

DISTRICT OF LAKE COUNTRY

**LICENCE OF OCCUPATION AND PUBLIC ACCESS RESTRICTION
BYLAW 502, 2004**

CONSOLIDATED VERSION

(Includes amendment as of November 1, 2005)

This is a consolidated copy to be used for convenience only. Users are asked to refer to the District of Lake Country Soil Regulation Bylaw as amended from time to time to verify accuracy and completeness.

Amending Bylaw	Summary of Amendments	Adoption
558	Delete and replace Schedules "A" and "B"	November 1, 2005

DISTRICT OF LAKE COUNTRY

BYLAW 502

A BYLAW TO AUTHORIZE A LICENCE OF OCCUPATION AGREEMENT FOR ENCROACHMENT IN, ON OR UNDER A HIGHWAY AND TO RESTRICT ACCESS TO THE PUBLIC

WHEREAS pursuant to the *Community Charter*, the right of possession in every highway in a municipality is vested in the municipality;

AND WHEREAS a municipality may grant a licence of occupation or permit an encroachment in respect of a highway that is vested in the municipality;

AND WHEREAS a municipality may restrict the common law right of passage by the public over a portion of a highway that is vested in the municipality as part of any authority it has in relation to these highways;

AND WHEREAS the District of Lake Country (“District”) wishes to authorize the use of a portion of highway by the Lake Country Sail and Boating Association for the purposes of the establishment and operation of a non-motorized boat storage compound;

NOW THEREFORE the Council of the District of Lake Country, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as "District of Lake Country Licence of Occupation and Public Access Restriction Bylaw 502, 2004".
2. “District of Lake Country Highway Encroachment Agreement Bylaw 99-277” is hereby repealed in its entirety.
3. The District hereby authorizes the use by the Lake Country Sail and Boating Association of that portion of highway shown outlined in heavy black line on the sketch plan attached as Schedule “B” to this bylaw, for the purposes of the establishment and operation of a non-motorized boat storage compound, on the terms and conditions set out in the Licence of Occupation and Encroachment Agreement attached to this bylaw as Schedule “A”.
4. The District hereby restricts the right of access and passage by the general public to that portion of highway shown outlined in heavy black line on the sketch plan attached as Schedule “B” to this bylaw, only to those rights identified in the Licence of Occupation and Encroachment Agreement (Schedule “A”).
5. The Mayor and Clerk are hereby authorized to enter into and execute on behalf of the District, the Licence of Occupation and Encroachment Agreement attached to this bylaw as Schedule "A".

READ A FIRST TIME this 14th day of December, 2004.

READ A SECOND TIME this 14th day of December, 2004.

READ A THIRD TIME this 14th day of December, 2004.

ADOPTED this 11th day of January, 2005.

“original signed by Rolly Hein”
Mayor

“original signed by Wendy Caban”
Deputy Clerk

I hereby certify the foregoing to be a true and correct copy of the Bylaw cited as "District of Lake Country Licence of Occupation and Public Access Restriction Bylaw 502, 2004" as adopted by the Municipal Council on January 11, 2005.

Dated at Lake Country, BC

Deputy Clerk

SCHEDULE "A"
Bylaw 558, 2005

LICENCE OF OCCUPATION AND ENCROACHMENT AGREEMENT
Lake Country Sail and Boating Association

THIS AGREEMENT DATED _____, 200__.

BETWEEN:

DISTRICT OF LAKE COUNTRY, a municipal corporation incorporated under the laws of British Columbia and having an address of 10150 Bottom Wood Lake Road, Lake Country, B.C. V4V 2M1 Facsimile: (250)766-2903

("District")

AND:

LAKE COUNTRY SAIL AND BOATING ASSOCIATION, (Inc. No. S-0039000), a society incorporated pursuant to the laws of British Columbia and having an address of 10138 Newene Road, Lake Country, B.C., V4V 1V2

("Association")

GIVEN THAT:

- A. The Association wishes to operate a **non-motorized boat storage compound** on a portion of road adjacent to R.S. Marshall Park and fronting on Okanagan Lake;
- B. The Association has requested permission from the District to occupy a portion of the lands the District possesses as highway; and
- C. The District may, grant a licence of occupation for the use of highways and establish terms and conditions according to which a person may occupy or otherwise encumber a highway;
- D. The District may restrict the right of passage by the public over a highway in order to exercise the authority to grant a licence of occupation and encroachment on a public highway.

