



THE CORPORATION OF THE CITY OF VERNON REPORT TO COUNCIL

SUBMITTED BY: Jing Niu, Environmental Planning
Assistant

COUNCIL MEETING: REG COW I/C
COUNCIL MEETING DATE: May 11, 2020
REPORT DATE: April 28, 2020
FILE: ZON00297

SUBJECT: REQUEST TO WAIVE REZONING APPLICATION CONDITION FOR 5000 20th
STREET (ZON00297)

PURPOSE:

To review the applicant's request to remove Council's required condition "that a Land Title Act Section 219 covenant be registered on title to ensure protection of the adjacent Blue Heron rookery during construction on the subject property" as part of the application to rezone the subject property from A3 – Rural-Small Holdings to RH1 – Low-Rise Apartment Residential to allow for a multi-family residential development.

RECOMMENDATION:

THAT Council receive for information the report titled "Request to Waive Rezoning Application Condition for 5000 20th Street (ZON00297)" dated April 28, 2020 from the Environmental Planning Assistant.

Note: This recommendation would mean the applicant may continue with the proposed development project as directed by the conditions noted by Council at their Regular Meeting of July 8, 2019.

ALTERNATIVES & IMPLICATIONS:

1. THAT Council endorse the applicant's request to remove Council's required condition "that a Land Title Act Section 219 covenant be registered on title to ensure protection of the adjacent Blue Heron rookery during construction on the subject property" as part of rezoning application ZON00297;

AND FURTHER, that Council's support of ZON00297 be subject to the following: *(to be cited by Council)*.

*Note: Should Council waive the requirement for the described covenant as part of the rezoning, there would be **no** measure in place to ensure protection of the adjacent Blue Heron rookery during construction on the subject property.*

ANALYSIS:

A. Committee Recommendations:

At its meeting of May 28, 2019, the Advisory Planning Committee passed the following resolution:

THAT the Advisory Planning Committee recommends that Council support the application (ZON00297) to rezone Lot A Section 11 Township 8 ODYD Plan 20774 (5000 20th Street) from A3 – Rural-Small Holdings to RH1 – Low-Rise Apartment Residential;

AND FURTHER, that Council's support of ZON00297 be subject to the following:

- a. That a Land Title Act Section 219 restrictive covenant be registered on title to ensure protection of the adjacent Blue Heron rookery;
- b. That a 5.0m wide road right of way adjacent to the north property line be dedicated to the City for a future active transportation connection between 20th Street and 24th Street; and
- c. That the applicant be required to provide extended offsite works to the north of the property in order to complete the sidewalk connection on 20th Street.

B. Rationale:

1. Rezoning application ZON00297 proposes to rezone 5000 20th Street (Figure 1) from A3 – Rural-Small Holdings to RH1 – Low-Rise Apartment Residential. Council's initial review of the proposal noted that the subject property is adjacent to the Great Blue Heron rookery to the northwest at 5104 20th Street (Figure 2). The Great Blue Heron are listed as a species at risk (Federal) and are Blue-listed (Provincial).



Figure 1: Property Location



Figure 2: Aerial View of Property

2. 149 written responses were received by Council prior to the Public Hearing of the subject Rezoning application asking for the protection of the Blue Heron rookery. A significant number of the public also attended the Public Hearing on July 8, 2019 and expressed concern for the protection of the rookery.
3. In order to support the redevelopment of the site while ensuring the necessary mitigation measures are adhered to during the development, Council had adopted the following condition as part of their support for the application at its Third Reading of Bylaw #5760 "5000 20th Street Rezoning Amendment Bylaw Number 5760, 2019" (Attachment 1):

That a Land Title Act Section 219 restrictive covenant be registered on title to ensure protection of the adjacent Blue Heron rookery during construction on the subject property.

4. Since Council's Third Reading of the rezoning application, the applicant has submitted new information from an environmental consultant (Attachment 2). A detailed land survey (Attachment 3) was completed in December of 2019 with respect to the rookery and the subject property at 5000 20th Street. The survey confirms that the subject property is outside of the 100 metre noise sensitivity buffer as recommended by the environmental consultant (Figure 3).

