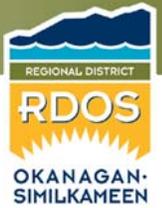


ADMINISTRATIVE REPORT



TO: Advisory Planning Commission

FROM: B. Newell, Chief Administrative Officer

DATE: December 15, 2020

RE: Amendment of Environmentally Sensitive Development Permit (ESDP) Areas

Purpose:

The purpose of this report is to seek input from the Electoral Area Advisory Planning Commissions regarding proposed amendments to the Environmentally Sensitive Development Permit (ESDP) Areas.

Background:

At its meeting of August 6, 2020, the following Director's Motion was carried by the Regional District Board:

THAT the RDOS Board apply Environmentally sensitive development permits (ESDPs) to only Subdivisions and rezonings; and further,

THAT Staff report back to the Board on the options to make ESDPs more effective at Subdivisions and rezonings; and further,

THAT ESDPs should in no way prevent or discourage residents from firesmarting their properties according to the firesmart principles.

At its meeting of September 3, 2020, the August 6, 2020, Motion was debated and carried by the Regional District Board.

At its meeting of October 15, 2020, the Planning and Development (P&D) Committee of the Board considered Amendment Bylaw No. 2912, and resolved "that the proposed amendments to the ESDP areas be referred to the Electoral Area Advisory Planning Commissions."

The proposed amendments relate to the Electoral Area "A", "C", "D", "E", "F", "H" and "I" OCP Bylaws and will be considered by each applicable APC.

Analysis:

In response to the direction provided by the Board at its meeting of September 3, 2020, a series of proposed amendments to the Electoral Area Official Community Plan (OCP) Bylaws have been prepared (see Attachment No. 1) and include:

- revised policy statements that speak to environmentally sensitive development permits being implemented only in relation to subdivision;
- the introduction of a new guideline related specifically to subdivision design in ESDP Areas;
- the deletion of "construction of, addition to or alteration of a building or other structure" and the "alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services" as triggers for an environmentally sensitive development permit; and

- the deletion of all non-subdivision related exemptions for environmentally sensitive development permits.

In support of these OCP amendments, it is further proposed to amend the Development Procedures Bylaw No. 2500, 2011, in order to remove existing requirements for “Rapid Environmental Assessments” (REA) as an application type. This is due to REA’s being primarily issued in relation to building permit applications.

Finally, it will be proposed at first reading that the Board adopt a new policy that will defer enforcement of specific ESDP Area requirements during the transition to the new development permit area guidelines.

Administration is concerned about requiring property owners to submit applications that will be made redundant as a result of the proposed amendments contained in Bylaw No. 2912, as well as expending resources on enforcement actions in support of guidelines that are to be repealed.

Administration does not consider that any amendments to the existing ESDP Area Maps schedules to the OCP Bylaws is required in order to implement the Board’s direction.

With regard to the Board direction that “ESDPs should in no way prevent or discourage residents from firesmaring their properties according to the firesmart principles”, Administration considers that this will be addressed by refocusing ESDPs to apply to subdivisions only.

Finally, Administration notes that the Electoral Area OCP Bylaws already contain very strong language regarding the rezoning of environmentally sensitive lands, specifically, that the Board:

Will not support the re-designation of land under the OCP or the re-zoning of land under the Zoning Bylaw where it is determined that the proposed development is contrary to the ESDP Area Guidelines of this Plan and the impact cannot be mitigated to a level acceptable to the Regional Board.

On this basis, Administration considers that policies already exist that elevate the importance of ESDPs as a Board consideration at the rezoning stage.

P&D Committee:

At the P&D Committee of October 15, 2020, the following requests were made by Electoral Area Directors:

- performance measurements for the ESDP Area; and
- examples of where work was done without a permit in an ESDP Area and how compliance was achieved.

