



Regional Board Report

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: April 27, 2019

SUBJECT: OCP Amendment Bylaw No. 1304-02 & Zoning Amendment Bylaw No. 871-258
Application Z19/06 (R. Schoenherr (owner) c/o G. Fedoriuk (agent))
4429 June Springs Road
Central Okanagan East Electoral Area

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

Purpose: To consider an amendment to the OCP designation on a portion of the subject property from Rural Resource to Parks and Natural Open Space and the zone from RU1 Rural 1 to CL8 Conservation Lands, P1 Park and Open Space, and F1 Forest Resource, and to amend regulations in Zoning Bylaw No. 871 to permit the existing outdoor recreational ropes course and zipline business.

Executive Summary:

In accordance with the bylaw amendments, the applicant intends to continue the existing outdoor recreational ropes course/zip line business known as Myra Canyon Adventure Park at the subject property. This use is not permitted in Zoning Bylaw No. 871 and was 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. Since the initial application, Planning staff has communicated that a permanent remedy must be accomplished through submission of an OCP and zoning amendment application and approval of the bylaw amendments.

In the event that the proposal is not approved by the Regional Board, the land use will continue as permitted under the RU1 Rural 1 zone. As the current use is not permitted, the operation will be terminated.

To date, no opposition has been received from affected agencies or neighbouring property owners regarding the application. Any correspondence received from the public will be provided to the Board as part of a future public hearing report.

RECOMMENDATION #1:

THAT OCP Amendment Bylaw No. 1304-02, for R. Schoenherr (owner), located at 4429 June Springs Road be given first reading.

RECOMMENDATION #2:

THAT Zoning Amendment Bylaw No. 871-258 (application Z19/06) be given first reading;

AND FURTHER THAT scheduling of a Public Hearing be withheld pending:

- Receipt of comments from Ministry of Forests, Lands, Natural Resource Operations and Rural Development (Resource Management Branch);
- Receipt of comments from Interior Health Authority; and
- Receipt of confirmation from the owner that the public access over the KLO creek trail will be maintained.

Respectfully Submitted:



Todd Cashin
Director of Community Services

Approved for Board's Consideration



Brian Reardon, CAO

Prepared by: Danika Dudzik, Senior Planner

Implications of Recommendation:

Strategic Plan:	Granting first reading to the amendment bylaws achieves the Regional Board Strategic Priorities 2019-2022 with respect to "Economic Development" and "Environment".
Policy:	Granting first reading to the amendment bylaws complies with: <ul style="list-style-type: none">• Regional Growth Strategy Bylaw No. 1336, and• South Slopes OCP Bylaw No. 1304 policies.
Legal/Statutory Authority:	Granting first reading to the amendment bylaws is in compliance with <i>Local Government Act</i> , Sections 472 and 479.

Background:**Current:**

The subject property is bisected by KLO Creek and the corridor surrounding the creek has historically been utilized for recreational purposes. The majority of the 129 ha (320 acre) parcel remains in a natural state with the exception of the existing outdoor recreational ropes course and zip line business known as Myra Canyon Adventure Park. The operation includes ropes and challenge course areas, zip lines, and parking area which utilizes an approximate 5.85 ha (14.2 acres) area. Through the amendment applications, the applicant intends to continue the

use which is not currently permitted in the Zoning Bylaw and historically permitted under a Temporary Use Permit.

The subject property is currently zoned RU1 Rural 1, this zone is intended to accommodate rural and agricultural uses on parcels that are 30 hectares or greater and located outside the Land Reserve and allows for a variety of permitted uses.

The existing land use designation in the South Slopes Official Community Plan (OCP) is Rural Resource, intended for privately owned large rural lots with minimal services. Private lands within this designation are intended to support resource industries such as cattle range, agriculture, timber harvest and gravel extraction as well as outdoor recreation on large parcels (30 ha or larger). Further, the OCP indicates that private lands within this designation have environmental constraints to the provision of services such as community water and roads. In order to minimize road access and to protect resource and environmental values, large parcel sizes are encouraged (30 ha or larger).