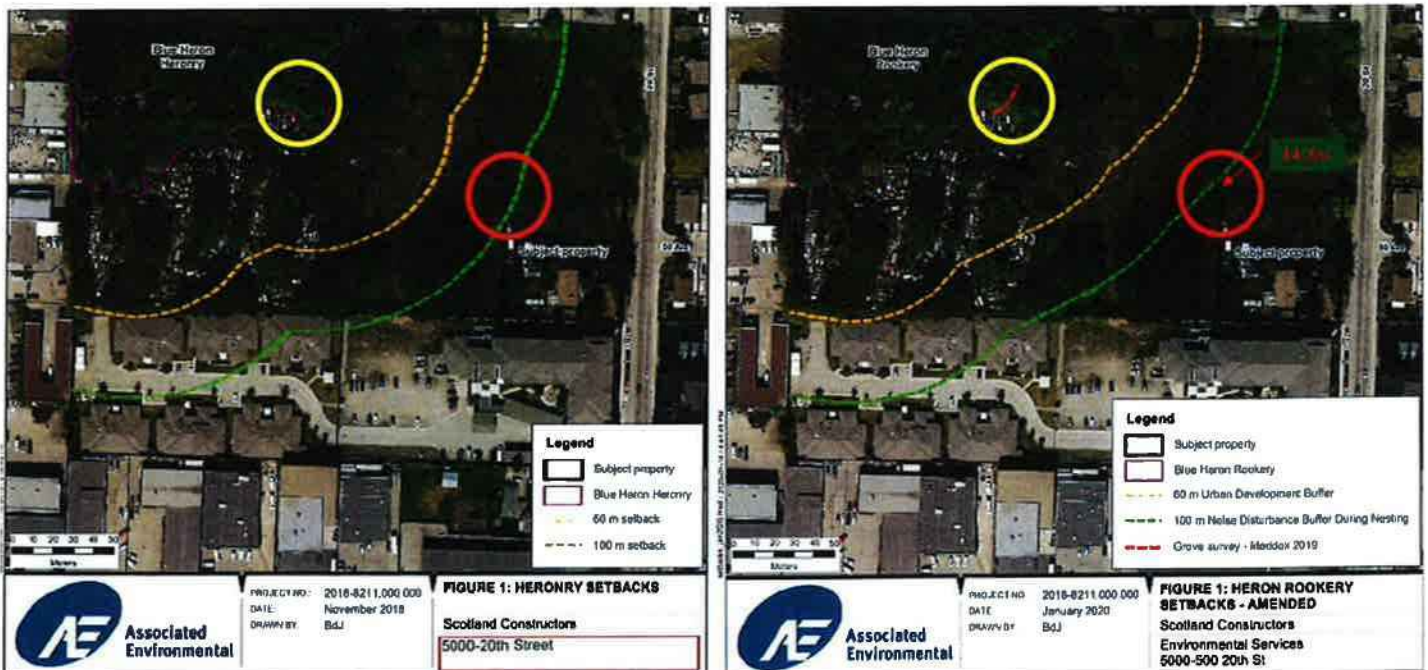


Figure 3: Original Mitigation Plan (Nov. 2018) and New Survey Plan (Dec. 2019/Jan. 2020)

5. Based on the confirmation that the proposed development would not be subject to the 100 metre buffer noise restrictions, the applicant requests that Council remove the required condition for a restrictive covenant be registered on title to ensure protection of the adjacent Blue Heron rookery during construction on the subject property.
6. The Great Blue Heron rookery remains active and the environmental consultant further notes that “if general construction noise results in a negative response from any Great Blue Herons in the area, actions should be taken to mitigate construction noise”. The Ministry of Forests, Lands, Natural Resource Operations & Rural Development (FLNRORD) have also provided information regarding the Great Blue Herons (Attachment 4), the legal obligations under the *Wildlife Act* and “recommend that developments in close proximity to heron nests include a qualified professional to conduct necessary inventory and develop appropriate mitigation measure, which need to be decided on a case-by case basis”. While the rookery is outside of the 60 metre no disturb buffer and the 100 metre noise sensitivity buffer, FLNRORD notes that an additional 200 metre ‘no disturbance’ buffer is recommended during the nesting season from February 1 to August 15. It is therefore recommended that Council retain the condition “that a Land Title Act Section 219 restrictive covenant be registered on title to ensure protection of the adjacent Blue Heron rookery during construction on the subject property” to ensure a qualified professional would be in place to comply with provincial and federal regulations and implement best practice for the protection of the rookery.