To the extent that the Regional District maintains performance measurements for ESDPs, these are in relation to permitting statistics, with the average number of ESDP’s issued by the Regional District prior to 2017 being 1-2/year, which increased to approximately 40+ per year after the 2017 Update:

	Area “A”	Area “C”	Area “D”	Area “E”	Area “F”	Area “I”	Total
2017	3	2	9	1	0	[N/A]	15*
2018	10	7	17	2	2	1	39
2019	14	2	11	7	3	8	45

2020	9	3	4	7	5	6	34†
Total	36	14	41	17	10	15	133

* ESDP's issued from June 15th to December 31st of 2017

† ESDP's received from January 1st to October 30th of 2020

Of the 26 ESDP's issued between 1997 and 2017, a majority were issued for subdivisions with the remainder being related to non-residential development (i.e. motel, campground, tennis court and water reservoir).

After June 15, 2017, 82.3% issued ESDP's have been for single detached dwellings or related residential structures (i.e. garages) with the remainder related to subdivisions (6.7%) and other non-residential development (7.5%).

Of the ESDP's issued since 2017, 89% have been approved under the Expedited ESDP option, which requires the submission of a "Rapid Environmental Assessment" (REA) by qualified environmental professionals (NOTE: this option did not exist prior to 2017).

With regard to examples of where work was done in an ESDP Area without a permit and how compliance was achieved, staff will provide examples of these as part of the presentation of this report to APC members.

Summary:

Further to the direction provided by the Regional District Board on September 3, 2020, Administration considers that the proposed amendments contained in draft Amendment Bylaw No. 2912 will meet the objective of having ESDPs only apply to subdivisions and rezonings. On this basis, Administration is recommending in favour of the proposed amendments.

Administrative Recommendation:

THAT the APC recommends to the RDOS Board of Directors that the proposed amendments to the Environmentally Sensitive Development Permit (ESDP) Area designation be approved.

Options:

1. THAT the APC recommends to the RDOS Board of Directors that the proposed amendments to the Environmentally Sensitive Development Permit (ESDP) Area designation be approved.
2. THAT the APC recommends to the RDOS Board of Directors that the proposed amendments to the Environmentally Sensitive Development Permit (ESDP) Area designation be approved with the following conditions:
 - i) TBD
3. THAT the APC recommends to the RDOS Board of Directors that the proposed amendments to the Environmentally Sensitive Development Permit (ESDP) Area designation be denied.

Respectfully submitted:


C. Garrish, Planning Manager

Attachments:

No. 1 – Proposed Revisions to ESDP Area Guidelines

22.2 Environmentally Sensitive Development Permit (ESDP) Area

.1 Category

The Environmentally Sensitive Development Permit (ESDP) Area is designated pursuant to Section 488(1)(a) of the *Local Government Act* for the protection of the natural environment, its ecosystems and biological diversity.

.2 Area

The lands shown as Environmentally Sensitive Development Permit Area on Schedule 'G' are designated as an Environmentally Sensitive Development Permit Area.

~~The ESDP Area identified on Schedule 'G' is derived from several sources:~~

- ~~• sensitive ecosystem inventory mapping completed to the "Standard for Mapping Ecosystems at Risk in BC", BC Ministry of Environment, 2006;~~
- ~~• BC Grassland Mapping, Grasslands Conservation Council of BC;~~
- ~~• Provincially designated wildlife habitat areas;~~
- ~~• Provincial mapping of wetlands and other watercourses;~~
- ~~• Provincial mapping of Parks, protected areas and other map reserves for environmental protection;~~
- ~~• BC Conservation Data Centre;~~
- ~~• Buffers based on "Develop with Care: Environmental Guidelines for Urban and Rural Land Development in British Columbia", BC Ministry of Environment, 2006; and~~
- ~~• The sensitive ecosystems include, but are not limited to: broadleaved woodlands, grasslands, mature forests, old forests, coniferous woodlands, riparian, wetlands, sparsely vegetated.~~

.3 Justification

To regulate development activities within environmentally sensitive areas in order to protect important sensitive ecosystems and biological diversity including valuable habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat.