History:

Myra Canyon Adventure Park has been previously supported by the Regional Board on a portion of the subject property under a Temporary Use Permit and upon expiry of the TUP, a Board resolution to not pursue active enforcement on the operation subject to various conditions. One of these conditions was the preparation and submission of an OCP and zoning amendment application.

The business provides an outdoor based activity site for families with children of all ages as well as for leisure and corporate groups, including school classes. Currently, Myra Canyon Adventure Park 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 Temporary Use Permit was conditionally approved for three years by the Regional Board on April 22, 2013. 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 both 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. In 2018 a land use amendment application was made however, it was withdrawn prior to referring it to external agencies and public process.

On April 11, 2019 the Regional Board was informed that the owner had engaged with a consultant to develop a land use proposal for consideration by the Board and intended to submit a comprehensive development zone application later in the year. As an alternative to leaving the property vacant during the planning process, the owner wanted Myra Canyon Adventure Park to continue during the 2019 season, under a new operator. The Regional Board considered the information and decided not to pursue active enforcement on the existing outdoor recreational

ropes course/zip line business for a period of one year subject to the owner/agent adhering to various conditions.

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.

Subsequent to the Board meeting on April 11, 2019, Planning staff were advised that the consultant was no longer involved in the planning process. Since this time, the owner engaged Greg Fedoriuk to represent the owners' interests in the property. Mr. Fedoriuk is the current operator of Myra Canyon Adventure Park and has continued operation of the business in a manner that complies with the previous TUP conditions.

Proposal:

1. To amend the Official Community Plan future land use designation on a portion of the subject property from Rural Resource to Parks and Natural Open Space;
2. To rezone the site from RU1 Rural 1 to CL8 Conservation Lands, P1 Park and Open Space, and F1 Forest Resource;
3. To amend the Permitted Uses Table for the CL8 Conservation Lands zone, Section 5.3.1 by adding a new subsection 5.3.1.10 – On part of South ½ of Section 36, Township 29, ODYD the following additional use is permitted: Adventure Eco-Tourism; and
4. To amend Definitions – Part 15 by adding the following definition: Adventure Eco-Tourism.

In accordance with the bylaw amendments, the applicant intends to continue the existing outdoor recreational ropes course/zip line business, with the ability to expand; offering additional passive recreational activities to the community and tourism sector.

Site Context:

The subject property is located within the South Slopes Official Community Plan. The surrounding land use is varied as it borders directly with Myra-Bellevue Provincial Park, vacant Crown lands, agriculture, and K.L.O. Creek Regional Park. The portion of the subject property which contains Myra Canyon Adventure Park is accessed through a Crown land parcel to the west. The owner has obtained a Commercial Access Permit from the Ministry of Transportation and Infrastructure and has valid Crown land license to access the subject property through the Crown land parcel.

Myra-Bellevue Protected Area was established on April 18, 2001 as part of the Okanagan-Shuswap Land and Resource Management Plan. In May of 2004, the Protected Area was reclassified as a Provincial Park. The area conserves and protects unique natural features, ecosystems, and wildlife. Myra-Bellevue Provincial Park was established to provide increased representation of the North Okanagan Basin and North Okanagan Highlands by capturing the full elevational range from the outskirts of Kelowna eastward to the crest of the mountains.

Under the OCP, the property 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 on February 17, 2014 for land disturbance associated with the existing Myra Canyon Adventure Park development which included:

- A 50 elements tree ropes course/20 element kinder course;

- Two zip lines, stabilization of existing trails/walking trails;
- Installation of four 4 meter high utility poles;
- Resurfacing and realignment of road access/grading and resurfacing of parking areas;
- Marsh wetland establishment/draining and infill of the dugout pond;
- Placement of a steel shipping container as the guest center; and
- The provision of 5 portable toilets that are serviced on a weekly and “as needed” basis.

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, and Myra-Bellevue Provincial Park which was actively used for recreation.

