

March 18, 2021

Planning & Development Committee
Agenda Item No: C.3. X2020.009-ZONE
Additional Representation

From: Bob Handfield
Sent: March 14, 2021 10:37 PM
To: Subrina Monteith <smonteith@rdos.bc.ca>
Subject: amendments to the ESDP by-law

Hello Subrina,

I have submitted a version of this email (below) to you previously regarding my opposition to the proposed amendments to the ESD Permits.

I know it is being considered this week. Can my letter be a part of the record – will other directors get a copy of it?

Thanks

Bob Handfield

“The Okanagan is a national hotspot of biodiversity, holding one of the highest ratings both nationally and globally of species richness as well as species rarity. The region is a critical corridor for wildlife movement, connecting the dry landscape habitat of the central interior with that of the south. A range of interconnected ecosystems – from grasslands, riparian and wetland areas, forests, rugged terrain, to rocky cliffs – serve as critical habitat for a diverse collection of rare and endangered species.”

“As Canadians, the idea of landscape intuitively makes sense. We are a nation awestruck with the visual image of it, the experience of it. Yet, we also see its value as a resource to be consumed. In the same breath of our reverence, we talk about ripping into the natural resources within spell-binding panoramas. We risk leaving behind altered and consumed landscapes: landscapes that no longer yield or sustain diverse life.

The Okanagan Valley is drifting towards becoming one such consumed landscape.”

These quotes are from:

Ecological wisdom: Reclaiming the cultural landscape of the Okanagan Valley published in The Journal of Urban Management, December 2018. Link to full article at the bottom of this email.

ESDP's are the ONLY tool that RDOS has in place to consider environmental values and impacts, and to mitigate impacts to the environment as part of a development approval/development process. The only tool. What is the alternative then?

-the Local Government Act enables local governments to designate ESDPA's to regulate the form and character of development and to influence the siting of development on a parcel. EDPAs enable staff and decision makers to make site-specific decisions about protecting sensitive ecosystems. This is important, it could be the difference between someone clearing/dumping soil on, excavating, putting in

a driveway/house/garage/barn on top of /in the middle of a sensitive ecosystem rather than knowing what is there and having someone knowledgeable help them to consider it and at least avoid it.

-Data from the SOSCP suggests that the ESDP provisions have improved the consideration of, and protection of sensitive valuable ecological resources on private land during development processes. It has influenced the form and character, and the siting of development on sensitive parcels despite the limitations of the tool. The Environmental Law Centre (University of Victoria) also highlights that the ***“EDPAs enable staff and council to make site-specific decisions about protecting sensitive ecosystems. They can specify conditions and standards that a developer must meet. Environmental protection staff agree that EDPAs are the best way to protect sensitive ecosystems. EDPAs are also the best way to prohibit site disturbance before approval of a development project.***

-Local governments have adopted a “professional reliance model” for DP’s in which the applicant is responsible for hiring and paying the professional to develop the report and prescribe mitigation. This is so that all taxpayers are not responsible for the development costs of an individual developer in which the benefits accrue to that developer. The ESDP’s have outlined expectations and standards for environmental reports and professionals are held to their ethics and associations for accountability. This is no different than an architect/contractor/geotechnical required to provide professional expertise related to building codes, safety, structure and location for building permits.

-Yes, the provisions for forcing compliance is not as easy as for a municipality. However, if the RDOS was serious about compliance it would use the tools at hand (in contravention of s 489, and the local government obtains a court order requiring the restoration of the land, the court may order the owner to obtain a development permit before undertaking the restoration work and comply with all applicable application requirements and fees.). It also has some discretion about what it can do - and there are other tools for how they might deal with development without a permit. AGAIN – IS THIS A GOOD RATIONALE FOR REMOVING THEM? IT IS THE ONLY TOOL THEY HAVE FOR CONSIDERING/PROTECTING THE ENVIRONMENT AS PART OF DEVELOPMENT APPROVAL.

-They have discretion about what they can ask those who build without a permit to do (with or without a professional opinion). Is replanting /restoring not the right thing to do when sensitive habitat has been destroyed without a permit? Could they not use other mechanisms such as : bonds, helping to educate the landowner (when not in compliance with their DP), or without a permit? Supporting the uptake of the permit provisions with help and advice, maybe hold other permitting until the DP’s are in place? MONITORING!?

-The ESDP provisions, like any other permitting tool (and especially because of the complexity of the divisions of power regarding the environment in BC and Canada) are not perfect, and they do require improvement – but it seems counterproductive to remove them completely (or create exemptions that render them not- applicable to 85% of the development that is occurring in the RDOS).

-If not an ESDP, then what is in place to consider the environmental values and impacts, and provide strategies to mitigate those impacts during the development application/adjudication and implementation process in one of THE most important places ecologically in Canada?

During the recent provincial election the NDP promised to implement the “full slate of proposals from the Old Growth Strategic Review Panel” – including a new provincial law to prioritize biodiversity and ecosystems. Lawyers from West Coast Environmental Law Society say “That promise has implications

extending beyond forestry, because one of the signature recommendations of the OGSR is that BC enact a new, overarching law to establish ecosystem health and biodiversity as priorities across all sectors in British Columbia.”

This seems like the most inappropriate time possible for the RDOS to abandon the ESDP area regulations and by this action, send a signal to one and all that the RDOS is giving up on the environment. This despite the fact that numerous professional opinion polls over the past 15 years show that a healthy natural environment is a top priority for residents of the South Okanagan.

With regard to the Board direction that “ESDPs should in no way prevent or discourage residents from firesmarting their properties according to the FireSmart principles”, I’m told that the Planning Dept admits that the ESDP designation has never been a problem in allowing people to FireSmart their properties (in other words this is a red herring).

I strongly urge you to reject the proposed amendments to the ESDP’s.

Bob Handfield
Kaleden



Southern Interior Land Trust

March 16, 2021

Regional District of Okanagan-Similkameen
101 Martin Street
Penticton, BC, V2A 5J9

Attn: Karla Kozakevich, Board Chair

Re: Proposed Amendments to Environmentally Sensitive Development Permit Areas (ESDPs)

The Southern Interior Land Trust objects to the proposed bylaw amendments 2912 and 2500.17, 2020, set to be discussed on March 18, 2021, during a Development and Planning Committee meeting.

SILT is a not-for-profit charitable land trust. SILT focusses on acquiring gems of wildlife habitat that act as "stepping-stones" through developed and developing areas. SILT owns three properties in the RDOS and has contributed to purchasing many more in several RDOS electoral areas.

Private lands in the RDOS are under extreme development pressure for intensive agriculture and residential use. The cost of land has sky-rocketed, making it difficult for trusts like ours to compete for acquisitions. Even small lands with physical challenges (rocky, wet, gullied) are under intense development pressure, and these conditions, now under threat, often have substantial value to wildlife.

It is unrealistic to think that any land trust could protect enough land to ensure that sensitive wildlife will forever occur in and remain free to move through the human altered landscape. So, it is important that all habitats, not just protected habitats, continue to provide essential attributes for sensitive species.

The current ESDP provisions appear to be helping protect species and critical habitat features on developing land parcels. Maintaining habitat suitability throughout the working landscape will help ensure that quality of life and the environment in the RDOS is maintained. SILT encourages you to deny the proposed amendments and to instead work to make the current ESDP requirements even better at governing development activities in ways that avoid or mitigate the loss of at-risk wildlife habitats.

Thank you for consideration,

Judie Steeves,
President

Cc: Mr. B. Newall, RDOS CAO
Sophie Fillion, SOSCP Program Manager

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*Development Permit Monitoring Project
South Okanagan-Similkameen Conservation Program*



Submitted to:
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South Okanagan-Similkameen Conservation Program
Penticton, BC

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March 2019

Contents

INTRODUCTION	3
BACKGROUND	3
METHOD	4
RESULTS	5
1. There is confusion about which assessment process to use, REA or EA, and what to include	5
2. Areas of mapped Critical Habitat are often described as lacking attributes, and loss of known attributes within mapped Critical Habitat is sometimes considered insignificant	5
3. Site developments generally conform to QEP recommendations but not always	7
4. Opportunity to extend protection of Critical Habitat attributes and sensitive areas are missed	8
5. Opportunities for avoiding environmental impacts are sometimes missed or not discussed	9
6. Additional habitat mitigation and enhancement strategies are available but not prescribed	10
7. It is uncertain who is responsible for development permit monitoring and what expectations there may be for monitoring	11
CONCLUSIONS and SUGGESTIONS	12

INTRODUCTION

Under the *Local Government Act*, municipalities and regional districts may designate “environmentally sensitive development permit” (ESDP) areas within Official Community Plans to protect the natural environment, its ecosystems and biological diversity, to regulate form and character and influence the siting of development on a parcel. Where a local government specifies or designates ESDP areas it may require an applicant to submit a report certified by a Qualified Environmental Professional (QEP) that describes potential environmental impacts of proposed developments and that provides recommendations to avoid or mitigate those anticipated impacts.

