

CITY OF KELOWNA

BYLAW NO. 9842

Official Community Plan Amendment No. OCP07- 0020 – Text Amendment Aquatic Habitat and Compensation Banking to Bylaw No. 7600 *Kelowna 2020* – Official Community Plan

AND WHEREAS Council wishes to adopt certain text amendments to Bylaw No. 7600 *Kelowna 2020* – Official Community Plan;

AND WHEREAS Council may adopt an official community plan by bylaw and each reading of the bylaw must receive an affirmative vote of a majority of all members of Council;

AND WHEREAS after first reading of the bylaw and before third reading of the bylaw, Council held a public hearing on the proposed amendments to the official community plan in accordance with Sections 890 through 894 of the *Local Government Act*;

NOW THEREFORE the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. THAT the **Definitions** section be amended by adding the following definitions in the appropriate location:

“Aquatic Habitat – means environments characterized by the presence of standing or flowing water that provide food and shelter and other elements critical to an organism’s health and survival. Aquatic habitat is associated with all types of watercourses including (but not limited to) lakes, ponds, rivers, streams, creeks, springs, wetlands, swamps, ravines, and some ditches.

Compensation – means, in the context of no net loss, the replacement of natural habitat or increase in the productivity of existing habitat where avoidance, mitigation techniques and other measures are not adequate to maintain those habitats affected by human activity.

Habitat Compensation Bank – means a physical site that has been created, restored or enhanced in anticipation of impacts on other potential development sites.

Habitat Compensation Banking – means restoration, creation, enhancement, and in exceptional circumstances, preservation undertaken expressly for the purpose of compensation for unavoidable habitat losses in anticipation of development activities, when avoidance, restoration or mitigation cannot be achieved at the development site or would not be as environmentally beneficial.

Mitigation – means actions taken during the planning, design, construction and operation of works and undertakings to alleviate potential adverse effects on natural habitats, and includes (but is not limited to) redesign or relocation of project components, timing of works, and methods of construction or operation which avoid or minimize changes to habitat attributes that affect its productive capacity.”

2. AND THAT **Chapter 7 – Environment**, be amended by inserting a new section **7.8 Aquatic Habitat Protection and Compensation Policies** in it's appropriate location and re-number subsequent sections:

“7.8 Aquatic Habitat Protection and Compensation Policies

The City of Kelowna will:

Considerations for Future Civic Action

Liaison/Co-operation/Public Relations

- .1 **Senior Government.** Continue to work with senior government environment and fisheries agencies and First Nations in meeting the requirements of provincial and federal legislation regarding fish and wildlife habitat as well as the City's aquatic habitat policies and bylaws;
- .2 **Stewardship Groups.** Work cooperatively with community-based stewardship organizations in habitat restoration planning and implementation, and in promoting public information regarding aquatic habitat protection.

Implementation

- .3 **Mission Creek Aquatic Habitat Compensation Bank.** Establish a Mission Creek “Aquatic Habitat Compensation Bank” (the Bank) based on the Mission Creek Restoration Feasibility Plan (2003, 2004) endorsed by Council. The Bank may be used to compensate for unavoidable losses to aquatic habitat in the Mission Creek watershed caused by City infrastructure projects and private development projects. Such projects may apply to the Bank where it can be clearly shown that:
 - a) every effort has been made to avoid, reduce and mitigate negative impacts to aquatic habitat on the project or development site but that residual, permanent losses of aquatic habitat still remain; and
 - b) opportunities to compensate for these losses on-site have been exhausted and/or greater benefit to the Mission Creek system can be realized through implementing the projects in the Bank than through on-site compensatory measures.
 - guidelines for use of the Bank will be established, including the geographical area within which the Bank may be used to compensate for aquatic habitat loss, project priorities, a comprehensive listing of costs, and the method for valuing the compensation contributions from development applications;
 - property acquisition is considered an acceptable compensation measure when it is linked to, and a necessary component in fulfilling one or more of the Bank projects and the Mission Creek Restoration Feasibility Plan;
 - establishment of the Bank must be approved by senior government environment agencies;

- .4 **Mission Creek Aquatic Habitat Restoration Fund.** Establish a dedicated fund for receiving contributions, donations or grants received to assist in implementing the restoration projects in the Mission Creek Aquatic Habitat Compensation Bank. The contributions may be in the form of monetary funds, financial assets or real property.

