



Regional Board Report

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: May 25, 2020

SUBJECT: Development Permit Application (DP-20-02)
Barbara Gordon (owner) c/o Darryl Arsenault (agent)
2677 Westside Road N – Central Okanagan West Electoral Area

Voting Entitlement: *Custom Vote – Electoral Areas, City of West Kelowna, City of Kelowna – 1 Director, 1 Vote*

Purpose: To consider the issuance of a Development Permit for works associated with the removal of unauthorized fill placed on Crown land along the foreshore of Okanagan Lake and naturalization of the foreshore.

Executive Summary:

The applicant is attempting to rectify the current non-compliance (absence of tenure) with occupation of Crown Land relating to the unauthorized placement of fill along the foreshore of Okanagan Lake. This land disturbance has a lengthy history and involvement with various government agencies. Under recent direction from the Province, the owner must remove the unauthorized fill. As works will be conducted in Sensitive Aquatic and Terrestrial Development Permit areas under the OCP, a Development Permit application is required.

Staff have reviewed the proposal and conclude that the proposed removal of fill, mitigation planting plan, restoration areas, and associated enhancement work adheres to the Aquatic Ecosystem Development Permit Objectives and Design Guidelines of the Rural Westside Official Community Plan.

(RECOMMENDATION ON NEXT PAGE)

RECOMMENDATION:

THAT the Regional Board conditionally approve Development Permit DP-20-02 subject to the following conditions:

- No further or variance in construction of, addition to or alteration of a building or structure; or alteration or clearing of land is to occur within the Development Permit Area as outlined in the Rural Westside Official Community Plan Bylaw No. 1274 without prior notification and approval by RDCO; other than that recognized and approved in this Development Permit.
- No further buildings, structures or improvements of any kind shall be constructed nor located within the 15m setback from the High Water Mark of Okanagan Lake. And further, there shall be no removal or disturbance of any soil, vegetation, or trees (with the exception of weeds) from within the 30 m setback area without first obtaining the written consent of the RDCO.
- All works must be in compliance with the approvals received from the Province in accordance with the BC *Water Sustainability Act*.
- All fill removal, mitigation, and restoration activities must be completed as per the recommendations contained in the December 20, 2019 Environmental Management Plan, March 23, 2020 Addendum 1, and May 7, 2020 Addendum 2, completed by Arsenault Environmental Consulting Ltd.
- Should any of the fill remain onsite, the DP must be amended to include a reclamation plan and further environmental assessment completed in the Sensitive Terrestrial area.
- There shall not be any further land disturbance beyond that which is outlined in DP-20-02 without additional environmental assessment work undertaken by a Qualified Environmental Professional and without first obtaining the written consent of the RDCO.
- The applicant must retain a Registered Professional Geotechnical Engineer to provide professional oversight of the proposed upland fill placement.
- Registration of a restrictive Section 219 'No Build No Disturb' Covenant within 15 metres of the high water mark of Okanagan Lake.
- In accordance with the RDCO Noxious Weed Control Bylaw No. 179, the owner or occupier of the land shall prevent the infestation of noxious weeds and cut down or otherwise destroy and mulch or remove all noxious weeds and plant with native grasses or other native vegetation.
- Best Management Practices are to be used as a means to protect the riparian area, fish, and fish habitat.

Respectfully Submitted:



Todd Cashin
Director of Community Services

Approved for Board's Consideration



Brian Reardon, CAO

Prepared by: Brittany Lange, Environmental Planner

Implications of Recommendation:

Strategic Plan:	Conditional approval of the Development Permit application complies with the strategic priority “Environment” and the Regional Board’s action to reduce development activities within higher risk floodplain areas and support efforts to reduce our environmental footprint.
Policy:	<p>Conditional approval of the Development Permit application complies with:</p> <ul style="list-style-type: none">• Regional Growth Strategy Bylaw No. 1336• Rural Westside Official Community Plan Bylaw No. 1274 <p>The application was submitted and processed in accordance with the RDCO Development Applications Procedures Bylaw No. 944.</p>
Legal/Statutory Authority:	The <i>Local Government Act</i> , Part 14, Section 488 (Designation of development permit areas) provides the legislative authority for an OCP to designate development permit areas for the protection of the natural environment, its ecosystems and biological diversity, and protection of development from hazardous conditions. The OCP provides the direction and guidelines to be adhered to when considering a development permit.

