

**MISCELLANEOUS PLANNING ITEM
 PLANNING AND DEVELOPMENT REPORT TO COUNCIL
 REQUEST TO AMEND DEVELOPMENT AGREEMENT
 February 26th, 2025**

LANDOWNER’S REQUEST RE: AMEND REGISTERED DEVELOPMENT AGREEMENT		
	LEGAL DESCRIPTION: Plan 2210150, Block 1, Lot 1, PTN: NW 18-22-04-W5M	
	LANDOWNER: Laura Ball	
	AREA OF SUBJECT PARCEL: 43.18 acres	
	CURRENT LAND USE: Agricultural Sub-District “A”	
DIVISION NO: 4	COUNCILLOR: Suzanne Oel	REPORT PREPARED BY: Theresa Chipchase

PURPOSE OF REQUEST

The landowner has submitted a request for Council’s consideration to amend the Development Agreement that is currently registered on the title of the subject parcel. The requested amendment would allow access to that portion of the subject lands that are north of Fish Creek, to be from a private road through an Easement Agreement and Access Right of Way registered on the adjacent lands that are located to the northeast of the subject parcel.

The landowner’s letter of request has been attached to this staff report under Appendix B.

SITE CONSIDERATIONS

Location

The parcel is located one half mile west of Highway 762, directly east of the Kananaskis Improvement District, one quarter mile north of Aspen Creek Drive, three miles south of Highway 22, and approximately 16 miles northwest of the Hamlet of Millarville.

Physiography

The subject parcel includes heavy fir and spruce tree cover to the north along the east boundary with open grassland along the southern boundary due to extensive logging activities. Logging roads have been constructed into the parcel from the adjacent title. The parcel also contains portions of a ravine along the northern boundary of the lot, with a small flat plateau north of the ravine, in the northeast corner. Fish Creek runs west to east on the south side of this topographical feature. The crest of a steep hillside is also contained within the southwest corner of the property.

Access

Agricultural Access to portion of subject parcel South of Fish Creek:

Agricultural access is obtained from an Easement Agreement and Access Right of Way registered on south and parcel west boundaries of the adjacent title to the east. This Access Right of Way is 10 meters in width and connects the subject parcel to the eastern end of Aspen Creek Drive before connecting to Highway 762.

Access to portion of subject parcel North of Fish Creek:

Access is obtained from an Easement Agreement and Access Right of Way registered on the adjacent title to the northeast of the subject parcel. This Access Right of Way is 30 meters in width, is not constructed to any County road construction standard, and connects the subject parcel to Highway 762.