Further Studies/Reviews

- .5 **Aquatic Habitat Restoration Feasibility Plans.** For the purpose of determining other potential aquatic habitat compensation banking opportunities, conduct studies on other aquatic systems that will identify appropriate actions for restoring the health and productivity of damaged ecosystems. Priority systems in this regard are Mill Creek and the Lake Okanagan Shore Zone;
- .6 **Other Aquatic Habitat Compensation Banks.** Consider establishing Aquatic Habitat Compensation Banks on other aquatic systems, subject to an approved restoration feasibility plan that clearly establishes aquatic habitat preservation and restoration priorities. Any such plan will define acquisition needs and restoration projects for a given watershed or stream within the city; these acquisitions and projects will then form the basis for defining options for off-site compensation within these systems.

Considerations in Reviewing Development Applications

General Principles

- .7 **No Net Loss of Aquatic Habitat Productivity.** Practice the principle of “no net loss/net gain” with respect to land use decisions that affect aquatic habitat. Based on the “no net loss” guiding principle of the Department of Fisheries and Oceans “Policy for the Management of Fish Habitat”, this means that no individual land use or development project should result in a net loss in aquatic habitat productivity, and that the City will strive for a net gain in overall productivity throughout the city’s aquatic habitats in the long term;
- .8 **Habitat Management Hierarchy.** To achieve the no net loss/net gain principle, require that all City infrastructure projects and private development proposals adhere to the following sequence of management actions:
- **Avoid** impacts to aquatic habitat through appropriate project siting and design;
 - **Mitigate** minor or temporary impacts by minimizing impacts, and repairing and restoring damaged aquatic habitats to their former state or better;
 - **Compensate** only when residual, permanent loss of aquatic habitat is unavoidable, acceptable and compensable. Aquatic habitat compensation proposals will not be accepted as a trade-off for incomplete on-site mitigation where effective mitigation efforts are feasible. Development proponents are responsible for proving that all measures to avoid or mitigate potential aquatic habitat impacts have been exhausted prior to proposing aquatic habitat compensation measures on or off-site;

- .9 **Compensation Guidelines.** Consider the following general 'rules of thumb' in aquatic habitat compensation decisions:
- On-site compensation (i.e., in or near the same location as the area being impacted) is generally preferred over off-site compensation, particularly when sufficient space is available and there is adequate biophysical capacity on the site to create or enhance similar aquatic habitat. However, in some instances, compensation efforts away from the site may result in greater ecological benefits to the overall watershed, aquatic habitat type, species or community;
 - When it is deemed necessary or appropriate, off-site compensation should occur within the same watershed or ecological unit as the area being impacted;
 - 'Like-for-like' compensation is generally preferred over replacing lost aquatic habitat with a different type of aquatic habitat. However, replacing with unlike aquatic habitat may be preferable in cases when the replacement aquatic habitat will have higher productivity and/or will address a limiting factor within the natural system affected.

☒ Note Chapter 7 – Natural Environment Policy 7.10.10 Maintaining Biodiversity.

