

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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March 2019

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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:

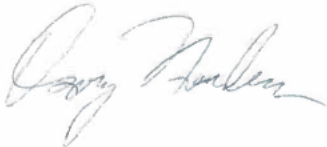
- a. We support the proposal to continue having “**subdivision**” applications as a trigger for this process, as that is the earliest stage where it is easiest to avoid development and destruction of critical habitat. We agree it is more difficult thereafter once land is subdivided and zoned for uses 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.

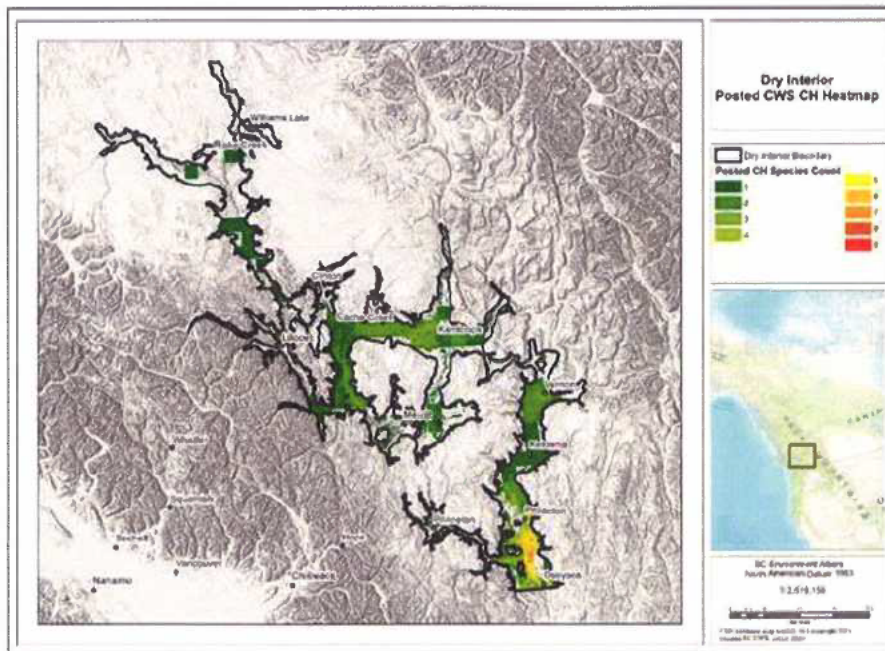
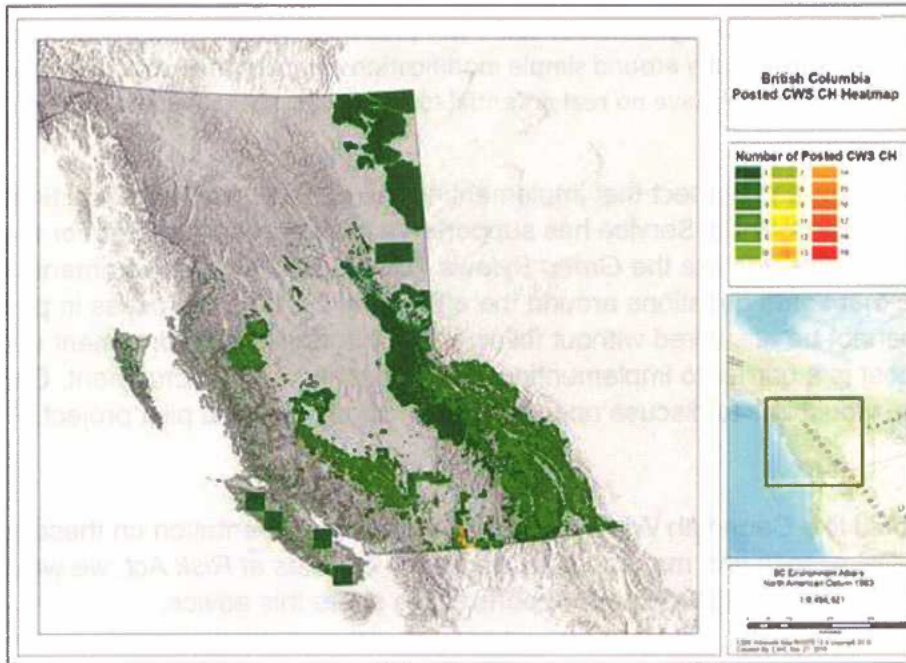
Signature

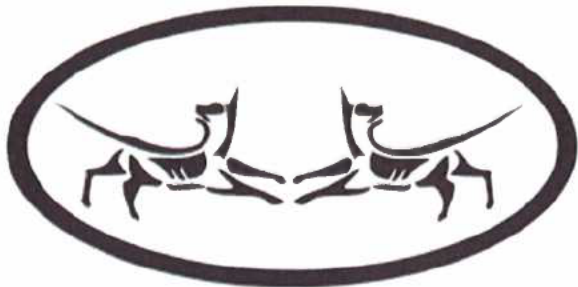
A handwritten signature in cursive script, appearing to read "Darcy Henderson".

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

RESPONSE SUMMARY

AMENDMENT BYLAW NO. 2912

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: 

Signed By: R. Lyle Thomas

Agency: Town of Princeton

Title: CAO

Date: Nov. 4, 2020



Bylaw Referral

Regional District of Okanagan-Similkameen

101 Martin Street, Penticton, BC, V2A-5J9

Telephone: 250-492-0237 / Email: planning@rdos.bc.ca

OFFICE USE ONLY	
Date:	Nov 2, 2020
Bylaw:	2912
File:	X2020.009-ZONE

You are requested to comment on the attached bylaw for potential effect on your agency's interests. We would appreciate your response **WITHIN 30 DAYS**. If no response is received within that time, it will be assumed that your agency's interests are unaffected.

Please email your reply to planning@rdos.bc.ca by **December 4, 2020**.

PURPOSE OF THE BYLAWS: The Regional District Board is proposing to initiate a series of textual amendments to the Environmentally Sensitive Development Permit (ESDP) Area designations in the Electoral Area "A", "C", "D", "E", "F", "H" & "I" Official Community Plan (OCP) Bylaws. The following is a summary of the proposed changes (please see the annotated version of Bylaw No. 2912 for my details):

- revised policy statements that speak to environmentally sensitive development permits being implemented only in relation to subdivision;
- the introduction of a new guideline related specifically to subdivision design in ESDP Areas;
- the deletion of "construction of, addition to or alteration of a building or other structure" and the "alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services" as triggers for an environmentally sensitive development permit; and
- the deletion of all non-subdivision related exemptions for environmentally sensitive development permits

LEGAL DESCRIPTION: not applicable

CIVIC ADDRESS: not applicable

PID: not applicable

AREA OF PROPERTY AFFECTED:	ALR STATUS:	OCP DESIGNATION:	ZONING DISTRICT:
Not applicable	Yes (part)	[various]	[various]

OTHER INFORMATION: At its meeting of September 3, 2020, the following Motion was debated and carried by the Regional District Board:

THAT the RDOS Board apply Environmentally sensitive development permits (ESDPs) to only Subdivisions and rezonings; and further,

THAT Staff report back to the Board on the options to make ESDPs more effective at Subdivisions and rezonings; and further,

THAT ESDPs should in no way prevent or discourage residents from firesmaring their properties according to the firesmart principles.

Additional information, including staff reports as well as an annotated and clean version of the amendment bylaw can be found at the following location: <https://www.rdos.bc.ca/development-services/planning/strategic-projects/esdp-review>

Please fill out the Response Summary on the back of this form. If your agency's interests are "Unaffected" no further information is necessary. In all other cases, we would appreciate receiving additional information to substantiate your position and, if necessary, outline any conditions related to your position. Please note any legislation or official government policy which would affect our consideration of this bylaw.

Christopher Garrish, Planning Manager

Agency Referral List

<input checked="" type="checkbox"/> Agricultural Land Commission (ALC)	<input checked="" type="checkbox"/> BC Parks	<input checked="" type="checkbox"/> City of Penticton
<input checked="" type="checkbox"/> Interior Health Authority (IHA)	<input checked="" type="checkbox"/> Central Okanagan Regional District	<input checked="" type="checkbox"/> District of Summerland
<input checked="" type="checkbox"/> Ministry of Agriculture	<input checked="" type="checkbox"/> Kootenay Boundary Regional District	<input checked="" type="checkbox"/> Town of Oliver
<input checked="" type="checkbox"/> Ministry of Energy, Mines & Petroleum Resources	<input checked="" type="checkbox"/> Canadian Wildlife Services	<input checked="" type="checkbox"/> Town of Osoyoos
<input checked="" type="checkbox"/> Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Ecosystem Section)	<input checked="" type="checkbox"/> Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch)	<input checked="" type="checkbox"/> Penticton Indian Band (PIB)
<input checked="" type="checkbox"/> Fisheries and Oceans Canada	<input checked="" type="checkbox"/> School District #67 (Okanagan Skaha)	<input checked="" type="checkbox"/> Osoyoos Indian Band (OIB)
<input checked="" type="checkbox"/> Fortis	<input checked="" type="checkbox"/> School District #53 (Okanagan Similkameen)	<input checked="" type="checkbox"/> Lower Similkameen Indian Bands (LSIB)
<input checked="" type="checkbox"/> Town of Princeton	<input checked="" type="checkbox"/> School District #58 (Nicola-Similkameen)	<input checked="" type="checkbox"/> Okanagan Nation Alliance (ONA)

Christopher Garrish

From: Dirk Zinner [REDACTED]
Sent: August 9, 2020 5:30 PM
To: mpendergraft@rdoso.bc.ca
Cc: Karla Kozakevich; Christopher Garrish; pbeckett@persona.ca
Subject: pink zones etc.

Dear folks.

I am writing re. the 'Imprecise EDPA Mapping '

I am a resident on Anarchist Mtn. I understand that RDOS is planning to implement some changes re. the environmental situation in our area.

I am requesting that this be significantly reviewed and changed.

1. Numerous environmental studies(at major cost) have already been done for this area and additional studies at a significant and irritating costs as well as time to the lot owner are duplicate and not needed.
2. The new proposals (as I understand them) would impose major limitations on what an owner (such as us) can do on owns property. The way I read the new document, I wouldn't be able to do anything. i.e. NO gardening ; NO fire smarting our property, etc. This does NOT make any sense.
We moved here to enjoy, appreciate and respect the out of doors.
Imposing new controls after purchasing a lot is unacceptable.
3. What evidence is there to support the changes (i.e. pink zone???)

Furthermore, I am wondering what RDOS is doing to control some of the invasive and obnoxious weeds that are threatening and overrunning this area (i..e knapweed)? It is one thing to print and distribute fancy brochures; what about spending some of that money(our tax \$s) to eradicate these obnoxious weeds???(such as along road sides and 'common areas?

I thank you in advance for your serious consideration of what we are desiring and facing on Anarchist Mtn.

Dirk Zinner
[REDACTED]

Sent from [Mail](#) for Windows 10



Agricultural Land Commission
201 – 4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000 | Fax: 604 660-7033
www.alc.gov.bc.ca

December 4, 2020

Reply to the attention of Sara Huber
ALC Planning Review: 46747
Local Government File: X2020.009-ZONE

Chris Garrish
Planning Manager, RDOS
planning@rdos.bc.ca

Re: Regional District of Okanagan Similkameen Electoral Areas A, C, D, E, F, H and I Official Community Plan Amendment Bylaw No. 2912

Thank you for forwarding a draft copy of Regional District of Okanagan Similkameen (RDOS) Electoral Areas A, C, D, E, F, H, and I Official Community Plan (OCP) Amendment Bylaw No. 2912 (the "Bylaw") for review and comment by the Agricultural Land Commission (ALC). The following comments are provided to help ensure that the Bylaw is consistent with the purposes of the *ALC Act* (ALC Act), the Agricultural Land Reserve (ALR) General Regulation, (the "ALR General Regulation"), the ALR Use Regulation (the "ALR Use Regulation"), and any decisions of the ALC.

Current Proposal:

The Bylaw proposes a series of textual amendments to the Environmentally Sensitive Development Permit (ESDP) Area designations, including the following:

- revised policy statements that speak to environmentally sensitive development permits being implemented only in relation to subdivision;
- the introduction of a new guideline related specifically to subdivision design in ESDP Areas;
- the deletion of "construction of, addition to or alteration of a building or other structure" and the "alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services" as triggers for an environmentally sensitive development permit; and
- the deletion of all non-subdivision related exemptions for environmentally sensitive development permits

ALC Staff Comments:

ALC staff have no objection to this amendment, as it eliminates the requirement for an ESDP for the construction, addition to, or alteration of a building or structure and associated Qualified Environmental Professional report, which may include structures used for farming purposes. Rather, the Bylaw relates the ESDP to subdivision only, which would require an application to the ALC anyways.

The ALC strives to provide a detailed response to all bylaw referrals affecting the ALR; however, you are advised that the lack of a specific response by the ALC to any draft bylaw provisions cannot in any way be construed as confirmation regarding the consistency of the submission with the ALCA, the Regulations, or any Orders of the Commission.

This response does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

If you have any questions about the above comments, please contact the undersigned at 236-468-3258 or by e-mail (Sara.Huber@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION



Sara Huber, Regional Planner

Enclosure: Referral of RDOS X2020.009-ZONE

CC: Ministry of Agriculture – Attention: Alison Fox (Alison.Fox@gov.bc.ca)

46747m1

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN

BYLAW NO. 2912, 2020

**A Bylaw to amend the Electoral Area "A", "C", "D", "E", "F", "H" & "I"
Official Community Plan Bylaws**

The REGIONAL BOARD of the Regional District of Okanagan-Similkameen in open meeting assembled, ENACTS as follows:

1. This Bylaw may be cited for all purposes as the "Regional District of Okanagan-Similkameen Environmentally Sensitive Development Permit Area Update Official Community Plan Amendment Bylaw No. 2912, 2020."

Electoral Area "A"

2. The "Electoral Area "A" Official Community Plan Bylaw No. 2450, 2008" is amended by:

- i) replacing sub-section 13.1.2.3 (Policies – General) under Section 13.0 (Natural Environment and Conservation) in its entirety with the following:
 3. Requires that, where a proposed subdivision affects land subject to an Environmentally Sensitive Development Permit Area, an Environmental Assessment (EA) be prepared by a Qualified Environmental Professional (QEP) in accordance with the policies outlined at Section 18.2 as well as relevant federal and provincial best management guidelines.
- ii) replacing sub-section 13.3.2.2 (Policies) under Section 13.0 (Natural Environment and Conservation) in its entirety with the following:
 - .2 Requires that land designated as an Environmentally Sensitive Development Permit Area shall be retained in a natural state and not subdivided prior to the issuance of an Environmentally Sensitive Development Permit (ESDP) in accordance with the guidelines outlined at Section 18.2 of this Plan unless an exemption applies.
- iii) replacing sub-section 13.3.2.6 (Policies) under Section 13.0 (Natural Environment and Conservation) in its entirety with the following:

Commented [CG1]: Proposes to replace reference to "development" with "subdivision"

Commented [CG2]: Proposes to replace reference to "development" with "subdivision"

- .6 Encourages development that avoids impacting important native species, habitats, ecosystems or sensitive areas and to retain important ecosystem features and functions. Responsiveness to this policy will be a very important consideration in the approval of an amendment bylaw application.
- iv) replacing a new sub-section 18.2 (Environmentally Sensitive Development Permit (ESDP) Area) under Section 18.0 (Development Permit Areas) in its entirety with the following:

Commented [CG3]: New wording.

18.2 Environmentally Sensitive Development Permit (ESDP) Area

Commented [CG4]: Option for an "Expedited Development Permit" has been removed as it is primarily related to building permits (was Section 18.2.7).

.1 Category

The Environmentally Sensitive Development Permit (ESDP) Area is designated pursuant to Section 488(1)(a) of the *Local Government Act* for the protection of the natural environment, its ecosystems and biological diversity.

.2 Area

The lands shown as Environmentally Sensitive Development Permit Area on Schedule 'C' are designated as an Environmentally Sensitive Development Permit Area.

.3 Justification

To regulate development activities within environmentally sensitive areas in order to protect important sensitive ecosystems and biological diversity including valuable habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat.

.4 Background

The natural environment provides essential habitat and corridors for plants, fish, birds and other organisms. It also acts as a natural water storage, drainage and purifying system, which can help to protect private property from flooding or land loss due to watercourse erosion. Furthermore, as concerns over climate change grow, it should be recognized that functioning ecosystems are more efficient at consuming carbon dioxide as well as carbon storage. Vegetation adjacent to watercourses needs to remain in a largely undisturbed state in order to maintain a healthy environment and clean water.

The south Okanagan-Similkameen area is considered one of the most ecologically diverse in British Columbia and Canada, and includes sensitive ecosystems which support a number of provincially Red and Blue-listed species (extirpated, endangered, threatened, and vulnerable) and federally listed Species at Risk. The ESDP Area is intended to protect habitat for

endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat within the Plan Area.

The ESDP Area is comprised of important habitat areas for wildlife and plant communities. Sensitive ecosystems in the area include grasslands, riparian areas, old forest, shrub-steppe, broadleaf woodland, coniferous woodland, wetlands, shallow soiled rock outcrops and ridges. Specifically, BC's pocket desert, Kruger Mountain, Osoyoos Lake, the oxbows and wetlands of Okanagan River, Richter Pass with the natural ridgeline views between Highway 3 and Osoyoos Lake. It is the close proximity of these diverse habitats that contribute to a wide variety of species, both common and rare, that are found in this Electoral Area.

.5 Development requiring a permit

.1 A development permit is required, except where exempt under Section 18.2.7 (Exemptions), for development on lands within the ESDP area. Where not exempted, development requiring a development permit includes:

- a) subdivision.

Commented [CG5]: The following references have been removed:
b) the construction of, addition to or alteration of a building or other structure; and
c) alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services

.6 Guidelines

.1 A Development Permit is required for development within an ESDP Area, and shall be in accordance with the following guidelines:

a) An Environmental Assessment (EA) Report, prepared in accordance with the requirements of the Regional District's Development Procedures Bylaw, must be submitted to the Regional District in respect of the proposed development by a qualified environmental professional (QEP) that is a Registered Professional Biologist in British Columbia (RPBio) or team that shall include a RPBio under contract to the development applicant, and shall include:

i) An Ecological Assessment Phase including:

- .1 background information;
- .2 an ecological assessment;
- .3 listing of rare and endangered species; and
- .4 stratification and rating of Environmentally Sensitive Areas (ESAs).

ii) An Impact Assessment and Mitigation Phase including:

- .1 description of proposed development;
- .2 assessment of potential impacts;

- .3 short and long term impacts;
- .4 cumulative and residual impacts;
- .5 avoidance of ESAs;
- .6 mitigation and compensation;
- .7 security requirements;
- .8 monitoring reports;
- .9 accountability; and
- .10 monitoring plan.

- b) Subdivision should be planned, designed and implemented to protect environmentally sensitive areas. Habitats that provide for at-risk species, at-risk ecological communities and keystone species should be given priority for protection.
 - c) Development should be planned away from native trees and trees containing active nest sites or cavities. If removal of native trees cannot be avoided, mitigation should include restoration and replanting with equivalent native trees.
 - d) Habitat connectivity and the retention of connectivity corridors between sensitive ecosystems should be preserved. Wildlife crossings should be designed to protect continuity of wildlife corridors where these are interrupted by roadways.
 - e) Monitoring reports may be required to be submitted to the Regional District following the completion of a development in order to confirm the conditions of a development permit have been met.
 - f) The Regional District may incorporate any areas or measures identified in an EA to protect sensitive ecosystems from the effect of development as terms and conditions of the development permit.
2. If an area of land is subject to additional Development Permit Area designations under Section 488(1)(a) of the *Local Government Act*, the Regional District requires that a single development permit application that combines the requirements of each Development Permit Area be submitted. The application will be assessed in accordance with the individual development permit guidelines for each applicable Development Permit Area under this bylaw and, if approved, issued under a combined development permit.

Commented [CG6]: New Guideline specific to subdivision

.7 Exemptions

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

- .1 subdivisions that propose to:
 - a) consolidate existing parcels, including the consolidation of parts of a closed road to an existing parcel; or
 - b) alter parcel lines between two or more parcels where no additional parcels are created upon completion of the alteration.

Commented [CG7]: All non-subdivision related exemptions have been removed.

Electoral Area "C"

3. The "Electoral Area "C" Official Community Plan Bylaw No. 2452, 2008" is amended by:

- i) replacing sub-section 16.1.2.3 (Policies – General) under Section 16.0 (Natural Environment and Conservation) in its entirety with the following:
 - .3 Requires that, where a proposed subdivision affects land subject to an Environmentally Sensitive Development Permit Area, an Environmental Assessment (EA) be prepared by a Qualified Environmental Professional (QEP) in accordance with the policies outlined at Section 21.2 as well as relevant federal and provincial best management guidelines.
- ii) replacing sub-section 16.3.2.2 (Policies) under Section 16.0 (Natural Environment and Conservation) in its entirety with the following:
 - .2 Requires that land designated as an Environmentally Sensitive Development Permit Area shall be retained in a natural state and not subdivided prior to the issuance of an Environmentally Sensitive Development Permit (ESDP) in accordance with the guidelines outlined at Section 21.2 of this Plan unless an exemption applies.
- iii) replacing sub-section 16.3.2.6 (Policies) under Section 16.0 (Natural Environment and Conservation) in its entirety with the following:
 - .6 Encourages development that avoids impacting important native species, habitats, ecosystems or sensitive areas and to retain important ecosystem features and functions. Responsiveness to this policy will be a very important consideration in the approval of an amendment bylaw application.
- iv) replacing a new sub-section 21.2 (Environmentally Sensitive Development Permit (ESDP) Area) under Section 21.0 (Development Permit Areas) in its entirety with the following:

Commented [CG8]: Proposes to replace reference to "development" with "subdivision"

Commented [CG9]: Proposes to replace reference to "development" with "subdivision"

Commented [CG10]: New wording.

21.2 Environmentally Sensitive Development Permit (ESDP) Area

Commented [CG11]: Option for an "Expedited Development Permit" has been removed as it is primarily related to building permits (was Section 21.2.7).

.1 Category

The Environmentally Sensitive Development Permit (ESDP) Area is designated pursuant to Section 488(1)(a) of the *Local Government Act* for the protection of the natural environment, its ecosystems and biological diversity.

.2 Area

The lands shown as Environmentally Sensitive Development Permit Area on Schedule 'C' are designated as an Environmentally Sensitive Development Permit Area.

.3 Justification

To regulate development activities within environmentally sensitive areas in order to protect important sensitive ecosystems and biological diversity including valuable habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat.

.4 Background

The natural environment provides essential habitat and corridors for plants, fish, birds and other organisms. It also acts as a natural water storage, drainage and purifying system, which can help to protect private property from flooding or land loss due to watercourse erosion. Furthermore, as concerns over climate change grow, it should be recognized that functioning ecosystems are more efficient at consuming carbon dioxide as well as carbon storage. Vegetation adjacent to watercourses needs to remain in a largely undisturbed state in order to maintain a healthy environment and clean water.

The south Okanagan-Similkameen area is considered one of the most ecologically diverse in British Columbia and Canada, and includes sensitive ecosystems which support a number of provincially Red and Blue-listed species (extirpated, endangered, threatened, and vulnerable) and federally listed Species at Risk. The ESDP Area is intended to protect habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat within the Plan Area.

The ESDP Area is comprised of important habitat areas for wildlife and plant communities. Sensitive ecosystems in the area include grasslands, riparian areas, old forest, shrub-steppe, broadleaf woodland, coniferous woodland, wetlands, shallow soiled rock outcrops and ridges. It is the close proximity of these diverse habitats that contribute to a wide variety of species, both common and rare, that are found in this Electoral Area.

.5 Development requiring a permit

- .1 A development permit is required, except where exempt under Section 21.2.7 (Exemptions), for development on lands within the ESDP area. Where not exempted, development requiring a development permit includes:
- a) subdivision.

Commented [CG12]: The following references have been removed:
b) the construction of, addition to or alteration of a building or other structure; and
c) alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services.

.6 Guidelines

- .1 A Development Permit is required for development within an ESDP Area, and shall be in accordance with the following guidelines:
- a) An Environmental Assessment (EA) Report, prepared in accordance with the requirements of the Regional District's Development Procedures Bylaw, must be submitted to the Regional District in respect of the proposed development by a qualified environmental professional (QEP) that is a Registered Professional Biologist in British Columbia (RPBio) or team that shall include a RPBio under contract to the development applicant, and shall include:
 - i) An Ecological Assessment Phase including:
 - .1 background information;
 - .2 an ecological assessment;
 - .3 listing of rare and endangered species; and
 - .4 stratification and rating of Environmentally Sensitive Areas (ESAs).
 - ii) An Impact Assessment and Mitigation Phase including:
 - .1 description of proposed development;
 - .2 assessment of potential impacts;
 - .3 short and long term impacts;
 - .4 cumulative and residual impacts;
 - .5 avoidance of ESAs;
 - .6 mitigation and compensation;
 - .7 security requirements;
 - .8 monitoring reports;
 - .9 accountability; and
 - .10 monitoring plan.

- b) Subdivision should be planned, designed and implemented to protect environmentally sensitive areas. Habitats that provide for at-risk species, at-risk ecological communities and keystone species should be given priority for protection.
 - c) Development should be planned away from native trees and trees containing active nest sites or cavities. If removal of native trees cannot be avoided, mitigation should include restoration and replanting with equivalent native trees.
 - d) Habitat connectivity and the retention of connectivity corridors between sensitive ecosystems should be preserved. Wildlife crossings should be designed to protect continuity of wildlife corridors where these are interrupted by roadways.
 - e) Monitoring reports may be required to be submitted to the Regional District following the completion of a development in order to confirm the conditions of a development permit have been met.
 - f) The Regional District may incorporate any areas or measures identified in an EA to protect sensitive ecosystems from the effect of development as terms and conditions of the development permit.
- .3 If an area of land is subject to additional Development Permit Area designations under Section 488(1)(a) of the *Local Government Act*, the Regional District requires that a single development permit application that combines the requirements of each Development Permit Area be submitted. The application will be assessed in accordance with the individual development permit guidelines for each applicable Development Permit Area under this bylaw and, if approved, issued under a combined development permit.

Commented [CG13]: New Guideline specific to subdivision.

7 Exemptions

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

- .1 subdivisions that propose to:
 - a) consolidate existing parcels, including the consolidation of parts of a closed road to an existing parcel; or
 - b) alter parcel lines between two or more parcels where no additional parcels are created upon completion of the alteration.

Commented [CG14]: All non-subdivision related exemptions have been removed.

Electoral Area "D"

4. The "Electoral Area "D" Official Community Plan Bylaw No. 2603, 2013" is amended by:

i) replacing sub-section 17.1.2.3 (Policies – General) under Section 17.0 (Natural Environment and Conservation) in its entirety with the following:

.3 Requires that, where a proposed subdivision affects land subject to an Environmentally Sensitive Development Permit Area, an Environmental Assessment (EA) be prepared by a Qualified Environmental Professional (QEP) in accordance with the policies outlined at Section 24.2 as well as relevant federal and provincial best management guidelines.

Commented [CG15]: Proposes to replace reference to "development" with "subdivision"

ii) replacing sub-section 17.3.2.2 (Policies) under Section 17.0 (Natural Environment and Conservation) in its entirety with the following:

.2 Requires that land designated as an Environmentally Sensitive Development Permit Area shall be retained in a natural state and not subdivided prior to the issuance of an Environmentally Sensitive Development Permit (ESDP) in accordance with the guidelines outlined at Section 24.2 of this Plan unless an exemption applies.

Commented [CG16]: Proposes to replace reference to "development" with "subdivision"

iii) replacing sub-section 17.3.2.6 (Policies) under Section 17.0 (Natural Environment and Conservation) in its entirety with the following:

.6 Encourages development that avoids impacting important native species, habitats, ecosystems or sensitive areas and to retain important ecosystem features and functions. Responsiveness to this policy will be a very important consideration in the approval of an amendment bylaw application.

Commented [CG17]: New wording.

v) replacing a new sub-section 24.2 (Environmentally Sensitive Development Permit (ESDP) Area) under Section 24.0 (Development Permit Areas) in its entirety with the following:

24.2 Environmentally Sensitive Development Permit (ESDP) Area

Commented [CG18]: Option for an "Expedited Development Permit" has been removed as it is primarily related to building permits (was Section 21.2.7).

.1 Category

The Environmentally Sensitive Development Permit (ESDP) Area is designated pursuant to Section 488(1)(a) of the *Local Government Act* for the protection of the natural environment, its ecosystems and biological diversity.

.2 Area

The lands shown as Environmentally Sensitive Development Permit Area on Schedule 'C' are designated as an Environmentally Sensitive Development Permit Area.

.3 Justification

To regulate development activities within environmentally sensitive areas in order to protect important sensitive ecosystems and biological diversity

including valuable habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat.

.4 Background

The natural environment provides essential habitat and corridors for plants, fish, birds and other organisms. It also acts as a natural water storage, drainage and purifying system, which can help to protect private property from flooding or land loss due to watercourse erosion. Furthermore, as concerns over climate change grow, it should be recognized that functioning ecosystems are more efficient at consuming carbon dioxide as well as carbon storage. Vegetation adjacent to watercourses needs to remain in a largely undisturbed state in order to maintain a healthy environment and clean water.

The south Okanagan-Similkameen area is considered one of the most ecologically diverse in British Columbia and Canada, and includes sensitive ecosystems which support a number of provincially Red and Blue-listed species (extirpated, endangered, threatened, and vulnerable) and federally listed Species at Risk. The ESDP Area is intended to protect habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat within the Plan Area.

The ESDP Area is comprised of important habitat areas for wildlife and plant communities. Sensitive ecosystems in the area include grasslands, riparian areas, old forest, shrub-steppe, broadleaf woodland, coniferous woodland, wetlands, shallow soiled rock outcrops and ridges. It is the close proximity of these diverse habitats that contribute to a wide variety of species, both common and rare, that are found in this Electoral Area.

.5 Development requiring a permit

- .1 A development permit is required, except where exempt under Section 24.2.7 (Exemptions), for development on lands within the ESDP area. Where not exempted, development requiring a development permit includes:
 - a) subdivision.

.6 Guidelines

- .1 A Development Permit is required for development within an ESDP Area, and shall be in accordance with the following guidelines:
 - a) An Environmental Assessment (EA) Report, prepared in accordance with the requirements of the Regional District's Development Procedures Bylaw, must be submitted to the Regional District in respect of the proposed development by a

Commented [CG19]: The following references have been removed:
d) the construction of, addition to or alteration of a building or other structure; and
e) alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services.

qualified environmental professional (QEP) that is a Registered Professional Biologist in British Columbia (RPBio) or team that shall include a RPBio under contract to the development applicant, and shall include:

- i) An Ecological Assessment Phase including:
 - .1 background information;
 - .2 an ecological assessment;
 - .3 listing of rare and endangered species; and
 - .4 stratification and rating of Environmentally Sensitive Areas (ESAs).
- ii) An Impact Assessment and Mitigation Phase including:
 - .1 description of proposed development;
 - .2 assessment of potential impacts;
 - .3 short and long term impacts;
 - .4 cumulative and residual impacts;
 - .5 avoidance of ESAs;
 - .6 mitigation and compensation;
 - .7 security requirements;
 - .8 monitoring reports;
 - .9 accountability, and
 - .10 monitoring plan.
- b) Subdivision should be planned, designed and implemented to protect environmentally sensitive areas. Habitats that provide for at-risk species, at-risk ecological communities and keystone species should be given priority for protection.
- c) Development should be planned away from native trees and trees containing active nest sites or cavities. If removal of native trees cannot be avoided, mitigation should include restoration and replanting with equivalent native trees.
- d) Habitat connectivity and the retention of connectivity corridors between sensitive ecosystems should be preserved. Wildlife crossings should be designed to protect continuity of wildlife corridors where these are interrupted by roadways.
- e) Monitoring reports may be required to be submitted to the Regional District following the completion of a development in

order to confirm the conditions of a development permit have been met.

- f) The Regional District may incorporate any areas or measures identified in an EA to protect sensitive ecosystems from the effect of development as terms and conditions of the development permit.
- .4 If an area of land is subject to additional Development Permit Area designations under Section 488(1)(a) of the *Local Government Act*, the Regional District requires that a single development permit application that combines the requirements of each Development Permit Area be submitted. The application will be assessed in accordance with the individual development permit guidelines for each applicable Development Permit Area under this bylaw and, if approved, issued under a combined development permit.

.7 Exemptions

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

- .1 subdivisions that propose to:
 - a) consolidate existing parcels, including the consolidation of parts of a closed road to an existing parcel; or
 - b) alter parcel lines between two or more parcels where no additional parcels are created upon completion of the alteration.