The Regional District of Okanagan-Similkameen (RDOS) is interested in how its ESDP process is working, after it was updated with the assistance of the South Okanagan-Similkameen Conservation Program (SOSCP) in June 2017. QEPs have told the RDOS and the SOSCP that they want further guidance to support improved, effective implementation of local government development permit processes for environmentally sensitive areas, particularly where Critical Habitat for federally listed species at risk is present. Funders of SOSCP’s Shared Environmental Planner project and SOSCP itself, are also interested in how the work of the planner influences the protection of habitat and species. As a first step, SOSCP has done this review of a sample of eleven approved development permits issued by the RDOS¹ to better understand its permit approval processes and results on-the-ground, with focus on species-at-risk habitats and sensitive ecosystem occurrences.

SOSCP did not look for permit infractions; the goal for the review was educational and non-regulatory with a view toward adaptive, ongoing improvement of the existing Rapid Environmental Assessment (REA) and Environmental Assessment (EA) processes.

BACKGROUND

The RDOS requires a development permit before activities are undertaken, including subdivision, vegetation removal, alteration of the land and building construction within designated ESDP areas. The purpose of an ESDP is “protection of the natural environment”² by assessing and avoiding or mitigating impacts to sensitive values³ such as species-at-risk and habitat features of importance to rare or endangered species.

While maintaining its authority over the development permit review and approval process, the RDOS relies on recommendations made by QEPs for protection of environmentally sensitive areas. To accomplish this, RDOS (in addition to other obligations and subject to some exemptions) requires applicants for land development in ESDP areas to submit either an EA or a REA report.⁴ Each report must be prepared by a QEP and each has specified content requirements.

A REA is intended to provide a cost-effective “check-list” alternative to the more comprehensive EA for “residential buildings, structures and uses” within ESDP areas. This implies that RDOS would

¹ A twelfth property in the District of Summerland will be considered separately.

² Section 488(1)(a) of the *Local Government Act* permits local governments to designate development permit areas for “protection of the natural environment, its ecosystems and biological diversity”.

³ *Local Government Act* Section 491(1).

⁴ Regional District of Okanagan-Similkameen Development Procedures Bylaw No. 2500, 2011

require a proposed subdivision (which is presumably not a use) to be assessed using the full EA process; all other “residential buildings, structures and uses” could initially be assessed through the REA process.

The REA process requires assessing “environmentally valuable resources” (EVRs) within 100 meters of the proposed development. EVRs include sensitive ecosystems, listed species-at-risk, federally-identified Critical Habitat, and certain habitat features (e.g. wildlife trees, dens and burrows, etc.). REA reports must include strategies to achieve avoidance, and/or recommendations for restoration and mitigation. Once a development permit is approved, there is no RDOS requirement for subsequent monitoring; it expects the QEP to monitor whether recommendations are implemented.

RDOS requires the EA process only for proposed subdivisions (presumably) and where the QEP cannot certify in a REA report that either EVRs are absent or that impacts have been avoided or acceptably mitigated. A key aspect of an EA report is to stratify the subject property into a high to low value four-class rating system of Environmentally Sensitive Areas (ESAs 1 to 4) with a view to avoiding negative impacts to high value sites. An RDOS EA also requires an inventory of likely-to-occur rare and endangered plant and animal species to be done during the appropriate seasons; requires an impact assessment of the proposed development; consideration of avoidance and mitigation strategies; and may require subsequent monitoring.

METHOD

The objective was to field-review a sample of approved ESDPs to assess results on-the-ground and identify potential improvements to development permit review processes, to support QEPs and local governments in achieving effective protection of species-at-risk habitats and environmentally sensitive areas. Thirteen approved development permits from a range of electoral areas were selected for review. Sites were selected to focus on ESDPs issued over the period 2017 to 2018 with designated or proposed federal Critical Habitat mapping identified on them. One ESDP was not reviewed due to access considerations, and one within the District of Summerland will be considered separate to this report. File materials were gathered for each ESDP and a chronology of events established.

By desktop and reconnaissance-level field review, questions were answered for each property:

- What was identified by the proponent/QEP as ESA or as species-at-risk?
- What concerns or issues were identified by the SOSCP Environmental Planner?
- What was recommended by the SOSCP Environmental Planner?
- How was the proposal/QEP report subsequently modified?
- What did the final REA or EA report require and/or suggest?
- What did local government staff suggest?
- What was required in the approved Development Permit?
- Were Development Permit requirements implemented?
- Are Critical Habitat attributes apparent on the site? Were they identified/missed?
- What evidence is there of avoidance, mitigation or enhanced management of species-at-risk; Critical Habitat and/or ESAs?
- Are there apparent additional opportunities to improve protection of or physically enhance species-at-risk habitats or ESAs?

RESULTS

1. There is confusion about which assessment process to use, REA or EA, and what to include

Seven QEP reports reviewed in our sample were submitted as REA reports, but also included an ancillary QEP report that met some of the RDOS EA content requirements. Conversely, none of the four EA reports reviewed contained all the content the RDOS lists as required in an EA report (e.g. none included a species-specific inventory of likely-occurring rare species conducted during an appropriate season)⁵. We found these hybrid reports somewhat difficult to review and interpret being neither the short and concise REA products intended, nor the comprehensive and complete Environmental Assessments intended for more complex situations and development proposals.

Hybrid reports are indicative of potential confusion over the intended purposes and requirements for each report type. The REA “checklist-style” report states the REA process is to provide an alternative to completing an EA for “residential buildings, structures and uses” within an ESDP area.⁶ By exclusion, this implies that a subdivision (which is presumably not a use) would require an EA report.

In our sample, two subdivisions of properties containing Critical Habitat and red-listed plant communities were approved under the REA process. This is a potential issue for maintaining productivity and connectivity of important ecosystems at a community level. Under the REA process, REA reports do not require that ESAs be identified and mapped, and ESAs were not mapped as part of either subdivision proposal. Standardized identification of ESAs prior to rezoning and/or subdivision is a key step confirming that community-level habitat connectivity can be maintained and that a development area footprint outside of high-value ESAs is available for each proposed lot. The narrower scope of a REA report is more appropriately applied to existing lots where the decision to develop has already been made.

To avoid confusion, and to achieve full benefit of both the REA and EA processes, ESDP applicants and QEPs appear to need guidance on which process to use in what circumstances, and clearer direction on essential content in each report.

2. Areas of mapped Critical Habitat are often described as lacking attributes, and loss of known attributes within mapped Critical Habitat is sometimes considered insignificant

Attributes of Critical Habitat are described in federal recovery strategies for each SARA-listed species for which Critical Habitat is identified (currently 28 species in the RDOS region). In our review, all site surveys of Critical Habitat by QEPs were conducted at a reconnaissance level (i.e. no systematic inventory). Many of the parcels reviewed overlapped Critical Habitat of multiple species, each with its own set of Critical Habitat attributes, resulting in some complex assessment situations and reports.

⁵ RDOS Bylaw 2500; methodologies for completing a species-specific inventory would be included in various BC government Resource Inventory Standards Committee (RISC) manuals and other applicable “best management practice” documents.

⁶ http://www.rdosmaps.bc.ca/min_bylaws/planning/Forms/Application_Forms_2015/RDOS_Rapid_Environmental_Assessment_2015.pdf

There were several examples of development activities where proposed development was within mapped Critical Habitat, but the assessments concluded that some key attributes of Critical Habitat were absent. Overall, the lack of attributes was well described (e.g., no trees of a certain size or type for nesting or foraging). However, some assessments for snakes seemed to focus on suitability of rock outcrops and talus for denning, with no clear consideration of soils suitable for gophersnake denning. In at least two instances, it was not clear which attributes of Critical Habitat were lacking (e.g. friable soils; deep soils) or whether the attributes were even assessed. In both instances, site descriptions and pictures in the assessment reports, and subsequent observations from this review, suggest that suitable Critical Habitat attributes were likely to occur within those project areas.

In another instance, attributes of Critical Habitat were identified by the QEP, and some impact to those attributes was predicted. However, the QEP's conclusion was that proposed development would not significantly impact the Critical Habitat. This finding was rationalized by QEP opinion that the development footprint was small relative to the surrounding land area. The test under Canada's *Species at Risk Act* (SARA) is not whether impact is significant but rather whether Critical Habitat will be destroyed. Under SARA, there is no mechanism to allow limited destruction of Critical Habitat on the basis that a small area is affected.

SARA's Critical Habitat protection provisions do not currently apply to provincial Crown or private lands. However, 23 years ago, Canada and the Province of British Columbia signed an Accord⁷ wherein the Province would provide effective protection to federally listed species-at-risk. There is no species-at-risk legislation in BC so, to meet its Accord on Crown and private lands, BC must rely on voluntary actions and stewardship measures such as might be suggested by a QEP. Consequently, QEPs engaged in land development do not have a mandate to allow even limited destruction of Critical Habitat on the basis that a small area is affected. The QEP must professionally rationalize that measures to mitigate the impact to Critical Habitat are enough (based on consultation with federal experts and others) to replace the anticipated destruction of Critical Habitat.

SARA definitively anticipates a "protection outcome" where Critical Habitat is not being and will not be destroyed, except in ways that the Act's discretionary measures would allow.⁸ Where impacts to Critical Habitat attributes are anticipated, the QEP is obligated to prescribe measures (e.g., avoidance, mitigation, enhancement) sufficient to address the issue of destruction.

