

TO: Planning & Development Committee

FROM: B. Newell, Chief Administrative Officer

DATE: February 17, 2022

RE: Watercourse Development Permit Area Update (X2022.002-ZONE)

Administrative Recommendation:

THAT Bylaw No. 2950, being a bylaw to amend the Official Community Plan Bylaws to update Watercourse Development Permit (WDP) Area designation, be initiated; and

THAT Bylaw No. 2500.25, being a bylaw to amend the Development Procedures Bylaw to introduce requirements for retroactive watercourse development permit applications, be initiated.

Purpose:

Amendment Bylaws No. 2950 and 2500.25 are seeking to clarify how retroactive permits for works that occurred within Watercourse Development Permit (WDP) Area may be issued and add a WDP exemption for Crown land.

Background:

On March 31, 2005, the provincial *Riparian Areas Regulation* (RAR) came into effect with the purpose of establishing “directives to protect riparian areas from development so that the areas can provide natural features, functions and conditions that support fish life processes.”

At Section 3 of the Regulation, the provincial government listed 14 regional districts — including the Regional District of Okanagan-Similkameen — that were required to implement RAR through their land use bylaws.

At its meeting of June 8, 2006, Amendment Bylaw No. 2337, 2006, which introduced Watercourse Development Permit (WDP) Area designations into all Electoral Area OCP Bylaws, was adopted.

On November 1, 2019, the provincial government replaced the RAR with a new *Riparian Area Protection Regulation* (RAPR) that, amongst other things, introduced a requirement allowing the provincial government to withhold an assessment report that does not comply with RAPR until identified deficiencies are rectified.

In response, and at its meeting of February 20, 2020, OCP Amendment Bylaw No. 2876 was adopted in order to align the WDP Area designations with the requirements of RAPR, including requiring the receipt of a ministerial notification confirming an assessment report complies with the legislation.

Condition and Impact Assessments:

In the fall of 2020, the Regional District became aware that the Ministry was advising local qualified environmental professionals (QEPs) that it was not prepared to provide a copy of an assessment report to a local government, as set out at Section 5 of RAPR, for retroactive development (i.e. works that had been undertaken prior to the issuance of a permit or in contravention of a permit).

The Ministry further advised that a QEP could, in these situations, submit something it referred to as a “Condition and Impact (C&I) Assessment” to a local government and obtain a development permit for retroactive development without the need for provincial review.

As C&I Assessments are not addressed in RAPR, the WDP Area amendments adopted in 2020 do not currently contemplate the issuance of a permit based on the submission of such an assessment.

As a result, the Regional District cannot currently issue a WDP on the basis of a C&I Assessment and all bylaw enforcement files involving development in a watercourse area without a permit are at a standstill, since there is no permissible path forward. Property owners can neither demolish an un-approved development and start again nor continue their development in the absence of a WDP issued on the basis of an assessment report from the minister.

In order to address this situation, a procedure must be introduced into the WDP Area designation so that retroactive developments may be resolved.

Analysis:

In response to the direction being provided by the Ministry, Administration considers the proposed OCP Bylaw and Development Procedures Bylaw amendments will create an avenue for property owners to obtain a WDP for “retroactive developments”, subject to sign-off by a Qualified Environmental Professional (QEP).

A retroactive Assessment Report does not mean that the development completed will be accepted as is, but should provide a way forward for the property owner and the RDOS. The result of the report could advise anything from complete removal of any development and restoration to the natural environment to acceptance of the structure as is with a reduced streamside protection and enhancement area (SPEA).

Ministry staff are advising the RDOS to accept retroactive Assessment Reports in the absence of their review.

NOTE: it is understood that the Ministry may amend RAPR in future to formalize the use of C&I Assessments, at which point the WDP Area designations may require further review to align with any new provincial direction.

Of some concern, the option of a retroactive approval may encourage situations where property owners elect to complete development and then apply for a WDP retroactively to save the time and complexity of sending their report to the Ministry for review. This will create more work for the RDOS regarding enforcement and potentially create situations that may be harmful to fish habitat.

Conversely, the option to not amend the WDP Area designations is available and would encourage Ministry staff to formalize procedures for retroactive development procedures in the Provincial regulations. Property owners under enforcement for building without a WDP or in contravention of a WDP would remain on hold until such time that the Ministry formalizes an approach.

WDP Exemption - Crown Land:

With regard to the proposed exemption of Crown land from WDP requirements, this is consistent with all other development permit areas in the OCPs.

The exemption also reflects the challenges of complying with the legislative requirement to register a permit on title when no title exists for Crown land as well as any enforcement that would require action be taken against the relevant minister.

Additionally, the Province assesses many requirements to lease Crown land that include ensuring riparian area compliance when it is licensing various uses or development of Crown land.

Summary:

In summary, Administration recommends approval of the proposed amendment bylaws on the basis that a procedure is required to handle enforcement of unpermitted development in riparian areas.

Alternatives:

1. THAT consideration of Bylaw Nos. 2950 and 2500.25 and Bylaw No. 2950, be deferred pending the following:
 - i) *TBD*
2. THAT Bylaw Nos. 2950 and 2500.25 not be initiated.

Respectfully submitted:



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Endorsed By:



C. Garrish, Planning Manager