Commented [20]:

Electoral Area "E"

5. The "Electoral Area "E" Official Community Plan Bylaw No. 2458, 2008" is amended by:

- i) replacing sub-section 18.1.2.3 (Policies – General) under Section 18.0 (Natural Environment and Conservation) in its entirety with the following:
 - .3 Requires that, where a proposed subdivision affects land subject to an Environmentally Sensitive Development Permit Area, an Environmental Assessment (EA) be prepared by a Qualified Environmental Professional (QEP) in accordance with the policies outlined at Section 23.2 as well as relevant federal and provincial best management guidelines.
- iv) replacing sub-section 18.3.2.2 (Policies) under Section 18.0 (Natural Environment and Conservation) in its entirety with the following:
 - .2 Requires that land designated as an Environmentally Sensitive Development Permit Area shall be retained in a natural state and not subdivided prior to the issuance of an Environmentally Sensitive Development Permit (ESDP) in

Commented [CG21]: All non-subdivision related exemptions have been removed.

Commented [CG22]: Proposes to replace reference to "development" with "subdivision"

accordance with the guidelines outlined at Section 23.2 of this Plan unless an exemption applies.

- v) replacing sub-section 18.3.2.6 (Policies) under Section 18.0 (Natural Environment and Conservation) in its entirety with the following:
 - .6 Encourages development that avoids impacting important native species, habitats, ecosystems or sensitive areas and to retain important ecosystem features and functions. Responsiveness to this policy will be a very important consideration in the approval of an amendment bylaw application.

Commented [CG23]: Proposes to replace reference to "development" with "subdivision"

- vi) replacing a new sub-section 23.2 (Environmentally Sensitive Development Permit (ESDP) Area) under Section 23.0 (Development Permit Areas) in its entirety with the following:

Commented [CG24]: New wording.

23.2 Environmentally Sensitive Development Permit (ESDP) Area

.1 Category

The Environmentally Sensitive Development Permit (ESDP) Area is designated pursuant to Section 488(1)(a) of the *Local Government Act* for the protection of the natural environment, its ecosystems and biological diversity.

.2 Area

The lands shown as Environmentally Sensitive Development Permit Area on Schedule 'C' are designated as an Environmentally Sensitive Development Permit Area.

.3 Justification

To regulate development activities within environmentally sensitive areas in order to protect important sensitive ecosystems and biological diversity including valuable habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat.

.4 Background

The natural environment provides essential habitat and corridors for plants, fish, birds and other organisms. It also acts as a natural water storage, drainage and purifying system, which can help to protect private property from flooding or land loss due to watercourse erosion. Furthermore, as concerns over climate change grow, it should be recognized that functioning ecosystems are more efficient at consuming carbon dioxide as well as carbon storage. Vegetation adjacent to watercourses needs to remain in a largely undisturbed state in order to maintain a healthy environment and clean water.

The south Okanagan-Similkameen area is considered one of the most ecologically diverse in British Columbia and Canada, and includes sensitive ecosystems which support a number of provincially Red and Blue-listed species (extirpated, endangered, threatened, and vulnerable) and federally listed Species at Risk. The ESDP Area is intended to protect habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat within the Plan Area.

The ESDP Area is comprised of important habitat areas for wildlife and plant communities. Sensitive ecosystems in the area include grasslands, riparian areas, old forest, shrub-steppe, broadleaf woodland, coniferous woodland, wetlands, shallow soiled rock outcrops and ridges. It is the close proximity of these diverse habitats that contribute to a wide variety of species, both common and rare, that are found in this Electoral Area.

.5 Development requiring a permit

- .1 A development permit is required, except where exempt under Section 23.2.7 (Exemptions), for development on lands within the ESDP area. Where not exempted, development requiring a development permit includes:
- a) subdivision.

Commented [CG25]: Option for an "Expedited Development Permit" has been removed as it is primarily related to building permits (was Section 21.2.7).

.6 Guidelines

- .1 A Development Permit is required for development within an ESDP Area, and shall be in accordance with the following guidelines:
- a) An Environmental Assessment (EA) Report, prepared in accordance with the requirements of the Regional District's Development Procedures Bylaw, must be submitted to the Regional District in respect of the proposed development by a qualified environmental professional (QEP) that is a Registered Professional Biologist in British Columbia (RPBio) or team that shall include a RPBio under contract to the development applicant, and shall include:
 - i) An Ecological Assessment Phase including:
 - .1 background information;
 - .2 an ecological assessment;
 - .3 listing of rare and endangered species; and
 - .4 stratification and rating of Environmentally Sensitive Areas (ESAs).
 - ii) An Impact Assessment and Mitigation Phase including:

- .1 description of proposed development;
- .2 assessment of potential impacts;
- .3 short and long term impacts;
- .4 cumulative and residual impacts;
- .5 avoidance of ESAs;
- .6 mitigation and compensation;
- .7 security requirements;
- .8 monitoring reports;
- .9 accountability; and
- .10 monitoring plan.
- b) Subdivision should be planned, designed and implemented to protect environmentally sensitive areas. Habitats that provide for at-risk species, at-risk ecological communities and keystone species should be given priority for protection.
- c) Development should be planned away from native trees and trees containing active nest sites or cavities. If removal of native trees cannot be avoided, mitigation should include restoration and replanting with equivalent native trees.
- d) Habitat connectivity and the retention of connectivity corridors between sensitive ecosystems should be preserved. Wildlife crossings should be designed to protect continuity of wildlife corridors where these are interrupted by roadways.
- e) Monitoring reports may be required to be submitted to the Regional District following the completion of a development in order to confirm the conditions of a development permit have been met.
- f) The Regional District may incorporate any areas or measures identified in an EA to protect sensitive ecosystems from the effect of development as terms and conditions of the development permit.
- .5 If an area of land is subject to additional Development Permit Area designations under Section 488(1)(a) of the *Local Government Act*, the Regional District requires that a single development permit application that combines the requirements of each Development Permit Area be submitted. The application will be assessed in accordance with the individual development permit guidelines for each applicable Development Permit Area under this bylaw and, if approved, issued under a combined development permit.

.7 Exemptions

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

- .1 subdivisions that propose to:
 - a) consolidate existing parcels, including the consolidation of parts of a closed road to an existing parcel; or
 - b) alter parcel lines between two or more parcels where no additional parcels are created upon completion of the alteration.

Commented [CG26]: The following references have been removed:
f) the construction of, addition to or alteration of a building or other structure; and
g) alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services.

Electoral Area "F"

6. The "Electoral Area "F" Official Community Plan Bylaw No. 2790, 2018" is amended by:

- i) replacing sub-section 16.1.2.3 (Policies – General) under Section 16.0 (Natural Environment and Conservation) in its entirety with the following:
 - .3 Requires that, where a proposed subdivision affects land subject to an Environmentally Sensitive Development Permit Area, an Environmental Assessment (EA) be prepared by a Qualified Environmental Professional (QEP) in accordance with the policies outlined at Section 23.2 as well as relevant federal and provincial best management guidelines.
- ii) replacing sub-section 16.3.2.2 (Policies) under Section 16.0 (Natural Environment and Conservation) in its entirety with the following:
 - .2 Requires that land designated as an Environmentally Sensitive Development Permit Area shall be retained in a natural state and not subdivided prior to the issuance of an Environmentally Sensitive Development Permit (ESDP) in accordance with the guidelines outlined at Section 23.2 of this Plan unless an exemption applies.
- iii) replacing sub-section 16.3.2.6 (Policies) under Section 16.0 (Natural Environment and Conservation) in its entirety with the following:
 - .6 Encourages development that avoids impacting important native species, habitats, ecosystems or sensitive areas and to retain important ecosystem features and functions. Responsiveness to this policy will be a very important consideration in the approval of an amendment bylaw application.
- iv) replacing a new sub-section 23.2 (Environmentally Sensitive Development Permit (ESDP) Area) under Section 23.0 (Development Permit Areas) in its entirety with the following:

Commented [27]:

Commented [CG28]: All non-subdivision related exemptions have been removed.

Commented [CG29]: Proposes to replace reference to "development" with "subdivision"

23.2 Environmentally Sensitive Development Permit (ESDP) Area

Commented [CG30]: Proposes to replace reference to "development" with "subdivision"

.1 Category

The Environmentally Sensitive Development Permit (ESDP) Area is designated pursuant to Section 488(1)(a) of the *Local Government Act* for the protection of the natural environment, its ecosystems and biological diversity.

.2 Area

The lands shown as Environmentally Sensitive Development Permit Area on Schedule 'H' are designated as an Environmentally Sensitive Development Permit Area.

.3 Justification

To regulate development activities within environmentally sensitive areas in order to protect important sensitive ecosystems and biological diversity including valuable habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat.

.4 Background

The natural environment provides essential habitat and corridors for plants, fish, birds and other organisms. It also acts as a natural water storage, drainage and purifying system, which can help to protect private property from flooding or land loss due to watercourse erosion. Furthermore, as concerns over climate change grow, it should be recognized that functioning ecosystems are more efficient at consuming carbon dioxide as well as carbon storage. Vegetation adjacent to watercourses needs to remain in a largely undisturbed state in order to maintain a healthy environment and clean water.

The south Okanagan-Similkameen area is considered one of the most ecologically diverse in British Columbia and Canada, and includes sensitive ecosystems which support a number of provincially Red and Blue-listed species (extirpated, endangered, threatened, and vulnerable) and federally listed Species at Risk. The ESDP Area is intended to protect habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat within the Plan Area.

The ESDP Area is comprised of important habitat areas for wildlife and plant communities. Sensitive ecosystems in the area include grasslands, riparian areas, old forest, shrub-steppe, broadleaf woodland, coniferous woodland, wetlands, shallow soiled rock outcrops and ridges. It is the close proximity of these diverse habitats that contribute to a wide variety of species, both common and rare, that are found in this Electoral Area.

.5 Development requiring a permit

Commented [CG31]: New wording.

- .1 A development permit is required, except where exempt under Section 23.2.7 (Exemptions), for development on lands within the ESDP area. Where not exempted, development requiring a development permit includes:
- b) subdivision.

.6 Guidelines

- .1 A Development Permit is required for development within an ESDP Area, and shall be in accordance with the following guidelines:
- a) An Environmental Assessment (EA) Report, prepared in accordance with the requirements of the Regional District's Development Procedures Bylaw, must be submitted to the Regional District in respect of the proposed development by a qualified environmental professional (QEP) that is a Registered Professional Biologist in British Columbia (RPBio) or team that shall include a RPBio under contract to the development applicant, and shall include:
 - i) An Ecological Assessment Phase including:
 - .1 background information;
 - .2 an ecological assessment;
 - .3 listing of rare and endangered species; and
 - .4 stratification and rating of Environmentally Sensitive Areas (ESAs).
 - ii) An Impact Assessment and Mitigation Phase including:
 - .1 description of proposed development;
 - .2 assessment of potential impacts;
 - .3 short and long term impacts;
 - .4 cumulative and residual impacts;
 - .5 avoidance of ESAs;
 - .6 mitigation and compensation;
 - .7 security requirements;
 - .8 monitoring reports;
 - .9 accountability; and
 - .10 monitoring plan.

- b) Subdivision should be planned, designed and implemented to protect environmentally sensitive areas. Habitats that provide for at-risk species, at-risk ecological communities and keystone species should be given priority for protection.
 - c) Development should be planned away from native trees and trees containing active nest sites or cavities. If removal of native trees cannot be avoided, mitigation should include restoration and replanting with equivalent native trees.
 - d) Habitat connectivity and the retention of connectivity corridors between sensitive ecosystems should be preserved. Wildlife crossings should be designed to protect continuity of wildlife corridors where these are interrupted by roadways.
 - e) Monitoring reports may be required to be submitted to the Regional District following the completion of a development in order to confirm the conditions of a development permit have been met.
 - f) The Regional District may incorporate any areas or measures identified in an EA to protect sensitive ecosystems from the effect of development as terms and conditions of the development permit.
- .6 If an area of land is subject to additional Development Permit Area designations under Section 488(1)(a) of the *Local Government Act*, the Regional District requires that a single development permit application that combines the requirements of each Development Permit Area be submitted. The application will be assessed in accordance with the individual development permit guidelines for each applicable Development Permit Area under this bylaw and, if approved, issued under a combined development permit.

7 Exemptions

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

- .1 subdivisions that propose to:
 - a) consolidate existing parcels, including the consolidation of parts of a closed road to an existing parcel; or
 - b) alter parcel lines between two or more parcels where no additional parcels are created upon completion of the alteration.

Commented [CG32]: Option for an "Expedited Development Permit" has been removed as it is primarily related to building permits (was Section 21.2.7).

Electoral Area "H"

7. The "Electoral Area "H" Official Community Plan Bylaw No. 2497, 2012" is amended by:

Amendment Bylaw No. 2912, 2020
(X2020.009-ZONE)
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- i) replacing Section 17.0 (Environment & Conservation) in its entirety with the following:

17.0 ENVIRONMENT & CONSERVATION

17.1 Background

Environmental quality is an important component of the community vision, and is tied to the quality of life and lifestyle options valued by local residents, property owners and visitors. The natural attributes of the Plan area, however, are seen to extend beyond the boundaries of Electoral Area "H", and the Regional District considers that environmental issues in the Similkameen Valley should be addressed from a broad regional perspective.

The Similkameen Valley is situated in the rain shadow of the Coast and Cascade Mountains, with the western part of the valley (which is seen to include Electoral Area "H") possessing a cooler, moister climate from that found in the dry south-eastern part of the valley. The whole of the Valley is seen to belong to the Southern Interior "Ecoprovince", which has the greatest diversity of birds in the interior of British Columbia and the most breeding species of all the Ecoprovinces in the province. The low elevation areas of the Similkameen Valley are also home to the Bunchgrass (BG), Ponderosa Pine (PP), and, Interior Douglas Fir (IDF) zones. These three zones are comparatively rare within the province, and have been identified as areas of conservation concern.

While the Bunchgrass zone is predominantly in the valley bottom from Keremeos southward, the Interior Douglas Fir (very dry hot) zone follows the major low elevation drainages including the Tulameen and the Similkameen rivers. A substantial proportion of the Ponderosa Pine zone falls in the area around the Town of Princeton.

Many of the Valley's ecosystems are sensitive to human disturbance, and high proportions are designated by the Provincial and or Federal governments as being "at risk". Alteration and the loss of ecosystems have historically occurred due to a variety of activities such as livestock farming, commercial orchard and field crop development, and more recently the focus has been on vineyard/winery and rural ranchette or larger parcel home developments.

The Similkameen River as a whole system continues to support many intact remaining natural attributes such as riparian deciduous forests, dense thickets, meadows and wetlands associated with its floodplain. The cottonwood forests on the valley floor are a notable feature of the landscape. Equally significant are the high mountains with deep dry valleys, the surrounding sensitive upland ecosystems of sagebrush grasslands,

rugged slopes, old growth open Ponderosa Pine and Interior Douglas Fir forests.

For the purpose of protecting environmentally sensitive areas (ESAs), which include not only riparian areas, but shrub-steppe, forested lands, rugged terrain and aquatic areas, the Regional District undertook Sensitive Ecosystem Inventory (SEI) mapping around the communities of Eastgate, Otter Lake and Chain Lakes.

As a local government listed under Section 3 of the *Riparian Areas Protection Regulation*, the Regional District has implemented a Watercourse Development Permit (WDP) Area designation in order to protect riparian areas; being lands within 30 metres of the high water mark of streams and ravines including lakes, watercourses and wetlands, and as described further at Section 22.3 of this bylaw.

For maps of development permit areas and other environmentally sensitive areas in the Plan Area see Schedule 'G' (Environmentally Sensitive Development Permit Area and Other Important Ecosystem Area) and Schedule 'H' (Watercourse Development Permit Area).

17.1.1 Objectives - General

- .1 Maintain and sustain a healthy environment by encouraging the enhancement of ecological systems and by protecting biodiversity.
- .2 Integrate measures to sustain environmental quality and consider impacts on the environment in future land use decisions.
- .3 Work with property owners and agents to inform and guide the design of development in a way that is sensitive to important landscape features such as watercourses, hillsides and sensitive ecosystems.
- .4 Support efforts to protect source water quality and quality today and for future generations.

17.1.2 Policies - General

The Regional Board:

- .1 Recognizes the importance of containing and controlling noxious weeds through the continued endorsement of weed prevention and control initiatives.
- .2 Recognizes and encourages the educational and eco-tourism contribution toward protection of the community's natural environment made by environmental organizations, and supports accommodating these uses with the necessary changes to the land use designations so long as the general intent of policies in this Plan are met.

- .3 Requires that, where a proposed subdivision affects land subject to an Environmentally Sensitive Development Permit Area, an Environmental Assessment (EA) be prepared by a Qualified Environmental Professional (QEP) in accordance with the policies outlined at Section 22.2 as well as relevant federal and provincial best management guidelines.
- .4 Requires that EA reports prepared by QEPs be undertaken in accordance with the Regional District's Development Procedures Bylaw.
- .5 Supports the incorporation of traditional ecological knowledge in the stewardship of important foreshore, riparian, and terrestrial ecosystems, and will seek to work with the Upper Similkameen Indian Band and Lower Similkameen Indian Band to incorporate it where feasible, practical and appropriate.

17.2 Riparian and Foreshore Areas

Riparian areas are places under the influence of water. They surround and contain wetlands, ponds, permanent and intermittent creeks, springs, wet meadows, etc. The Plan Area includes several lakes such as Missezula, Alison, Chain, Link, Osprey and Thirsk Lakes and numerous smaller lakes. The Plan Area also includes the Similkameen River and various smaller streams.

Activities in riparian areas have potential to impact water quality, affect erosion, damage fish habitat and impact habitat for species at risk. Agriculture impacts are significant and range from infilling to cultivation and livestock use.

Because riparian and foreshore areas are so strongly connected to both habitats for species at risk and water quality through groundwater/surface water, it is vital that land use practices protect riparian areas by retaining and restoring native species, and ecosystems. Natural riparian areas provide significant ecosystems benefits that costly water treatment and recovery planning for species at risk cannot replace.

Generally land above the high water mark (natural boundary) is privately held and land below the high water mark belongs to the Crown and forms part of the water resource in the province. Land within 30.0 metres of the high water mark of a stream or a ravine is identified as being within a Watercourse Development Permit Area and any development within this area may require a Development Permit (see Section 22.3). Other activities that are subject to regulation include dock construction and modification, mooring buoy installation, and shoreline modifications (including sand, soil, vegetation removal, disturbance, and addition).

17.2.1 Objectives

- .1 Foster community awareness of the importance and sensitivity of the riparian and foreshore environments in the Plan Area.
- .2 Protect aquatic habitat areas and associated environmentally sensitive areas from negative impacts of development as identified in Schedule 'G' (Environmentally Sensitive Development Permit Area and Other Important Ecosystem Area) and Schedule 'H' (Watercourse Development Permit Area).
- .3 Improve and better manage waterfront public access along major lake shorelines, while limiting the overall number of public access points.
- .4 Minimize and avoid development in high hazard soil instability areas along lake foreshore and riparian areas.
- .5 Encourage high quality lakeshore development that maintains the natural character of all lakes and sustains the sensitive riparian and foreshore ecosystems.
- .6 Conserve, protect and enhance surface, ground and aquifer water sources in cooperation with provincial ministries, local water purveyors and landowners.
- .7 Identify, manage and protect significant watercourses to maintain their natural habitat and environmental quality.

17.2.2 Policies

The Regional Board:

1. Recognises riparian values and, in accordance with the provincial *Riparian Areas Protection Regulation*, has designated land within 30.0 metres of the high water mark of a stream or a ravine as a development permit area. Land designated as a Watercourse Development Permit Area shall be developed according to the guidelines outlined in Section 22.3 (Watercourse Development Permit Area) of this Plan unless an exemption applies. The Watercourse Development Permit Area includes the lands within 30.0 metres of the high water mark of a stream or ravine identified on Schedule 'H'.
- .2 Encourages provincial and federal water and resource managers to protect and enhance water quality, base flows, natural drainage patterns, and continuous riparian corridors of sufficient width to accommodate the dynamic nature of the hydrologic system, to avoid and reduce flood damage, to avoid the need for channel stabilization, to avoid underground drainage systems, to avoid groundwater

interruption, and to protect and sustain aquatic biota, important fish populations and habitats.

- .3 Supports efforts that maintain appropriate riparian buffers, determined by qualified professionals that take into account processes of natural erosion, deposition and movement of natural stream boundaries, floodplain provisions and sensitive terrestrial habitats
- .4 Encourages and supports the analysis of ground water hydrology in areas with identified aquifers, and requires environmental assessments in advance of considering zoning amendments for uses such as heavy industrial, mining, fuel storage and/or sewage or waste containment.
- .5 Discourages development that will have a negative environmental impact on lake riparian and foreshore areas.
- .6 Encourages the subdivision approving officer to ensure that public access to lakes is provided pursuant to Section 75 of the *Land Title Act*.
- .7 Supports the use of Section 86 of the *Land Title Act* and Section 56 of the *Community Charter* to regulate development in a floodplain and provide for the safe use of the land for the intended purpose.

17.3 Terrestrial Areas

Terrestrial areas are simply described as the areas upland or beyond water. They include areas with grassland and shrub-steppe, sparsely vegetated, broadleaf woodlands, coniferous woodlands and old forest ecosystems. Many at risk species are found in terrestrial ecosystems in the Plan Area.

Like foreshore and riparian areas, terrestrial areas also contain areas sensitive to development and land use. Of the various ecosystem types, the grassland and shrub-steppe ecosystems are particularly sensitive to disturbance and subject to habitat loss through development, agriculture conversion, impacts from invasive plants, and habitat loss resulting from recreation use.

Significant proportions of sensitive terrestrial habitat have been provincially recognized and protected in the Plan Area.

17.3.1 Objectives

- .1 Protect and steward sensitive and important terrestrial ecosystem areas as identified in Schedule 'G' (Environmentally Sensitive Development Permit Area Areas).

- .2 Encourage provincial and federal governments, private organizations and private landowners to protect, enhance and manage critical habitat areas for species at risk in the Plan Area.
- .3 Work cooperatively with regional partners and support rehabilitation, restoration and enhancement of wildlife habitats and environmentally sensitive areas that have been subject to negative impacts in the past.
- .4 Encourage and facilitate linkages of protected habitat areas.

17.3.2 Policies

The Regional Board:

- .1 Recognizes the values of environmentally sensitive lands and has on Schedule 'G':
 - a) Designated these lands as an Environmentally Sensitive Development Permit Area pursuant to Section 488(1)(a) of the *Local Government Act*; or
 - b) Identified these lands as "Potential Sensitive Ecosystems".
- .2 Requires that land designated as an Environmentally Sensitive Development Permit Area shall be retained in a natural state and not subdivided prior to the issuance of an Environmentally Sensitive Development Permit (ESDP) in accordance with the guidelines outlined at Section 22.2 of this Plan unless an exemption applies.
- .3 Considers that land identified as "Potential Sensitive Ecosystems" should generally be retained in a natural state and, if a re-designation of the land under the OCP or a re-zoning of the land under the Zoning Bylaw is proposed, that these lands be considered for inclusion in the Environmentally Sensitive Development Permit Area in Schedule 'G'.
- .4 Encourages the parcel sizes of land designated as an Environmentally Sensitive Development Permit Area or identified as "Potential Sensitive Ecosystems" on Schedule 'G' to remain as large as possible to protect these habitat areas.
- .5 Will not support the re-designation of land under the OCP or the re-zoning of land under the Zoning Bylaw where it is determined that the proposed development is contrary to the ESDP Area Guidelines of this Plan and the impact cannot be mitigated to a level acceptable to the Regional Board.
- .6 Encourages development that avoids impacting important native species, habitats, ecosystems or sensitive areas and to retain important ecosystem features and functions. Responsiveness to this policy will be a very important consideration in the approval of an application.

- .7 Encourage the protection, preservation, enhancement and management of sensitive ecosystems or land contiguous to sensitive ecosystems of private lands through the following methods:
- a) donation of areas to the Regional District or provincial government;
 - b) donation of areas to a land trust or conservation organization;
 - c) introduction of conservation area designation and zoning;
 - d) creation of conservation covenants in favour of municipal, provincial government, private conservation organizations;
 - e) establishment of statutory right of ways under the *Land Title Act* for affected areas;
 - f) establishment of long-term leases for sensitive areas;
 - g) land stewardship and participation in conservation initiatives by the private landowner; or
 - h) consideration of alternative development standards.
- .8 Supports conserving, enhancing and promoting the protection of wildlife corridors and ecosystem connectivity with interfacing Crown lands.
- .9 Encourages the use of native vegetation to restore disturbed sites.

17.4 Conservation Areas

For the purpose of protecting environmentally sensitive areas (ESAs), the Regional District may designate lands as Conservation Area (CA). The Conservation Area designation is applied to land that is preserved and protected for its unique natural value, land left in a natural or semi-natural state for the purpose of conserving plant life and providing habitat for wildlife or fish.

Conservation Area lands may include Crown land designated as an Ecological Reserve or Wildlife Management Areas, but is generally applied to private lands that have been acquired or donated for conservation purposes and which are held by an individual or an organisation, such as The Nature Trust of British Columbia or the Nature Conservancy of Canada.

For a map of Conservation Areas in the Plan Area see Schedule 'B' (Official Community Plan Map).

17.4.1 Objectives

- .1 Protect and steward designated Conservation Areas in their natural or semi-natural state for the purpose of conserving plant life and providing habitat for wildlife or fish.
- .2 Work with agencies and partners, including local First Nations to enhance, protect and interpret ecological systems and biodiversity in Conservation Areas.
- .3 Work with property owners and agents to inform and guide the design of development in a way that is sensitive to adjacent or abutting Conservation Areas.

17.4.2 Policies

The Regional Board:

- .1 Recognizes and encourages the educational and eco-tourism contributions toward protection of Conservation Areas made by environmental organizations, and supports accommodating these uses where they do not conflict with Conservation Area objectives.
 - .2 Supports the incorporation of traditional ecological knowledge in the stewardship of Conservation Areas, and will seek to work with local First Nations to incorporate it where feasible, practical and appropriate.
- ii) replacing a new sub-section 22.2 (Environmentally Sensitive Development Permit (ESDP) Area) under Section 22.0 (Development Permit Areas) in its entirety with the following:

22.2 Environmentally Sensitive Development Permit (ESDP) Area

.1 Category

The Environmentally Sensitive Development Permit (ESDP) Area is designated pursuant to Section 488(1)(a) of the *Local Government Act* for the protection of the natural environment, its ecosystems and biological diversity.

.2 Area

The lands shown as Environmentally Sensitive Development Permit Area on Schedule 'G' are designated as an Environmentally Sensitive Development Permit Area.

.3 Justification

To regulate development activities within environmentally sensitive areas in order to protect important sensitive ecosystems and biological diversity

including valuable habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat.

.4 Background

The natural environment provides essential habitat and corridors for plants, fish, birds and other organisms. It also acts as a natural water storage, drainage and purifying system, which can help to protect private property from flooding or land loss due to watercourse erosion. Furthermore, as concerns over climate change grow, it should be recognized that functioning ecosystems are more efficient at consuming carbon dioxide as well as carbon storage. Vegetation adjacent to watercourses needs to remain in a largely undisturbed state in order to maintain a healthy environment and clean water.

The Similkameen area is considered one of the most ecologically diverse in British Columbia and Canada, and includes sensitive ecosystems which support a number of provincially Red and Blue-listed species (extirpated, endangered, threatened, and vulnerable) and federally listed Species at Risk. The ESDP Area is intended to protect habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat within the Plan Area.

The ESDP Area is comprised of important habitat areas for wildlife and plant communities. Sensitive ecosystems in the area include grasslands, riparian areas, old forest, shrub-steppe, broadleaf woodland, coniferous woodland, wetlands, shallow soiled rock outcrops and ridges. It is the close proximity of these diverse habitats that contribute to a wide variety of species, both common and rare, that are found in this Electoral Area.

.5 Development requiring a permit

- .1 A development permit is required, except where exempt under Section 22.2.7 (Exemptions), for development on lands within the ESDP area. Where not exempted, development requiring a development permit includes:
 - a) subdivision.

.6 Guidelines

- .1 A Development Permit is required for development within an ESDP Area, and shall be in accordance with the following guidelines:
 - a) An Environmental Assessment (EA) Report, prepared in accordance with the requirements of the Regional District's Development Procedures Bylaw, must be submitted to the Regional District in respect of the proposed development by a

order to confirm the conditions of a development permit have been met.

- f) The Regional District may incorporate any areas or measures identified in an EA to protect sensitive ecosystems from the effect of development as terms and conditions of the development permit.
- .7 If an area of land is subject to additional Development Permit Area designations under Section 488(1)(a) of the *Local Government Act*, the Regional District requires that a single development permit application that combines the requirements of each Development Permit Area be submitted. The application will be assessed in accordance with the individual development permit guidelines for each applicable Development Permit Area under this bylaw and, if approved, issued under a combined development permit.

.7 Exemptions

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

- .1 subdivisions that propose to:
 - a) consolidate existing parcels, including the consolidation of parts of a closed road to an existing parcel; or
 - b) alter parcel lines between two or more parcels where no additional parcels are created upon completion of the alteration.

Commented [CG33]: The following references have been removed:

b) the construction of, addition to or alteration of a building or other structure; and

c) alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services.

Electoral Area "I"

8. The "Electoral Area "I" Official Community Plan Bylaw No. 2683, 2008" is amended by:

- i) replacing sub-section 17.1.2.3 (Policies – General) under Section 17.0 (Natural Environment and Conservation) in its entirety with the following:
 - .3 Requires that, where a proposed subdivision affects land subject to an Environmentally Sensitive Development Permit Area, an Environmental Assessment (EA) be prepared by a Qualified Environmental Professional (QEP) in accordance with the policies outlined at Section 23.2 as well as relevant federal and provincial best management guidelines.
- ii) replacing sub-section 17.3.2.2 (Policies) under Section 17.0 (Natural Environment and Conservation) in its entirety with the following:

Commented [34]:

qualified environmental professional (QEP) that is a Registered Professional Biologist in British Columbia (RPBio) or team that shall include a RPBio under contract to the development applicant, and shall include:

- i) An Ecological Assessment Phase including:
 - .1 background information;
 - .2 an ecological assessment;
 - .3 listing of rare and endangered species; and
 - .4 stratification and rating of Environmentally Sensitive Areas (ESAs).
- ii) An Impact Assessment and Mitigation Phase including:
 - .1 description of proposed development;
 - .2 assessment of potential impacts;
 - .3 short and long term impacts;
 - .4 cumulative and residual impacts;
 - .5 avoidance of ESAs;
 - .6 mitigation and compensation;
 - .7 security requirements;
 - .8 monitoring reports;
 - .9 accountability; and
 - .10 monitoring plan.
- b) Subdivision should be planned, designed and implemented to protect environmentally sensitive areas. Habitats that provide for at-risk species, at-risk ecological communities and keystone species should be given priority for protection.
- c) Development should be planned away from native trees and trees containing active nest sites or cavities. If removal of native trees cannot be avoided, mitigation should include restoration and replanting with equivalent native trees.
- d) Habitat connectivity and the retention of connectivity corridors between sensitive ecosystems should be preserved. Wildlife crossings should be designed to protect continuity of wildlife corridors where these are interrupted by roadways.
- e) Monitoring reports may be required to be submitted to the Regional District following the completion of a development in

.2 Requires that land designated as an Environmentally Sensitive Development Permit Area shall be retained in a natural state and not subdivided prior to the issuance of an Environmentally Sensitive Development Permit (ESDP) in accordance with the guidelines outlined at Section 23.2 of this Plan unless an exemption applies.

Commented [CG35]: All non-subdivision related exemptions have been removed.

iii) replacing sub-section 17.3.2.6 (Policies) under Section 17.0 (Natural Environment and Conservation) in its entirety with the following:

.6 Encourages development that avoids impacting important native species, habitats, ecosystems or sensitive areas and to retain important ecosystem features and functions. Responsiveness to this policy will be a very important consideration in the approval of an amendment bylaw application.

Commented [36]:

iv) replacing a new sub-section 24.2 (Environmentally Sensitive Development Permit (ESDP) Area) under Section 24.0 (Development Permit Areas) in its entirety with the following:

24.2 Environmentally Sensitive Development Permit (ESDP) Area

Commented [CG37]: All non-subdivision related exemptions have been removed.

.1 Category

The Environmentally Sensitive Development Permit (ESDP) Area is designated pursuant to Section 488(1)(a) of the *Local Government Act* for the protection of the natural environment, its ecosystems and biological diversity.

.2 Area

The lands shown as Environmentally Sensitive Development Permit Area on Schedule 1 are designated as an Environmentally Sensitive Development Permit Area.

.3 Justification

To regulate development activities within environmentally sensitive areas in order to protect important sensitive ecosystems and biological diversity including valuable habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat.

.4 Background

The natural environment provides essential habitat and corridors for plants, fish, birds and other organisms. It also acts as a natural water storage, drainage and purifying system, which can help to protect private property from flooding or land loss due to watercourse erosion. Furthermore, as concerns over climate change grow, it should be recognized that functioning ecosystems are more efficient at consuming

carbon dioxide as well as carbon storage. Vegetation adjacent to watercourses needs to remain in a largely undisturbed state in order to maintain a healthy environment and clean water.

