

# ADMINISTRATIVE REPORT



**TO:** Planning and Development Committee  
**FROM:** B. Newell, Chief Administrative Officer  
**DATE:** March 18, 2021  
**RE:** Amendment of Environmentally Sensitive Development Permit (ESDP) Areas

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## **Administrative Recommendation:**

**THAT the Regional District of Okanagan-Similkameen:**

- 1. Initiate an update to the Environmentally Sensitive Development Permit Areas as identified in Official Community Plan Amendment Bylaw 2912, 2020; and,**
- 2. Initiate an amendment to the Development Procedures as identified in Bylaw 2500.17, 2020.**

## **Purpose:**

The purpose of this report is to seek direction from the Board in relation to proposed amendments to the Electoral Area Official Community Plan (OCP) Bylaws as they relate to Environmentally Sensitive Development Permit (ESDP) Areas.

## **Background:**

At its meeting of August 6, 2020, the following Director's Motion was brought forward to 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 firesmaring 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 Nos. 2912 and 2500.17 and resolved that "the proposed amendments to the ESDP areas be referred to the Electoral Area Advisory Planning Commissions."

## **Public Process:**

The proposed amendments to the ESDP Areas were considered by the Electoral Area APCs between November of 2020 and February 2021, with the following recommendations put forward for Board consideration:

Electoral Area "A": that the proposed amendments be approved, subject to the following:

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- *that parcel coverage percentage reductions be considered (dealing with what square footage a building can be vs. size of the lot); and*
  - *that Site-Specific re-zonings may need to be exempt on a case by case basis.*

Electoral Area “C”: a motion was not made due to the loss of quorum during the meeting.

Electoral Area “D”: that the proposed amendments be approved, subject to the following:

- *a trigger for the issuance of a permit continue to include the “alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services” for parcels greater than 2.0 ha.*

Electoral Area “E”: that the proposed amendments be approved.

Electoral Area “F”: that the proposed amendments be denied.

Electoral Area “H”: that the proposed amendments be approved.

Electoral Area “I”: that the proposed amendments be denied.

In addition to consideration by the Electoral Area APCs, Amendment Bylaw No. 2912 was referred to the agencies listed at Attachment No. 1, while received comments are included at Attachment No. 2.

The Board is asked to be aware that consultation with residents and property owners has not yet been undertaken.

### **Analysis:**

Administration is aware that the South Okanagan-Similkameen is recognized as a region that combines a wide range of natural habitat areas with a large number of unique species, many of which are not found elsewhere in the province or in Canada. That the area is also home to the largest number of endangered and threatened species of plants and animals in BC and Canada.

Administration is further aware that the Board has adopted a vision for the Regional District “as a steward of our environment, sustaining a diverse and livable region that officers a high quality of life through good governance.”

Yet, based upon previous experience, Administration considers development permit area designations to have significant limitations when used to meet the land use objectives of the Board, including:

- the supremacy of the electoral area zoning bylaws (i.e. an ESDP designation cannot be used to prohibit a use or density allowed by zoning);
- the uncertainty that exists around the authority of a local government to ticket for infractions against an ESDP (principal recourse being injunctive action at BC Supreme Court);
- the absence of statutory authority to require post-approval monitoring reports;
- the limitations of relying on landscaping bonds to achieve compliance (i.e. seen to be the “cost of doing business”, expense of having a biologist confirm landscaping may exceed value of bond);
- reliance on the Professional Reliance Model and lack of internal resources / expertise to undertake monitoring and compliance; and

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- absence of performance measuring criteria (i.e. it is presently unknown if ESDPs are meeting their objective of minimizing the impacts of development on the environment).

Administration is further concerned that the stated objective of the ESDP Area designation; “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”, is overly broad and provides inadequate guidance to QEPs regarding the Regional District’s goals for the ESDP Area designation.

For these reasons, Administrations generally supports the proposed amendments contained in Amendment Bylaw No. 2912 to re-focus the ESDP Area designation on the subdivision stage and that greater policy emphasis on environmental values be considered by the Board at the rezoning stage.

#### APC Recommendations:

In response to the recommendations provided by the Electoral Area APCs, and despite the limitations of DPs outlined above, there is seen to be merit in retaining a permit requirement for soil disturbance and vegetation removal on larger parcels (i.e. those greater than 2.0 ha in area), but that this should be accompanied by an exemption for constructing a principal residential use (including driveway access and septic field).

Administration considers the request to review maximum allowable parcel coverage in the rural-residential zones to have value, and notes that a similar review in the rural zones (i.e. RA, AG & LH) was previously completed as part of work related to the preparation of a single zoning bylaw for the Okanagan Electoral Areas (i.e. in the RA Zone, the maximum parcel coverage for parcels greater than 2.0 ha is 5%).

