



File No. 0870-20
Also 6240-20

REQUEST FOR DECISION
Regular Council
Meeting Date: January 26, 2015

To: Gord Howie, Chief Administrative Officer
From: Corporate Services Department
Re: **Sooke Horseshoe Pitching Association – Sooke River Road Park Use, Management and Maintenance Agreement**

RECOMMENDATION:

THAT COUNCIL approve the *Use, Management and Maintenance Agreement* (“Agreement”) for an area of Sooke River Road Park, between the District of Sooke and the Sooke Horseshoe Pitching Association (“Association”);
AND THAT COUNCIL authorize the Mayor and Chief Administrative Officer to sign the Agreement subject to the registration by the Association as a Society with the BC Corporate Registry.

1. Executive Summary:

The District of Sooke has come to an agreement with the Sooke Horseshoe Pitching Association (“Association”) for the use of a portion of the Sooke River Road Park as a horseshoe pitch. The installation of the horseshoe pitch will see an underutilized park space become a community amenity.

2. Background:

At the October 27, 2014 meeting, Council resolved as follows:

MOVED and seconded to approve the use of municipal lands located at 2250 Sooke River Road by the Sooke Horseshoe Association for 8 horseshoe courts, plus parking within the Sooke River Road right of way;
AND TO direct staff to draft an agreement with the Sooke Horseshoe Association for the approved location of the Horseshoe Pitch at 2250 Sooke River Road for Council approval and notice to the adjacent property owners.
CARRIED Councillor Berger opposed the motion

Accordingly, staff has worked with the Association and a Use, Management and Maintenance Agreement (“Agreement”) has been drafted for consideration by Council.

Society

The District will require the Association to incorporate as a Society; a Society is a not-for-profit organization registered with the BC Corporate Registry. When a Society is incorporated, it acquires all of the powers of a natural person, as well as an independent existence -- separate and distinct from its members -- and an unlimited life expectancy. The natural person powers include the ability to enter into agreements such as the proposed Agreement.

Horseshoe Pitching Area

Under the proposed Agreement, the District will grant the Association the right to enter upon, use and occupy an area approximately 20 metres x 30 metres on the Sooke River Road Park for eight horseshoe pitches. It is understood that, during construction, the Association will work with the District as to access to the horseshoe pitch area in order to mitigate disturbance of the surrounding park lands.

Should the Association wish to expand the pitching area or add other amenities (such as a storage shed), the Agreement would have to be amended.

Agricultural Land Reserve

The Agricultural Land Commission has allowed the use of the park for the horseshoe pitching facility (a non-farm activity) as the area has limited agricultural ability. The approval is subject to a club house, if constructed, not to exceed 1,000 square feet. It was noted that the area proposed for the facility is separated from the remainder of the park property by a steep bank and the remainder portion is marshland.

Parking

Staff proposes to create angled parking on the District right of way to ensure delineated parking exists for users of all the recreational facilities in the area.

Insurance

The Association is able to provide the required liability insurance under its membership with the BC Horseshoe Association.

Term

The term of the Agreement will be for two years, with the option to renew for a further two years (section 20).


Fee

As this is a recreational facility many in the community will use, there will be no fee under the Agreement.

Attached Documents:

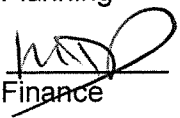
1. DRAFT Use, Management and Maintenance Agreement
2. Ortho map showing location of horseshoe pitch area
3. Timeline

Respectfully,



Bonnie Sprinkling

Approved for Council Agenda

| | |
|--|---|
| _____ Engineering | _____ Planning |
|  _____ Corp. Services |  _____ Finance |
| _____ CAO | |

USE, MANAGEMENT AND MAINTENANCE AGREEMENT

Project Name: Horseshoe Pitch
District of Sooke File No: 1790 - 20

THIS AGREEMENT dated for reference this day ____ of ____, 2015.

