

ADMINISTRATIVE REPORT



TO: Board of Directors

FROM: J. Zaffino, Interim Chief Administrative Officer

DATE: December 7, 2023

RE: Environmentally Sensitive Development Permit (ESDP) Area Review (X2020.009-ZONE)

Administrative Recommendation:

THAT the Regional District of Okanagan-Similkameen Environmentally Sensitive Development Permit Area Update Official Community Plan Amendment Bylaw No. 2912, 2023, be read a first and second time and proceed to public hearing;

THAT the Regional District of Okanagan-Similkameen Development Procedures Amendment Bylaw No. 2500.17, 2023, be read a first and second time;

THAT the Board of Directors considers the process, as outlined in this report from the Chief Administrative Officer dated December 7, 2023, to be appropriate consultation for the purpose of Section 475 of the *Local Government Act*;

THAT, in accordance with Section 477 of the *Local Government Act*, the Board of Directors has considered Amendment Bylaw No. 2912, 2023, in conjunction with its Financial and applicable Waste Management Plans;

THAT the holding of a public hearing be scheduled for the Regional District Board meeting of December 21, 2023; and

THAT staff give notice of the public hearing in accordance with the requirements of the *Local Government Act*.

Proposed Development:

The proposed amendments to the Electoral Area "A", "C", "D", "E", "F", "H" & "I" Official Community Plan (OCP) Bylaws will update the policies and guidelines related to the Environmentally Sensitive Development Permit (ESDP) Area in order to remove land alteration and construction as development requiring a development permit.

The proposed amendments to the Development Procedures Bylaw No. 2500, 2011, will update the application requirements for ESDPs and support the proposed amendments to the OCP Bylaws.

Background:

- **August 6, 2020**, the following Director's Motion was brought forward to 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.

- **September 3, 2020**, the Notice of Motion from the August 6, 2020, Board meeting was debated and carried by the Regional District Board.
- **October 15, 2020**, the Planning and Development (P&D) Committee of the Board considered Amendment Bylaw Nos. 2912 and 2500.17 and resolved that “the proposed amendments to the ESDP areas be referred to the Electoral Area Advisory Planning Commissions.”
- **March 18, 2021**, the P&D Committee of the Board resolved to initiate the Environmentally Sensitive Development Permit Areas as identified in Official Community Plan Amendment Bylaw 2912, 2020.
- **March 3, 2022**, the Board resolved to defer consideration of Amendment Bylaw No. 2912 “to the June 2, 2022 Board of Directors meeting to provide additional opportunity to meet with the Ministry of Forest, Lands, Natural Resource Operations and Rural Development and the Ministry of Environment.”
- **April 21, 2022**, the P&D Committee heard from Ministry staff and their concerns about the proposed changes to the ESDP Areas.
- **May 5, 2022**, the Board resolved to postpone 1st reading of the amendment bylaws to its first meeting in October of 2022 in order to allow for a provincial audit of the ESPD designation to be completed.
- **October 6, 2022**, the Board resolved to “defer the debate on the current ESDP Bylaw until March 31, 2023. The deferral is to allow enough time for an independent investigation into the effectiveness of the RDOS ESDP process as per the 2022 09 28 email to the board from Jamie Leathem, BC Ministry of Land, Water and Resource Stewardship.”
- **April 20, 2023**, the Board resolved that the “Environmentally Sensitive Development Permit (ESDP) Area Review (X2020.009- ZONE) be postponed to the July 4, 2023 meeting.”
- **July 6, 2023**, staff from the federal Canadian Wildlife Service, the provincial Ministry of Forest, Lands, Natural Resource Operations and Rural Development and Stantec presented the findings of their “Effectiveness Audit” of the ESDP Area designation to the P&D Committee.
The Committee resolved “THAT the matter be postponed to a future meeting and that Stantec be invited to attend the meeting to present their report.”
- **July 6, 2023**, the Board, at its regular meeting, resolved to defer 1st reading of the amendment bylaws “until the Board has had an opportunity to further discuss the matter with Provincial and Federal representatives.”
- **November 16, 2023**, the P&D Committee of the Board deferred consideration of the “Effectiveness Audit” to its meeting of December 7, 2023.

Referrals:

Approval from the Ministry of Transportation and Infrastructure (MoTI) is not required prior to adoption as the proposed amendments involve Official Community Plan (OCP) Bylaws.

