

## ADMINISTRATIVE REPORT



**TO:** Community Services Committee  
**FROM:** B. Newell, Chief Administrative Officer  
**DATE:** March 4, 2010  
**RE:** Addition to Reserve, Penticton Indian Band Reserve #1 – Kettle Valley Railway

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### **Administrative Recommendation:**

**THAT the Board advise Indian and Northern Affairs Canada that the Regional District of Okanagan-Similkameen is concerned with the addition of Kettle Valley Railway lands to the Penticton Indian Band Reserve for the purposes presented in the application; and further,**

**THAT the Board request Indian and Northern Affairs Canada to register a Statutory Right of Way over the titles to guarantee access to the public for general use and convenience as a linear park for recreational trail purposes.**

### **Reference:**

1. Additions to Reserve Policy, Federal Government, Indian and Northern Affairs
2. Young Anderson Opinion

### **History:**

Indian and Northern Affairs Canada (INAC) have been requested by the Penticton Indian Band (PIB) to add certain lands to the Reserve. INAC is seeking comments or concerns by April 12, 2010 from the Regional District.

At the February 4, 2010 Community Services Committee, Administration was requested to develop a response for consideration by the Board which outlines our interest in that portion of the Kettle Valley Railway right-of-way that runs through PIB land and a desire that it continue to be available for general use and convenience as a linear park.

### **Alternatives:**

1. That the Board provide comments to INAC
2. That the Board decline the opportunity to comment.

### **Analysis:**

The Federal Government has an "Additions to Reserves" policy. The lands in question were at one time part of the Reserve but were arbitrarily taken out for railway purposes. Litigation initiated by PIB established in the 1980's that, once no longer required for railway purposes, such lands revert to the Crown in trust for the Indian Band from whose Reserve the lands were taken. In short, the Crown has a fiduciary responsibility to the Indian Band to have the lands restored to Reserve Status. Notwithstanding, there may be some mitigating factors that INAC would take into consideration in their decision on "how" to return the land and Administration proposes that these factors form the foundation of our comments.

#### **1. Harmonization of Land Use Planning**

The Regional District has been working to establish an agreement with the PIB concerning the harmonization of land use planning, not only with regard to the proposed Reserve additions, but with regard to the Comprehensive Community Plan that INAC indicates the PIB is developing for the

Reserve and with regard to an upcoming review of the Electoral Area F Official Community Plan.

The West Bench community, adjacent to PIB, is a non-native community that would be bisected by a corridor of land under federal jurisdiction. The Regional District would propose that any consideration of adding the corridor to the Reserve be deferred until land use harmonization has been achieved in relation to the Reserve.

## **2. Importance of the Trail/Asset to the Trail**

Recognizing the importance of having an integrated and sustainable trail system, collaboratively, regional, provincial and federal governments have invested in the development and maintenance of the Kettle Valley Rail corridors to create a world class trail network.

The Kettle Valley Rail Trail and Trans Canada Trail represents significant opportunities and benefits for residents. Trails provide opportunities for outdoor activities that contribute to physical and mental health. They allow people to connect with one another and with nature in a sustainable manner. They offer significant tourism benefits and opportunities for economic diversification for communities. Trails are integral to encourage healthy, active lifestyles, whether as recreation amenities or as components of comprehensive transportation and commuting corridors. Recreation trails provide an opportunity to learn about our rich heritage including First Nations history and culture.

In 2005, the Regional District Board re-established the Rails to Trails and Parks Committee to develop a comprehensive linear park strategy that provides links between the region's communities. The Regional District Board identified the trail corridor extending from Chute Lake south to Osoyoos, east from Princeton to Penticton, including the lands west from Osoyoos to Princeton. Over the past five years the Regional District, Provincial and Federal governments have invested substantial funds to improve the infrastructure of this valuable asset.

The Regional District wishes to ensure that portions of the Trans Canada Trail that have been constructed on the former Kettle Valley rail trail right of way will continue to be available for public use and that PIB will maintain them in good condition, or allow any third party that wishes to maintain the trail to do so.

## **3. Public Forum**

The Regional District acknowledges that it does not hold a veto over additions to Reserves of land within its jurisdiction, but that it expects INAC to follow its own Additions to Reserve policy and that INAC and the PIB holds a adequate public forums prior to any formal decision.

## **4. Protection of Infrastructure**

The KVR identified to be returned to PIB currently hosts public infrastructure. It should be incumbent on INAC and the PIB to consult with the Ministry of Transportation and Infrastructure, water purveyors and all Utility providers with respect to any affected facilities and infrastructure of those stakeholders, and to make appropriate arrangements for the continued use of these facilities despite Reserve status of the lands.

**Respectfully submitted:**



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M. Woods, Manager of Community Services