To help standardize identification and support methodical assessment of Critical Habitat attributes, specific training and guidance (e.g. photographic examples) may be required for QEPs. There is evidence that QEPs need direction from senior governments to define the limits of the use of discretion in facilitating impacts to Critical Habitat and appropriate processes to use in avoiding impacts, mitigating damage, or improving habitat. Reliance on professional judgment may not yet be enough to support desired protection of Critical Habitat attributes.

⁷ <https://www.canada.ca/en/environment-climate-change/services/species-risk-act-accord-funding/protection-federal-provincial-territorial-accord.html>

⁸Canada *Species at Risk Act* Subsections 61(1), 61(2) and 61(4), and Environment and Climate Change Canada Policy on Critical Habitat Protection on Non-federal Lands [Proposed], 2016. https://registrelep-sararegistry.gc.ca/virtual_sara/files/policies/CH_Protection_NFL_EN.pdf

QEPs could consider seeking additional advice from Environment and Climate Change Canada (ECCC) and other regulators to resolve uncertainty or to devise management responses that avoid potential destruction of Critical Habitat.

3. Site developments generally conform to QEP recommendations but not always

Development activities on most of the properties (that had activities) appeared to generally conform with the approved site plans and QEP recommendations. However, there were exceptions. On two properties, the area disturbed by excavation and site grading appeared to exceed that proposed in the site plan and QEP report. In both, noted Critical Habitat attributes may have been affected more than anticipated. In one, the area excavated for the home is at least twice the size indicated in the REA report; in the other, the area of site grading appears to be much larger than proposed.

Protection of easily-identified habitat features, such as wildlife trees and rock outcrops seem well-implemented. QEP findings that cavity-bearing wildlife trees would not be or were not to be disturbed was common in the reports reviewed. To the extent practical, we confirmed that all such trees remained standing and intact. In one instance, a recommended protective fence had not been built, but the tree appeared to be undisturbed.

Tree and shrub plantings, and grass seeding were commonly recommended as mitigation strategies to replace vegetation removed during site development. Of seven properties where planting of native trees or shrubs was prescribed, two had planted or transplanted at least some. No evidence of grass-seeding was apparent at any of the properties where it had been recommended. However, for both planting and seeding, not all areas of all properties were visible during the site review, and not all development had been completed. It is possible that some plantings or seeding activity went un-noticed or has yet to be completed.

Timing of proposed development activities to avoid direct impacts to in-situ living creatures was more problematic. Several REA reports included recommendations for timing restrictions to avoid potential impacts to one or more endangered, threatened or at-risk species. The time of restrictions varied depending on the species' biology. For example, some timing restrictions were designed to prevent disturbance of terrestrial amphibians in the ground, while others were intended to prevent disturbance of nesting birds in trees. Properties with multiple species at risk had more than one timing restriction. In two instances, the land developers met one recommended timing restriction but not the other. At another, both the direction and the outcome are uncertain because the report listed three date ranges for a single species; in the circumstance, the reviewer was uncertain what the QEP intended.

One reason that requirements may be missed, or landowners confused by recommendations is that, in our sample, the site recommendations were generally embedded in the text of the reports. For the more complicated reports, we found this made the recommendations difficult to discern and track. However, in one instance, a REA report also included a concise, itemized summary of recommendations in its own section of the report and used precise language such as "shall" and "will" to convey mandatory actions, and the word "should" to convey discretion. We found these recommendations easy to discern, interpret and track.

For improved conformance with actions required to avoid and mitigate impacts to Critical Habitat and Environmentally Sensitive Areas, reports and checklists could have a dedicated section that includes a separate, itemized list of concise “must do” and/or “should do” requirements and recommendations in each REA or EA report.

The REA “checklist” could be improved by including a standardized list of typical mitigation strategies that apply to the site (e.g., do not cut or disturb wildlife trees; grass seed exposed soils). The REA checklist could be revised such that all information required to issue a development permit was contained within the form. Maps submitted with the development permit application could identify the specific location of important habitat features and mandatory management actions.

Clarity for work windows would be improved by standardizing the format for providing work windows. A coloured “bar chart” calendar could be provided for use by QEPs in each REA or EA to clearly explain open and closed windows for time restricted development activities (e.g., vegetation clearing, excavation, tree removal, etc.).

4. Opportunity to extend protection of Critical Habitat attributes and sensitive areas are missed

One aspect of ensuring that sensitive habitat features are protected into the future, beyond the immediate development activity, is to physically identify them in the field. An example would be the presence of known or potential nest trees for a SARA-listed species. While some reports described the locations of potential nest trees and sensitive areas and prescribed their protection (or found they were unlikely to be disturbed), none recommended permanently marking the trees or areas to indicate their habitat value into the future, or to other people.

In one instance, a temporary fence (not yet built) was recommended around a known nesting tree. In another, an identified ESA 1 area was delineated during site construction by a temporary fence. While these are worthwhile practices to prevent disturbance during development activities, simple permanent signage or fencing would have helped to ensure that such important features, and others elsewhere, remain identifiable and undisturbed beyond the land-development period.

Further permanent protection could also be provided by other means. In two instances, QEPs recommended registration of land-title conservation covenants as a means of increasing protection over part of the property to compensate for anticipated development impacts elsewhere on the property. Neither proposed covenant has been registered. One (an extension of an existing conservation covenant on the property) was not implemented after a discussion between RDOS staff and the QEP—no rationale was provided.

The use of conservation covenants to add protection to sensitive values seems under-utilized. In addition to the two above, three other reports proposed no disturbance to sensitive areas, one of which was Critical Habitat with noted attributes. These reports did not contain content suggesting the use of a covenant to prevent future disturbances, or for future monitoring of the areas.

Another way to increase protection of valuable habitat features such as wildlife trees, and likely obtain more consistent (and monitorable) management recommendations for them, is a local-

government tree protection bylaw. A tree protection bylaw would require a specific permit to remove trees protected under a defined set of criteria, and so could reduce reliance on development permits to address some Critical Habitat attributes.

Consider the use of cost-effective generic signage to permanently mark important trees for protection. Simple but permanent fencing could also be used to delineate and protect sensitive areas.

Consider training and collaborating with QEPs in using conservation covenants to add perpetual and monitorable legal status to areas recommended for protection as compensation for development impacts elsewhere.

Consider enacting a tree protection bylaw to regulate and monitor the protection and conservation of valuable trees.

5. Opportunities for avoiding environmental impacts are sometimes missed or not discussed

Both REA and EA reports are required to include strategies to achieve avoidance of environmental impacts, in addition to strategies to mitigate unavoidable impacts. Opportunities to avoid impact include applying no disturbance buffers to wetlands or other sensitive areas or habitat features.

Buffers and no disturbance areas were sometimes applied in the reports reviewed, and subsequent development activities appeared to conform with those measures. However, it was also apparent that buffers and no disturbance areas were recommended only to the extent they did not substantively impinge on the development footprint as proposed. There was only one instance where a minor change of the proposed development footprint was suggested to avoid some trees; this review indicated those trees were avoided during development.

There were two situations where the opportunity to relocate development to less environmentally sensitive areas on the property seemed obvious, but the option to relocate was not discussed in either report. In one case, the development footprint was in Critical Habitat with noted attributes on a multi-hectare lot. A previously disturbed area, likely without Critical Habitat attributes, was located 100 meters away. In the other example, most of the large property had previously been converted to vineyard. A commercial development was proposed for a remaining natural area within identified Critical Habitat for several species, and in habitat for several other species at risk. There was no apparent consideration of relocating the proposed development into the existing vineyard.

In a final example, subsequent to a REA report, a land developer in Critical Habitat with attributes decided to relocate a proposed outbuilding for economic and aesthetic reasons. Doing so reduced both the area disturbed and the number of trees removed as compared to that assessed as acceptable in the REA report. The potential to create a smaller development footprint was not apparently identified by the QEP.

Government's intent regarding avoidance of environmentally sensitive areas may not be clear enough. QEPs may benefit from additional guidance about their discretion to suggest moving or

modifying a development proposal to avoid or reduce impacts to Critical Habitat and high-value ESAs.

ESA identification is not required in the REA process, however, QEPs could identify and document discussions with landowners about options for avoidance of impacts to environmentally sensitive areas. At a minimum, to benefit approval-agencies, a REA or EA report could include clear findings of impact and of potential legal implications where development footprints are proposed in environmentally sensitive areas, together with identifying alternate, lower-impact location(s).

6. Additional habitat mitigation and enhancement strategies are available but not prescribed

Both REA and EA processes require mitigation strategies where impacts cannot be avoided. The reports reviewed included strategies such as tree or shrub planting, grass-seeding, and activity timing restrictions, among others. This review indicated some additional opportunities for mitigation and habitat enhancement were also available, all of which have existing technical guidance. Some examples are:

Reduce the Area to be Disturbed⁹

Several properties reviewed had development footprints reported as building size and location but did not indicate the total ground area to be disturbed. In one case, a new 100-meter long driveway located in Critical Habitat with attributes was accurately described and built as proposed. The five-meter-wide driveway serves one residence. It was not apparent whether narrowing the proposed driveway to reduce its area of impact was considered. Constraining the actual area of site disturbance for buildings, services and access could reduce severity of their environmental impact on available habitat for at-risk species and other wildlife.