BETWEEN:

SOOKE HORSESHOE PITCHING ASSOCIATION,
Incorporation no. XXXXX, having an address at XXX Street, Sooke, British Columbia, xxx xxx

(“the Association”)

AND:

DISTRICT OF SOOKE, a municipal corporation incorporated under the *Local Government Act*,
having an address at 2205 Otter Point Road,
Sooke, British Columbia, V9Z 1J2

(the “District of Sooke”)

WHEREAS the District of Sooke is the registered owner of those certain lands and premises
situated in the District of Sooke and commonly known as the Sooke River Road Park located at
2250 Sooke River Road, Sooke, BC (the “Park Lands”),

AND WHEREAS the Association is a Society duly incorporated under the laws of the Province
of British Columbia and having its registered office at XXX Street, in the District of Sooke,
Province of British Columbia; and

AND WHEREAS horseshoe pitching buildings and horseshoe pitching grounds (the “Facility”)
will be constructed on the Park Lands by the Association;

AND WHEREAS the Association desires to use, manage and maintain the Facility;

AND WHEREAS the parties hereto are desirous of entering into an Agreement to authorize use,
management and maintenance of the Facility;

NOW THEREFORE THIS AGREEMENT WITNESSES that the parties hereto mutually
covenant and agree as follows:

1. The District of Sooke hereby grants to the Association the right to enter upon, use and occupy an area approximately 20 metres x 30 metres on the Park Lands as shown outlined in black and hatched on Schedule “A” of this Agreement (the “Facility Location”) for the non-exclusive use, management and maintenance of the Facility subject to the terms and conditions of this Agreement.
2. The District of Sooke may terminate this Agreement forthwith if the Association breaches any of the covenants contained herein and re-enter the premises and take possession of any improvements thereon as if this Agreement had never been made.

3. It is understood and agreed by the parties hereto that all right, title and interest in and to the Facility shall remain vested in the District of Sooke.

Authority

4. The Association represents and warrants to the District of Sooke that it has the authority to enter into this Agreement and carry out its transactions and all necessary resolutions and procedural formalities have been completed and the persons executing this Agreement on its behalf are duly authorized to do so.

Name

5. The Association may name the Facility and post signs for that purpose, subject to the provisions of the *Sign Regulation Bylaw*.

Effective Date and Term

6. This Agreement takes effect immediately upon execution by all of the Parties.
7. The term of this Agreement shall be for a period of two (2) years, commencing the first day of _____, 2015 and ending the 30th day of _____, 2017.

Use, Maintenance and Repair of the Facility

8. The use, maintenance and repairs of the Facility shall be carried out in accordance with the terms and conditions set out in Schedule "B" attached hereto.

Annual Reports

9. The Association shall within 90 days of the end of each fiscal year submit to the District of Sooke Finance Department the following reports:
 - a. an Annual Financial Statement consistent with reporting of a Society;
 - b. the Annual Report submitted to the Province showing that the Society is still in good standing;
 - c. a summary of the previous year's activities at the Facility which will include the number of participants and a record of use of the Facility by other groups and agencies; and
 - d. an annual maintenance and repair program at the Facility and budget for approval along with any requests for funding assistance.

Insurance

10. In the event of loss or damage to the facility covered by insurance, the District of Sooke reserves the right not to repair or rebuild if in the opinion of District of Sooke the costs exceed the economic value or utility of the Facility.
11. The Association shall, at its own expense, maintain at all times during the term of this Agreement:

- a. general liability insurance coverage in an amount and with deductibles as described in the District of Sooke Policy No. 5.4, *Risk Management – Contract Services Policy*, and shall ensure that the District of Sooke is named as an insured; and
- b. all policies noted in Clause 11(a) must:
 - i. include the District of Sooke, its officers, officials, employees, agents, representatives and volunteers as additional insureds;
 - ii. include a waiver of all rights of subrogation or recourse against District of Sooke;
 - iii. be placed with one or more insurer(s) licensed to do business in the Province of British Columbia; and
 - iv. contain thirty (30) days written notice of cancellation or reduction of coverage in favour of District of Sooke, to be delivered by registered mail to the attention of the Director of Finance, at District of Sooke's business address.