C. Attachments:

- Attachment 1 – Letter to Applicant Regarding Third Reading of ZON00297
- Attachment 2 – Environmental Mitigation Addendum Letter, Associated Environmental
- Attachment 3 – Updated Land Survey (December 2019)
- Attachment 4 – Regulations and Recommendations from Provincial Ministry

D. Council’s Strategic Plan 2019 – 2022 Goals/Deliverables:

The subject application involves the following objectives in Council’s Strategic Plan 2019 – 2022:

- Encourage sustainable infrastructure, agriculture and landscaping
- Promote transit oriented housing and mixed use development

E. Relevant Policy/Bylaws/Resolutions:

1. At its Regular Meeting of July 8, 2019, Council gave Third Reading to Bylaw #5760, "5000 20th Street Rezoning Amendment Bylaw Number 5760, 2019" – a bylaw to rezone the subject property from "A3 – Rural Small Holdings" to "RH1 – Low-Rise Apartment Residential". Prior to final adoption of the rezoning bylaw all conditions imposed on this application must be completed. The conditions are outlined in the following resolution adopted by Council at its Regular Meeting of June 10, 2019:

THAT Council support the application (ZON00297) to rezone Lot A Section 11 Township 8 ODYD Plan 20774 (5000 20th Street) from A3 – Rural-Small Holdings to RH1 – Low-Rise Apartment Residential;

AND FURTHER, that Council's support of ZON00297 be subject to the following:

- a) *That a Land Title Act Section 219 restrictive covenant be registered on title to ensure protection of the adjacent Blue Heron rookery during construction on the subject property;*
- b) *That the applicant be required to clear and grub on the west side of 20th Street north of their property, adjacent to 5104 20th Street.*

AND FURTHER, that Council support adding the curb, gutter and sidewalk segment adjacent to 5104 20th Street to the City's annual infill sidewalk projects to be built in the short-term (within 6 years).

2. The Official Community Plan (OCP) designates the property as Residential Medium Density (RMD) and the requested RH1 – Low-Rise Apartment Residential zoning district conforms to this OCP designation. Supporting OCP policies include:

Policy # 7.3 → Support the development of designated multiple family areas to the densities outlined in the OCP to build compact, complete neighbourhood areas within the community and to achieve the maximum use of municipal infrastructure.

Policy # 11.10 → Ensure that pedestrian, cycling and trail facilities take a high priority in transportation planning. Seek to increase community connectivity for pedestrians and cyclists through the provision of connectors between roads, cul-de-sacs, sidewalks and all classes of trails.

Policy # 13.3 → Protect and conserve sensitive ecosystems throughout the City.

Policy # 13.5 → Ensure that seasonal limits are placed on the timing of site clearing, tree removal and site disturbance activities to avoid nesting, calving, rearing and migratory seasons in areas of essential habitat.

Policy # 13.12 → Ensure development practices avoid negative impacts on natural features and environmentally significant areas in the siting, servicing and establishment of new neighbourhoods.

BUDGET/RESOURCE IMPLICATIONS:

N/A

Prepared by: _____

Approved for submission to Council: _____



Will Pearce, CAO

Date: 04. MAY. 2020

 Jing Niu,
Environmental Planning Assistant



For: Kim Flick,
Director, Community Infrastructure and Development

REVIEWED WITH

- | | | |
|--|---|--|
| <input type="checkbox"/> Corporate Services | <input type="checkbox"/> Operations | <input checked="" type="checkbox"/> Current Planning |
| <input type="checkbox"/> Bylaw Compliance | <input type="checkbox"/> Public Works/Airport | <input checked="" type="checkbox"/> Long Range Planning & Sustainability |
| <input type="checkbox"/> Real Estate | <input type="checkbox"/> Facilities | <input type="checkbox"/> Building & Licensing |
| <input type="checkbox"/> RCMP | <input type="checkbox"/> Utilities | <input type="checkbox"/> Engineering Development Services |
| <input type="checkbox"/> Fire & Rescue Services | <input type="checkbox"/> Recreation Services | <input type="checkbox"/> Infrastructure Management |
| <input type="checkbox"/> Human Resources | <input type="checkbox"/> Parks | <input type="checkbox"/> Transportation |
| <input type="checkbox"/> Financial Services | | <input type="checkbox"/> Economic Development & Tourism |
| <input checked="" type="checkbox"/> COMMITTEE: APC (May 29/19) | | |
| <input type="checkbox"/> OTHER: | | |



THE CORPORATION OF THE CITY OF VERNON

File: ZON00297

July 12, 2019

Scotland Constructors Ltd.
22 4701 Pleasant Valley Road
Vernon, BC V1T 4K7

Email: (scotlandconstructors@hotmail.com)

Dear Sir/Madam,

RE: REZONING APPLICATION FOR 5000 20 STREET

Council, at their Regular Open Meeting on July 8, 2019 gave third reading to Bylaw #5760, "5000 20th Street Rezoning Amendment Bylaw Number 5760, 2019" – a bylaw to rezone the subject property from "A3 – Rural Small Holdings" to "RH1 – Low-Rise Apartment Residential.

Prior to final adoption of the rezoning bylaw all conditions imposed on this application must be completed. The conditions are outlined in the following resolution adopted by Council at the June 10, 2019 Regular Open Meeting:

"THAT Council support the application (ZON00297) to rezone Lot A Section 11 Township 8 ODYD Plan 20774 (5000 20th Street) from A3 – Rural–Small Holdings to RH1 – Low-Rise Apartment Residential;

AND FURTHER, that Council's support of ZON00297 be subject to the following:

- a) That a Land Title Act Section 219 restrictive covenant be registered on title to ensure protection of the adjacent Blue Heron rookery during construction on the subject property;*
- b) That the applicant be required to clear and grub on the west side of 20th Street north of their property, adjacent to 5104 20th Street.*

AND FURTHER that Council's support adding the curb, gutter and sidewalk segment adjacent to 5104 20th Street to the City's annual infill sidewalk projects to be built in the short-term (within 5 years).

CARRIED."

Please be aware that all conditions must be completed by July 8, 2020, (one year following third reading of the rezoning Bylaw). The City's 'Inactive Bylaw' Policy allows for Council to consider rescinding the initial readings of the Bylaw, due to inactivity, after the noted twelve month period.

Please contact Ms. Carie Liefke, Planning Assistant at 250-550-3578 or cliefke@vernon.ca with regard to planning issues and to confirm completion of the conditions.

Yours truly,



Susan Blakely, Deputy Corporate Officer
Manager, Legislative Services

pc: K. Flick, Director of Community Infrastructure & Development Services
C. Broderick, Manager, Current Planning
C. Liefke, Planning Assistant



Associated Environmental Consultants Inc.
Suite 200, 2800 29 Street
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TEL: 250.545.3672
FAX: 250.545.3654
www.ae.ca | ISO 9001 & 14001 Certified

January 21, 2020
File: 2018-8211.000

Carie Liefke
Planning Assistant
City of Vernon
3400-30th Street
Vernon, BC
V1T 5E6

Re: ENVIRONMENTAL MITIGATION ADDENDUM LETTER FOR PROPOSED RESIDENTIAL DEVELOPMENT: 5000 20TH STREET, VERNON

Dear Ms. Liefke:

Associated Environmental Consultants Inc. (Associated) is pleased to submit this addendum letter to update information previously submitted by Associated regarding a rezoning application (File No. ZON00297) for a high-density residential development at 5000 20 St, in Vernon B.C.