Application Processing

- .10 **Environmental Assessments.** Require that environmental assessments for development proposals define impacts to aquatic habitat and lay out satisfactory avoidance, mitigation and compensation measures;
- .11 **No Net Loss.** Require that no net loss or that a net gain in the productive capacity of aquatic habitat is realized prior to, or as a condition of, any approval of projects that affect that aquatic habitat;
- .12 **Incomplete Mitigation.** Not support restorative or enhancement aquatic habitat works as an acceptable trade-off for incomplete mitigation where more effective mitigation efforts are feasible. A business case will be required to prove mitigation feasibility;
- .13 **Unacceptable Environmental Impacts.** Not support trade-off of unacceptable environmental effects for economic gain (e.g. development projects will be directed to locations and / or design options that avoid impacts to environmentally sensitive areas). Support only those planning and development trade-offs that will result in substantial, long-term net positive production benefits for aquatic habitat;
- .14 **Compensation Ratio.** When compensation for loss of aquatic habitat is necessary and acceptable to the City, DFO and MoE, require a compensation ratio (area of replacement habitat to area of lost aquatic habitat) that takes into account factors such as:
- time lags in achieving aquatic habitat replacement;
 - risk associated with the success of compensation measures; the relative significance of the impacted aquatic habitat (e.g., does it support threatened, endangered and / or economically important species);

- whether compensation is occurring on site or off-site; and
 - whether the replacement habitat is of the same type as the lost aquatic habitat (i.e., in-kind or out-of-kind);
- .15 **Use of Compensation Bank.** When compensation is required to address harmful alteration, disruption or destruction of fish habitat (a HADD) under the federal *Fisheries Act*, the ability to contribute to the Mission Creek Compensation Bank or any other future Bank as a compensation option will be at the discretion of senior fisheries agencies. For non-HADD related compensation, proposals to contribute to the Bank will be at the discretion of the City with input from senior agencies, as needed;

Applications Affecting Lake Okanagan

- .16 **Shore Zone ESA Protection.** Not support development within environmentally sensitive areas (ESA's) identified as having high value in the Kelowna Shore Zone Fisheries and Wildlife Habitat Assessment (2006);
- .17 **Shore Zone Aquatic Habitat Protection.** Not support avoidable or mitigate-able adverse effects to any aquatic habitat on the basis that compensatory habitat works may offset such effects. Any proposed compensatory works must follow the Habitat Management Hierarchy and be consistent with the no net loss principle. "

3. AND THAT **Chapter 7 – Environment**, be amended by deleting **Section 7.10 Natural Environment Policies** in it's entirety and replacing it with the following:

"7.10 Natural Environment Policies

The City of Kelowna will:

Considerations for Future Civic Action

Liaison/Co-operation/Public Relations

- .1 **Public Education.** Continue comprehensive education programs to schools and local organizations by City staff, and encourage public and private interests directed at natural resource protection and watershed stewardship;
- .2 **Donations Toward Environmental Protection.** Encourage the activities of nature trust organizations and corporations for the purposes of receiving donations of funds or land toward protection of natural attributes within the community;
- .3 **Land Donations.** Facilitate the work of groups and individuals willing to donate land for protection of natural attributes or public access;
- .4 **Fish Habitat Awareness.** Co-operate with senior levels of governments to promote public awareness of fish habitat;

- .5 **Agricultural Land Reserve.** Continue to involve the appropriate provincial ministry or agency in establishing Natural Environment Development Permit conditions for properties located within the Agricultural Land Reserve.

Further Studies/Reviews

- .6 **Natural Features Identification.** Continue to identify and assess Natural Environment areas with the objective of formulating protective strategies, encouraging restoration, and obtaining knowledge to facilitate appropriate land use and servicing decisions;
- .7 **Terrestrial Habitat.** Develop guidelines for protection, mitigation and compensation for loss of wildlife habitat, indigenous vegetation areas and other non-aquatic habitat.
- ☒ Note Section 7.8 Aquatic Habitat Protection and Compensation Policies for policy regarding mitigation and compensation for impacts to aquatic habitat.

Implementation

- .8 **Environmental Review.** Ensure that all development and activities occurring on properties designated as Natural Environment development permit areas are reviewed and meet the requirements for mitigation, compensation, protection, or replacement;
- .9 **Environmental Management System.** Ensure that the management of City activities has the necessary structure and processes to:
- Identify all aspects of City operations that may have a significant impact on the environment;
 - Manage and control operations and processes to minimize impacts on the environment;
 - Achieve compliance with environmental legislation and regulations;
 - Ensure a defence of due diligence in the event of non-compliance;
 - Continuously improve the City's environmental performance.
- ☒ Note Chapter 17 – Social Environment Policies 17.3.23 Sustainable Development and 17.3.27 Development Standards.