12. The Association further agrees:

- a. to provide to District of Sooke proof of the insurance policies noted in Clause 11 upon placement and annually thereafter on renewal of the policies or otherwise upon demand by District of Sooke, by way of certificate of insurance;
- b. that any building and contents are not insured under any policies carried by District of Sooke;
- c. that the District of Sooke is under no obligation to verify that the Association's insurance coverages are adequate;
- d. shall be responsible for any deductions or reimbursement clauses within the policies of insurance indicated in Clause 11;
- e. to apply to the Workers' Compensation Board for coverage for the Association and any workers or other persons engaged by the Association to carry out any works at the Facility;
- f. at its own expense, to provide additional insurance for its members to augment WorkSafe BC coverage as it wishes; and,
- g. to comply with all conditions of the Workers Compensation Act and regulations, and be responsible for all fines, levies, penalties and assessments made or imposed under the *Workers Compensation Act* and regulations relating in any way to any works carried out at the Facility, and shall indemnify and save harmless the District of Sooke, its employees and agents, from and against any such fines, levies, penalties and assessments.

Indemnification

- 13. The Association shall indemnify, release and save harmless the District of Sooke and its elected and appointed officials, officers, employees, agents, Associations, successors and assigns from any and all liabilities, actions, damages, claims, losses, orders, fines, penalties, costs and expenses, including the full amount of all legal fees and expenses that may be brought against, or suffered or incurred by, the District of Sooke or any of its elected and appointed officials, officers, employees, agents, Associations, successors and assigns, in any way directly or indirectly arising from or in connection with the activities, actions or omissions of the Association or any of its employees, sub-Associations, agents, licenses, servants, invitees or anyone for whom the Association is in law responsible, in relation to the Services or in connection with this Agreement. The indemnities set out in this paragraph do not include indemnifications for negligence or

willful or malicious misconduct on the part of the District of Sooke or a person for whom the District of Sooke is responsible at law. This paragraph will survive termination of this Agreement.

Termination

14. The District of Sooke may terminate this Agreement at any time, and without cause, by giving thirty (30) days' written notice of termination to the Association.
15. The District of Sooke may terminate this Agreement if the Association fails to comply with any of the terms, covenants and agreements that the Association must observe or perform under this Agreement and that failure continues for fourteen (14) days after receipt by the Association of notice in writing from the District of Sooke specifying the failure.
16. The Association may terminate this Agreement by providing thirty (30) days' written notice of termination to the District of Sooke.

Other

17. The Schedules to this Agreement form part of this Agreement. If there is a conflict between a provision in a schedule to this Agreement and any other provision of this Agreement, then the provision in the schedule is inoperative to the extent of the conflict, unless it states that it operates despite a conflicting provision of this Agreement.
18. The Association agrees to comply with all District of Sooke Bylaws and Regulations.
19. The District of Sooke reserves the right to enter and inspect the Facility as often as is deemed necessary upon 24 hour notice to the Association.
20. Upon receipt of notice in writing at least six (6) months prior to the expiration of the term of this Agreement, the District of Sooke will give consideration to the renewal of this Agreement for a further two (2) year term on the same terms as herein provided.
21. The Association shall not be permitted to transfer or assign its rights under this Agreement without the written consent of the District of Sooke.
22. The Association shall not alter the Facility, including any land, buildings or structures covered in the Agreement without obtaining the permission of the District of Sooke Municipal Engineer and obtaining all necessary permits and approvals from the District of Sooke.
23. Should the Association cease to exist the District of Sooke is not liable for any Agreements entered into by the Association.
24. This Agreement and everything herein contained shall inure to the benefit of and be binding upon the Association and District of Sooke and its successors and assigns.
25. Whenever the singular or masculine are used in this Agreement, they shall be construed as meaning plural or feminine or body corporate where the context or the parties hereto require.

NOW THEREFORE as evidence of their agreement to be bound by the terms of this Agreement, the parties have executed this Agreement as follows:

SIGNED the ___ day of _____, 2015

District of Sooke by its authorized signatories:)
)

Mayor:)

