

Environmentally Sensitive Development Permit Area Update

Planning & Development Committee
(December 7, 2023)

History of Development Permits in the RDOS

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History of DPs in the RDOS

- First DPs implemented in mid-1990s.
- Currently 10 different DP Area designations.
- Vast majority of permits issued are environmental protection:
 - Watercourse (RAPR); and
 - Environmentally Sensitive.

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Environmentally Sensitive DPs:

- First “ESDP” introduced in 1997 (OK Falls).
- Objective is “... to minimize the impact of development on the natural environment.”
- Guidelines include protecting Native & Nesting Trees; Habitat Corridors; Grasslands; Riparian Areas and Rock Outcrops.
- Triggers: BPs, Subdivision & Land Clearing.
- Professional Reliance Model.



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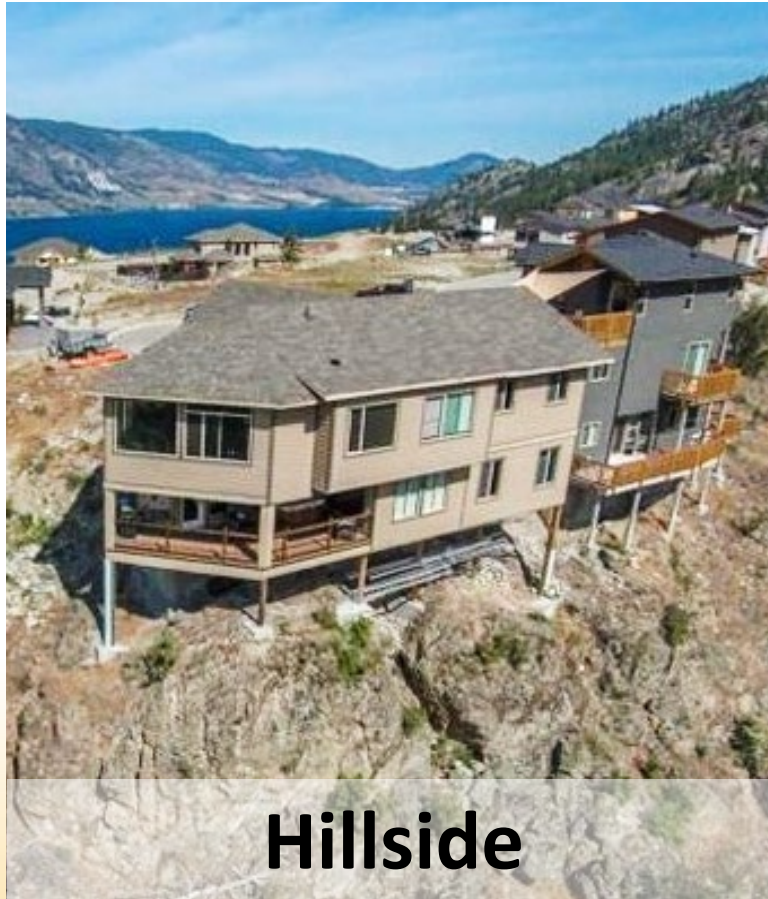
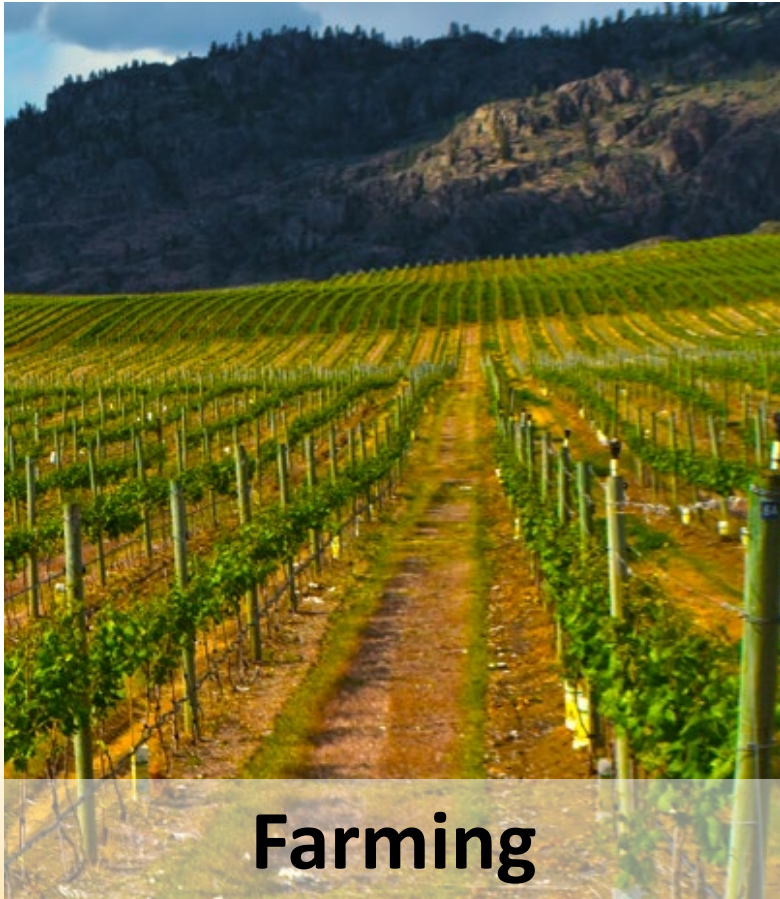
ESDP Background:

- ESDPs deemed to be too onerous after first 3 permits issued in 1997.
- DP Area is “suspended” pending bylaw amendments.
- Wide exemptions for residential and agricultural development are introduced.
- These guidelines are applied to the other electoral area OCPs by 2012.



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Other DP Area the required amendment:





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ESDP Update (2013-2017)

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Overview

- RGS adopted in 2010, recommends a Biodiversity Strategy.
- Biodiversity Strategy is completed by a conservation group.
- Primary objective is to create new sensitivity mapping.
- Staff are directed to use Strategy to update the ESDP Area (2013).
- ESDP Update is commenced in 2014.



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Background Research

Development activity between 1997-2017:

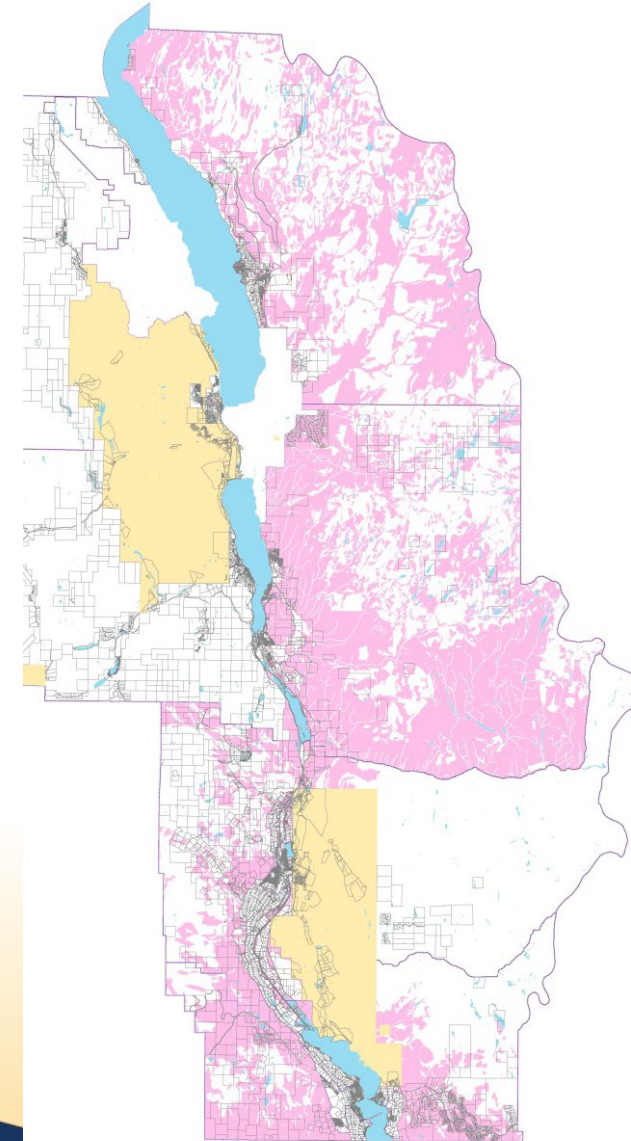
- 5,100+ Building Permits (BPs) issued:
 - 2/3 are for residential construction.
- 26 ESDPs issued:
 - 7 are related to non-residential construction; and
 - 19 are related to subdivisions.