Scattered Coarse Woody Debris¹⁰

Coarse woody debris is any sound or rotting wood debris or stumps about 10 centimeters diameter or larger. It provides long-lasting habitat for plants, animals, and insects and a source of nutrients for soil development. On several of the properties reviewed, trees had been felled and piled for burning or later removal. Instead of disposal, the stems, stumps and large branches could be scattered on site to decay over time in places where it would not heighten risk of a property-damaging fire (i.e., well away from structures, etc.).

Constructed Brush Piles¹¹

Where site conditions allow, tree and shrub debris and pruned branches could be kept and piled to create brush piles. Brush piles, when properly constructed and located, can provide and improve nesting and protective cover for many species where dense stands of natural vegetation are limited or have been disrupted. Brush piles should be placed where they will not heighten the risk of a property-damaging fire.

⁹ <https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/best-management-practices/develop-with-care/dwc-section-3.pdf>

¹⁰ <https://www.surrey.ca/files/CoarseWoodyDebrisManagementStrategy.pdf>

¹¹ <https://mylandplan.org/content/how-create-and-maintain-brushpiles>

Artificial Nest and Roost Structures¹²

Nest boxes and other nesting/roosting structures can substitute for a deficiency of natural sites in otherwise suitable habitats, with a view toward “bridging the gap” in vegetation structure while waiting for natural or planted vegetation to provide suitable conditions. Such structures often require maintenance, and this may be a good way to interest and engage landowners in continued habitat conservation on their properties.

Artificial Dens and Refuges¹³

Several properties reviewed had rock blasting or bedrock excavation proposed as part of the development. In appropriate situations, using the material at hand, a landowner could build artificial hibernacula and security habitat for snake and other species as part of rock fill and disposal. This mitigation strategy is not recommended to mitigate for damaged or destroyed burrows, but rather is intended to exploit opportunity to add habitat where opportunities exist. This strategy should be considered together with other information such as proximity to roads, aspect of the site, etc.

Boulder Piles¹⁴

Like brush piles, properly constructed boulder piles and boulder-rows can also provide and improve hunting, travel ways and protective cover for many species, especially reptiles and amphibians.

There may be value in holding an applied-biology workshop and providing guidance documents to QEPs on simple and cost-effective habitat improvement techniques designed to manipulate food, cover, water and living space for at-risk species.

QEPs could consider what habitat structures or features may be in short supply at a development site, and prescribe additional, cost-effective mitigation or enhancement techniques, especially where the materials needed (e.g. rock, wood debris) are a by-product of site development.

7. It is uncertain who is responsible for development permit monitoring and what expectations there may be for monitoring

Follow-up monitoring of ESDPs is essential for ensuring compliance with permit conditions, for assessing whether site recommendations and mitigation strategies were effective for their intended purpose, and for adaptive, ongoing improvement of ESDP processes.

RDOS approves the ESDPs but defers responsibility for monitoring to the QEPs to ensure that recommendations [in REA or EA reports] are met. While a QEP can make environmental monitoring a condition of the development permit (by including it in the REA/EA report), professional direction from regulatory bodies prevents QEPs from collecting fees for work not completed. Thus, without additional oversight, landowners may not fully understand or complete their requirements for an environmental monitor.

RDOS-approved development permits typically require that development activities be in accordance with the applicable REA or EA report. Some of the reports reviewed included recommendations for environmental monitoring of specific development activities. It was beyond the scope of this review

¹² http://www.friendsofkootenaylake.ca/wp-content/uploads/2016/08/Nestbox_COMBINED_aug7.pdf

¹³ <https://www.tranbc.ca/2018/02/07/why-we-are-making-a-bed-for-200-snakes>

¹⁴ <https://www.wildlifecenter.org/sites/default/files/PDFs/backyard/Habitat%20Rock%20Piles.pdf>

to determine whether required monitoring was done. However, one QEP indicated that no clients had yet made any request for follow-up monitoring on any of that QEP's reports submitted to the RDOS; the clients of other QEPs may have.

There appears to be an opportunity to clarify expectations for monitoring of development permit conditions to help inform ongoing improvement and effectiveness of ESDP processes. It also appears worthwhile to provide guidance and/or support as appropriate to QEPs to ensure that desired monitoring is recommended, completed and reviewed.

RDOS could take back the responsibility to identify if/when monitoring is required. Including an ESDP condition requiring later submission of an environmental monitoring report would help ensure that environmental monitoring occurs. In addition, RDOS could collect bonds/securities to ensure that required monitoring and reporting will be completed.

CONCLUSIONS and SUGGESTIONS

1. There is confusion about which assessment process to use, REA or EA, and what to include.
 - *To avoid confusion, and to achieve full benefit of both the REA and EA processes, ESDP applicants and QEPs appear to need guidance on which process to use in what circumstances, and clearer direction on essential content in each report.*
2. Areas of mapped Critical Habitat are often described as lacking attributes, and loss of known attributes within mapped Critical Habitat is sometimes considered insignificant.
 - *To help standardize identification and support methodical assessment of Critical Habitat attributes, specific training and guidance (e.g. photographic examples) may be required for QEPs. There is evidence that QEPs need direction from senior governments to define the limits of the use of discretion in facilitating impacts to Critical Habitat and appropriate processes to use in avoiding impacts, mitigating damage, or improving habitat. Reliance on professional judgment may not yet be enough to support desired protection of Critical Habitat attributes.*
 - *QEPs could consider seeking additional advice from Environment and Climate Change Canada (ECCC) and other regulators to resolve uncertainty or to devise management responses that avoid potential destruction of Critical Habitat.*
3. Site developments generally conform to QEP recommendations but not always.
 - *For improved conformance with actions required to avoid and mitigate impacts to Critical Habitat and Environmentally Sensitive Areas, reports and checklists could have a dedicated section that includes a separate, itemized list of concise "must do" and/or "should do" requirements and recommendations in each REA or EA report.*
 - *The REA "checklist" could be improved by including a standardized list of typical mitigation strategies that apply to the site (e.g., do not cut or disturb wildlife trees; grass seed exposed soils). The REA checklist could be revised such that all information required to issue a development permit was contained within the form. Maps submitted with the development permit application could identify the specific location of important habitat features and mandatory management actions.*

Development Permit Monitoring
March 2019

- *Clarity for work windows would be improved by standardizing the format for providing work windows. A coloured “bar chart” calendar could be provided for use by QEPs in each REA or EA to clearly explain open and closed windows for time restricted development activities (e.g., vegetation clearing, excavation, tree removal, etc.).*
4. Opportunity to extend protection of Critical Habitat attributes and sensitive areas are missed.
 - *Consider the use of cost-effective generic signage to permanently mark important trees for protection. Simple but permanent fencing could also be used to delineate and protect sensitive areas.*
 - *Consider training and collaborating with QEPs in using conservation covenants to add perpetual and monitorable legal status to areas recommended for protection as compensation for development impacts elsewhere.*
 - *Consider enacting a tree protection bylaw to regulate and monitor the protection and conservation of valuable trees.*
 5. Opportunities for avoiding environmental impacts are sometimes missed or not discussed.
 - *Government’s intent regarding avoidance of environmentally sensitive areas may not be clear enough. QEPs may benefit from additional guidance about their discretion to suggest moving or modifying a development proposal to avoid or reduce impacts to Critical Habitat and high-value ESAs.*
 - *ESA identification is not required in the REA process, however, QEPs could identify and document discussions with landowners about options for avoidance of impacts to environmentally sensitive areas. At a minimum, to benefit approval-agencies, a REA or EA report could include clear findings of impact and of potential legal implications where development footprints are proposed in environmentally sensitive areas, together with identifying alternate, lower-impact location(s).*
 6. Additional habitat mitigation and enhancement strategies are available but not prescribed.
 - *There may be value in holding an applied-biology workshop and providing guidance documents to QEPs on simple and cost-effective habitat improvement techniques designed to manipulate food, cover, water and living space for at-risk species.*
 - *QEPs could consider what habitat structures or features may be in short supply at a development site, and prescribe additional, cost-effective mitigation or enhancement techniques, especially where the materials needed (e.g. rock, wood debris) are a by-product of site development.*
 7. It is uncertain who is responsible for development permit monitoring and what expectations there may be for monitoring.
 - *There appears to be an opportunity to clarify expectations for monitoring of development permit conditions to help inform ongoing improvement and effectiveness of ESDP processes. It also appears worthwhile to provide guidance and/or support as appropriate to QEPs to ensure that desired monitoring is completed and reviewed.*
 - *RDOS could take back the responsibility to identify if/when monitoring is required. Including an ESDP condition requiring later submission of an environmental monitoring report would help ensure that environmental monitoring occurs. In addition, RDOS could collect bonds/securities to ensure that required monitoring and reporting will be completed.*

From: [Alpeatt](#)

Sent: March 16, 2021 3:34 PM

Subject: AMENDMENT OF ENVIRONMENTALLY SENSITIVE DEVELOPMENT PERMIT (ESDP) AREAS

This is about the RDOS Planning and Development Committee March 18, 2021 meeting Item C: a recommendation to update ESDP areas as identified in amendment Bylaws 2912 and 2500.17, 2020.

I urge you to deny the amendments as proposed; they will cause irreversible harm to federally listed species-at-risk and other sensitive wildlife. The amendments will remove current provisions for site-specific environmental protection during land parcel development. The proposed amendments are contrary to available evidence that the current ESDP provisions are working to protect the environment, and, that the current process is neither onerous nor overly restrictive.