The south Okanagan-Similkameen area is considered one of the most ecologically diverse in British Columbia and Canada, and includes sensitive ecosystems which support a number of provincially Red and Blue-listed species (extirpated, endangered, threatened, and vulnerable) and federally listed Species at Risk. The ESDP Area is intended to protect habitat for endangered species of native, rare vegetation or wildlife, and provide wildlife corridors and secondary habitat within the Plan Area.

The ESDP Area is comprised of important habitat areas for wildlife and plant communities. Sensitive ecosystems in the area include grasslands, riparian areas, old forest, shrub-steppe, broadleaf woodland, coniferous woodland, wetlands, shallow soiled rock outcrops and ridges. It is the close proximity of these diverse habitats that contribute to a wide variety of species, both common and rare, that are found in this Electoral Area.

.5 Development requiring a permit

.1 A development permit is required, except where exempt under Section 24.2.7 (Exemptions), for development on lands within the ESDP area. Where not exempted, development requiring a development permit includes:

- a) subdivision.

.6 Guidelines

.1 A Development Permit is required for development within an ESDP Area, and shall be in accordance with the following guidelines:

- a) An Environmental Assessment (EA) Report, prepared in accordance with the requirements of the Regional District's Development Procedures Bylaw, must be submitted to the Regional District in respect of the proposed development by a qualified environmental professional (QEP) that is a Registered Professional Biologist in British Columbia (RPBio) or team that shall include a RPBio under contract to the development applicant, and shall include:

- i) An Ecological Assessment Phase including:
 - .1 background information;
 - .2 an ecological assessment;
 - .3 listing of rare and endangered species; and

Commented [CG38]: Proposes to replace reference to "development" with "subdivision"

- .4 stratification and rating of Environmentally Sensitive Areas (ESAs).
- ii) An Impact Assessment and Mitigation Phase including:
- .1 description of proposed development;
 - .2 assessment of potential impacts;
 - .3 short and long term impacts;
 - .4 cumulative and residual impacts;
 - .5 avoidance of ESAs;
 - .6 mitigation and compensation;
 - .7 security requirements;
 - .8 monitoring reports;
 - .9 accountability; and
 - .10 monitoring plan.
- b) Subdivision should be planned, designed and implemented to protect environmentally sensitive areas. Habitats that provide for at-risk species, at-risk ecological communities and keystone species should be given priority for protection.
- c) Development should be planned away from native trees and trees containing active nest sites or cavities. If removal of native trees cannot be avoided, mitigation should include restoration and replanting with equivalent native trees.
- d) Habitat connectivity and the retention of connectivity corridors between sensitive ecosystems should be preserved. Wildlife crossings should be designed to protect continuity of wildlife corridors where these are interrupted by roadways.
- e) Monitoring reports may be required to be submitted to the Regional District following the completion of a development in order to confirm the conditions of a development permit have been met.
- f) The Regional District may incorporate any areas or measures identified in an EA to protect sensitive ecosystems from the effect of development as terms and conditions of the development permit.
- .2 If an area of land is subject to additional Development Permit Area designations under Section 488(1)(a) of the *Local Government Act*, the Regional District requires that a single development permit application that combines the requirements of each Development Permit Area be

Commented [CG39]: Proposes to replace reference to "development" with "subdivision"

submitted. The application will be assessed in accordance with the individual development permit guidelines for each applicable Development Permit Area under this bylaw and, if approved, issued under a combined development permit.

.7 Exemptions

Commented [CG40]: New wording.

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

- .1 subdivisions that propose to:
 - a) consolidate existing parcels, including the consolidation of parts of a closed road to an existing parcel; or
 - b) alter parcel lines between two or more parcels where no additional parcels are created upon completion of the alteration.

READ A FIRST AND SECOND TIME this ____ day of _____, 2020.

PUBLIC HEARING held on this ____ day of _____, 2020.

READ A THIRD TIME this ____ day of _____, 2020.

ADOPTED this ____ day of _____, 2020.

Board Chair

Corporate Officer

DRAFT

Christopher Garrish

From: Jamie V Wright
Sent: October 18, 2020 6:20 PM
To: Karla Kozakevich; Mark Pendergraft; George Bush; Rick Knodel; Ron Obirek; Riley Gettens; Tim Roberts; Bob Coyne; Subrina Monteith; John Vassilaki; Jake Kimberley; Frank Regehr; Julius Bloomfield; Toni Boot; Doug Holmes; Petra Veintimilla; Suzan McKortoff; Spencer Coyne; Manfred Bauer; Christopher Garrish
Cc: Pbeckett; Mark Mckenney; Ironbull; Lynnehesketh63; Gmont; Freesem; Graham; John; Riechert; Dsvendse
Subject: ESDP Issue Electoral Area A - Anarchist Mountain
Attachments: The ESDP Issue in Electoral Area.pdf

Dear RDOS Directors,

I understand on October 15th, 2020 that several RDOS board members opposed the suggested language of the ESDP draft recommendations made by Electoral Area "A" Director Mark Pendergraft and have sent the draft to the APC for further comments.

As President of the Anarchist Mountain Community Society (AMCS), I am attaching an overview of evidence/data concerning the ESDP issue in the Anarchist Mountain Area. The RDOS needs to make evidence based decisions and use evidence based processes in this most important issue for private landowners in our area. *We don't want to lose focus on our concerns about the process beyond the cost of the permits.*

Thank you,

Jamie

Jamie V Wright
President, AMCS



The ESDP Issue in Electoral Area 'A' – Anarchist Mountain

Good decisions are based on evidence. Let evidence and data be the centre of the discussion. While the over-arching desire or goal is to protect the environment – specifically 'endangered species' - without data and evidence-based decision making, any discussion or efforts to protect the environment become simply **emotional environmentalism** – which serves no good purpose.

The Anarchist Mountain evidence to date:

- The RDOS **issued (3) ESDP** to the developer - during the subdivision stage. The developer conducted environmental studies (of which the RDOS has copies) & hived-off some land to the RDOS as conservation areas;
- All this land has a use history of logging, forest fires and cattle grazing. (There is still considerable on the ground artifacts of this historic use.);
- The Developer then proceeded to create the residential subdivisions wherein trees were cut, earth and rock were moved/blasted/placed to create ditches, berms, building sites, drill wells, install power and add asphalt;
- Individual lots were sold and owners proceeded to build homes & out-buildings, connect to power – if it existed, connect to wells, install septic fields, install solar panels, plant gardens and Fire Smart their property under the guidance of the local Fire Smart experts;
- Some 17+ years later, the RDOS decided – with limited private land owner consultation to **duplicate the ESDP process** prior to a land owner receiving a building permit. This ESDP covered the same areas disturbed and established during the sub-division stage;
- The RDOS mapped the area – the Pink Zone. This **mapping is completely arbitrary and inaccurate**. Pink Zone mapping clearly did not capture all the land disturbance that was undertaken to develop a sub-division. The RDOS mapped only the asphalt drives & perhaps the cleared building placement site. In some instances, the RDOS did not even map the asphalt. The RDOS admitted to some **mapping errors**, yet persisted regardless this inaccuracy;
- This RDOS **ESDP is in conflict with Fire Smart advice & practice** which is strongly supported by both the Province & Federal Governments. Fires remain the greatest risk on Anarchist Mountain;
- The RDOS conducted a review of this ESDP on private land owners. (Administrative report 20190523 to the Board.) This revealed the RDOS consulted with QEP's for their feedback on how the process was working. Three issues here:
 - QEPs have been placed in a **conflict of interest position** as they were consulted for feedback - while the private land owner was not - yet the private landowner is expected to pay for the QEP reports. QEPs have a strong commercial interest in the RDOS maintaining the ESDP on private land. A very lucrative revenue stream;
 - QEP reports did not capture development site disturbance or the area history on logging, forest fires and cattle grazing. This error challenges their 'expert' qualifications. If "endangered species" survived all this prior land use impact – it throws into question whether these species are actually endangered. **Data efficacy is at issue**;
 - Bernie & Eileen Langlois - private landowners - submitted an excellent letter of concern laying out all the same issues we are still dealing with - yet the RDOS **ignored private land owner input** and forged on; (RDOS staff report attached)
- While the RDOS is using all their energy regulating private land owners, they have **NO PLAN to protect the environment on crown lands they are responsible for**. Part of the 'horse-trading' with the developer on Anarchist was conservation land areas 'donated' to the RDOS.

We all know that plants & animals have no regard for arbitrary property boundaries so forcing private land owners to 'protect' the environment while adjacent lands have no effort is a losing proposition. Nothing useful is accomplished and at great cost - to the private landowner. It is analogous to a private land owner trying to rid their lawn of dandelions while adjacent public boulevards and right of ways have no plan or effort. It is simply not effective.

This is a data overview. The ESDP process as implemented on private land already subdivided, calls into question motive and the process the RDOS uses to make decisions. The outcome of processes and decisions that avoid actual data serves to frustrate legitimate desires by land owners to protect environment and deal with real risks like forest fires and invasive grasses.

Christopher Garrish

From: Jamie V Wright
Sent: October 27, 2020 8:16 PM
To: Mark Pendergraft; Karla Kozakevich; George Bush; Rick Knodel; Ron Obirek; Riley Gettens; Tim Roberts; Bob Coyne; Subrina Monteith; John Vassilaki; Jake Kimberley; Frank Regehr; Julius Bloomfield; Toni Boot; Doug Holmes; Petra Veintimilla; Suzan McKortoff; Manfred Bauer
Cc: Christopher Garrish; Pbeckett; Mark Mckenney; Ironbull; Lynnehesketh63; Gmont; Freesem; Graham; John; Riechert; Dsvendse; Stan Teichroew; Jim Gray; Alex Giovannelli; Giselle Leclair; Eileen Langlois; Gloria Richardson; Lausmank55; Tbsalamone; jgt3; Bernie Langlois6
Subject: Citizen Concerns & Suggestions for RDOS Process Improvements
Attachments: Citizen Concerns and Suggestions for RDOS Process Improvements.pdf

Dear RDOS Chair, Directors, APC & EcoPlan Consultants,

We, the Anarchist Mountain Community Society, are a not-for-profit society of rural property owners and we would like to work more closely with the RDOS as well as the Provincial and Federal representatives for our area on better governance and service.

The recent update provided by our Anarchist Mountain Fire Department is useful information in fire risk, protection & guidance. However, there are a few concerning issues with the RDOS process as outlined in the document attached.

Thank you for your attention,

Jamie

Jamie V Wright
President, AMCS



Citizen Concerns and Suggestions for RDOS Process Improvements

Fire Risk, Protection & Guidance:

The recent update provided by our AMFD is useful information. However, there are a few concerning issues with RDOS process:

5) Mandatory Fire Smarting for New Construction:

The AMFSC position is that Fire Smart requirements; for both the buildings and property; should be mandated by the RDOS at the building permit stage. (Note: This may also be a moot point as the RDOS is already considering this) The RDOS has suggested a “wildfire professional” evaluate and approve the plans at a cost to the owner. The AMFSC position is that while Fire Smart requirements should be mandated there is no need for a “wildfire professional” as the Fire Smart requirements are well documented and straight forward.

CONCERN:

1. While the RDOS Planning Manager stated the RDOS wasn't considering REGULATING private land owners to hire a 'wildfire professional', the reality is we do not have the trust and confidence this is not the RDOS plan. This would again create a **CONFLICT of INTEREST** regulation - creating a commercial interest for 'wildfire professionals'. Private land owners are already Fire Smarting their property under the guidance of the volunteer Fire Department - against the insistence of the ESDP regulations. The RDOS still uses only one tool in their toolbox - REGULATING private landowners, yet **continue to ignore their responsibility for managing Fire Smart on crown lands.**

9) The need for Fire Smarting on vacant properties; both private and developer owned properties.

10) The need to control both burn piles and campfires on private properties where no water supply is available. (I.e. owners Fire Smarting and camping prior to operation of water well)

CONCERN:

1. It's been our experience and neighbours' observations, that over the past number of years, vacant lots on AM have been used by 'others' for camping and campfire drinking parties. We cannot assume property owners are doing this. It is not helpful for the RDOS to REGULATE private landowners from use of their property with punitive measures. Typically, they are working to Fire Smart their land as well as plan for their building project, by spending time on their property – prior to building.
2. We enjoy the benefits of a highly recognized and expert Volunteer Fire Department on Anarchist Mountain. The Province has publicly recognized this expertise. We as a registered NFP Society spend volunteer hours raising funds to support the Fire Department in their work. It would be more than appropriate for the RDOS to extend the same recognition and seek to consult and collaborate with this group for Fire Smart planning and education rather than dismiss their expertise by contracting 'outside experts'.

Metal Storage Containers:

CONCERNS:

1. This proposed Regulation seems to be entirely driven by some neighbourhood “aesthetic” preferences from the Apex Area. Since the history of development in Canada, architectural styles have been varied – influenced by many factors. This is a reflection of Canadian **diversity which should be promoted rather regulated against**. The contention that metal storage containers drive down property values is personal opinion. There is a **lack of credible data** on which the RDOS is basing policy/regulation decisions. Ask the Real Estate industry what drives property values;
2. There now seems to be a **desire to ‘broad-brush’ these regulations across most Electoral areas** - in particular Area ‘A’ which has a number of geographical, parcel size, topography, Fire Risk, and other differences with Apex and other areas;
3. **Lack of consultation** - the RDOS conducted one survey in Area A with respect to metal storage containers - and not well publicized - hence the low response;
4. Metal storage containers are used by a number of private land owners in Area ‘A’ which is mainly LH and SH, for on-going storage purposes - not just during construction as suggested. They store seasonal recreation equipment like ATVs, bikes, snowmobiles, quads, motorcycles, chainsaws, table saws, sheets of plywood, Porsche fenders or turkey deep-fryers, and sometimes the garbage prior to garbage day to protect from bears and rodents etc. They are also fire resistant, air tight, water tight and portable. Again, the RDOS is trying to draft regulations when they have a **lack of data**. We do appreciate the effort to properly define metal storage containers – if the definition is proper, however, we strongly suggest regulating metal storage containers is a waste of time, energy and public funds;
5. It’s been suggested that Metal storage containers encourage break-ins. These containers are very secure. That’s part of their designed function. Lack of break-in success discourages attempts on metal containers. It’s surprising the issue of break-in & theft is not a significant part of this discussion as there are too many incidents in Area A. **Where are the RCMP stats of criminal activity (break-in & theft) for Area ‘A’? Data is important.**
6. Metal containers have no impact on either accelerating or delaying construction schedules. The economy, financing & cash-flow, lack of contractor availability/motivation, many permits & long delays in permit approvals, long delivery time for materials - and currently insane material price escalation - if at all available. The contention that limiting time a metal container can be on site during construction as an incentive to accelerate construction or close permits is misinformed. **Where is the data? Talk to owners.** The resulting impact would be added cost due to theft or delayed construction for which much data exists. Property owners require choice for storage solutions.
7. Placement of metal storage containers is predicated on owner access and zoning set-backs from property lines. Both Area ‘A’ LH & SH properties have a building site area and most – if not all - are sheltered by earth/rock berms or trees. Someone would really need to go out of their way to notice a metal storage container. The function is storage – not a neighbour’s concept of aesthetics. Regulating aesthetics sets a dangerous precedent on free choice.

**Solar panels:
CONCERNS:**

1. Again, we in Electoral Area ‘A’ were not provided an opportunity for input. Perhaps this was due to the RDOS internet technical issues? However, **Communication and consultation is inadequate.**
2. There is absolutely no mention of the SUN in the analysis. Placement of solar panels is highly influenced by **exposure to sun** for the longest period in the day/season which also means avoiding shadow & shade areas. **Again, where is the data?**

3. A great many roof structures do not have the required sunlight exposure as roof slopes are oriented for many different purposes; there needs to be panel placement options on a property. **Data is important.**
4. Solar panels placed on roof systems need be designed for the weight & loading. Roofing material life-cycle is greatly diminished when panels are installed on a roof. Owners need options. **Data is important.**
5. The Province is encouraging alternate forms of energy through various incentives. This Bylaw would **conflict with stated Government priorities** on alternative energy.

SUGGESTED IDEAS for BETTER GOVERNANCE:

Regardless the issue, we as tax paying citizens and private landowners strongly suggest alternative ways for the RDOS to achieve land planning, protecting the environment, and Fire protection - or simply good Governance with a **focus on data and evidence-based decision making.**

IDEA #1:

‘The 5 Levels of Public Engagement’ – an RDOS branded document representing globally-accepted and RDOS promoted best practice standards for public engagement. We strongly encourage the RDOS use this best practice more frequently. (Your document attached)

Level 1 – Inform: this is a great opportunity to provide an overview of an initiative, the data concerning the initiative and how this initiative fits into the RDOS Strategic Plan priorities for citizen service.

Level 2: Feedback:

We are very concerned at the current practice for soliciting feedback – particularly from private land owners. While on-line surveys seem popular with the RDOS, they rarely reach the affected land owners in a timely fashion and frequently ask the wrong questions. We suggest you try citizen WORKSHOPS to better engage land owners in the process of review of rationale and feedback. So, rather than citizens responding to the same survey questions again & again; attending ‘open-house’ public consultation events with the same questions, while we repeat the same concerns to the same deaf ears, this process of citizen WORKSHOPS where citizens have real input & impact on decisions while working with consultants and the local government is shown to be much more effective and less time consuming. This process usually takes an empathic approach and respects divergent opinion, getting to consensus.

Level 3 – Involve:

This engagement process is very effective as well in working with citizens as opposed to dictating to them.

Level 4 – Collaborate:

Ultimately, this is the level of engagement private land owners expect when the desire of an RDOS initiative is to regulate private land owners. There are much more effective ways to manage issues than regulating private land owners. Constant Regulation without proper engagement results in extreme frustration and inevitably unnecessary cost to the private land owner. Unwarranted Regulation diminishes the quiet enjoyment of private land.

Level 5 – Empower:

This engagement is always a democratic requirement including elections and when warranted referendums. Normally, citizens don’t expect to solve every frustration with either unless faced with no alternatives.

IDEA #2:

The RDOS is able to contact Area ‘A’ private landowners by mail when they issue the annual property tax bill - or when they want to send a threatening letter for an assumed regulation transgression. Using that contact capability – particularly for land owners that have not yet built on their property - we the AMCS would like the RDOS to send - along with the tax bill - a pre-drafted

note of WELCOME (drafted by AMCS) and inviting new property owners on Anarchist Mountain to subscribe to the AMCS website and the RDOS for current, up-to-date information and events important to this community. The note could also suggest to new property owners that they be aware of the potential for 'free-camping' on their property and need to protect against any damage. We also could provide advice on the importance of Fire Smart efforts and current neighbourhood watch awareness.

Friendly education achieves more positive action than punitive, threatening regulation. This approach would also serve the other RDOS Electoral Areas very well.

IDEA #3:

Good governance in Canada (both Federally and Provincially) is promoted through the reliance on **actual data** which is then used for **evidence-based decision making**. This should be the practice of all municipalities and local government. Good government is also a focus on **citizen SERVICE** rather than citizen regulation.

IDEA #4:

It is useful for any organization public/private to set actual **key performance indicators** to align and measure business/corporate activity against stated priority **goals within strategic plans**. How do citizens measure RDOS success? How do citizens know if the RDOS is working toward its stated purpose and priorities? How does the RDOS avoid policy conflict?

Citizens prefer to have influence on governance priorities to ensure energy and funds are directed to a purpose of service.

There are many useful guides and training courses to be found at the Institute on Governance, FCM, Municipal World and many others that would guide Policy writing and Good Governance and citizen service. Using Level 4 Collaborative workshop events would provide the RDOS with citizen guidance on priorities.

As a registered NFP Society representing our community, we have a vested interest in working more closely with the RDOS as well as the Provincial and Federal representatives for our area on better governance and service and have a strong voice on all matters directly impacting our enjoyment and protection of life as rural property owners.

Fire Smart protection initiatives remain the top priority for private land owners in Electoral Area 'A' with LESS regulation and MORE collaboration and education.

January 27, 2021

To: The board of the Regional District of Okanagan-Similkameen

Re: RDOS Environmentally Sensitive Development Permit Amendments

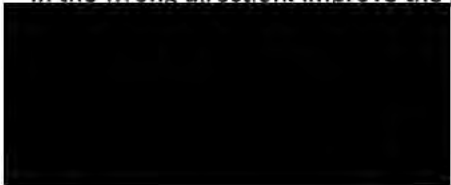
I am aware of the proposed changes to the ESDP's through my membership on the Area "C" APC. However, I am writing to you as RDOS resident, who has lived in rural Oliver for 20 years. I object strongly to the current proposed amendments to the ESDP.

You are all aware that the South Okanagan is an environmentally special place with many sensitive habitats and species, many of which have suffered from ever-increasing human development. It should not be news to any of you that the South Okanagan is one of Canada's hotspots for biodiversity and number of rare species. In 2017 the RDOS updated the ESDP policy, because the lack of protection of environmentally sensitive areas was seen as a gap. Four years later, the need for this protection is even stronger, as we see an increase in development and more people moving to the valley, many of whom are not aware of the environmental values that are here. The RDOS has a responsibility to help protect these sensitive areas and mitigate impacts to them on land that they have jurisdiction over.

The presentation by RDOS staff to the APC showed that the majority of ESDP's in the last 4 years were for developments or alterations to private properties, not for subdivisions. This was the intended purpose of the changes made in 2017. The process is not perfect and needs some adjusting, but completely eliminating all requirements for ESDP for anything but a subdivision is a giant step backward. The individual landowners are where this permit process can have the biggest impact on protecting the most critical parts of the landscape and the species within.

Many other municipalities and regional governments make this type of tool work. If there are issues with enforcement, look at potential bylaws. If the Rapid ESDP is not working as it was intended, adjust it. Make changes to your website so that it is easier for landowners to understand what situations an ESDP would apply, before they get started. Improve the oversight of the QP reports, possibly through the shared environmental planner, or even better a full time RDOS environmental planner.

We are all only here for a short time in the big scheme of things and it is our collective responsibility to leave the land, if not better than we found it, then at least not worse. The proposed changes are going in the wrong direction. Improve the process, don't eliminate it.



Sara Bunge

Oliver BC V0H 1T5

RESPONSE SUMMARY

AMENDMENT BYLAW NO. 2912

Approval Recommended for Reasons Outlined Below

Interests Unaffected by Bylaw

Approval Recommended Subject to Conditions Below

Approval Not Recommended Due to Reasons Outlined Below

Environment and Climate Change Canada (ECCC) has concerns with the bylaw amendment.

Since 2008, ECCC - through its Canadian Wildlife Service branch (CWS) - has directly contributed \$784,000 to the Regional District of Okanagan Similkameen to support the South Okanagan Similkameen Conservation Program (SOSCP). This relationship supports collaborative environmental management and land-use planning throughout the Regional District. The relationship is a recognition of the importance of developing locally viable solutions to our shared environmental and legislative responsibilities.

The Environmentally Sensitive Development Permit process is an excellent example of a locally developed solution that ensures adherence to applicable environmental legislation supported by other levels of government. Since 2008, ECCC has provided \$440,895 to directly support the development and implementation of the ESDP process, providing financial resources to support mapping, scoping, drafting, development, and implementation (through provision of the Shared Environmental Planner role within RDOS) as well as a recent audit of the ESDP effectiveness. The proposed bylaw amendment should not be made without consideration of these substantial investments and of the collaborative history between ECCC, SOSCP, and RDOS.

In particular, ECCC is concerned about amendments that transfer or remove responsibilities to address the potential presence of critical habitat on private lands, creating gaps and eliminating oversight of activities, resulting in less stewardship and the destruction of critical habitat. The current ESDP provides a level of oversight and due diligence that benefits land owners and environmental professionals.

For example, by eliminating "*alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services*" as a trigger for ESDP, the proposed bylaw amendment removes a layer of local oversight in environmental management.

In summation, ECCC encourages the RDOS to reconsider some aspects of the ESDP bylaw amendment as currently proposed, and to instead seek a modified approach to the amendment or use other mechanisms to provide greater clarity and direction to landowners and QEPs throughout the existing process.

We wish to note that the collaborative relationship with RDOS has been productive. We view this relationship as being particularly valuable in proactively resolving potential conflicts with

conservation objectives in the region, in part by improving land owner access to information about the presence of species at risk and their habitats.

Signature: _____

Signed By: _____

Agency: _____

Title: _____

Date: _____

Canadian Wildlife

Attention: Chris Garrish

Candy Anders <[REDACTED]>

Thu 9/10/2020 3:46 PM

To: Planning E-Box <planning@rdos.bc.ca>

Email to: Chris Garrish

Mark Pendergraft

After time mulling over some things, I am writing to express my thoughts and concerns regarding a few current topics.

OCP - in general, I am in favour of it and very pleased with the cooperation and communication you have had with the FireSmarting team. I support FireSmarting principles including concern about vacant properties' responsibilities, use of proper building materials and concern about access on roads with no alternative access.

Defining the area as rural is a bit ambiguous. For example, on Anarchist Mountain in the former Regal Ridge development, we have a country lifestyle yet enjoy the benefits similar to towns with good roads and maintenance/service, garbage and recycling pickup etc. I recommend more support in the management of invasive weeds on both public and private lands, unsightly premises, temporary residents (i.e. weekenders, seasonal) where there is risk of fire, garbage/wildlife risk, sewage improperly disposed of etc. I am okay with RV's where the property owner is actively building their home as most are acting responsibly.

EDSP - although this is a separate initiative of RDOS and was recently cancelled at your board meeting, the concerns of the 'pink zone' in this area seemed to overshadow many things. It had some areas of merit and I am supportive of the concerns raised regarding Firesmarting, thank you for listening to that team. What does bother me is this pink zone thing (i.e. building permit infractions) seemed to overshadow other things in the community for a while and the initiative taken by some ticked off by fines encouraged others to oppose any other proposed bylaw (i.e. metal structures) based on a 'no more rules' philosophy. The July 29 letter on Anarchist Community Society website suggesting to residents what to complain about to the RDOS is not necessarily the opinion of all residents including newer residents who do not know the history.

For example, the letter spoke about a 'broad brush' complaint.....I am of the opinion that the RDOS does not go out of its way to make rules unless there is a concern/need for it. Highlighting the metal storage containers proposed bylaw is not necessarily the opinion of the whole community. Although I understand perhaps the issue started with concern in Apex, let's address it before it does become a problem in other parts of the district. Concerns include safety, environmental and property values, pride of ownership and living in the RDOS.

Thank you for the opportunity to voice my concerns and opinions. If you wish to contact me, my contact information is below.

Best regards,
Candy Anders

From: [RDCO Planning Services](#)
To: [Planning](#)
Subject: RE: Bylaw Referral - ESDP Area Amendments - Bylaw No. 2912 (Project No. X2020.009-ZONE)
Date: December 7, 2020 9:46:30 AM
Attachments: [image003.png](#)
[image004.png](#)

Good morning,

Thank-you for the opportunity to provide comments on the above noted referral. RDCO Environmental Planning staff has reviewed the information and provides the following comments on this proposal with a recommendation of non-support:

- Designating Environmentally Sensitive Development Permit Areas (ESDPA) offers land use planning options and tools to protect the natural environment, its ecosystems, and biological diversity and protection of development from hazardous conditions.
- The South Okanagan contains some of the most biologically diverse ecosystems and critically endangered plant communities in British Columbia and across Canada. While RDCO staff agree that the most effective time to achieve ESDPA objectives and protection of the natural environment is at time of subdivision and rezoning, there is still great value in applying ESDPA criteria to building permits and development proposals after the subdivision and rezoning stage.
- Across the Okanagan, RDCO staff encourage and support clear and consistent approaches when it comes to environmental planning. ESDPA criteria can achieve the goals and objectives of an Official Community Plan by specifying areas of land that must remain free of development, require natural features or areas be preserved, protected, restored, or enhanced, require watercourse dedication, and further require protection measures such as erosion and drainage control, riparian area enhancements, and habitat restoration. Without requiring this at time of building permit or triggering an ESDP during land alteration activities, much of the local government ability to protect the natural environment is lost.
- Given the above information, RDCO staff advise that approval of ESDP Area Amendment Bylaw is not recommended.

Respectfully,

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

On Thu, Nov 19, 2020 at 9:27 AM Eva Durance wrote:

I was alerted yesterday to the changes proposed in the ESDP areas document at the RDOS and would appreciate your comments on it. As we read the draft document, the changes would eliminate the need for an ESDP except for a subdivision. This would be a huge, and potentially very environmentally/ecologically damaging reduction in the need for an ESDP and open the door to the further degradation and/or destruction of sensitive habitats such as grasslands, wetlands, and riparian vegetation, and even threatened species such as cottonwoods, water birch, and antelope-brush. The latter has already been further devastated by the complete clearing of the antelope-brush-ponderosa pine-grasslands south of Vaseux Lake, what I take to be part of the Thompson property.

I noted in particular the following Section 5, p. 26, which certainly appears to corroborate the above. The Commented box is beside the Section and presumably from staff.

“Development requiring a permit .1 A development permit is required, except where exempt under Section 18.2.7 (Exemptions), for development on lands within the ESDP area. Where not exempted, development requiring a development permit includes: a) subdivision. .” **Commented [CG5]:** The following references have been removed: b) the construction of, addition to or alteration of a building or other structure; and c) alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services



Dec 4, 2020

File: 2020088
Your File: X2020.009-ZONE

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

Attention: Christopher Garrish, Planning Manager

Re: Environmentally Sensitive Development Areas update for RDOS Electoral Areas A, C, D, E, F, H and I.

The Ecosystems Section of the Ministry of Forests, Lands, Natural Resource Operations & Rural Development has reviewed the above noted referral. We understand that the application is for the following updates to the ESDPA requirements: *(a) that they only apply to subdivisions and rezoning, (b) that staff report back to the Board on the options to make ESDPs more effective at subdivisions and rezonings; and (c) that ESDPs should in no way prevent or discourage residents from firesmarting their properties according to the firesmart principles.*

There are no concerns with items (b) and (c) above. However, the province strongly recommends against item *(a) exemption of all but rezoning and subdivision applications from the ESDPA process* for the following reasons:

- The RDOS administers one of the foremost biodiversity hotspots in the country. It contains high densities of Species at Risk and includes one of Canada's most endangered ecosystems. If the majority of development proceeds outside of an ESDP process, environmental oversight of the > 10,000 square km region will be dramatically reduced.
- A large proportion of wetlands, both mapped and un-mapped, occur on private property. 90% of the Okanagan and Similkameen's wetlands have already been lost to development. The ESDP process is a way to flag these features and provide for their wellbeing and that of the species at risk often present.
- ESDPs make landowners aware of important features to consider during development. Many RDOS properties are large, rural parcels; therefore, having at least cursory guidance on, e.g., house siting or driveway development can help preserve sensitive features.

- The level of environmental assessment conducted at the rezoning and/or subdivision stage is not always detailed enough to effectively identify and mitigate damage to specific sensitive features. Therefore, having a process to evaluate e.g. home placement on a given site, or areas to leave vegetation intact at the level of individual development, increases the likelihood of preserving habitat.
- It is the province's understanding that existing ESDPA requirements were developed through lengthy stakeholder and public discussion and with the help of the South Okanagan Similkameen Conservation Program (SOSCP). From the information provided in the referral package, it appears that the same level of scrutiny and consultation was not applied to the currently proposed changes.
- Regardless of ESDP compliance rates, the ESDP process makes landowners aware of the values on their property so they can make informed decisions; compliance issues could be addressed directly rather than making blanket exemptions
- If the ESDP process is causing issues for certain types of development or in certain areas, focused solutions are recommended rather than changes that affect the entire 10,000 + square km.
- The region is facing unprecedented development pressures. Removing most of the (terrestrial) oversight could have far-reaching consequences for Species at Risk in the Okanagan Similkameen.

Please contact the undersigned if you cannot follow the recommendations provided in this referral response. It is the proponent's responsibility to ensure his/her activities are in compliance with all relevant legislation, including the *Water Sustainability Act* and the *Wildlife Act*. The undersigned may be reached at Jamie.Leathem@gov.bc.ca or 778-622-6834 if you have further questions or require additional information.

Sincerely,



Jamie Leathem, M.Sc.
Ecosystems Biologist
For the Referral Committee

JL/jl

July 22, 2020

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

Dear Sirs/Madams:

Re: Imprecise EDPA Mapping

As a community, residents on Anarchist Mountain are generally upset by the requirement of an Environmentally Sensitive Development Permit (ESDP) prior to receiving building permits. Until our (the Anarchist Mountain Community Society's (AMCS) recent activities to raise community awareness of the issue, most residents were not even aware of the ESDP process. The ESDP requirements were effectively a covenant placed on title after most people purchased the land and then not publicly disclosed to landowners with any credible effort.

Restrictions on landowners imposed by the process are at odds with the guidelines of FireSmart – those being the removal of ground fuels surrounding homes. RDOS is aware of this issue and is perhaps already considering making competent and rigorous changes to Environmental Development Permit Areas (EDPAs).

Our further complaint about the system is in its imprecise mapping at the local scale. We understand that local governments have the right to impose EDPAs to protect riparian and sensitive ecosystems, but also understand that EDPAs must be designated on reasonable evidence and with reasonably certain boundaries.

We would argue that the boundaries outlined by the RDOS in Area 'A' are not reasonably mapped. We would need more information and research to confirm its accuracy.