When the TUP expired, the lease for the trail connection expired. Last year, as the owner/agent was in the process of developing a land use proposal for consideration by the Regional Board and as an alternative to leaving the property vacant during the planning process, there was desire for Myra Canyon Adventure Park to continue to operate. As such, the Board agreed to not pursue active enforcement on the existing outdoor recreational ropes course/zip line business uses subject to the owner adhering various conditions. One of these conditions was that the owner would enter into a lease agreement for a two year period with RDCO Parks Services for the KLO Creek trail.

Additional Information:

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

Regional Board Strategic Priorities 2019-2022

RDCO's strategic priorities, developed by the Regional Board, speak to important goals, services and needs on which the Board wishes to focus the organization's attention and resources. Economic Development and Environment have been identified as priorities:

- We will support economic development through the efforts of the Central Okanagan Economic Development Commission (COEDC) and its partners to identify new and emerging opportunities on which to build the future prosperity of our community.
- The Economic Development Strategic Plan 2020-2025 of COEDC identifies various strategic pillars including growing sustainably and competing globally.
- We will initiate and support efforts to reduce our environmental footprint, adapt to climate change and connect with nature.

Regional Growth Strategy Bylaw No. 1336

Our Land goal is to manage the land base effectively to protect natural resources and limit urban sprawl.

Policies Include:

- Support logical and sequential growth patterns that minimize urban encroachment into rural areas. (Policy No. 1)
- Support the protection of the rural areas that offer a rural lifestyle choice. (Policy No. 3)
- Ensure there is an appropriate supply of land used for economic opportunities, public facilities and infrastructure and protection of natural environment for the region's projected population growth. (Policy No. 13)

Our Economy goal is to develop and enhance a positive business environment in the region to achieve a dynamic, resilient and sustainable economy.

Policies Include:

- Encourage and support related economic development initiatives that address the needs and challenges in the Region. (Policy No. 2)
- Support effectively managing and protecting the integrity of the Region's critical assets such as the lakes, natural environment and agricultural lands that promote attraction of employment and investment. (Policy No. 9)
- Promote land development patterns that support a diverse regional economy. (Policy No. 11)

Our Water Resources goal is to manage and protect water resources.

Policies Include:

- Consider water resources in land use planning decisions. (Policy No. 1)
- Utilize best management practices to protect and manage water resources, groundwater and surface water, through integrated watershed planning to improve water quality, and adequate supply for the Region. (Policy No. 4)

Our Health goal is to contribute to the improvement of community health, safety and social well-being.

Policies Include:

- Support active transportation initiatives of the regional partners. (Policy No. 3)
- Promote community health and safety through investments in education, recreation, health, community development, social support, civic design, environmental design, maintenance and economic development. (Policy No. 5)

Our Ecosystems goal is to be responsible stewards of natural ecosystems to protect, enhance and restore biodiversity in the region.

Policies Include:

- Manage growth to minimize disturbance to habitat, watershed and natural drainage areas and systems. (Policy No. 3)
- Encourage a mix of parkland and open space that protect regionally significant ecosystems, and natural and cultural attributes. (Policy No. 5)
- Protect natural environments, parks and water systems, as these systems are essential to the quality of life in the Okanagan that support active and healthy lifestyles. (Policy No. 7)

South Slopes Official Community Plan Bylaw No. 1304:

Various objectives and policies in the South Slopes OCP address a core principle for this unique area, which is to, retain protect and enhance the current rural character. The OCP supports tourism and related businesses in the South Slopes that complement the existing parks and their permitted low-impact uses, supports the Strategic Plan of the Economic Development Commission, identifies the importance of an overall connectivity of natural open space, linear parks and trails, and includes policy to plan for and protect wildlife corridors, rare and endangered ecosystem communities and species, important fish or wildlife resources and ecosystem connectivity.

Chapter 7 - Commercial Uses, Working Lands and Economic Development, outlines that the vast majority of private lands within the OCP area are used for parks protection/recreation, and rural resource extraction. The objectives and policies support the existing rural character of these areas with limited residential, commercial and industrial development.