In 2019, I reviewed eleven approved development permits issued by the RDOS to better understand the permit process and results on-the-ground, with focus on species-at-risk habitats and sensitive ecosystems. Development activities on most of the properties appeared to mostly conform with the approved site plans and QEP recommendations. In my report (attached) I made several suggestions for how to improve the existing process to make it even more effective. It is not apparent these suggestions have been discussed, considered, or deployed as part of either the ESDP process or for the amendments being considered.

Administration's preference to focus ESDPs at subdivision is mis-guided and a step backwards in effective environmental protection. The concept is not consistent with provincial and local government responsibilities to provide species-at-risk protections equivalent to what would otherwise be provided were Canada's Species At Risk Act to apply on private and provincial lands.

Managing for environmental values at subdivision-only will not adequately protect site-specific species-at-risk habitats, which occur throughout the landscape, but which are concentrated in the grassland and open forest areas of our region – those areas that are already much subdivided and desired for further human development. It is a matter of scale. At subdivision, it is indeed important to identify sensitive areas and animal movement routes for large-scale avoidance. At parcel development, it remains important to identify, and avoid or mitigate damage to the specific habitat attributes essential for survival and persistence of the many species-at-risk and other sensitive wildlife species in our area.

My 2019 report demonstrates that current ESDP provisions do work to identify and protect valuable wildlife trees, rocky and wet areas, and other important habitat features, and provide suggestions for beneficial practices on previously subdivided lots. Without the ESDP process, future parcel development

will occur in ignorance, critical habitat attributes for species-at-risk will be destroyed, and stewardship opportunities that could help wildlife to persist forever will be lost, for want of qualified professional guidance.

The current ESDP process already has exemptions for FireSmart and other purposes, and provides opportunity to identify least-risk timing windows and to promote long-lasting habitat stewardship through landowner interest and engagement. With some simple improvements through meaningful consultation with qualified environmental planners and biology professionals, the current ESDP process could be a showcase of progressive, effective, local governance of species-at-risk habitats.

I trust that you will have the wherewithal to deny the amendments as proposed and will continue to support effective protection of species-at-risk and other sensitive wildlife on all private lands in the RDOS that have substantive biodiversity value.

For clarity, Bearfoot Resources Ltd neither supplies environmental assessment services for land development nor am I a QEP for ESDP, other land development, or riparian area regulatory works. I am a senior registered professional biologist and 40-year resident of RDOS Areas D and F. Most of my professional experience relates to wildlife and habitat management issues in the Okanagan Region.

Alan Peatt, RPBio #230, FAPB



Alan Cell/Text: (250) 328-4699
Direct Email: Alpeatt@shaw.ca

Lauri Feindell

From: Oliver Betz [REDACTED]
Sent: October 13, 2020 6:31 PM
To: Karla Kozakevich; Mark Pendergraft; George Bush; Ron Obirek; Bob Coyne; Tim Roberts; Rick Knodel; Riley Gettens; Subrina Monteith; Spencer Coyne; Manfred Bauer; John Vassilaki; Julius Bloomfield; Frank Regehr; Jake Kimberley; mayor@summerland.ca; Doug Holmes; Suzan McKortoff; Petra Veintimilla; Christopher Garrish; Bill Newell
Subject: Comments re: ESDP Area Update for the October 15, 2020 Planning & Development Committee Meeting

Comments re: ESDP Area Update for the October 15, 2020 Planning & Development Committee Meeting

As a property owner and resident on Anarchist Mountain (RDOS Area A) for over 15 years, I am very concerned by the RDOS Board's recent step to remove bylaw provisions which protect the mountain's rare and endangered species*.

On September 3, 2020 the Board passed the following motions:

THAT the RDOS Board apply environmentally sensitive development permits (ESDPs) throughout the Regional District of Okanagan-Similkameen to only Subdivisions and rezonings; and further, THAT Staff report back to the Board on the options to make ESDPs more effective throughout the Regional District of Okanagan-Similkameen at Subdivisions and rezonings; and further, THAT ESDPs should in no way prevent or discourage residents of the Regional District of Okanagan-Similkameen from firesmarting their properties according to the firesmart principles."

The Anarchist Mountain Society spearheaded the anti-ESDP campaign that led to these motions, driven by fears that FireSmart treatments more than 10 metres from homes would result in hefty RDOS fines. However, the motions go much further than enabling extended FireSmart activities. The motions remove the previous requirements for an ESDPs on private properties when there is construction or alteration of the land for grading, removal of vegetation, deposit or moving of soil, paving, installation or underground services.

I agree that FireSmart treatments are important, and most residents are already doing a great job of safeguarding their homes. Upon hearing that the RDOS motion above had passed, residents weren't rushing to do more FireSmarting. They were rushing to get building permits to build on their properties without the need to first assess the impact on the species that live there (excerpt from <https://anarchistmountaincommunitysociety.com/>):

"As president of the AMCS, I have been receiving a lot of emails and concerns from people who have tried communicating with RDOS staff concerning building on their properties up here since this motion was

voted on. My husband and I visited the RDOS office last week asking about a permit to build a shop on *our* property and I learned from the staff that it takes 4-6 months before bylaw changes go through.”

Part of the anti-ESDP campaign on Anarchist Mountain sought to have the RDOS step away and allow private property owners take over stewardship of the land. It doesn't follow that property owners who are unwilling to assess the environmental sensitivity of their property before building over it, will be responsible stewards.

Unfortunately, we see horribly destructive acts on Anarchist private property all the time. Some examples from just the last few months would suggest that increased, not decreased, bylaw provisions to protect the environment are needed:

- A driveway replacement project disposed of huge chunks of old asphalt by pushing them down an adjacent embankment all over active marmot dens. Marmots are a protected species in BC.
- A swimming pool dumped thousands of gallons of chlorine-soaked water into a stand of Aspen trees. Aspens are a rapidly declining species of trees in western Canada and the US.
- An entire 1.3-gallon container of highly toxic herbicide, Roundup, was used in the treatment of a small grassy area next to a stream, contaminating hundreds of feet of water and riparian area downstream.
- Massive overuse of rodenticide pellets has resulted bats and birds found excreting blood and literally dropping dead from the air. Numerous red-listed birds and rare bats live on Anarchist mountain.

The Region District is the steward of the land on Anarchist Mountain. With all due respect, I'm not sure the Board had all the information needed to make an informed decision before passing the September 3, 2020 motions.

As a Society member, I attempted to have the concerns about protecting the environment included in the Anarchist Mountain Society's anti-ESDP campaign. My comments were rejected as they "did not align with the Society's vision". I am therefore making a plea directly to the RDOS Board to pause before amending the bylaw, allow time for more information to be collected, and have options presented to the Board that allow FireSmart activities without reducing the requirement for ESDPs on private property.

Sincerely,

Oliver Betz



Osoyoos, BC

* Numerous red and blue listed species live on Anarchist Mountain:

<http://bcparks.ca/explore/parkpgs/anarchist/>

A few of the species we have recently seen on our property recently

- BC badger (picture below taken on our property), an endangered species in BC, estimated 300 in the province and only 30 left in the BC interior
- Western skink, a rare blue-tailed lizard listed as a “Species of Special Concern”
- Rubber boa, a very unique snake that is also listed as a “Species of Special Concern”



Lauri Feindell

From: Jamie V Wright [REDACTED]
Sent: September 24, 2020 1:15 PM
To: Julius Bloomfield; Jake Kimberley; Karla Kozakevich; Mark Pendergraft; Manfred Bauer; Subrina Monteith; John Vassilaki; Suzan McKortoff; George Bush; Rick Knodel; Ron Obirek; Riley Gettens; Tim Roberts; Bob Coyne; Frank Regehr; Toni Boot; Doug Holmes; Petra Veintimilla
Cc: Christopher Garrish
Subject: ESDP Mapping Electoral Area "A"

Directors, RDOS
101 Martin St.
Penticton, BC
V2A 5J9

Dear Board Members:

RE: Ambiguous ESDP Mapping Electoral Area "A"

As President of the Anarchist Mountain Community Society (AMCS) and a private property owner on Anarchist Mountain, I have obtained over 160 signatures from Anarchist Mountain residents (not just members of AMCS) who do not agree with the pink zone restrictions imposed by the RDOS. The wildfire risk is the most important concern for private property owners in our area so the conflicts arising between the "pink zone" requirements and FireSmarting need to be resolved immediately as is proven recently by the Christie Mountain Fire. Does the RDOS want to be responsible for the cost of devastation caused by a wildfire?

It remains unproven that everywhere on Anarchist Mountain is ecologically sensitive. There should be evidence of specific species at risk and a scientific basis for an ESDP in our area. Individual property owners should not be held financially responsible for duplicating environmental studies which were already completed and development permits issued when this area was first developed i.e. March 20, 2008 & January 14, 2009 by Mike Sarell, RPBio Senior Wildlife Biologist with Ophiuchus Consulting.

The RDOS should remove the pink zone restrictions (ESDP) on privately owned lands in order to provide each private property owner the ability to FireSmart, steward and enjoy their property thus "Keeping Nature in our Future." The new mapping and ESDP redesign should precede the OCP Draft – not the other way around.

