

April 30, 2021

# Background Document

## RE: Road Closure and Sale of lands abutting 2450 - 2590 Landry Crescent

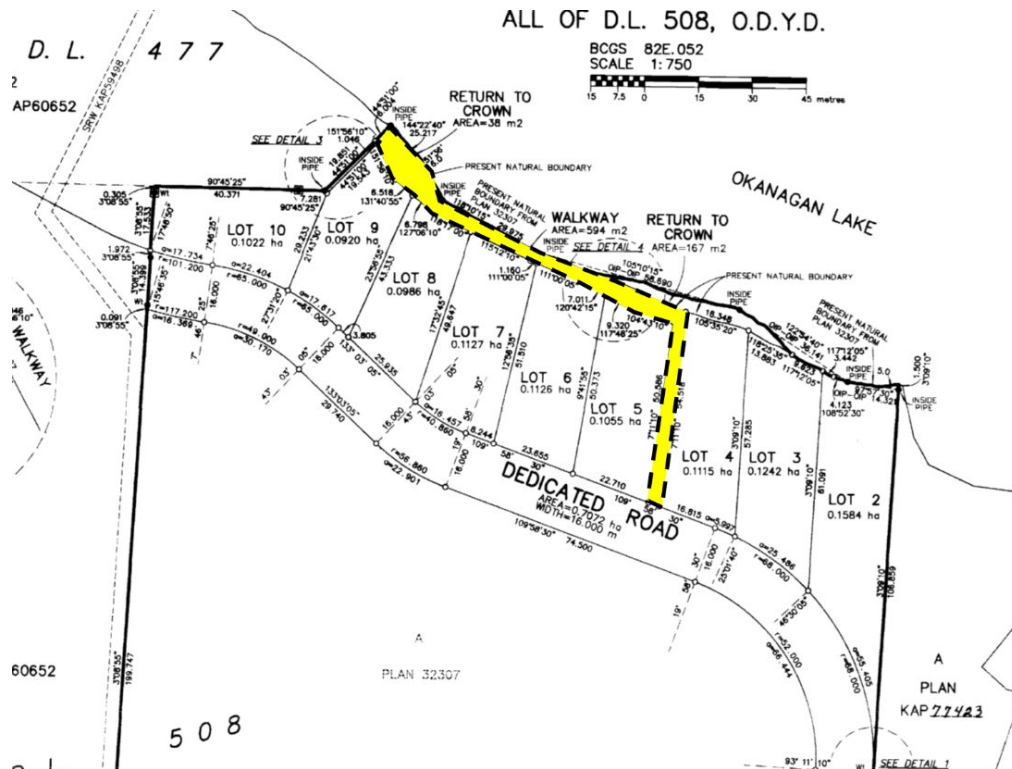
District Staff have prepared this background document to provide additional information to the public regarding the proposal to close lands formally dedicated to the District as “highway” under the *Land Title Act*, and for the potential sale of portions of these lands to adjacent private property owners located at 2450 – 2590 Landry Crescent.

### **Quick Facts:**

- The natural boundary of Okanagan Lake, defined by the “highwater mark”, delineates lands owned by the Crown (Province of BC) from upland owners.
- The District maintains regulatory jurisdiction over all lands above the highwater mark, while all uses (i.e. docks) below the highwater mark are the jurisdiction of the Province of BC (Ministry of Forests, Lands, and Natural Resources Operations).
- For 2450 – 2590 Landry Crescent, the District owns a narrow strip of land along these properties, just above the highwater mark, which was originally meant for a pathway.
- The pathway was subsequently built further upland to protect it from erosion and it is currently protected by a statutory right of way.
- Nothing is changing with respect to the public use and enjoyment of the pathway.
- The narrow strip land owned by the District is defined as a “highway” under the *Land Title Act*.
- Unsolicited interest was relayed to the District from abutting landowners for the narrow strip of land.
- Transfer of lands to the adjacent owners would remain subject to the provincial *Riparian Areas Protection Regulation* (RAPR - November, 2019) which protects the “riparian area” measured 30.0 meters from the highwater mark of the Lake from all private and public land disturbances and proposed developments located in the riparian area.
- Prospective owners would be limited to a small list of permissible activities and use of the land, for example building a dock, which would require Crown authorization.
- The bed and shore of the lake is owned by the Crown. The public continues to have the right to access of these public lands below the highwater mark of the Lake.

## What is the area in question?

- 2450 -2590 Landry Crescent were created through a subdivision plan that was registered with Land Titles BC on February 4, 2005.
- In addition to the residential properties created, the District was dedicated a strip of land (identified as “walkway” in plan below) between these five residential properties and the natural boundary of Okanagan Lake.