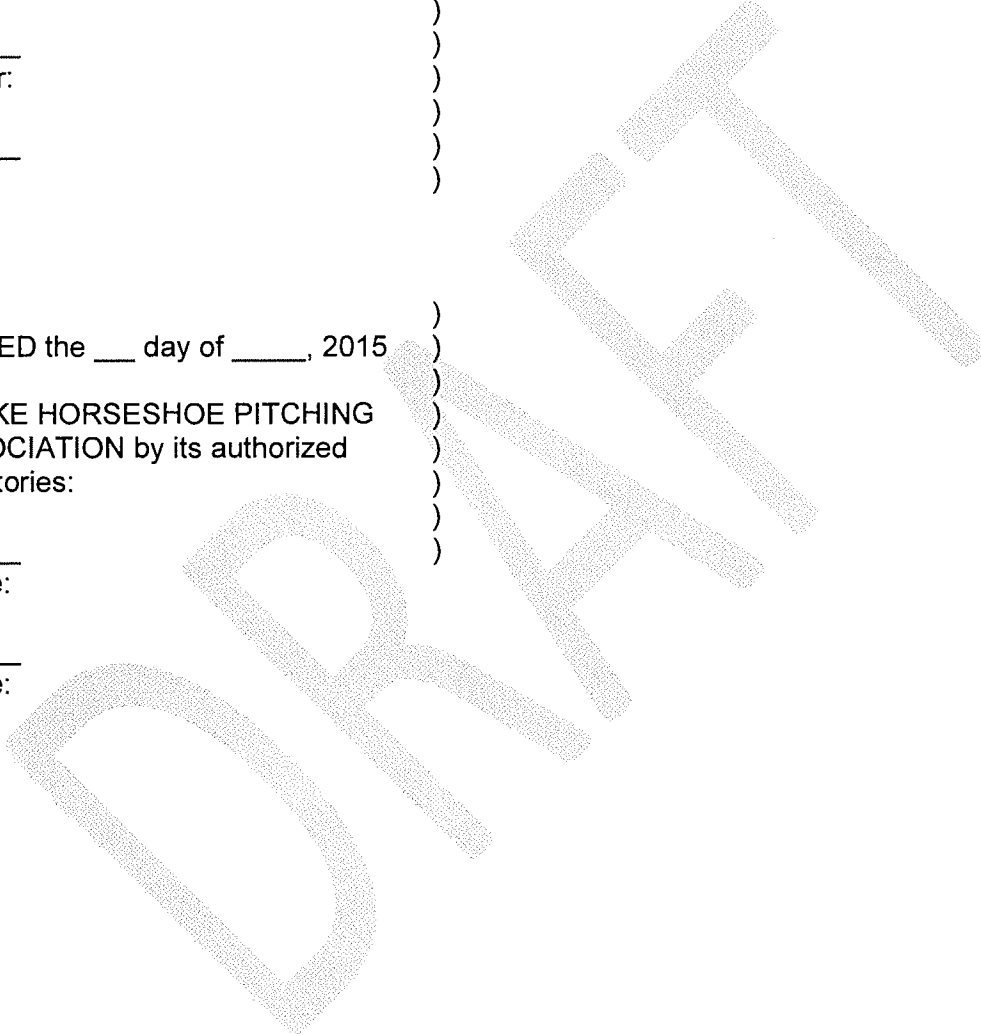
CAO:)

SIGNED the ___ day of _____, 2015)