~~The primary objective of this Development Permit Area designation is to minimize the impact of development on the natural environment. The natural environment provides essential habitat and corridors for plants, fish, birds and other organisms. It also acts as a natural water storage, drainage and purifying system, which can help to protect private property from flooding or land loss due to watercourse erosion. Furthermore, as concerns over climate change grow, it should be recognized that functioning ecosystems are more efficient at consuming carbon dioxide as well as carbon storage.~~

~~The south Okanagan-Similkameen area is considered to be one of the most ecologically diverse in British Columbia as well as Canada, and includes sensitive ecosystems which support a number of provincially Red and Blue-listed species (extirpated, endangered, threatened, and vulnerable) and federally listed Species at Risk. This Development Permit Area is intended to protect habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat within the Regional District of Okanagan-Similkameen.~~

.4 Background

The natural environment provides essential habitat and corridors for plants, fish, birds and other organisms. It also acts as a natural water storage, drainage and purifying system, which can help to protect private property from flooding or land loss due to watercourse erosion. Furthermore, as concerns over climate change grow, it should be recognized that functioning ecosystems are more efficient at consuming carbon dioxide as well as carbon storage. Vegetation adjacent to watercourses needs to remain in a largely undisturbed state in order to maintain a healthy environment and clean water.

The south Okanagan-Similkameen area is considered one of the most ecologically diverse in British Columbia and Canada, and includes sensitive ecosystems which support a number of provincially Red and Blue-listed species (extirpated, endangered, threatened, and vulnerable) and federally listed Species at Risk. The ESDP Area is intended to protect habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat within the Plan Area.

The ESDP Area is comprised of important habitat areas for wildlife and plant communities. Sensitive ecosystems in the area include grasslands, riparian areas, old forest, shrub-steppe, broadleaf woodland, coniferous woodland, wetlands, shallow soiled rock outcrops and ridges.

~~In 2009, the Regional District undertook Sensitive Ecosystem Inventory (SEI) mapping at Eastgate, Otter Lake (i.e. Tulameen), and the Chain Lakes Corridor. These three areas were selected for mapping due to their ecological sensitivity as well as being locations where recreational development pressure is increasing. The total area mapped represented approximately 19,800 ha, with a regional break-down as follows:~~

- ~~1. Eastgate ————— 2,455 ha;~~
- ~~2. Otter Lake ————— 6,650 ha; and~~
- ~~3. Chain Lakes Corridor ——— 10,605 ha.~~

~~Of this area, approximately 25% was classified as a sensitive ecosystem due to the presence of Broadleaf and Coniferous Woodlands, Seasonally Flooded Fields, Grasslands, Mature Forest, Riparian and Wetlands. This differs from the Okanagan Valley, where 48% of the landscape is considered as sensitive.~~

~~As a majority of the sensitive ecosystems in the Similkameen Valley occur at lower elevations and valley bottoms (and are less frequent at higher elevations as result) settlement of the region, which generally occurred along the valley bottom, has seen a dramatic reduction in the overall area of these ecosystems. Consequently, these ecosystems are now considered to be potentially at risk to harm from disturbance or development activities.~~

Grasslands

~~Grassland ecosystems are dominated by bunchgrasses and scattered forbs (a non-woody flowering plant that is not a grass) with shrubby inclusions, and represent the western-most occurrence of these ecosystems in the British Columbia. These grasslands typically develop on sites that are too hot and dry for forests due to factors such as directional exposure, slope, shallow soils or meso-climate conditions.~~



Bluebunch Wheatgrass-dominated Grasslands found on steep sites with deep soils.



Coniferous Woodlands on shallow soils with some in-growth due to long-term fire suppression).

Coniferous Woodlands

~~Coniferous Woodlands in the Plan area are dominated by open stands of Douglas-fir or Ponderosa Pine with open grassy under stories, often on shallow soils or on deep soils with warm aspects. These sites are areas where moisture deficiencies or shallow soils limit tree growth, resulting in widely spaced trees. Historically, these ecosystems have been maintained by fire, but fire suppression over the past century has facilitated dense conifer in-growth which has reduced the quality of these sites for habitat and biodiversity values.~~

Broadleaf Woodlands

~~Broadleaf Woodlands ecosystems are dominated by Trembling Aspen and generally occur in depressions and moist areas associated with grasslands. They are frequently in a patchy distribution, with a shrubby understory and are often disturbed by cattle grazing. Broadleaf woodlands are important areas in that they represent specialized habitats that offer high biodiversity.~~



Broadleaf Woodland dominated by Trembling Aspen on a level moist site.



