

ADMINISTRATIVE REPORT



TO: Advisory Planning Commission

FROM: B. Newell, Chief Administrative Officer

DATE: November 17, 2015

RE: Update of Environmentally Sensitive Development Permit Areas
Okanagan Electoral Area Official Community Plan (OCP) Bylaws

Purpose:

The purpose of this report is to provide an overview of proposed textual and mapping amendments to the Environmentally Sensitive Development Permit (ESDP) Area designation in the Okanagan Electoral Area Official Community Plan (OCP) Bylaws.

Background:

Under Section 919.1 of the *Local Government Act*, the Regional District can designate development permit areas for a number of purposes, including the “protection of the natural environment, its ecosystems and biological diversity” (NOTE: in Electoral Area “C” there is also a Protection of Farming DP Area).

Once an area of land has been designated, development such as subdivision, construction or the removal/disturbance of soil cannot occur unless a Permit has been issued by the Regional District. While a DP can be an effective form of land use regulation, they are certain limitations to their use, such as:

- ESDPs cannot be used to prohibit a use or density permitted under a zoning bylaw;
- the Regional District cannot ticket for infractions against an ESDP Area designation or the conditions of an ESDP (enforcement must be pursued through the BC Supreme Court); and
- the Regional District cannot regulate farm uses within the ALR or provincial use of Crown land through an ESDP.

The first ESDP Area designated in the RDOS occurred in 1997 when a new OCP Bylaw was adopted for Electoral Area “D-2” (Okanagan Falls), and was subsequently introduced to Electoral Areas “D-1” (Kaleden-Apex) in 2000, “C” (Oliver) in 2002, “A” (Osoyoos) in 2005 and “E” (Naramata) in 2007.

Since 1997, the Regional District has issued approximately 27 ESDPs, the majority of which have been in relation to proposed subdivisions (as opposed to construction).

Keeping Nature in our Future:

In 2010, the South Okanagan and Similkameen Conservation Program (SOSCP) initiated the development of a Biodiversity Strategy which, amongst other things, “identifies why we should conserve and restore natural areas, which natural areas should be protected and restored ...”

As the Advisory Planning Commission (APC) will recall, the Biodiversity Strategy, now known as [*Keeping Nature in Our Future*](#), was the subject of a Public Information Meeting in Oliver on February 19, 2013, and subsequently presented to the APC at its meeting that same night.

At its meeting of September 5, 2013, the Planning and Development (P&D) Committee resolved to “accept *Keeping Nature in our Future: A Biodiversity Conservation Strategy for the South Okanagan-Similkameen* as a guiding document for the Regional District of Okanagan-Similkameen and the amendment of Official Community Plans.”

While the mapping associated with *Keeping Nature in our Future* represents the first major update to ESDP Area mapping in 16 years, the OCP objectives, policies and guidelines underpin this mapping had not been reviewed since 1997.

In order to address this, Regional District and SOSCP staff has spent the past two years reviewing and updating the text of the OCP related to ESDP Areas and presented a number of recommendations to the Planning and Development (P&D) Committee of the Board at its meeting of September 17, 2015.

The Committee subsequently resolved to direct staff to undertake “early and on-going” consultation with residents, APCs, external agencies, and local First Nations in order elicit feedback on these proposed changes. It is anticipated that the results of this consultation will be completed by January 2016, and reported to the Committee shortly thereafter.

Analysis:

The following is a summary overview of the proposed changes to ESDP Areas in the Okanagan Electoral Area OCP Bylaws.

Due to the breadth of the changes being proposed, APC members are encouraged to visit the project page on the Regional District’s [web-site](#) in order to find more detailed information, such as draft OCP policies and objectives, ESDP Area mapping & guidelines as well as a proposed Terms of Reference (ToR) for Professional Reports.

OCP Mapping:

- only land with “high” and “very high” values are to be formally designated as ESDP Areas;
- an alternate “Important Ecosystem Areas” (IEA) layer be applied to Crown land, lands in the ALR zoned agricultural and lands zoned for low, medium and high density residential uses that possess environmental values;
- the IEA layer would not be formally designated under the Act (i.e. no permit required for development);
- the Regional District can generally not apply development permits to Crown and ALR lands (i.e. *B.C. Interpretation Act* and *Right to Farm Act*);
- certain exceptions resulting in low, medium and high density residential zones being included in the ESDP Area designation would occur where significant topographical features are present (i.e. gullies, ravines, etc.);
- IEA layer would allow for the “flagging” of environmental values when assessing external agency referrals or rezoning applications.

OCP Text:

- separate the current OCP section entitled “Parks and Natural Environment” (Section 12.0) into two new sections entitled “Parks, Recreation and Trails” and “Natural Environment and Conservation”;

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- modernise the language and policy statements contained within each of these respective new sections;
 - update the guidelines contained under the ESDP Area section in order to:
 - require that assessments prepared by a QEP be completed by a Registered Professional Biologist (RPBio) or a team that includes an RPBio;
 - introduce the ability to require a third party review of a QEPs assessment, with the cost shared equally between the Regional District and the applicant (is assumed that this would be a rare occurrence); and
 - provision for joint ESDP and Watercourse Development Permit (WDP) Area applications and permits.
 - updated Terms of Reference (ToR) governing the material to be included in assessment reports prepared by QEPs;
 - the creation of a Rapid Environmental Assessment (REA) for new residential development plans (as a cost-efficient alternative to a full environmental assessment); and
 - a modified list of exemptions, including:
 - the replacement of the broad exemption for all residential developments with a one-time 50 m² exemption for additions or expansions;
 - requiring that a Building Permit has formally been accepted by the Regional District prior to any site clearing activities are undertaken; and
 - replacing a subdivision exemption for parcels greater than 20ha in area or a 2 lot subdivision with an exemption for consolidations and lot line adjustments.

Administrative Recommendation:

THAT the APC recommends to the RDOS Board that the proposed amendments related to the ESDP Area Update be approved.

Options:

1. THAT the APC recommends to the RDOS Board that the proposed amendments related to the ESDP Area Update be approved.
2. THAT the APC recommends to the RDOS Board that the proposed amendments related to the ESDP Area Update be approved with conditions:
 - i) *TBD*
3. That the APC recommends to the RDOS Board that the proposed amendments related to the ESDP Area Update be denied.

Respectfully submitted:



C. Garrish, Planning Supervisor

Endorsed by:

Donna Butler

D. Butler, Development Services Manager