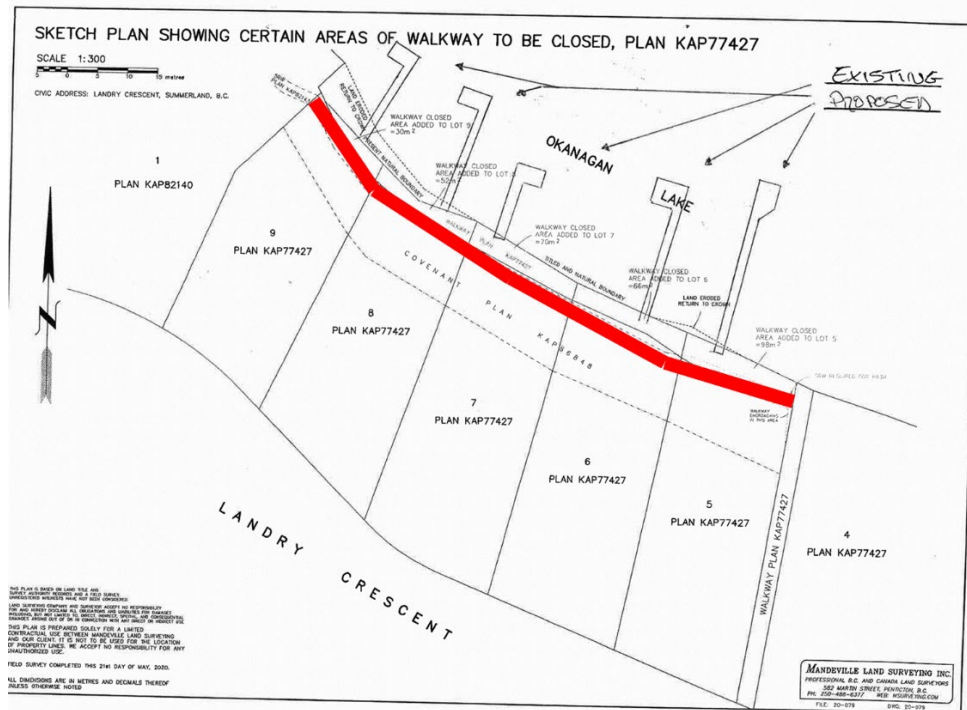


- The intent of this land, at the time, was to provide a future trail access to the District for the future construction of Gartrell Trail. Following the registration of the subdivision, the District initiated a project to construct Gartrell Trail.

## Is the Gartrell Trail protected where it currently exists? Will it continue to be?

- In the original design of the trail project, the District recognized that placement of the proposed trail within the dedicated lands would result in difficulties in maintaining the trail given the water erosion found in this area and still being recognized to date.
- As a result, the District decided to place the constructed trail, further upland, from the dedicated lands and to protect the new trail location with a statutory right-of-way.

- Please see the location of this statutory right-of-way which currently is protecting Gartrell Trail, and will continue to protect the Trail in the future, in the plan below:



- The use of a statutory right of way is a secure method to protect the District’s interest in maintaining Gartrell Trail and ensuring that public access is maintained over properties that are privately owned.
- Similarly, the use of a statutory right of way (rather than land dedicated to the District) is the method utilized for currently protecting Gartrell Trail for all private property located north of 2590 Landry Crescent in the Trout Creek community.

***If the trail is protected what is this proposed land sale?***

- In 2017, the Ministry of Forest, Lands and Natural Resource Operations updated the *Provincial General Permission for the Use of Crown Land for Private Moorage*. In the new general permission, “Upland Property” was defined “as the non-aquatic land parcel that is bordering the water body where the Dock is accessed from dry land”. The permission was further restricted so that new Docks are only permitted to be constructed and have ownership rights from the “Upland Property” landowner.
- As such, for the residential properties located at 2450 – 2590 Landry Crescent, the technical “Upland property” owner is the District of Summerland, and as a result of the change in provincial policy the owners are no longer able to construct and own a private dock related to their residential use.



- As noted above, the shoreline continues to be within a riparian area and is subject to the same provincial regulatory regime in place regardless of who the upland owner is.

### ***Some parts of this trail need improving why are you not focused on that issue?***

- The District, in its 2021 Capital works plan, plans to make improvements to the existing Gartrell Trail in its current location (located in the statutory right of way).
- These trail improvements may require repairing the trail in its current alignment or reconstructing the trail further upland in sections that have been eroded.
- We are targeting a detailed design and Section 11 application submission: May 10 – 28, 2021. We are hopeful to receive Section 11 approval from the Ministry of Forest, Lands and Natural Resource Operations to allow for construction by the end of 2021.
- The land sold is appraised at the fair market value by a professional appraiser. Any monies from the sale of these lands will go to reserves which allows the District to have additional funds for trail or park land purchases.

### ***Why is the notice saying a road is being closed? What does that have to do with anything?***

- This is a technical legal issue. Because these lands were formally dedicated to the District as a “walkway” under the Land Titles Act, and a “walkway” is a form of “highway” defined in the Land Titles Act, the District must adopt a “Road Closure and Highway Dedication Removal Bylaw” for the subject lands and register this bylaw with Land Titles BC, prior to legal title to the land being provided in the name of the District of Summerland.
- Proposed Bylaw No. 2021-018 has been drafted by District staff to complete the above purpose. Notice of this bylaw was provided in the April 15, and April 22 editions of the Summerland Review.
- Advertisement was also provided for the disposition of portions of the lands to 3 of the 5 private property owners. An additional owner put forward a request to purchase their portion on April 25, 2021 and it is for this reason the consideration of the bylaw was withdrawn from Council’s meeting of April 26, 2021.
- A new notice will be put forward which adds the additional owner and will be forthcoming.

### ***What are the next steps?***

- District staff plans to update proposed Bylaw No. 2021-018 to include the additional landowner requesting purchase and present the Bylaw for consideration at Council’s next meeting of May 10, 2021.

- If Council decides to proceed with the first three readings of the proposed bylaw, the District will advertise the notice of disposition of land and the revised Road Closure and Highway Dedication Removal Bylaw in the next two week editions of the Summerland Review.
- The Ministry of Transportation and Infrastructure is also required to approve the road closure prior to Council adoption.
- Once public notification has been provided, and approval from the Ministry received, adoption of the Bylaw can be considered by Council. Staff anticipate this will be placed on the May 25, 2021 Council meeting agenda.
- The Public may provide verbal or written representation to Council regarding this proposed Bylaw by registering to speak at the Council meeting, or by submitting written correspondence to [corporateofficer@summerland.ca](mailto:corporateofficer@summerland.ca)