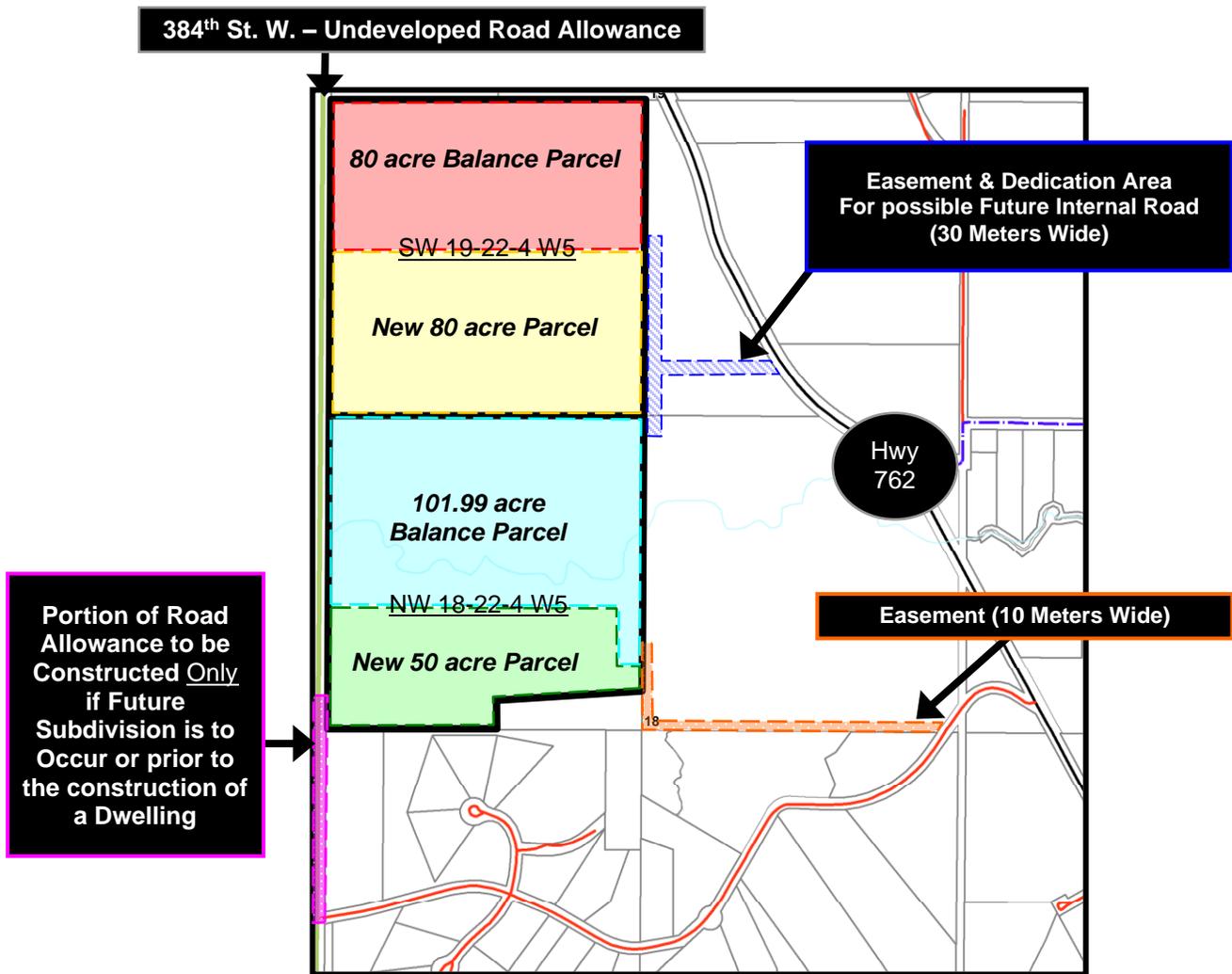
Please note: this is not the access that was approved by Council when the initial subdivision of the quarter section was approved in 2011. See the background section below regarding the approved access strategy for more information.

The noted access rights of way are shown in yellow on the aerial photo below, with the subject parcel identified by the blue outline.



BACKGROUND RE: APPROVED ACCESS STRATEGY

Access to these subdivisions was approved by Council as follows:



SW 19-22-04-W5M and NW 18-22-04-W5M

On May 26th, 2011, Council approved the subdivision of a +/- 80 acre Agricultural District first parcel out of SW 19 (shown above in yellow) and a +/- 50 acre Agricultural Sub-district “A” (A-A) first parcel out of NW 18 (shown above in green). The +/-50 acre A-A first parcel out was zoned Sub-District “A” to ensure that an appropriate building envelope be determined through a development permit process.

SW 19-22-04 W5M (both 80 acre parcels – shaded in red and yellow) and NW 18-22-4 W5M (101.99 acre parcel; portion north of Fish Creek)

Access to these 3 parcels was approved by way of an access easement via a 30 metre wide access right of way (shown above crosshatched in blue). The County is named as a third party to this easement agreement.

A development agreement was also executed and registered which states that should further subdivision be permitted on these lands, or if the landowners benefitting from the easement desire to have access to a developed public roadway, that the landowners would be responsible for the construction of an internal road within the access right of way to Municipal standards,

and to the satisfaction of Council and the public works department. A road acquisition agreement was additionally executed and registered to protect the access right of way for this purpose.