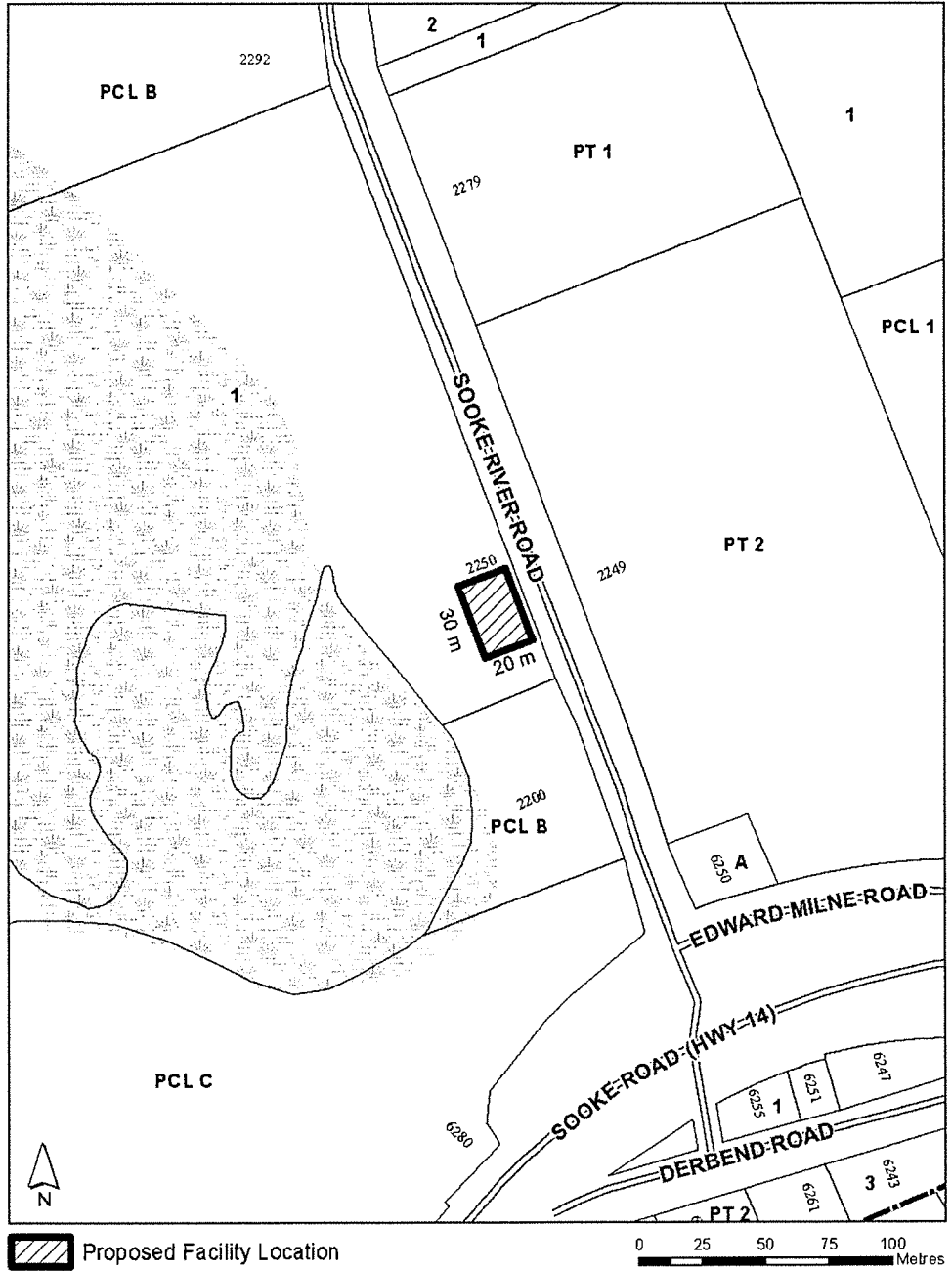
SOOKE HORSESHOE PITCHING ASSOCIATION by its authorized signatories:)
)
)
)

Name:)

Name:)



SCHEDULE "A"
Facility Location



SCHEDULE "B"

USE, MAINTENANCE AND REPAIRS and ROLES AND RESPONSIBILITIES FOR FACILITY

1.0 Use

- 1.1 The Association agrees not to use the Facility except in accordance with the District of Sooke *Community Parks Regulation Bylaw* unless prior written permission has been provided.
- 1.2 Lighting systems must be approved by the District of Sooke Municipal Engineer or their designate and shall be turned off by 10:00 p.m. nightly.
- 1.3 The Association must ensure that the use of the Facility and the deportment of its users, are both within the law and socially acceptable. Concerns or complaints from neighbouring residents and the public at large regarding the Facility will be given every consideration and effort by the Association for their expedient resolution.
- 1.4 The Association agrees to notify the District of Sooke Municipal Engineer of any special event, game or activity that is expected to draw more than 100 people to the Park. The Association also agrees to follow any directions related to traffic and parking control, neighbourhood notification, noise management and other aspects of event management as set out by the District of Sooke.
- 1.5 The Association agrees that requests by outside groups must be directed to the District of Sooke Engineering Department for a permit to ensure that usage is appropriate and that the proper insurance is in place.
- 1.6 The use of amplified sound (e.g., music or public address system) shall be made in a manner respectful to park neighbours and other park patrons and abide by the District of Sooke *Community Parks Regulation Bylaw* and *Noise Control Bylaw*, including appropriate volume and bass levels, being limited to only support special events or games, and direction of sound travel. Repeated unresolved noise complaints may result in termination of the ability to use amplified sound.

