NO. 828, 2004

A by-law of the Squamish-Lillooet Regional District to amend Squamish-Lillooet Regional District Zoning By-law No. 540, 1994.

WHEREAS pursuant to Part 29 of the Local Government Act, a local government may regulate, by means of zoning by-law, the use of land, density of the use of land and siting matters;

AND WHEREAS, pursuant to section 920.2 of the Local Government Act, local government may in a zoning bylaw designate areas where temporary industrial uses may be allowed and may specify general conditions regarding the issue of temporary industrial permits in those areas;

AND WHEREAS the Board of the Squamish-Lillooet Regional District deems it advisable to provide appropriate zoning;

NOW THEREFORE, the Regional Board of the Squamish-Lillooet Regional District, in open meeting assembled, enacts as follows:

1. This by-law may be cited for all purposes as the "Squamish-Lillooet Regional District Zoning By-law No. 540, 1994, Amendment By-law No. 828, 2004".
2. The Squamish-Lillooet Regional District Zoning By-law No. 540, 1994, is amended as follows:
 - (a) The words 'Ashlu Creek' are added to the Setback section 7.1.5(b) of the Industrial 1 zone as indicated in bold as follows:

Setback

- 7.1.5 (b) Notwithstanding subsection (a), no building or structure, except tailrace channels which return water to the creek shall be located within 5 metres of the natural boundary of Furry Creek or **Ashlu Creek**.

Zoning Map

- (b) Zoning Map Schedule A to By-law No. 540 is amended by rezoning the following areas from Resource Use zone to Industrial 1 zone:
 - (i) parts of the unsurveyed Crown Lands, NWD, comprising 1.5 ha total area, located approximately 3.1 km upstream of the confluence of Ashlu Creek with the Squamish River, as shown on Schedule A, which is attached to and forms part of this bylaw.

3. Those parts of the unsurveyed Crown Lands, NWD and D.L. 986 and D.L.987 as shown on Schedule B and Schedule C are designated as temporary use permit areas during construction of the Ashlu Creek Independent Power project for temporary laydown and construction areas. A temporary industrial use permit for these areas may include some or all of the following uses, subject to the general conditions in section 4:
 - i. concrete batch plant;
 - ii. aggregate and fill storage;
 - iii. storage of penstock pipe;
 - iv. fabrication facility – a “cover – all building” used for cutting and welding pipe, for covered storage and for minor repair activities
 - v. storage of light equipment, and supplies such as form work lumber and hardware, compressors, light towers, etc.
 - vi. temporary contractor, engineers offices;
 - vii. fuel storage;
 - viii. off street parking.

4. Issuance of a temporary industrial use permit shall be subject to the following general conditions:
 - i. A temporary use permit shall not be issued unless arrangements have been made to the satisfaction of the Regional Board that the temporary uses under the permit will enhance local employment, utilize local resources and directly benefit the local Electoral Area D economy.
 - ii. Temporary industrial activities on the site shall be solely for the purpose of construction of the hydroelectric facility. There shall be no retail or wholesale sales of any products.
 - iii. Adequate security shall be provided to ensure that the temporary industrial activity is ceased upon expiry of the temporary use permit or project completion, whichever occurs first.
 - iv. A report shall be prepared by a qualified professional on the date of expiry of the temporary use permit to verify that the temporary use area is free of contamination to the extent that it would not be considered a contaminated site under provincial legislation.
 - v. Specific operating conditions may be incorporated in the temporary use permit as the Regional Board deems appropriate.

READ A FIRST TIME this 28th day of October , 2004.
READ A SECOND TIME this 28th day of October , 2004.
PUBLIC HEARING held on the 17th day of November , 2004.
READ A THIRD TIME this day of , 2004.
ADOPTED this day of , 2004.