NW 18-22-04 W5M – 50 acre parcel and 101.99 acre parcel (portion south of Fish Creek)

At the time that this quarter section was being subdivided, the landowners advised Council that the lands were not to be developed and that access to the 50 acre parcel would only be required for agricultural purposes; therefore agricultural access was approved and provided through the registration of a 10 meter wide Access Easement and Right of Way Agreement, which runs from Aspen Creek Drive, west along the south boundary of the NE 18-22-04-W5M, then north along the partial west boundary of the NE 18-22-04-W5M. This access right of way is shown on the map on the preceding page shaded in orange. This access easement also provides legal access for agricultural purposes to the portion of the 101.99 that is south of Fish Creek.

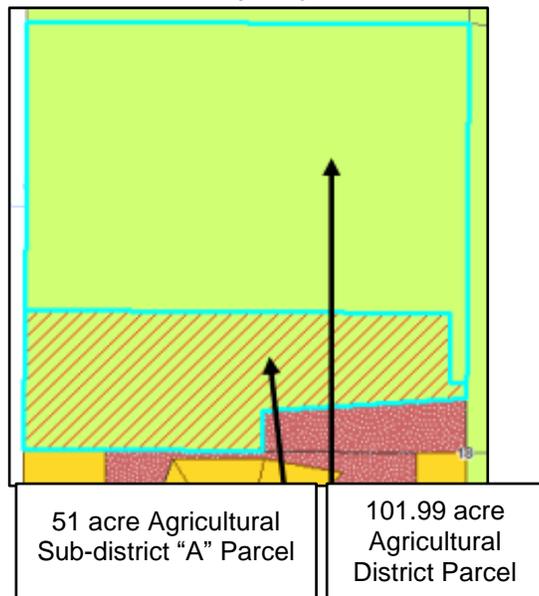
A Development Agreement was also executed and registered on the 51 acre parcel. The agreement states that should further subdivision be permitted on the 51 acre parcel or should a residence be constructed on the 51 acre parcel, the landowners will be responsible for constructing to Municipal Standards, that portion of the undeveloped road allowance (384th St. W.) (shown on the preceding page shaded in purple), to the satisfaction of Council and the County’s Public Works department.

Boundary Adjustment

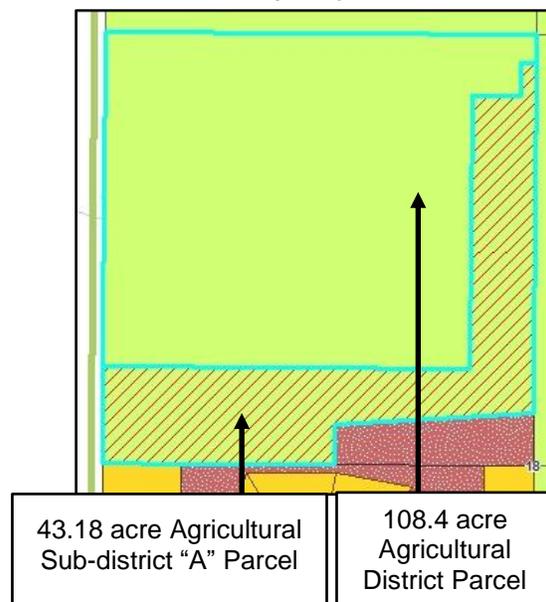
June 2nd, 2021 - Council approved a boundary adjustment between the 101.99 acre parcel and the 51 acre parcel both within NW 18-22-04-W5M. See below images showing the subject parcels pre and post boundary adjustment.

No changes to the above-described approved access strategy were proposed or considered by Council when this boundary adjustment application was approved.

Land Uses and Property Lines
Before Boundary Adjustment



Land Uses and Property Lines
After Boundary Adjustment



CIRCULATION REFERRALS

As the landowner's request regards access, planning staff circulated the request to both Alberta Transportation and Economic Corridors and the County's Public Works Department for review and comment.

Public Works

Public Works provided the following comments:

- The extension of 384th Street West (undeveloped road allowance) required for access to the subject parcel would be challenging. The road would have to be extended roughly 500 meters north of Aspen Creek Drive. The entire 500 meter section consists of +/- 25% side slopes as well as uphill and downhill sections with slopes in excess of +/- 20%. If the road is to be built, engineering will be required to ensure uphill/downhill slopes can be 12% or less. The engineering will also be able to determine the amount of back sloping required, which could be significant.
- Should Council agree to accept the landowner's request for amendments to the registered Development Agreement and allow access to the northern portion of the landowner's parcel from Access Right of Way Plan 1113404, Public Works would recommend that construction of a gravel road to meet current County standards be provided within that Right of Way. The gravel road would be required to meet the excessive road grade policy.

