

# ADMINISTRATIVE REPORT



**TO:** Advisory Planning Commission

**FROM:** B. Newell, Chief Administrative Officer

**DATE:** January 20, 2021

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

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## **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.

At its meeting of December 16, 2020, the Electoral Area "I" Advisory Planning Commission (APC) resolved to "defer a motion on approving or rejecting the proposed amendments to the next scheduled APC meeting."

## **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,

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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: 1) performance measurements for the ESDP Area; and 2) 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†

<b>Total</b>	<b>36</b>	<b>14</b>	<b>41</b>	<b>17</b>	<b>10</b>	<b>15</b>	<b>133</b>
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\* ESDP's issued from June 15<sup>th</sup> to December 31<sup>st</sup> of 2017 /

† ESDP's received from January 1<sup>st</sup> to October 30<sup>th</sup> 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

## **18.2 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 'C' are designated as an Environmentally Sensitive Development Permit Area.

### **.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.

### **.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. Specifically, BC's pocket desert, Kruger Mountain, Osoyoos Lake, the oxbows and wetlands of Okanagan River, Richter Pass with the natural ridgeline views between Highway 3 and Osoyoos Lake. It is the close proximity of these diverse habitats that contribute to a wide variety of species, both common and rare, that are found in this Electoral Area.

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## .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;
  - ~~b) the construction of, addition to or alteration of a building or other structure; and~~
  - ~~c) alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services.~~

## .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.

## ~~.7 Expedited Development Permit~~

- ~~.1 Despite sub-section 17.2.6.1(a), the Regional District may issue a development permit on the basis of a Rapid Environmental Assessment (REA) Report for development where:~~
- ~~a) A REA, prepared in accordance with the Regional District's Development Procedures Bylaw, has been 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 or team that includes a Registered Professional Biologist in British Columbia (RPBio) under contract to the development applicant, and includes:~~
    - ~~i) a site plan documenting, if applicable, the location and extent of Environmentally Valuable Resources (EVRs) occurring within 100 metres of the proposed footprint of the development.~~
    - ~~ii) a completed Rapid Environmental Assessment Checklist signed and sealed by the responsible QEP indicating:~~

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- ~~.1 there is no known occurrence of an EVR on or within 100 metres of the proposed footprint of the development; or~~
  - ~~.2 known EVR occurrence(s) have been identified and:
    - ~~a) measures have been prescribed to avoid impacts; or~~
    - ~~b) acceptable restoration/mitigation have been prescribed.~~~~
  - iii) recommended avoidance or mitigation measures if known EVR occurrences have been identified.
  - b) If a QEP cannot certify the absence of EVRs or that impacts to known EVRs have been avoided or acceptably mitigated through a REA to the satisfaction of the Regional District, an EA as outlined under sub-section 17.2.6.1(a) will be required.
  - c) The Regional District may incorporate any areas or measures identified in a REA to protect sensitive ecosystems from the effect of development as terms and conditions of the development permit.

## **.7 Exemptions**

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

- ~~.1 The construction, repair, maintenance or alteration of public utility works, including sanitary sewer, storm sewer, water, natural gas, cable, hydro electric or telecommunications works, but excluding communication towers and antenna systems;~~
- ~~.2 the repair or maintenance of existing buildings and structures provided there are no additions or increases to the footprint of the building or structure;~~
- ~~.3 Residential development where a completed Building Permit application has been accepted by the Regional District, the proposed development does not exceed 50.0 m<sup>2</sup> from the original footprint of the principal dwelling unit and the development comprises either:
  - ~~a) an alteration or addition to the original footprint of an existing principal dwelling unit;~~
  - ~~or~~
  - ~~b) the construction of an accessory building or structure, provided the accessory building or structure is not situated beyond 10.0 metres of a principal dwelling unit.~~~~
- ~~.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);~~
- ~~.5 the construction, alteration, addition, repair, demolition and maintenance of buildings and structures to be used in relation to a farm use as defined in the *Agricultural Land Commission Act* on land located in the ALR and classified as "farm" under the *Assessment Act*;~~
- ~~.6 any farm use as defined in the *Agriculture Land Commission Act* on land located in the ALR;~~

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~~.7 any farm use that is subject to an approved Environmental Farm Plan (EFP) through the Canada-British Columbia Environmental Farm Plan Program;~~

~~.8 the repair of existing fences;~~

.9 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.