We, the ratepayers must insist on transparency in the RDOS decision-making process & insist on RDOS listening to direct consultation with private landowners who are affected by these Bylaws.

To date there has been inadequate public engagement. The recent Open House at the Sonora Centre in Osoyoos was a start in the right direction and with the ongoing Covid situation I understand the challenges but it is so important for the private landowners to be heard and their knowledge to be shared and taken into consideration.

Yours sincerely,

Jamie

Jamie V Wright

President, AMCS

Environment and Climate Change Canada
Canadian Wildlife Service
1238 Discovery Ave
Kelowna BC, V1V 1V9



April 20, 2021

To: Mr. Christopher Garrish

Re: Proposed ESDP Bylaw Amendments

Hi Chris,

Thanks for the opportunity to provide follow-up advice about the Draft Amendment Bylaw No. 2912 in relation to the Environmentally Sensitive Development Permit (ESDP) Area and criteria.

Canadian Wildlife Service would like to reiterate that we supported the initiative to develop and implement the ESDPA with contributions totalling \$784,000 dollars beginning in 2008 through agreements to the Regional District of Okanagan-Similkameen (RDOS) to support the work of the South Okanagan-Similkameen Conservation Program (SOSCP). These contribution agreements supported the addition of critical habitat for Species at Risk, and sensitive ecosystems at risk, to data layers identifying development constraints within RDOS boundaries, and in developing the ESDP process. The contributions also supported the Shared Environmental Planner within RDOS. Together these contributions fostered innovative and excellent outputs that helps local governments and property owners demonstrate due diligence under Canada's *Species at Risk Act*. This is of particular importance in the RDOS, which is home to more overlapping critical habitat for multiple species than anywhere else in BC (see attached maps). We value and commend the past and present efforts the Regional District has taken to conserve and protect those species and their habitats.

Success of conservation measures that function as a deterrent to harming the environment are difficult to measure. The Canadian Wildlife Service is not privy to information detailing the number of permits that have been applied for or issued; nor can we enumerate instances in which prospective buyers/developers have opted not to invest within the ESDP area. We are aware, from feedback received from Qualified Professionals (QPs), that the ESDP process has prevented destruction of critical habitat for Species at Risk. Success of the process is measured by the amount of critical habitat lost to development over time, and whether the status of individual Species at Risk is consistent with recovery goals and objectives. Monitoring these trends is a long term and ongoing process. The Province of BC is in the process of updating habitat loss maps, and identifying where, when, and from what land uses those losses occurred. The goal of the ESDP process is for local government and landowners to have the appropriate information to avoid such losses.



An independent audit of the ESDP process, funded by Environment and Climate Change Canada, identified avenues of improvement for the ESDP process. This, in conjunction with our review of the proposed bylaw changes, leads us to suggest the following improvements. The intent of these suggestions is that the ESDP process should follow a common-sense approach to protecting habitat without creating undue burden for RDOS staff and rate-paying landowners. Specifically, we suggest the following amendments to modify what triggers the need for an ESDPA permit, proposed in the Draft Amendment Bylaw No. 2912:

- a. We support the proposal to continue having “**subdivision**” applications as a trigger for this process, as that is the earliest stage where it is easiest to avoid development and destruction of critical habitat. We agree it is more difficult thereafter once land is subdivided and zoned for uses other than Conservation, Natural Resource, or Agricultural use to then restrict development by property owners.
- b. We advise retaining [with modification] the trigger “**alteration of the land, including grading [of soil], removal of [native] vegetation, ~~deposit or moving of soil~~, paving, installation of drainage or underground services**” because these are activities most likely to result in destruction of critical habitat. On federal lands where Canadian Wildlife Service currently has permitting responsibility under the *Species at Risk Act*, these are the same triggers that would require a *Species at Risk Act* permit application and review. We recognize this raises questions about what may constitute a ‘trigger’ under this wording (e.g., removing a native plant from your garden?). This is precisely why QEPs and a shared Environmental Planner are essential to the process. To help advise property owners and RDOS staff about what is reasonable or not reasonable to require environmental review given the size and timing of a proposed activity. Adopting common-sense modifications to the language used in the bylaw, and supporting professional review and discretion within the Environmental Planner role, could exclude many small-scale activities that are unlikely to alter the biophysical attributes of critical habitat for Species at Risk. This could include activities that may be necessary maintenance to reduce fire, flood and tree-fall risk. Such changes would minimize the burden on property owners, and be a service the RDOS provides to rate-payers with the financial support of Canadian Wildlife Service.
- c. We advise clarifying there should be exceptions to the trigger above, “**where a person is carrying out an activity necessary for the protection of public safety or health [for example]**”. This is consistent with exceptions under s.83 of the *Species at Risk Act*, and could accommodate a variety of emergency measures, including those related to concerns raised by landowners such as flooding or wildfire. Note; fire-smarting and flood-proofing homes outside the context of an emergency are preventative (not emergency) measures that should be carried out under the guidance of a QP and an ESDPA permit.
- d. We advise retaining and modifying the following trigger from “**construction of, addition to or alteration of a building or other structure**” to “**construction of, addition to or**

alteration of a building or other structure that increases the footprint and involves disturbance to vegetation or soil". This proposed modification will be more specific and reduce ambiguity around simple modifications or maintenance of buildings and other structures that have no real potential to cause damage to wildlife habitat.

Finally, we recognize and respect that implementing the ESDPA process costs time and money. This is why Canadian Wildlife Service has supported a portion of those costs for the RDOS, along with similar initiatives like the *Green Bylaws Toolkit* for all local governments in BC. We also recognize that some questions around the efficacy of the ESDP process in protecting the environment cannot be answered without follow-up monitoring and enforcement of permit conditions. If cost is a barrier to implementing that monitoring and enforcement, Canadian Wildlife Service would like to discuss opportunities to support such a pilot project.

If the board would like Canadian Wildlife Service to make a presentation on these topics above, to help the RDOS assess and manage risks under the *Species at Risk Act*, we would be pleased to do so. Thanks again for the opportunity to share this advice.

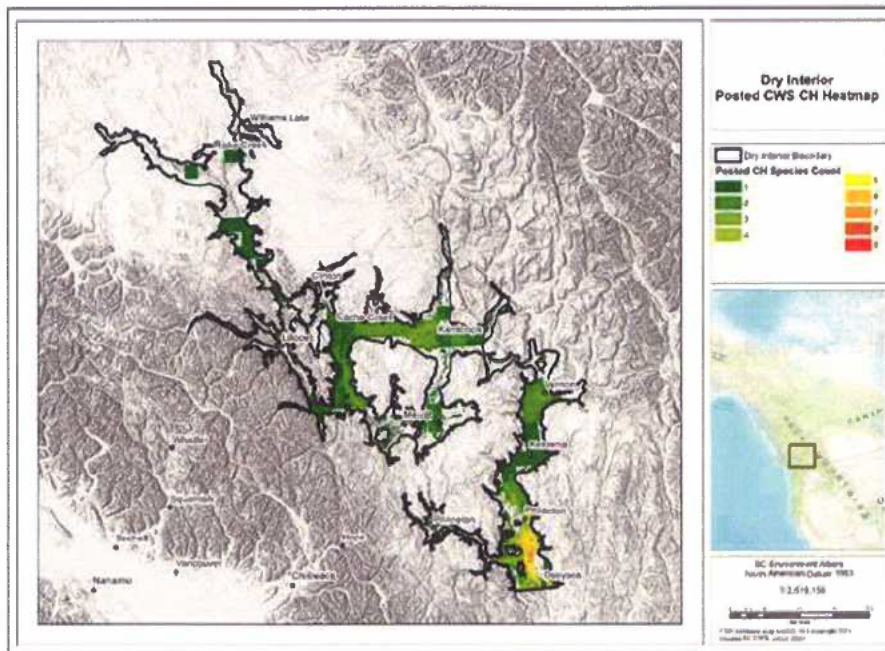
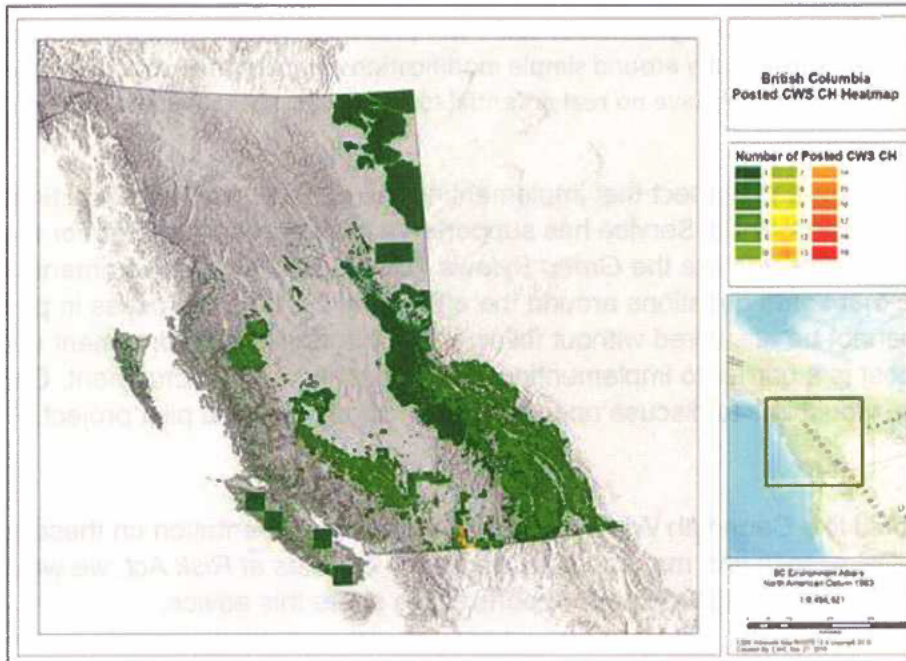
Signature

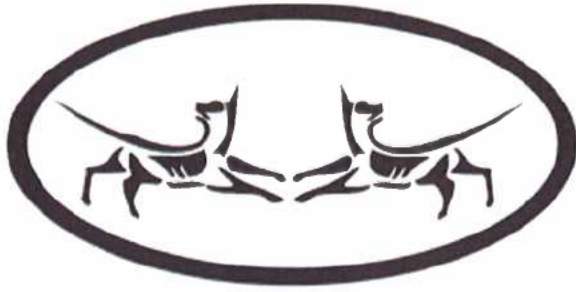
A handwritten signature in cursive script, appearing to read "Darcy Henderson".