Alberta Transportation and Economic Corridors (ATEC)

ATEC provides the following response:

Upon a desk top review of the location, permanent use of this access for residential purposes (additional dwelling unit) would be acceptable. Sight distances should be checked in the field if a larger design vehicle is to use the intersection (truck traffic, as an example)

COUNCIL REQUEST

OPTION #1: APPROVE REQUEST TO AMEND DEVELOPMENT AGREEMENT

Council may choose to approve the landowner's request to amend the Development Agreement registered on Ptn. NW 18-22-04-W5M Plan 2210150, Block 1, Lot 1, to allow access to that portion of the subject property, located north of Fish Creek, to be provided from Access Right of Way Plan 1113404. The amendments to the Development Agreement are to address the following:

- Access to the portion of the subject parcel that is north of Fish Creek is permitted to be provided from Access Right of Way Plan 1113404;
- Prior to the construction of a Dwelling Unit on the portion of the subject parcel lying north of Fish Creek, the landowner will be required to upgrade the existing private access road to be designed and constructed to meet the County's current gravel road construction standards within the Access Right of Way area, to the satisfaction of the County's Public Works department.

OPTION #2 – REFUSE OF REQUEST TO AMEND DEVELOPMENT AGREEMENT

Council may choose to deny the landowner's request to amend the Development Agreement registered on Ptn. NW 18-22-04-W5M Plan 2210150, Block 1, Lot 1.

APPENDICES

APPENDIX A: MAP SET:

