

ADMINISTRATIVE REPORT



TO: Advisory Planning Commission

FROM: B. Newell, Chief Administrative Officer

DATE: February 28, 2022

RE: OCP Bylaw Amendment - Watercourse Development Permit Area Update

Purpose:

The Regional District Board is seeking input from the Advisory Planning Commission (APC) regarding proposed Official Community Plan (OCP) and Development Procedures amendment bylaws related to retroactive permits for works within Watercourse Development Permit (WDP) areas.

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, the Regional District Board adopted Amendment Bylaw No. 2337, 2006, which introduced Watercourse Development Permit (WDP) Area designations into all Electoral Area OCP Bylaws, including Electoral Area “F”.

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, the Regional District Board adopted OCP Amendment Bylaw No. 2876, 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 by the Board 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 acceptable to the Regional District Board must be introduced into the WDP Area designation so that retroactive developments may be resolved.

Board Consideration:

At its meeting of February 17, 2022, the Planning and Development (P&D) Committee of the Regional District Board resolved to initiate the amendment bylaws to amend the OCP guidelines and development procedures to have a mechanism to accept retroactive WDP applications.

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).

Further, Administration is following the advice of Ministry staff 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, Administration is cognizant that 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 Administration 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 to the Board 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.

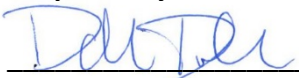
Administrative Recommendation:

THAT the APC recommends to the RDOS Board of Directors that the proposed amendments to the Watercourse Development Permit Area under the official community plan bylaws be adopted.

Options:

1. THAT the APC recommends to the RDOS Board of Directors that the proposed amendments to the Watercourse Development Permit Area under the official community plan bylaws be adopted.
2. THAT the APC recommends to the RDOS Board of Directors that the proposed amendments to the Watercourse Development Permit Area under the official community plan bylaws be adopted with the following conditions:
 - i) *TBD*
3. THAT the APC recommends to the RDOS Board of Directors that the proposed amendments to the Watercourse Development Permit Area under the official community plan bylaws be denied.

Respectfully submitted:



Danielle DeVries, Planner 1

Endorsed By:



C. Garrish, Planning Manager

Attachments: No. 1 – Comparison of Current vs. Proposed WDP Area Guideline

Attachment No. 1 – Comparison of Current vs. Proposed WDP Area Guideline

Current WDP Area Guideline	Proposed WDP Area Guideline
<p>Guidelines</p> <p>.1 A Development Permit is required for development within the WDP Area, and shall be in accordance with the following guidelines:</p> <p>a) An Assessment Report, prepared in accordance with Part 4 (Assessments and Assessment Reports) of the provincial <i>Riparian Area Protection Regulation</i>, must be received by the Regional District in respect of the proposed development from the responsible provincial minister.</p>	<p>Guidelines</p> <p>.2 A Development Permit is required for development within the WDP Area, and shall be in accordance with the following guidelines:</p> <p>a) An Assessment Report, prepared in accordance with Part 4 (Assessments and Assessment Reports) of the <i>Riparian Area Protection Regulation</i>, must be received by the Regional District in respect of the proposed development from the responsible provincial minister; or</p> <p>b) if the minister will not provide the Assessment Report under Section 6 (Administration of assessment reports by minister) of the <i>Riparian Area Protection Regulation</i> because the development that is the subject of the Assessment Report has already occurred, then the person who prepared the Assessment Report may submit it to the Regional District, together with evidence of the minister’s rejection of the report, and any reasons the minister provided for the rejection.</p>