The rezoning application was submitted in June 2018 by Scotland Constructors Ltd (the proponent). Due to the proximity of a Great Blue Heron (*Ardea herodias Herodias*) heronry, the City requested an environmental mitigation assessment to accompany the rezoning application submitted in December 2018 (see attached correspondence summary for additional information). Two construction mitigation buffers were recommended, including a 60 m no disturbance buffer, and a 100 m noise buffer. A detailed land survey was not completed at the time of the December 2018 environmental mitigation letter; therefore, we are submitting this addendum letter to confirm the boundary of the buffer.

The purpose of this addendum letter is to confirm the setback of the proposed development with respects to the construction mitigation buffers. A recent land survey and site investigation completed by William Maddox, and verified by Associated, identified that the property occurs outside the 100 m noise buffer (Figure 1). This confirms that the proposed development would not be subject to the 100 m buffer noise restrictions.

However, if general construction noise results in a negative response from any Great Blue Herons in the area, actions should be taken to mitigate construction noise. Activity during the sensitive nesting period (**March 10-August 31**, Birds Canada 2018¹) within the 100 m noise buffer should observe a noise level of a maximum of 10 dB above ambient noise levels in the surrounding environment (Associated 2018, MOE


¹ Birds Canada. 2018. Nest Query Calendar. Great Blue Heron. North Okanagan Region.
<https://www.birdscanada.org/volunteer/pnw/rnest/>

January 21, 2020
Carie Liefke
City of Vernon
- 2 -

2018²). High risk activity noise produced within the 100 m buffer during the sensitive nesting period should be monitored by a qualified professional. Visual responses from the herons occupying the heronry should be observed, and activities leading to stress responses should be postponed until the birds are no longer occupying the heronry.

If you have any questions, please contact the undersigned below at 250-545-3672.

Yours truly,



Carrie Nadeau, R.P.Bio.
Senior Ecologist

CN

Attachments:

Rezoning Application Correspondence Summary

Figure 1: Amended Property Figure

Environmental Mitigations Letter, Associated Environmental, December 11, 2018

² Ministry of Environment and Climate Change. 2018. Wildlife Habitat Features Field Guide (Kootenay Boundary Region). https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/technical-information-risk-factors.html#_03_1_1

An Associated Engineering Company

January 21, 2020
Carie Liefke
City of Vernon
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Rezoning Application Correspondence Summary

A summary of the correspondence is as follows:

- June 2018 – Proponent submits a re-zoning application to the City
- June 2018 – additional information regarding the proximity of the heronry and potential environmental impacts from the proposed rezoning application was requested;
- December 2018 - an Environmental Mitigation letter was submitted to the City;
- June 2019 - City of Vernon and Council passed the first and second reading of the rezoning application
- July 2019 - City of Vernon and Council passed the third reading of the rezoning application after hosting a public open house.
- September 2019 - the resolution of City Council was to register a Section 219 restrictive covenant on the title of 5000 20 Street (PID 007-732-899; Lot A Plan 20774) to ensure protection of the adjacent heronry during construction on the subject property;
- October 2019, a draft Restrictive Covenant Letter was submitted to the City on behalf of the proponent;
- November 2019, City of Vernon requested edits to the draft covenant document; and
- December 2019, Maddox and Co. completed a survey of the south eastern edge of the cottonwood trees near the heronry.

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setbacks_jan2020.mxd / 2020-01-14 / 4:41:49 PM



PROJECT NO.: 2018-8211.000.000
 DATE: January 2020
 DRAWN BY: BdJ

FIGURE 1: HERON ROOKERY SETBACKS - AMENDED
 Scotland Constructors
 Environmental Services
 5000-500 20th St



Associated Environmental Consultants Inc.
Suite 200, 2800 29 Street
Vernon, B.C., Canada V1T 9P9

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December 11, 2018
File: 2018-8211.000

Carie Liefke
Planning Assistant
City of Vernon
3400-30th Street
Vernon, BC
V1T 5E6

**Re: ENVIRONMENTAL MITIGATION LETTER FOR PROPOSED RESIDENTIAL DEVELOPMENT:
5000 20TH STREET**

Dear Ms. Liefke:

Associated Environmental Consultants Inc. (Associated) are pleased to submit this letter to support a rezoning application for a proposed high-density residential development on 5000 20th Street, Vernon B.C. (the Project, Figure 1), by Scotland Constructors Ltd. The application (File No. ZON00297) was submitted to the City of Vernon in June 2018, and after a preliminary review, the City requested additional information (see attached letter from Carie Liefke of the City of Vernon, dated June 18, 2018). The purpose of this environmental mitigation letter provided by Associated is to address the following item in Ms. Liefke's letter:

#4. Long Range Planning: *The applicant must demonstrate that the project meets environmental regulations (Provincial and Federal) in regards to the known Heron rookery.*

This letter briefly describes the current condition of the site, the heron rookery, potential impacts of the project and mitigation measures. On October 24th, 2018, Carrie Nadeau, R.P.Bio., and Melissa Wetteland (of Scotland Constructors Ltd.) completed a site visit of the property and assessed adjacent mature trees for stick nests, adjacent to the known heron rookery boundary.

1 SITE CONDITIONS

The subject property is currently zoned as A3-Rural Small Holdings as per Zoning Bylaw #5000. The subject property is bounded by 20th Street to the east, a medium density residential development (seniors care facility) to the south, and a large 9-acre undeveloped property to the north and west. Part of the adjacent undeveloped property includes an active Great Blue Heron rookery, which is approximately 100 m northwest of the subject property (as shown in Figure 1). Currently structures on the subject property include: a driveway, house, front and back yards, garden shed, fencing, and a large side yard to the north, which was previously cultivated garden (see attached Photographs and Figure 1).

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December 11, 2018
Carie Liefke
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2 HERON ROOKERY

Two subspecies of Great Blue Herons occur in British Columbia: *Ardea herodias fannini* breeds along the Coast, whereas *A. h. herodias* breeds in the Interior. Both subspecies of Great Blue Heron are Species at Risk under the *Species at Risk Act* and are Blue-listed in British Columbia (MOE 2018¹).

The Heron rookery in Vernon was established in 1986 and has gradually increased over the past 32 years, in 2012 more than 40 nests² were identified (CDC 2018). This rookery is largely within an urban area, which is surrounded by various development including industrial businesses, residential communities, and roads. A portion of the undeveloped property (to the south of the rookery) was used as a vehicle storage yard for a towing company. Many abandoned vehicles currently occupy the site and are within an expanding treed area which adjoin with the trees of the rookery. Some colonies habituate to human disturbance, such as the urban colony in Vernon (CDC 2018).

This urban rookery is on private land and is partially protected by a conservation covenant, one acre of this property has a conservation covenant and lease, this does not encompass the entire size of the currently occupied rookery. There are also several conservation and no-build covenants and leases registered on several of the neighbouring properties to the north. Nests, eggs, young and adults are protected from hunting by Article II:3 of the *Migratory Birds Convention Act* (1994) and Section 5(4) of the *Migratory Birds Regulations*. As well, the nest and nest trees are protected year-round by Section 34 of the *Wildlife Act*. (CDC 2018).

Activities that negatively impact nesting herons should be avoided near breeding colonies during their sensitive breeding period (CDC 2018³). Best Management Practices for the Great Blue Heron should be followed (MOE 2018), including:

- Any nest found should be protected with a buffer zone determined by a setback distance appropriate to the species, the level of the disturbance and the landscape context, until the young have permanently left the vicinity of the nest. Birds respond differently to different levels of disturbance, which could be determined based on the intensity, duration, frequency and proximity of the activity, but also on the cumulative effects of multiple activities in the vicinity of a nest.
- Setbacks should be developed and followed for types of activities and levels of disturbance. Significant sources of disturbance (high risk construction activities) include: removal of vegetation and/or soil operations, drilling, loud noise, vibration, (e.g., seismic blasting from operations).

¹ Ministry of Environment and Climate Change. 2018. Wildlife Habitat Features Field Guide (Kootenay Boundary Region). https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/technical-information-risk-factors.html#_03_1_1

² <https://www.vernonmorningstar.com/news/planting-a-future-for-vermons-herons/>

³ BC Conservation Data Centre. (CDC). 2018. Blue Heron species report. Accessed November 1, 2018.

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Carie Liefke
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Disturbance could also be associated with noise, especially when the noise is 10 dB above ambient noise levels in the natural environment or **greater than about 50dB**.