Background:

As outlined in the Rural Westside Official Community Plan (OCP), a Development Permit (DP) must be approved before land undergoes construction, addition to or alteration of a building, structure, or clearing of land for the protection of the natural environment, its ecosystems, and biological diversity.

History

Historical air photos indicate that the foreshore at this location has been altered since 1973 and fill has continuously been added over time. Significant land disturbance of additional fill placement at the subject property was identified in 2007 as a violation of the Federal *Fisheries Act*. In order to address the violation, restoration and reclamation works were required including, but not limited to, realignment of the foreshore and replacement of the concrete retaining wall with the existing engineered/rip-rap retaining wall.

In June 2017, the property owner applied to the Province of BC for a License of Occupation to permit the existing area of fill (Lands File: 3413216). This referral application was not supported by the Regional Board in 2017 (RDCO File: CL-17-03) and subsequently was not approved by the Province in February 2019. As such, the Province has requested that the fill be removed from where it has been placed on Crown land. The application for a Development Permit is required for works within a sensitive aquatic, terrestrial, and hillside area.

Under the current application, the applicant is proposing to remove the unauthorized fill placed on Crown land along the foreshore of Okanagan Lake. A portion of the fill will be placed upland on the subject property. The foreshore fill area will be restored using naturalized flood, riparian, and fish spawning benches as well as native tree and shrub plantings.

According to the Environmental Management Plan (EMP) prepared by Arsenault Environmental Consulting Ltd, the lake bottom will be returned to similar grade and state as the natural grade of the shoreline in the area, as stipulated in the grading plan submitted with the application. No excavations or depressions are proposed to remain within the re-graded area.

Provincial Approvals:

The applicant has received a conditional Section 11 Change approval under the *Water Sustainability Act* (File: A8005332) for the removal of unauthorized fill and associated in-stream works. According to the conditions of the change approval, the least risk fisheries timing window of June 1 to September 30 are applicable to this proposal and a fence will be installed to mark the property boundary and signs will delineate private versus Crown land.

Furthermore, the applicant has received a prior Licence of Occupation to permit a private moorage at the location and under current Ministry of Forests, Lands & Natural Resource Operations' policy; as such, an application for Crown Land tenure is not required as the dock meets the requirements for General Permission.

Environmental Considerations

According to the EMP, the shoreline is mapped as a red zone for Kokanee spawning with moderate to high value for juvenile fish rearing. There are no native plants on the fill area and the existing landscaping provides very little habitat value. Overall, the project should result in a net gain in habitat value and fish production.

Monitoring and Security

As a condition of the issuance of a Development Permit, Qualified Environmental Professionals (QEPs) must be retained for the duration of the proposed development to ensure compliance with the recommendations presented in the Environmental Management Plan and Addendum as well as subsequent monitoring reports.

Monitoring and security (bonding) is required as set out in Bylaw No. 944 (Procedures Bylaw). The bond amount is based on the estimate provided by the QEP and is required prior to issuance of the Development Permit. The QEP has estimated the costs associated with the current DP application for monitoring and plantings in the amount of \$18,310.00.

Regional Board Strategic Priorities 2019-2022

Environment

- Reduce new construction in higher risk floodplain areas.
- Support efforts to reduce our environmental footprint and adapt to climate change.

Regional Growth Strategy Bylaw No. 1336

- Policy No. 3.2.3.1 "Consider water resources in land use planning decisions".
- Policy No. 3.2.8.3 "Manage growth to minimize disturbance to habitat, watershed and natural drainage areas and systems".
- Policy No. 3.2.8.6 "Encourage and support coordinated efforts to protect and enhance the Region's forests, environmentally sensitive and significant areas".

Rural Westside Official Community Plan Bylaw No. 1274:

Chapter 3 Natural Environment

- Policy No. 3.2.1.1 "The Regional District will continue to protect Environmentally Sensitive Areas on private land through the Development Permit process".

- Policy No. 3.2.1.2 “Provide and protect vegetated leave areas to water courses, control soil erosion and sediment in run-off water, control the rates of run-off to minimize impacts on the lake, prevent the discharge of deleterious substances into the lake”.
- Policy No. 3.2.1.3 “Protect Kokanee spawning grounds located in the OCP area”.