A blue-listed Mature Forest ecosystem.

Mature Forest

Mature Forest ecosystems are dominated by mature coniferous trees, often interspersed with a few large old trees. While Mature Forests do not exhibit the biological diversity of other sensitive ecosystem classes, they do offer important habitat for some species of reptiles and amphibians, especially rattlesnakes, who will take cover in these ecosystems in summer. Birds such as song birds, woodpeckers and owls use the mature trees for roosting, nesting and foraging. Tree cavities and loose bark provide important habitat for bats and other small mammals. Mature forests with a component of old snags can be very important, especially in an area where true Old Forest ecosystems are lacking or very rare.

Old Forest

Old forest ecosystems are dominated by old trees that are greater than 140 years of age, and are very rare in Electoral Area "H" owing to an extensive history of fires, logging and development. They exist as only very small relic areas within a matrix of mature forests, younger forests, grasslands and sparsely vegetated areas. Generally, their overstories are open and their understories are dominated by grasses and shrubs. Dead wood, snags and coarse woody debris may or may not be present depending on the fire history of the particular stand. An accumulation of fuels, in and around relic old forest sites, puts them at risk for wildfire.



PHOTO: Timberline

Old Forest dominated by Ponderosa Pine and an open-grassy understory.



PHOTO: Timberline

Sparsely Vegetated cliffs.

Sparsely Vegetated

Sparsely vegetated ecosystems are areas with little vegetation, and typically occur on bedrock or talus slopes and are harsh environments where site features limit the establishment of vegetation. Sparsely vegetated areas are, however, rich in niche habitats, cracks and crevices, especially on warm aspects, which provide cover, forage and rearing habitat for amphibians and reptiles. These ecosystems are often impacted by recreational activity as they are attractive to hiking, biking and ATVs. Development activities surrounding these ecosystems have resulted in increased exposure, reducing their connectivity and isolating them from other ecosystems and habitats.

Riparian Areas

~~Riparian ecosystems are associated with water bodies such as creeks, rivers, ponds, lakes, marshes and swamps. They are influenced by the seasonal fluctuations of the water body and may be dominated by trees or shrubs depending on the regularity and severity of disturbances. Most riparian sites, especially those on level floodplains, are regularly disturbed by the water body depending on their distance from, and their elevation relative to, the water body. These ecosystems vary in width and their nature is determined by site specific features such as soil texture, surrounding vegetation, hydrology and topography. Riparian ecosystems are diverse, dynamic and important landscape features. They are difficult to map accurately as their character and structure can change from year to year depending on flooding events.~~



PHOTO: Timberline

~~A cottonwood dominated Riparian ecosystem.~~



PHOTO: Timberline

~~Seasonally Flooded Fields also contribute to habitat diversity and can be restored to a riparian state.~~

~~Seasonally Flooded Fields~~

~~Seasonally flooded fields are areas that have been converted to agricultural fields and usually occur on finer textured materials in low lying areas along rivers in their floodplain. These areas have standing water in them for at least some portion of the year, providing habitat for amphibians, water fowl and other birds. This habitat contributes to the overall biodiversity of the Princeton area. If these areas are reclaimed into riparian habitat from agricultural fields, with time, they will contribute to restoring the natural state and diversity of the area.~~



PHOTO: Timberline

~~Wetlands can exist as very small complexes of swamps, marshes and fens.~~

~~Wetlands~~

~~Wetlands are typically highly productive ecosystems where the water table is at or near the surface for a long enough period to influence soil and vegetation development. These ecosystems support plants that are adapted to wet soils which have tolerance to lower dissolved oxygen in the ground water. Soils can be decomposed organic material or glycolic mineral soils.~~

.5 Development requiring a permit

- .1 A development permit is required, except where exempt under Section 18.2.7 (Exemptions), for development on lands within the ESDP area. Where not exempted, development requiring a development permit includes:

-
- a) subdivision.