#### Agency Referral Comments:

The following is a summary of some of the comments and concerns that have been received from agencies:

- the Agricultural Land Commission (ALC) generally supports the proposed amendments, while the Ministry of Agriculture has “no comments”.
- Environment Canada and Climate Change (ECCC) is concerned that the amendments will create gaps and eliminate oversight of activities, resulting in less stewardship and the destruction of critical habitat on private lands. ECCC notes that it has provided significant funds to support the environmental planner utilized by the RDOS and the member municipalities and is encouraging the Board to consider a modified approach to the ESDP Area amendments.
- The Ecosystem Branch of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development is concerned that the region is facing unprecedented development pressures and that the proposed amendments to ESDP Areas will remove most of the (terrestrial) oversight and that this could have far-reaching consequences for Species at Risk in the Okanagan and Similkameen. The Branch is recommending that more focused amendments be considered.

(NOTE: approximately 2.99% of the total land base in the Regional District has been designated as an ESDP Area. This equates to 7.72% of the land base in the Okanagan Valley, 1.42% of the land base in Electoral Area “H” and 0.0% in Electoral Areas “B” & “G”. In most electoral areas Crown land represents around 90% of the land base and the Regional District defers to the province to protect environmental values on Crown land).

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- The South Okanagan Similkameen Conservation Program (SOSCP) has raised many concerns, the principal of which appears to be the proposed changes to ESDPs are inconsistent with the Regional District’s corporate Vision of being “a steward of our environment ...”
  - Staff at the Central Okanagan Regional District (CORD) support a consistent approach to the protection of the environment across the Okanagan Valley and are concerned that removing building permits as a trigger for an ESDP will result in the RDOS losing the ability to protect the natural environment at a critical juncture in the development process.

**Public Comments:**

While public comments have been received in relation to the proposed amendments and are included at Attachment No. 2, Administration is not providing a summary of these as Bylaw No. 2912 has yet to be formally notified to the public and it is unknown if the comments received to date are representative of the broader community.

**Alternatives:**

- .1 THAT Amendment Bylaw No. 2912, 2020, Amendment Bylaw No. 2500.17, 2020, not be initiated.
- .2 THAT initiation of Amendment Bylaw No. 2912, 2020, Amendment Bylaw No. 2500.17, 2020, be deferred pending:
  - i) *TBD*

**Respectfully submitted:**



C. Garrish, Planning Manager

**Attachments:** No. 1 – Agency Referral List

No. 2 – Proposed Amendments to ESDP Area Guidelines

No. 3 – Representations

No. 4 – Amendment Bylaw No. 2912, 2020 (annotated version – 2020-10-15)

No. 5 – Amendment Bylaw No. 2500.17, 2020 (annotated version – 2020-10-15)

Attachment No. 1 – Agency Referral List

Referrals have been sent to the following agencies as highlighted with a , regarding Amendment Bylaw No. 2912:

<input checked="" type="checkbox"/>	Agricultural Land Commission (ALC)	<input checked="" type="checkbox"/>	Fortis
<input checked="" type="checkbox"/>	Interior Health Authority (IHA)	<input checked="" type="checkbox"/>	City of Penticton
<input checked="" type="checkbox"/>	Ministry of Agriculture	<input checked="" type="checkbox"/>	District of Summerland
<input checked="" type="checkbox"/>	Ministry of Energy, Mines & Petroleum Resources	<input checked="" type="checkbox"/>	Town of Oliver
<input type="checkbox"/>	Ministry of Municipal Affairs & Housing	<input checked="" type="checkbox"/>	Town of Osoyoos
<input checked="" type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Ecosystem Section)	<input checked="" type="checkbox"/>	Town of Princeton
<input checked="" type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch)	<input type="checkbox"/>	Village of Keremeos
<input type="checkbox"/>	Ministry of Jobs, Trade & Technology	<input checked="" type="checkbox"/>	Okanagan Nation Alliance (ONA)
<input type="checkbox"/>	Ministry of Transportation and Infrastructure	<input checked="" type="checkbox"/>	Penticton Indian Band (PIB)
<input type="checkbox"/>	Integrated Land Management Bureau	<input checked="" type="checkbox"/>	Osoyoos Indian Band (OIB)
<input checked="" type="checkbox"/>	BC Parks	<input checked="" type="checkbox"/>	Upper Similkameen Indian Band (USIB)
<input checked="" type="checkbox"/>	School District #53	<input checked="" type="checkbox"/>	Lower Similkameen Indian Band (LSIB)
<input checked="" type="checkbox"/>	School District #58	<input type="checkbox"/>	Environment Canada
<input checked="" type="checkbox"/>	School District #67	<input checked="" type="checkbox"/>	Fisheries and Oceans Canada
<input checked="" type="checkbox"/>	Central Okanagan Regional District	<input checked="" type="checkbox"/>	Canadian Wildlife Services
<input checked="" type="checkbox"/>	Kootenay Boundary Regional District	<input type="checkbox"/>	OK Falls Irrigation District
<input type="checkbox"/>	Thompson Nicola Regional District	<input type="checkbox"/>	Kaleden Irrigation District
<input type="checkbox"/>	Fraser Valley Regional District	<input checked="" type="checkbox"/>	South Okanagan Similkameen Conservation Program

## **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.