Pursuant to Section 476 of the *Local Government Act*, the Regional District must consult with the relevant School District when proposing to amend an OCP for an area that includes the whole or any part of that School District. In this instance, School District Nos. 53, 58 and 67 have been made aware of the proposed amendment bylaw.

Pursuant to Section 477 of the *Local Government Act*, after first reading the Regional Board must consider the proposed OCP amendment in conjunction with Regional District's current financial and waste management plans. The proposed OCP amendment has been reviewed by the Public Works Department and Finance Department, and it has been determined that the proposed bylaw is consistent with RDOS's current waste management plan and financial plan.

Pursuant to Section 475 of the *Local Government Act*, the Regional District must consult with the Agricultural Land Commission (ALC) when proposing to amend an OCP which might affect agricultural. Both the ALC and the Ministry of Agriculture have been made aware of the proposed amendment bylaw.

Public Process:

The following is a summary of the recommendations put forward for Board consideration by the Electoral Area Advisory Planning Commission (APCs):

APC	Date	Recommendation
Area "A"	2020-11-09	that the proposed amendments be approved, subject to the following: <ul style="list-style-type: none">• <i>that parcel coverage percentage reductions be considered (dealing with what square footage a building can be vs. size of the lot); and</i>• <i>that Site-Specific re-zonings may need to be exempt on a case by case basis.</i>
Area "C"	2021-01-19	a motion was not made due to the loss of quorum during the meeting.
Area "D"	2021-02-09	that the proposed amendments be approved, subject to the following: <ul style="list-style-type: none">• <i>a trigger for the issuance of a permit continue to include the "alteration of the land, including grading, removal of vegetation, deposit or moving of soil, paving, installation of drainage or underground services" for parcels greater than 2.0 ha.</i>
Area "E"	2020-12-14	that the proposed amendments be approved.
Area "F"	2020-11-23	that the proposed amendments be denied.
Area "H"	2020-12-15	that the proposed amendments be approved.
Area "I"	2021-01-20	that the proposed amendments be denied.

On February 22, 2021, an electronic Public Information Meeting (PIM) was held via Webex and was attended by approximately 41 members of the public.

Administration recommends that the written notification of affected property owners, the public meetings as well as formal referral to the agencies listed at Attachment No. 1, should be considered

appropriate consultation for the purpose of Section 475 of the *Local Government Act*. As such, the consultation process undertaken is seen to be sufficiently early and does not need to further ongoing. All comments received to date in relation to this application are included in the Board Agenda.

Analysis:

Administration is aware that the South Okanagan-Similkameen is recognized as a region that combines a wide range of natural habitat areas with a large number of unique species, many of which are not found elsewhere in the province or in Canada. That the area is also home to the largest number of endangered and threatened species of plants and animals in BC and Canada.

Administration is further aware that the Board has adopted a vision for the Regional District “as a steward of our environment, sustaining a diverse and livable region that officers a high quality of life through good governance.”

Administration is committed to helping the Board fulfill this vision for the Regional District and is supportive of this projects and initiatives that help in a meaningful way.

Importantly, and based upon the experience of the past 5 years, Administration is very concerned that the development permit area designation has significant limitations, including:

- the supremacy of the electoral area zoning bylaws (i.e. an ESDP designation cannot be used to prohibit a use or density allowed by zoning);
- the uncertainty that exists around the authority of a local government to ticket for infractions against an ESDP (principal recourse being injunctive action at BC Supreme Court);
- the absence of statutory authority to require post-approval monitoring reports;
- the limitations of relying on landscaping bonds to achieve compliance (i.e. seen to be the “cost of doing business”, expense of having a biologist confirm landscaping may exceed value of bond);
- reliance on the Professional Reliance Model and lack of internal resources / expertise to undertake monitoring and compliance; and
- absence of performance measuring criteria (i.e. it is presently unknown if ESDPs are meeting their objective of minimizing the impacts of development on the environment).

Administration is further concerned that the stated objective of the ESDP Area designation; “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”, is overly broad and provides inadequate guidance to QEPs regarding the Regional District’s goals for the ESDP Area designation.

For these reasons, Administrations supports the proposed amendments contained in Amendment Bylaw No. 2912 to re-focus the ESDP Area designation on the subdivision stage and that greater policy emphasis on environmental values be considered by the Board at the rezoning stage.

Alternatives:

Conversely, the option of maintaining the current ESDP Area designation unchanged remains available to the Board.

