

ADMINISTRATIVE REPORT



TO: Board of Directors
FROM: B. Newell, Chief Administrative Officer
DATE: March 3, 2022
RE: Environmentally Sensitive Development Permit (ESDP) Area Review

Administrative Recommendation:

THAT Bylaw No. 2912, 2022, being a bylaw of the Regional District of Okanagan-Similkameen to amend the Official Community Plans to update the Environmentally Sensitive Development Permit Area, be read a first and second time and proceed to public hearing;

THAT Bylaw No. 2500.17, 2022, being a bylaw of the Regional District of Okanagan-Similkameen to amend the Development Procedures Bylaw be read a first and second time;

THAT the process, as outlined in this report from the Chief Administrative Officer dated March 3, 2022, is considered appropriate consultation for the purpose of Section 475 of the *Local Government Act*;

THAT, in accordance with Section 477 of the *Local Government Act*, the Board of Directors has considered Amendment Bylaw No. 2912, 2022, in conjunction with its Financial and applicable Waste Management Plans;

THAT the holding of the public hearing be delegated to Chair Pendergraft;

THAT the date, time, and place of the public hearing be scheduled at the discretion of Chair Pendergraft; and

THAT notice of the public hearing be in accordance with the requirements of the *Local Government Act*.

Proposed Development:

The proposed amendments to the Electoral Area "A", "C", "D", "E", "F", "H" & "I" Official Community Plan (OCP) Bylaws will update the policies and guidelines related to the Environmentally Sensitive Development Permit (ESDP) Area in order to remove land alteration and construction as development requiring a development permit.

The proposed amendments to the Development Procedures Bylaw No. 2500, 2011, will update the application requirements for ESDPs and support the proposed amendments to the OCP Bylaws.

Background:

September 3, 2020 - the following Motion was adopted:

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.

October 15, 2020 - the Planning and Development Committee considered Amendment Bylaw Nos. 2912 and 2500.17 and recommended that “the proposed amendments to the ESDP areas be referred to the Electoral Area Advisory Planning Commissions.”

March 18, 2021 - the Planning and Development Committee recommended the initiation of the Environmentally Sensitive Development Permit Areas revision as identified in Official Community Plan Amendment Bylaw 2912, 2020.

Referrals:

Approval from the Ministry of Transportation and Infrastructure (MoTI) is not required prior to adoption as the proposed amendments involve Official Community Plan (OCP) Bylaws.

Pursuant to Section 476 of the *Local Government Act*, the Regional District must consult with the relevant School District when proposing to amend an OCP for an area that includes the whole or any part of that School District. In this instance, School District Nos. 53, 58 and 67 have been made aware of the proposed amendment bylaw.

Pursuant to Section 477 of the *Local Government Act*, after first reading the Regional Board must consider the proposed OCP amendment in conjunction with Regional District's current financial and waste management plans. The proposed OCP amendment has been reviewed by the Public Works Department and Finance Department, and it has been determined that the proposed bylaw is consistent with RDOS's current waste management plan and financial plan.

Pursuant to Section 475 of the *Local Government Act*, the Regional District must consult with the Agricultural Land Commission (ALC) when proposing to amend an OCP which might affect agricultural. Both the ALC and the Ministry of Agriculture have been made aware of the proposed amendment bylaw.

Public Process:

The following is a summary of the recommendations put forward for Board consideration by the Electoral Area Advisory Planning Commission (APCs):

APC	Date	Recommendation
Area "A"	2020-11-09	that the proposed amendments be approved, subject to the following: <ul style="list-style-type: none">• <i>that parcel coverage percentage reductions be considered (dealing with what square footage a building can be vs. size of the lot); and</i>• <i>that Site-Specific re-zonings may need to be exempt on a case by case basis.</i>
Area "C"	2021-01-19	a motion was not made due to the loss of quorum during the meeting.
Area "D"	2021-02-09	that the proposed amendments be approved, subject to the following: <ul style="list-style-type: none">• <i>a trigger for the issuance of a permit continue to include the "alteration of the land, including grading, removal of vegetation, deposit or moving</i>

APC	Date	Recommendation
		<i>of soil, paving, installation of drainage or underground services” for parcels greater than 2.0 ha.</i>
Area “E”	2020-12-14	that the proposed amendments be approved.
Area “F”	2020-11-23	that the proposed amendments be denied.
Area “H”	2020-12-15	that the proposed amendments be approved.
Area “I”	2021-01-20	that the proposed amendments be denied.

February 22, 2021 - an electronic Public Information Meeting (PIM) was held via Webex and was attended by 41 members of the public.

The written notification of affected property owners, the public meetings as well as formal referral to the agencies listed at Attachment No. 1, is considered to be appropriate consultation for the purpose of Section 475 of the *Local Government Act*.

All comments received to date in relation to this application are included in the Board Meeting Agenda.

Analysis:

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. The area is also home to the largest number of endangered and threatened species of plants and animals in BC and Canada.

The Regional District vision is to be “a steward of our environment, sustaining a diverse and livable region that officers a high quality of life through good governance.”

Based upon the experience of the past 4 years, it seems apparent that the development permit area designation has significant limitations, 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
- 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).

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”, seems overly broad and provides inadequate guidance to QEPs regarding the Regional District’s goals for the ESDP Area designation.

The proposed amendments contained in Bylaw No. 2912 to re-focus the ESDP Area designation on the subdivision stage and greater policy emphasis on environmental values at the rezoning stage are intended to address the concerns.

Alternatives:

1. THAT first reading of the Regional District of Okanagan-Similkameen Environmentally Sensitive Development Permit Area Update Official Community Plan Amendment Bylaw No. 2912, 2022 and Regional District of Okanagan-Similkameen Development Procedures Amendment Bylaw No. 2500.17, 2022, be defeated.
2. THAT Administration be directed to bring forward the appropriate amending bylaws to repeal the ESDP Area designation in its entirety.

Respectfully submitted:



C. Garrish, Planning Manager

Attachments: No. 1 – Agency Referral List

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