2.0 Construction, Maintenance and Repairs

- 2.1 The Association must carry out the construction and maintenance of the Facility in a good and workmanlike manner and must not cause unnecessary damage or disturbance to the surrounding Park Land or any improvement on or in the Park Land;
- 2.2 The Association is responsible for the maintenance and repair of the greens, grounds and any other outdoor facilities or fixtures within the Facility Location. These areas are included within the meaning of the term "Facility".
- 2.3 The Association must keep the Facility in good condition and promptly carry out all necessary maintenance and repairs within sixty (60) days of notice or to such further period to which the parties agree, except those repairs required to make the Facility reasonably safe shall be carried out immediately. Failure to make these repairs within forty-eight (48) hours will result in the Facility being closed and locked by District of Sooke until such repairs are completed.

2.4 The Association is not entitled to make any alterations, renovations, or additions to or demolish the Facility except with the written permission of the District of Sooke Municipal Engineer and all the necessary permits and approvals from District of Sooke.

3.0 Roles and Responsibilities

District of Sooke:

- Field drainage – maintenance and repair
- Municipal lighting – maintenance and repair
- General park signage
- Graffiti cleanup on general park areas
- Maintenance of parking area on municipal right of way – including potholes and dust control
- Review and approval of special projects
- Hazardous tree management

Sooke Horseshoe Association:

Turf

- Mowing, edging
- Routine field inspections and maintenance (e.g., filling holes, hand pulling of weeds, etc.)
- Report unsafe conditions to the District of Sooke for follow-up

Fencing

- Maintenance and repair

Furniture

- Maintenance and repair of benches, signs, sidewalks or other structures

Lighting

- Facility lighting maintenance and repair and utility costs

Irrigation

- Irrigation startup and winterization
- Facility irrigation maintenance, water fountains, hose bibs, repair and programming and water costs

Landscaping

- Hedge trimming/maintenance, as required
- Any landscape maintenance

Garbage for the Facility

- Garbage cans – emptying/disposal
- Recycling

Other

- Recognition/sponsorship signage (subject to District of Sooke approval)
- Special projects – project management, safety coordination, insurance, etc.
- Snow and ice clearing



 Proposed Facility Location

0 25 50 75 100 Metres

| Date | Meeting | Motion |
|--|--|---|
| June 14, 2011 | Council - <i>Community Grant Review Committee Recommendations – June 2, 2011 meeting</i> | Sooke Horseshoe Pitching Club \$3,000 |
| August 2, 2011 | Committee of the Whole: <i>Application for Non-Farm Use in the ALR – 2250 Sooke River Rd</i> | MOVED to recommend that Council forward the application to the Agricultural Land Commission (ALC) with a recommendation to support the non-farm use proposed for 2249 Sooke River Road. CARRIED |
| August 8, 2011 | Council – <i>Application for Non-Farm Use in the ALR – 2250 Sooke River Rd</i> | MOVED and seconded to forward the application to the Agricultural Land Commission (ALC) with a recommendation to support the non-farm use proposed for 2250 Sooke River Road. CARRIED UNANIMOUSLY |
| December 12, 2011 | Community Grant Committee | Sooke Horseshoe Pitching Club: To allocate \$3,000 towards the Sooke Horseshoe Pitching Club's Horseshoe Pitching Courts project, subject to Council's approval on a suitable site. |
| December 12, 2011 | Council - <i>Agreement with Sooke Horseshoe Pitching Club</i> | MOVED and seconded to defer the agreement with the Horseshoe Club back to staff for further information. CARRIED UNANIMOUSLY |
| June 25, 2012 ** Petition submitted 134 signatures | Council <i>Delegation - Sooke Horseshoe Club</i> | MOVED and seconded to direct staff to work with the Sooke Horseshoe Club to determine a suitable location and development in John Phillips Memorial Park for horseshoe pitches; SUBJECT TO staff bring forward a report to the Land Use and Environment Committee to establish a long term plan for the use of the park including but not limited to off-leash/dog park, disc park, bike skills park, and horseshoe pitch. CARRIED UNANIMOUSLY |
| September 10, 2012 | Council | MOVED and seconded to approve the Sooke Horseshoe Club extension request for 2011 grant funding. CARRIED UNANIMOUSLY |
| September 17, 2012 | Land use and Environment Committee: <i>Public Input Meeting - Proposed Uses of John Phillips Memorial Park – Public Input Opportunity</i> | MOVED and seconded to receive the Proposed Uses for John Phillips Memorial Park for information AND TO recommend that Council direct staff to work with the Horseshoe Club and bring forward a report to establish a horseshoe pitch at John Phillips Memorial Park; AND FURTHER recommend that Council direct staff to work with the Off-Leash Dog Park advocates and bring forward a report to establish an Off-Leash Dog Park at John Phillips Memorial Park. CARRIED UNANIMOUSLY AND FURTHER recommend that Council direct staff to prepare an outline for a public consultation process to address these and all other issues with respect to the |