Susan L. Gimse
Chair

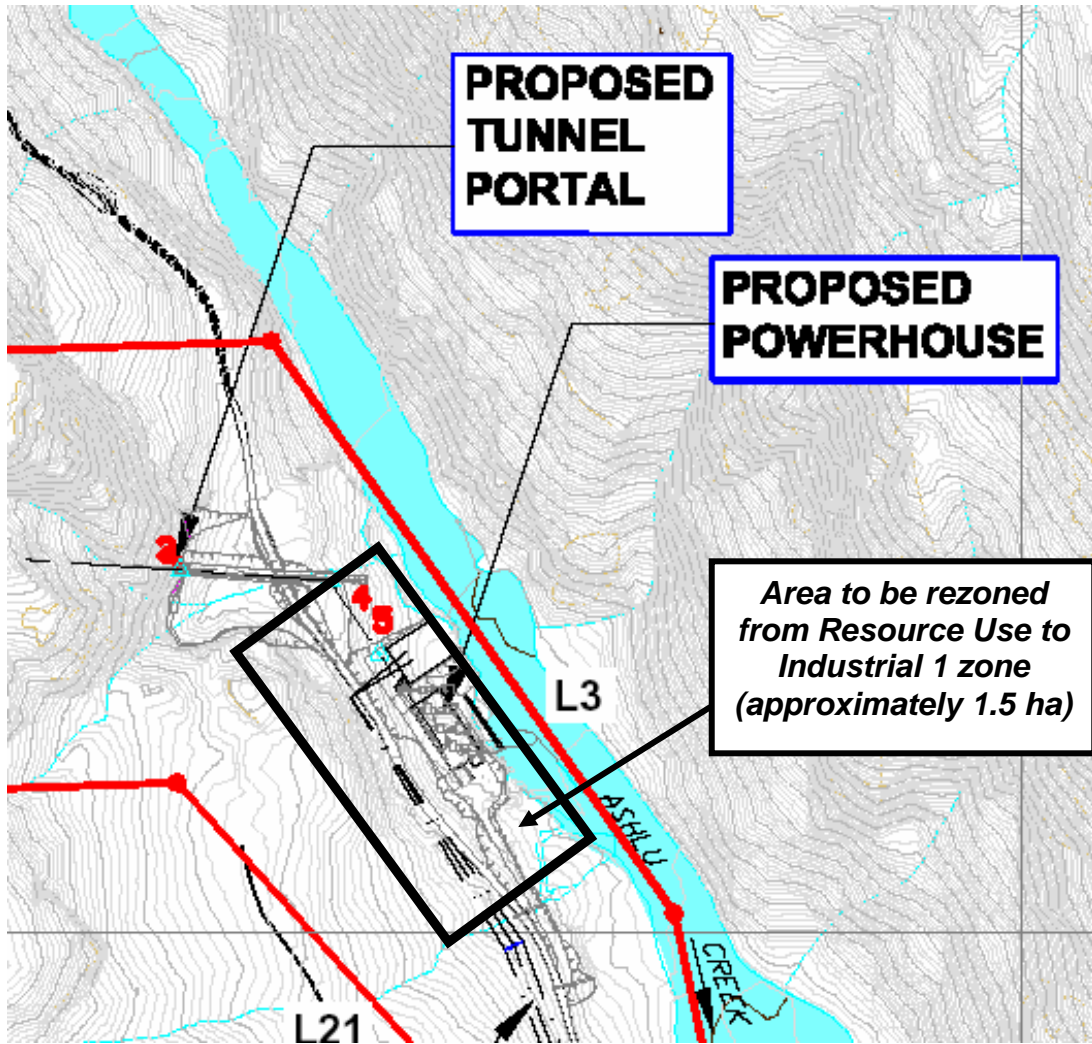
Paul R. Edgington
Administrator-Secretary

I hereby certify the foregoing to be a true and correct copy of By-law No.828 cited as
“Squamish-Lillooet Regional District Zoning By-law No. 540, 1994, Amendment By-law No.
828, 2004” as read a second time October 28, 2004.