THIS AGREEMENT IS EVIDENCE that in consideration of the premises and covenants herein contained the parties agree as follows:

1. Permission to Occupy - The District grants to the Association permission to use and occupy that portion of highway in the District which is shown outlined in heavy black line on the sketch attached as Appendix 1 to this Agreement ("Encroachment Area") for the sole purposes of the

operation of **a secure storage area to house non-motorized boats being no larger than 18 feet in length, including a chainlink fence compound to be constructed strictly in accordance with the sketch and parameters set out in Appendix 1.** The Association is permitted to house, within the confines of the storage compound, two (2) motorized safety boats AND FURTHER, the Association is permitted to launch one or both of the safety boats at the non-motorized boat launch for safety purposes only.

2. Term - This Agreement shall be for a term of three (3) years, commencing on the date of adoption of District of Lake Country Licence of Occupation and Public Access Restriction Bylaw 502, 2004, unless terminated sooner pursuant to the terms of this Agreement ("Term").

3. Fee For Use –

- a) The Association agrees to pay to the District, upon execution of this Agreement and on each anniversary date thereafter, a cash payment for the use of the Encroachment Area in the amount of **One Thousand Five Hundred Dollars (\$ 1,500.00); AND**
- b) The Association agrees to provided in-kind property maintenance of the encroachment area, parking area, boat launch and adjacent Marshall Park to the value of **One Thousand Five Hundred Dollars (\$1,500.00)** per annum, pursuant to an annual maintenance contract endorsed by the District; **AND**
- c) The Association agrees to provide capital improvements to Marshall Park and the adjacent road end that are deemed to be desirable by the District, to the value of **Three Thousand Four Hundred and Eighty Dollars (\$3,480.00)** per annum; **AND**
- d) The Association agrees to submit to the District 50% of the annual revenues received by the Association for rental of public storage berths.

Notwithstanding a) above:

In the event that the Association makes voluntary capital improvements to Marshall Park or the adjacent road end exceeding the required capital improvements in any given year, and that are deemed to be desirable for public use, the District will adjust the annual cash contribution payable for following year(s) to reflect the overpayment.

In the event that in-kind maintenance and capital improvements do not equal an annual contribution of \$4,980.00, the Association agrees to pay to the District an additional cash sum equal to the difference between all contributions (cash, maintenance, capital improvements) made by the Association over a one-year term and the annual licence fee of \$6,480.00.

4. Deposit - As security for the due and proper performance by the Association of all of the covenants in this Agreement and for the removal of the Encroachment, the Association shall deposit with the District a security deposit ("Deposit") in the form of cash or irrevocable letter of credit in the amount of **Two Thousand Dollars (\$2,000.00)** . The Association agrees that the District may use the Deposit to pay any costs incurred by the District in making repairs and removing the Encroachment pursuant to this Agreement. The District shall hold the Deposit for use as set out in this Agreement, and the Deposit shall not accrue interest payable to the Association.

5. Representations and Warranties of Association - The Association represents and warrants to the District that it is a society duly incorporated and maintained in accordance with the *Society Act* (British Columbia), for the purposes of developing and managing facilities for sailboats and other non-motor powered craft, as well as promoting and supporting instruction and racing of non-powered boating and related recreation activities.

6. Use by Public - The Association acknowledges and agrees that it is a condition of the granting of the Licence of Occupation that not less than **ten (10) storage berths** will be available for public rental from the Association and that the Association will provide sailing and boating programs which are of benefit to the public.

7. Access for Public - The Association acknowledges and agrees that the public's right of access to the Okanagan Lake boat launch and vehicle parking area shall be open and available to all members of the public during daylight hours, without any interference whatsoever by the Association.