We (and we believe all residents) feel that the environmental protection intent of the ESDP process would be adequately met if EDPAs were moved off personal holdings and pertained only to public and crown land within Area 'A'. Mark

Pendergraft, Area 'A' Director, is reportedly in agreement with this proposed change.

We would also add that people who live in the rural environment do not need to be told that it is worth protecting. At the same time, they are generally averse to arbitrary and imprecise regulation.

Also, it seems there is no real value in getting an ESDP. In cases we are aware of, after paying fees to the RDOS and to the QEP, no difference has been made as to whether projects proceed; the only effect is that residents' lives have been made more difficult, more complicated and more expensive. This is not the purpose of local government. We would want to see substantive impact research in this regard prior to proceeding with any plan.


If you need to see a copy of our zone, please let us know.

Kindest Regards,

Karen Goodfellow/Herman Commandeur



James & Brenda Gray



July 22, 2020

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

Dear Chair and Directors:

Re: Imprecise EDPA Mapping

As a community, residents on Anarchist Mountain are generally upset by the requirement of an Environmentally Sensitive Development Permit (ESDP) prior to receiving building permits. Until our (the Anarchist Mountain Community Society (AMCS)) recent activities to raise community awareness of the issue, most residents were not even aware of the ESDP process. The ESDP requirements were effectively a covenant placed on title after most people purchased the land and then not publicly disclosed to landowners with any credible effort.

Most fundamentally, restrictions on landowners imposed by the process are at odds with the guidelines of FireSmart – those being the removal of ground fuels surrounding homes. RDOS is aware of this issue and is perhaps already considering making competent changes to Environmental Development Permit Areas (EDPAs).

My further complaint about the system is in its imprecise mapping at the local scale. I understand that local governments have the right to impose EDPAs to protect riparian and sensitive ecosystems, but also understand that EDPAs must be designated on reasonable evidence and with reasonably certain boundaries.

I would argue that the boundaries outlined by the RDOS in Area 'A' are not reasonably mapped. As an example, I submit my own property at 1051 Bullmoose Trail, Osoyoos (below). Clearly very little attention went into the mapping of the EDPA on our property; well over half our pool and pool house (both RDOS permitted) are in the "pink zone". Additionally, the long existing road leading from our property to Longview Place is fully within the EDPA; this is clearly disturbed, as opposed to natural, land.

I, and all residents I have spoken to on the subject, feel that the environmental protection intent of the ESDP process would be adequately met if EDPAs were moved off personal



holdings and pertained only to public and crown land within Area 'A'. Mark Pendergraft, Area 'A' Director, is reportedly in agreement with this proposed change.

I would also add that people who live in the rural environment do not need to be told that it is worth protecting. At the same time, they are generally averse to arbitrary and imprecise regulation.

Also, it seems there is no real value in getting an ESDP. In cases I am aware of, after paying fees to the RDOS and to the QEP, no difference has been made as to whether projects proceed; the only effect is that residents' lives have been made more difficult, more complicated and more expensive. This is not the purpose of local government.



Kindest Regards,

James Gray
Resident and AMCS Director

From: Timothy Gray

Date: Tuesday, December 8, 2020 at 7:47 PM

To: Riley Gettens RDOS Okanagan Lake West Rural Summerland

Subject: FW: RDOS is planning to make significant changes to their Environmentally Sensitive Development Permit Area

Hello Riley,

I am a professional biologist, I live on the West Bench. I have lived in the Okanagan for about 4 years. I volunteer as a member of the RDOS South Okanagan Conservation Fund technical advisory committee, BC College of Applied Biology and the South Okanagan Naturalist Committee. I received the email below from Alison Peatt.

I am concerned that if RDOS reverses previous policies pertaining to the requirement for Environmental Assessments and the identification of Environmentally Sensitive Development Permit Areas we will be doing a major disservice at a local community and local ecological level. I have lived central Canada and the West coast am happy to have put down roots here to raise my young family. The Okanagan Similkameen is unique in BC and Canada. There is always going to be a demand for developable land in the South Okanagan, it is in extremely short supply. There are some excellent professionals who have made major contributions towards the goals of conservation / environmental protection / environmental assessment requirements in the South Okanagan. Environmental protection statutes at a provincial and federal level are generally said to be "lacking teeth", local municipal requirements provide an extremely valuable role in terms of protecting sensitive environmental features. To dial back or remove any existing requirements to expedite or facilitate a couple developments is short sighted and would come at the expense of natural features that make this a great place to live, raise a family, retire.

Please interpret this as my strong opposition to any changes that would reduce requirements for Environmental Assessment in the RDOS. I acknowledge that part of my work load is completing EAs for local developments.

Tim Gray M.E.T.

Directors of RDOS
101 Martin Street
Penticton , BC
V2A 5J9

Dear Sirs or madam:

RE: EDPA Bylaw Implementation in RDOS

I am quite familiar with how the ESDP was designed, why and when. It is astounding that until just recently when Anarchist Mountain Community Society (AMCS) took it upon themselves to inform land owners of this policy and how it affects them, that until now most people including long time residents were unaware of the pink zone and its restrictions on property owners and their development plans. This plan was first introduced in February 2005. In 15 years, RDOS has not properly communicated with stakeholders. Since protecting riparian and sensitive ecosystems is important to all, why has the plan not been communicated to all landowners and affected parties who are now faced with covenants on title.

In the executive summary of the 48 page document entitled "*In Practice and in Caselaw March 2016*"

- 1) It is clear that EDPAs are a tool for local governments to protect riparian and terrestrial natural environments but there must be precision of mapping in terms of identifying the sensitive areas.
- 2) The local governments must be specific about activities that constitute land alterations.

In RDOS, the mapping is very suspect since exclusions were largely an interpretation of already disturbed areas on available aerial map. No exclusions were made from ground proofing.

As a result, the mapping is very imprecise and inconsistent.

- a) There are large tracts including full lots with paved driveways still in the pink zone
- b) There are large tracts that are excluded for unknown reasons. (OME lots?)
- c) In my case the pool which was permitted is partially in the pink zone as is the septic field and garden.
- d) Since the initial mapping was done, many changes have taken places that are not accounted for.

The triggers or activities requiring an ESDP are:

- a) Subdivision development
- b) Construction
- c) The alteration of land, including grading, removal of vegetation, deposit or moving of soil, paving installation of drainage or underground services.

With respect to activities that constitute land alterations, these directly conflict with appropriate Firesmarting guidelines provided by the provincial government.

Furthermore whether it was done prior to or since the implementation of the ESDP, most residents have altered their land by firesmarting , paving , building gardens ,etc.. without ever applying for an ESDP because no one knew anything about this bylaw.

RDOS was well intentioned in designing a plan to protect the environment but the plan is flawed and seriously lacking in achieving its objectives. The intent is to protect the flora and fauna of the sensitive areas but in the 24 months since the implementation, only 18 permits were issued in Area A which is less than 5 % of the overall land owners. The only way to find out about the pink zone and the ESDP is to apply for a building permit and the only way to educate yourself about the sensitive values is to pay for an ESDP.

I submit to you that, to date, RDOS has done a poor job in saving and protecting the environment since very few people know about the values or what to do about it.

People who moved and live in a rural setting do not need to be told how important it is to protect it. That's why they moved here. You would be surprised how people can rally around an issue given the right approach. ESDP is not it. The heavy hand of government and non-accountability is not what residents respond to.

Our recommendation would be to:

- 1. Remove the pink zone from all private properties or at the very least exclude 2 hectares directly surrounding residences.**
- 2. Exclude any alteration of land that is related to firesmarting activities.**
- 3. Begin an education program to educate all residents (not just those applying for a building permit) as to the environmentally sensitive values.**

There are numerous good ideas for solutions that the public can offer if consulted. We need our government to listen more.

I and many residents of Anarchist Mountain are available for consultation at any time. We can even provide the venue.

Kindest Regards
Bernie Langlois



Christopher Garrish

From: Lavona Reade
Sent: January 22, 2021 3:14 PM
To: Planning
Subject: ESDP review feedback

Attention: RDOS review

We purchased XXXXXX (Anarchist Mountain) in December 2020. We submit this email in support of proposed changes to the existing ESDP, OCP Bylaws for Electoral Area "A".

We support the **deletion** of:

“construction of, addition to or alteration of a building or other structure” and the “alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services” as triggers for an environmentally sensitive development permit;

We support permits only being required for subdivision.

Sincerely,

Lavona and Steven Reade

July 31, 2020

All Rural - Regional Directors, RDOS
(See list below)
101 Martin St.
Penticton, BC
V2A 5J9

by EMAIL ONLY

Dear Directors:

Re: Conflicts - Environmentally Sensitive Development Permit (ESDP) Program

Residents on Anarchist Mountain, within Area A, have raised concerns with the RDOS about the ESDP program for several years. I am also a member of the Area A – Advisory Planning Council. Our APC has raised our concerns about the apparent arbitrariness of the ESDP program (Dec.14, 2015 minutes). However, since 2015 no actions for correcting these issues appear to have been taken by RDOS. Since 2017 the RDOS has taken a more aggressive stance concerning ESD Permits in advance of allowing a building permit to be issued, or regarding enforcement for non-compliance.

As a property owner on Anarchist Mountain (Area A) since 2003, I recall that when the original developer (Regal Ridge) proposed new sub-divisions RDOS required them to conduct rigorous environmental studies prior to development approval. These studies were conducted by Qualified Environmental Professionals. Upon receipt of those studies and after consultation with the developer those development plans were approved, and lands were then made available for sale to the public.

Much of the information relied upon by RDOS in the development of the ESDP program appears to have come from the *South Okanagan & Similkameen Conservation Program (SOSCP)*, during their Keeping Nature in our Future Project (2014?). In my view the ESDP program in our area was based upon information that appears to have been largely anecdotal, and not backed up with biological or environmental data. At a recent APC meeting I asked the RDOS staff (Mr. Garrish) and your consultants (EcoPlan - writing the revised Official Community Plan (OCP)) to provide the APC with data that justifies the origins of the ESDP program. EcoPlan came back to us saying *they could not find specific data showing the eco values in Area A*, except they did point out “***In a note from the SOSCP Planner - The conservation rankings were predominantly based on sensitive and at-risk ecosystems which are likely to remain constant over time. We did not have species location data which can only be identified through comprehensive inventories and some data are confidential as well so cannot be shared with the public***”. I attach the SOSCP biodiversity map entitled “Opportunities for Biodiversity Conservation” from the Keeping Nature in our Future Project (page 3).

It is reasonable to believe that a conservation organization like SOSCP (who does great work) would promote a “precautionary” approach to recommending to RDOS the ESDP designation of what they believe to be **possible** ecologically sensitive areas, even without ground truth data as proof of those values. Regulating landowners based on speculative assumptions is not appropriate.

My concern also stems from the ESDP program on the Anarchist Mountain being instituted **AFTER** the development permits for development on Anarchist Mountain were approved by RDOS. Those development approvals were subject to rigorous environmental study, by QEP's, prior to being approved by RDOS. It is unreasonable to require residents to repeat these studies, at their own expense, when a QEP was already been involved in the original evaluation of environmental values prior to the development permit being issued by RDOS.

Another important point is that the ESDP is in direct conflict with Fire Smart recommendations promoted by RDOS, provincial authorities and the insurance industry. As the ESDP program stands now it is not permissible to remove brush, vegetation, debris and under grown beyond 10 meters from a principle residence without an ESDP. On Anarchist Mountain (a recognized Fire Smart Community) all the properties are several acres to many acres in size; thus, this conflict imposes a major impediment to fire safety. The ESDP should not conflict with Fire Smart activities, in an interface fire risk area.

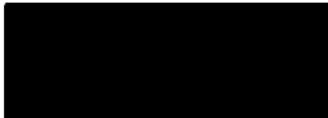
Our community prioritizes wildfire as the most serious risk to our properties and to our personal safety. As such we encourage the RDOS to support Fire Smart activities with more than “words in a brochure.” I suggest that RDOS find funding sources, perhaps in concert with the Provincial and Federal government, the Union of B.C. Municipalities or the insurance industry, Gas Tax, various foundations or other sources, to access grants to provide community-wide Fire Smart activities. With funding support common hazard areas could be tackled hiring professional tree fellers and mechanized equipment. A similar program was done at Mount Baldy in the past two-three years. Preventing a wildfire catastrophe is much less costly than fighting fires or rebuilding burned out communities.

Better fire risk assessment planning , through a Community Wildfire Protection Plan is also something that RDOS should be supporting and creating for the Anarchist Mountain neighbourhoods.

I believe that the RDOS Planning Dept. is considering a full review of the ESDP program – which is encouraging. I applaud consideration of that review. The “Pink Zone” problem on Anarchist Mountain has harmed RDOS’s reputation in the eyes of many of our residents and created some resentment and distrust of the RDOS. I have had several discussions with Area ‘A’ Director - Mark Pendergraft on the ESDP matter, and he has indicated to me that changes would likely be beneficial for all concerned.

I hope that if Director Pendergraft or RDOS staff bring reasonable amendments to the EDSP program forward to the Board, including public consultations, that you will support changes. I offer any assistance I can provide to RDOS in moving positive discussions and amendments forward. A common solution is the goal here. This problem will not go away without changes being made.

Carefully considered planning and by-laws, with open and considered public input, are essential for proper municipal governance. Having the rate payers see that their local government is listening and acting upon legitimate concerns is equally important.



Mark McKenney
Resident Anarchist Mtn,
Member Advisory Planning Council – Area A

Area A - Opportunities for Biodiversity Conservation

From: Keeping Nature in Our Future (SOSCP)



Copy to
Mark Pendergraft – Area “A” Director, RDOS
mpendergraft@rdos.bc.ca

Karla Kozakevich, Board Chair, **RDOS** & Area E, Naramata
kkozakevich@rdos.bc.ca

Chris Garrish, Planning Manager, **RDOS**
cgarrish@rdos.bc.ca

From: [Forbes, Christina D AGRI:EX](#)
To: [Planning](#)
Subject: FW: Bylaw Referral - ESDP Area Amendments - Bylaw No. 2912 (Project No. X2020.009-ZONE)
Date: November 26, 2020 10:52:55 AM
Attachments: [image001.png](#)
[image002.png](#)

Good morning,

The Ministry of Agriculture has reviewed the attached referral and have no comments to provide.

Thank you,
Christina

Christina Forbes BSc, P.Ag | Regional Agrologist I Kelowna
New Phone Number: 236-766-7057 | c: 250-309-2478
Email: Christina.Forbes@gov.bc.ca

Generic Email: AgriServiceBC@gov.bc.ca

**Osoyoos Mountain Estates Inc.
Box 327, Osoyoos, BC V0H 1V0**

September 2, 2020

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

RECEIVED
Regional District

SEP 11 2020

101 Martin Street
Penticton BC V2A 5J9

**RE: Environmentally Sensitive Development Permit (ESDP) Area
Commentary on Proposed Bylaw Amendments**

Background:

Osoyoos Mountain Estates Inc. (OMEI) was formed in 2012 for the purpose of acquiring a substantial amount of land from 590335 BC Ltd. (Regal Ridge) when that company failed. Today, OMEI owns approximately 1300 hectares on Anarchist Mountain including approximately 757 hectares which is zoned CA – Conservation Area. A substantial portion of this CA zone land is subject to a Conservation Covenant registered in favour of RDOS in 2003. The covenant ensures that this land will remain in its natural state forever.

OMEI is generally supportive of all reasonable and practical measures to protect the natural environment, and particularly to mitigate the risk of wildfire. We consider wildfire risk the greatest danger to the Anarchist Mountain community from both an environmental and economic perspective. We continue to support on going Fire Smart activities through the provision of a controlled waste site where residents can deliver fuels from their lots for safe burning. We work in unison with Anarchist Mountain Fire Department and the Fire Smart committee on this initiative which has been very well received by residents. We have clearly indicated our interest in tangibly supporting the establishment of a possible satellite fire hall through the donation of a suitable parcel of land.

We have always worked cooperatively with RDOS on these issues. However, we are not fully supportive of the current ESDP guidelines as now constituted and believe that some changes are needed.

History

Prior to 1999, when Regal Ridge was conceived the Anarchist Mountain area was very sparsely populated with a few large ranch holdings. There was no real residential development at all. Economic activity over several decades had been limited to intermittent logging, cattle grazing and limited gravel extraction from a few sites.

At that time zoning was RA (Resource Area) with a 20 Ha minimum lot size. Intuitively, larger lot sizes were seen by many as an effective tool to eliminate or at least reduce environmental impacts with the main assumption being that an individual owner would not impact a full 20 Ha parcel. The deficiency in this approach is that all of the land in a given area may be impacted by private owners (i.e. there are no restrictions or covenants). Additionally, the most valuable areas from an environmental standpoint were not guaranteed of any protection. Regal Ridge proposed a cluster development approach with significantly smaller lot sizes. When the Regal Ridge development was proposed RDOS required significant environmental analysis and investigation prior to rezoning. Subsequently, numerous environmental reports were prepared before development started and then as development proceeded.

The initial environmental reports identified some specific areas that warranted protection if the development was to proceed. It was only after extensive negotiations with the owner/developer that RDOS allowed re-zoning to smaller holdings which resulted in significantly higher density in the area. In exchange for this re-zoning the developer agreed to the designation of about 1,000 Ha as Conservation Area (CA). This CA zoned land can never be developed and must be left in its natural state. To further protect the land RDOS and the developer entered in to a Conservation Covenant which has been registered and runs with the land in perpetuity.

Therefore, prior to the initial Regal Ridge subdivisions RDOS already had the comfort of knowing that a significant amount of land deemed high value from an environmental perspective had been protected from development. RDOS could now focus on each subdivision when applications were brought forward.

The key initial environmental reports were as follows:

Ophiuchus Consulting – Sarell/Haney – August 9, 2002

This was the original Environmental Assessment required by RDOS to assess the Regal Ridge Development plan. Under the cluster development approach proposed by Regal Ridge it was recommended that environmental concerns could be addressed at the sub-division stage as each smaller area was developed. The Sarell/Haney report made the following recommendations:

1. *Develop environmental guidelines for each cluster development prior to lot sales - these can be incorporated into neighborhood community plans;*
2. *Contain physical developments to as small an area as possible, including the containment of spoil and side-casting down slopes;*
3. *Post signs on wildlife trees so they can be retained where possible;*
4. *The areas with high fire hazards (much of the IDFxh1 and cool slopes throughout) should be thinned of small-diameter trees to reduce fuel loading and ladder fuels;*
5. *Fence the perimeter of the clusters or developable areas to ensure that impacts are contained – thinned stems from wildfire hazard abatement could be incorporated;*
6. *Determine whether and where road underpasses are required for small wildlife to avoid road mortality – these could be incorporated with surface water drainage plans;*
7. *Promote good land stewardship (e.g. xeriscaping, problem wildlife management, weed control, pet management) with residents and land users through developing neighborhood stewardship pamphlets; and*
8. *Develop sound management plans for natural lands, especially to deal with anticipated recreational uses and fire hazards. Finally, the lands that are not developed should be transferred to a bona-fide, non-government organization that has the ability to manage these lands for conservation purposes. This is especially true of those lands identified as undeveloped High Biodiversity Areas. There are possibilities of developing community recreation areas along the Nine Mile Creek Tributary at the eastern edge of the properties, and the lands that include the summit of Anarchist Mountain. These areas have high recreation values and environmental values that can be maintained with recreational uses.*

Most, but not all of these recommendations have been implemented in the various sub-divisions on Anarchist Mountain. With respect to the matter at hand the key recommendation is Point 1- requiring site specific environmental assessments at

the sub-division stage. This results in the developer and RDOS negotiating appropriate environmental protections prior to the development of the subdivision.

Ophiuchus Consulting – Sarell/Haney – April 26, 2003

This was a follow up report to the 2002 Sarrell report and was the final report required by RDOS prior to re-zoning the area. This report refined the conclusions of the 2002 report. It is very important to note that from 2002 to 2003 some proposed clusters were moved and some deleted so as to ensure that the recommendations of the environmental consultant could be met.

Summitt Environmental Consultants – Phase 1 Report – July 2005

This is a standard Phase 1 environmental report which assessed the likelihood of the property having any contamination as a result of past economic activity.

Alcock & Sarell – Stream Assessment Report – 2007

The developments on Anarchist Mountain intersect a number of watercourse features identified in the Terrain Resource Inventory Mapping (TRIM) provided by the Province. The Riparian Areas Regulation (RAR), enacted under Section 12 of the Fish Protection Act in July 2004, requires the Regional District of Okanagan-Similkameen (RDOS) to protect riparian areas (zoning bylaw sec 7.23) by ensuring that proposed development activities are subject to a science-based assessment conducted by a Qualified Environmental Professional. This report provided the required assessment

Sarell/Haney – May 2008

In 2008 Regal Ridge was proposing that three areas be re-zoned for higher density on Anarchist Mountain. The three areas were zoned for Large Holdings at that time with the proposal being they be re-zoned Small Holdings with a minimum parcel size of 1 ha. All three areas were previously assessed in the original subdivision plan for Regal Ridge (Sarell and Haney 2002). These areas were originally zoned Large Holdings as a consequence of limiting the number of subdivision parcels within the overall development plan while more desirable areas were zoned Small Holdings. This report concluded that the small cluster developments could proceed in these areas provided the recommendations of the consultant were followed.

Summary Comments

These are all relatively “high level” reports which provide comment and analysis on the Anarchist Mountain area as a whole. They are extremely useful as they identify the key issues and areas that needed special attention in the future as development proceeded. The clusters that were subsequently built by Regal Ridge and Osoyoos Mountain Estates with environmental recommendations followed. This repository of information provided RDOS with a firm basis to proceed to consider future development in the mountain environment.

As development proceeded over the years RDOS required some form of environmental report dealing with the specific location of each sub-division development. (OMEI owns ~ 20 environmental reports pertaining to the Anarchist Mountain area). Therefore, when approving a sub-division request RDOS has always had the benefit of the high-level reports along with a specific report on the subdivision proposed. In 2017 this became more formalized when virtually the entire mountain was designated as an ESDP area.

ESDP Bylaw Critique.

We have two general criticisms of the bylaw:

1) Fire Smart Activity

The ability of an individual lot owner to fire smart their lot should not be limited by this bylaw or any other bylaw. In fact, Fire Smart activities should be actively encouraged. This community was one of the first in British Columbia to become a Fire Smart community and the mountain residents take this very seriously. It is our opinion that Anarchist Mountain residents are fully invested in mitigation of Wildfire Risk and in reasonable and effective requirements to preserve and protect environmental values. All stakeholders agree that Wildfire Risk needs to be aggressively managed with the Fire Smart programme being a cornerstone activity. Further, in the aforementioned Sarrell 2002 report one of the key recommendations deals with good land stewardship including fuel reduction and thinning of trees.

The bylaw should allow lot owners to maintain their lots in accordance with Fire Smart practices without interference.

Lot Owners – Exemption

We are of the strong opinion that individual lot owners should be exempted from any further environmental investigation if they wish to construct an allowed structure on their lot. Our opinion is premised on the fact that in all cases the lot in question will have been subject to previous adequate environmental investigation. We will use two examples to further illustrate this position:

2) Langlois Example:

Attached to the May 23/19 administrative report (Garrish) is a submission from a lot owner; Mr. Bernie Langlois. Mr. Langlois and his wife purchased a lot in the Bullmoose area on Anarchist Mountain and then built a house. They subsequently wanted to build an accessory building and were then required to submit a separate report from a QEP specific to his lot. This is taking place on a small holding lot of < 2Ha.

When considering the Langlois request RDOS had the benefit of the 2002 Sarrell/Haney environmental report and the 2008 Sarrell report which was specific to the Bullmoose area. Additionally, in this case RDOS also had the benefit of a specific report on the Bullmoose subdivision (Scheffler - November 2010). That report concluded that there were no unique or specific environmental issues with respect to the subdivision area. In other words, Scheffler did not recommend any covenants, no build areas etc. The sub-division was then built to a very high standard.

After being subjected to this level of environmental analysis what could the possible benefit be to requiring yet another environmental assessment on the Langlois lot?

➤ Raven Hill Extension Area

In 2012 OMEI developed an 8 lot sub-division under an ESDP. A report was prepared by a QEP which recommended that the development could proceed if a covenant was placed on a specific area which had some environmental values of significance. The area identified affected one of the proposed lots. This recommendation was readily accepted by OMEI with the sub-division subsequently completed. The subsequent purchaser of the affected area was happy with the covenant, and was able to develop the lot to his liking. We would suggest that a further report for a building permit would have added no additional value.

Today, if an owner wanted to build a house on one of these lots a specific report from a QEP would be required.

What is the value of any additional report on the sub-divided area now?

I would also like to add an additional comment around building sites. I understand that RDOS takes the position that if an owner builds exactly on the cleared building site provided by the developer a QEP report might be waived as the site has already been disturbed. As a developer, I can say with certainty that we choose what we consider to be the most suitable site. However, this can be a very subjective exercise and as has happened a lot owner may choose a slightly different location to take advantage of a particular view or other characteristic.

We find it instructive that 76% of ESDP's issued have been for residential dwellings or garages. These structures have been built on lots that have been examined from an environmental perspective previously. Anecdotally, I am told that no permits have been denied over an environmental issue. This should not be a surprise to anyone

We also would like to remark on a few comments in the administrative report of May 23/19:

"QEP's have also advised that they believe that the new ESDP guidelines to be useful and better than the past approach (i.e. exempting all residential development at the building permit stage)"

Clearly the ESDP guidelines are useful and beneficial to QEP's but what value do they add to the overall goal of protecting and preserving environmental values? How many assessments on a particular property is sufficient?

"The option of a Rapid Environmental Assessment (REA) for residential buildings and structures was introduced in 2017 as a way to provide a cost-effective alternative to Environmental Impact Assessments (EIA)".

The report goes on to say that this has not worked as hoped as some QEP's were "confused" as to the level of report required. Fees have not reduced, and report size and quality have varied significantly. Frankly, this has been an abject failure. The proposed solution of a template, with a new name (Environmental Screening Report) completed by a QEP, will not effectively deal with the issue, in our opinion.

RECOMMENDATION

In our opinion, the solution to this lies at the subdivision stage. When a land owner/developer applies for a subdivision RDOS has the full capability to require environmental assessment of the entire area to be developed. Environmental issues at that time can be addressed in terms of the parcel lay out, suitability of building sites, road layouts, sewage disposal and water sources. With benefit of the high-level reports and a specific sub-division report RDOS should be able to satisfy any and all concerns with the developer.

With respect, we would suggest that the requisite expertise, and responsibility to deal with these complex issues sits with RDOS, the developer and their professional advisors. Most lot owners can add little value to the process and do not want to be involved. They simply want to build their “dream house”

We would like to see the following amendments:

1. All previously developed lots under 5 Ha in the Anarchist Mountain Area should be excluded from the ESDP area designation. Any permitted development such as an accessory building should not trigger the need for any environmental investigation.
2. Any ongoing enforcement procedures should be set aside until a decision on the bylaw changes are made.
3. All lot owners should be able to apply Fire Smart guidelines and principals in maintaining their lots without violating the bylaw.

Respectfully submitted,



Ron Palmer, Managing Partner
Osoyoos Mountain Estates Inc.

From: Alison Peatt
Date: November 18, 2020 at 10:58:50 PM PST
To: Riley Gettens

Subject: upcoming vote to rescind environmental development permit provisions and their application to subdivisions

Riley: I live at 4049 Sage Mesa Dr in Area F. I think we met briefly at a Bear Smart meeting. I am writing to express my dismay at hearing that the RDOS is considering a motion to rescind the environmental development permit provisions as they are currently applied to lots in the Okanagan portions of the regional district. I wrestled with whether or not to even write this note, wondering if my opinion would carry any weight. As one of the authors of the work, clearly those that want to see it go away will not care to hear my concerns. However, I've learned over my long career to try harder to stand in the face of criticism and to speak when it would be easier to slink away.

This proposal would undo something I worked on for about 5 years, making my efforts largely pointless, which is difficult to contemplate; but, some things we work on are timeless and other things are forgotten in a heartbeat. What aches is the lost opportunity for conservation leadership and innovation, in a place where doing the right thing can accomplish so much and where doing the wrong thing can be a legacy of biodiversity gone for good.

I started working in the South Okanagan when I was 27, with one year of experience after I completed my master's degree. I remember what was here at that time, species and wilderness that our oldest children saw, but future generations will never see. I hate to think that more again will be lost because a few people are convinced that FireSmart and conservation are in some kind of conflict.

I am one of the authors of the Building Climate Resilience in the Okanagan guide (a collaboration between the local Real Estate Association and RDOS). This guide explains how landowners can act to protect themselves and their assets from fire. RDOS has for a long while had an exemption that permits landowners to take action and remove fuels near their homes, without needing to speak with a QEP or get professional advice, however advisable that might be. There may very well be perceived conflicts, but there are no real ones that I know of. I work with people who are trying to figure out how to make conservation of species at risk and fire protection work better; I certainly see scope for change, but unravelling what has already been done, is a waste of resources and so demoralizing for those who worked so hard to build something better, to help RDOS meet the same standards most other local governments in the region follow.

I have significant experience in outreach related to mitigating impacts of climate. I helped the city of Penticton last year with a plan to look at FireSmart, recreation use and wildlife in the Three Blind Mice Area. I spent 5 years doing outreach on shoreline stewardship to encourage actions that will keep our lake and water quality protected. I think perhaps your passion is health care, but I hope you have some bandwidth left for environmental considerations. When I participated with the City of Penticton and the Town of Osoyoos OCP updates, I recall the health experts and advocates speaking passionately about the strong ties between health and environment. They weren't just talking about getting outside; they recognized that water quality, biodiversity, ecosystem services all built on health. I hope you will see this tie and advocate to keep the current environmental provisions in place. Prior to the change I was part of making, RDOS had a very large mapped area acknowledging all its nationally significant biodiversity, but in more than a decade and a half, it considered fewer than 30 environmental assessments in support of development. That is because if you apply development permits only to subdivision and rezoning, there are few opportunities for environmental protection.

I would also like to highlight my interactions with the Anarchist community east of Osoyoos, who are being characterized, or so I hear, as the group the RDOS will "help" by rescinding ESDP requirements applied to subdivided lots, giving them better control over opportunities to conduct FireSmart unhindered. Last May, I was invited to speak to a group of 80 or so residents from that community about environmental values in the area and how they could be addressed in a fire prone landscape. I found a warm reception from those I met and remember only one person that challenged my presentation suggesting that environmentally sensitive development permits were somehow preventing something that should be allowed, in pursuit of fire risk reduction. I heard privately afterward that there were some community members that had conducted drastic vegetation removal on their properties; some of the residents didn't the clearing of vegetation, there was no indication either at work or in that outreach session that QEP advice prevented the achievement of Firesmart actions. As there is little or no enforcement of environmental reports, except where others complain, it seems much more likely that someone or a few people didn't want to pay to have an environmental assessment. I find it ironic how much some are willing to pay to have countertops or good plumbing installed and yet how little perceived value is found in the several thousand dollars spent to obtain advice about environmental protection.

I would like to close by saying that I worked as the shared environmental planner for the RDOS for 7 years successfully, as far as a controversial job can be successful. I worked under contract to the South Okanagan Similkameen Conservation Program but delivered services to all local governments in the region. I am well known in BC for my competence as a professional and for my efforts to work collaboratively on all my projects. The only client I have ever lost over perceived or real performance issues is the RDOS. I still don't really understand why that happened, but I think you should know that too, if you are going to give my letter any weight. You are welcome to look into my credentials. I have worked with Osoyoos, Oliver, Penticton, Summerland and Kelowna providing advice on environmental assessments and official community plan updates. I am a regional expert on species at risk, I am trained in the Riparian Areas Regulation methodology and I am engaged with the College of Applied Biology on a committee that is looking at professional Ethics training.

In closing, I will say that I encouraged the Province to award the RDOS recognition for environmental leadership. Ironically, if it is still there, there is a plaque outside the boardroom that recognizes that RDOS for that work. I have attached a photo of me and the mayor of Victoria taken when I accepted the award on behalf of the regional district. You might contemplate that picture while you are deciding how to vote.

Thanks for the opportunity to provide input.

Yours sincerely,



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

November 26, 2020

Attention: Planning RDOS

File number: X2020.009-ZONE

RE: 40 (forty) day extension

Thank you for the above application that was sent on 11-02-2020.

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.

limlāmt,

Maryssa Bonneau
Referrals Coordinator
P: 250-492-0411
E: referrals@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
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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

November 26, 2020

Attention: Planning RDOS

File Number: X2020.009-ZONE

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.

Invoice Number: L-201102-X2020009-ZONE

SubTotal Tax Total

Referral Processing \$ 500.00 \$ 0.00 \$ 500.00

Total \$ 500.00 \$ 0.00 \$ 500.00

INVOICE AMOUNT FOR PRELIMINARY OFFICE REVIEW \$500.00

Please make cheque or cash payable to Penticton Indian Band. re: P.C.132 and send to 841 Westhills Drive, Penticton, British Columbia, Canada V2A 0E8

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.

limlëmt,

Maryssa Bonneau
Referrals Coordinator
P: 250-492-0411
E: referrals@pij.ca

August 1, 2020
by EMAIL only

Mark Pendergraft, Area "A" Director RDOS
mpendergraft@rdoso.bc.ca

101 Martin St.
Penticton, BC
V2A 5J9

Dear Mark:

Re: ESDP ByLaw/Pink Zone designation

ESDP Bylaw from one of the RDOS documents

- Firesmaring activities are allowed providing they occur within 10 metres of the existing and permitted structures.
- Otherwise an ESDP is required to scrap, rake, removal of vegetation, moving of soil.

