

Lauri Feindell

Subject: FW: Referral comments requested: Watercourse Development Permit (WDP) Area Updates

From: HBE <HBE@interiorhealth.ca>
Sent: February 10, 2022 3:05 PM
To: Planning <planning@rdos.bc.ca>
Subject: RE: Referral comments requested: Watercourse Development Permit (WDP) Area Updates

Hello Danielle,

The IH Healthy Community Development Team has received the above captioned referral from your agency. Typically we provide comments regarding potential health impacts of a proposal. More information about our program can be found at [Healthy Built Environment](#).

An initial review has been completed and no health impacts associated with this proposal have been identified. As such, our interests are unaffected by this proposal.

If you have any questions, please feel free to contact me at 250-851-7347.

Kind regards,

Misty

Misty Palm, B.Tech. CPHI(C)

Environmental Health Officer – Healthy Communities Healthy Families

Interior Health

p: 250-851-7347

c: 250-320-0495

e: misty.palm@interiorhealth.ca

www.interiorhealth.ca



Interior Health

We recognize and acknowledge that we are collectively gathered on the traditional, ancestral, and unceded territories of the seven Interior Region First Nations, where we live, learn, collaborate and work together. This region is also home to 15 Chartered Métis Communities. It is with humility that we continue to strengthen our relationships with First Nation, Métis, and Inuit peoples across the Interior.



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:

Watercourse Development Permit (WDP) Update

FN Consultation ID:

W-220208-X2022-002-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

Regional District of Okanagan Similkameen

Date Received:

Thursday, February 10, 2022

File number:

X2022.002-ZONE Bylaw: 2950 & 2500.25

February 11, 2022

Attention: Danielle DeVries

We are in receipt of the above referral. This proposed activity is within the PIB Area of Interest within the Okanagan Nation's Territory, and the lands and resources are subject to our unextinguished Aboriginal Title and Rights.

The Supreme Court of Canada in the *Tsilhqot'in* case has confirmed that the province and Canada have been applying an incorrect and impoverished view of Aboriginal Title, and that Aboriginal Title includes the exclusive right of Indigenous People to manage the land and resources as well as the right to benefit economically from the land and resources. The Court therefore concluded that 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.

PIB has specific referral processing requirements for both government and proponents which are integral to the exercise of our management right and to ensuring that the Crown can meet its duty to consult and accommodate our rights, including our Aboriginal title and management rights. According to this process, proponents are required to pay a \$500 processing fee for each referral. This fee must be paid within 30 days. Proper consultation and consideration of potential impacts cannot occur without the appropriate resources therefore it is only with payment that proper consultation can begin and the proposed activity/development can be reviewed.

1. Invoice Number: W-220208-X2022-002-ZONE

Referrals Processing Fee

Sub Total \$ 500.00

Tax \$ 0.00

Total \$ \$500.00

INVOICE AMOUNT FOR PRELIMINARY OFFICE REVIEW \$500.00

Please make cheque or cash payable to Penticton Indian Band. re: P.C.132. Mail payment to ATTN: Heather McDougall, Penticton Indian Band Natural Resources Department 841 Westhills Drive, Penticton, British Columbia, Canada V2A 0E8. Please include this letter when sending.

Upon receipt of the processing fee, we will commence our review. You may then expect to receive a letter from us notifying you of the results of our review of potential impacts of the project within 30 to 90 days.

If the proposed activity requires a more in-depth review, PIB will notify the proponent and all parties will negotiate a memorandum of agreement regarding a process for review of the proposed activity.

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.

lmlmt,

Heather McDougall
Referrals Clerk
Natural Resources Department
Penticton Indian Band
W: 250-492-0411
Referrals.clerk@pib.ca



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:

Watercourse Development Permit (WDP) Update

FN Consultation ID:

W-220208-X2022-002-ZONE

Consulting Org Contact:

Planning RDOS

Consulting Organization:

Regional District of Okanagan Similkameen

Date Received:

Thursday, February 10, 2022

February 11, 2022

Attention: Planning RDOS

File number: X2022.002-ZONE Bylaw: 2950 & 2500.25

RE: 40 (forty) day extension

Thank you for the above application that was received on 2022-02-10T00:00:00.

This letter is to inform you that due to current levels of internal capacity, we are unable to review your referral in your proposed timeline. With additional time, the Penticton Indian Band will be able to ensure that an informed review process will occur. We are setting the new timeline to be 40 days from the existing timeline.