Considerations in Reviewing Development Applications

Application Processing

- .10 **Maintaining Biodiversity.** Seek to maintain ecological linkages and biodiversity, including wildlife movement corridors and aquatic and terrestrial pathways, in all land use and development decisions.

Uses to be Encouraged

- .11 **Tools to Encourage Voluntary Protection.** Encourage voluntary protection of natural features in cases where it is an objective of the City to protect (for stream conservation, water quality protection, or habitat preservation) land in excess of that which is, by virtue of municipal and senior government regulations, required to be protected.

To encourage *voluntary* placement of conservation covenants, the City may give consideration to allowing increased density on the balance of the subject property, transferring density to another property, trading land, purchasing land, offering grants-in-aid, or granting tax exemptions. Owners placing voluntary conservation covenants on their land shall not be deprived of the privilege to enjoy the land as their own but they may not close, fence or otherwise obstruct any adjoining public route of access;

- .12 **Retention of Natural Areas.** Encourage all development and infrastructure projects to conserve wetlands, wildlife habitat, trees or other indigenous vegetation. Encourage alternative development methods, such as considering increasing density, narrowing right-of-ways, or cluster housing;
- .13 **Indigenous Plants.** Encourage, wherever possible, the use of indigenous plants in landscape planting schemes (please contact the City of Kelowna Environmental Division for a list of appropriate indigenous plants);

☒ Note related Development Permit requirements in Section 7.12

- .14 **Wetland Buffers.** Encourage the retention and use of wetlands as natural buffers between urban and rural uses;
- .15 **Green Technology.** Encourage the use of Green Technologies and recyclable materials in all new developments.

☒ Note Chapter 14 – Parks and Leisure Policy 14.1.30 Viewing Areas and Interpretative Centres.

Uses to be Discouraged

- .16 **Lot Clearing.** Discourage complete or indiscriminate lot clearing.

☒ See Natural Environment DP Guidelines for requirements in Section 7.12, prior to disturbing the land.

Special Requirements

- .17 **Natural Environment Development Permit.** Require, unless exempted under the provisions of Section 7.12, that those owning properties located within Natural Environment Development Permit Areas (See Map 7.1a) obtain development permits prior to altering land or receiving building permit or subdivision approval. (Please see Section 7.12 in the Environment Chapter for an explanation of development permit criteria and exemption provisions);

⊗ Note that properties may also be subject to Development Permit requirements for other purposes. To determine applicability of other requirements, refer to the following portions of the OCP:

- Hazardous Condition – Section 7.13
- Commercial – Section 9.2
- Industrial – Section 10.2
- Multiple Unit – Section 8.2
- Urban Centre – Section 6.2

- .18 **Site Density Calculations.** Allow the owner(s) of land affected by dedications for environmental protection to use the original site area in computing density and floor area ratios and minimum area for development or subdivision purposes;
- .19 **Landscape Bonding for Sensitive Environmental Areas.** Require as part of the Development Permit process, landscape bonding to provide funding for rectifying deficient landscape conditions or for addressing damage to the environment caused by development activity;
- .20 **Placement of Utility Lines.** Require that all service lines be placed in such a way as to minimize encouragement of weed growth and in such a way that service lines would not be subject to continual maintenance, or contact and damage by maintenance equipment."
4. AND THAT cross-referencing within the bylaw resulting from the insertion of new policies within Chapter 7 be updated.
5. If any statement, section, sub-section, clause, sub-clause or phrase of this bylaw and the official community plan adopted by this bylaw is for any reason held to be invalid by a decision of a court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of the bylaw and official community plan.

Read a first time by the Municipal Council this 19th day of November, 2007.

Considered at a Public Hearing on the day of , 2007.

Read a second and third time and be adopted by the Municipal Council of the City of Kelowna this day of , 2007.

Mayor

City Clerk