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Issue: Are ESDPs meeting the Board's objective of minimizing the impact of development on the natural environment?

- ESDP mapping suggested that large parts of the Regional District were subject to some form of environmental protection; *yet*
- Almost all forms of development are exempt from the need for a permit.



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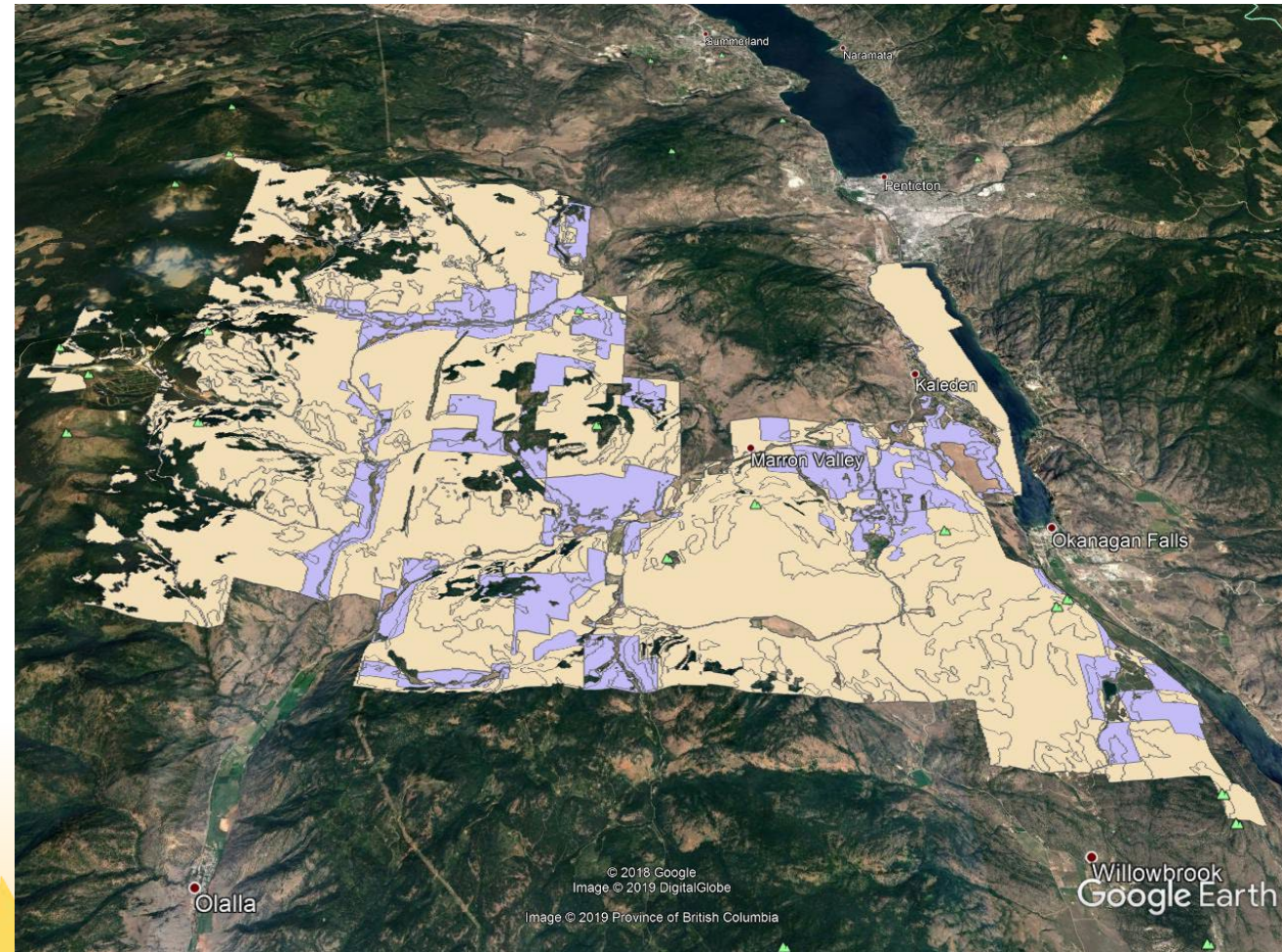
Options for Board Consideration:

1. repeal the ESDP Area designation;
2. Status Quo (i.e. do not amend ESDP Area designation);
3. amend ESDP Area mapping only; or
4. expand ESDP Area amendments to include:
 - introduction of new policies, mapping and guidelines;
 - removal of residential exemptions; and
 - introduction of Rapid Environmental Assessment (REA).

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Mapping

- Locations designated as ESDP Areas comprise “high” & “very high” values.
- Excluded areas*:
 - Crown land;
 - ALR lands; and
 - Low & Medium Density Residential zones.

