

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

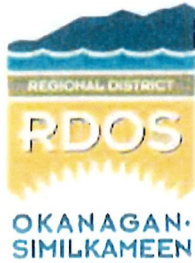
Send this email to voice my disapproval of the So called PINK ZONE that did not exists on my property when purchased in 2002 in Kilpoola Estates, This pink area has been brushed over my garden, driveway access & buildings that have been installed in the development of these acreages years ago.

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: [Brenda Gault](#)
Subject: Proposed ESRP amendment
Date: February 21, 2022 2:25:57 PM

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

The South Okanagan-Similkamen is the very northern extent of the Great Basin biome, and as such we play 'lost 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 development, 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. Gagnon, https://indefense.proofpoint.com/v2/qf/9e-3A_M_SqkL-DwTcA8k&e=otZacitDIhImENb7jXmrgOLvSA_CdpmYtHhMk&e=HtYamXVpDhhd16s1xxv0XtGvAvhwtvgeEdAm33&e=emvYF2hVSHLQ7mGZ4fTSEvFmZjSEhLkYpEhBAk&e=ZNDYXKXndLGRML_WDHEFLgRkZmWHDPERLbHOK&e=P_Agqf
Ecologist and Writer
Sumnerland, BC Canada

https://indefense.proofpoint.com/v2/qf/9e-3A_Avwn-dmepytioncrk&e=DwTCAgk&e=otZacitDIhImENb7jXmrgOLvSA_CdpmYtHhMk&e=HtYamXVpDhhd16s1xxv0XtGvAvhwtvgeEdAm33&e=emvYF2hVSHLQ7mGZ4fTSEvFmZjSEhLkYpEhBAk&e=ek5kOZGRBN3HfpgGq1S6ZAN7O_-10IQv7pAlhw&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

Gjöa 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: RE: AMENDMENT OF ENVIRONMENTALLY SENSITIVE DEVELOPMENT PERMIT (ESDP) AREAS
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 <rknodel@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; '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]

Alan Cell/Text: ([REDACTED])

Direct Email: [REDACTED]



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



Submitted to:
Bryn White, Project Manager
South Okanagan-Similkameen Conservation Program
Penticton, BC

Submitted by:
A Peatt, RPBio, FAPB
Bearfoot Resources Ltd.
Email: bearfootresources@shaw.ca

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

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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.

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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.*

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- *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.*