LOCATION MAP

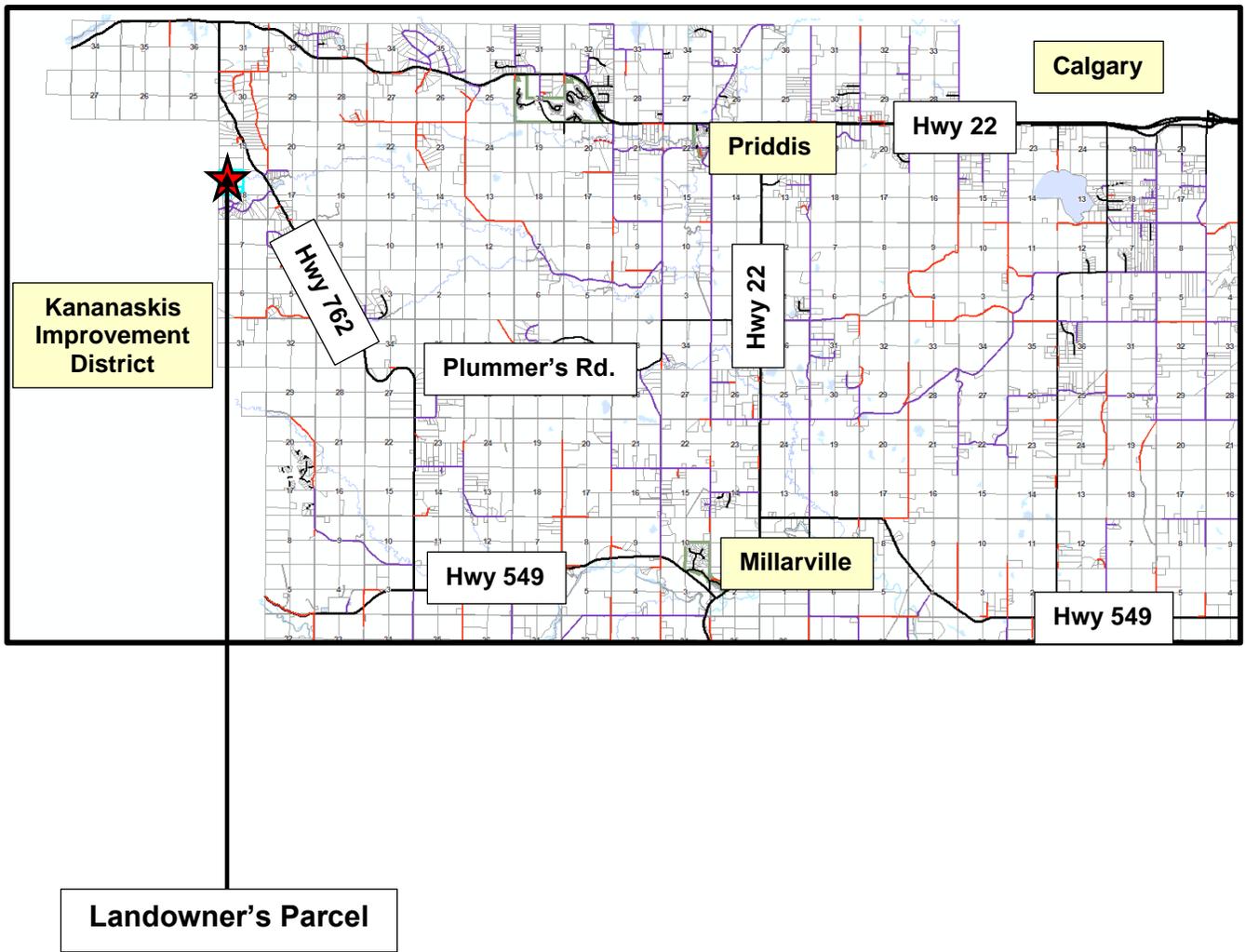
HALF MILE MAP – LAND USE

ORTHO PHOTO

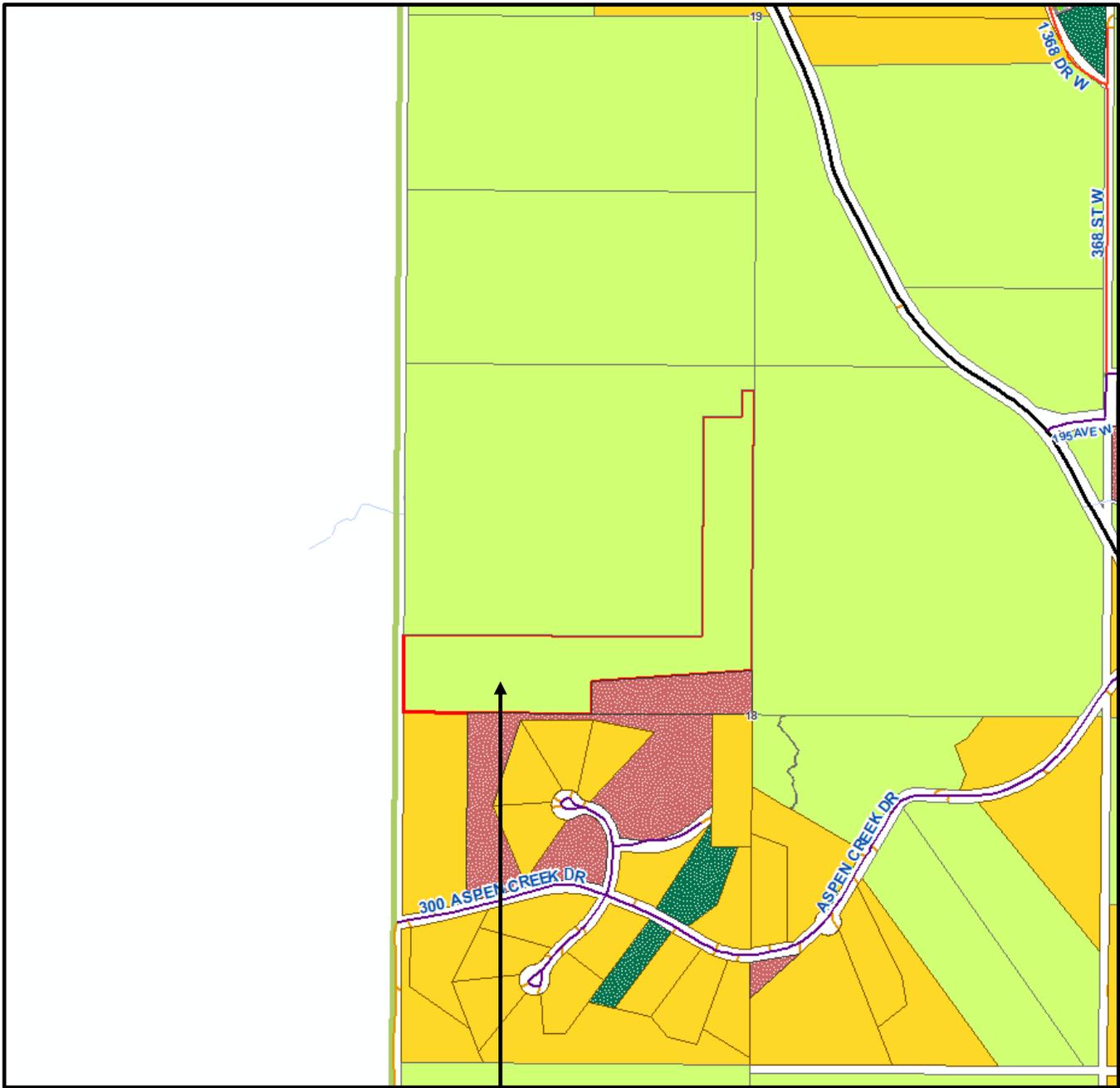
APPENDIX B:

LANDOWNER'S LETTER OF REQUEST

APPENDIX A: LOCATION MAP



APPENDIX A: HALF MILE MAP – LAND USE



Landowner's Parcel

Legend

- | | |
|--------------------------------|----------------------------------|
| Hard Surface (Chip/oil) | DC - Direct Control |
| Gravel | INR- Natural Resource Extraction |
| Pavement | EP- Environmental Protection |
| A- Agricultural | PUL- Public Utility |
| AA- Agricultural Sub A | ER- Environmental Reserve |
| AB- Agriculture Business | MR- Municipal Reserve |
| CR- Country Residential | |
| CRA- Country Residential Sub A | |

APPENDIX A: ORTHO PHOTO



Landowner's Parcel

APPENDIX B: LANDOWNER'S LETTER OF REQUEST

December 9th, 2024

To Foothills County Councillors,

I was recently going through paperwork and came across the document for the Boundary adjustment I completed in 2022. I noticed that on page two and three it stated:

"Should further subdivision be permitted on the 51 +/- acre parcel (registered as 43.0 acres) or should a residence be constructed on the 51 +/- acre parcel, the landowners will be

Access ROW

1113404 Plan

1113405, Block 1,

Lot 2 NW 18-22-04-

W5M

Undeveloped road allowance

Access ROW 1113404

responsible for constructing to

Municipal Standards the portion

of the undeveloped road

allowance (384th St. W.),

identified in purple on Schedule

"A" of this agreement. The road

will be required to be

constructed to the satisfaction

of Council and the Municipal

Engineer."

I am asking for Council's consideration to allow for an amendment to the development agreement that is currently registered on the title of my parcel. The requested amendment is to allow for access to the portion of my parcel that lies north of the creek to be from an existing developed private gravel road, which is located on adjacent lands just northeast of my parcel. There is an existing access easement agreement and right of way plan in place that would facilitate legal physical access to my parcel from this private road.

The reason for the boundary change in 2022 was to have this portion of the property as my future home building site. I adjusted the boundary to include this area and spoke with the planner regarding my access being from the North road. In the future when I build, this would be the access point to my property. I was unaware when the boundary adjustment was completed and finalized that this was included. This was also never mentioned to me throughout my conversations with the County.

Developing the undeveloped road allowance on Aspen Creek Road would be a very significant cost to me. The terrain is very steep, as well I would need a crossing over the Fish Creek which would be extremely difficult to obtain.

Please do not hesitate to contact me about any further questions.

Thank you for your time.

Laura Ball