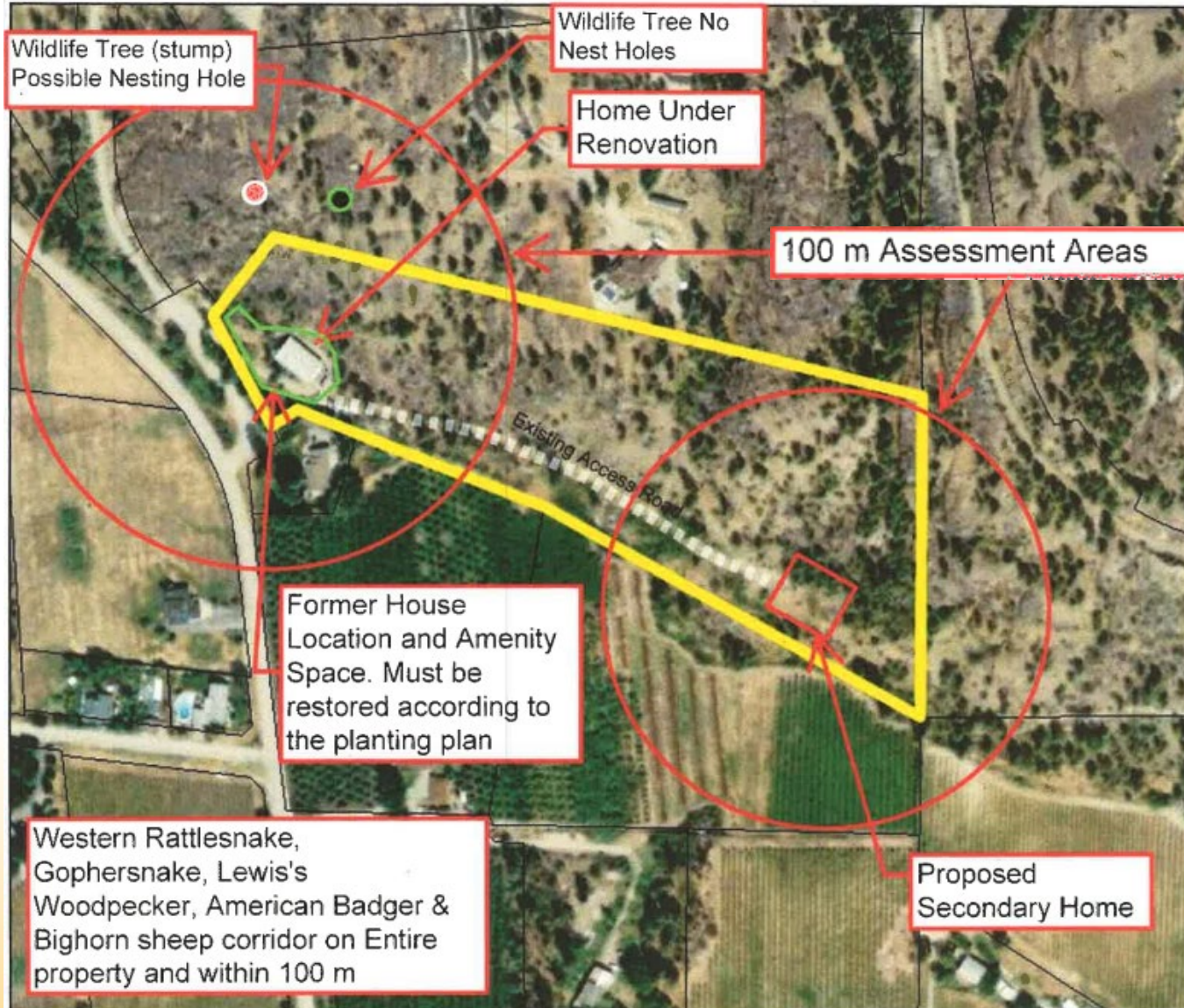


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Revised Exemptions:

- Rapid Environmental Assessment (REA) to replace 1997 exemptions.
- REA is a desktop analysis to determine ESAs within 100 m radius of proposed development footprint.
- expected to be rarely used due to assurances around quality of new environmental mapping.
- when used properly, a REA provides a cost-effective option for owners whose land may have been improperly designated.

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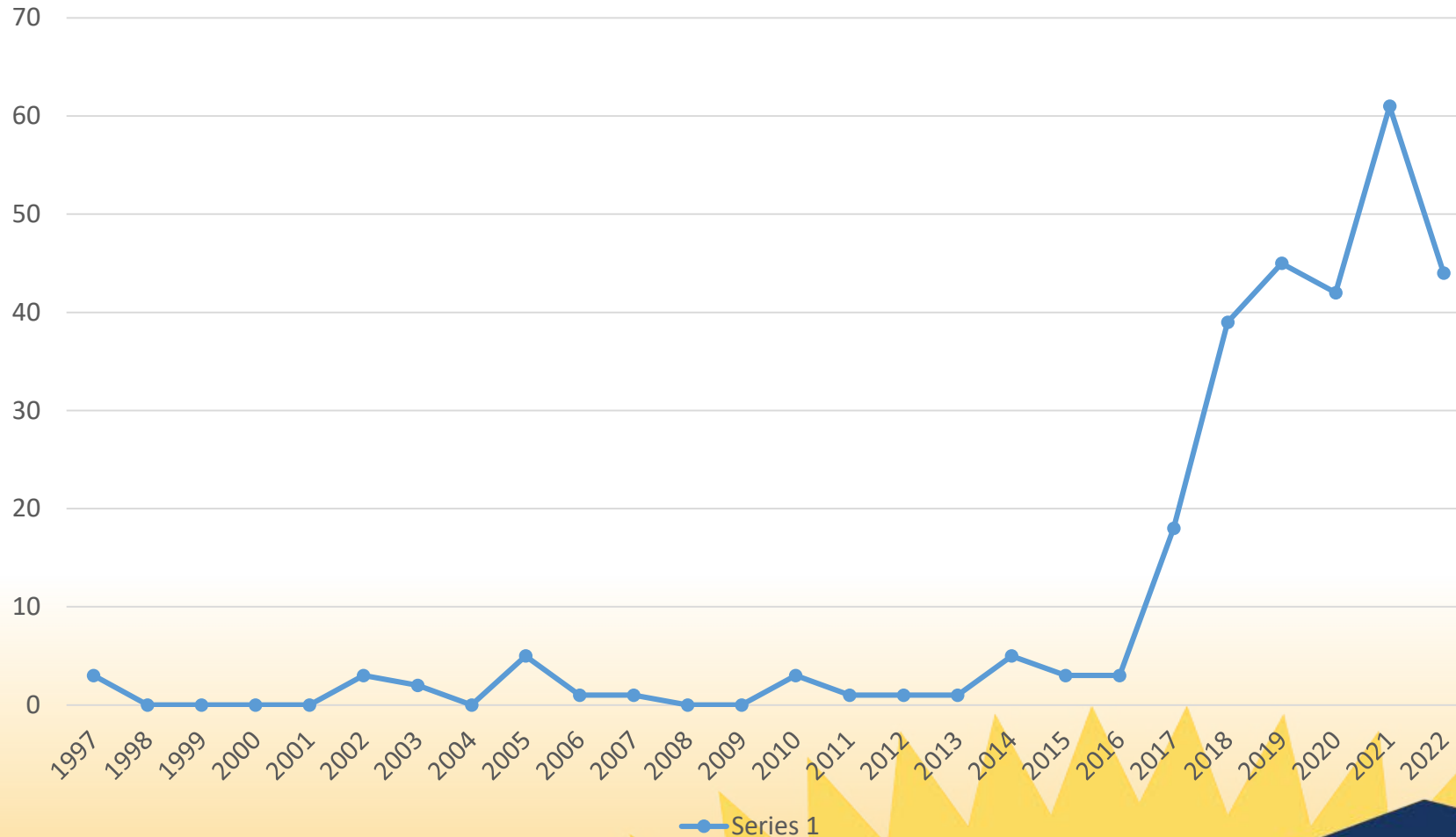


Professional Opinion:

- Known Environmentally Valuable Resource (ER) occurrence(s) have been identified and:
 - acceptable restoration / mitigation has been prescribed.

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ESDP Permits Issued 1997-2022



Building Permits:

- 516 in 2022
- 611 in 2021
- 525 in 2020
- 527 in 2019
- 515 in 2018

ESDPs triggered for approx. 8.5% of BPs (2022).

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ESDP issuance prior to 2017:

- 73% subdivisions;
- 27% non-residential development;
- 0% residential development

ESDP issuance after 2017:

- 6.7% subdivisions;
- 7.5% non-residential development;
- 82.3% residential development;

*** 89% of ESDP's have been "Expedited"**

[* percentages calculated based 2019-20 permit numbers]



