



# Regional Board Report

**TO:** Regional Board

**FROM:** Todd Cashin  
Director of Community Services

**DATE:** April 11, 2019

**SUBJECT:** Myra Canyon Adventure Park (DI-19-028)  
R. Schoenherr (owner) and Avalon Alliance Management Corp. (agent)  
The South 1/2 of Section 36, Township 29, ODYD - 4429 June Springs Road

**Voting Entitlement:** *Custom Vote – Electoral Areas and Kelowna Fringe Areas – 1 Director, 1 Vote*

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**Purpose:** To consider an existing outdoor recreational ropes course/zip line business.

## **Executive Summary:**

The owner/agent is currently in the process of developing a land use proposal for consideration by the Regional Board for the 129.5 ha (320 acre) subject property. As an alternative to leaving the property vacant during the planning process, the owner would like the existing outdoor recreational ropes/zip line business (Myra Canyon Adventure Park) to continue to operate during the upcoming 2019 season. These uses are not permitted in the Zoning Bylaw and were previously permitted by the Board under a Temporary Use Permit (TUP-13-03) for three years, with a subsequent renewal for a period of three years approved on April 14, 2016. The TUP has since expired as the lease between the owner and previous applicant was terminated. Since 2013, staff have regularly communicated that should the business wish to continue to operate upon expiry of the TUP, staff recommends a permanent remedy be accomplished via submission and approval of an Official Community Plan (OCP) and zoning amendment application.

The Regional District could pursue enforcement regarding contravention of permitted uses under Zoning Bylaw No. 871 through issuance of offence notices pursuant to Regional District of Central Okanagan Bylaw Notice Enforcement Bylaw or by injunction proceedings. As the owner intends to submit an OCP and zoning amendment application, the Board may wish to consider not pursuing active enforcement on the existing outdoor recreational ropes course/zip line business at this time.

**RECOMMENDATION:**

**THAT** the Regional District not pursue active enforcement on the existing outdoor recreational ropes course/zip line business uses (Myra Canyon Adventure Park) on a portion of the South 1/2 of Section 36, Township 29, ODYD – 4429 June Springs Road for a period of one year subject to the owner/agent adhering to the following conditions:

- On or before May 1, 2019 the owner will enter into a lease agreement with RDCO Parks Services for the KLO Creek Trail for a two year period, with renewal rights, through a lease in substantially the same form as attached to this report (Schedule A);
- Operate the business only between the months of May 2019 through to October 2019;
- Obtain a Business License on or before May 15, 2019;
- Provide confirmation from the Province that the Crown land access has been addressed on or before May 1, 2019;
- Adhere to the agreements and use permitted in the previous Temporary Use Permit (TUP-13-03) to allow an outdoor recreational ropes course/zip line business (Myra Canyon Adventure Park) (Schedule B);
- Adhere to all conditions contained within Development Permit Permit DP-13-10 (Schedule C);
- Provide confirmation from the Ministry of Transportation and Infrastructure that access has been addressed on or before May 1, 2019;
- Submit a summary to Planning staff of the Comprehensive Development Zone application process to date on or before July 1, 2019;
- Submit a summary to Planning staff of the Comprehensive Development Zone application process to date on or before September 1, 2019;
- Submit a summary to the Regional Board of the Comprehensive Development Zone application process to date on or before October 1, 2019 and present this information to the Regional Board for information at a subsequent meeting; and
- Submit a comprehensive Rezoning and OCP Amendment application with the intent of pursuing a Comprehensive Development Zone for the subject property on or before November 1, 2019.

Respectfully Submitted:



Todd Cashin  
Director of Community Services

Approved for Board's Consideration



Brian Reardon, CAO

*Prepared by: Danika Dudzik, Environmental Planner*

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**Implications of Recommendation:**

<b>Strategic Plan:</b>	Not pursuing active enforcement at this time meets the 2015-2018 Strategic Priorities Plan, Strategic Priority #3: Nurture Responsible Growth and Development.
<b>Policy:</b>	Not pursuing active enforcement at this time complies with: <ul style="list-style-type: none"><li>• Regional Growth Strategy Bylaw No. 1336, Policy No. 3.2.2.11 Promote land development patterns that support a diverse regional economy.</li><li>• South Slopes OCP Bylaw No. 1304 policies.</li></ul>
<b>Legal/Statutory Authority:</b>	Enforcement of bylaws under the <i>Local Government Act</i> or the <i>Local Government Bylaw Notice Enforcement Act</i> is discretionary.

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**Background:****History:**

Myra Canyon Adventure Park has been previously supported by the Regional Board on a portion of the subject property since 2013 under a Temporary Use Permit. During this time, the business has provided an outdoor based activity site for families with children of all ages as well as for leisure and corporate groups, including school classes.

The business utilizes an approximate 5.85 ha (14.2 acres) portion of the 129 ha (320 acre) property which includes a ropes and challenge course area, zip-lines, and a parking area. No permanent buildings are associated with the business and it operates with minimal negative environmental impact.

The TUP (TUP-13-03) was conditionally approved for three years by the Regional Board on April 22, 2013. A copy of the April 15, 2013, staff report is appended. In 2013, the intent of the original applicant was to obtain approval of the TUP and establish the business while continuing negotiations with the property owner for a long-term lease and/or purchase of the property. Since the initial application, Planning staff has communicated that a permanent remedy must be accomplished via submission of, and approval of an OCP and zoning amendment application.