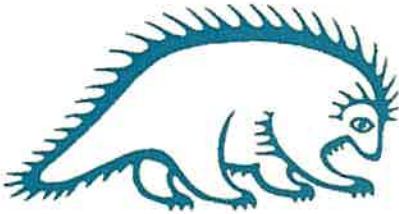
Most recently, the Supreme Court of Canada in the Tsilquot'in case confirmed that the province has been applying an incorrect and restrictive test to the determination of Aboriginal Title, and that Aboriginal Title includes the exclusive right of a First Nation to decide how that land is used and the right to benefit economically from those uses.

Please note that not receiving a response regarding a referral from Penticton Indian Band in the pre-application, current or post-application stage does not imply our support for the project.

I appreciate your co-operation.

lilmlamt,

Heather McDougall
Referrals Clerk
Natural Resources Department
Penticton Indian Band
P: 250-492-0411
Referrals.clerk@pib.ca



Okanagan Indian Band

12420 Westside Road • Vernon, BC, • V1H 2A4
Telephone: 250-542-4328 • Facsimile 250-542-4990

Email: okibreferrals@okanagan.org

"This correspondence will not be construed so as to to prejudice, limit, or derogate from any rights, claims or interests in respect of any Aboriginal title, rights and interests of Okanagan or Syilx Nation recognized and affirmed under Section 35 of the Constitution Act, 1982 and nothing in this letter indicates acceptance by Okanagan of federal or provincial Crown jurisdiction over or ownership of land, water or other resources within the Territory."

Project Name:

Watercourse Development Permit (WDP) Update

FN Consultation ID:

X2022.002-ZONE

Consulting Org Contact:

Chris Garrish

Consulting Organization:

[Regional District of Okanagan Similkameen](#)

Date Received:

Thursday, February 10, 2022

Attention: Chris Garrish

The Territorial Stewardship Division would like to acknowledge receipt of the above referral. The Okanagan Indian Band has conducted a desk top review of the project and would like to keep informed of any additional changes. At this time the Okanagan Indian Band will be deferring this project to Westbank First Nation, Upper Similkameen Indian Band, Upper Nicola Band, Penticton Indian Band, Osoyoos Indian Band and Lower Similkameen Indian Band for a more in depth review.

Regards,

Colleen Marchand

Director, Territorial Stewardship Division

250.542.7132 (office)

250.306.9796 (cell)

Colleen.Marchand@okanagan.org

Lauri Feindell

Subject: FW: Referral comments requested: Watercourse Development Permit (WDP) Area Updates

From: Maria Ciardullo <mciardullo@rdkb.com>

Sent: February 14, 2022 4:10 PM

To: Danielle DeVries <ddevries@rdos.bc.ca>

Subject: RE: Referral comments requested: Watercourse Development Permit (WDP) Area Updates

Hello,

The interests of the Regional District of Kootenay Boundary are unaffected by this proposal.

Regards,

 **Maria Ciardullo** | Senior Planning Secretary
mciardullo@rdkb.com | T: 250.368.0241

Regional District of Kootenay Boundary
Toll-free: 1.800.355.7352
Main: 250.368.9148
rdkb.com

RESPONSE SUMMARY

AMENDMENT BYLAW NOS. 2950 & 2500.25

Approval Recommended for Reasons Outlined Below

Interests Unaffected by Bylaw

Approval Recommended Subject to Conditions Below

Approval Not Recommended Due to Reasons Outlined Below

Signature: Amber McAfee

Signed By: Amber McAfee

Agency: FLNRORD - Mountain Resorts Branch

Title: Sr. Project Specialist

Date: February 18, 2022

Lauri Feindell

From: McBurnie, Michael ALC:EX <Michael.McBurnie@gov.bc.ca>
Sent: February 25, 2022 4:23 PM
To: Danielle DeVries
Subject: RE: Referral comments requested: Watercourse Development Permit (WDP) Area Updates

Hi Danielle,

The ALC has no comments on the amendments regarding the Watercourse Development Permit Area Updates.

Michael McBurnie (he/him)
Regional Planner: North, Interior, and Okanagan Regions
Agricultural Land Commission
michael.mcburnie@gov.bc.ca | 236.468.3246

From: Danielle DeVries <ddevries@rdos.bc.ca>
Sent: February 9, 2022 11:03 AM
To: Danielle DeVries <ddevries@rdos.bc.ca>
Subject: Referral comments requested: Watercourse Development Permit (WDP) Area Updates

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hello all,

Please see attached referral sheet and draft bylaws regarding a proposed update to the WDP Area guidelines to deal with "retroactive developments" that have occurred in a riparian area.

