

ADMINISTRATIVE REPORT



TO: Board of Directors

FROM: B. Newell, Chief Administrative Officer

DATE: April 7, 2022

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

Administrative Recommendation:

THAT Bylaw No. 2950, 2022 being a bylaw to amend the Official Community Plan Bylaws to update watercourse development permit area guidelines and exemptions, be read a first and second time and proceed to public hearing; and

THAT Bylaw No. 2500.25, 2022 being a bylaw to amend the Development Procedures Bylaw to introduce requirements for retroactive watercourse development permits, be read a first and second time; and

THAT the Board of Directors considers the process, as outlined in this report from the Chief Administrative Officer dated April 7, 2022, to be appropriate consultation for the purpose of Section 475 of the *Local Government Act*; and

THAT, in accordance with Section 477 of the *Local Government Act*, the Board of Directors has considered Amendment Bylaw No. 2950, 2022, in conjunction with its Financial and applicable Waste Management Plans; and

THAT the holding of a public hearing be scheduled for the Regional District Board meeting of May 5, 2022; and

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

Purpose:

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

Background:

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

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

June 8, 2006 - the Regional District adopted Bylaw No. 2337, 2006, which introduced Watercourse Development Permit (WDP) Area designations into all Electoral Area OCP Bylaws.

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

February 20, 2020 - the Regional District adopted OCP Amendment Bylaw No. 2876 to align the WDP Area designations with the requirements of RAPR, including requiring the receipt of a ministerial notification confirming an assessment report complies with the legislation.

Condition and Impact Assessments:

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

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

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

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

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

Referrals:

Approval from the Ministry of Transportation and Infrastructure (MoTI) is required prior to adoption as the proposed amendments involve lands within 800 metres of a controlled access highway (i.e. Highway 97 & 3).

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 No. 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.

Public Process:

March 9, 2022 - a Public Information Meeting (PIM) was held online via WebEx and was attended by two members of the public.

The bylaws were considered by all of the electoral area advisory planning commissions as follows:

APC	Date	Recommendation
"A"	2022-03-14	that the subject development application be approved
"C"	2022-03-15	that the subject development application be denied
"D"	2022-03-08	that the subject development application be approved
"E"	2022-03-14	no quorum
"F"	2022-02-28	that the subject development application be approved
"H"	2022-03-15	that the subject development application be approved
"I"	2022-03-16	that the subject development application be approved

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 as a separate item on the Board Agenda.

Analysis:

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

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

Further, the process meets the advice of Ministry staff to accept retroactive Assessment Reports in the absence of their review.

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

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

WDP Exemption - Crown Land:

With regard to the proposed exemption of Crown land from WDP requirements, this is consistent with all other development permit areas in the OCPs. The exemption reflects the challenges of complying with the legislative requirement to register a permit on title when no title exists for Crown land as well as any enforcement that would require action be taken against the relevant minister. Additionally, the Province assesses many requirements to lease Crown land that include ensuring riparian area compliance when it is licensing various uses or development of Crown land.

Alternatives:

1. THAT Bylaw No. No. 2500.25, 2022 and Bylaw No. 2950, 2022 be denied.

Respectfully submitted:



Danielle DeVries, Planner 1

Endorsed By:



C. Garrish, Planning Manager

Attachments:

No. 1 – Agency Referral List

Attachment No. 1 – Agency Referral List

Referrals to be sent to the following agencies as highlighted with a , prior to the Board considering first reading of Amendment Bylaw Nos. 2950 & 2500.25, 2022.

<input checked="" type="checkbox"/>	Agricultural Land Commission (ALC)	<input 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 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 type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch)	<input checked="" type="checkbox"/>	Village of Keremeos
<input type="checkbox"/>	Ministry of Jobs, Trade & Technology	<input checked="" type="checkbox"/>	NationsConnect (ONA/PIB/OIB/USIB/LSIB)
<input checked="" type="checkbox"/>	Ministry of Transportation and Infrastructure	<input checked="" type="checkbox"/>	Environment Canada
<input type="checkbox"/>	Integrated Land Management Bureau	<input checked="" type="checkbox"/>	Fisheries and Oceans Canada
<input type="checkbox"/>	BC Parks	<input checked="" type="checkbox"/>	Canadian Wildlife Services
<input checked="" type="checkbox"/>	School District #53 (Areas A, B, C, D & G)	<input type="checkbox"/>	OK Falls Irrigation District
<input checked="" type="checkbox"/>	School District #58 (Area H)	<input type="checkbox"/>	Kaleden Irrigation District
<input checked="" type="checkbox"/>	School District #67 (Areas D, E, F, I)	<input type="checkbox"/>	X Irrigation District / improvement Districts / etc.
<input checked="" type="checkbox"/>	Central Okanagan Regional District	<input checked="" type="checkbox"/>	Kootenay Boundary Regional District
<input checked="" type="checkbox"/>	Thompson Nicola Regional District	<input checked="" type="checkbox"/>	Fraser Valley Regional District