8. Acknowledgment of Highway - The Association acknowledges and agrees that the Encroachment Area is a highway and that the District has power to authorize the private occupation of highways. The Association further acknowledges and agrees that any rights granted by the District to the Association by this Agreement are not exclusive and are subject always to the District's unhindered right to pass and repass and that the District has full authority pursuant to this Agreement to require the removal of the Encroachment from the Encroachment Area and the restoration of the Encroachment Area, at any time, without compensation to the Association.

9. Association to Maintain - The Association shall at all times keep and maintain the Encroachment and the Encroachment Area litter-free and in safe and sufficient repair to the satisfaction of the District.

10. Development Plan – Not more than six (6) months following execution of this Agreement, the Association agrees to submit a phased development plan of the encroachment area and adjacent Marshall Park, including a schedule of the proposed capital works.

11. Construction and Maintenance – Not less than thirty (30) days prior to commencing any work, the Association shall deliver to the District detailed plans and specifications setting out the exact nature, location and extent of the work, for the District's review and approval, at the District's sole discretion. The District shall advise the Association of any changes required to the plans and specifications, and the Association shall implement those changes. Without limitation, no permanent buildings shall be constructed on the Encroachment Area. The Association shall use all reasonable efforts to cause a minimum of obstruction and inconvenience during the construction, maintenance or repairs, and shall place and maintain such warning signs, barricades, lights or flares at or near the site of any work in progress as will give reasonable warning and protection to members of the public.

11. Utilities - Except as expressly authorized in writing by the District, all work shall be undertaken and located in such a manner as not to interfere with any existing utilities, both public and private, located on, in or over the highway. Without limitation, the Association shall construct and locate the Encroachment so as to not interfere with existing utilities, and to at all times allow free and unhindered access to those utilities. In the event that the Association is authorized to interfere with existing municipal utilities in or in the vicinity of the Encroachment Area, the Association shall, upon written notice by the District, reimburse the District for all sums expended by the District in altering such municipal utilities, as requested, as determined in the sole discretion of the District. Where any additional utilities are contemplated, the Association will cooperate with any person designated by the District in connection with any construction, extension, alteration or improvement of the utilities involving the Encroachment Area.

12. Indemnification - The Association shall indemnify, save harmless and release the District from and against any loss or damage to property, and any personal injury or death, suffered or

incurred by any one caused by or resulting from the use of the Encroachment Area by the Association or the Association's operations on or from the Encroachment Area, but this indemnity does not include any loss suffered or incurred by the District arising out of the negligence or other actionable wrong of the District, or its employees, agents or contractors.

13. Notice - Any notice required or allowed to be given under this Agreement shall be deemed to have been given to the party to whom it is addressed if it is mailed in British Columbia, in a prepaid envelope addressed to the address of the party as set out on page one (1) of this Agreement and any notice, demand or request so given shall be deemed to have been received and given five (5) days after the date of mailing. Alternatively, any notice under this Agreement may be delivered by hand or by facsimile and shall be deemed to be received upon the day of delivery or transmission, respectively.

14. Insurance - The Association covenants and agrees with the District that the Association shall maintain at its sole expense comprehensive general liability insurance providing coverage for acts or omissions by the Association, its employees and agents in the amount of not less than \$5,000,000.00 per occurrence, all inclusive, and the insurance policy shall:

- (a) name the District as an additional insured;
- (b) be issued by an insurance company entitled under provincial law to carry on business in British Columbia;
- (c) state that the policy:
 - (i) applies to each insured in the same manner and to the same extent as if a separate policy of insurance had been issued to each insured; and,
 - (ii) cannot be cancelled, lapsed or materially changed without thirty (30) days written notice to the District;
- (d) be maintained for a period ending twelve months after this Agreement is terminated; and
- (e) not include any deductible amount greater than \$5,000.00 per occurrence.

15. Copies of Policies - The Association shall provide the District with a copy of the required policy upon issuance of this Licence of Occupation and shall hereafter provide copies of any amendment or renewal of the policy.