Darcy Henderson

Head of Stewardship

Canadian Wildlife Service, Pacific Region





Penticton Indian Band
Natural Resources Department
841 Westhills Drive | Penticton, B.C.
V2A 0E8
Referrals@pib.ca | www.pib.ca
Telephone: 250-492-0411
Fax: 250-493-2882

Project Name:

Bylaw Referral - ESDP Area Amendments - Bylaw No. 2912 (Project No. X2020.009-ZONE)

FN Consultation ID:

L-201102-X2020009-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

[Regional District of Okanagan-Similkameen](#)

Date Received:

Thursday, November 26, 2020

WITHOUT PREJUDICE AND NOT TO BE CONSTRUED AS CONSULTATION

January 6, 2021

Attention: Christopher Garrish

File Number: X2020.009-ZONE

We are in receipt of the above referral. The proposed activity is located within Syilx (Okanagan) Nation Territory and the Penticton Indian Band (PIB) Area of Interest. All lands and resources within the vicinity of the proposed development are subject to our unextinguished Aboriginal Title and Rights.

The Penticton Indian Band has now had the opportunity to review the proposed activity. Our preliminary office review has indicated that the Environmentally Sensitive Development Permit (ESDP) Bylaws and its objective was developed unilaterally without consultation or consent from the syilx(Okanagan) nation title holders. The provincial government's consultation framework, land use referral policy and administrative system are insufficient to uphold our syilx interests in the land and resources within our traditional territory or to meet the fiduciary obligations of British Columbia. At this time there has been no reconciliation of our interests with those of the Province of British Columbia and Canada and no process in place to adequately recognize and negotiate co-existence or accommodation of our title and jurisdiction. Compliance with provincial processes, legislation, regulations and requirements therefore does not ensure that our interests are adequately accommodated.

In addition, as proved by the 2014 Tsilhqot'in case, when the Crown allocates resources on Aboriginal title lands without the Indigenous peoples' consent, it commits a serious infringement of constitutionally protected rights that will be difficult to justify. Further more, in 2019, the province of British Columbia implemented the United Nations Declaration on the Rights of Indigenous Peoples which aims to emphasize the Indigenous peoples' rights to live in dignity, to maintain and strengthen Indigenous institutions, cultures and traditions and to pursue self-determined development, in keeping with Indigenous needs and aspirations. The UNDRIP states in article 32(2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

At this time, The PIB cannot provide comment on the ESDP textual amendments due to an insufficient level of engagement.

Please note that our participation in the referral and consultation process does not define or amend PIB's Aboriginal Rights and Title, or limit any priorities afforded to Aboriginal Rights and Title, nor does it limit the positions that we may take in future negotiations or court actions.

If you require further information or clarification, please do not hesitate to contact me. Respectfully,

Maryssa Bonneau
PIB Referrals Coordinator
Email: referrals@pib.ca
Phone: 250-486-3241

To RDOS Directors

May 20, 2021

As concerned citizens on the board of First Things First Okanagan and residents of the Regional District of Okanagan Similkameen (RDOS), we would like to take this opportunity to express our concerns in regards to Environmentally Sensitive Development Permit (ESDP) Areas that are currently under review.

From our understanding the RDOS Board has passed a motion to apply ESDP permits to only subdivisions and rezoning. We find this recommendation deeply concerning. Removing the requirement for an Environmental Assessment report to be conducted for any development in an ESDP area that is not related to subdivisions or rezoning is a dangerous precedent to set and is not reflective of the principles in the RDOS guiding document, "Keeping Nature in Our Future: A Biodiversity Conservation Strategy for the South Okanagan Similkameen".

We see this recommendation as a step backwards for environmental protection. The RDOS should be a leader in environmental protection in the Province, considering that the South Okanagan is considered one of Canada's most endangered ecosystems with one of the highest concentrations of species at risk in the Province and Country. Approximately one quarter of the endangered species in the Province can only be found in this area, making it imperative that environmental assessments be conducted for all levels of development in designated ESDP areas, not just subdivisions and rezoning.

The mission of First Things First Okanagan is to promote awareness of climate change and work to find solutions for a better future. We encourage the protection of natural areas (often called natural assets) to maintain a region's environmental resilience in the face of climate change. The Federation of Canadian Municipalities states: *"Green infrastructure – natural resources and ecosystems ... – is critical for helping municipalities deliver and maintain levels of service for their communities, often at a lower cost than grey infrastructure alternatives. As the Canadian climate changes, protecting and managing green infrastructure is ever more vital, since it is a key tool for municipal adaptation to climate change."*

If RDOS were to make this downgrade in their development permit process, they would be one of the only Regional Districts in the Interior to do so. The Regional District of the Central Okanagan (RDCO) requires environmental assessments be completed for any development in any Natural Environmental Development Area. The natural environment and its occupants are not bound by Regional District boundaries, and as such, their level of protection should be consistent across the Regional Districts.

It is everyone's responsibility, including single-family developments to uphold the Provincial and Federal laws to protect the unique, rare and at-risk species and ecosystems in the RDOS for generations to come. If these fragile ecosystems are lost due to inadequate environmental protection standards for development, they cannot be brought back.

Sincerely,

Leanne McDonald – on behalf of First Things First Okanagan Board

May 20, 2021

Hello,

I have viewed the March 18, 2021 RDOS council meeting webcast twice (https://www.youtube.com/watch?v=8_JRtYOs8N0&t=4892s). After viewing the webcast, I called Area F Director, Riley Gittens, to discuss my impressions and concerns. I have previously sent email correspondence voicing my concerns about potential reductions / changes to the ESDP requirements in the RDOS. I am a QEP and have prepared Environmental Assessment (EA) reports for many clients throughout BC and Canada including many throughout the Okanagan. I acknowledge that as QEP and professional biologist in the RDOS I am not without personal, professional, and ideological bias.

During my 5 years in the RDOS I have observed a very engaged and generally well-informed community. It is my understanding that the ESDP process was developed by / with inputs from several very well-informed, experienced and highly respected local biologists. The March 18, 2021 RDOS council meeting webcast included a concise overview of the ESDP process and included some commentary regarding perceived issues regarding the ESDP process voiced by some Area Directors. I observed generally constructive dialogue during the council meeting webcast, however, I take issue with some of the comments made by some of the Area Directors.

Area A Director speaks to the perceived issue that ESDP reports do not provide sufficient value to landowners and deflects environmental protection to provincial responsibilities.

"...I agree that education goes a long ways, but a 5,000\$ bill for the homeowner to educate themselves is a little bit farfetched in my opinion. We can do the same with a 25-cent pamphlet and they would get the same benefit, thats the whole problem with this ESDP area.

I think that we need to look at ways of protecting the environment, I totally agree with that, but this is not the way, and the province is unwilling to give us any other tools so we need to come up with something and maybe lobby the province through UBCM on how to do this, but for the time being, I sure don't like the fact that we're saddling home owners who are planning on trying to build with that big of an expense and it [ESDP process] being so ineffective so with that I would move the motion that staff are recommending." (1:16).

These comments from Area A Director appear dismissive of the value of having a professional biologist visit a property to identify Sensitive Ecological Features and having a professional biologist recommend measures to protect Sensitive Ecological Features. I politely suggest that drawing an equivalence between a "25 cent pamphlet" and a report prepared by a professional biologist is false and misleading.

Area C Director addresses the perceived issue of some properties being located within the ESDP area while nearby areas are excluded from the ESDP area resulting in differential development costs.

"...when the mayors and council of a town look at it, its kind of an apples and oranges thing but it definitely brings to mind a point of view - if you have 2 houses on a block and one falls inside the pink zone [ESDP area] and the other one doesn't, one house is looking at, with all due respect to Director Pendergraft, I think he's being kind of conservative on the costs there, I believe it can run as much as 10,000\$ for one these, almost double, or more, depending on the depth of the study, but if you have one house that's going to add 10,000\$ to its building permit to fix the doors on its garage and the other house doesn't you're going to have some issues in your council chambers very quickly so you know somehow we have to find an answer to this." (1:30).