As the herons in the Vernon rookery are accustomed to disturbances, their degree of tolerance is largely influenced by the level of background noise which they are used to. Birds which choose to inhabit developed areas are less susceptible to disturbance and likely do not need buffers to the same extent as birds which inhabit natural or remote settings. Setbacks for heron colonies are often the best method used to provide nest protection (MOE 2018).

3 POTENTIAL IMPACTS OF PROPOSED PROJECT

This project may impact herons during their courting, nesting, and fledging period ("sensitive period") at the heron rookery from **March 10-August 31**. Noise and vibrations greater than 50dB and dust could temporarily impact the fecundity of the eggs and/or disturb fledglings. The **least risk period** for herons in the Interior of BC is from **September 1 to March 9** (Birds Canada 2018⁴), however herons in the Interior can begin courtship as early as February 15.

4 ENVIRONMENTAL TIMING WINDOWS, MITIGATION MEASURES AND SETBACKS

Mitigation measures to avoid impacts to the herons are as follows:

- Schedule high risk construction activities for the least risk window from **September 1 to March 10**;
- Avoid high vibration and high noise activities (road building, tree felling, blasting, concrete pumper trucks, jackhammers, building demolition, etc.), during the sensitive nesting period from **March 10-August 31**;
- Reduce dust generated from construction by using water trucks if necessary;
- Survey the heron rookery for departing birds at the end of the high-risk window (September 1) to ensure the herons have completed fledging, and at the beginning of the courting period starting February 15th and adjust noise levels from construction activities if courting activities are observed.

Because the herons are likely used to noise and encroachment by humans, we recommend the establishment of a nest disturbance buffer setback around the heron rookery to mitigate for noise and construction impacts as follows (Figure 1):

- a buffer of 100 m during the sensitive nesting period (200 m is recommended in the guidelines for forestry activities, MOE 2018; as this urban colony had adapted to noise, a 100 m buffer should be sufficient),
- a 60 m buffer during the least risk window.

⁴ Birds Canada. 2018. Nest Query Calendar. Great Blue Heron. North Okanagan Region.
<https://www.birdscanada.org/volunteer/pnw/rnest/>

December 11, 2018


Carie Liefke
City of Vernon

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If the project follows the mitigation measures in this letter, the project will not likely impact heron nesting activities in the heron rookery. Note: the 100 m buffer includes a very small section of the northwestern corner of the project property, as the size of this area is insignificant and not likely to mitigate for noise, we recommend excluding this from the setback as long as construction remains inside the property boundary. If a high vibration or high noise activity cannot be avoided during the sensitive nesting period, a monitoring program could be implemented by qualified professionals. However, this does not align with the best management practices, and the local Natural Resource Officers from the BC Ministry of Forests, Lands and Natural Resource Operations and Rural Development should be consulted.

If you have any questions, please contact the undersigned below at 250-545-3672.

Yours truly,



Carrie Nadeau, R.P.Bio.
Senior Ecologist

CN

Attachments:

Figure 1: Property Figure

Rezoning Application Preliminary Review Letter

Photographs

An Associated Engineering Company



PROJECT NO.: 2018-8211.000.000
 DATE: November 2018
 DRAWN BY: BdJ

FIGURE 1: HERONRY SETBACKS

Scotland Constructors
 5000-20th Street

ALL DISTANCES ARE IN METRES.

LANE

LOT 19
PLAN KAP52193

STRATA PLAN
KAS2607

PLAN KAP52193

Canopy of
grove
of trees with
nests

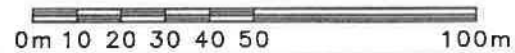
114.3m

REMAINDER
LOT 2
PLAN 939

LOT A
PLAN 20774

LOT 1
PLAN 4972

20TH STREET



SITE PLAN SHOWING LOCATION
OF NEAREST CANOPY OF A
HERON NEST TREE TO LOT A,
PLAN 20774, SEC 11, TP 8,
ODYD

107410A00

SCALE: 1 : 1500 OUR FILE: R10741

DATE: 19 Dec 2019 DRAWN: KDG

Scotland Constructors Ltd.