Paul R. Edgington
Administrator-Secretary

SCHEDULE A TO BYLAW 828

Ashlu Creek Powerhouse site and Temporary Construction/Laydown areas



FROM: Resource Use zone

TO: Industrial One zone

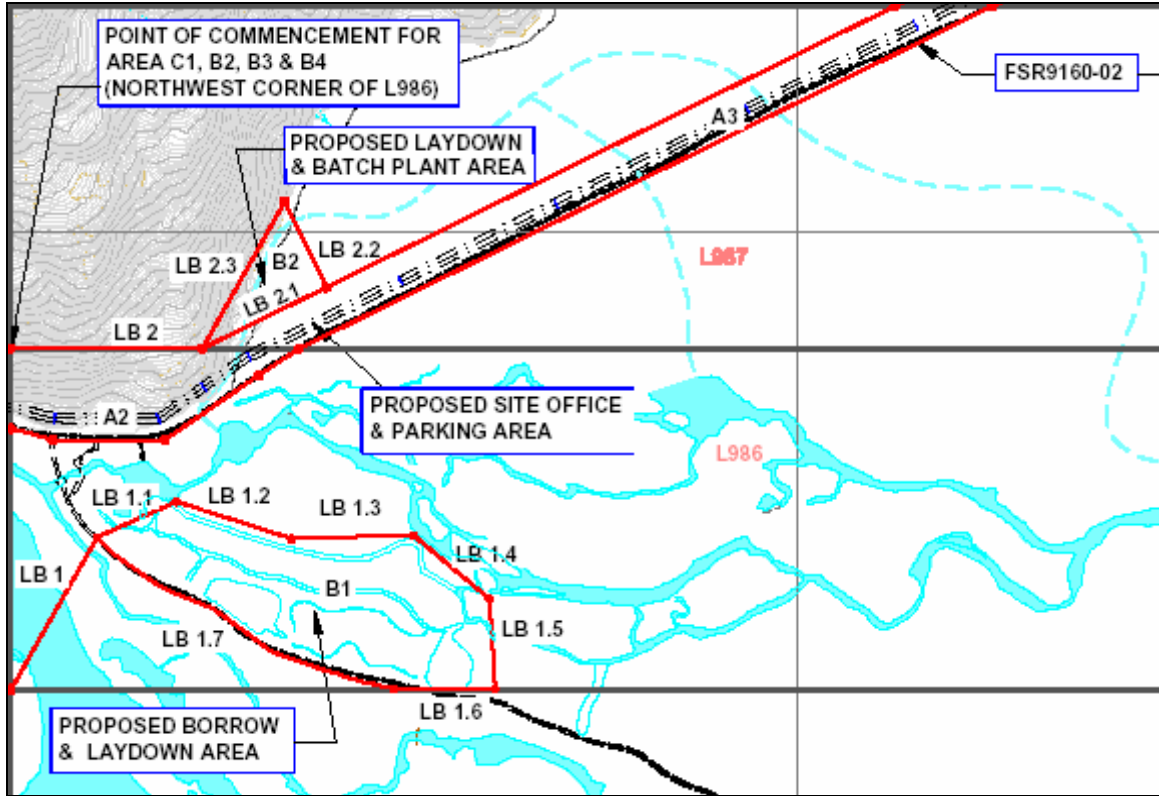
Chair

Secretary

SCHEDULE B TO BYLAW 828

Temporary Laydown and Construction Areas

- Area A3 (4.531 ha) D.L.987 – Proposed Site Office and Parking Area
- Area B1 (5.847 ha), D.L.986 – Proposed Borrow and Laydown Area
- Area B2 (.905 ha) D.L. 987 – Proposed Laydown and Batch Plant Area