In accordance with the *Local Government Act* Section 497, a TUP may be issued for up to three years with the option of one renewal for an additional three years. In 2016, the previous applicant requested a one-time renewal of the TUP for a period of three years to allow the continued operation of the business. This renewal was approved by the Regional Board on April 14, 2016 to allow the then-applicant to pursue an OCP and zoning amendment applications. A copy of the April 5, 2013, staff report is appended. In 2018 a land use amendment application was made however, it was withdrawn prior to referring it to external agencies and public process.

**Current Proposal:**

In January 2019, the owner engaged Avalon Alliance Management Corp. (Avalon), a professional planning and green design-build firm, to represent the owners' interests in the property. Avalon is currently in the process of developing a land use proposal for consideration

by the Board for the 129.5 ha (320 acres) subject property and intends to submit a comprehensive development (CD) zone application later this year. As an alternative to leaving the property vacant during the planning process, the owner would like Myra Canyon Adventure Park to continue to operate during the upcoming 2019 season. These uses are not permitted in Zoning Bylaw No. 871 and are no longer permitted under the TUP. As a future OCP and zoning amendment application is anticipated, the owner wishes to continue the outdoor recreational ropes course/zip line business in the meantime.

**KLO Creek Corridor:**

RDCO Parks Services has had ongoing interests in the KLO Creek corridor as a future trail and greenway connection between KLO Creek Regional Park, Scenic Canyon Regional Park and Myra-Bellevue Provincial Park. The KLO Creek trail corridor and greenway connectivity between these adjacent parks is supported in the South Slopes Official Community Plan. In 2013, the RDCO was presented with the opportunity to secure a trail access along KLO Creek, as part of the TUP requirements. The agreement entered into between the RDCO and owner in 2014 allowed the RDCO to fulfill this trail connection for multi-use recreation purposes between Regional Parks, City owned parks and Myra-Bellevue Provincial Park.

**South Slopes Official Community Plan Bylaw No. 1304:**

Policies applicable to the proposal include:

- Support tourism and related businesses in South Slopes that complement the existing parks and their permitted low-impact (non-motorized uses);
- Support the Strategic Plan of the Economic Development Commission and its three key objectives of business retention, business attraction, and business facilitation; and
- Provide for an overall connectivity of natural open space and parkland between the RDCO, City of Kelowna and Crown lands in the South Slopes area.

**Bylaw Enforcement Authority and Discretion:**

The Regional District is not compelled to enforce its bylaws. Legal counsel notes that the exercise of a local government's discretion to enforce its bylaws is not reviewable by a court unless it is exercised in bad faith. Case law supports a local government decision to withhold taking enforcement action where a bylaw is under review, as in the case of an application to amend the zoning/OCP.

**Site Context:**

The subject property is located within the South Slopes OCP and is affected by a number of Development Permit Areas (including Aquatic Ecosystem, Sensitive Terrestrial Ecosystem, Hillside, and Wildfire). A Development Permit (DP-13-10) was approved by the Manager of Planning on February 17, 2014 for Phase 1 activities for Myra Canyon Adventure Park.

**Additional Information:**

<b>Owner:</b>	Reimund Schoenherr
<b>Agent:</b>	Avalon Alliance Management Corp.
<b>Legal Description:</b>	South 1/2 of Section 36, Township 29, ODYD
<b>Address:</b>	4429 June Springs Road
<b>Lot Size:</b>	+/- 129.5 ha (320 acres)
<b>Zoning:</b>	RU1 Rural1
<b>OCP Designation:</b>	Rural Resource
<b>Sewage Disposal:</b>	Portable toilets
<b>Water Supply:</b>	Well
<b>Surrounding Uses:</b>	North: K.L.O. Creek Regional Park South: Myra - Bellevue Provincial Park East: Vacant Crown lands West: June Springs Road/Rural residential
<b>A.L.R.:</b>	Not within the A.L.R.
<b>Fire Protection Area:</b>	June Springs Fire Protection Area

**Conclusion:**

The previous applicant of the Myra Canyon Adventure Park operated the business in compliance with all conditions of TUP-13-03. It is expected that the new operator will continue operation of the business in a manner that complies with the previous TUP conditions. Should the operator fail to comply with the previous TUP conditions and the terms of Development Permit DP-13-10 or the owner/agent fail to adhere to all conditions outlined by the Regional Board, staff will report promptly to the Board which can consider whether to authorize enforcement proceedings and, if so, by which enforcement process available. Additionally, should the OCP and zoning amendment not be completed within the one-year period for suspending enforcement action, the issue will be returned to the Board for consideration of whether the suspension of enforcement should be extended or whether an enforcement process should be authorized.

**Alternative Recommendation:**

**THAT** the Regional District pursue active enforcement on the existing outdoor recreational ropes course/zip line business (Myra Canyon Adventure Park) on a portion of the South 1/2 of Section 36, Township 29, ODYD – 4429 June Springs Road.

**Considerations not applicable to this report:**

- *Financial Considerations*
- *External Implications*
- *Organizational Issues*

## Attachments:

Schedule 'A' RDCO Trail Access Lease

Schedule 'B' TUP-13-03

Schedule 'C' DP-13-10

April 15, 2013, staff report and attachments

April 5, 2016, staff report