~~.5—Determining whether development falls within the ESDP Area~~

~~.1—To confirm whether a proposed development is within land identified as environmentally sensitive in the ESDP Area for which a development permit application is required, locate the following:~~

- ~~a)—the development in relation to the important habitat areas, identified in Schedule ‘G’.~~

.6 Guidelines

.1 A Development Permit is required for development within an ESDP Area, and shall be in accordance with the following guidelines:

a) An Environmental Assessment (EA) Report, prepared in accordance with the requirements of the Regional District’s Development Procedures Bylaw, must be submitted to the Regional District in respect of the proposed development by a qualified environmental professional (QEP) that is a Registered Professional Biologist in British Columbia (RPBio) or team that shall include a RPBio under contract to the development applicant, and shall include:

i) An Ecological Assessment Phase including:

- .1 background information;
- .2 an ecological assessment;
- .3 listing of rare and endangered species; and
- .4 stratification and rating of Environmentally Sensitive Areas (ESAs).

ii) An Impact Assessment and Mitigation Phase including:

- .1 description of proposed development;
- .2 assessment of potential impacts;
- .3 short and long term impacts;
- .4 cumulative and residual impacts;
- .5 avoidance of ESAs;
- .6 mitigation and compensation;
- .7 security requirements;
- .8 monitoring reports;
- .9 accountability; and
- .10 monitoring plan.

b) Subdivision and rezoning of undeveloped lands that contain significant portions of high ecological value should be avoided.

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- c) Subdivision and development plans must be designed in a way that protect the areas with the highest environmental values. Methods to achieve this can include, but are not limited to:
 - i) Parcel and road network layouts that avoid areas with high ecological value;
 - ii) Clustering development onto less environmentally sensitive lands; and
 - iii) Protection of areas with high ecological value through Conservation Area (CA) designations, land donations public trusts, and protective covenants.
 - d) Development should be planned away from native trees and trees containing active nest sites or cavities. If removal of native trees cannot be avoided, mitigation should include restoration and replanting with equivalent native trees.
 - e) Habitat connectivity and the retention of connectivity corridors between sensitive ecosystems should be preserved by avoiding development across corridors Wildlife crossings should be designed to protect continuity of wildlife corridors where these are interrupted by roadways.
 - f) Monitoring reports may be required to be submitted to the Regional District following the completion of a development in order to confirm the conditions of a development permit have been met.
 - g) The Regional District may incorporate any areas or measures identified in an EA to protect sensitive ecosystems from the effect of development as terms and conditions of the development permit.
- .2 If an area of land is subject to additional Development Permit Area designations under Section 488(1)(a) of the *Local Government Act*, the Regional District requires that a single development permit application that combines the requirements of each Development Permit Area be submitted. The application will be assessed in accordance with the individual development permit guidelines for each applicable Development Permit Area under this bylaw and, if approved, issued under a combined development permit.
- ~~.2 A development permit is required, except where specified under Exemptions Section 22.2.8, for development on lands within the ESDP area. Where not exempted, development requiring a development permit includes:~~
- ~~a) subdivision,~~
 - ~~b) the construction of, addition to or alteration of a building or other structure;~~
 - ~~c) alteration of the land, including grading, removal, deposit or moving of soil, paving, installation of drainage or underground services.~~
- ~~.3 Development shall be in accordance with the following guidelines:~~
- ~~a) If development is considered within an ESDP Area, an Environmental Impact Assessment (EIA) is required and must be carried out by a qualified environmental professional (QEP). The EIA must be based on the Regional District's approved terms of reference (TOR), and includes two phases of assessment as follows, which can be completed together or separate:~~