MADDOX & COMPANY

LAND SURVEYORS

3500 - 30th STREET

VERNON, BC V1T 5E8

TELEPHONE: (250) 542-4343



August 23, 2019

City of Vernon

Attention:

Re: Approved Development next to Great Blue Heron Rookery, located in Vernon B.C.

The Ecosystems Section of the Ministry of Forests, Lands, Natural Resource Operations & Rural Development (FLNRORD) has been notified by a concerned member of the public regarding the approval of rezoning and development of a multi-level housing unit next to a Great Blue Heron Rookery, located in Vernon B.C. The individual was concerned that the rookery may be at risk of destruction and/or disturbance due to development. We would like to take this opportunity to provide you with information regarding Great Blue Herons, the legal obligations under the *Wildlife Act* and recommendations to prevent abandonment and/or contravention of the *Wildlife Act*.

Great Blue Herons (*Ardea herodias herodias*) are a Provincially Blue-listed species in British Columbia. Great blue herons are protected provincially under the *Wildlife Act* and federally under the *Migratory Birds Convention Act*. As per Section 34 of the *Wildlife Act* it is an offense to possess, take, injure, molest, or destroy a bird or its egg or a nest occupied by a bird or egg. Herons nests are protected all year-round as they typically return to the same nesting area every year. This protection extends automatically to the structure holding the nest (often a tree) as obviously disturbance to/destruction of the structure would result in similar effects on the nest and its contents. As well, disturbance that results in birds abandoning active nests may be considered to 'molest' under the *Wildlife Act*.

Great blue herons are sensitive to disturbance and the main threats are from eagle predation, habitat loss and human disturbance. Urban and rural development results in loss of suitable nesting areas and disturbance to birds during their breeding season. Herons are susceptible to noise; therefore, loud and/or new noises may cause the herons to abandon their nests. With the proximity of the new development to the reported nests there are concerns that the activity may pose a risk to the population nesting in the area. Breeding is initiated between February and April. Courtship and nest repair and/or building take from several days to about a month. Herons lay 2-5 eggs which hatch after approximately 30 days of incubation. After two months old, young are able to fly and seek food.

We recommend that developments in close proximity to heron nests include a qualified professional to conduct necessary inventory and develop appropriate mitigation

measures, which need to be decided on a case-by case basis. However, the following are some recommendations for consideration during the planning stages for this development to ensure the protection of Great Blue Herons, their nests and their habitat.

1. Nesting birds are protected from harm under Section 34 of the provincial *Wildlife Act*, along with year round protection of nests of eagles, peregrine falcons, gyrfalcon, osprey, heron, and burrowing owls. Vegetation clearing should avoid in the following nesting windows:
 - a. **February 1 to August 15 for raptors and herons**
 - b. April 1 to August 31 for most other bird speciesIf clearing must occur during the above time periods, the proponent must hire a qualified professional to survey for active nests within the proposed disturbance areas and provide appropriate mitigation.
2. A buffer of at least 300 m in undeveloped areas, 200 m in rural areas, and 60 m in urbanized areas. An additional 200 metre 'no disturbance' buffer is recommended during the nesting season (see above), especially for colonies not previously accustomed to people and their activities.
3. Vegetation screening should be planted or maintained between the activity and the colony as close to the activity area as possible. Where possible, the trees/shrubs planted should be a mixture of deciduous and coniferous, and half should be of the same species currently used for nesting
4. Blasting or similarly excessive noises should not occur closer than 1000 m from a colony during the nesting window (see above).
5. It is the proponent's responsibility to ensure his/her activities are in compliance with all relevant legislation, including the *Water Sustainability Act* and the *Wildlife Act*.

For more information please refer to the attached Environmental Guidelines for Urban and Rural Development in British Columbia: The Develop with Care Fact Sheet for Great Blue Heron.

Please contact the undersigned at Melissa.Lalande@gov.bc.ca or (250) 371-6204 if you have further questions or require additional information.

Sincerely,

Melissa Lalande
Ecosystems Biologist
Thompson Okanagan Region
Kamloops, BC