16. Replacement Insurance - In the event the Association fails to maintain insurance as required by this Agreement, the District in its sole discretion may immediately obtain such insurance in whole or in part. If the District obtains such insurance, the Association shall reimburse the District for the cost of that insurance within fifteen (15) days of receiving written notice to do so from the District.

17. Survival of Terms - The indemnification, release and insurance obligations of the Association under this Agreement shall survive any termination of this Agreement in relation to any event first arising or commencing on or before the date of termination of this Agreement.

18. Termination - The Association understands and agrees that the District may at any time, in its sole discretion, withdraw the rights it has granted herein to the Association by giving thirty (30) days notice to the Association in writing. In the event of an emergency or for public safety reasons as determined by the District, the District may forego the aforementioned thirty (30) day notice provision.

The Association may at any time, by written notice to the District, terminate this Agreement as of a date to be specified in such notice. In the event of a withdrawal by the District, for any cause or reason whatsoever, or a notice to terminate by the Association, the Association shall, at its own expense and within three (3) months from the notice of termination, remove the Encroachment and restore the Encroachment Area to its original state to the satisfaction of the District.

19. Termination Due to Default - If at any time the Association is in default of any payments due and owing to the District, makes a proposal or general assignment or arrangement for the benefit of its creditors, or otherwise acknowledges its insolvency, commences winding-up proceedings or if a trustee in bankruptcy or receiver-manager is appointed in respect of its assets, or if the Association is in any way in breach of any term of this Agreement, then in each of such cases at the option of the District, this Agreement may be terminated and the Association shall immediately cease all use and occupation of the Encroachment Area and shall immediately remove the Encroachment and restore the Encroachment Area to its original state to the satisfaction of the District.

20. Removal by District - If the Association fails to remove the Encroachment and restore the Encroachment Area as required under this Agreement, the District and its agents may remove all fixtures, chattels, improvements, personal property and all other things on the Encroachment Area and restore the Encroachment Area to its original condition. The District may apply the Deposit or part of it to the cost of such removal and any deficiency will be a debt due and owing to the District by the Association upon receipt by the Association of the District's invoice for the deficiency.

21. Compliance with Laws - Nothing in this Agreement exempts the Association from complying with all applicable laws, including all municipal bylaws, or from obtaining all required permits and licenses relating to the use of the Encroachment Area or the Encroachment.

22. Compensation - Notwithstanding any provision of this Agreement, the Association shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Encroachment at any time and, without limitation, shall not be entitled to business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal of the Encroachment or by reason of the termination of the Agreement.

23. No Interest in Land - This Agreement grants no interest in land in the Encroachment Area to the Association.

24. References - Every reference to each party is deemed to include the heirs, executors, administrators, permitted assigns, employees, servants, agents, contractors, officers, directors and invitees of such party, where the context so permits or requires.

25. Enurement - This Agreement shall enure to the benefit of and be binding on the parties and their respective successors and assigns.

26. Severance - If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

27. Assignment - The Association shall not be entitled to transfer or assign this Agreement, in whole or in part, and shall not permit or suffer any other person to occupy the whole or any part of the Encroachment Area except as permitted by this Agreement, without the prior written consent of the District.

28. Entire Agreement - The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter hereof.

29. Time of Essence - Time is of the essence of this Agreement.

30. Governing Law - This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia, and the parties each agree to adhere exclusively to the laws and the courts of that province.

AS EVIDENCE of their agreement to be bound by the terms of this Agreement, the parties have executed this Agreement on the day and year first above written.