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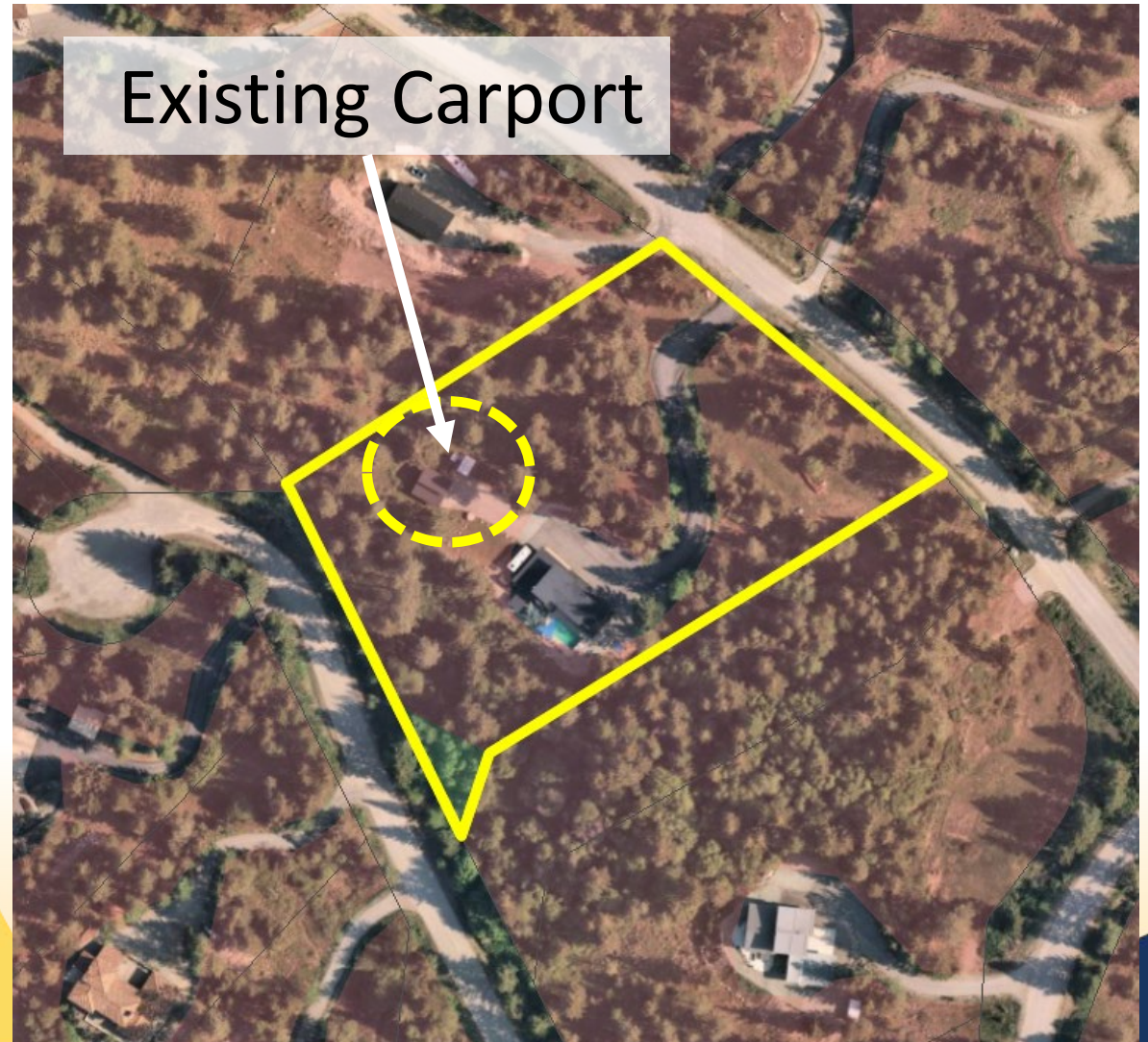
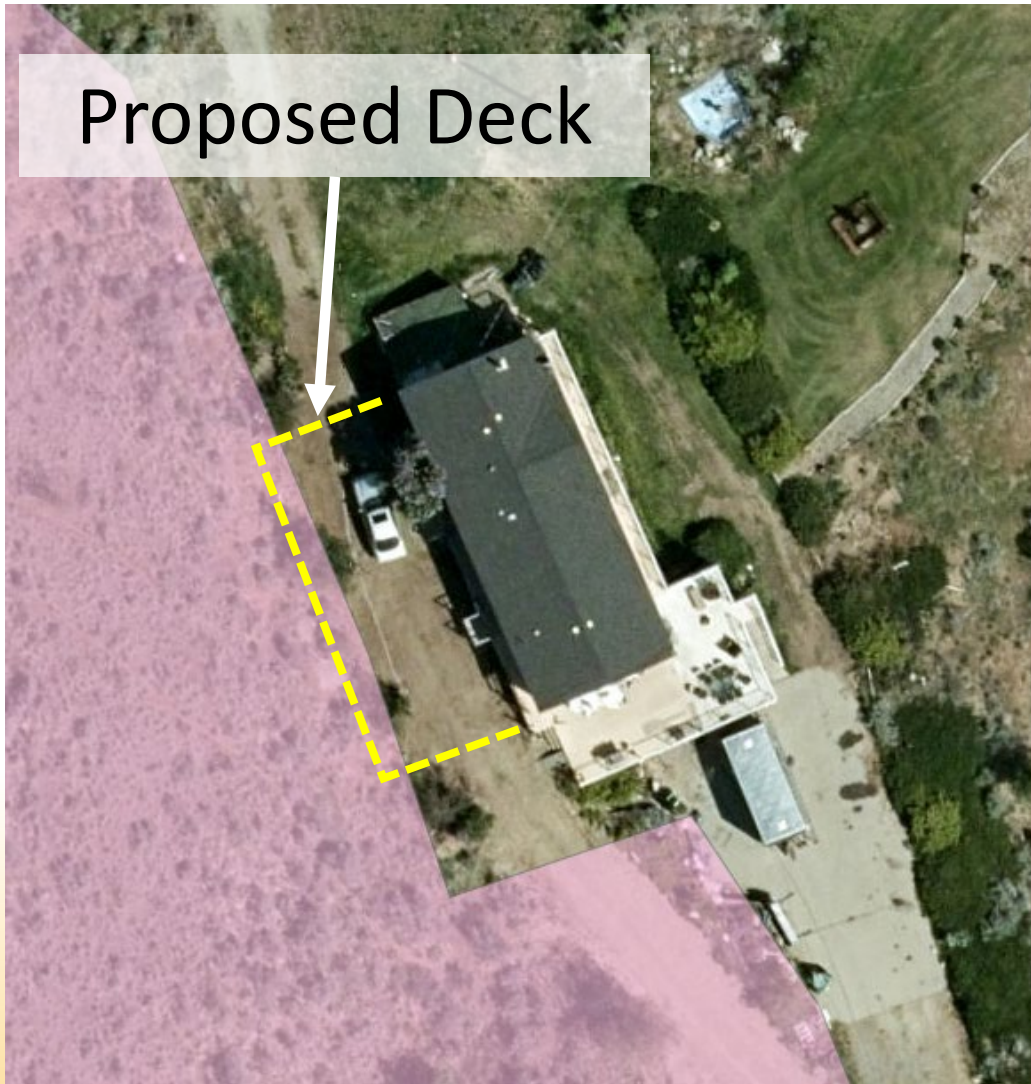
12-Month Check-in (2019)

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Issues:

- REA is poorly understood by QEPs and not being used as designed / intended.
- Mapping may have been applied to lands that do not comprise “high” & “very high” values.
- Emphasis on building permits has shifted focus of permits to a very granular level of the development process.
- Public concerns being expressed about new mapping and guidelines (e.g. Anarchist Mountain).

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DP Limitations:

- cannot prohibit a use or density allowed by zoning.
- cannot be denied, unless accompanied by steps on how to get to an approval (“it’s not no, it’s not yet”).
- unclear if infractions can be ticketed.
- post-approval monitoring cannot be required.
- performance securities = “cost of doing business”.
- professional reliance model / poorly drafted guidelines.
- absence / difficulty of measuring DP Area performance.

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Can ESDP issues be corrected?

- Can the REA be replaced with something more prescriptive (e.g. an “Environmental Survey” based on provincial riparian assessment form)?
- Is different mapping available (no clear solution)?
- Would hiring an in-house biologist to do assessments make a difference?
- Should the permit exemptions be revisited?

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RDOS Board Motion – September 3, 2020

1. that ESDPs shall only apply to subdivisions and rezonings;
2. that options be brought forward to make ESDPs more effective at the subdivision and rezoning stage; and
3. that ESDPs should not prevent the *FireSmarting* of properties.

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“Effectiveness Audit” (2022-2023)

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Federal and Provincial Response:

- Staff from Ministry of Land, Water and Resource Stewardship and federal Environment and Climate Change Canada (ECCC) request 12-month deferral;
- Offer to complete an “**effectiveness audit**” of ESDPs to demonstrate they are minimizing the impacts of development on the environment.