As a resident of Anarchist Mountain since the mid-1990's, my wife and I find the contents of this proposed pink zone bylaw incredible, upsetting and mind-boggling, as well as totally unnecessary for the residents of Anarchist Mountain. We residents are well versed in the concept of environmentally sensitive areas, and we value nature and the natural setting we have on this mountain. The former named Regal Ridge occupies a goodly portion of the mountain, and the developer not only designated conservation areas but also had in place many Firesmart guidelines. In addition he did much in an attempt to control invasive plants, such as knapweed.

As a resident whose house and property was in the path of the wildfire of 2003, I am well aware of the intensity and spread of a wildfire, and of the measures one can take to help mitigate the effects upon our homes and buildings, all of which are part and parcel of the Firesmart program. As well, Forestry, in 2002 when a wildfire in Oroville could possibly head in our direction, visited me and recommended the following: trim all trees on the hillside from the road to our house, around the house, and for 100 feet beyond the house, to a height of 10-15 feet; clean up duff and pine needles/cones from under the trees; burn all branches, needles, etc. in the Fall/Winter. Also recommended was to make extensive wide fireguards

around the house, and especially on the hillside as that is where the fire would likely travel upwards to our house. And finally, Forestry recommended an ongoing process of thinning out the forest on our property.

All of this requires "Firesmarting activities " occurring more than 10 metres from existing and permitted structures and not what is written in the ESDP Bylaw. And what is a "permitted structure"? Is a pumphouse or storage shed included? In addition, firesmarting activities require scraping, raking, removal of vegetation (duff, needles, cones, branches), and to make the fireguards, the moving of soil. As well, if we are to store inflammables, such as propane cylinders and gas/diesel containers, safely from the house, then a storage shed is required.

If one goes by the proposed ESDP Bylaw, we residents of the mountain are setting ourselves up for a disastrous wildfire encounter in the future. Therefore, I recommend the pink zone restriction designations be limited to crown land and the land Regal Ridge zoned as conservation lands on Anarchist Mountain.

Thank you.

Irvin Redekopp
[REDACTED]

cc

Jamie V. Wright, President
[REDACTED]

Karla Kozakevich, Board Chair, RDOS

kkozakevich@rdos.bc.ca

Chris Garrish, Planning Manager, RDOS

cgarrish@rdos.bc.ca

Electoral Area "A" Advisory Planning Council (APC):

Peter Beckett, Chair, (APC) [REDACTED]

Mark McKenney, Vice Chair, (APC) [REDACTED]



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December 4, 2020

Christopher Gerrish
Planning Manager
Regional District of Okanagan-Similkameen
101 Martin Street, Penticton, BC V2A 5J9

Re: Comments regarding bylaw amendments No. 2912 & No. 2500.17

Dear Mr. Gerrish,

Please consider the following referral comments on behalf of the South Okanagan Similkameen Conservation Program (SOSCP), a longstanding partner of the regional district on environmental and conservation planning matters.

The predominant focus of the comments presented herein is on the sweeping changes that will be enacted if Draft Amendment Bylaw No. 2912 is to be adopted. Please consider this letter as SOSCP's formal referral comments for both Draft Amendment Bylaw No. 2912 and Draft Amendment Bylaw No. 2500.17 i.e. they should be included in the agenda package and administrative report for each respective bylaw. Please note that the two documents referenced throughout can be found as Appendix A and B. SOSCP's response draws on its professional expertise as well as concerns raised by its partners.

SOSCP's review of the proposed amendments raises deep concerns regarding the perceived direction that the Regional District of Okanagan-Similkameen (RDOS) is headed. The contemplated removal of protections for species at risk and sensitive ecosystems appears to be justified at least partly by the demands of a minority of stakeholders without proper fact-checking and adequate consultation, which is incompatible with our shared mandate for environmental protection and long-term sustainability.

As a long-term partner on land use matters within the Okanagan-Similkameen, SOSCP regularly reviews Environmentally Sensitive Development Permits (ESDP), Riparian Development Permits (RDP), and many other bylaws and policies from the RDOS and municipal partners, giving it a unique viewpoint to fully appreciate the benefits and challenges of development permits and other applicable environmental protection measures. As a major contributor to SOSCP's core activities, it is both surprising and concerning that RDOS did not solicit SOSCP's inputs when contemplating the proposed amendments. Moreover, SOSCP was not formally asked to submit a referral on the proposed amendments while concomitantly, the organization was assisting an adjacent municipality in updating its OCP, including the reinforcement of its ESDP provisions.



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One would understand the overall confusion created by the impromptu proposed amendments as the RDOS' website was and still is suffering several broken and misdirected links, including the bylaw amendment pages, which makes it difficult to provide fully informed commentary on the proposed changes. This confusion is enhanced by the fact that three draft bylaws are available on the website, of which only two were formally circulated to stakeholders associated with SOSCP, those being Draft Amendment Bylaw No. 2912 and Draft Amendment Bylaw No. 2905. Thus, Draft Amendment Bylaw No. 2500.17 can only be found on the website and was not mentioned to referral agencies as prescribed by Section 475 of the *Local Government Act*. Neither does the bylaw contain an easily readable tracked changes version of the proposed changes, nor any addendums or further explanatory notes. This makes it very tedious to cross compare to obtain a fuller understanding, while also raising concerns as to the intention of such ambiguity.

We believe that RDOS should exercise due diligence by rectifying these gaps and clarifying these ambiguities to allow for impacted stakeholders to provide an informed response. Until such time and for the reasons detailed previously, SOSCP will withhold its provision of comments on Draft Amendment Bylaw No. 2905 with the exception of the following based on previous observations: SOSCP believes that RDOS is doing a disservice to the community it serves by not allowing referral agencies, residents, or stakeholders to properly engage with a potentially consequential and wide-reaching OCP amendment. As per the requirements of Section 475 of the *Local Government Act*, SOSCP would note that it appears the RDOS has failed to meet its mandatory requirement to circulate an OCP amendment to affected parties.

Draft Amendment Bylaw No. 2912 and Draft Amendment Bylaw No. 2500.17

Extraordinary Natural Values

The Okanagan-Similkameen region is a biologically unique area with species and ecosystems that do not occur anywhere else in Canada, and in some cases, worldwide. The district hosts one of Canada's highest levels of biodiversity, including several listed species, both provincially and federally, whose survival relies on the protection and conservation of already endangered and highly pressured ecosystems. SOSCP would also like to remind RDOS of the countless services rendered by these ecosystems to the regional communities, services that represent incommensurable economical value. Given these conditions, one can understand the role of tools such as environmentally sensitive development permit processes to protect and preserve the integrity of irreplaceable ecosystems and biodiversity.

The Biodiversity Conservation Strategy for the South Okanagan Similkameen, *Keeping Nature in our Future*, provides information to ensure that the stewardship of the natural environment is considered in all decisions on urban, suburban, resource, recreational, and rural development. Conservation ranking maps, which show the significance and sensitivity of various ecosystems in the region, were determined using the best available



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science and peer reviewed. The conservation ranking maps are a higher-level tool for local governments at the appropriate scale for community planning.

Long-standing commitment to ESDP

In response to the increasing threats to, and rarity of, native plants, wildlife, and ecosystems, the RDOS has established Environmentally Sensitive Development Permit Areas. The RDOS prides itself on its role as a regional leader in environmental protection, as illustrated by the awards it has received for past initiatives. As such, regulating residential development supports the commitment made by the Regional District Board to protect and preserve the natural environment as illustrated in its Vision statement:

We envision the Regional District of Okanagan-Similkameen as a steward of our environment, sustaining a diverse and livable region that offers a high quality of life through good governance.

In 2013, the RDOS Board supported the use of *Keeping Nature in our Future* as a guiding document to initiate a review of its ESDP area designations and policies, including high and very high environmentally sensitive areas. This process was accompanied by extensive Advisory Planning Commission engagement and public consultations on proposed modifications leading to its adoption in 2017. From that day, SOSCP has been and is still assisting in a cost-sharing model to help support the implementation of ESDPs.

Furthermore, the bylaw modifications proposed in Amendments No. 2912 and No. 2500.17 directly contradict the general environmental policies referenced in each OCP, as well as the more specific provision included under the Natural Environment & Conservation sections. For example, in the current Electoral Area A OCP, policy 13.1.1.2 states that the Municipality shall:

Integrate measures to sustain environmental quality and consider impacts on the environment in future land use decisions.

If the draft bylaws are enacted, the effectiveness of this clause would be significantly diminished. While it is at the discretion of local governments to define what constitutes a development and to place restrictions on such development under the *Local Government Act*, no one can argue that the proposed amendments are a huge step back for the RDOS in its protection of the natural environment under its jurisdiction.

Rapid Environmental Assessment Process



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The option of a Rapid Environmental Assessment (REA) for residential buildings and structures was introduced in 2017. It was developed as a solution to address the previous exemption for residential development to increase environmental safeguards for all types of development while providing a cost-effective alternative to traditional Environmental Impact Assessments (EIA). Residential development exemptions are no longer considered consistent with best management practices for the protection of the natural environment which is why adjacent jurisdictions, including Summerland and Penticton, have also removed these exemptions.

It is important to consider that natural environments, along with scientific understanding of ecosystems and species, are in constant evolution. This provides rationale for why ESDP applications require the presence of qualified professionals to assess current site conditions and natural values and potential impacts of development on a case by case basis.

Additionally, reliance on only subdivision for ESDP application ensures that many existing subdivided lots are excluded from future assessment despite potential or known occurrence of critical habitats or species at risk. For instance, some of these areas, particularly in the south part of the region, support multiple, overlapping habitats for species at risk, as well as known locations of use (i.e. Areas A, C, D, I). These values were not considered at the time of subdivision and rezoning because this information was not available.

Despite obvious benefits from a sitewide assessment at the time of subdivision, construction details of later development can still have greater bearing and impacts on species at risk and sensitive ecosystems. Typical rural subdivisions do not include intensive land grading and installation of infrastructure, other than access and occasionally communal water and sewer systems. On-site developments have the greatest impact when residences or accessory structures are built. These impacts cannot be determined at the time of subdivision except for the establishment of a development pocket. Furthermore, the scope and scale of development, even on lots of uniform zoning, cannot guarantee the location of structures, intensity of use, structure height and footprint, site grading, landscaping and tree removal, or the total number of structures. These can only be effectively assessed at the time of development.

Review of REA Process

In 2019, an audit was performed by a third-party to assess the effectiveness of the ESDP Area Guidelines in its first two years and to provide the Board with an overview of the process's successes and challenges thus far (Appendix A). The review process included consultations with local QEPs as well as provincial and federal employees working in regional environmental management at the time. The major outcomes of the review are listed below:



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- The ESDP process helps inform development and reduces impacts to sensitive ecosystems and species at risk and ensures that reliable environmental information is being considered as part of the development planning process.
- The ESDP process assists the Regional District with the protection of Critical Habitat consistent with the requirements of the federal Species at Risk Act.
- QEPs believe the new ESDP guidelines to be useful and better than the past approach (*e.g.*, exempting all residential development).
-

Furthermore, the review highlighted the very fact that as we continue to learn from our experiences and evolve in our understanding of nature, there is and will be a continuing need for revisions of the ESDP process. The review also identified opportunities to improve the approval process and quality of assessments and provided support for monitoring and evaluating compliance.

Despite constraints, including limited resources, staff turnover, and COVID-19, improvements are ongoing. SOSCP developed and provided training opportunities related to ESDP process requirements and expectations including the design of effective mitigation measures and the development of a species at risk portfolio. RDOS staff and the SOSCP Land Use Biologist are currently working on recommended changes to improve the REA process. These include mapping updates to remove existing undeveloped lots and the creation of an Environmental Screening Report template to streamline review and improve the quality of assessments.

In conclusion, we believe that we have established that removing the requirement for an ESDP on all developments except for subdivision is inconsistent with the Board's previous position, guiding vision, feedback from professionals, or the extensive, ongoing work undertaken to develop and improve the process. This is echoed in the May 23, 2019 Administrative Report to the Planning and Development Committee (Appendix B).

Wildfire, ESDP, and FireSmart

SOSCP is aware of concerns from landowners related to the compatibility of ESDP and FireSmart requirements and as such, that these concerns were used to pressure RDOS to amend its bylaws to remove applicable ESDP requirements. This is cited in a letter attached to the Administrative Report in Appendix B.

SOSCP wants to remind RDOS of an existing exemption to ESDPs that allows landowners to clear within 10 metres of their structures for FireSmart. This provision ensures that landowners retain their right to protect their property from wildfire while maintaining the protection of sensitive species and ecosystems. For this reason, SOSCP believes that the concerns were based mainly on misinformation and therefore can be assuaged through a consultation with targeted landowners to communicate directly and educate them on the



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issue. SOSCP is offering its services to RDOS for such purpose as part of their long-standing collaboration.

Closing remarks

In conclusion, we believe that we have presented sufficient evidence as to why SOSCP strongly opposes both Draft Amendment Bylaw No. 2912 and Draft Amendment Bylaw No. 2500.17. We believe that what appears to be a pressured adoption of Draft Amendment Bylaws No. 2912 and No. 2500.17 without a proper consultative process based on transparency, open communication and science is a disservice to the communities and an abridgement of the right of future generations to enjoy a healthy natural environment. As such, SOSCP would welcome the opportunity to provide further comment on Draft Amendment Bylaw No. 2905 at such time the RDOS provides a clear version of the proposed changes.

Responsible land use planning must include the consideration of biodiversity and ecosystem conservation, which in turn requires the application of strong, effective processes to regulate development such as ESDP, not only at the time of subdivision, but also development. There is no question that the proposed amendments will cause long term environmental degradation, including reduced habitat connectivity, impaired ecosystem services, diminished climate change adaptation capacity, and will further reduce our ability to protect and retrieve already eroded biodiversity.

Sincerely,



Benjamin Misener, CPT



Sophie Fillion, BSc. MES

On behalf of the South Okanagan Similkameen Conservation Program

Attachments:

Appendix A (Audit Report)

Appendix B (2 year review report)

Appendix A



Environmentally Sensitive Development Permit Area Provision Audit - Commissioned by SOSCP 2019

Conducted by Contracted Consultant Bearfoot Resources.

INTRODUCTION

Where a local government specifies or designates “environmentally sensitive development permit” (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 in June 2017. QEPs have told the South Okanagan-Similkameen Conservation Program (SOSCP) that they want further guidance from SOSCP 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 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 REA and EA processes.

BACKGROUND

The RDOS requires a development permit for activities including subdivision, vegetation removal, alteration of the land and for 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 a Rapid Environmental Assessment

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).

(REA) or an Environmental Assessment (EA) 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 alternative to the preparation of the more comprehensive EA for “residential buildings, structures and uses” within ESDP areas. It 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. There is no RDOS requirement for subsequent monitoring; it puts responsibility on the QEP to monitor that REA recommendations are implemented.

RDOS requires the more comprehensive EA report where the QEP cannot certify either the absence of EVRs or that impacts have been avoided or acceptably mitigated through a REA. 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 of this project was to conduct an internal field-review of a sample of approved ESDPs to assess results on-the-ground and identify potential improvements to development permit review processes, to better support QEPs and local governments in achieving effective protection of species-at-risk habitats and environmentally sensitive areas. The SOSCP program manager selected 13 approved development permits for review, focussed on species-at-risk habitats and environmentally sensitive areas. One 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. These included:

- 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?

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

- Are there apparent additional opportunities to improve protection of or physically enhance species-at-risk habitats or ESAs?

File selection was not random. Sites were selected to focus on recent files with designated or proposed federal Critical Habitat mapping identified on them. The review sample was selected from ESDPs issued over the period 2017 to 2018.

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 type.*
- 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 ECC Canada 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.*
 - *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.*
 - *Including ESDP conditions requiring later submission of an environmental monitoring report would help ensure that environmental monitoring occurs.*

SOSCP gratefully acknowledges financial support for this project from the following:



Environment
Canada

Canadian Wildlife
Service

Environnement
Canada

Service Canadien
de la faune





TO: Planning and Development Committee

FROM: B. Newell, Chief Administrative Officer

DATE: May 23, 2019

RE: Environmentally Sensitive Development Permit (ESDP) Area
24 Month Review – Proposed OCP Bylaw & Development Procedure Bylaw Amendments

Administrative Recommendation:

THAT the Environmentally Sensitive Development Permit (ESDP) Area designations in the Okanagan Electoral Area Official Community Plan Bylaws be amended;

AND THAT the Development Procedures Bylaw No. 2500, 2011, be amended in order to update the requirements related to ESDPs.

Purpose:

The purpose of this report is to provide the Board with an overview of the Environmentally Sensitive Development Area (ESDP) as it has been operating following the adoption of new guidelines, mapping and processing procedures in June of 2017.

In addition, Administration is proposing a number of amendments to the ESDP Area designation to address issues identified with the new permitting process.

Background:

At its meeting of April 1, 2010, the Board adopted the South Okanagan Sub-Regional Growth Strategy Bylaw No. 2421, 2007, which included, amongst other things, a recommendation to:

Support the development of an inter-regional Biodiversity Conservation Strategy by collaborating with ecosystems experts, including those with traditional ecological knowledge, and balance ecosystems interests with economic and social sustainability.

At its meeting of September 5, 2013, the Planning and Development (P&D) Committee of the Board resolved to “accept *Keeping Nature in Our Future: A Biodiversity Conservation Strategy for the South Okanagan-Similkameen* as a guiding document for the Regional District of Okanagan-Similkameen and the amendment of Official Community Plans.”

A key policy direction included within this Strategy was to “Establish new, or update existing land use policies and regulations to ensure that development processes integrate biodiversity conservation considerations” (Strategic Direction 1.1).

Based upon this direction, Administration undertook a review of the ESDP Area designations in the Okanagan Electoral Area OCP Bylaws between 2014 and 2017. This involved the following updates:

- mapped areas (using mapping contained in *Keeping Nature in Our Future*);
 - OCP policies which support the designation of ESDP Areas;
 - ESDP Area Guidelines; and
 - application requirements and processing procedures.
-

At its meeting of June 15, 2017, the Board adopted Amendment Bylaw 2710, 2017, which incorporated the ESDP Area updates summarized above into the Okanagan Electoral Area OCP Bylaws.

At that time, Administration committed to bring forward a review of the new ESDP Area designation and how it was operating within 12 months (i.e. by June 15, 2018). Due, however, to un-foreseen work volumes and available staff resources in 2018, this review was delayed.

On November 15, 2018, and in anticipation of this review, a Workshop with RDOS staff, Provincial government staff, SOSCP Program Manager and Environmental Planner, and area Qualified Environmental Professionals (QEPs). Items discussed at this meeting included feedback on the ESDP process, possible revisions and the overall efficacy of Rapid Environmental Assessments.

Analysis:

Based upon the consultation undertaken with local QEPs and provincial staff involved in environmental management in late 2018, it is Administration's understanding that the current ESDP process is helping inform development and reducing impacts to sensitive ecosystems and species at risk.

QEPs have also advised that they believe the new ESDP guidelines to be useful and better than the past approach (i.e. exempting all residential development at the building permit stage).

While enforcement and compliance with development permit provisions continues to be an issue, regulating residential development is seen to further the objectives and policies endorsed by the Regional District Board in its various land use bylaws as well as in its Vision statement:

We envision the Regional District of Okanagan-Similkameen as a steward of our environment, sustaining a diverse and livable region that offers a high quality of life through good governance.

The ESDP Area designation also assists the Regional District with the protection of Critical Habitat consistent with the requirements of the federal *Species at Risk Act* (i.e. protecting migratory bird habitat), which is over-riding federal legislation that local governments are expected to uphold to.

Finally, the ESDP Area designation is seen to be ensuring that good environmental information is being considered as part of the development planning process.

That said, and after 2 years of working with the current ESDP Area guidelines and processing procedures, Administration believes that there a number of improvements that can be made. These are outlined below along with some basic statistics regarding recent permit issuance:

Permitting Statistics:

Prior to 2017, the average number of ESDP's issued by the Regional District in a year was 1-2 total, which increased to approximately 30+ per year after 2017 following the removal of the building permit exemption for all types of residential development:

	Area "A"	Area "C"	Area "D"	Area "E"	Area "F"	Area "I"	Total
2017	3	2	9	1	0	[N/A]	15*
2018	10	7	17	2	2	1	39
2019	5	1	1	2	3	1	13†

Total	18	10	27	5	5	2	67
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* ESDP's issued from June 15th to December 31st of 2017

† ESDP's received from January 1st to May 15th of 2019

Of the 26 ESDP's issued between 1997 and 2017, a majority were issued for subdivisions with the remainder being related to non-residential development (i.e. motel, campground, tennis court and water reservoir).

After June 15, 2017, 76.1% issued ESDP's have been for single detached dwellings or related residential structures (i.e. garages) with the remainder related to subdivisions (16.4%) and other non-residential development (7.5%).

Of the ESDP's issued since 2017, 86.6% have been actioned under the Expedited ESDP option through the submission of a "Rapid Environmental Assessment" (REA) by qualified environmental professionals (NOTE: this option did not exist prior to 2017).

For reference purposes, an overview of all ESDPs issued since June 15, 2017, is provided in Attachment No. 1.

Checklist vs. Template:

The option of a "Rapid Environmental Assessment" (REA) for residential buildings and structures was introduced in 2017 as a way to provide a cost-effective alternative to traditional "Environmental Impact Assessments" (EIA) in light of the proposed removal of the building permit exemption for residential development.

The REA is premised on the completion of a checklist by a QEP that is primarily concerned with the identification of "environmentally valuable resources" (EVRs) within 100 metres of an area proposed for residential development.

If no EVRs are identified by a QEP, the Regional District issues an ESDP in much the same way it issues "Expedited" Watercourse Development Permits (WDPs) for development in riparian areas. If, however, a QEP identifies EVRs and is unable to mitigate the impact of the proposed residential development, an EIA would be required prior to the issuance of an ESDP.

Administration did not anticipate in 2017 that the REA option would become the principal form in which QEP's submit ESDP's to the Regional District, and is further concerned the REA option is being mis-used by QEP's to facilitate complex subdivisions and developments that the checklist was not designed to address.

There also appears to be confusion amongst QEP's as to the level of information required to support a REA with reports ranging in size from 2 pages to 40 pages with length seemingly unrelated to the complexity of a development.

To address this, Administration considers there to be merit in replacing the current REA checklist with a standardised report template that will specify key issues to be addressed and reporting requirements to be met by QEP's. The benefits of this revision would be:

- streamline development permit review, by ensuring that required information is presented more efficiently;
- clarification about what residential development thresholds/circumstances would result in the need for a full environmental impact assessment (EIA), instead of an expedited review;

-
- clarification of timing restrictions that may impact an environmental assessment (including REAs) to help property owners understand that these assessments cannot be completed when significant snow is on the ground, of when other timing requirements may be imposed (e.g. where inventory is needed);
 - creating consistency in the quality and effectiveness of assessments being submitted by QEP's in support of development permits; and
 - improving the information provided by QEPs regarding monitoring and evaluation conditions to be used in development permits.

Subdivisions:

The subdivision of land is considered a complex form of development that is not suited for assessment through a REA.

This is due to the requirement that an environmental assessment not only consider the proposed layout of parcels and road dedication (including the placement of utilities and storm water management), but also confirm that within each proposed parcel exists a suitable building envelope capable of accommodation residential development (i.e. dwelling, driveway & septic system), and that such development be able to occur without the need for additional ESDPs.

For this reason, it is being proposed to exclude subdivisions as a form of development that can be submitted as an Expedited ESDP.

REA Title:

QEP's have expressed concern regarding use of the name Rapid Environmental Assessments to described the checklist and the expectation it creates amongst property owners that an assessment of their property can be completed in a quick manner (i.e. "rapid").

According to QEPs, this is leading property owners to provide insufficient time between the preparation of a building permit application and the obtaining of an environmental assessment.

To address this, QEPs have requested that the "Rapid Environmental Assessment" name be replaced. In response, and reflecting the other changes outlined above, Administration is proposing that the new report template be referred to as the "Environmental Screening Report".

Mapping Corrections:

In incorporating the mapping from *Keeping Nature in Our Future*, parcels zoned low, medium and high density residential were excluded from the ESDP Area as were parcels in the Agricultural Land Reserve (ALR) or Crown land – unless significant topographical features existed on a site.

Similarly, where a developed footprint could be identified on a parcel this area was excluded from an ESDP Area. Due to the volume of properties being reviewed, oversights occurred where an existing developed area was inadvertently retained within the ESDP Area (see Attachment No. 2).

Administration has identified a number of such properties since 2017 and is proposing to update the mapping to address these by excluding the developed footprint.

Public Representation (Electoral Area "A"):

While Administration has not yet sought public input regarding the operation of the ESDP Area over the previous two years, a representation from a property owner at Anarchist Mountain in Electoral Area "A" has been received and is included in Attachment No. 3.

In summary, this representation is advocating for the removal of the ESDP Area and the implementation of a voluntary approach to environmental protection by individual property owners with educational support provided by the Regional District.

While Administration is concerned that such an approach would be less effective than the current model of utilising ESDPs for retaining biodiversity values, it does raise a question of the extent to which the ESDP Area should be applied. As a suggestion, the Board may wish to consider if parcels less than 2.0 ha in area should be excluded from the ESDP Area designation if these properties have been previously developed (as is the case for the Anarchist Mountain community).

Alternatives:

- .1 THAT the Environmentally Sensitive Development Permit (ESDP) Area guidelines, mapping and development procedures in the Okanagan Electoral Area Official Community Plan Bylaws not be amended; or
- .2 THAT consideration of amending the Environmentally Sensitive Development Permit (ESDP) Area guidelines, mapping and development procedures in the Okanagan Electoral Area Official Community Plan Bylaws be deferred.

Respectfully submitted:


C. Garrish, Planning Manager

Endorsed by:


B. Dollevoet, General Manager of Development Services

Attachments: No. 1 — ESDP's submitted to RDOS since June 15, 2017

No. 2 — Representative Example of Proposed Mapping Correction

No. 3 — Public representation — (March 8, 2019)

Attachment No. 1 — ESDP's submitted to RDOS since June 15, 2017

No.	Permit No.	Applicant	Type	Development
2017				
.1	D2017.116-ESDP	Dyck	Expedited	New dwelling
.2	D2017.125-ESDP	Pyrozyk	Expedited	New dwelling
.3	A2017.127-ESDP	Strouts & Miller	Expedited	New accessory structure
.4	E2017.131-ESDP	Cleveland	Regular	New dwelling
.5	D2017.132-ESDP	Hoeger	Expedited	New dwelling
.6	D2017.136-ESDP	Briscoe	Expedited	New dwelling
.7	D2017.137-ESDP	Jacques	Expedited	New dwelling
.8	D2017.146-ESDP	Burke	Expedited	New Dwelling
.9	A2017.149-ESDP	Visser	Expedited	New Dwelling & Workshop
.10	D2017.153-ESDP	Gratton	Expedited	New well and pipe to dwelling
.11	D2017.158-ESDP	Schmidt	Expedited	New roof over shipping containers
.12	D2017.162-ESDP	McClelland	Expedited	New workshop
.13	C2017.167-ESDP	Vaillancourt	Expedited	New dwelling & septic
.14	C2017.171.ESDP	Lindsay	Expedited	Subdivision (2-lot)
.15	A2017.178-ESDP	Quintal	Expedited	Subdivision (1-lot)
2018				
.1	D2018.008-ESDP	Balla & Paul	Expedited	New dwelling
.2	D2018.016-ESDP	Marti	Expedited	Subdivision (3-lot)
.3	D2018.018-ESDP	Thew	Expedited	New Dwelling
.4	C2018.019-ESDP	Chamberland	Expedited	New Dwelling
.5	D2018.025-ESDP	Kenyon & Hitchcock	Expedited	New dwelling
.6	E2018.034-ESDP	Mathias & Born	Expedited	New dwelling, shed & septic
.7	D2018.037-ESDP	Schmidt	Expedited	New dwelling & garage
.8	D2018.043-ESDP	OK Falls RV Resort	Regular	Residential development
.9	D2018.046-ESDP	Kwakernaak/Wood	Expedited	New dwelling
.10	C2018.055-ESDP	T262 Enterprises	Expedited	Subdivision (31-lot)
.11	A2018.056-ESDP	Blomme	Expedited	New dwelling & garage
.12	D2018.067-ESDP	Mide	Expedited	Subdivision (1-lot)
.13	D2018.068-ESDP	Regina & Chidley	Expedited	New dwelling
.14	F2018.073-ESDP	Vaisanen	Regular	Subdivision (1-lot)

.15	F2018.077-ESDP	Dolan	Expedited	New dwelling & septic
.16	D2018.087-ESDP	Kildaw	Regular	Subdivision (2-lot)
.17	D2018.096-ESDP	Pardell	Regular	New dwelling
.18	A2018.097-ESDP	Teichroew	Expedited	New garage
.19	D2018.101-ESDP	Cesla	Expedited	New dwelling, driveway & septic
.20	E2018.107-ESDP	Schroeder	Regular	New dwelling, garage and garden
.21	D2018.112-ESDP	Elkjar	Expedited	New garage
.22	A2018.117-ESDP	De Goede Newfield	Expedited	New dwelling, garage, pool & septic
.23	C2018.122-ESDP	Marsel	Expedited	New dwelling & driveway
.24	D2018.131-ESDP	Baker	Expedited	New dwelling
.25	A2018.134-ESDP	Larose Winery	Regular	New winery
.26	C2018.136-ESDP	Warren	Expedited	New dwelling, workshop, etc.
.27	C2018.139-ESDP	Oliveira	Expedited	Subdivision (2-lot)
.28	A2018.145-ESDP	Kappel	Expedited	New dwelling & workshop
.29	C2018.151-ESDP	Cotter	Expedited	New accessory structure and septic
.30	A2018.152-ESDP	Trueman	Expedited	New dwelling
.31	A2018.154-ESDP	Gagnon	Expedited	New dwelling
.32	D2018.155-ESDP	Twin Lakes Golf Course	Expedited	Garlic Farm
.33	D2018.157-ESDP	Kribernegg	Expedited	New dwelling & septic field
.34	D2018.167-ESDP	Russell	Expedited	New dwelling
.35	C2018.173-ESDP	Oldfield	Expedited	New dwelling
.36	D2018.176-ESDP	Plensky & Palmer	Expedited	New dwelling
.37	A2018.200-ESDP	Osoyoos Mt. Estate	Regular	Subdivision (1-lot)
.38	I2018.201-ESDP	Zenger	Expedited	New dwelling
.39	A2018.206-ESDP	Premerl & Velghe	Expedited	New dwelling
2019				
1.	A2019.001-ESDP	Kramer	Expedited	New dwelling, driveway & septic
2.	E2019.002-ESDP	Noble	Expedited	New pool
3.	I2019.003-ESDP	Thomson & Sanche	Expedited	New dwelling
4.	C2019.004-ESDP	UBC	Expedited	Demolition & New Buildings
5.	A2019.005-ESDP	424940 BC Ltd.	Expedited	New dwelling & accessory building
6.	D2019.006-ESDP	London	Expedited	New dwelling, garage & acc. dwelling
7.	E2019.007-ESDP	Grace Estates	Expedited	Subdivision (11-lot)
8.	A2019.008-ESDP	Walker	Expedited	New dwelling, shed and septic
9.	A2019.009-ESDP	Hinz & Clark	Expedited	New garage

10.	I2019.010-ESDP	Gibney	Regular	Quonset & wells
11.	A2019.011-ESDP	Pendergraft	Expedited	Subdivision (boundary adjustment)
12.	F2019.012-ESDP	Matheson	Expedited	New dwelling
13.	I2019.013-ESDP	Mielke	Expedited	New dwelling

Attachment No. 2 — Representative Example of Proposed Mapping Correction



Attachment No. 3 – Public Representation

My name is Bernie Langlois. My wife Eileen and I purchased lot 1 (3.5 acres) on Bullmoose Trail extension in 2012 and started building our retirement home and developing the property. At the time there was no restrictions, directives, charges or caveats on title (other than Fortis right of ways) as to what we could, or could not do with our property. As we continue to develop the property we have since been informed that this property is now in an environmentally sensitive area and comes with numerous restrictions.

I have read the document “Keeping Nature in our Future” that was adopted as the basis for the RDOS strategic biodiversity policies and the Official Community Plan (OCP). Some of the Key findings in this scientific study are:

1. “More than 20%of the study area is classified as having high or very high relative biodiversity i.e., the region has many healthy natural areas supporting a diversity of wildlife
2. The electoral areas and municipalities with the greatest proportion of very high and high relative biodiversity are Area A (Rural Osoyoos), Area B (Cawston), Area C (Rural Oliver), Area D (Okanagan Falls), and the municipalities of Osoyoos and Oliver.
3. The valley bottom is very important, even though it is a smaller part of the region. Nearly half of the very high and high biodiversity values occur in the valley bottom. The results show that a significant amount of habitat in the valley has already been lost, as reflected by the high proportion of low and very low relative biodiversity found there
4. Since upland areas do not have the same intensity of land conversion as the valleys they represent an opportunity for land managers to retain biodiversity values, although protection of these lands is not comparable or interchangeable with protection of valley bottoms.”