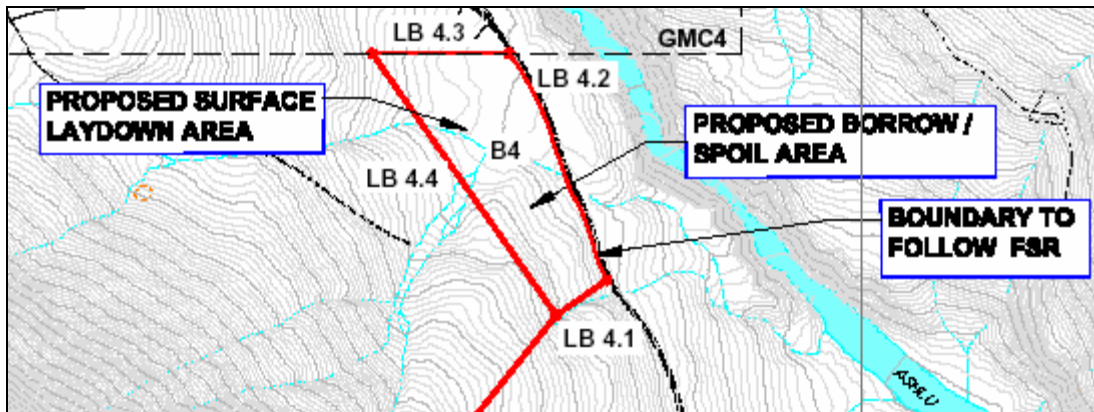
Sites shown on Schedule B designated for temporary laydown and construction use.

Chair

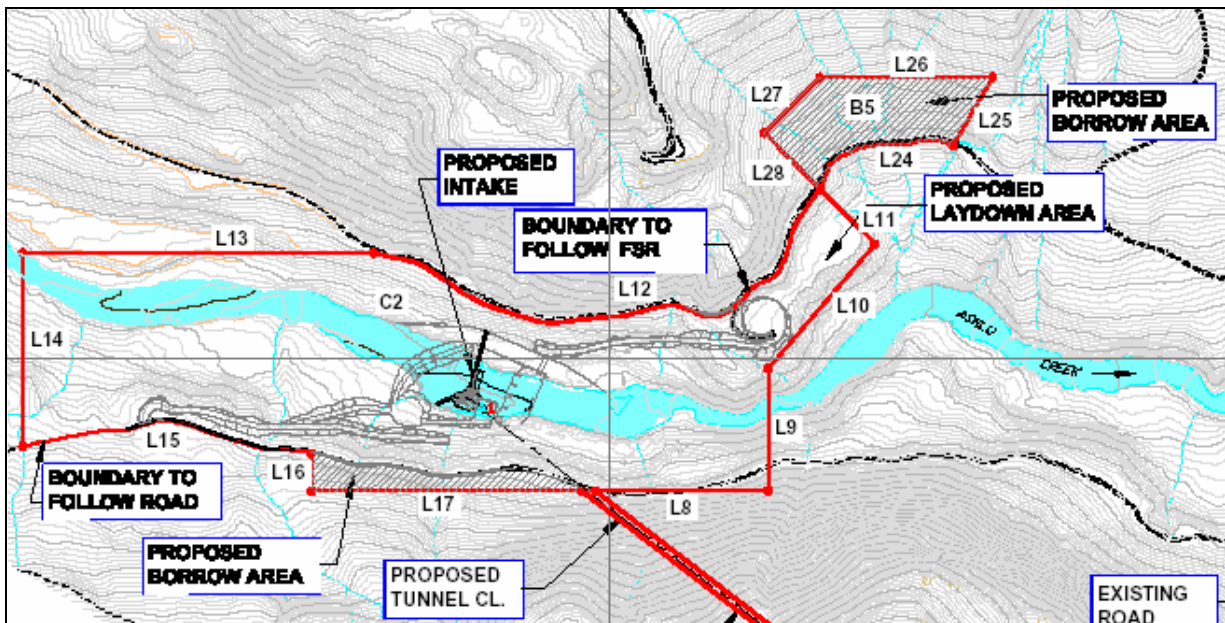
Secretary

SCHEDULE C TO BYLAW 828 Temporary Laydown and Construction Areas

- Area B4 (2.657 ha) – Proposed Borrow/Spoil area



- Area C2 (24.016 ha) – Proposed Laydown Area



Sites shown on Schedule C designated for temporary laydown and construction use.

Chair

Secretary