



Regional Board Report

For the Public Hearing July 29, 2019

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: July 29, 2019

SUBJECT: Land Use Contract Amendment Bylaw No. 247-04
Zoning Amendment Bylaw No. 871-252 (Z19/01)
Central Okanagan East Electoral Area – Scotty Creek Subdivision

Purpose: To discharge Land Use Contract No. 247 and zone the subject properties as R1 Single Detached Housing, P1 Park and Open Space, or P2 Institutional and Assembly.

Executive Summary:

Land Use Contracts (LUC) are land-use regulatory tools, similar to site-specific zoning bylaws, enacted under legislation established in the 1970's. All LUC's in the Province of British Columbia will automatically be terminated on June 30, 2024, under the *Local Government Act*. The Regional District of Central Okanagan is moving forward with bylaws to discharge LUC's and apply the equivalent land use designation or zone to the parcels.

Of the nine LUC's that affect the RDCO, LUC No. 247 is the fifth to be presented to the Regional Board for discharge. Should this Community Services initiated application be successful, LUC No. 247 will be removed in its entirety from the subject properties and zoning will apply.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Todd Cashin'.

Todd Cashin
Director of Community Services

Approved for Board's Consideration

A handwritten signature in black ink, appearing to read 'Brian Reardon'.

Brian Reardon, CAO

Prepared by: Brittany Lange, Planner

Background:

Land Use Contracts (LUC) are land-use regulatory tools, similar to site-specific zoning bylaws, enacted under historical legislation in the 1970's. Properties located within LUC's are not governed by the Regional Districts Zoning Bylaw No. 871 or Joe Rich Rural Land Use Bylaw No. 1195.

The Province of British Columbia has amended the *Local Government Act* (LGA) so that LUC's in the Province will automatically be terminated on June 30, 2024. Prior to June 30, 2022, all local governments that have jurisdiction over land subject to a LUC must provide zoning. As per the October 9, 2014 staff report to the Regional Board (Land Use Contract Discharge Priority), the intent is for the Regional District to move forward with bylaws to discharge the LUC's and apply the equivalent land use designation or zone to the parcel(s).

Of the nine LUC's that affect the RDCO, LUC No. 247 is the fifth to be presented to the Regional Board for discharge. Should this Community Services initiated application be successful, LUC No. 247 will be removed in its entirety from the subject properties and zoning will apply.

Land Use Contract No. 247:

There are a total of 163 properties under LUC No. 247 including 160 private residential properties, 1 irrigation district water facility, 1 elementary school, and 1 park. LUC No. 247 was adopted in 1979, which allowed for the initial subdivision and development of the land to not more than eight-four (84) lots subject to minor deviations as approved by the Regional District and the Ministry of Transportation and Infrastructure.

LUC No. 247 was amended in April 1982 to allow for further subdivision of sixty five (65) lots and the construction of water wells and related pump houses' for Black Mountain Irrigation District (Bylaw No. LUCA-81-5). Furthermore, in January of 1985, LUC No. 247 was amended to permit an additional two-lot subdivision (Bylaw No. LUCA-84-12).

LUC No. 247 also required the landowner to enter into a restrictive covenant to prohibit development within the floodwaters of Scotty Creek as well as include park dedication to be held by the Regional District.

The following land uses, buildings, and structures are permitted and continue to be regulated under LUC No. 247:

- Single family residential;
- The keeping of not more than two (2) boarders or lodgers in each dwelling unit;
- One single family dwelling per lot; and,
- Buildings and structures which are accessory to one family dwelling.

Prior to the *Local Government Act* amendment, the Regional Board previously discharged LUC No. 247 from 1 private parcel and zoned to R1s at time of owner-initiated applications (RDCO Files: LUCA-247-1 / Z06-17).

Project Description:

Regional District staff is moving forward with bylaws to discharge LUC No. 247 and zone one parcel as P1 Park and Open Space, one parcel as P2 Institutional and Assembly, and the remaining 161 lots as R1 Single Detached Housing under Zoning Bylaw No. 871. The proposed zones would not allow for future subdivision or an increase in the number of dwelling units.

The proposed zones do allow for additional uses not currently permitted under the LUC; some examples include home based business and bed and breakfast accommodation. It is noted that all private parcels are each less than 9.0 acres in size; therefore, an accessory home use would not be permitted. Furthermore, as per RDCO Zoning Amendment Bylaw No. 871-243 currently in process, RDCO staff are recommending that secondary suites not be permitted in R1 zones.

It is noted that a number of parcels under LUC No. 247 are located adjacent to lands within the Agricultural Land Reserve (ALR) and zoned A1 Agriculture. Once zoned, Zoning Bylaw's Section 3.11 Setback and Buffering from ALR will apply at time of development as the R1 zone is considered a "R zone" (See attached). For example, Level 1 Buffer Requirements would become mandatory at time of a building permit (ie. replacing a home).

Additional Information:

Applicant: Regional District of Central Okanagan
Location: Adjacent to Scotty Creek Road, Old Vernon Road, and Sunset Ranch Golf Course and Developments

Legals:

- Lots 1-21, 25-81, Section 12, Township 23, ODYD, Plan 30525; Lots 1-15, 17-22, 24- 65, Section 12, Township 23, ODYD, Plan 33240; Lots A and B, Section 12, Township 23, ODYD, Plan 35211; Lots A and B, Section 12, Township 23, ODYD, Plan KAP46998; and, Lots 1-15 and 17, Section 12, Township 23, ODYD, Plan KAP48547 as shown on Schedule 'A'
- Lot C, Section 12, Township 23, ODYD, Plan 30526 as shown on Schedule 'C'
- Lot B, Section 12, Township 23, ODYD, Plan 30526 as shown on Schedule 'D'

Area of Land Affected: +/- 19.07 ha (47.12 acres)
Land Use Contract: Land Use Contract No. 247
OCP Designations: Residential (161 Parcels)
Park and Open Space (1 parcel)
Community Facilities (1 parcel)
Existing Use: Residential, Public Utilities, Elementary School, Park and Open Space
Surrounding Uses: Agriculture, Residential, Manufactured Home Park, Golf Course
A.L.R.: Not within the A.L.R.
Fire Protection: Within the Ellison Fire Protection Area

Site Context:

The properties are located in the Scotty Creek subdivision, within the Ellison Official Community Plan. Two properties along the eastern portion of Bulman Road near Scotty Creek are impacted by Sensitive Aquatic Development Permit Areas.