The hypothetical example presented by the Area C Director of a 10,000\$ Environmental Assessment to replace a garage door is mis-informed and inconsistent with land development triggers that I am familiar with as a professional biologist. Area C Director's very poorly chosen hypothetical example ("fix the doors on its garage") is misleading,

appears dismissive, and suggests to me that the Area C Director does not understand the distinction between land development that requires Environmental Assessment and land development that would not require Environmental Assessment (i.e. garage door replacement). The comments provided by the Area C Director suggest he is entirely missing the objective of the ESDP process and Environmental protection objectives in general. I strongly recommend that further conversation occur to bring all Area Directors to a point where informed discussion on general and specific land development scenarios can occur without the use of misleading and dismissive statements. I agree that some studies for large rural properties that support many diverse Sensitive Ecological Features may cost a landowner 10,000\$ to identify development strategies that will avoid impacting these Sensitive Ecological Features and help the landowner comply with environmental protection legislation that applies to privately owned properties.

Area H Director speaks to the perceived issue of some landowners not being aware of potential permitting requirements and potential land use limitations on their property.

"...People buy these lots and like Director Gittens said, then they find out all the things about them after they have already bought it and they don't understand it and then they end up having to hire a QEP to come out or a biologist to come out and that's absolutely horrendously expensive to bring these folks out here to do these types of studies or, whatever you call them, and um that should already be done so that when somebody buys that piece of property the person purchasing it knows what they're getting into. Whereas so often people buy property and have no idea what they can do with it. They don't understand these things so, if it was done at subdivision stage then it would be done and people would buy it and know what they're getting so that's all I got to say." (1:09).

Many property owners engage QEPs and or Biologists as a measure of due diligence prior to making major real estate decisions. The Area H Director's comments are clear, however, there does not appear to be any appreciation for the fact that habitat values change with time. Often a property is developed several years following subdivision. A 5-year-old Environmental Assessment that was completed prior to subdivision may not adequately reflect conditions at the time of development. Native trees mature and acquire greater habitat values as time passes. Many Ecologically Sensitive Features will be consistent between the time of subdivision and eventual development, but I see an appreciable concern that by eliminating the requirement for Environmental Assessment of already subdivided lots some Ecologically Sensitive Features might be destroyed during development, potentially in contravention of environmental protection legislation including the provincial *Wildlife Act*, Federal *Species at Risk Act* and the *Migratory Birds Convention Act*. Later comments from the Area I Director capture this sentiment that simply requiring EAs at the time of subdivision is not sufficient, and environmental damage might occur at later stages of land development (1:10).

I can appreciate that legal frameworks change with time; I suggest that major changes to the ESDP requirements are a step in the wrong direction and any changes should only be considered following robust conversation that includes discussion of specific issues rather than hypothetical situations. It is critical that our elected officials be adequately informed on the topic of the ESDP process including existing requirements. I suggest that enforcement of contraventions of ESDP requirements and monitoring or works are important topics for further discussion. I do not agree that limiting the ESDP process to subdivision only will provide adequate environmental protection in the RDOS. I echo the comments made by the Area F and Area I Directors regarding the importance of education regarding the ESDP process and environmental protection in general in the RDOS.

Respectfully submitted,

Tim Gray B.Sc., M.E.T., R.P.Bio., QEP



From: [Richard Thom](#)
To: [Planning](#)
Subject: Area C Amendment Proposal ESDP
Date: February 11, 2022 5:28:03 PM

My name is Richard Thom, for the last 5yrs I have resided at 493 Johnson Crescent Oliver BC . A proud owner of a 2.63acre parcel in Area C also known as "Willowbrook ".

I absolutely love the area and all the local farms and home based businesses in this area.

Firstly ,I wanted to give my support for the proposed amendments to Area C ESDP.

I believe the present Bylaw for ESDP for a private residence goes far beyond what is necessary or even the original intent of existing bylaw. For example my property is SH3 zoned and I have an existing 4ft high perimeter fence from 1990 and I was inquiring with RDOS of replacing existing fence with a 8ft deer fence. The reason being I am pursuing to develop a high quality edible lavender farm business and it requires to have strict control of inorganic / disease causing material which could be introduced by deer feces.

Even though I would be using the very same holes in the ground for new fence I was informed that I would have to get a Environment sustainable study to proceed but if I was just repairing which could involve replacing parts of the fence that would be ok. Also I want to mention that there will be no grading of land as the natural topography is perfect for growing lavender. There would be some surface soil amending to the already bare land . As an owner of such a lovely property I can only see positives to enhancing the land with a drought resistant plant and provide much needed nectar for the resident honeybees. I do feel it is overreaching and unnecessary to treat a single dwelling parcel with the same Bylaw as an application for subdivision permit which on its own has a high potential for land impact. As I understand the existing Bylaw for ESDP , there is no mechanism in place to monitor and is lost in the existing process . With a residential property that the intent is not to subdivide parcel but to plant an acre of high quality lavender on already bare land should stand on its own merits and have support from the RDOS to support local farming by not being too onerous or even a mute matter.

I am a firm believer of the importance of Bylaws and there place working in harmony with the very people that live in the area that already respect the land they live and work on.

Thank you for your consideration for my point of view.

Yours Truly

Richard Thom

From: [Lavona Reade](#)
To: [Planning](#)
Subject: ESDP review feedback
Date: February 11, 2022 8:12:22 AM

Planning Dept, RDOS,

We submit this feedback in support of the upcoming ESDP review:

In 2020, my husband and I viewed land throughout the province with the intent to purchase the ideal spot where we would build our upcoming retirement lifestyle. We are outdoor enthusiasts and have spent our lives appreciating and respecting the mountains and wilderness and it is important to us to be able to continue these experiences long into the next chapter of our lives. What made us decide on this property was the ideal combination of natural beauty, climate, and balance of adequate development with wilderness that would allow us to live our desired mountain lifestyle. In December, 2020 we purchased our lot [REDACTED]

During the purchase, we became aware of the ESDP through our own due diligence. We also discovered it was in review with the possibility of removal from the existing developed lots in the area. Because of this restriction, we came very close to not making the purchase. Ultimately, we conceded that if the ESDP remained, we would have to pay the added price to achieve our goal but that it did not prevent us from using the lot as we desired.

As we researched the immediate area, we met neighbors and residents of the mountain with very different backgrounds and situations. There was a common thread though, everyone loved the natural beauty, the views, and the peaceful lifestyle on the mountain. The type of buyer who would choose to live up here has this inherent trait. The lots are very mountainous, many with steep drop offs and minimal usable land. Residents are not here to desecrate the land, they are here as stewards, to live in the natural setting and amongst the wilderness it holds. It is not because of the ESDP that the mountain remains this way, it is because of the people.

Please accept this letter as our testament to our full support of removing the ESDP designation from the existing lots on Anarchist Mountain.

Sincerely,
Steve and Lavona Reade

[REDACTED]
Osoyoos

From: [Jackie Sehgal](#)
To: [Planning](#)
Subject: ESDP zoning amendments.
Date: February 8, 2022 12:48:00 PM

Good day


The current zoning restrictions should stand for all private homes and subdivisions, as any and all land no matter it's size should remain subject to environmental oversight. This will prevent private citizens from having freedom to sully parts of the whole RDOS purview, and keep the intent of the first principles strong.

Do not endorse new amendments that give preferential treatment to different holdings.

With appreciation to your efforts to keep BC beautiful for all its inhabitants during these fragile and challenging environmental times,

Sincerely,

Jackie and Ajai Sehgal


Osoyoos, BC

Sent from my iPhone

Board Chair
Regional District of Okanagan Similkameen
101 Martin Street
Penticton, British Columbia

14 February 2022

Subject: Changes proposed to ESDP Area permitting by-law.

I am writing today on behalf of the South Okanagan Naturalists' Club, to express our concerns about the proposed changes to the Environmentally Sensitive Development Area Permitting process.

We understand that there may be difficulties in protecting environmentally sensitive areas through the current permitting system, because the identified sensitive areas are not actually zoned as such under Official Community Plans. The need for ESDPA permits may not be widely understood by landowners, may not be enforceable once issued, and may present difficulties in measuring their impact in achieving sensitive area conservation.

The proposed changes to the ESDPA bylaw, however, appear to be a major step away from the Regional District's commitment to protect the unique ecosystems of the South Okanagan. Although it may not be a perfect system at the moment, abandoning it now will undoubtedly lead to the removal of any restrictions on developments in sensitive areas, including subdivisions, negating all the work done so far to identify and protect those areas.

A more refined approach to prioritizing conservation values in the identified ESDPAs is required. Measurable goals and objectives need to be set for environmentally sensitive areas that would indicate what species and ecosystems are priorities for management, and to identify the most appropriate land uses in those areas to achieve those goals. We believe information for such refinements already exists. Once those priorities are set, OCPs should be changed to reflect the needs of the most endangered sensitive areas, first and foremost.

Although we are a small organization we are prepared to help ensure that environmentally sensitive areas are protected and conserved in any way we can. Collectively, we have come too far in the ground breaking approach the Regional District adopted to help protect the South Okanagan's unique landscape to go back to the old ways. Let's make the improvements necessary to make the ESDPA system work, rather than working to eliminate it.

Rick McKelvey
Board Member, South Okanagan Naturalists' Club