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Measuring Performance

- it is unknown if ESDPs are actually minimizing impacts of development on the environment;
- focus of ESDPs is building permits whereas successful environmental protection is understood to be preventing the fragmentation of sensitive lands (e.g. rezoning stage);
- anecdotal evidence suggests benefit of ESDP Area is in educating property owners of values on their property, but this is not the objective of the ESDP Area.

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Audit to answer the following questions:

- 1. Are ESDPs effective at mitigating impacts of development on sensitive habitats?*
- 2. Is the ESDP process having measureable benefits to the natural environment?*
- 3. Is the ESDP process reasonable from a cost / benefit perspective?*
- 4. What are ESDPs helpful for and what are they ineffective for?*
- 5. Are there other tools that can be effective?*

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Summary of Audit's Findings:

1. Unknown if ESDPs are effective.
2. There *may* be a measurable benefit.
3. Process inefficiencies limit evaluation of cost/benefit:
 - 31% of issued ESDPs may have been un-necessary.
4. ESDPs are “helpful” for guiding development in sensitive areas.
5. “additional regulatory bylaws may be an option ...”
(revisions to zoning bylaws suggested).

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Summary of Audit's Recommendations:

1. Undertake community engagement to solicit insights.
2. Obtain better mapping.
3. Hire more staff (e.g. biologist).
4. Improve application process:
 - i) introduce “an initial screening process” to determine if an ESDP is required (RDCO cited as an example).
5. Undertake increased enforcement.



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Other “Effectiveness Audit” Observations:

- *ESDPs are focused on managing impacts from building, however effective environmental conservation requires land use decisions to be made at the subdivision or community plan level to maintain contiguous, intact habitat areas ...*
- *mitigation efforts [at the DP level are] divided and unable to address the overarching risk factors to the environment posed by incremental development.*

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Points of Clarification

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Funding:

- Canada Wildlife Service (CWS) funding was provided to the South Okanagan Similkameen Conservation Program (SOSCP).
- RDOS Board also provided funding to SOSCP in the amount of \$10,000/year during this same period.
- *Significant* RDOS staff time & resources were spent on the 2014-17 ESDP Update.

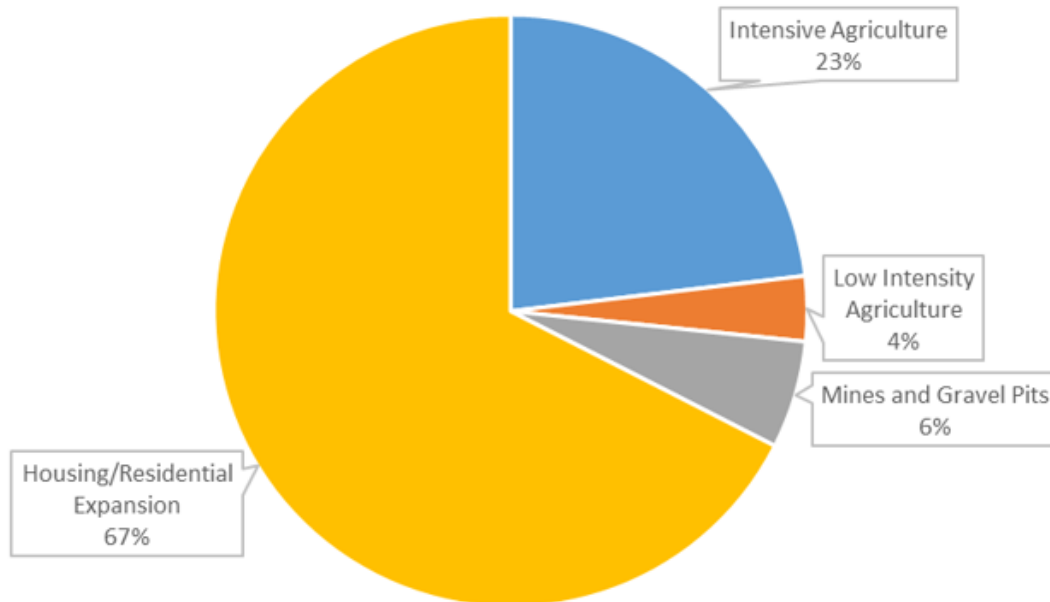
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Species At Risk Act:

- There is no provincial legislation providing direction to local governments regarding the *Species At Risk Act* (SARA).
- Local governments do not have obligations under SARA.
- Local governments are not expected to meet provincial obligations under SARA through the implementation of DP area(s).

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Conversion of Natural Habitats/CH 1041 Hectares lost (2004/5 – 2021)



Loss of critical habitat:
“Loss on private land is being authorized at the local government level.”

Over 75% of the loss (780 ha) can be attributed to the following ...

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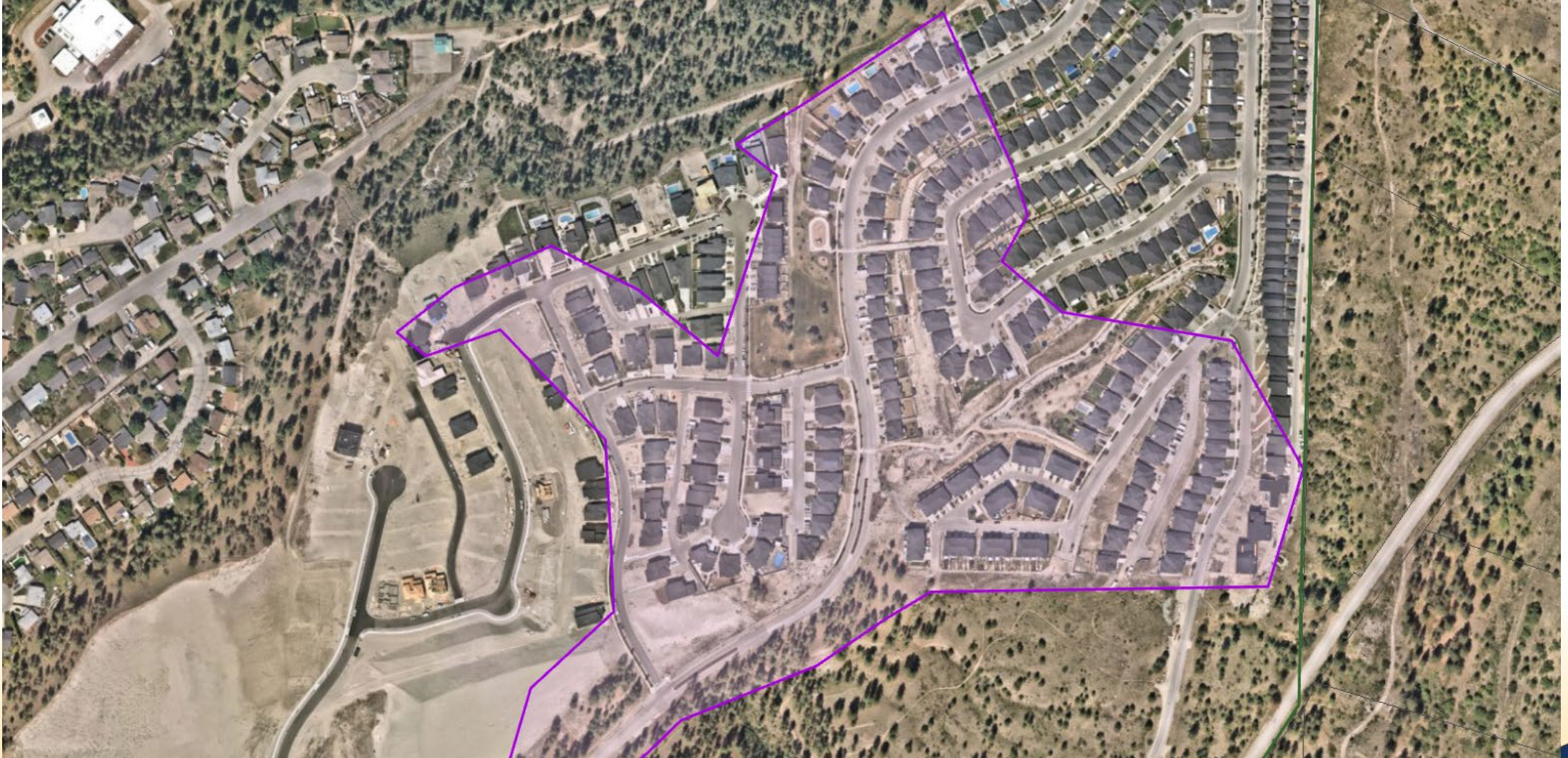
Conversion of Critical Habitat to Agriculture in the ALR – ESDP Not applicable