Comments are appreciated **by 4:30 p.m. on Thursday, March 10** to be included in the Board agenda package.

Thank you,
Danielle



Danielle DeVries • Planner I
Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC, V2A 5J9
p. 250.490.4213 • tf. 1.877.610.3737 • f. 250.492.0063
www.rdos.bc.ca • ddevries@rdos.bc.ca
[FACEBOOK](#) • [YOUTUBE](#) • Sign up for [REGIONAL CONNECTIONS](#)

I acknowledge that I work within the traditional, unceded territory of the syilx people in the Okanagan Nation.

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RESPONSE SUMMARY

AMENDMENT BYLAW NOS. 2950 & 2500.25

- Approval Recommended for Reasons Outlined Below
- Interests Unaffected by Bylaw
- Approval Recommended Subject to Conditions Below
- Approval Not Recommended Due to Reasons Outlined Below

The Penticton Indian Band is in receipt of the above referral. The proposed bylaw amendment affects sylix lands and lands within the Penticton Indian Band(PIB) area of responsibility. The PIB has now had the opportunity to review the proposed bylaw amendment.

The lands which are affected by this bylaw amendment are within the unceded sylix territory and are subject to sylix decision making and title and rights. As the decision makers for our unceded sylix lands and resources, the PIB is supportive of the bylaw amendment with the condition that a Cultural Heritage Resource Assessment be added as one of the requirements within the proposed bylaw amendment.

Please note out participation in the referral 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 any positions that we may take in future negotiations or court action.

Please contact me at your earliest convenience to discuss

Thank you

Maryssa Bonneau
PIB Natural Resources
Referral Coordinator
e: referrals@pib.ca
p: 250-492-0411
c:250-486-3241

Signature: Maryssa Bonneau

Signed By: Maryssa Bonneau

Agency: Penticton Indian Band

Title: Referrals Coordinator

Date: March 9, 2022

Lauri Feindell

Subject: FW: Referral comments requested: Watercourse Development Permit (WDP) Area Updates - MFLNRORD District Okanagan Shuswap Comments

From: FLNR DOS Referrals CSNR:EX <FLNRDOSReferrals@gov.bc.ca>

Sent: March 9, 2022 8:15 AM

To: Planning Group <planning@rdos.bc.ca>

Subject: Referral comments requested: Watercourse Development Permit (WDP) Area Updates - MFLNRORD District Okanagan Shuswap Comments

Good day,

MFLNRORD District Okanagan Shuswap Comments:

DOS Lands Team

Please clarify the restrictions you have in place for Section 21.3.8 (.1) – “Development on Crown Land”.

Mary Ellen Grant, Lands NR Specialist, 250-558-6273, MaryEllen.Grant@gov.bc.ca

Regards,

Patricia Shatzko

Authorizations Administrator

DOS Referrals Coordinator

Okanagan Shuswap Natural Resource District

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

2501 14th Ave | Vernon, BC V1T 8Z1

Tel (VOIP): 778-943-6850 | Fax: 250-549-5485

FLNRDOSReferrals@gov.bc.ca



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Lauri Feindell

From: RDCO Planning Services <planning@rdco.com>
Sent: March 9, 2022 10:52 AM
To: Danielle DeVries
Subject: RE: Referral comments requested: Watercourse Development Permit (WDP) Area Updates

Follow Up Flag: Follow up
Flag Status: Completed

Good morning,

Thank-you for the opportunity to comment. RDCO staff have reviewed the application and have no comments.

Should you have any questions, please contact Planning Services at 250-469-6227.

Sincerely,

Planning Services
Regional District of Central Okanagan
250-469-6227 | planning@rdco.com
Connect with us | rdco.com

From: Danielle DeVries <ddevries@rdos.bc.ca>
Sent: February 9, 2022 11:03 AM
To: Danielle DeVries <ddevries@rdos.bc.ca>
Subject: Referral comments requested: Watercourse Development Permit (WDP) Area Updates

You don't often get email from ddevries@rdos.bc.ca. [Learn why this is important](#)

CAUTION: This message was sent from outside the organization. Please do not click links, open attachments, or respond unless you recognize the source of this email and know the content is safe.

Hello all,

Please see attached referral sheet and draft bylaws regarding a proposed update to the WDP Area guidelines to deal with "retroactive developments" that have occurred in a riparian area.

Comments are appreciated **by 4:30 p.m. on Thursday, March 10** to be included in the Board agenda package.