RDCO TECHNICAL COMMENTS (Presented at First Reading):

Regional Parks advise that the park and school site dedication and park development requirements under the Land Use Contract No. 247 - Clauses 6(iii) and 10(1) and 10(2) has been fulfilled. The proposed park site (Lot C, Sec. 12, Tp 23, Plan 30526, ODYD) was transferred to the Regional District in 1979 at the time of subdivision and is now known as Scotty Creek Park. The School District No. 23 school site had also been dedicated at time of subdivision and is now the Ellison Elementary School (Lot B, Sec. 12, Tp 23, Plan 30526, ODYD).

Parks Services supports the discharge of LUC No. 247 and proposed amendment bylaw under the Regional District's Zoning Bylaw No. 871 for Scotty Creek Park (P1- Parks and Open Space) and the Ellison Elementary School (P2 – Institutional and Assembly).

RDCO TECHNICAL COMMENTS (Subsequent to First Reading):

Agricultural Advisory Commission recommends conditional support for the proposed bylaw amendments. The conditions are:

- That the Regional District of Central Okanagan and the Ministry of Agriculture provides information to residents located adjacent to farm land on agricultural practices and buffering requirements.

Unaffected RDCO Departments include Engineering Services, Fire Services, and Inspection Services.

AGENCY REFERRALS (Presented at First Reading):

Ministry of Transportation and Infrastructure indicates that LUC No. 247 is outside of MOTI jurisdiction as it is beyond 800 metres of an intersection with a Controlled Access Highway (e.g. Highway 97). As such, their interests are unaffected.

Fortis B.C. notes that there are FortisBC Inc. (Electric) ("FBC(E)") primary distribution facilities within the Ellison neighbourhood along public roads and lanes servicing the affected properties; however, FBE(E) has no concerns with this proposal.

Black Mountain Irrigation District indicates that they are aware of their public utilities water facility located at Lot 10, Plan KAP30525, Sec 12, Township 23, ODYD which falls under LUC No. 247. BMID staff has no issues regarding the discharge of LUC No. 247 and understand the new zone will not impact the operation of supplying water to the area.

School District No. 23 notes that they have no concerns with the proposal at this time.

AGENCY REFERRALS (Subsequent to First Reading):

Interior Health Authority has concerns regarding the long term sustainability of lots less than 700m² needing to be independent for servicing, particularly with the addition of a secondary suite. For existing lots with onsite sewage disposal systems looking to add a secondary suite, it is recommended that the applicant retain the services of an Authorized Person (AP) to provide documentation to support that the proposal will not conflict with the existing on-site sewage disposal system.

An increase in daily design flow necessitates an “upgrade” to the system meaning that it must meet all current regulations and standards. Furthermore, it is recommended that the applicant provides evidence that there is adequate reserve area for a type 1 system on the lot prior to allowing the addition of a secondary suite. Alternatively, connection to community sewer should be considered as a long term approach to sustainability in the Scotty Creek subdivision.

The Ministry of Agriculture supports the proposed bylaw amendments and the provisions of Bylaw No. 871 regarding buffering requirements. Furthermore, Ministry staff suggests that RDCO staff include a strategy to communicate with potential residents located adjacent to parcels designated for farming to educate/inform of the *Farm Practices Protection Act* as well as normal farm practices. For example, there are many activities associated with the business of farming that may generate noise, dust, odours, and other disturbances. These activities may potentially create nuisance complaints and land use conflict if not adequately addressed.

Unaffected Agencies include the Agricultural Land Commission, Ministry of Forests, Lands, Natural Resource Operations, and Rural Development, Ministry of Municipal Affairs and Housing, Telus, B.C. Hydro, Shaw Cable, Okanagan Indian Band, Westbank First Nation, and the City of Kelowna.

External Implications:

Newspaper notices advertising the Public Hearing and proposed amendments were printed in the Capital News (two consecutive days), the Peachland View and the Vernon Morning Star. In accordance with the *Local Government Act*, since more than 10 properties owned by 10 different people is involved with the proposed bylaw amendments the 100 metre notification to surrounding property owners is not required.

For housekeeping amendments (Regional District initiated), Planning Service’s notification procedures exceed *Local Government Act* requirements by advising owners of the site specific properties referenced in the bylaw amendments via regular mail. Furthermore, Public Hearing Notices were delivered to all registered property owners. A total of 167 copies were mailed on July 9, 2019.

To date, no letters of opposition have been received.

Conclusion:

Should the Regional Board close the Public Hearing, the application will come forward with a separate report for Board consideration of further readings to the bylaw amendments.

Attachment(s):

- LUC Amendment Bylaw No. 247-04
- Zoning Amendment Bylaw No. 871-252
- Orthophoto
- R1 Single Detached Housing, P1 Park and Open Space, and P2 Institutional and Assembly Zones
- Section 3.11 Setback and Buffering from the ALR
- July 3, 2019 Letter from Interior Health
- July 4, 2019 Letter from the Ministry of Agriculture