



Regional Board Report

For the Public Hearing June 22, 2020

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: June 22, 2020

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

Purpose: To amend the OCP Future Land Use Designation on a portion of the subject property from Rural Resource to Parks and Natural Open Space, to amend the zoning from RU1 Rural 1 to CL8 Conservation Lands, P1 Park and Open Space, and F1 Forest Resource, and a site-specific amendment to permit adventure eco-tourism as a use in the CL8 Conservation Lands zone.

Executive Summary:

In accordance with the bylaw amendments, the applicant intends to continue operating the existing outdoor recreational aerial adventure park, ropes and challenge course 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.

To date, no opposition has been received from affected agencies or neighbouring property owners regarding the application.

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 "M. Rilkoff".

Prepared by: Danika Dudzik, Senior Planner

M. Rilkoff, Deputy CAO
for Brian Reardon, CAO

Background:

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 aerial adventure park, ropes and challenge course known as Myra Canyon Adventure Park. 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).

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.

First Reading: The Regional Board granted First Reading to OCP Amendment Bylaw No. 1304-02 and Zoning Bylaw No. 871-258 on April 27, 2020. Further, the application was to be scheduled for a Public Hearing upon:

- 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.

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.

The applicant intends to continue the existing business, with the ability to expand; offering additional passive recreational activities to the community and tourism sector.

South Slopes Official Community Plan Bylaw No. 1304:

Various objectives and policies in the South Slopes Official Community Plan (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.

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.

Site Context:

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.

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.

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

RDCO TECHNICAL COMMENTS (Presented at First Reading):

Parks Services staff indicates 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 (Presented at First Reading):

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 OGMAs 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, and Telus.

AGENCY REFERRAL COMMENTS (Subsequent to First Reading):

Westbank First Nation completed a review of the proposal pursuant to the Westbank First Nation decision-making process. Through this process, a decision was made to allow the proposed activity/development.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development (Ecosystems Branch) staff advises that the subject lands overlap with known values including critical habitat for Federally-Listed Species at Risk (gopher snake, rattlesnake, and night snake), ungulate winter range, mountain goat winter range, very high conservation ranking, KLO creek, Grizzly Bear Resource Management Zone, and Species and Ecosystems at Risk (Black Cottonwood-Douglas Fir/Douglas Maple-Common Snowberry). Due to the presence of these known values, any future development activities must be guided by a Qualified Professional (QP).

Future development activities within 30 m of a stream are subject to the Riparian Areas Protection Regulation. No development, including vegetation clearing is allowed within 30 m of the stream without a RAR assessment.

Activities on the property must not result in the introduction and spread of invasive weed species into previously undisturbed areas. Under the provincial *Weed Control Act*, an occupier of land is responsible for controlling noxious weeds.

Nesting birds are protected from harm under the provincial *Wildlife Act*, along with year-round protection of nests of eagles, peregrine falcons, gyrfalcon, osprey, heron, and burrowing owls. Any proposed vegetation clearing must be completed within the respective timing window.

Activities on the subject property must be compliant with all other relevant legislation, including but not limited to, the *Water Sustainability Act* and *Migratory Birds Convention Act*.

Interior Health Authority supports activities that provide opportunities to have access to natural spaces and physical activity however, it is important that the operation minimize erosion and overland flow into KLO creek. Interior Health Authority (IHA) staff advises that the Environmental Public Health Program will provide future guidance and approval as required on items such as source water protection and servicing. It is recommended that a review of the site be completed to assess future needs as long term use for this purpose may require the operator to provide onsite sewerage. As pit toilettes are the current method of sewage disposal, the operator should consider providing handwashing stations as a possible preventative measure. Should the sale of food be proposed in the future, review and approval is required from IHA.

External Implications:

In accordance with Development Applications Procedures Bylaw No. 944, two Notice of Application Signs have been posted. One sign was posted on the subject property and the second sign was posted adjacent to June Spring Road on MOTI right-of-way. Subsequent to the Public Hearing notification process, up to and including the date of this report, no letters of support or opposition have been received regarding this application.

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 amendment.

Attachments:

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