Thank you,

Danielle



Danielle DeVries • Planner I
Regional District of Okanagan-Similkameen
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p. 250.490.4213 • tf. 1.877.610.3737 • f. 250.492.0063
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I acknowledge that I work within the traditional, unceded territory of the syilx people in the Okanagan Nation.

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Bylaw referral response – RDOS Watercourse Development Permit (WDP) Area Updates

Andrew Appleton, Riparian Areas Protection Regulation Coordinator

Our comments pertain to bylaw 2500.25, the Development Procedures Amendment Bylaw.

We make reference to section 2(i)(.1)(b) of the proposed bylaw, which reads as follows:

*If the minister will not provide the Assessment Report under section 6 (Administration of assessment reports by minister) of the RAPR because the development that is the subject of the Assessment Report has already occurred, the **Assessment Report** submitted to the Regional District as defines in section 1(b)(2).*

[Emphasis ours]

- Note that any report that is not submitted to the ministry for review through the online notification system would not constitute an assessment report as defined in the RAPR, despite potentially using the required methodology and/or forms.
- If it is the intent of the RDOS to request the type of report specified in section 1(b)(2), it would be preferable for the bylaw language to name this class of report as distinct from a RAPR Assessment Report. The commonly used term for such a report is a *Condition and Impact Assessment Report*. We note however that the proposed language of section 1(b)(2) currently appears to combine the content of a *Condition and Impact Assessment Report* with a RAPR Assessment Report. Specifically, this section states that the report should include “...all required components of an Assessment Report that is consistent with RAPR...”
- Note that if a “retroactive development” scenario occurs, it is still possible for the ministry to provide a compliant report to a local government for the proposed components of the development, provided the “retroactive” elements are dealt with through a *Condition and Impact Assessment* process. The proposed bylaw language appears to contemplate that in a contravening scenario, the entire report material will be provided to the local government as per section 2(i)(.1)(b) In this scenario, the local government would then be responsible for ensuring the entire content of the report complied with RAPR standards (not exclusively the content of a *Condition & Impact Assessment* component). The proposed language appears to contemplate that **either** a compliant RAPR Assessment Report (2(i)(.1)(a) or a report as described section 1(b)(2) will be received by the RDOS.
- In our conversations with the RDOS, we understood the intent of the bylaw amendment is to include language that provides an avenue to receive *Condition and Impact Assessment* Report materials. If the type of assessment described in section 1(b)(2) is provided to the RDOS (with amended language as described below), the component of the development that is not “retroactive development” can still be reviewed by the ministry. If it is not the intent of the RDOS to review materials typically reviewed by the ministry, then it may be more appropriate to require both reports specified in section 2(i)(.1) and direct that the report described in section 1(b)(2) be received by the RDOS in advance of ministry review of a RAPR Assessment Report.
- In the alternative, if the intent of the RDOS is to review the entirety of materials under the situation prescribed in section 2(i)(.1)(b), then we would reiterate that it would then fall to the RDOS to ensure that the entirety of the content met RAPR standards.
- Further to the above, it may be useful to further differentiate that part of the process that relates to the desired *Condition and Impact Assessment* materials from the RAPR Assessment Report process.

With respect to the report specifications laid out in section 1(b)(2):

- Key to achieving a restorative prescription that meets RAPR standards is that no development is permissible inside the Streamside Protection and Enhancement Area (SPEA). In the case of “retroactive development” that involves vegetation or soil disturbance, a QEP will in most cases be able to specify a restorative prescription based on best practices and existing provincial guidelines. To better align with the regulatory language of the RAPR, it may be desirable to replace the term “*integrity of the SPEA*” in the proposed bylaw with “*natural features, functions and conditions as defined in RAPR*”.
- Note that any “retroactive development” scenario where a permanent structure (including but not limited to such ancillary structures as decks, patios and outbuildings) has been placed in a SPEA is a contravention of RAPR standards. As the RAPR (purposefully) does not provide a mechanism for compensation / offsetting where a permanent structure has been placed in a SPEA, a Condition and Impact Assessment report that proposes such compensation will not conform to RAPR standards (and therefore a subsequent RAPR Assessment Report submission that contained such a situation would be rejected)
- It appears that the three subsections (a, b and c) of section 1(b)(2) are intended to capture three distinct scenarios (a. where no incursion into the SPEA has occurred b. where incursion into the SPEA has occurred but no buildings or structures are involved and c. where incursion into the SPEA has occurred and buildings or structures have been placed in the SPEA.
 - In scenario a, the language is appropriate (note the above recommendation on substituting *natural features, functions and conditions* for “*integrity of the SPEA*”) and once the QEP has made this determination the ministry review of the RAPR Assessment Report (for the non “retroactive” component of the development) can continue.
 - In scenario b, amending the language of this section to read “*development has occurred in the SPEA that does not involve buildings or structures and restoration measures have been prescribed to address the natural features, functions and conditions as defined in RAPR*” or similar. This makes it clearer that the intent is to restore disturbed areas that do not involve buildings or structures (vegetation clearing, fill placement, grading, etc.). Again, once the restorative prescription has been approved the ministry review of the RAPR Assessment Report (for the non “retroactive” component of the development) can continue. The language “without removing any buildings or structures” in the proposed language could be misinterpreted as permitting buildings or structures within the SPEA to remain.
 - In scenario c, the language is appropriate (note the above recommendation on substituting *natural features, functions and conditions* for “*integrity of the SPEA*”). Note that only a restorative prescription that involved the removal of the structure would conform to RAPR standards (as above). If the “retroactive development” falls under scenario c and the RDOS wished to retroactively permit that development without removal of the unpermitted buildings or structures, this would not meet RAPR standards as required in the regulation. We do not understand this subsection to be intended to provide this authority, but for clarity.