As of April 1, 2022, the province, through its consultant (Stantec), was completing a survey of local qualified environmental professionals (QEPs) as well as a select number of permit holders to gather feedback on the existing ESDP process and guidelines and finalizing its assessment. It is anticipated that a final report will be completed shortly.

The Regional District is also in the process of preparing a broader survey of the community regarding the ESDP Area designation.

Alternately, the option of repealing the ESDP Area designation in its entirety is available to the Board. For the reasons outlined above, Administration consider this option to have merit, but that the Board may wish to provide an accompanying resolution to consider the creation of more focused and limited development permit area designations related to the protection of the natural environment as part of the 2024 Budget and Business Plan process.

Alternatives:

1. THAT the Regional District of Okanagan-Similkameen Environmentally Sensitive Development Permit Area Update Official Community Plan Amendment Bylaw No. 2912, 2023, be read a first and second time and proceed to public hearing;

THAT the Regional District of Okanagan-Similkameen Development Procedures Amendment Bylaw No. 2500.17, 2023, be read a first and second time;

THAT the Board of Directors considers the process, as outlined in this report from the Chief Administrative Officer dated December 7, 2023, to be appropriate consultation for the purpose of Section 475 of the *Local Government Act*;

THAT, in accordance with Section 477 of the *Local Government Act*, the Board of Directors has considered Amendment Bylaw No. 2912, 2023, in conjunction with its Financial and applicable Waste Management Plans;

THAT the holding of the public hearing be delegated to Chair Pendergraft;

THAT staff schedule the date, time, and place of the public hearing in consultation with Chair Pendergraft; and

THAT staff give notice of the public hearing in accordance with the requirements of the *Local Government Act*.

2. THAT first reading of the Regional District of Okanagan-Similkameen Environmentally Sensitive Development Permit Area Update Official Community Plan Amendment Bylaw No. 2912, 2023, and Regional District of Okanagan-Similkameen Development Procedures Amendment Bylaw No. 2500.17, 2023, be denied.

Respectfully submitted:



C. Garrish, Senior Manager of Planning

Attachments: No. 1 – Agency Referral List

Attachment No. 1 – Agency Referral List

Referrals have been sent to the following agencies as highlighted with a , regarding Amendment Bylaw No. 2912:

<input checked="" type="checkbox"/>	Agricultural Land Commission (ALC)	<input checked="" type="checkbox"/>	Fortis
<input checked="" type="checkbox"/>	Interior Health Authority (IHA)	<input checked="" type="checkbox"/>	City of Penticton
<input checked="" type="checkbox"/>	Ministry of Agriculture	<input checked="" type="checkbox"/>	District of Summerland
<input checked="" type="checkbox"/>	Ministry of Energy, Mines & Petroleum Resources	<input checked="" type="checkbox"/>	Town of Oliver
<input type="checkbox"/>	Ministry of Municipal Affairs & Housing	<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"/>	Town of Princeton
<input checked="" type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch)	<input type="checkbox"/>	Village of Keremeos
<input type="checkbox"/>	Ministry of Jobs, Trade & Technology	<input checked="" type="checkbox"/>	Okanagan Nation Alliance (ONA)
<input type="checkbox"/>	Ministry of Transportation and Infrastructure	<input checked="" type="checkbox"/>	Penticton Indian Band (PIB)
<input type="checkbox"/>	Integrated Land Management Bureau	<input checked="" type="checkbox"/>	Osoyoos Indian Band (OIB)
<input checked="" type="checkbox"/>	BC Parks	<input checked="" type="checkbox"/>	Upper Similkameen Indian Band (USIB)
<input checked="" type="checkbox"/>	School District #53	<input checked="" type="checkbox"/>	Lower Similkameen Indian Band (LSIB)
<input checked="" type="checkbox"/>	School District #58	<input type="checkbox"/>	Environment Canada
<input checked="" type="checkbox"/>	School District #67	<input checked="" type="checkbox"/>	Fisheries and Oceans Canada
<input checked="" type="checkbox"/>	Central Okanagan Regional District	<input checked="" type="checkbox"/>	Canadian Wildlife Services
<input checked="" type="checkbox"/>	Kootenay Boundary Regional District	<input type="checkbox"/>	OK Falls Irrigation District
<input type="checkbox"/>	Thompson Nicola Regional District	<input type="checkbox"/>	Kaleden Irrigation District
<input type="checkbox"/>	Fraser Valley Regional District	<input checked="" type="checkbox"/>	South Okanagan Similkameen Conservation Program