| Date | Meeting | Motion |
|-----------------|---|--|
| | | development of John Phillips Memorial Park. CARRIED UNANIMOUSLY |
| October 9, 2012 | Council | Land Use and Environment Committee Recommendations from September 17, 2012 meeting; Proposed Uses of John Phillips Memorial Park – Public Input Opportunity MOVED and seconded to direct staff to work with the Horseshoe Club and bring forward a report to establish a horseshoe pitch at John Phillips Memorial Park; AND FUTHER direct staff to work with the Off-Leash Dog Park advocates and bring forward a report to establish an Off-Leash Dog Park at John Phillips Memorial Park. AND FURTHER direct staff to prepare an outline for a public consultation process to address these and all other issues with respect to the development of John Phillips Memorial Park. CARRIED UNANIMOUSLY |
| May 13, 2013 | Council – Notices of Motion | Mayor acknowledged Notice of Motion by Councillor Herb Haldane: THAT a half acre be established in the John Phillips Memorial Park for the horseshoe club. ACTION ITEM: Matter to be considered at next Regular Council Meeting. |
| May 27, 2013 | Council – Notice of Motion by Councillor Herb Haldane: | MOVED and seconded that a half acre be established in the John Phillips Memorial Park for the Sooke Horseshoe Club; AND TO direct staff to move forward with the public consultation process. CARRIED |
| June 10, 2013 | Council | Mayor Miine reported that the issues with the bike skills park, horseshoe park and dog park be coming forward for an opportunity for public input prior to any decisions of Council on John Phillips Memorial Park. |
| March 24, 2014 | Council | MOVED and seconded to NOT include the Sooke River Road Park as an option for the Horseshoe Pitch. CARRIED |
| May 26, 2014 | Council | MOVED and seconded to direct staff to continue working with the Horseshoe Club and the public to determine an appropriate location for an 8-court horseshoe pitch at John Phillips Memorial Park; AND THAT a business plan for the Horseshoe Pitch proposal be submitted to Council by the Sooke Horseshoe Club. CARRIED UNANIMOUSLY |
| June 23, 2014 | Council | MOVED and seconded to approve the proposed location in John Phillips Memorial Park for a Horseshoe Pitch; AND TO direct staff to continue working with the Sooke Horseshoe Club on the 8 court Horseshoe Pitch subject to the location of the re-alignment of Otter Point Road. CARRIED UNANIMOUSLY ACTION ITEM: Staff to schedule a Public Information meeting for the proposed Horseshoe Pitch in John Phillips |

| Date | Meeting | Motion |
|--------------------|---|--|
| | | Memorial Park and to bring forward information on the costs associated with construction of the Horseshoe Pitch and the costs for placing capital infrastructure (ie. Public washrooms) in John Phillips Memorial Park. |
| September 15, 2014 | Committee of the Whole – Public Information Meeting | MOVED and seconded to direct staff to provide a report to Council on a proposal to locate the horseshoe pitching facilities to the Sooke River Road Park; AND THAT staff include information as to parking and the Agricultural Land Commission (ALC) approval for the use of the Park for the horseshoe pitching facilities. CARRIED UNANIMOUSLY |
| October 27, 2014 | Council | MOVED and seconded to approve the use of municipal lands located at 2250 Sooke River Road by the Sooke Horseshoe Association for 8 horseshoe courts, plus parking within the Sooke River Road right of way; AND TO direct staff to draft an agreement with the Sooke Horseshoe Association for the approved location of the Horseshoe Pitch at 2250 Sooke River Road for Council approval and notice to the adjacent property owners. CARRIED |