DISTRICT OF LAKE COUNTRY)
by its authorized signatories:)
)
_____)
Mayor)
)
_____)
Clerk)

Date: _____

(c/s)

LAKE COUNTRY SAIL AND)
AND BOATING ASSOCIATION by its)
authorized signatories:)
)
_____)
Name:)
)
_____)
Name:)

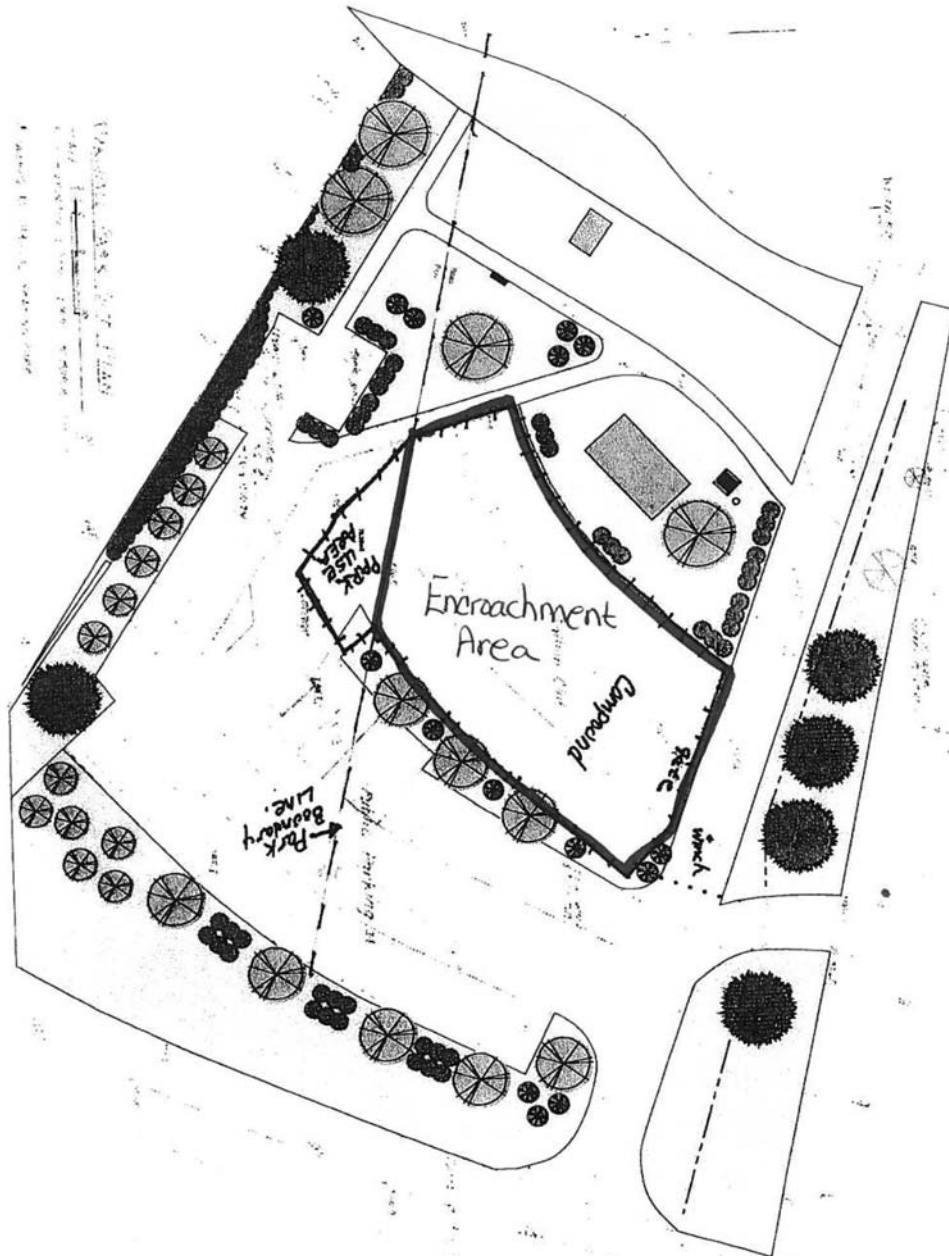
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(c/s)