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. (Policy 3)
- Support the Strategic Plan of the Economic Development Commission. (Policy 4)

Chapter 10 - Community Facilities, Parks, Recreation and Heritage, outlines South Slopes is a large geographic area with 45% of the land area held as Provincial parks that were established to protect the unique ecosystems, habitats and scenic Okanagan Lake views. Community facilities, recreation and heritage sites in South Slopes are located within the provincial and regional parks in this area. One of the key areas of interest for improving the connectivity between RDCO, Provincial and City of Kelowna parks include KLO Creek.

Regional Parks provide opportunities for public recreation, interpretation and enjoyment of the natural and cultural landscape, protect and preserve ecologically significant ecosystems, natural habitats and features and provide wildlife habitat and corridors. There is one regional park located within the South Slopes OCP area and three regional parks located adjacent to the South Slopes OCP area.

The OCP identifies long term planning for future parkland acquisitions include securing lands to complement the existing system of regional parks, protection of regionally significant natural and human heritage park areas, and to complete recreational corridor linkages with existing parks, linear greenways, trails, natural areas, and surrounding Crown lands.

Policies applicable to the proposal include:

- Assess a range of tools for natural open space and conservation area management, including covenants, land trusts, purchase by conservation organizations and regional park acquisition. (Policy 5)
- Provide for an overall connectivity of natural open space and parkland between Regional District, Provincial, City of Kelowna and Crown lands in the South Slopes area.(Policy 11)

RDCO TECHNICAL COMMENTS:

Parks Services staff indicate support for the zoning amendment as the Parks Department has ongoing recreational interests in the KLO Creek corridor for the park and trail connectivity to KLO Creek Regional Park, Scenic Canyon Regional Park, and Myra Bellevue Provincial Park. The KLO Creek trail corridor and trail connectivity between RDCO, City of Kelowna and Crown lands is supported in the South Slopes OCP Bylaw No. 1304.

In 2019, RDCO Parks Services entered into an interim two year land lease agreement with the owner of the parcel for public access over the KLO Creek trail. The existing lease agreement, due to expire on April 30, 2021, contains a renewal option for an additional two year term. It is recommended that the existing signed land lease agreement for the KLO Creek trail through the subject property remain in effect and as a condition of approval for the bylaw amendments.

Environmental Advisory Commission recommends that the application be supported as presented.

Planning Services staff indicates the existing use (outdoor recreational ropes course/zip line business) is not permitted in Zoning Bylaw No. 871 and was 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. Since the initial TUP application, Planning staff has communicated that a permanent remedy must be accomplished through submission of an OCP and zoning amendment application and approval of the bylaw amendments.

In 2013, a Development Permit (DP) was conditionally approved to address the environmental and hillside impacts associated with the existing operation (RDCO File: DP-13-10). Since the original DP approval, all activities have been completed with the exception of the condition to register a Section 215 geotechnical covenant for the activities covered under Phase 2. This condition was waived by the Director of Community Services in 2017 as the Phase 2 proposal of zip lines within the canyon was abandoned by the property owner.

Under the DP, the marsh wetland / dugout restoration was completed in 2017, with professional oversight and monitoring by Ecora Resource Group Ltd. 10% of the required maintenance bond is currently being held by the Regional District for a minimum of two years (growing seasons) to ensure that the required mitigation has been fully implemented and demonstrated to function ecologically or as designed. The maintenance bond may be held for longer periods if, throughout the initial 2-year period the persistent failure of the works is documented.

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

AGENCY REFERRAL COMMENTS:

Ministry of Transportation and Infrastructure staff indicates the subject property is beyond Ministry jurisdiction. Applications located within 800 metres from an intersection with a Controlled Access Highway require Ministry of Transportation & Infrastructure approval.