I fully agree that the unique properties of the Okanagan valley and more specifically the northern part of the Sonora Desert must be preserved because of the specific flora and fauna that a desert environment brings. However as stated, the desert in the valley bottom has already been destroyed through development and agriculture.

My major concern and objection is to the plan that was adopted to protect the environment, specifically to our area. It is flawed for the following reasons:

1. The plan targets and focuses on only selective areas and individuals.
 - a. When one looks at the RDOS map that has been designated as environmentally sensitive (red zoned) it is only a small fraction of the entire regional district. The most sensitive areas (the desert areas) are not red zoned. Area B which is a very high to high in biodiversity is not deemed an environmentally sensitive area.
 - b. The largest red zone on the whole map is a big square at the southeast corner of Area A which includes the Regal Ridge development. The whole area is being treated

equally despite the fact that there are several different eco systems and topography within the area. Low risk area is being treated the same as high risk. Anarchist Mountain is not the Sonoran Desert and as such has different biodiversity values.

- c. RDOS was well intentioned to preserve the biodiversity in the Okanagan but designed a plan that puts all the accountability on the individuals while collecting permit fees for RDOS and creating a healthy source of income for QEP/biologists. How is RDOS accountable and how does the environment benefit from this plan. Who is monitoring and measuring and who gets the accolades?

2. Implementation Plan less than adequate

- a. When the plan was about to become policy, a series of town halls were scheduled. The town hall meeting planned for Area A was set up outside of Area A, one week before Christmas between 5:00PM and 7:00PM (when many residents were away for Christmas, and the time of Dinner hour) This was great timing to not garner good attendance.
- b. We know from the experience in the valley that degradation from human activity is real and detrimental to biodiversity values. Although the plan isn't meant to discourage development and growth, it must contain elements to protect the environment. If this was adopted by RDOS in 2005, why was Regal Ridge allowed to develop as it did without designation on title that this area was environmentally sensitive. Our lot had not even been developed then and even when it was, there were no caveat or descriptors associated with or declared on title.
- c. The method used for ESDP mapping in Regal Ridge was to exclude already disturbed areas based on an interpretation of available aerial photos. In our case there was already a trailer on the western edge of the lot that was not excluded. There was no checking in person on any of these lots. I also find in looking at the whole area that there are inconsistencies to the mapping interpretation. Huge areas are excluded with no evident land disturbance.
- d. We have 2 Fortis right -of -ways on our property. We understand that Fortis can access those right of ways and scrape, dig and basically change the landscape without regard to the flora or fauna and without permission or an ESDP from RDOS. Conversely as the land owner, I am not allowed to do any of these activities without great costs and permission from RDOS. Either the environment is sensitive for all these activities or it isn't.
- e. The current plan for ESDP is to have land/lot owners pay a QEP/biologist (\$1,500 to \$2,000)to do an assessment and provide a report to both RDOS and the lot owner as to the environmental values of the stated development area and mitigative measures to offset any impact the development might have to the environment. This report comes

in the form of recommendations and is not followed up by RDOS nor are the corrective measures enforced (ie Has there been 2 trees planted for every tree that is cut)? This plan also does not address the following:

- i. If no environmental values are impacted, are the QEP fees refunded by RDOS or the QEP?
- ii. If there is major environmental impact such as the private development otherwise known as, "the scar on the mountain" just above Osoyoos and Hwy #3, is the development not approved or stopped?
- iii. The triggers for an ESDP as per Section 18.2.5 of the OCP bylaw are 1) subdivision development, 2) construction, 3) the "alteration of land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services". For all practical purposes subdivision development obviously would trigger an ESDP as would many building permits but certainly not all outbuildings. Least of all RDOS would not be apprised by individual lot owners for any of the activities in section 3. In fact Fire Smarting activity exclusions within 10 meters of a building contravenes the recommended guidelines for interface fire hazard mitigation. Anarchist Mountain (mostly Regal Ridge residents) have had Firesmart Recognition status for the past 6 years and were one of the first communities in BC to be recognized. This is because we, as a community and individual land owners care about the environment and the destruction to flora and fauna that a major fire would create, therefore we have raked, scraped the ground and picked up dead brush beyond the 10 meters of our buildings and in common areas. Where is the consistency and how effective is the plan to the overall strategy. What does an individual ESDP for Bernie Langlois or the general "John Smith" do for preserving biodiversity in the Okanagan Valley?
- iv. What about the deforestation and clear cutting of trees adjacent to the Environmentally Sensitive area? How does that interface with this program?
- v. One of the purposes of this program is to protect and encourage growth in all wildlife by protecting their habitat, food and water sources. What good is that if hunters are allowed to come and destroy both animals and habitat within or in close proximity to this environmentally sensitive area?

3. Accountability

- a. AS mentioned the accountability from this plan rests solely on those individuals who are coerced (with a threat of not getting a building permit) into getting an ESDP and hopefully they abide or adopt the recommendations in the report. All others in the community know nothing or very little about conservation other than their own

intuitive methods. How does this meet the objectives of “Keeping Nature in our Future”

- b. Not complying with the ESDP process results in an enforcement procedure that includes putting a notice on title of a non-permitted building on the property. No one is against getting a building permit . It is the ESDP that is questionable and onerous. Many residents are avoiding the whole building permit process for outbuildings because of ESDP. Enforcement is inconsistent by RDOS and unfairly tasked RDOS inspectors.
- c. The plan is erroneous, unfairly burdens land owners financially and is punitive in its’ approach as opposed to collaborative. RDOS are not a fully vested partner in the process but only the body that makes the rules and to get recognition from senior biodiversity groups and provincial government.

What is the alternative

The “Keeping Nature in our Future” document provides numerous directives, strategies and recommendations as follows:

Page 6 . Strategic Directions for Senior Government

2) Improve implementation of conservation initiatives; promote interagency cooperation, and enforcement of senior legislation, regulations and standards.

3) Manage ecological values on provincial and federal crown lands in a manner that leads by example.

4) Improve the efficiency and effectiveness of environmental mitigation and compensation programs.

6) Support land owners, managers and other stakeholders to conserve biodiversity with financial and technical assistance.

Page 54. Examples of Incentives for Landowners and Developers

- Providing resources to help landowners and developers understand the financial benefits of ecological development approaches
- Exempting eligible riparian property from property taxes if a property is subject to a conservation covenant registered under section 219 of the Land Title Act
- Reducing fees for applications that meet certain environmental criteria
- Providing free technical assistance and recognition for land conservation.

Page 71. Regional Growth Strategy Support for the Biodiversity Conservation Strategy

- 1) Meet with environment partners to develop a regional approach to biodiversity conservation and work with the RDOS Board toward coordinated biodiversity conservation and ecosystems protection.

-
- 2) Support the development of an inter-regional Biodiversity Conservation Strategy by collaborating with ecosystems experts, including those with traditional ecological knowledge, and balance ecosystems interests with economic and social sustainability.
 - 4) Monitor the effectiveness of Regional Growth Strategy ecosystems actions, including annual indicators for key ecosystems measures.

These are only some of the suggestions, directives and strategies that I do not see within the current plan.

Suggestions

- Scrapping the current ESPD system including redoing the red zoning maps to exclude private property and focus on community initiatives described below.
- A collaborative approach where all stakeholders prepare the strategies for a particular area/municipality/community/ neighborhood and share in the executive actions and reap the rewards would be much more effective than the punitive approach on individual land owners. The stakeholders would be RDOS, ecosystem experts, community leads and other interested and committed individuals.
- An approach similar to the FireSmart program where objectives for achieving status are outlined to the community. Experts are brought in to explain criteria and what needs to be done. Every year the same and new objectives are added in order to achieve status and maintain designation.
- A number of rewards and incentives could be designed and offered to communities or neighborhoods that achieve proposed biodiversity objectives including public recognition in the form of plaques/signs/announcements, tax deductions for ESDP for every individual in the community, grants for environmental projects for the following year, etc...
- It is critical that a system of monitoring and measurement be established to provide a baseline and gauge on-going progress.

From: [REDACTED]
To: [Planning Group](#)
Subject: ESDP Area Review
Date: February 22, 2022 6:49:57 PM

re: Official Community Plan Amendment Bylaw No. 2912 Electoral Areas "A", "C", "D", "E",
"F", "H" & "I"

Environmentally Sensitive Development Permit (ESDP) Area Review

Thank you for your common sense approach. A vast improvement.
Staff deserves a pat on the back for this :)

Pat and Nora Walker

[REDACTED]
Kaleden, BC V0H 1K0

Margaret Holm

Penticton BC V2A 8X7

February 22, 2022

To: RDOS Planning Department
RDOS board of directors

Regarding: RDOS amendment to ESDPs

I do not support the suggested amendment to ESDPs for the following reasons:

1. As residents and caretakers of one of the most biologically important regions in Canada, elected officials have a duty to carefully consider the appropriate policies and bylaws to protect nature within RDOS boundaries. Protection of the natural environment also supports the region's economy and agricultural and tourism industries.
2. ESDPs may be a limited tool to protect the natural environment on private land but to remove the use of ESDPs for large properties is not a solution, it is a step backwards.
3. A comprehensive review of ESDPs should be commissioned (and has been offered by agencies advising the RDOS). Planner Chris Garrish's presentation arguing that ESDPs are not an effective tool that showed cherry-picked examples of ESDP failures is an inadequate evaluation of this important topic. A review should be done by qualified professionals, since Garrish admits RDOS planning staff do not have adequate resources or expertise. Several written reviews of ESDPs in BC jurisdictions are also available (Curran et al).
4. There are opportunities to make the ESDP process work better for the RDOS, rather than restricting it to subdivisions and rezoning. Other municipalities and regional districts have provided a comprehensive list of which activities are considered development/land alteration and which activities are exempt from the designation. This

also creates greater certainty for homeowners and developers on acceptable land alteration in potentially sensitive areas.

5. The RDOS has benefited from significant funding and expertise provided by the province and South Okanagan Similkameen Conservation Program (SOSCP) in developing mapping used for the ESDPA. The same agencies have offered assistance to improve ESDPA bylaw language and policies and to review ESDP work since enacted in 2017. The RDOS board should instruct the Development and Planning Department to work with these agencies to improve ESDP policy.
6. Garrish implies that work by RPBios advising homeowners and the use of Rapid Assessments has sometimes been problematic. This too can be addressed by examining policies from other municipalities for obtaining better results from the work of registered professionals. As well, the College of Applied Biology continues to improve standards and accreditation, with new standards for 2022.

In conclusion, there are many other options to consider to make ESDPs more effective to protect the environment and to prevent an unnecessary burden on residents seeking to improve their properties. Examples from other municipalities, green bylaw experts, and provincial and conservation agencies are all resources that can and should be consulted before making changes.

Sincerely,

Margaret Holm

From: [marty.stewart](#)
To: [Planning Group](#)
Subject: Pink Zone
Date: February 22, 2022 9:36:43 AM

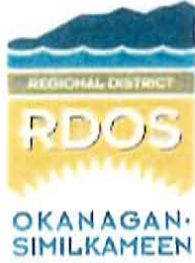
Send this email to voice my disapproval of the So called PINK ZONE that did not exists on my property when purchased in 2002 in Kilpoola Estates, This pink area has been brushed over my garden, driveway access & buildings that have been installed in the development of these acreages years ago.

I vote to have all this pink area removed from existing properties that have been developed. This ESDP should only be looked at when development of new subdivisions of the future not on existing property.

Regards,

marty.stewart
[REDACTED]

Osoyoos, BC
V0H 1V5
[REDACTED]



Feedback Form

Regional District of Okanagan Similkameen

101 Martin Street, Penticton, BC, V2A-5J9

Tel: 250-492-0237 / Email: planning@rdos.bc.ca

TO: Regional District of Okanagan Similkameen FILE NO.: X2020.009-ZONE

FROM: Name: Scott Smith
(please print)

Street Address: [Redacted] Penticton BC

RE: Official Community Plan Amendment Bylaw No. 2912
Electoral Areas "A", "C", "D", "E", "F", "H" & "I"
Environmentally Sensitive Development Permit (ESDP) Area Review

My comments / concerns are:

- I do support the proposed amendments to the ESDP Area.
- I do support the proposed amendments to the ESDP Area, subject to the comments listed below.
- I do not support the proposed amendments to the ESDP Area.

Written submissions will be considered by the Regional District Board at 1st reading of Bylaw No. 2912.

Please see my comments on the following pages

Feedback Forms must be completed and returned to the Regional District
no later than **February 25, 2022**

To: RDOS

Re: Environmentally Sensitive Development Permit Area Review

As stated on my feedback form, I do not support the proposed amendments to the Environmentally Sensitive Development Permit Areas (ESDPAs) for the following reasons.

At its meeting of September 5, 2013, the Planning and Development Committee of the Regional District Board recognized the importance of maintaining biodiversity values by resolving to “accept *Keeping Nature in our Future: A Biodiversity Conservation Strategy for the South Okanagan-Similkameen* as a guiding document for the RDOS and the amendment of OCPs. It appears that the current proposed Bylaw amendments stray from both the direction provided by this document and the Committee’s resolve to accept it as guidance.

Biodiversity provides important ecological services such as regulating carbon and nutrient cycling, greenhouse gas sequestration and the quantity and quality of water flows.

- These services stem from natural areas and it is the objective of ESDPA to minimize the impact of development on the natural environment.
- Ecological services provide for essential human needs such as food, clean water, and natural resources upon which our economy depends.
- Finally, our natural landscapes satisfy habitat, recreational, spiritual, and cultural needs.

Biodiversity plays a critical role in the economy of the South Okanagan-Similkameen region.

- New research in agriculture shows how profitable specialty crops such as grapes, tree fruits and organic crops benefit directly from biodiversity. Birds, butterflies, bees, and a wealth of invertebrates help pollinate and control insect pests and weeds in these horticultural systems, but they require natural ecosystem habitats to flourish.
- In this context, all efforts, however small, minimize the impact of development on the natural environment and protect priority sensitive ecosystems which provide benefits to everyone.

While I acknowledge that the current application of the ESDPA has shortcomings, I take exception to the view that the best way to fix this is to abandon the use of ESDPAs during the Building Permit process.

- Some of the most destructive activities to biodiversity occur through site-specific land alteration associated with Building Permits. It is important to continue to assess the impacts of such building activities and land clearing/alterations.

- If the Rapid Environmental Assessments are not working as intended, fix this. If RDOS cannot enforce ESDPAs, then continue to work to fix this.

There are some good suggestions from staff on how to revise policies to enhance the efficient use of ESDPAs on subdivisions and rezoning applications. These should be implemented.

Given that the RDOS covers the most environmentally sensitive landscapes in the province, if not the country:

- Why not have a staff RPBio to help design more effective use of ESDPAs and begin the job of monitoring activities over time?
- If you have no idea if ESDPAs are working to minimize the impact of development on the environment, is it not logical to have an RPBIO assess their effectiveness on the environment and ecosystem before amending Bylaw No. 2912?
- What are you intending to do in place of the ESDPA removal to address/ensure sustainable development as enabled by your legislation and as you committed to in your mission and mandate?

In summary, I feel that RDOS needs to look at ways to fix the short comings with respect to the current use of ESDPAs, but part of that fix should not be to simply abandon their use during the Building Permit process. If such an amendment is to pass, let's be clear, this is being done for social and economic reasons, not because the ESDPAs are ineffective.

Extensive time, effort, and money (several \$100,000) over the span of a few decades have gone into mapping our most environmentally sensitive areas and we need to continue to extract the value from this information base. We have so little functioning biodiversity left in the South Okanagan sub-region. We need to 'stay the course' with respect to guarding what we have left, however small the spatial increment or inconvenient it feels to the RDOS Board and staff.

Respectfully,



Scott Smith M.Sc., P. Ag.

From: [REDACTED]
To: [Brendan O'Neil](#)
Subject: Proposed ESDP amendment
Date: February 21, 2022 2:27:57 PM

As a professional ecologist with extensive experience in the South Okanagan-Similkameen, I am opposed to restricting the Environmentally Sensitive Development permitting to only subdivisions and rezonings.

The South Okanagan-Similkameen is the very northern extent of the Great Basin biome, and as such we play host to an extremely high concentration of species at risk, whose northern range typically ends within the RDOS.

As our climate warms, we need to ensure that these native species are available to occupy newly created habitats to the north of us.

This means not only protecting the species themselves, but also protecting the terrestrial and aquatic connectivity corridors that will facilitate their northward movement.

The RDOS has traditionally favored suburban developments, to the detriment of our natural heritage. It is high time you start showing some concern for the species and ecosystems that make these two valleys such wonderful places to live.

Don V. Gayton, https://indefense.proofpoint.com/v2/url?url=http://3A__M_Sc&d=DwICAg&e=cuGZsteaTDilvjmENbb7jXuvjOfv5A_C6pgnVfiihM&k=HVpamXl9IhuhIa6vLxxv0NXfCvA9vixbvsEdAm282s&m=myV4F2Ev158L0tqYd4JFSFVvFmwZjesE3uLY8PeBAA&s=eKsOzGKB1N2stHepCsqJIS6zZAI7O_1f0JQs7Palkw&e=P_Agfred
Ecologist and Writer
Summerland, BC Canada
https://indefense.proofpoint.com/v2/url?url=http://3A__www.dongayton.ca&d=DwICAg&e=cuGZsteaTDilvjmENbb7jXuvjOfv5A_C6pgnVfiihM&k=HVpamXl9IhuhIa6vLxxv0NXfCvA9vixbvsEdAm282s&m=myV4F2Ev158L0tqYd4JFSFVvFmwZjesE3uLY8PeBAA&s=eKsOzGKB1N2stHepCsqJIS6zZAI7O_1f0JQs7Palkw&e=

From: [Paul Doyle](#)
To: [Planning Group](#)
Subject: EDSP Policy
Date: February 19, 2022 8:08:28 AM

I am opposed to any changes to the current subject policy. We need stronger protection for our environment now, not weaker.
Please reconsider what you are proposing to do on this subject.
Thank you.
Paul Doyle
Oliver

From: [Sharon Parrotta](#)
To: [Planning Group](#)
Subject: E S D P for Electotal area A
Date: February 23, 2022 2:32:12 PM

Sharon Parrotta [REDACTED] Old Richter pass Rd Osoyoos B C

I am strongly in favor of removing kilpoola Estates from requiring an E S D Permit.
regards Sharon Parrotta.

From: [chad klotz](#)
To: [Planning Group](#)
Subject: Thank you for the February 22nd meeting on the proposed changes to the bylaws
Date: February 22, 2022 8:58:33 PM

hello,

I really enjoyed the meeting tonight. From what i can tell the proposed changes will be more effective in protecting the land compared to the current bylaw. As it was stated, once a subdivision is approved there are major limits on what can actually be achieved as far as protection. As a current land owner looking to build in the near future, its hard to see the benefit of the esdp, when even after the esdp is taken care of i can still go ahead with my original plans. Chris clearly stated no esdp has ever been denied so really at that stage it's hard to see the benefit. I do support the need for esdps when talking about new subdivisions as there is much more impact potential. From the comments in the chat tonight its clear people are worried about potential impacts, but I believe the focus should be on new subdivisions and not on individual homeowners. To me the potential changes to the bylaw make complete sense and I fully support the changes. I recognize the tough side of Chris's job when dealing with the public on sensitive issues like this and would like to take this opportunity to thank Chris and all the staff for their hard work.

Thanks so much, take care
Chad

Lauri Feindell

From: Lauri Feindell
Sent: February 23, 2022 10:08 AM
To: 'Tina Merry'
Subject: RE: ESDP Review

Hi Tina,

Thanks for providing these comments on the proposed amendments to the Environmentally Sensitive Development Permit (ESDP) Area designation.

I will place this on file and ensure they are considered by the Board when it next reviews this proposal (tentatively set for March 3, 2022).

As you may be aware, information and status updates regarding this project can be accessed at the following webpage: <https://www.rdos.bc.ca/development-services/planning/strategic-projects/esdp-review/>

Sincerely,

Chris.

Planning Manager

250-490-4101

-----Original Message-----

From: Tina Merry <tinamerry.blog@gmail.com>

Sent: February 22, 2022 8:48 PM

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

Cc: Paul Merry <paulmerry@shaw.ca>

Subject: ESDP Review

Hello, we live at [REDACTED] Kruger Mountain Rd. in Kilpoola Park Estates , Osoyoos. We are writing to support the removal of the Pink Zoning on lands that are already subdivisions like ours here in Kilpoola.

Thank you, Paul and Tina Merry

Feedback Form

Regional District of Okanagan Similkameen

101 Martin Street, Penticton, BC, V2A-5J9

Tel: 250-492-0237 / Email: planning@rdos.bc.ca

TO: Regional District of Okanagan Similkameen FILE NO.: X2020.009-ZONE

FROM: Name: _____ Lori Goldman _____

Street Address: _____

RE: Official Community Plan Amendment Bylaw No. 2912
Electoral Areas "A", "C", "D", "E", "F", "H" & "I"
Environmentally Sensitive Development Permit (ESDP) Area Review

My comments / concerns are:

I do support the proposed amendments to the ESDP Area.

I do support the proposed amendments to the ESDP Area, subject to the comments listed below.

I do not support the proposed amendments to the ESDP Area.

Written submissions will be considered by the Regional District Board at 1st reading of Bylaw No. 2912.

I DO NOT support the proposed amendments to the ESDP Area. Our RDOS Board and Departments are charged with protecting our sensitive biodiversity and need to consider carefully through bylaws how to do that while allowing for development. ESDP rules protect our future and need to be strengthened, not weakened. Although it is costly to do the assessments, scientists must be consulted and respected in their analysis of how to develop our area without damaging nature. It is 2022. The IPCC has made very clear that human activity is changing our climate. We are in danger of an immediate catastrophe of climate change and not protecting our land, air, and water will only hasten our suffering and that of our fellow living creatures. It may be difficult to enforce bylaws, but it is critical.

Please consider other ways to strengthen the bylaws of the RDOS to use professionals to advise landowners and departments and find ways to enforce rules to provide a future for our children for 7 generations.

We know more now and must act boldly with purpose. It is RDOS's job, and the job of all elected officials and employees, to do that. Thank you

Feedback Forms must be completed and returned to the Regional District
no later than **February 25, 2022**

Protecting your personal information is an obligation the Regional District of Okanagan-Similkameen takes seriously. Our practices have been designed to ensure compliance with the privacy provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) ("FIPPA"). Any personal or proprietary information you provide to us is collected, used and disclosed in accordance with FIPPA. Should you have any questions about the collection, use or disclosure of this information please contact: Manager of Legislative Services, RDOS, 101 Martin Street, Penticton, BC V2A 5J9, 250-492-0237.

Feedback Form

Regional District of Okanagan Similkameen
101 Martin Street, Penticton, BC, V2A-5J9
Tel: 250-492-0237 / Email: planning@rdos.bc.ca

TO: Regional District of Okanagan Similkameen FILE NO.: X2020.009-ZONE

FROM: Name. Gerry & Lesia Lalonde
(please print)

Street Address: Area F

RE: Official Community Plan Amendment Bylaw No. 2912
Electoral Areas "A", "C", "D", "E", "F", "H" & "I"
Environmentally Sensitive Development Permit (ESDP) Area Review

My comments / concerns are:

- I do support the proposed amendments to the ESDP Area. (comments below)
- I do support the proposed amendments to the ESDP Area, subject to the comments listed below.
- I do not support the proposed amendments to the ESDP Area.

Written submissions will be considered by the Regional District Board at 1st reading of Bylaw No. 2912.

We strongly encourage the RDOS Board to approve the amendments to the ESDP guidelines as proposed.

Conservation and environment protection should be a community wide effort and not simply applied to a few selected areas of the region. Progress can be made through open dialogue and communication. Meanwhile staff have the tools to deal with individual situations on a case by case basis.

Respectfully submitted.

Feedback Forms must be completed and returned to the Regional District no later than **February 25, 2022**

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From: [Joy Price](#)
To: [Christopher Garrish](#)
Subject: PINK ZONE(ESDP)
Date: February 21, 2022 6:17:31 AM

Hi there Chris,

I own property up in Kilpoola Park Estates, I was given your email by a neighbour who said we could express our opinions to you regarding the Pink Zone that has been applied to our properties.

Although I am a lover of nature and understand that we must protect this fragile and rare ecosystem in our area, I am against the Pink Zone being applied to private residences. I have owned my property for over 16 years and Last year was the first time I have ever heard about it being Pink Zoned.

I am looking forward to watching the meeting on Feb. 22/21, It will be nice to get more information on the subject.

Thank you for your time

Joy Price

From: [Gjoa Taylor](#)
To: [Planning Group](#)
Subject: ESDP changes and input on recent presentation
Date: February 24, 2022 12:41:18 PM


I attended the recent review of the ESDP presentation on Tuesday, February 22nd. I had gone over the same power point that was presented ahead of time to get a better understanding of the changes being suggested.

It was very clear to me after the presentation, that the majority of the audience in attendance did not understand the rationale or the implications of why the Board of RDOS wanted to eliminate the current ESDP except for subdivisions and rezoning. This was clear by the questions being asked, as well as the poor messaging on why make this change, what the ramifications were, and was this a step backwards? It started to sound like very political rationale as to why this change was coming about. Is the RDOS saying they don't really have the power to do much about environmentally sensitive areas at the DP stage and action needs to be taken at the zoning or subdivision stage, so we want to throw in the towel, as the "Provincial Government hasn't given us the power to implement fines, or steward/monitor/we don't have the staff/becomes a paper shuffle to no avail on ESDP's"?

This seems like the easy way out, and doesn't help the problem going forward does it? Who will monitor building around sensitive environment areas if the RDOS throws in the towel? Yes, I totally agree the time to put a stop to building in fire prone areas, or ecologically sensitive hill development, or geotechnical challenged areas is at the rezoning or subdivision stage. But, there is a heck of a lot of land outside those parameters that needs to be addressed at the development permit stage. We live on the Naramata Bench, and we have an environmentally sensitive area that runs through our land. Who will steward people with no regard to these areas if the RDOS isn't involved at the DP stage? If the RDOS doesn't have the power, then isn't it better to figure out ways to get that power?

Maybe I missed the intention of this notice of motion, but if so, then I would respectfully suggest a presentation that isn't rushed, less acronyms, more transparency when questions are asked that seemed uncomfortable to the presenter, and providing a better understanding to what is at stake to the public.

Thanks

Gjoa Taylor


From: [Bernie Langlois](#)
To: [Christopher Garrish](#)
Cc: [Karla Kozakevich](#); [Mark Pendergraft](#)
Subject: Proposed Bylaw Change for ESDP
Date: February 23, 2022 4:59:50 PM

Firstly, Thank you for your presentation to Area A last night regarding this topic.

I would like to commend RDOS, its directors, you and the planning staff for the approach you have taken regarding this ever festering ESDP topic.

You have found an approach that finds common ground between protecting the environment by keeping the pink zone intact while protecting property owners rights to develop their property.

AS we have seen throughout this summer of wildfires, there are much bigger "big picture" issues as it relates to protecting the environment than just protecting flora and fauna on residential properties.

I was astonished while fighting the wildfires on Anarchist Mtn. for 3 weeks that heavy equipment just moved right in to build a fireguard 50 feet wide by 10 kms right in the pink zone obviously killing all habitat in the process. I am glad that we now have protection against ground wildfires but I have a hard reconciling this to the objectives of the current ESDPA.

I trust in time that we can move on to help educate both the general public as well as the environmentalists how we develop comprehensive programs that address all environment and climate change issues.

Bernie Langlois

February 24, 2022

Regional District of Okanagan Similkameen
Penticton BC

c/o Planning@rdos.bc.ca

RE: Proposed changes to the ESDP policy

Given the high ecosystem and species values that occur in the South Okanagan, both residents and all levels of government have a responsibility to protect them – this includes the RDOS. I feel that the proposed changes to the ESDP policy regarding only applying to subdivisions and rezoning are a gutting of the ESDP policy.

RDOS data clearly shows that the number of residential development permits are on the rise. Which would indicate a stronger need for protection of these habitats and species. Applying ESDP's to only subdivisions and rezoning (as proposed) will capture some of the protection that is needed, but many smaller private parcels have important habitats and species that would also benefit from protection. And much of the valuable and important habitat occurs on private parcels. Provincial and Federal government protection on Crown lands is not enough.

Without a proper analysis of the ESDP's issued since 2017, the RDOS really has no data on the effectiveness of this tool. I agree the tool is not perfect, these permitting processes rarely are, but the RDOS should be improving them, not removing them entirely for residential development. Changes/adjustments that I support:

- Improve/fine tune the ESDP area mapping
- Explore potential of sharing an environmental monitor with other regional districts or municipalities
- Improve the rapid environmental assessment form, including a name change
- Provide better guidance to QEP's on the parameters
- Include language regarding encourage residents to use firesmarting principles, which would not be subject to an ESDP

Thank you,

Sara Bunge

Resident RDOS Area "C"

From: [REDACTED]
To: [Riley Gettens](mailto:Riley.Gettens@rdos.bc.ca)
Cc: roberik@rdos.bc.ca; [Rick Knodel](mailto:Rick.Knodel@rdos.bc.ca); [Christopher Garrish](mailto:Christopher.Garrish@rdos.bc.ca); [Subrina Monteith](mailto:Subrina.Monteith@rdos.bc.ca); [Doug Holmes](mailto:Doug.Holmes@rdos.bc.ca); [tim gray](mailto:tim.gray@rdos.bc.ca)
Subject: February 22, 2022 11:43:12 PM
Date: [DPA monitoring rpt FINAL.pdf](#)
Attachments:

This time, with the attached report. sorry.

From: alpeatt@[REDACTED]
Sent: February 22, 2022 11:42 PM
To: Riley Gettens <rgettens@rdos.bc.ca>
Cc: 'roberik@rdos.bc.ca' <roberik@rdos.bc.ca>; Rick Knodel <rkknodel@rdos.bc.ca>; 'cgarrish@rdos.bc.ca' <cgarrish@rdos.bc.ca>; 'Subrina Monteith' <smonteith@rdos.bc.ca>; 'dholmes@summerland.ca' <dholmes@summerland.ca>; tim gray
Subject: FW: AMENDMENT OF ENVIRONMENTALLY SENSITIVE DEVELOPMENT PERMIT (ESDP) AREAS

Riley – an interesting online meeting tonight. Thank you for representing our RDOS Area F and to the RDOS staff for their presentation.

I appreciate that Mr. Garrish is representing senior RDOS staff and RDOS Board direction. He and Fiona did a good job in a thought-provoking circumstance.

I asked a question toward the end of the meeting about which RDOS board members have declared a conflict of interest in the ESDP initiative but my question was not acknowledged – though Chris did try to bring me back into the conversation (thank you Chris) -- my audio connection seemed muted on the host's end.

I would appreciate an answer to that question as a matter of public record. Which RDOS board members have declared a conflict of interest in this amendment?

I believe it is important for government officials to be transparent about their and their family interests, for the good of democratic, representative governance.

It would be reassuring for many RDOS constituents to know whether any board members may have a real or perceived conflict of interest in this matter.

My thoughts following the meeting is that the RDOS planning department is in serious need of professional advice when it comes to protection of environmental and wildlife habitat values at multiple scales -- at the landscape, and at the site attribute level. The Okanagan-Similkameen is a region of intense biological value of significance to all Canada. Yet, Mr. Garrish made no mention (as I recall) of that fact or of any reference to any species at risk or other wildlife or ecosystem of value to our nation. It gives me pause to consider whether the RDOS has the expertise to reasonably assess or consider the impact of its decisions on our environment.

When I was young, one of my mentors told me that "wildlife does not lay on the land like piss on a

platter". You have to do the right thing in the right place.

During the meeting, Mr. Garrish, MCIP, acknowledged that he is a lay person in biology, and as such, may not understand conservation biology. It is vitally important that professionals acknowledge their limitations and areas of expertise – good on you Chris! Consulting a qualified, respected, and experienced conservation biologist would provide the RDOS with the information it needs to best represent the public interest and the environment. This seems prudent because, in 2021, the Province of BC granted a right to practice to biology professionals. Simply put, only a biology professional should be practicing biology within their area of expertise – same as an engineer, veterinarian, doctor, lawyer, forester, agrologist, planner, or such.

During the meeting, Mr. Garrish noted a situation where a QEP was consulted on a site development plan but returned no advice that altered that development plan. I am unsure what Mr. Garrish might have intended by that statement. Incredulity that no substantive environmental values would be negatively affected within a mapped ESDP area? -- that would seem a good and worthwhile result to me. Or, was it an implied value on QEP competence? – that would seem to be a matter better presented to the biology profession's regulator, the College of Applied Biology, which sets the rules for the performance of every biology professional.