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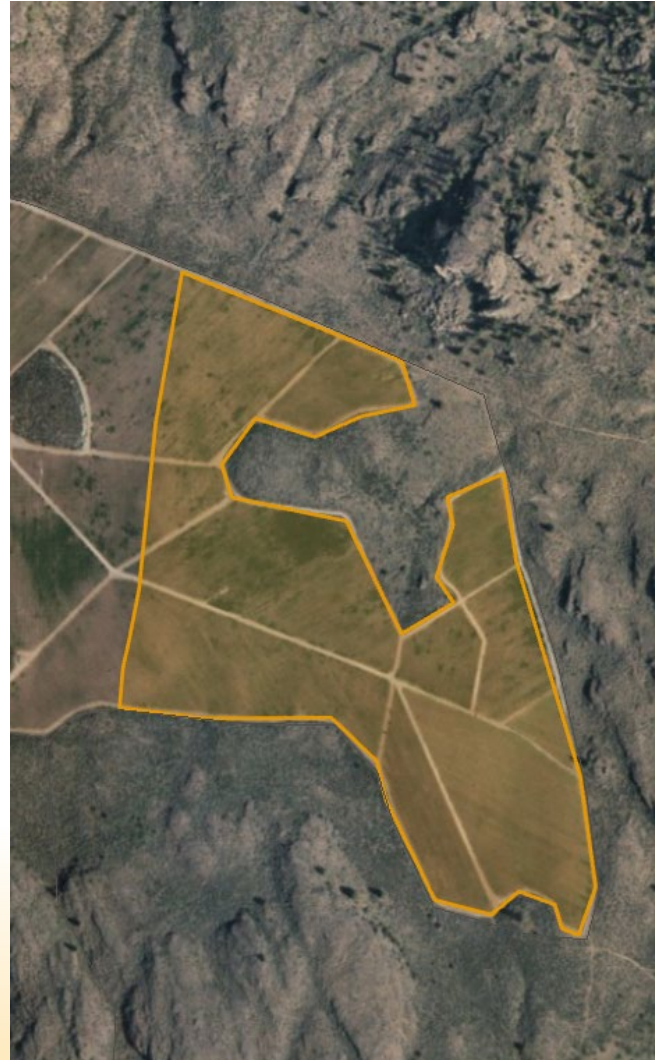
Conversion of Critical Habitat to Gravel Pit (Mines Permit) – ESDP Not applicable

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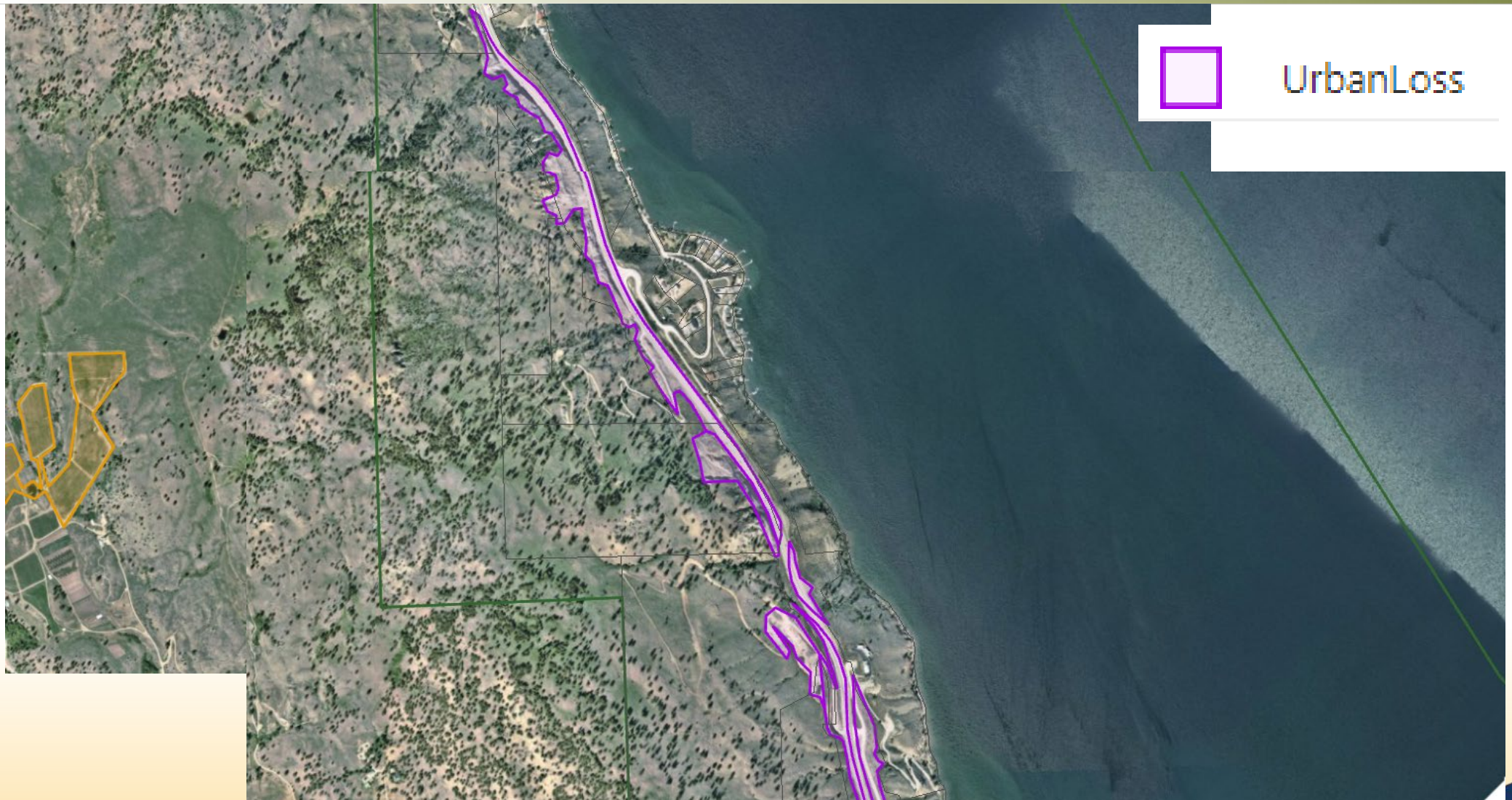
Conversion of Critical Habitat in a Municipality – ESDP Not applicable

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Conversion of Critical Habitat on Indian Reserve (IR) Land – ESDP Not applicable