Chapter 13 – Development Permit Areas

- Policy No. 13.1.1 “Development within designated Development Permit Areas will be reviewed by the Regional District in consideration of the objectives and guidelines identified in this Section. Conditions or restrictions may be imposed on the development accordingly”.
- Policy No. 13.1.2 “In accordance with the *Local Government Act* of the Province of BC, the Regional District will require funding to ensure the completion of landscaping, environmental rehabilitation, or other conditions for which security may be held”.

Appendix 2 – Aquatic Ecosystem Development Permit Objectives and Design Guidelines

- Riparian vegetation should be maintained where it is present, and restored where it has been lost.
- A leavestrip for the protection and restoration of the riparian ecosystem is to remain undisturbed near watercourses. The intention is that the leavestrip will be untouched by development and left in its natural condition, or, if damaged by previous use or construction, the ecosystem restored or enhanced.

Site Context:

The subject property is a rural residential parcel consisting of one single family dwelling, a two-storey accessory building, and existing cabin. The parcel is located south of Lake Okanagan Resort within the Central Okanagan West Electoral Area. The subject property is affected by the Rural Westside Official Community Plan Aquatic, Terrestrial, Wildfire, and Hillside Development Permit Areas.

Owner/Applicant:	B. Gordon c/o D. Arsenault
Legal Description:	Lot A, District Lot 3745, ODYD, Plan 11659
Address:	2677 Westside Road N
Lot Size:	+/- 3.4 acres (13,759m ²)
Zoning:	RU3 – Rural 3
OCP Designation:	Rural Residential
Sewage Disposal:	Septic System
Water Supply:	Okanagan Lake (Private)
Existing Use:	Residential
Surrounding Uses:	North: Rural Residential South: Rural Residential East: Okanagan Lake West: Westside Road, Rural Residential
Fire Protection:	Wilsons Landing Fire Protection Area

RDCO Technical Comments:

Inspection Services staff notes that there was one outstanding ‘Stop Work Order’ associated with development on the upland parcel, however, this has since been addressed and closed. It does not appear that the Inspections Section has record of any outstanding requirements in regards to Lot A, DL 3745, ODYD, Plan 11659.

Environmental Advisory Commission (EAC) recommends support for the development permit application (DP-20-02) with the following conditions:

- Hauling any unused fill off site that is not proposed to be placed on the existing access road.
- Should any of the fill remain onsite, the DP must be amended to include a reclamation plan and further environmental assessment completed in the Sensitive Terrestrial area.
- Include additional monitoring works after two years to ensure weeds do not overtake the upland fill areas, and see if any additional planting is necessary.

Agency Referral Comments:

Ministry of Forests, Lands, Natural Resource Operations, and Rural Development – Archaeology Branch note that according to Provincial records, there are no known archaeological sites recorded at the subject property. However, archaeological potential modelling for the area indicates there is high potential for previously unidentified archaeological sites to exist on the property. If archaeological material is encountered during development, the proponent must stop all activities immediately and contact the Archaeology Branch.

Unaffected Agencies include Westbank First Nation, City of West Kelowna, Interior Health Authority, Ministry of Forests, Lands, Natural Resource Operations, and Rural Development – Okanagan Shuswap Lands Branch as well as Ecosystems Branch, Ministry of Transportation and Infrastructure, Fortis B.C., B.C. Hydro, Telus, and Shaw Cable.

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

External Implications:

In accord with the Development Applications Procedures Bylaw No. 944, the applicant submitted technical reports in accordance with the Rural Westside OCP (Appendix 2 and 5) as well as the RDCO Terms of Reference for Professional Reports.

Alternative Recommendation:

In consideration of the Development Permit Application, the Regional Board may approve the Development Permit with Conditions, not approve the Development Permit or defer a decision pending more information or clarification. Should the Board choose not to support the staff position, the following alternate recommendation is provided:

THAT Development Permit Application DP-20-02 not be approved.

Considerations not applicable to this report:

- *Financial*
- *Organizational*

Attachment(s):

- Subject Property & Orthophoto Maps
- April 26, 2017 Survey Certificate with Fill Area
- February 14, 2019 Provincial Decision Letter
- March 6, 2020 Provincial Change Approval
- December 2019 Environmental Management Plan
- March 23, 2020 Addendum
- May 7, 2020 Second Addendum