I also asked about SOSCP's 2019 development permit monitoring report, which I authored. Had Mr. Garrish been more familiar with that report, attached again for your information, he would have been aware of situations where QEPs provided environmental advice and that advice was largely implemented. There are also recommendations in the report for improvement to the ESDP process and for further QEP training. There is also at least one example where RDOS planning staff seemingly over-rode the QEP's suggestions without explanation.

I will reiterate – I have over 40 years invested in working collaboratively in this region to help maintain a beautiful, functional environment and its wildlife values.

Given the environment in which we are privileged to live, the RDOS should be a model of environmental understanding – anyone can destroy something when they do not want it to persist. This seems to be RDOS' intent.

For clarity, I do not and will never have development permit assessments, REAs, or EAs as part of my business profile – I refer such work to respected colleagues. I support all living things in perpetuity, including people. My kids, my kids' kids', and their kids' deserve better than what the RDOS is currently giving them.

Al Peatt, RPBio, FAPB

From: Al Peatt [REDACTED]

Sent: February 8, 2022 8:15 PM

To: Al Peatt [REDACTED]

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

AREAS

Al Peatt

Begin forwarded message:

From: Al Peatt <[REDACTED]>
Date: February 8, 2022 at 18:07:55 PST
To: [REDACTED]
Subject: Re: AMENDMENT OF ENVIRONMENTALLY SENSITIVE DEVELOPMENT PERMIT (ESDP) AREAS

Absolutely! Feel welcome to send it as far and wide as you wish. It may be time to consider a legal review of this issue. Calvin Sanborn, Mark Haddock or Ben can Drimmelen come to mind for advice. I think Mike Sarrell may have reached out to EcoJustice a few years ago re some similar frustrations.

Al Peatt

On Feb 8, 2022, at 16:30, [REDACTED]

Hi Al,

Can I send this to Anne Hargrave (retired RDOS planning tech) and Tim Gray, an RP Bio who lives on the West Bench?

Margaret

From: [REDACTED]
Sent: April 28, 2021 9:33 PM
To: 'Riley Gettens' <rgettens@rdos.bc.ca>
Cc: [REDACTED]
Subject: RE: AMENDMENT OF ENVIRONMENTALLY SENSITIVE DEVELOPMENT PERMIT (ESDP) AREAS

Riley:

Why is the authority to use an ESDP to vary property use or density even relevant to the discussion? Use and density decisions are made at the zoning/subdivision stage. For environmentally sensitive areas, density decisions should be based on prior and full environmental assessment including (as warranted) ecosystem and species inventory done by a

competent professional at an appropriate time of year, per provincial inventory standards, where the identification of workable building envelopes could be (but I don't believe typically is) part of the process.

But that is not what we have been discussing. What we have been talking about is whether the ESDP process is appropriate and useful for siting new or amended development (e.g. vegetation clearing, site disturbance, hard surface or building installations) to protect important habitat features on existing parcels under existing zoning in pre-identified environmentally sensitive areas. No one that I am aware of, other than -- as you have identified -- the RDOS planning manager, has suggested that ESDPs have been used to vary zoned use of an existing parcel or to change the density/site coverage under current zoning. If any QEP to date has suggested a building site is not available on an existing legal parcel, I am willing to bet that your planning dept would have rejected that advice.

In the ESDPs that I reviewed, there was no indication that any QEP had suggested a change in use or density of a parcel under consideration. So, what is the issue? There was an example or two in the ESDPs that I reviewed where the RDOS planning dept did not apparently accept or follow through on the advice of the QEP for site-level habitat protection or subsequent mitigation of harmful impacts, for example, by establishing a conservation covenant on a remaining part of the 'then developed' parcel. So, it seems that concern about RDOS not having authority to vary use or density of a property under an ESDP may be unwarranted and potentially mis-leading. You have said that RDOS cannot enforce a REA or EA -- is that a legal opinion, and if so, are you sure it is an accurate reflection of the process? Would it not be the conditions of the subsequent development permit post REA or EA that would be enforced? If the conditions of a RDOS development permit cannot be enforced, which seems absurd, should that not be that gap that RDOS staff and its Board should be working on to resolve?

It seems that the RDOS has authority and responsibility for "protection of the natural environment" under the LGA:

LGA 491 (1) For land within a development permit area designated under section 488 (1) (a) [protection of natural environment], a development permit may do one or more of the following:

- (a) specify areas of land that must remain free of development, except in accordance with any conditions contained in the permit; [---i.e. narrow your driveway, build your house in the prescribed previously disturbed area rather than where the snake den is]
- (b) require specified natural features or areas to be preserved, protected, restored or enhanced in accordance with the permit; [-- i.e do not disturb the described area of friable soils suitable for spadefoot toads, and install

- some nest boxes for Lewis's woodpecker]
- (c)require natural water courses to be dedicated;
- (d)require works to be constructed to preserve, protect, restore or enhance natural water courses or other specified natural features of the environment; (--- seems like this means build to suit the land, not alter the land to suit the build.)
- (e)require protection measures, including that vegetation or trees be planted or retained in order to
 - (i)preserve, protect, restore or enhance fish habitat or riparian areas,
 - (ii)control drainage, or
 - (iii)control erosion or protect banks.

LGA 490 (1)Subject to this section, a local government may, by resolution, issue a development permit that does one or more of the following:

- (b)Includes requirements and conditions or sets standards under section 491 [development permits: specific authorities];
- (c)imposes conditions respecting the sequence and timing of construction.

Please consider that the apparent intent of LGA sections 490(1) and 491(1) is to allow the local government to put specific conditions that protect the environment into its enforceable development permits. Doing so can support the federal-provincial accord for species at risk which suggests that the province will provide equivalent protection to what would otherwise be proffered by Canada's Species at Risk Act were it to apply to private or other non-federal lands. To not do so abnegates our societal responsibility to the creatures that we are displacing through our ever-expanding human use of the region.

You suggested there is perceived cost and hardship on the citizenry of having to complete REAs or EAs -- I say, plan to build a house on a silt bluff, expect to pay for a PGeo's advice to avoid causing the silt bluff to fail. Like so, plan to build a house in habitat for an at-risk species, expect to pay for an RPBio's advice to avoid causing the species to become extinct. Both costs are societal responsibilities that benefit society at large -- to suggest that it is a hardship to spend \$1500 on wildlife habitat protection advice for a new build in an environmentally sensitive area might indicate a strong anti-environment bias.

To my knowledge, there is no one currently on staff at RDOS, or on the Board that has the appropriate professional qualifications or experience to judge ecosystem sensitivity or wildlife habitat values, or how best to mitigate potential harm to those values that may result from land development.

Your staff seem to be suggesting that RDOS has no authority to

'manage/enforce' its development permits so why require them? The corollary is that RDOS is prepared to 'manage' its responsibility for the environment and at-risk wildlife habitat in ignorance. Is that what the RDOS Board was elected to do?

Re your question about whether the recommendations of the ESDP review that I did for SOSCP were considered by the RDOS Board -- I have no idea. Bryn White was the program manager for SOSCP at the time; Bryn would likely be able to answer that question.

Thank you for your continued time and interest in this Riley, please do what you can to ensure that RDOS does not abnegate its responsibilities to all its human and non-human constituents.

Best regards,

Al Peatt, RPBio, FAPB
[REDACTED]

-----Original Message-----

From: Riley Gettens <rgettens@rdos.bc.ca>

Sent: April 22, 2021 5:00 PM

To: [REDACTED]

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

Hi Al and Margaret,

Thank you for sending this over. I didn't receive your March 16 email. I've checked in with a few other directors (one from Summerland and one with the RDOS) and they didn't get it either. So, not too sure what happened there. However, I will forward your email from March 16 to our Leg. Manager to ensure it gets out correctly today.

Here is my understanding of the issue and am 100% open to your comments.

The RD does not have authority (as per the Local Gov't Act) to use ESDP to vary use or density of a property. This is what our planning manager provided:

Section 491(3)

<<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/r15>

[001_14#section491](#)> of the Act sets out the ability of a local government to use a Development Permit designated in relation to the "protection of development from hazardous conditions" (Section 488(1)(b)) to vary use or density (i.e. prohibit certain types of development).

As ESDPs are designated under Section 488(1)(a) (i.e. "protection of the natural environment, its ecosystems and biological diversity"), they cannot be used to vary use or density (i.e. prohibit certain types of development).

The feeling is, that the RD is putting added cost and hardship onto citizens by requiring a REA or EA prior to renovations or new builds. Further, depending on the time of year, this requirement could add delays to the application process and construction timelines.

The only time local government has any 'authority' is at the sub-division level. The RD cannot enforce the REA or EA recommendations. That is leading some board members to question the effectiveness of the reports. Could we achieve the same results with an education campaign?

Were the recommendations in the report presented to the RD Board?

Please let me know your thoughts.

Thank you,
Riley

From: [REDACTED]
Date: Friday, April 2, 2021 at 12:11 PM
To: [REDACTED]
Cc: Riley Gettens RDOS Okanagan Lake West Rural Summerland
<rgettens@rdos.bc.ca>
Subject: FW: AMENDMENT OF ENVIRONMENTALLY SENSITIVE
DEVELOPMENT PERMIT (ESDP) AREAS

Marg, thank you for stopping by this morning, and being so interested in the ESDPA issue.

I have permission to share the attached report with interested parties. I sent it to several RDOS directors in advance of their March meeting, along with my comments, which I've included below.

I am glad that Area F Director Riley Gettens voted against the motion to remove parcel-specific ESDPAs – and by cc am giving Riley a thank you!

You mentioned that RDOS is now seeking public comment. My current understanding is that RDOS is reaching out to those agencies that

commented on the motion.

I have had no acknowledgment or reply from anyone re my email below.

My 2019 report makes several suggestions for positive actions the RDOS and SOSCP could take to help improve the current ESDPA process.

I do not know whether any suggestions were considered but I think it is safe to say that none have been implemented.

I guess the elephant in the room is why the RDOS appears to have such a strong and pervasive anti-environment culture within its ranks. The available evidence is that the current ESPSA process is working to protect habitat attributes but also that—like any process— it is not perfect and has room for improvement. Throwing out the parcel-specific ESPDA process to instead rely only on environmental assessments at subdivision will not protect site-specific Critical Habitat attributes. Critical habitat attributes will be destroyed in ignorance—which is neither sound governance nor indicative of environmental leadership.

Al

From: [REDACTED]
Sent: March 16, 2021 3:34 PM
To: 'Riley Gettens' <rgettens@rdos.bc.ca>; 'Rick Knodel' <rknodel@rdos.bc.ca>; 'Ron Obirek' <robirek@rdos.bc.ca>; 'Subrina Monteith' <smonteith@rdos.bc.ca>; 'mayor@keremeos.ca' <mayor@keremeos.ca>; 'julius.bloomfield@penticton.ca' <julius.bloomfield@penticton.ca>; 'mayor@summerland.ca' <mayor@summerland.ca>; 'troberts@rdos.bc.ca' <troberts@rdos.bc.ca>; 'kkozakevich@rdos.bc.ca' <kkozakevich@rdos.bc.ca>; 'dholmes@summerland.ca' <dholmes@summerland.ca>; 'etrainer@summerland.ca' <etrainer@summerland.ca>; 'john.vassilaki@penticton.ca' <john.vassilaki@penticton.ca>; 'gbush@rdos.bc.ca' <gbush@rdos.bc.ca>; 'bcoyne@rdos.bc.ca' <bcoyne@rdos.bc.ca>
Cc: 'bnewall@rdos.bc.ca' <bnewall@rdos.bc.ca>; 'sophie@soscp.org' <sophie@soscp.org>; 'mpendergraft@rdoso.bc.ca' <mpendergraft@rdoso.bc.ca>; 'Leathem, Jamie FLNR:EX' <Jamie.Leathem@gov.bc.ca>; 'Henderson, Darcy (EC)' <darcy.henderson@canada.ca>
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

[bearfoot logo small]

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



Submitted to:
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March 2019

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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

Development Permit Monitoring
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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: Nancy Baron

Sent: February 25, 2022 9:51 AM

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

Subject: RDOS Amendments to Remove Environmental Protection on Sensitive Areas

Dear RDOS Planning Department and Board of Directors,

I am writing to urge you to adhere to your responsibilities to protect nature within RDOS boundaries and therefore not revoke the need for Environmentally Sensitive Development Permits (ESDP's) before building/altering private lands.

RDOS has a stated goal to protect the health and biodiversity of the South Okanagan. Land alteration and clearing associated with building permits is one of the most insidious ways to lose biodiversity and intact habitat and ecosystems. Furthermore the reviews and permitting process are a critically important tool to know what stands to be lost - and a way of monitoring and assessing biodiversity.

To amend the policy and require ESDP's only for subdivisions and rezonings is a big step in the wrong direction. Many of our region's ecosystems and species are already under increasing pressure.

It is essential that permitting continue on private lands or the cumulative impacts will rapidly accrue accelerating further rapid loss of biodiversity. To remove this safeguard will cause irrevocable damage.

Efforts to make the ESDP work better such as a specific and comprehensive list of which activities are considered detrimental and which activities are exempt would provide greater clarity and certainty for homeowners and developer regarding acceptable land alteration in potentially sensitive areas. Yes the process may be improved, but it should not be weakened and shot with holes.

Many people are drawn to the beauty of our area. It's biodiversity supports the region's economy and tourism industries. Let's not allow unmanaged development and loss of monitoring and permits to undermine the greater lasting good for shorter term convenience.

Thank you for taking the long view.

Sincerely,

Nancy Baron

Penticton BC
V2A 8J8

February 25, 2022

Regional District of Okanagan Similkameen Penticton BC

c/o Planning@rdos.bc.ca

RE: Proposed changes to the ESDP policy

While I believe that the current restrictions can be too onerous and costly for landowners resulting from their property having been identified as being within an Environmentally Sensitive Development Permit Area, I also feel that the solution is NOT to abandon the process for individual land owners is not the appropriate path forward.

Given the unique wildlife habits and abundance of threatened species in the South Okanagan I believe that the RDOS has a critical role to play in putting the breaks on development that will further imperil ecosystems function to support native wildlife species.

Therefore, I support in principle the concept of the Environmentally Sensitive Development Permit Areas. From my perspective, the main problems are:

- The coarse scale of the mapping to identify Environmentally Sensitive Development Permit Areas.
- The types of some of the activities that are restricted. I suggest that rather than the default being having to hire a professional biologist to complete an assessment, the landowner would submit a description/scale of the planned activity and map showing the location/footprint of the activity for review by the RDOS. Upon review by the RDOS the impacts of the planned activities are deemed minimal, then the project can proceed.

The process needs to be improved not abandoned. There is no doubt that refinements to the program will be more costly in terms of both time and money for the RDOS. However, just because something may be difficult, is not justification for quitting.

In some cases, ESDPA process and requirements may not change the landowners actual development plans. However, in such cases it is inappropriate to conclude that the process was a waste of time and money. Surely, one of the objectives of the ESDPA process is educational to improve awareness of ecosystems and native wildlife. Ultimately, it would benefit the RDOS and the community at large if landowners took a proactive approach to planned developments that would preserve the functionality of ecosystems and the societal benefits they provide.

I also suggest that similar to the adjustments to property values (for tax purposes) that are available to land in agricultural production, a similar method of assessing land values should be applied to lands that have been identified as providing ecosystem services and where the integrity and functionality of the ecosystems are preserved.

If I must forgo development opportunities on land that I own because it is determined that the greater societal good is to maintain the ecosystem values occurring on the land, then society at large needs to be prepared to financially recognize and support this stance. While I appreciate that changes to the property tax assessment system are beyond the direct control of the RDOS, it must be part of the thinking regarding the fate of ESDPA.

Respectfully,

Joe Lariviere
Resident of RDOS Area "C"

From: Helen Malloy
Sent: February 24, 2022 9:07 PM
To: Planning Group <planning@rdos.bc.ca>
Subject: EDSP Review for RDOS Area A

I am writing you after attending the RDOS Public Meeting on Tuesday, Feb 22, regarding the potential change of handling of EDSP provisions on already developed property.

I would like to make two points regarding my perception of how things have unfolded.

1. THE ANARCHIST MOUNTAIN COMMUNITY SOCIETY (AMCS), DESPITE THEIR CLAIMS OF REPRESENTING THE COMMUNITY ON ANARCHIST MOUNTAIN, HAVE OVER-EXAGGERATED THEIR SUPPORT AND REPRESENTATION.

I fear that some of the proposed action is a result of relentless harrying of RDOS by the AMCS.

I am puzzled about Ms. Lausmann's letter posted on the AMCS Website on February 8, given that the AMCS's objectives as a not-profit society are as follows, copied from their existing bylaws: The purposes of the Society are, amongst others:

- a. uniting all persons interested in the conservation of natural environment of the Anarchist Mountain area;
- b. acting as an advisory body to monitor, comment upon and recommend short and long-term goals for the overall future of the community of Anarchist Mountain, sensitive ecosystems within the Anarchist Mountain area and any commercial development that may be considered in the Anarchist Mountain area;
- d. participating in educating the public and acting as a forum for discussion and debate on issues affecting the Anarchist Mountain area with respect to the stewardship and conservation of sensitive areas and to encourage the sustainability of the biodiversity of the Anarchist Mountain area...

From my perspective, it appears that their representations to you are in contradiction to the Bylaws of the AMCS.

From a numbers standpoint, I question Ms. Lausmann's claims to represent the represent the opinions of the residents of Anarchist Mountain.

- At the most recent AMCS Annual General Meeting in November, 2021 (held as a Zoom Conference) quorum was determined to be 25, representing 93 memberships, which was met. Memberships can be that of a family (2 or more people) or that of a single individual. It is unclear how many people were counted; let us assume that the 93 memberships represented 93 families for a maximum number of participants. In a recent analysis I did for the Anarchist Mountain Fire Department, I assessed that there are at least

235 occupied lots on the mountain. To me, 93 memberships represent, at maximum, 40% of the occupants of the mountain, which does not constitute a majority.

- At no time during my residence on the mountain or in my membership in the Society has the AMCS polled its members specifically on their opinions regarding ESADSP's . Without a stated mandate, I can only conclude that the Directors of the AMCS are pursuing their own agendas as opposed to that of the membership. In Ms. Lausmann's letter of February 8, the pictures presented are that of her own property (Lot 3 on Mule Deer Drive). My concern is that she may be pursuing her private interests in the guise of her position at the AMCS.
- At the November AGM, all but 2 of the 6 Directors stepped down from their positions. The AMCS by-laws state that designees must retain their responsibilities until they are replaced. It is difficult to imagine their commitment to the future. I question the viability of the AMCS given these circumstances.

I deplore the combative attitude the Anarchist Mountain Community Society has taken with RDOS, and feel they are threatening other efforts made by more cooperative and civic-minded residents on the mountain.

2. **THERE ARE MORE OF US IN THE SILENT MAJORITY WHO SUPPORT THE PROTECTIONS PROVIDED BY THE EDSPA's. MANY OF US HAVE MOVED HERE BECAUSE OF THE NATURAL BEAUTY OF THE AREA AND UNDERSTAND THE NEED FOR PROTECTION OF THE SENSITIVE HABITAT.**

The importance and rarity of the terrain in our area has been recognized by both Federal and Provincial authorities.

Our area experienced significant threats last year: a heat dome, drought, and the local Nk Mip wildfire causing us to evacuate.

There is no indication that these threats will lessen in the future. It is also well-recognized that human development further challenges the integrity of sensitive areas.

If we lessen the protections on private property, we implicitly support further deterioration of our landscape.

It takes vision and courage to establish environmental guidelines that protect not only current conditions but those that will be experienced by future residents.

I am asking you to establish a leadership position in environmental protection rather than sinking us to the lowest common denominator.

Thank you for considering my opinion.

Regards, Helen Malloy

Comments- RDOS Draft Amendment Bylaw 2912- ESDPAs

Revised

We live in one of Canada's most endangered habitats where a number of species at risk along with many other species reside. I believe it is our responsibility to protect and enhance where possible the species and habitat therein. Furthermore, we would be wise to be cognizant of ESAs in view of Climate Change, etc. Adjacency, connectivity and functioning of ESAs be it on private or adjoining Crown land are also worthy of note.

In this proposed Amendment Bylaw, I understand the ESDPA now only applies to subdivisions on currently zoned land and rezonings, and no longer land disturbances and building permits. However, there could be circumstances whereby disturbances in an ESDPA on a future subdivision site (currently zoned) might be considered an issue and pose an impact to adjoining ESAs be it on the subdivision site or adjoining land. For example, connectivity with adjoining ESAs may be compromised.

Also, with respect to building permits what is important to bear in mind in an ESA is the location of structures and other disturbances. To maximize the functioning and continuity of ecosystems it is best to have these disturbances located on the least sensitive areas wherever possible. This helps minimize the impact on the ESA. This can be noted at the time the QEP does the assessment. I recognize there may be circumstances where this is not possible but minimizing disturbances nevertheless should be a goal to help mitigate further fragmentation of habitat.

Rezoning can present an opportunity to minimize future ESA disturbances in that the assessment by a QEP prior to rezoning could identify potential impacts on ESAs on the site as well as adjoining lands. For example, a highly sensitive area may not be well suited to more intensive development (eg. smaller lot subdivision) and therefore the proposed rezoning unsuitable. However, rezoning to a larger parcel size might not impact the ESAs as significantly or the property may not be suitable for rezoning if the impact on the ESAs is significant. Cluster housing might be another option on a disturbed portion or under some circumstances a low value ESA of a property.

Another thought to better support the protection of ESAs and endangered habitats is to elevate the Conservation Strategy to a similar plan status as a Climate Action Plan, Emergency Preparedness Plan, Fire Smart Plan, etc. These subjects are not mutually exclusive - they are more likely inter-dependent and possibly co-dependent.

I appreciate local government resources are limited. What if the RDOS had access to some additional funding to support the protection of ESDPAs (both in-house and for applicants)? Wouldn't this help to support the protection ESAs. There are a number of possibilities you might want to consider including RDOS hiring a part-time biologist (also a QEP) who is familiar with the ESAs, current mapping, familiar with the local landscape and some experience in working in land development in this regard.

Thank you for the opportunity to participate in this Bylaw Amendment process.

Kind regards,

Susan Austen

former Registered Planner

(RDOS, City of Penticton, other RDOS municipalities, Ministries of Environment and Forestry, ALC, The Nature Trust of BC and former South Okanagan Stewardship program)

Feb. 24, 2022

Eva Durance
Penticton, BC

February 23, 2022

To: RDOS Planning Department
RDOS Board of Directors

Regarding the RDOS amendments to Environmentally Sensitive Development Permits (ESDPs)

I do not support the proposed amendments to the ESDPs for the following reasons:

1. As is well known and detailed in the RDOS-endorsed document, **Keeping Nature in Our Future**, the land encompassed by the RD is one of four endangered ecosystems in Canada and arguably one of the smallest, most fragile, and threatened. It is the responsibility of all levels of government, in this case the RDOS, to put in place policies, bylaws, and regulations that are adequate to the protection of these unique environmental areas and in particular those that are especially sensitive to damage. Aside from their intrinsic value, the natural features of the area are very important for the health of the local economy including the tourist industry.
While the current ESDP system may be less than ideal in protecting sensitive habitats and features on private properties, to react to the deficiencies by simply removing large properties and certain activities currently requiring a permit is a retrograde and defeatist step.
2. Rather than simply reducing the ESDP system to cover only subdivisions and rezoning applications, other options to improve it should be looked into. For example, other municipal and regional jurisdictions in BC have drawn up comprehensive lists of activities which fall under the Permit system and those which are exempt. This gives much greater certainty to property owners as well as reducing work for staff since very few applications would be submitted that did not already qualify for the permit.
3. In the presentation by Chief Planner Chris Garrish, he implies that the advisory work of professionals such as RPBios as well as Rapid Assessments have been less than satisfactory for the efficiency and adequacy of the system. Again, to simply downgrade the regulations rather than to seek for other places with similar regulations, but more satisfactory use of professionals, is unhelpful.
4. In the same presentation, the focus seemed to be on a few failures of the ESDP system and the whole tone is very negative. For example, if the RDOS lacks a staff person with biology training, why not hire one?! In other areas, Planner Garrish frequently cited a lack of resources and expertise to carry out the system properly. A more useful response would be to try to remedy that lack, not throw out the baby with the bathwater.

5. Organizations such as the South Okanagan Similkameen Conservation Program (SOSCP) and the Provincial government have contributed considerable money and time to the RDOS for the ESDP program in terms of mapping and developing the wording of the terms since the program began in 2017. I would suggest that the Development and Planning Department be instructed to go back to these agencies for help in refining and improving the ESDPs instead of essentially scrapping them.

6. I have heard that one of the motivations behind the proposal to reduce the lands and activities which the ESDPs now cover had to do with concerns about people not being able to FireSmart their property. Mr. Garrish mentioned this in passing during the presentation. I suggest that, as for other exempt situations, the ESDPs regulations simply have FireSmart actions listed as an activity not covered under the Permits.

Before any changes are considered, there needs to be a comprehensive review of ESDPs commissioned; in fact I understand that agencies that advise the RDOS have offered to carry one out. Without such a review, the proposed changes are based on inadequate information and an apparent lack of awareness of other possibilities to strengthen, not weaken, this very important tool for the protection of sensitive natural areas. There are many local and provincial organizations and agencies with particular expertise in this area. These should be consulted and more positive options considered.

Yours truly

Eva Durance

Arlyn Greig

February 23, 2022
info@RDOS.bc.ca

Christopher Garrish, Planning Manager

This letter will agree that the 'Pink Zone', that has been of great annoyance for over three years now, should indeed be removed from Anarchist Mountain, where the lots have already passed through strict regulations while they were being planned and developed. My understanding was that the Pink Zone was to be applied to new subdivisions that would be brought forward. The lots are from three to ten acres, generally, so people who own them are limited to what they can do on them. Generally, you're wanting to build a house, with a garage, so the pack rats can live in the area without ruining your vehicle wiring. In most lots, a driveway is required, as most lots with the houses already built have a driveway. Also, every home needs a Septic system and a well installed. During the meeting last night, many speakers came out in favour of protecting the wild life and the flora and fauna. I noticed that many of the names were not actually people who live on the mountain, so I am curious why they would even have reason to comment. Most of these people already have their homes and garages built. All I want is the same right, that of building my home and garage and driveway, as they all have done over the years. I can understand the need for protecting riparian waters, but; I find that your insistence that I must make certain to not endanger one dried up creek bed (aged mapping shows water running) has cost me thousands of dollars in payment to engineers; while down on the lake, others can build huge docks, with no extra cost for engineers at all. When I did complain about the unfair treatment, nothing at all was done. I ask that I, and other land owners on Anarchist Mountain, are treated with fairness, and allowed to build our homes.

Sincerely,

Arlyn Greig

From: [Tambrey Faasse](#)
To: [Planning Group](#)
Subject: ESDP feedback
Date: February 25, 2022 4:43:10 PM

I that esdp requirements should include all levels of land use. If the proposed changes are accepted then the education of landowners will be lost.

I do not agree with letters from AMCS that people living on Anarchist are "environmentally aware" in the subdivision where I live at least 3 owners have done significant land disturbance road building and clearing (without any permits) outside of the building site that was created by OM estates near their well head

I am concerned that the decision to move esdp requirements only to re-zoning and subdivision levels of land use will result in more significant disturbances of habitat as developers have deeper pockets and more lobbying influence and in a culture where the ONLY bottom line of measurement is \$\$\$, their abilities to override any esdp requirements with tradeoffs of land will significantly undermine the purpose of recognizing and protecting environmentally sensitive areas.

I am especially skeptical because it was stated in the PowerPoint that it will be essentially impossible to rescind zoning and subdivisions that are already created! Without esdp requirements at the building permit stage either, what will happen in those areas? It seems there won't be any protection of the environmentally sensitive areas?

Also rezoning applications pass the board's approval way too quickly ... case in point the recent sweeping changes determined to be necessary to consolidate zoning across all rdos areas which resulted in the SH2 zoned area here on Ravenhill ALL OF WHICH HAD BEEN RECENTLY BLANKETED WITH PINK ZONE STATUS being changed to SH3 within 2 meetings of the rdos board ... it is impossible to believe the lip service paid to environmental caring, sensitivity and the greenwashing language etc. when these are the actions taken

So in my opinion...

Keep esdp requirements for all land use decisions at all levels

Create accurate maps for land use and environmentally sensitive areas

Continue to educate property owners and developers about the natural environment

Give espd reports "teeth" and fines of \$ significance for breaking land use laws

Have professional biologist(s) on staff or under contract to do the work with integrity and deep knowledge of EACH area within the rdos because each area is different and each area, perhaps especially Area A, have numerous and diverse ecosystems within them

Thank you
T. Faasse
Ravenhill rd Osoyoos



February 25, 2022

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

Attention: Area Directors c/o RDOS Chair Pendergraft

Re: **Proposed Environmentally Sensitive Development Permit updates**

Dear Mr. Pendergraft,

As per our letter dated November 8, 2021, the provincial government has significant concerns about the motion to exempt all but subdivision and rezoning from Environmentally Sensitive Development Permits (ESDP).

We respectfully request that you defer the motion for a year. During that deferral time the Province would work with the RDOS and our federal government partners (see signature below) to conduct a thorough effectiveness audit of the ESDP process. The audit will provide the RDOS Board members with concrete data on the successes and challenges of the ESDP processes enabling the board to make an informed decision. If the deferral request is supported by the board, the Province will work with our federal government partners to look for funding to resource the audit and support the RDOS staff.

This motion has triggered concerns at all levels of senior government, including the Ministries of Forests, Lands, Natural Resource Operations and Rural Development, and Environment and Climate Change Strategy; and the federal Canadian Wildlife Service (ECCC-CWS). The Province and other partners have invested considerably in the development of the current ESDP process. The value of ESDPs established by local governments in conserving biodiversity and managing communities for the enjoyment of citizens are widely recognized in B.C. and elsewhere.

The RDOS is an important steward of the natural environment in a region with some of the most species and ecosystems at risk in Canada. As previously requested, we would like the opportunity to speak to the Board about these concerns and the recommended solutions. Thank you for your time and consideration. We look forward to future discussions.

Sincerely,

Celine Davis, A/Executive
Director
Ecosystems Branch
Environmental Sustainability
Division,
Ministry of Environment

Eric Valdal, Director
Resource Management
Thompson Okanagan Region, South Area,
Ministry of Forests, Lands, Natural Resource
Operations and Rural Development

Blair Hammond, Director,
Pacific Region, Canadian
Wildlife Service,
Environment and Climate
Change Canada

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

Resource Management
Thompson Okanagan Region
102 Industrial Place
Penticton, BC V2A 7C8

Telephone (250) 490-8200
Facsimile: (250) 490-2231

To: [Planning Group](#)
Subject: Fwd: Website Contact Form Submission
Date: February 25, 2022 12:56:46 PM

The following comment was submitted from the RDOS website:

Contact Information

First Name Sue

Last Name Kirschmann

Comments

Sue Kirschmann

TO: RDOS Planning Department and RDOS Board of Directors

RE: RDOS proposed amendments to Environmentally Sensitive Development Permit Areas (ESDPAs)

Thank you for hosting the information session on February 22. Chris Garrish's presentation and the Q&A really helped to clarify that this is not a simple issue and that the RDOS has limited legislative means with which to enforce management of ESDPAs. Nevertheless, as a few attendees said, we shouldn't throw out the baby with the bathwater. The South Okanagan has unique ecology and many species at risk, and it is our responsibility to protect it for future generations.

I disagree with the amendments that are being proposed to the ESDPA wording. I believe the ESDPAs should continue to apply to individual properties as well as to subdivisions as a great deal of damage can be done by private landowners. It should be possible to craft wording that doesn't restrict Firesmart activities or make the ESDPA process unduly cumbersome so the ESDPA can be wide-reaching.

I know RDOS staff are extremely busy and I agree with other attendees on Tuesday that engaging an outside expert might be the best way to determine how to best manage ESDPAs. Further research into what other jurisdictions are doing seems warranted. An organization that might be helpful is Climate Caucus, which is comprised of 460+ elected officials across Canada and provides a forum for sharing ideas about municipal policy (link: [Who We Are — Climate Caucus](#)). Climate Caucus focuses on all aspects of climate action, including protecting biodiversity and ecosystems. There is definitely an overlap between climate action and the goals of ESDPAs as both seek to protect ecosystems from unnecessary disturbance. Climate Caucus has a Rural/Small Communities Chapter which might be worth contacting for ideas. Thank you for your consideration.

Sincerely,
Sue Kirschmann

To: RDOS Planning – February 25, 2022

Re: ESDP Recommended Changes - Response

The Anarchist Mountain Community Society (AMCS) is **in support of the recommended changes to the current ESDP Area process**, as recommended by staff and endorsed by the RDOS Board at 1st reading.

We wish to be clear on our common interests of protecting the environment. We live in this rural environment, know the land and experience nature daily. We also have a strong interest in protecting this environment and the species living here.

