

ADMINISTRATIVE REPORT



TO: Board of Directors

FROM: B. Newell, Chief Administrative Officer

DATE: May 5, 2022

RE: Official Community Plan (OCP) Amendment – Electoral Area “E” (E2022.005-ZONE)

Administrative Recommendation:

THAT Bylaw No. 2458.18, 2022, a bylaw to amend the Electoral Area “E” Official Community Plan, be denied.

Purpose: To exempt the development of a tram from the provincial *Riparian Area Protection Regulation*.

Civic: 2265 Naramata Road Legal: Lot 1, Plan KAP16214, District Lot 206, SDYD, Except Plan H17800

OCP: Agriculture (AG) Zone: Agriculture One (AG1) Folio: E-02061.100

Proposed Development:

This application is seeking to amend the zoning of the subject property in order to allow for the development of a tram in the Watercourse Development Permit Area through the issuance of an Expedited Development Permit.

In order to accomplish this, the applicant has applied to amend the Electoral Area “E” Official Community Plan (OCP) Bylaw No. 2458, 2008, by adding a new sub-section 23.3.7.7 (Expedited Development Permit) under Section 23.3 (Watercourse Development Permit (WDP) Area) to allow for the development of a tram on the subject parcel.

In support of the rezoning, the applicant has submitted an Environmental Assessment which states that: “[QEP] can assure that the proposed tram to allow for foreshore access directly from the subject property ... would not result in a harmful alteration, disruption or destruction (HADD) of the natural features, functions and conditions of fish and fish habitat under the Federal Fisheries Act ... creation of a trail would result in significantly greater environmental impacts to the SPEA in comparison to that of a tram ... RAPR does not allow for the construction of a new foreshore access structure such as a staircase or tram in the SPEA.”

Site Context:

The subject property is approximately 1.36 ha in area and is situated on the east side of Naramata Road and abuts the Okanagan lake on its eastern edge. It is understood that the parcel is comprised of a single detached dwelling and accessory structure.

The surrounding pattern of development is generally characterised by similarly sized residential parcels that have been developed with single detached dwellings.

Background:

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The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on April 21, 1966, while available Regional District records indicate that a building permit for a swimming pool (2014) has been issued for this property.

Under the Electoral Area “E” Official Community Plan (OCP) Bylaw No. 2458, 2008, the subject property is currently designated Agriculture (AG), and is the subject of Watercourse Development Permit (WDP) Area and Environmentally Sensitive Development Permit (ESDP) Area designations.

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Agriculture One (AG1) which allows for single detached dwelling and accessory structures.

Under Section 10.0 (Floodplain Regulations) of the Zoning Bylaw, the subject property is within the floodplain associated with Okanagan Lake.

The property is partially within the Agricultural Land Reserve (ALR) and has been classified as part “Residential” (Class 01) and part “Farm” (Class 09) by BC Assessment.

Statutory Requirements

Under Section 2 of the provincial *Riparian Area Protection Regulation* (RAPR) the Regional District is named as a local government that:

must have in force zoning or land use bylaws that ensure that a riparian development is subject to ... a rules-based scheme that prohibits the development from proceeding unless the local government has received an assessment report [from the Minister] ...

Under Section 12(4)(b) of the *Riparian Areas Protection Act*, a local government may determine that its bylaws “provide a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by [RAPR].”

Referrals:

Approval from the Ministry of Transportation and Infrastructure (MoTI) is not required prior to adoption as the proposed amendment is to an OCP Bylaw

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. 67 have been made aware of the proposed amendment bylaw.

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

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

Public Process:

On April 20, 2022, a Public Information Meeting (PIM) was held via WebEx and was attended by approximately one (1) member of the public.

At its meeting of April 11, 2022, the Electoral Area “E” Advisory Planning Commission (APC) resolved to recommend to the RDOS Board that the subject development application be refused.

The written notification of affected property owners, the public meetings as well as formal referral to the agencies listed at Attachment No. 1, should be considered appropriate consultation for the purpose of Section 475 of the *Local Government Act*. As such, the consultation process undertaken is seen to be sufficiently early and does not need to further ongoing.

