



Penticton Indian Band

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DECEMBER 14, 2023

REGIONAL DISTRICT of SOUTH OKANAGAN-SIMILKAMEEN

101 Martin St
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Via email: mpendergraft@rdos.bc.ca

Attention: Chair, Mark Pendergraft and RDOS Board

Re: Environmentally Sensitive Development Permit (ESDP) Bylaw Amendment

Snpink'tn (Penticton Indian Band) opposes the motion currently being brought forward to the RDOS Board to change the requirements for a Environmentally Sensitive Development Permits to only apply to subdivision and rezoning applications within the Environmentally Sensitive Development Permit Area. The RDOS is seeking to remove its only environmental bylaw from the vast majority of its operating area without a suitable replacement mechanism. This will mean that the RDOS Board will not have the necessary information or procedure to consider the environmental impacts of developments on these sensitive areas. Furthermore, in its decision making on other land use applications, RDOS will not be able to engage with *snpink'tn* in a meaningful way because of that lack of information. We see these amendments as moving away from the requirements under the United Nations Declaration on the Rights of Indigenous People as it does not provide the necessary information for the RDOS and *snpink'tn* to collaborate in meaningful decision making on projects that impact their *sqilx^w/syilx/s?uknaqinx* (Okanagan Nation) Title and Rights.

The *sqilx^w/syilx/s?uknaqinx* (Okanagan Nation) hold unextinguished *sqilx^w/syilx/s?uknaqinx* Title and Rights to the land and resources within our ancestral lands. The Environmentally Sensitive Development Permit Area is within the *snpink'tn*'s Territorial Area of Responsibility and as such where *snpink'tn* exercises *sqilx^w/syilx/s?uknaqinx* title, jurisdiction, rights, interests, and *snpink'tn* decision making and responsibility. *sqilx^w/syilx/s?uknaqinx* Title includes the *snpink'tn* right to proactively use and manage the resources. In *Tsilhqot'in*, the Supreme Court of Canada emphasizes the need to seek the consent of the title-holding Aboriginal group. The obligation to seek free, prior and informed consent is further required by the United Nations Declaration on the Rights of

Indigenous People (UNDRIP). Indigenous peoples have the right to participate in decision-making in matters which would affect their rights. UNDRIP requires that Indigenous peoples shall be consulted and cooperated with in good faith in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.

Development within the RDOS have a tremendous and, at times, unacceptable impact on the Title and Rights held by our people. Our lands and rights are being impacted through the decisions of the RDOS without any attempt at meaningful consultation and engagement. The Naramata Vista development, which we opposed, is a good example of the lack of RDOS environmental policy whereby environmentally sensitive lands and cultural spaces were thoughtlessly destroyed without our Free, Prior and Informed Consent (FPIC), and there are many other examples. These types of projects require scrutiny of their environmental and cultural impacts. We require information about the environmental and cultural impacts of the development in order to meaningfully engage in decision making with the RDOS.

The consideration of the the elimination of ESDPs for all projects other than rezoning and subdivision is a decision which requires meaningful engagement directly with snpink'tn. This decision cannot be made without meaningful consultation given it's impact snpink'tn interests and the obligations established under the BC Declaration on the Rights of Indigenous Peoples Act. We have not been adequately engaged with for the RDOS to make this decision.

The motion before the Board, if endorsed, will have unacceptable impacts on lands and resources which we rely on for our sustenance, culture and economy, and therefore would infringe our exercise of *sqilx^w/syilx/s?uknaqinx* rights and title, to this area. Therefore, we advise that we do not approve and are opposed to this motion.

While we acknowledge the ESDP is a flawed bylaw, this is the only tool that the RDOS has to protect sensitive environmental habitat. We understand the ESDP hasn't been effective because the RDOS has not developed an appropriate system to implement the permits, does require/legally enforce the implementation of the mitigation measures proposed by QEP's, has not allocated adequate resourcing to support the overall process. Limiting the application of this ESDP does not address these issues. The RDOS must be accountable to the environment and its obligations to meaningfully engage and seek the FPIC of snpink'tn.

Snpink'tn would welcome a dialogue with the RDOS to discuss how to improve environmental protections within the RDOS operating area, to build trust and work together to ensure for a sustainable future. This cannot start with reducing environmental protection measures. As stated above, snpink'tn does not consent to this amendment.

Lim Lemt,



Chief Greg Gabriel
snpink'tn Chief

CC:

Honourable Bruce Ralston
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Minister of Land, Water and Resource Stewardship
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From: Anne C
Sent: December 16, 2023 11:40 AM
To: Planning; Riley Gettens; Anne C
Subject: ESDP Review feedback

Some people who received this message don't often get email from acosentinebc@gmail.com. [Learn why this is important](#)

I recently received the RDOS email indicating many RDOS Directors want to change the Environmentally Sensitive Areas Permit Designations (ESPD) requirements within the Community Plans of all RDOS rural areas (Area A, C, D, E, F, H and I). The email indicated “the purpose of the OCP amendment is to remove land alteration and construction as development requiring an ESDP.”

I’m writing to indicate that I’m strongly opposed to this amendment.

The current OCP for my area, Area F, “requires that, where a proposed development affects land subject to an Environmentally Sensitive Development Permit Area, an Environmental Assessment (EA) be prepared by a Qualified Environmental Professional (QEP) in accordance with the policies outlined in Section 23.2, as well as relevant federal and provincial best management guidelines. [and] Requires that EA reports prepared by QEPs be undertaken in accordance with the Regional District’s Development Procedures Bylaw.” 16.1.2.3-4. I’m sure other RDOS area OCPs have the same or similar wording. I understand the proposed amendment will remove this requirement for private properties (but will continue to apply to subdivisions). Removing this requirement will remove a vital RDOS protection of conservation values on private property within rural areas.

This amendment will completely negate the “Natural environment and conservation” goals of the Area F OCP to “protect important sensitive ecosystems and biological diversity, including valuable habitat areas for wildlife and plant communities, the Regional District has implemented an Environmentally Sensitive Development Permit (ESDP) Area. These areas generally comprise privately held lands not in the Agricultural Land Reserve (ALR) that possess “high” and “very high” ecologically sensitive classifications as identified by the Keeping Nature in our Future: A Biodiversity Conservation Strategy for the South Okanagan-Similkameen (2012) prepared by South Okanagan Similkameen Conservation Program (SOSCP), and is described further in Section 23.2 of this Plan”.

I understand that assessing the effectiveness of the ESPD process is difficult, that enforcement has varied and follow-up monitoring has not been done. These problems speak to the need to substantially improve the ESPD process. Identifying these issues helps in rebuilding the ESPD process but does not support eliminating the ESPD requirement for private properties.

Area F residents supported the OCP and many residents specifically commented on and supported natural environment/conservation goals during the OCP consultation period. Those residents are excluded by the scheduling of the ESPD amendment hearing just two days before the Christmas weekend. A “public hearing” on December 21, 2023 does not meet the minimum standard for public consultation. Worse, scheduling a “public hearing” a few hours before Board third reading approval of the amendment is disgraceful.

Anne Cossentine

(Area F)