The AMCS has:

- provided much feedback on this ESDP issue over the past years since the changes in 2017 – in particular the ESDP applied to the Building Permit stage of site improvements. (This included a petition signed by a majority of AM residents at the time);
- insisted on science and evidence-based decision making, including making all information public;
- like the OME, provided much information on Environmental Reports produced for and prior to the developments on Anarchist Mountain and the various development decisions taken to protect potentially environmentally sensitive areas;
- provided detailed analysis and examples of ‘Pink Zone’ mapping errors;
- expressed concerns about using this error filled mapping to make decisions on ‘potentially’ environmentally sensitive habitat and the QEP reports not recognizing ground disturbance;
- referenced advice from the TEM mapping experts on the level of reliability of mapping at various scales;
- quoted from the Green Bylaws Toolkit on the efficacy of mapping;
- quoted the Green Bylaws Toolkit on best practice with respect to private land owners which suggests ‘education’ as opposed to regulation;
- listed the cost impact & time implications of this ESDP process while trying to get buildings constructed;
- highlighted the direct conflict between the ESDP process and the Fire Smart Guidelines;
- reminded all about the devastation forest fires have on the environment and habitat, including the most recent fire last summer 2021. Without appropriate management efforts at the provincial, district and local level, fires have costly impacts on lives and infrastructure - affecting everyone;
- also spoke to the recognized fire smart and fire-fighting expertise in our community.

The AM Community continues to be concerned that we – as direct stakeholders, and the citizens bearing the costs of this ESDP process – are not being heard. We are a community diverse in expertise including environmental protection, Information Technology, agriculture, fire protection, engineering, architecture, construction, law and governance. Our community comes from across Canada equipped with the wisdom different geography brings.

While we see the ‘offer’ of many non-resident experts to ‘educate’ us and speak for us, we believe that local government is constituted to represent us - the directly affected property tax payers.

We encourage the RDOS to:

- approve these changes as soon as possible to limit further cost implications to private land owners;
- correct the inaccurate ‘Pink Zone’ maps and properly document existing terrain including all property improvements and decades of use – such as agriculture;
- collaborate with the Province on a plan to protect all land vulnerabilities including fire. Protecting the natural and built environment should not be defined by political jurisdiction.

Sincerely,

Kathleen Lausman, President
Anarchist Mountain Community Society Board

February 08, 2022

Celine Davis, A/Executive Director
Ecosystems Branch,
Environmental Sustainability Division,
Ministry of Environment

Eric Valdal, Director
Resource Management
Thompson Okanagan Region, South Area, Ministry of Forests, Lands, Natural Resource Operations and
Rural Development

**Re: Environmentally Sensitive Development Permit Areas update for RDOS Electoral
Areas A, C, D, E, F, H and I.**

Dear Celine Davis and Eric Valdal,

We are the Anarchist Mountain Community Society (AMCS), representing private property owners in Area 'A' of the RDOS. We have been provided a copy of your letter written to the Board of Directors at the RDOS concerning ESDP.

We agree with your suggestion that information should be the basis of an informed decision on the issue of ESDPs in the RDOS and elsewhere in this Province. This information should be accurate and fact-based and inclusive of engineering and architectural sciences – as sub-divisions are construction projects. There should be clear legal authorities.

It is also critical that the focus of any ESDP process seek to consult with affected private land owners – *prior* to implementing any ESDP. We still subscribe to the concept of *public service* and believe any public policy should seek to serve the common interests of the directly affected public. Your letter to the RDOS does not reference consultation with the affected private land owners.

History:

All eco-system mapping in the South Okanagan originated in the 1990's with Terrestrial Ecosystem Mapping (TEM) aerial photos at a 1:20,000 scale. The Fed. & Prov. governments also published the Species at Risk Red/Blue lists. These lists and species info can be found on the Habitat Atlas, published on the BC, Dept of Environment web page – as you are aware. Canadians and BC residents are encouraged to protect the environment through a number of efforts – collectively. The 'Green Bylaws Toolkit 2016' provides advice and examples for governance bodies on **data accuracy, mapping and ground-truthing to raise the level of confidence in information accuracy**. From the Green Bylaws Toolkit 2016, page 301.

- “Mapping should occur at a scale of at least 1:20,000 and preferably at a more detailed scale (e.g., 1:10,000 or 1:5,000) with supplemental ground-truthing.”
- “Mapping efforts should attempt to ground-truth ESAs mapped from air photos to confirm ecosystem types, verify boundaries, and collect biological/ecological information

on landscape conditions, threats, vegetation, disturbance history, and other factors. By confirming the data and refining the maps, ground-truthing raises the level of confidence in the accuracy of the ESA maps.”

- “All mapping contains errors and omissions, and it is important that local governments acknowledge this fact and actively solicit and incorporate input from community members and stakeholders to continue to improve the quality of and confidence in the mapping.”ⁱ

Issues:

1. The current RDOS ‘Pink Zone’ map is inaccurate and DOES NOT represent the actual state of the ground disturbance on each building site. It is not clear where this RDOS ‘Pink Zone’ map originated. These maps are not the territory.
2. Private land owners on AM were never consulted on the issue of applying ESDP typically for sub-division work to already developed individual building sites. Many homes, garages, pools etc. were already constructed when the RDOS (perhaps encouraged by the Department of Environment) decided to apply the subdivision ESDP to individual building sites – some 16 years after sub-division development.
3. Local QEPs have stated they are obligated to work from the RDOS ‘Pink Zone’ maps. Most site development – including very obvious berms – have not been referenced on the ‘Pink Zone’ maps or in QEP reports. Significant invasive plant species (weeds) are evident on building sites growing on disturbed soils and imported granular materials – yet this correlation was not referenced.
4. Anarchist Mountain is a longstanding Fire Smart community and has been recognized as such Provincially and Nationally since 2013. The current ESDP and QEP reports requested from private land owners by the RDOS are in conflict with Fire Smart guidance.
5. There are also several basic concerns about the flaws in the functioning of the program itself. For example, the “permits” that are created by the RDOS based on the reports prepared by the evaluating QEP contain boiler plate language that put the QEP in the role of enforcer of the permit. In our experience, the QEPs had no idea that they were expected to continue to monitor the terms of the permit. Which QEP monitors which permit? Moreover, it is not clear what role the QEP would have if they did determine that the terms of the permit were not being met. More specifically, there is a complete lack of statutory or regulatory authority for the QEP to play any enforcement role.
6. There is no legal authority for the RDOS to place these permits on title, nor is there any clear legal basis for the enforcement of the permits once they are placed on the title. Clearly this program is flawed from its foundation to its implementation.

The AMCS has assembled the following overview of information that should inform decisions on ESDP in Area ‘A’ in particular within the RDOS, by every level of government. For the most part, the RDOS has – or should have this information - within their files. Some information was developed by other levels of government but is certainly available online. The MoTI has many sub-division development engineering drawings and details. The MoTI is the responsible Department for sub-division review and approvals.

ESDP History on Anarchist Mountain:

The RDOS drafted the Environmentally Sensitive Development Permit (ESDP) bylaw in early 2000's (pre-Green Bylaw Toolkit drafting advice) without undertaking any additional mapping or ground-truthing efforts to confirm species or habitat. This approach put the onus on private land developers to invest in further research and ground-truthing to confirm – or not – the level of environmental sensitivity on their land and the most appropriate development action.

The following is a list of information that is available and should be used in assessing this issue of ESDP application to individual lots within a developed subdivision:

1. A subdivision of rural land on Anarchist Mountain referred to as Regal Ridge began in early 2000;
2. Three (3) different environmental reports were undertaken by a QEP for each stage of the subdivision development – over the course of approximately eight (8) years. The full reports are in the RDOS files and likewise posted on the AMCS website for reference;
3. Out of the approximately 2,350 ha in property size, only 25% was identified as potentially 'environmentally sensitive' habitat. Of this total area, only a small portion of ha contains residential building sites within the zoned minimum land area of Residential SH3;
4. Notwithstanding these numbers, the developer set aside 50% of the property under subdivision for Conservation Areas;
5. The developer also followed the ESDP subdivision guidelines which included:
 - a. Clustering residential building sites to exclude potentially critical habitat areas – rather than seeking individual conservation covenants;
 - b. This included the creation of 'hook' lots to meet the SH3 area requirements while clustering building site areas closer together;
 - c. Most 'hook' lots are adjacent each other – effectively creating a conservation area owned by individual land owners – as there is no vehicular access to most of them and these hook lot areas are not large enough to build on as per RDOS Zoning Bylaws;
 - d. Various soil and rock berms were built around and on residential building sites to provide visual separation between neighbours and from road ways;
 - e. Signs were posted on 'wildlife' trees to conserve them;
 - f. Numerous bird houses were hung throughout the subdivision area;
 - g. Wildlife corridors were added between some individual properties to connect to conservation areas;
 - h. Efforts were taken for fuel reduction to reduce wildfire hazards;

6. These developer QEP reports also recognized the *historic land disturbance* the Regal Ridge sub-division land experienced such as fires, logging and cattle grazing over the years, and the impact on species at risk habitats.
7. Subdivision developments are subject to MoTI civil and geotechnical engineering requirements and approvals:
 - a. Road building – base prep, slopes, gradients;
 - b. Bank stabilization;
 - c. Ditch construction and water run-off management
 - d. Both wells and septic field installations are subject to engineering requirements and approvals by the Interior Health Authority; (NOTE: septic fields were not part of the subdivision development but installed by individual land owners, however wells were dug for each building site)
8. Each residential building area (location for house, garage, other out buildings, septic fields) was prepared as follows:
 - a. Sites were cleared of trees & ground materials, a leveled area created – either many yards of granular materials brought in via dump trucks and placed with earth moving equipment; or rock was blasted to create a level building area;
 - b. Wells were dug and the resultant excavated soils spread on site;
 - c. Power was brought to building sites – either trenched underground – or through above ground poles and wire. The ground was disturbed – Easements for access were created;
 - d. Driveways were constructed with heavy equipment and imported granular materials leveled & packed then paved;
 - e. Many earth and rock berms were constructed on individual building lots with heavy earth-moving equipment and imported materials.
9. Building site locations were determined based on a number of engineering decisions, as well as natural views and avoidance of any potential ‘critical habitat’.
10. All building site area ground cover were extensively disturbed. The level of disturbance varied with the topography and ground soils. **Not one building lot is a ‘greenfield’ site.** All have been disturbed in their creation during the sub-division work.
11. As part of the commitment for fuel reduction and management, the Anarchist Mountain community has been committed to Fire Smart practices from the beginning and since 2013 have been recognized for these efforts both nationally and provincially. Private land owners follow the Fire Smart Guidelines. We are pleased to note that as of 2021, the RDOS has now hired a Fire Smart coordinator and he has now attended two Fire Smart events in this community, before the forest fires of 2021 and since. We have also invited that we can provide him with additional information.
12. Since the early 2000s houses, garages, accessory dwellings, shops, swimming pools etc. have been constructed on these private lots over time. Landscaping features and gardens are also common on these private properties including various plants, pathways, water

features and parking areas. Residents have domestic pets that use their property. Some residents also have livestock – as supported within the Zoning Bylaws. Nonetheless, these properties have been mapped by the RDOS as in the ‘Pink Zone’ including many of these buildings and other ground improvements.

Impact:

1. The cost to private land owners to contract a QEP for an assessment of their building site has varied by location \$900 - \$3000+ and the additional cost of the ESDP itself is paid to the RDOS.
2. Because the RDOS has insisted on this QEP report & ESDP prior to issuing a Building Permit, property owners have also suffered delays in moving forward with their building project. Scheduling the QEP report has been at the whim of the QEP and many have taken months. Coupled with the time the RDOS takes to issue a Building Permit, time lost has been significant. When planning a construction project, time lost has the effect of needing to change contracts for construction work, or losing contractors entirely and ultimately increasing costs for construction. Likewise, most property owners are homeless at this stage of their project and are therefore scrambling to find accommodation while they wait to build, incurring yet additional costs.
3. The Anarchist Mountain Community are in support of environmental protection. We all located in this rural mountain area for that reason. However, this ESDP process applied to individual building sites on clearly disturbed land - after a subdivision process that took efforts to protect ‘potentially sensitive habitat’ calls into question the *credibility* of this process and the *motives* supporting it. Without question, the people who choose to live in a place as beautiful and natural as Anarchist Mountain do so with an eye toward protecting and maintaining that beauty. However, these same people also object to being forced to implement a program that is *costly, arbitrary, capricious, and performs no actual protective function*.

There is much wildlife on Anarchist Mountain. Our community efforts to Fire Smart our properties serves to also protect habitat for all species – ‘at risk’ and otherwise. The 2021 fire that caused our entire community to be evacuated and filled the atmosphere with thick smoke for months, again should reinforce for everyone the need to work together to protect the environment and make evidence-based decisions using all sciences on how best to achieve this protection including Fire Smart.

We are encouraged Wildfire Services has set budgets for more forest management practices and Fire Smart activity, hopefully that effort can include crown land around Anarchist Mountain. Individual Fire Smart activity protects individual areas but not the larger environment and collective habitat.

We would be pleased to connect with your departments more directly should you determine that consulting with affected property owners and basing decisions using on-the-ground information and knowledge is important.

We speak only for the Anarchist Mountain Community where we are resident, living on the land and know the terrain intimately. However, if other area ‘Pink Zone’ mapping was assembled with the same lack of information and efficacy, it is likely prudent to review the actual terrain in these areas and ‘ground-truth’ them as well before assuming habitat at risk. It is also prudent to re-consider the entire ESDP process – the Purpose; the Implementation Process; Legal Authorities & Monitoring; What is actually being protected – if anything.

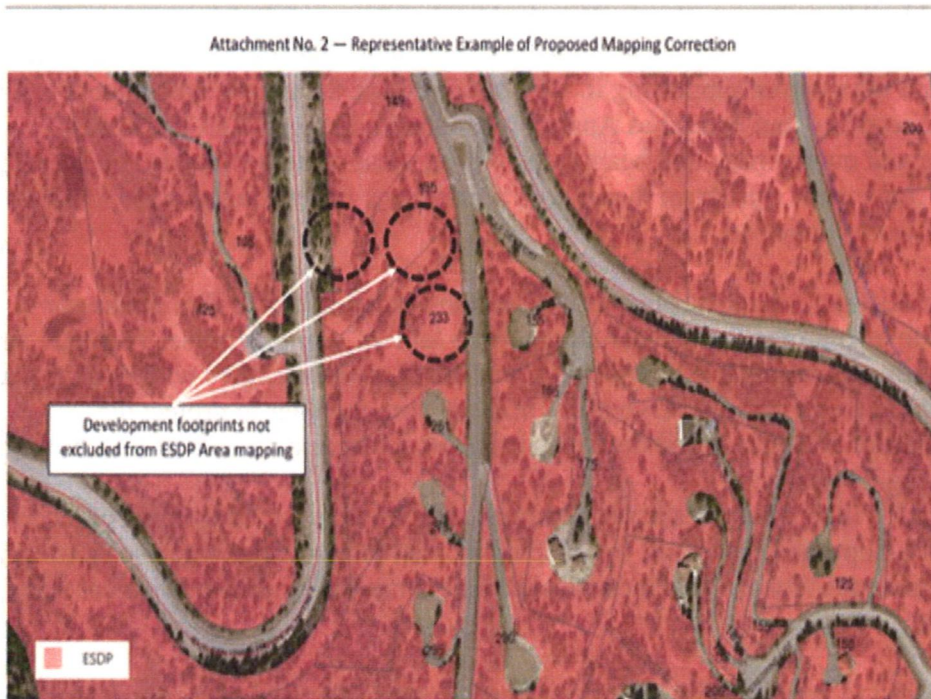
Note: Attached are a few maps and photos intended to illustrate the construction process and the extent of ground disturbance during the construction process.

RECOMMENDATION:

Rescind the current ESDP process. Take time to review the entire ESDP purpose, process and results. Involve and consider the experience of private land owners and developers.

¹ Green Bylaws Toolkit 2016, page 301

Example of the Pink Zone map where the RDOS admits inaccuracies.

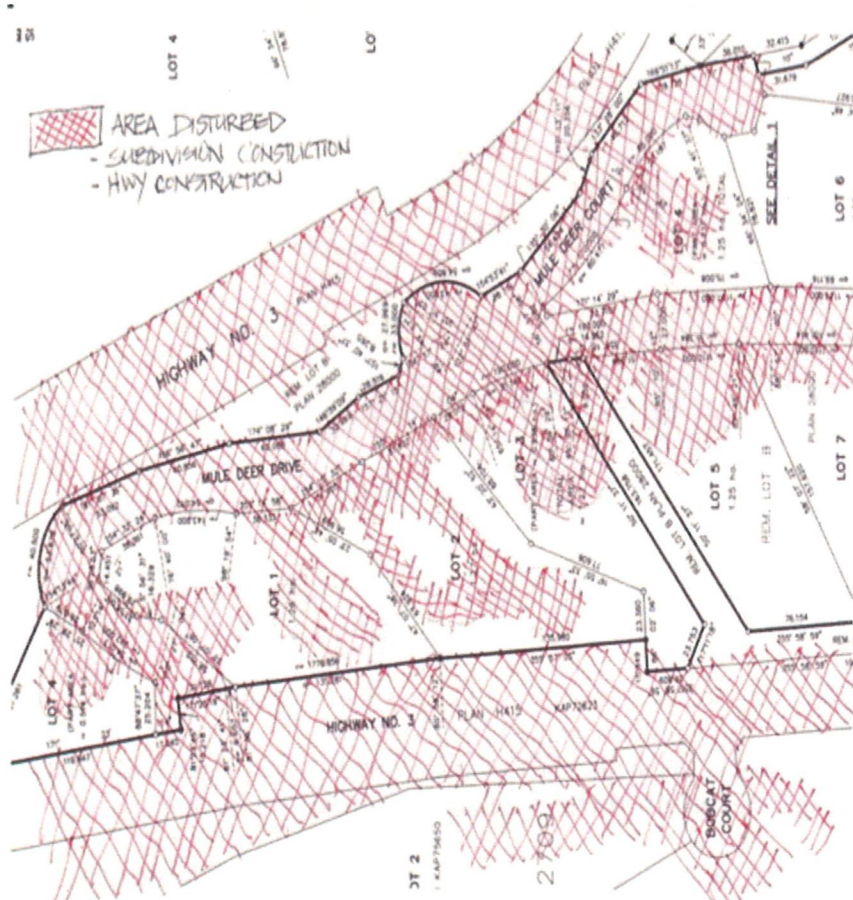


Current RDOS ESDP mapping – Mule Deer Drive Lots 1,2,3,4,5.

NOTE: the entire area is mapped as PINK (RDOS representation of environmentally sensitive). However, this area is outside of the original TEM polygons.

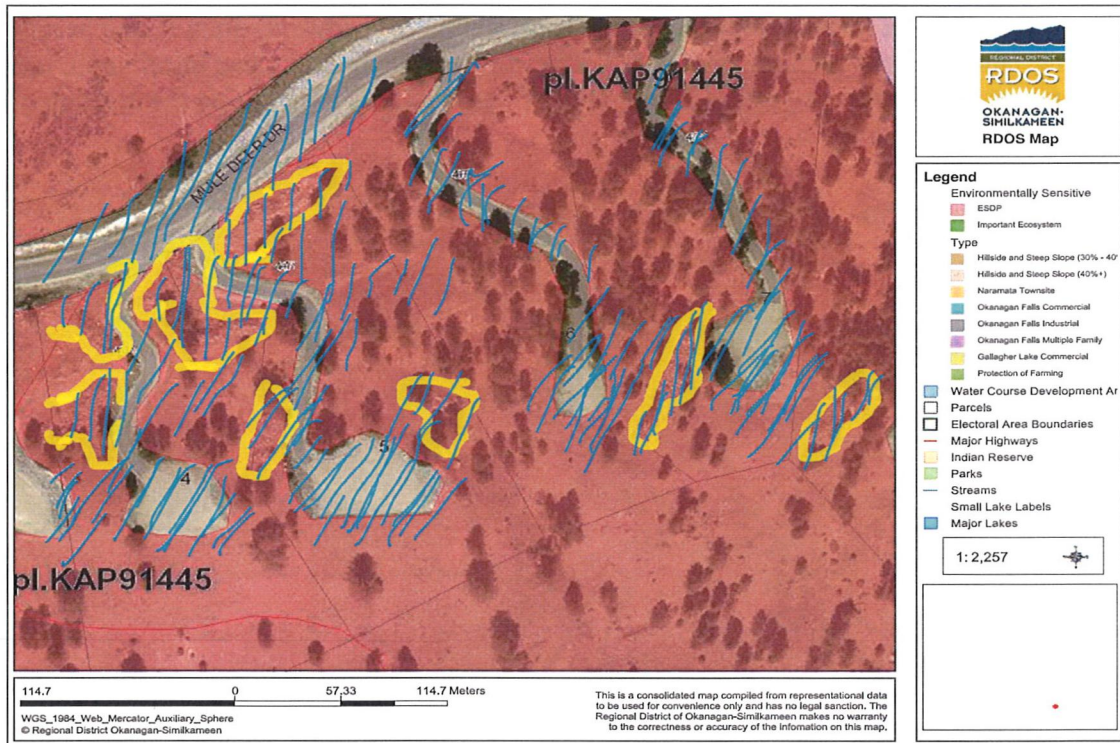
RDOS notes errors – on Lots 2,3 & 4 only. Other lots have had the “PINK” removed from only the asphalt drive & building site area pad. The PINK zone map **DOES NOT accurately document** sub-division soils disturbance during construction of roadways, ditches, soil berms, rock berms, laneway construction, paving, building site clearing, building pad installation, rock blasting, power installation and drilling wells and off-site materials used during the creation of each single-family building lot.

The actual condition



Site Legal Survey of Mule Deer Drive Lots 1,2,3,4,5,7. **NOTE:** ACTUAL ‘ground-verified’ site disruption (**red hash marks**) during Subdivision for the installation of Roads, ditches, soil berms, rock berms, power & associated easements, wells and a cleared building sites with gravel pads. **Note:** Trees were cut; debris on grade was removed, lots were graded. Trucked gravel was brought onto lots to build driveways, building sites and berms. Driveways were constructed of gravel and finished with asphalt. Wells were drilled and resultant soil spread on site. Power conduit was trenched and covered. Easements were created for landowner access to power & wells. Large earth moving machinery and trucks were used for this sub-division work and drove all over the individual lots to complete the work. MoTI roadway specifications and civil engineering & landscape architecture science and good practice were used to develop the

subdivision and individual lots. The construction of some roadways and building sites actually required rock blasting, disturbing the area to an even greater extent.



Section of the RR Sub-division Pink Zone Map. Berms have been high-lighted in yellow and blue hash marks have been added to indicate the extent of site disturbance typical in the creation of individual lots.

Even greater detail is available when someone actually walks the site. Or, a copy of the development details and specifications could be obtained from the MoTI.

Lanes, berms, septic fields, wells, power lines and building gravel pads were placed with earth moving equipment. **Engineering and Architectural science** govern construction details and work.

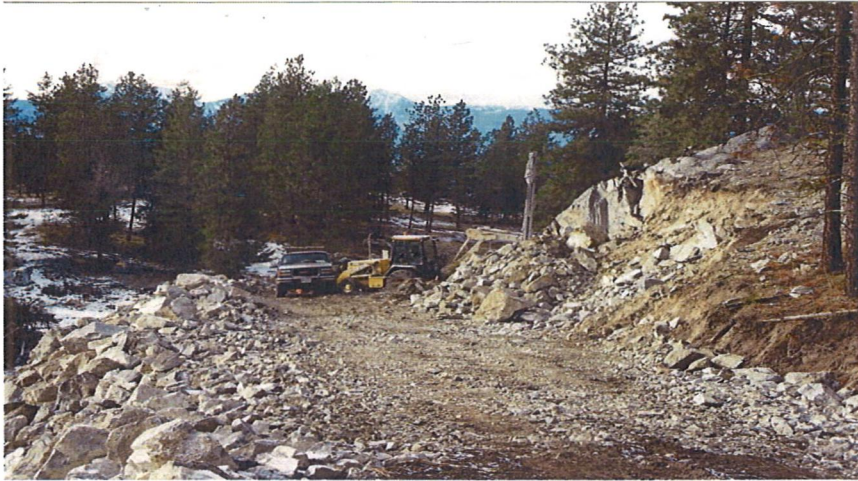
It should be noted that soils types and distance to the well and building location dictate where septic fields are placed – an Interior Health jurisdiction – not the RDOS or QEPs. Power line placement is the jurisdiction of Fortis BC – not the RDOS or QEPs. Wells are likewise drilled based on science, registered with the Province and the jurisdiction of Interior Health.

There is **no science** that supports repeating an ESDP or QEP reports for individual lots already disturbed through the subdivision development process including any alteration of the lot surface such as cutting/trimming trees or removing combustibles from the landscape – which is also in **direct conflict** with the Federal/Provincial Fire Smart guidelines.

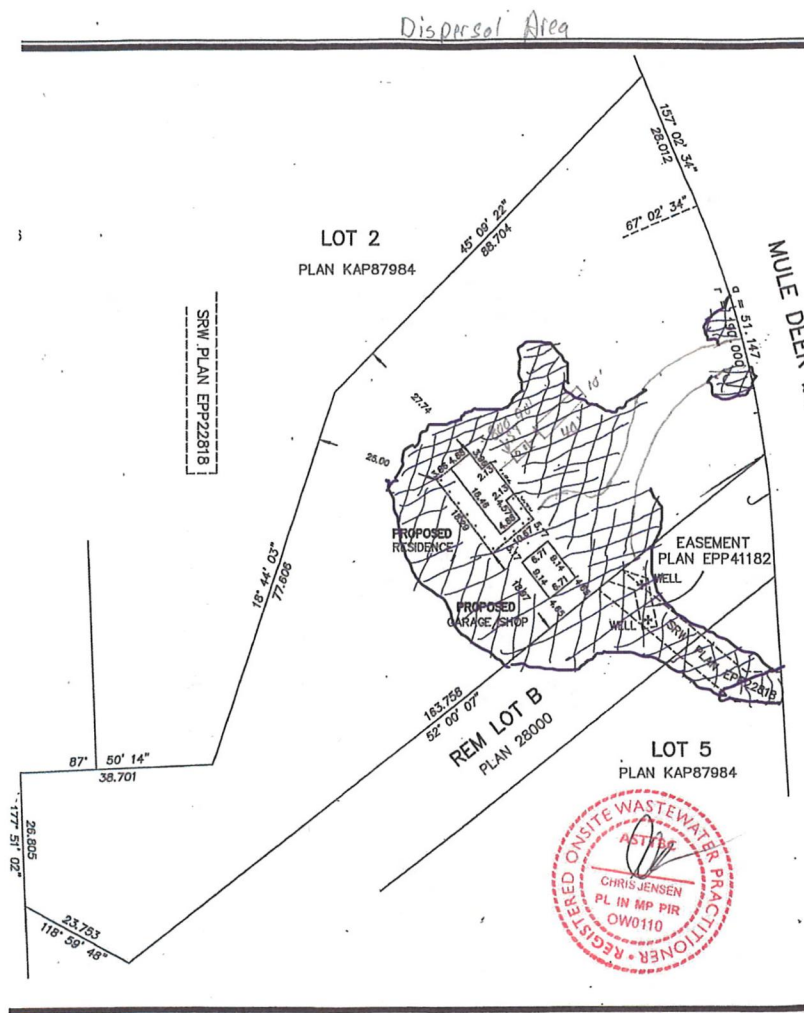


RR Subdivision during construction.

Typical MoTI development construction specification (pre-asphalt) & building site preparation using trucked-in granular material, during Subdivision work. Note bank stabilization work as well. **A great deal of soil is disturbed and new soils (gravel, rocks) and other remediation materials trucked in and installed.** Rock was blasted. This type of construction was typical throughout the Regal Ridge development.



Building site preparation.
Vegetation was cleared and burned to make way for services, landscape features and building sites. Fire Smarting. Frequently rock was blasted to level the building site.



Mule Deer Drive, Lot 3, **Actual site disturbance** (hatched area) during the construction of a house & shop, connection to wells, power, the installation of the septic field & tank, installation of a gate and final site grading. **NOTE:** The site disturbance for construction **re-disturbed** the area originally disturbed by the creation of the sub-division and installation of services, asphalt drives, berms and building pads.

A number of land owners begin preparing their property for building a home long before submitting for a building permit – which includes getting site services installed – which all include clearing trees and digging the ground.

On some lots, dependent on the actual site topography and/or soils, foundations for buildings and trenching for connection of services required **BLASTING rock**, creating even greater site disturbance.

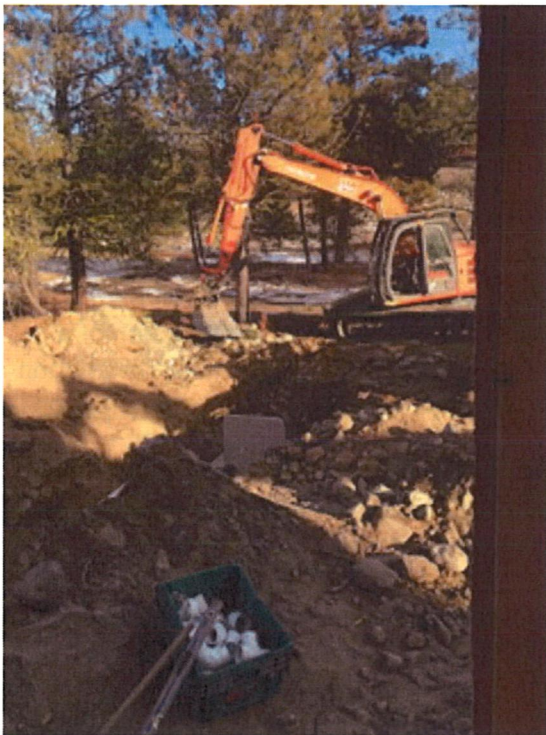
As noted earlier – the RDOS Pink Zone map indicates this and other adjacent lots as ‘environmentally sensitive’. The ‘mapping’ is incorrect.



Trenching for power & well connection.



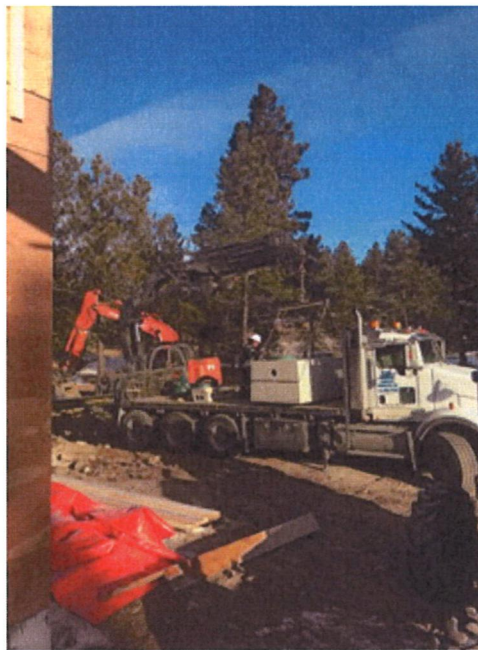
Excavation for building foundations.



Excavations for septic tank & field



Installation of septic field



Large vehicle traffic on site during construction.



Rough Grading around buildings and site.

NOTE: Using the Habitat Atlas for the Red/Blue species, typically species on these lists **do not use disturbed soils as their habitat for breeding, nesting or living.**

“Wildlife habitat models profile habitat that is able to support a particular species. However, the species may not actually occur there at present. The habitat maps identify where species are likely to occur and which areas are the most important to conduct inventories, environmental impact assessments, and habitat enhancement projects.” (excerpt from Habitat Atlas) This information should also guide habitat ‘environmental sensitivities’ decisions, particularly when the area in question has been significantly disturbed and is being used for human habitat.



November 8, 2021

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

Attention: Area Directors

Re: **Environmentally Sensitive Development Permit Areas update for RDOS Electoral Areas A, C, D, E, F, H and I.**

Dear Directors,

It has come to our attention that the board of Directors for the Regional District of Okanagan-Similkameen (the Board) is considering exempting residential development from the Environmentally Sensitive Develop Permit Areas (ESDPA) process. As you are likely aware, the province along with other partners have invested considerably in the development of the current ESDPA process. The value of ESDPAs established by local governments in **conserving biodiversity and managing communities for the enjoyment of citizens** are recognized locally and globally. As such, we have significant concerns regarding the decision that is in front of you.

A decision to exempt residential development from this carefully developed process will likely have provincial impacts. Before the decision is made by the Board, the Province would like to offer support the Regional District of Okanagan-Similkameen to **gather more information so that you are able to make an informed decision.**

We are requesting a meeting with RDOS Directors, planning staff, staff with this Ministry and the Ministry of Environment, staff with the Canadian Wildlife Service (ECCC-CWS) and **Members of the South Okanagan Stewardship Conservation Program (SOSCP) to discuss further.** We believe that moving forward with these changes without proper dialogue with the province and other agencies who contributed to their formation (ECCC-CWS and SOSCP) is counter to our working relationships.

We will have staff contact your office to arrange for a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Celine Davis".

Celine Davis, A/Executive Director
Ecosystems Branch
Environmental Sustainability Division,
Ministry of Environment

A handwritten signature in black ink, appearing to read "Eric Valdal".

Eric Valdal, Director
Resource Management
Thompson Okanagan Region, South Area,
Ministry of Forests, Lands, Natural Resource
Operations and Rural Development