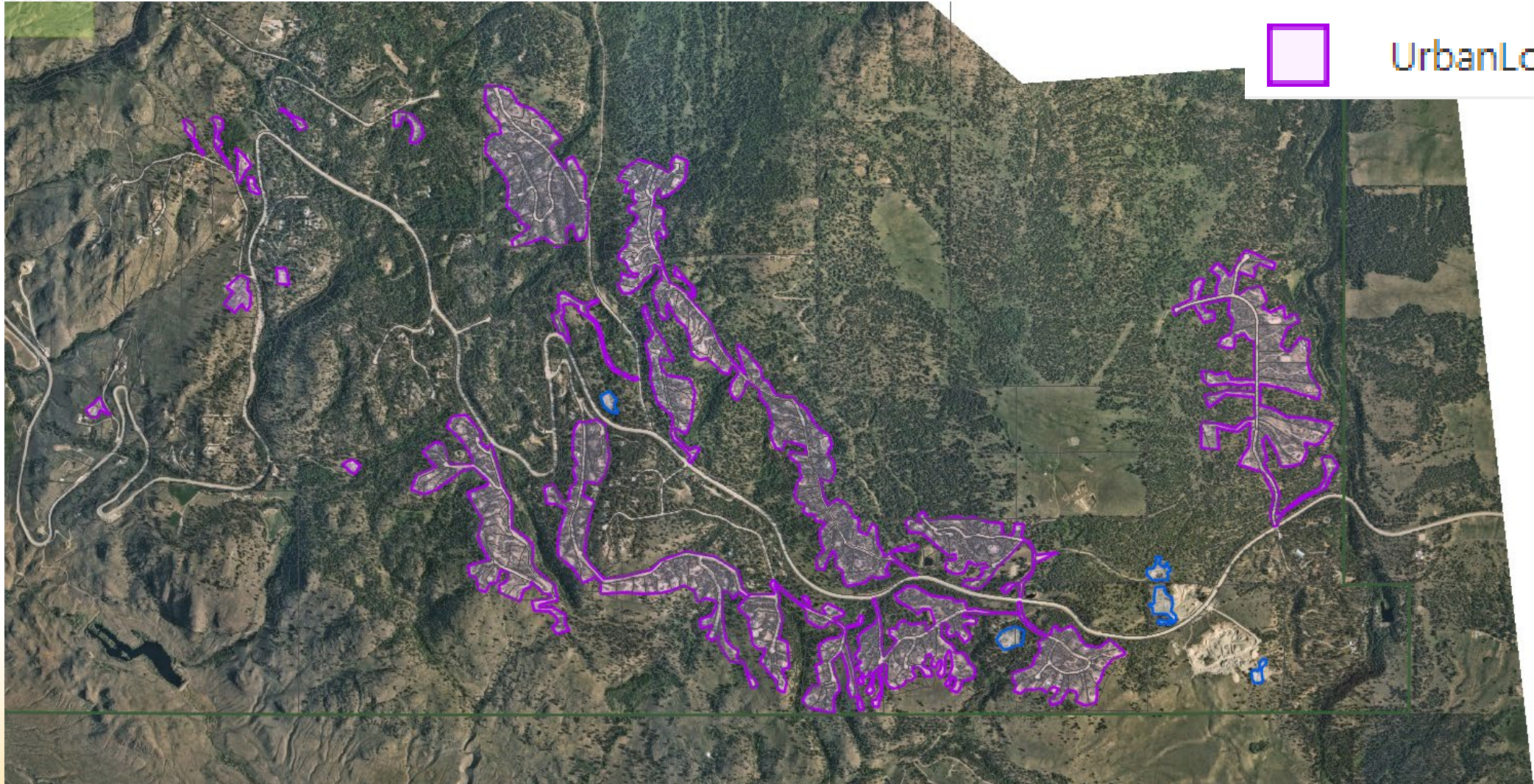
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Conversion of Critical Habitat to Highway Upgrades – ESDP Not applicable

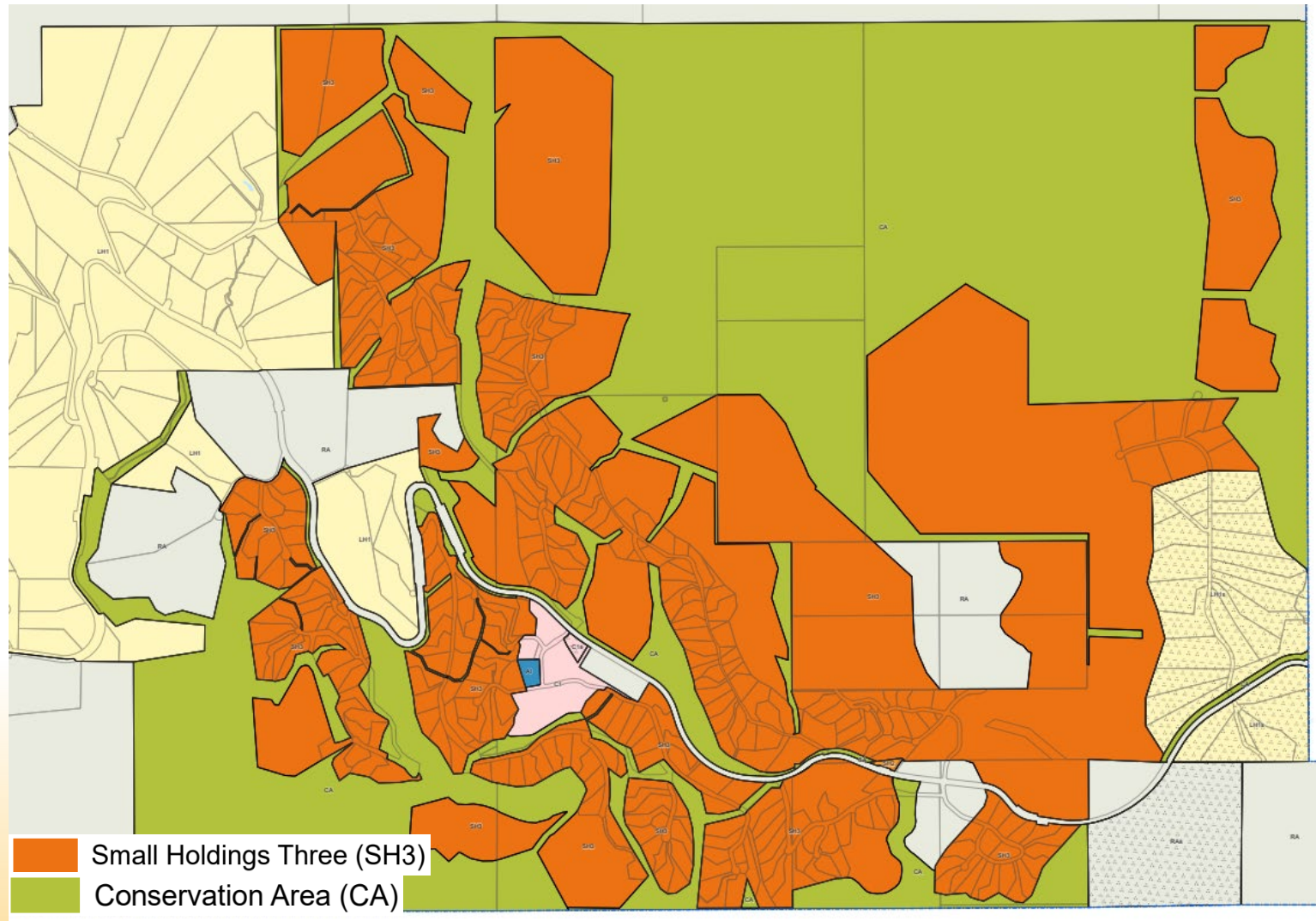
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 UrbanLoss



Conversion of Critical Habitat to Residential at “Anarchist Mountain”