All comments received to date in relation to this application are included in the Board Agenda.

Analysis:

This proposal is in contravention of provincial regulations and fails to meet the guidelines in Section 23.3.5 of the OCP bylaw. Provincial legislation further requires local governments to enact bylaws to protect riparian areas during development and this proposal defeats the intent of the regulation.

The introduction of the “Expedited” permit option in 2013 was to provide land owners with a less onerous and less expensive permitting process by not requiring the submission of an “Assessment Report” from a qualified environmental professional (QEP) *if* the proposed development did not affect lands designated as WDP Area.

For example, if a sketch or plan prepared by a B.C. Land Surveyor or QEP is provided and indicates that no physical alteration of land is proposed within the Watercourse Development Permit Area, an “Expedited” WDP may be issued without the provision of an “Assessment Report”.

In this respect, the applicant’s proposal is manifestly different from the current “Expedited” options in that it explicitly contemplates development occurring within a designated WDP Area.

Conversely, the property owner’s QEP has stated that the impact of a tram on riparian area values is much lower in comparison to a trail or a staircase, despite being inconsistent with provincial requirements requiring the protection of the riparian values associated with the property.

Alternative:

1. THAT Bylaw No. 2458.18, 2022, Electoral Area “E” Official Community Plan Amendment Bylaw be read a first and second time; and
THAT the Board of Directors considers, in accordance with Section 12(4)(b) of the *Riparian Areas Protection Act*, that the requirements for an Expedited Watercourse Development Permit contained in Bylaw No. 2876, 2020, provides a level of protection that is comparable to or exceeds that established by the *Riparian Areas Protection Regulation*; and

THAT the Board of Directors considers the process, as outlined in this report from the Chief Administrative Officer dated May 5, 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. 2458.18, 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 June 2, 2022; and

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

Respectfully submitted:

Nikita Kheterpal

Nikita Kheterpal, Planner I

Endorsed By:



C. Garrish, Planning Manager

Attachments: No. 1 – Agency Referral List

No. 2 – Applicant’s Site Plan 1

No. 3 – Applicant’s Site Plan 2

No. 4 – Applicant’s Photos of Sample Trams

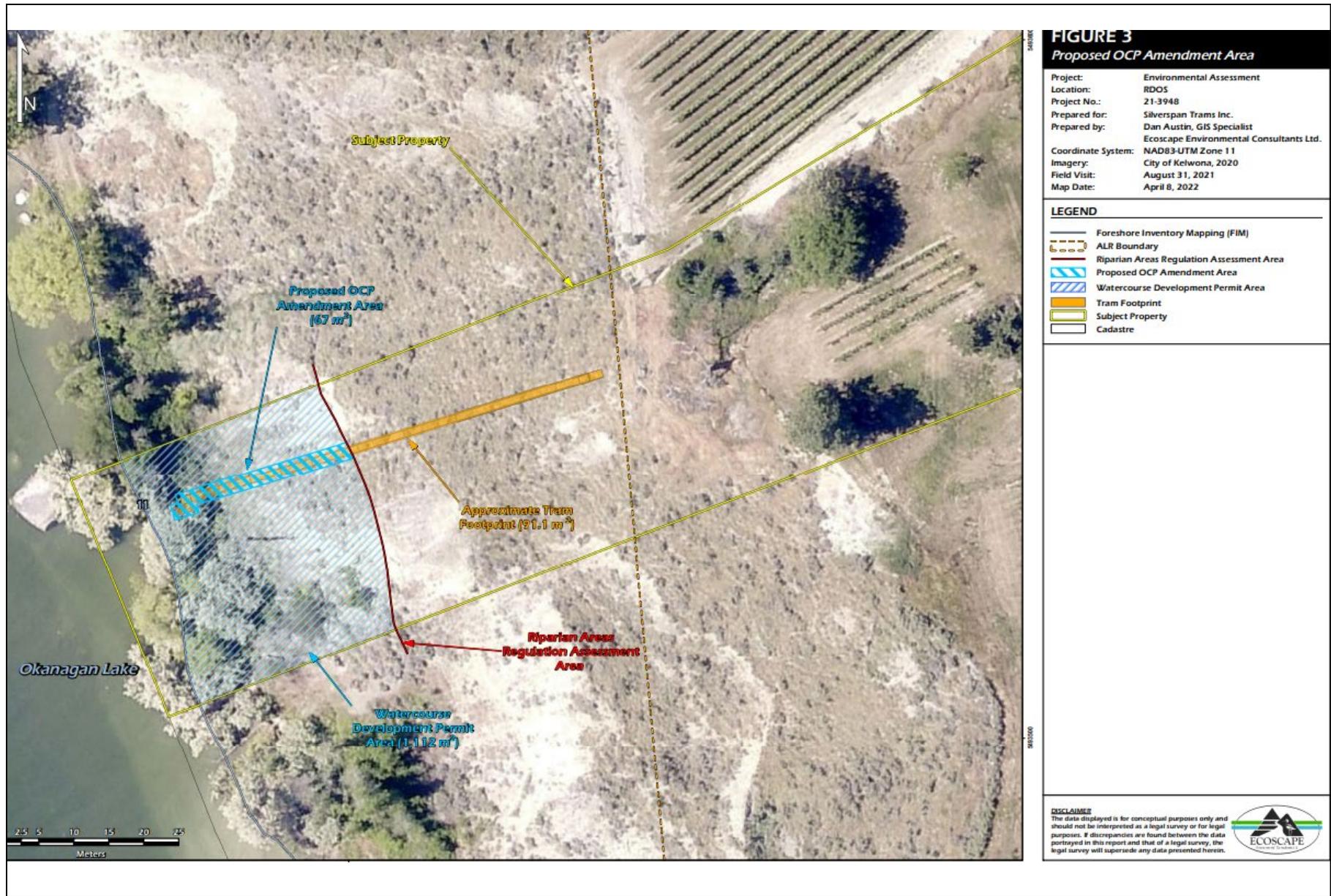
No. 5 – Site Photo

Attachment No. 1 – Agency Referral List

Referrals have been sent to the following agencies as highlighted with a , regarding Amendment Bylaw No. 2458.18:

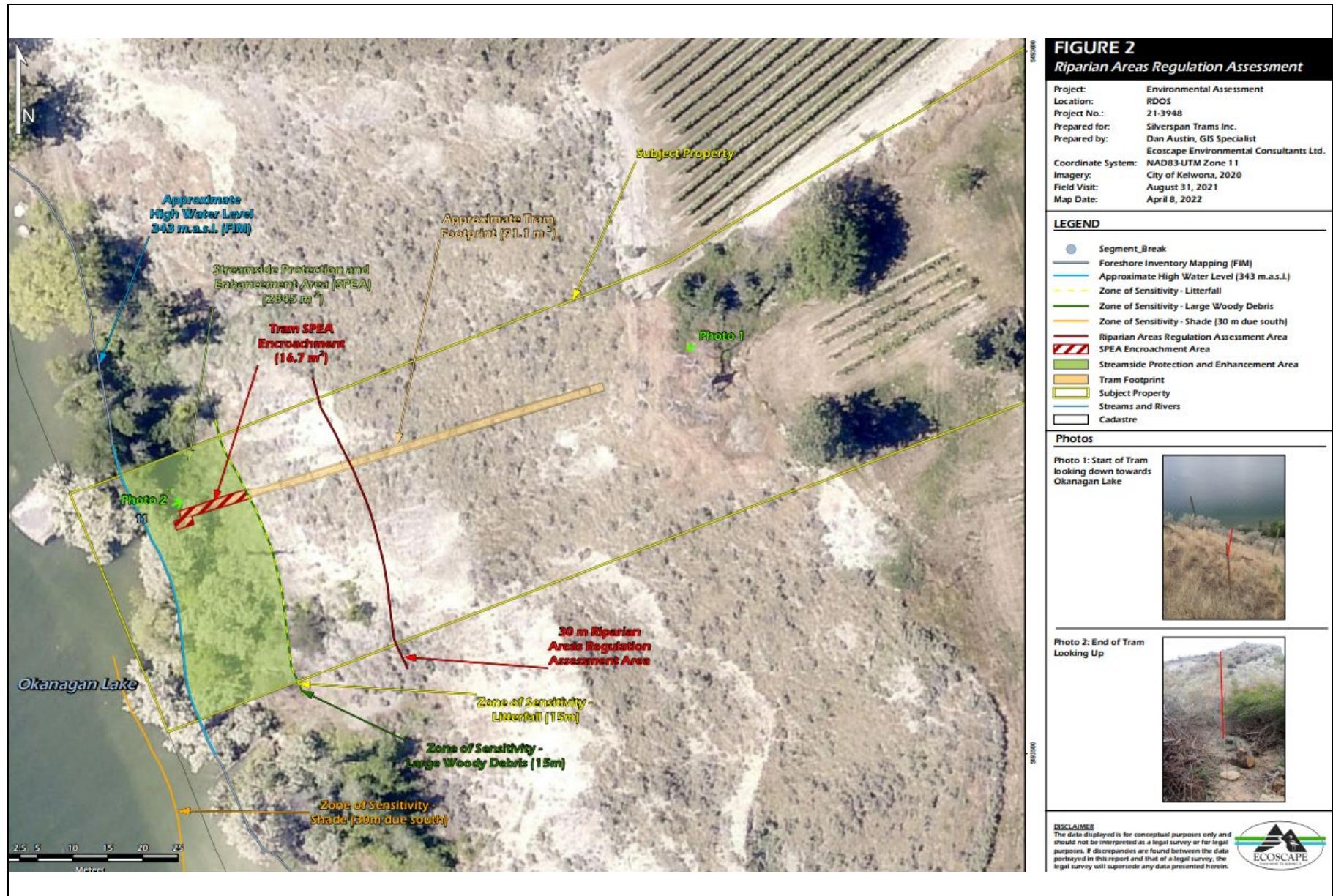
<input checked="" type="checkbox"/>	Agricultural Land Commission (ALC)	<input checked="" type="checkbox"/>	Fortis
<input type="checkbox"/>	Interior Health Authority (IHA)	<input type="checkbox"/>	City of Penticton
<input checked="" type="checkbox"/>	Ministry of Agriculture	<input type="checkbox"/>	District of Summerland
<input type="checkbox"/>	Ministry of Energy, Mines & Petroleum Resources	<input type="checkbox"/>	Town of Oliver
<input type="checkbox"/>	Ministry of Municipal Affairs & Housing	<input type="checkbox"/>	Town of Osoyoos
<input checked="" type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Ecosystem Section)	<input type="checkbox"/>	Town of Princeton
<input type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch)	<input type="checkbox"/>	Village of Keremeos
<input type="checkbox"/>	Ministry of Jobs, Trade & Technology	<input type="checkbox"/>	ONA / PIB / OIB / USIB / LSIB (via NationsConnect)
<input type="checkbox"/>	Ministry of Transportation and Infrastructure	<input type="checkbox"/>	Environment Canada
<input type="checkbox"/>	Integrated Land Management Bureau	<input type="checkbox"/>	Fisheries and Oceans Canada
<input type="checkbox"/>	BC Parks	<input type="checkbox"/>	Canadian Wildlife Services
<input type="checkbox"/>	School District #53 (Areas A, B, C, D & G)	<input type="checkbox"/>	OK Falls Irrigation District
<input 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"/>	Irrigation District / improvement Districts / etc.
<input type="checkbox"/>	Central Okanagan Regional District	<input type="checkbox"/>	Kootenay Boundary Regional District
<input type="checkbox"/>	Thompson Nicola Regional District	<input type="checkbox"/>	Fraser Valley Regional District
<input checked="" type="checkbox"/>	Naramata Volunteer Fire Department		

Attachment No. 2 – Applicant's Site Plan 1



File No: E2022.005-ZONE

Attachment No. 3 – Applicant's Site Plan 2



File No: E2022.005-ZONE

Attachment No. 4 – Applicant’s Photos of Sample Trams



Photo 11. View of a tower bracket on two piles and their minimal permanent footprint.

Attachment No. 5 – Site Photo



File No: E2022.005-ZONE