The Ministry has issued a Commercial Access Permit for the operation of Myra Canyon Adventure Park. Subsequent to rezoning, should additional uses be added to the operation, the permit will require an amendment.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development (Regional Lands Branch) staff advises:

- Recreation Sites and Trails BC has no concerns with the proposed bylaw amendments.
- The subject property has a domestic water licence attached to it – C112138. It is the responsibility of the landowner to apportion the water licence should the use change or subject to a future subdivision of the land.
- The subject area is within Ungulate Winter Range GAR Order UWR u-8-001 and Mule Deer Planning Cells, the Central Okanagan South Slopes TEM Sensitive Ecosystem, and Grizzly Bear Resource Management Zones.
- The subject area is within the Provincial Forest of the Okanagan Timber Supply Area (TSA). Any area that will no longer be managed for timber harvesting within the timber harvesting land base (THLB) may require a deletion from the provincial forest.
- The ILRR report shows constraints with two Non-Legal Old Growth Management Areas (OGMAs) (LRDW/ILRR ID 37725 and 37726, also described as KAM_TOK_928 and KAM_TOK_929). However, in iMap, it appears the proposed area overlaps with two OGMA KAM_TOK_927 and KAM_TOK_928. If any development or timber removal is planned within these OGMA areas, the Ministry must be notified.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development (Archaeology Branch) staff indicates according to Provincial records, there are no known archaeological sites recorded on the subject property. Further, archaeological potential modelling for the area does not indicate a high potential for previously unidentified archaeological sites to be found on the subject property.

The Archaeology Branch does not identify a need for archaeological study or Provincial heritage permit(s) at this time. Archaeological sites are protected under the *Heritage Conservation Act* and must not be damaged or altered without a Provincial heritage permit issued by the Archaeology Branch. This protection applies even when archaeological sites are previously unidentified or disturbed. If archaeological material is encountered at any time, the Archaeology Branch must be contacted for direction.

City of Kelowna staff indicates that the City of Kelowna owns a parcel adjacent to the subject property; directly north of Myra Canyon Adventure Park. The City property is not park (aside from the land along KLO Creek that is maintained by the RDCO) and does not have sanctioned trails connecting to the existing outdoor recreational ropes course/zipline business. Additionally, there will be cattle on the property for a portion of the year, through a prescribed grazing program to reduce wildfire fuel hazard.

The cattle will be placed there annually once fuel mitigation is complete this winter and is funded through the Forest Enhance Society of BC (FESBC), and led by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

City staff advises no objection to the proposed use of the property subject to the following:

- Establish signage at the north property boundary that notifies visitors that this land is “Not park property – No sanctioned trails are beyond this point.”
- Establish a wire fence at the property’s north property line along 4295 Field Road from the western corner to the edge of the KLO Creek ravine. The construction of fences in ungulate winter ranges will follow recommended designs to ensure safe passage for deer and smaller critters that need to move under the lower wire. This usually includes barbless wires for the upper and lower wires as well increased height of the lower strand. In areas of known deer migration routes high visibility strips may also be attached to reduce risk of injury.

Fortis BC staff indicated there are primary distribution facilities along June Springs Road and within the boundary of the subject property. All costs and land right requirements associated with changes to the existing servicing are the responsibility of the applicant.

For any changes to the existing service, the applicant must contact a FortisBC Inc (Electric) designer for more details regarding design, servicing solutions, and land right requirements.

Unaffected Agencies include BC Hydro, Shaw Cable, Westbank First Nation, and Telus.

External Implications:

In accordance with Development Applications Procedures Bylaw No. 944, two Notice of Application Signs have been posted. Any correspondence received from the public will be provided to the Board as part of a future public hearing report.

Alternative Recommendations:

- #1 THAT OCP Amendment Bylaw No. 1304-02 not be given first reading.
- #2 THAT Zoning Amendment Bylaw No. 871-258 not be given first reading.

Considerations not applicable to this report:

- *General*
- *Financial Considerations*
- *Organizational Issues*

Attachment(s):

- Bylaw Amendment No. 1304-02
- Bylaw Amendment No. 871-258
- Orthophoto
- Myra Canyon Adventure Park Site Plan
- Zoning Bylaw No. 871, RU1 Rural 1 & CL8 Conservation Lands & P1 Park and Open Space & F1 Forest Resource