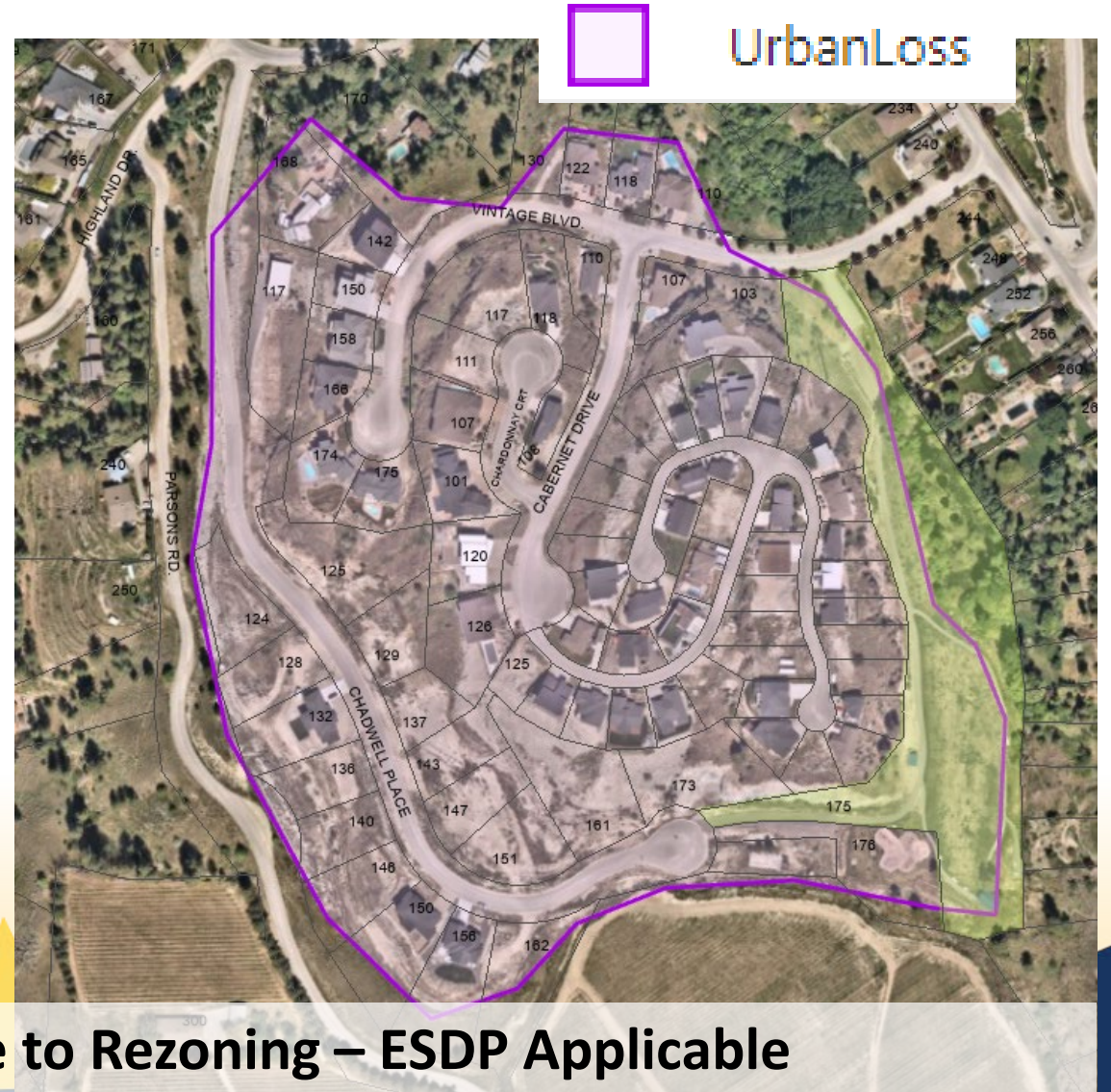
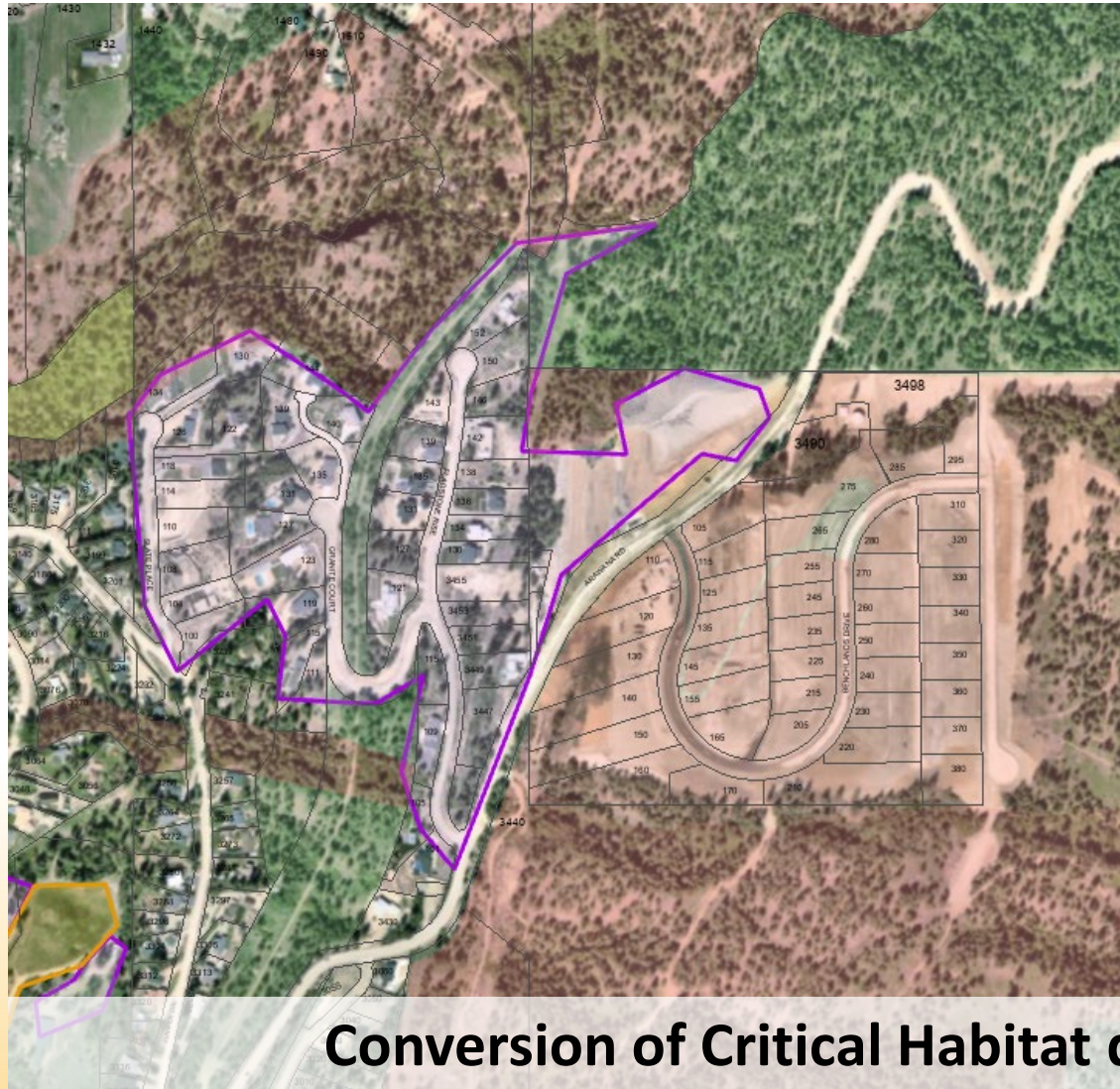
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Anarchist Mountain:

- Rezoned in 2004
- “Cluster Development”
- Parcels sizes reduced from 20 ha to 1 ha
- 1,200 ha (50% of land) set aside as Conservation Area (CA)

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Conversion of Critical Habitat due to Rezoning – ESDP Applicable



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Summary

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Summary:

- DPs have proven challenging to successfully implement and apply;
- Stantec's review has highlighted *significant* structural issues with the current ESDP Area designation:
 - Mapping Quality
 - Staff resources
 - Performance
 - Public education
 - Professional Reliance
 - Measurement
 - Enforcement
 - Monitoring
- Addressing Audit recommendations would constitute a major strategic project in 2024 (and beyond).