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- ~~i) Inventory Phase to be carried out in advance of any preliminary layout plan or any preparatory site disturbances. The intention is to assess both the biological conditions and physical conditions of a site. The Inventory Phase determines a development footprint respectful of sensitive ecosystems and helps streamline the development approval process.~~
 - ~~ii) Impact Assessment and Mitigation Phase to be carried out after the preliminary layout plan is prepared but prior to the Regional Subdivision Approving Authority giving preliminary layout approval or any preparatory site disturbances. The Impact Assessment and Mitigation Phase outlines the impact, if any, of the development footprint on sensitive ecosystems and recommends mitigation measures to minimize or cause no impact to sensitive ecosystems.~~
 - ~~b) The Regional District may incorporate the preliminary layout plan and any mitigation measures identified in the EIA necessary to protect sensitive ecosystems in the area from the effect of the development as terms and conditions of the development permit. Minor changes that do not materially affect the preliminary layout plan required by the Regional Subdivision Approving Officer before signing the final subdivision plan may be permitted as determined by the Regional District's Chief Administrative Officer (CAO).~~
 - ~~c) Incorporation of conservation area, park, trail and wildlife and fish corridors to provide continuity between important habitats without creating conflicts will be encouraged by the Regional Board.~~
 - ~~d) Where it is not practical to preserve important habitat areas, the recommendations of Provincial and/or Federal governments, and/or staff, and/or a committee of the Regional Board in the context of the EIA Report will be considered. Options may include development modifications, enhancement opportunities, dedicating or restoring comparable habitat area elsewhere. Permanent disturbances such as roads and structures must not be located on critical habitats as identified by the QEP.~~
 - ~~e) Dedication to Crown of the natural watercourse, in accordance with the *Local Government Act*.~~

~~.7 Bonding and Environmental Monitors~~

- ~~.1 The Regional District Board may require security as a condition of issuance of a development permit in accordance with Section 502 of the *Local Government Act* to pay for remediation if:
 - ~~a) a condition in a permit respecting landscaping has not been satisfied;~~
 - ~~b) an unsafe condition has resulted as a consequence of contravention of a condition in a permit; or~~
 - ~~c) damage to the natural environment has resulted as a consequence of a contravention of a condition in a permit.~~~~
- ~~.2 Where the Regional District requires a security deposit as a condition of the development permit approval, the applicant must provide a security deposit at 115% of the estimated cost of any remediation works, as prepared by a QEP.~~

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- ~~.3 The Regional District may require monitoring reports prepared by a QEP, during construction, and up to one (1) year after construction, the purpose of which are to confirm the required conditions of the development permit have been met.~~
 - ~~.4 The security deposit shall remain in effect until the Regional District has been notified, in writing, by a QEP and Regional District staff are satisfied that the conditions of the development permit have been met. However, to confirm that the remedial works, such as successful plant establishment, have been completed, the Regional District will withhold 10% of the security deposit for one year.~~

.8 Exemptions

A development permit is not required for development within land in the ESDP area for:

- .1 subdivisions that propose to:
 - a) consolidate existing parcels, including the consolidation of parts of a closed road to an existing parcel; or
 - b) alter parcel lines between two or more parcels where no additional parcels are created upon completion of the alteration.
- ~~1. the construction, alteration, expansion, repair, demolition or maintenance of one (1) single detached dwelling and accessory buildings related to that dwelling, and any related grading, removal, deposit or moving of soil;~~
- ~~2. building additions or alterations that represent a floor area of less than 10.0 m²;~~
- ~~3. provision of utilities and a driveway provided the total area of development does not exceed 500.0 m²;~~
- ~~4. works conducted in accordance with the Provincial *FireSmart Manual*, provided that all landscaping is conducted within 10.0 metres of an existing structure or building (existing on-site native plants which meet the *FireSmart Manual* guidelines are encouraged to be maintained as part of the landscaping plan);~~
- ~~5. the construction, alteration, addition, repair, demolition and maintenance of farm buildings in the ALR;~~
- ~~6. community utility services where they meet provincial and federal regulations;~~
- ~~7. the repair of existing fences;~~
- ~~8. a subdivision, if the smallest parcel resulting from subdivision is 20 ha or greater, or if the subdivision will create only two (2) parcels (i.e. one new parcel and a remainder parcel);~~
- ~~9. any type of development, provided that a QEP has confirmed the absence of sensitive ecosystems or federally or provincially listed species and their habitats on the property;~~
- ~~10. any farm use as defined in the *Agriculture Land Commission Act* on land located in the ALR, provided farming practices are in accordance with Provincial and Federal policies and environmental guidelines.~~