Lauri Feindell

From: referrals@usib.ca
Sent: March 16, 2022 10:44 AM
To: Danielle DeVries; referrals@usib.ca
Subject: RE: Referral comments requested: Watercourse Development Permit (WDP) Area Updates
Attachments: USIB Traditional Territory Map.jpeg.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Hello Danielle, thank you for letting us know that we are not included in the Nations Connect Database. This is the correct contact email for all things referrals.

We have reviewed the information provided and USIB has no comments specifically to add to the bylaw amendment.

We do request that USIB is notified for any decisions or work taking place in the USIB Area of Interest and Traditional Territory. A map of USIB's AOI is attached.

With thanks,
Robin Irwin

From: Danielle DeVries <ddevries@rdos.bc.ca>
Sent: February 10, 2022 12:37 PM
To: referrals@lsib.net; referrals@usib.ca
Subject: Referral comments requested: Watercourse Development Permit (WDP) Area Updates

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Hello LSIB & USIB,

We noticed that you are not in the Nations Connect database for consultation. Is this the correct avenue to reach you?

Please see attached referral sheet and draft bylaws regarding a proposed update to the WDP Area guidelines to deal with "retroactive developments" that have occurred in a riparian area.

Comments are appreciated **by 4:30 p.m. on Thursday, March 10** to be included in the Board agenda package.

Thank you,
Danielle



Danielle DeVries • Planner I
Regional District of Okanagan-Similkameen
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I acknowledge that I work within the traditional, unceded territory of the syilx people in the Okanagan Nation.

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RESPONSE SUMMARY

AMENDMENT BYLAW NOS. 2950 & 2500.25

Approval Recommended for Reasons Outlined Below

Interests Unaffected by Bylaw

Approval Recommended Subject to Conditions Below

Approval Not Recommended Due to Reasons Outlined Below

Please see attached summary for FLNRORD RAPR group comments / recommendations.

Signature: _____

Signed By: _____

Agency: _____

Title: _____

Date: _____



March 18, 2022

File: 0280-30

Local Government File: X2022.002 - ZONE

Danielle DeVries, Planner I
Regional District of Okanagan
Similkameen
Via Email: planning@rdos.bc.ca

Dear Danielle DeVries,

Re: RDOS Development Procedures Amendment Bylaw No. 2500.25 & 2950, 2022

Thank you for providing the Ministry of Agriculture, Food and Fisheries (Ministry) staff the opportunity to comment on how retroactive permits for works that occurred within watercourse development permit (WDP) areas may be issued.

Given that the proposed bylaw amendments are proposed to create an avenue for property owners to receive approval for retroactive developments for works within a WDP and that there does not appear to be any direct impact/implications on a property owner's ability to farm their property, Ministry staff have no comments.

As a reminder, please be advised that if a covenant is required on a property within the Agricultural Land Reserve as part of the WDP process, it would need to be approved by the Agricultural Land Commission.

If you have any questions, please contact us directly at the numbers and email addresses below.

Sincerely,

Reed Bailey
Land Use Planner
Ministry of Agriculture, Food
and Fisheries

Philip Gyug, P.Ag
Regional Agrologist
Ministry of Agriculture, Food
and Fisheries

Reed.Bailey@gov.bc.ca
(778) 698-3455

Philip.Gyug@gov.bc.ca
(250) 378-0573

Email copy: Michael McBurnie, ALC Regional Planner, Michael.McBurnie@gov.bc.ca