APPENDIX 1

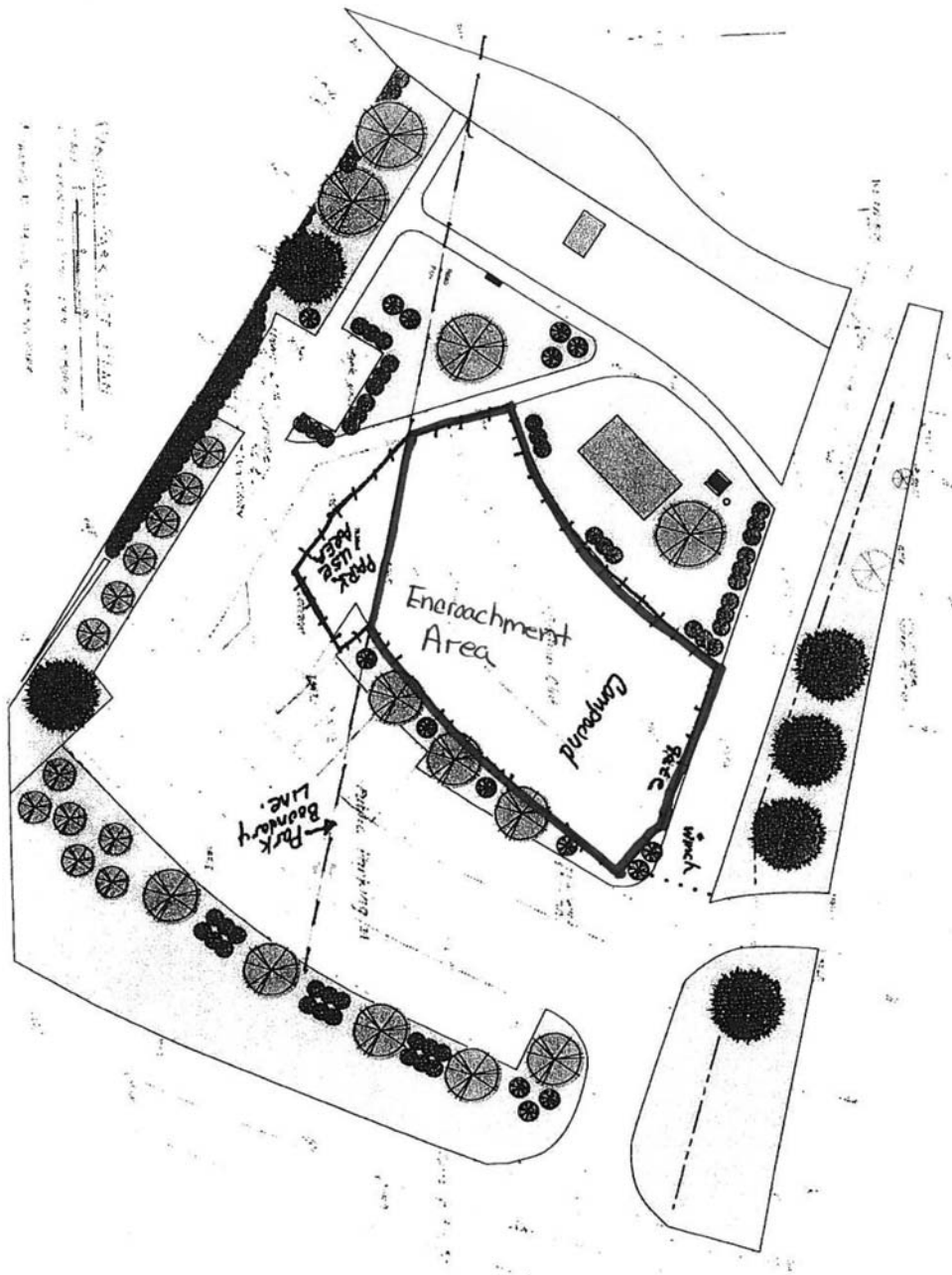
LICENCE OF OCCUPATION

SKETCH OF ENCROACHMENT AND ENCROACHMENT AREA



Schedule 'A', Bylaw 558
Revised Concept 'C' - Aug. 2005
Appendix I

SCHEDULE B



Schedule 'B' Bylaw 558
Revised Concept 'C' - Aug. 2005