



DEVELOPMENT PERMIT AREAS¹

SECTION 7

7.1 Development Permit Area Organization

For the area covered by this bylaw, the Electoral Area F Official Community Plan designates development permit areas and describes the special conditions or objectives that justify the designations. The applicability, exemption and guidelines for the development permit areas are contained within this bylaw as within Section 7 of this bylaw.

7.2 Freshwater and Fish Habitat Development Permit Area

APPLICABILITY

Terms used in this development permit area that are defined in the provincial *Riparian Areas Regulation* (RAR), of the *Riparian Areas Protection Act*, are intended to be interpreted in accordance with the definition given in the Regulation, as it may be amended from time to time. This Regulation and Act may be obtained from the provincial Ministry of Forests, Lands, Natural Resource Operations and Rural Development or from the BC Laws website.

A development permit is required for the following activities wherever they occur within this Development Permit Area, unless specifically exempted:

1. removal, alteration, disruption, or destruction of vegetation;
2. disturbance of soils; including grubbing, scraping and the removal of top soils;
3. construction or erection of buildings and structures;
4. creation of non-structural impervious or semi-impervious surfaces;
5. flood protection works;
6. construction of roads, trails, docks, wharves, and bridges; and
7. subdivision of land.

EXEMPTIONS

The following activities are exempt from any requirement for a development permit.

Exemptions Applicable to all Watercourses:

1. Development in an area where no stream or watercourse exists, or where the proposed development is clearly outside the development permit area, as determined by the Regional District, a BC Land Surveyor, or a Registered Professional Biologist. This

¹ Bylaw No. 1285.33, adopted December 4, 2018



exemption does not apply if the stream or watercourse ecosystem was previously filled or realigned without a development permit.

2. Renovations, repairs, maintenance, the construction of a second storey addition, excluding cantilevered construction to existing buildings within the same footprint (a building permit may still be required).
3. All park or parkland ancillary uses not containing commercial, residential, or industrial activities.
4. Emergency procedures to prevent, control, or reduce erosion, or other immediate threats to life and property including:
 - a) emergency flood or protection works;
 - b) clearing of an obstruction from bridge, culvert, or drainage flow, repairs to bridges and safety fences;
 - c) any emergency works to be undertaken in accordance with the Provincial *Water Sustainability Act* and *Wildlife Act*, and the federal *Fisheries Act*.

Notwithstanding the above, emergency actions for flood protection and clearing of obstructions by anyone other than the Regional District or Ministry must be reported to the Regional District and applicable Ministry immediately to secure exemption under this provision. Note that once the emergency has passed, a development permit may be required for remediation or permanent protection works.

5. Removal of trees deemed hazardous by a certified arborist or Registered Professional Forester that pose an imminent threat to buildings or life safety. Removal of hazardous trees that also contain an eagle or heron nest are exempt only if a permit under the *Wildlife Act* has been obtained.
6. The small-scale, manual removal of non-native invasive plants or noxious weeds or planting of non-invasive, native vegetation on a small scale conducted in accordance with best practices such as the Invasive Plan Council of BC's 'Grow Me Instead' publication.
7. The activity is part of a farm operation as defined by the *Farm Practices Protection (Right to Farm) Act*, is a permitted farm use as defined in Section 2(2) of the *Agricultural Land Reserve Use, Subdivision, and Procedures Regulations*, and the lands are assessed as 'farm' under the *BC Assessment Act*. The farm operation of land clearing is only exempt from the requirement of a development permit if conducted in accordance with a current Environmental Farm Plan (less than five years old); otherwise, land clearing as part of a farm operation is not exempt. Note that other provincial legislation such as the *Waste Management Act* and the *Water Sustainability Act* may apply to farm operation activities.



8. Digging of observation holes for percolation testing under supervision of a Registered Onsite Wastewater Practitioner or Professional Engineer, and digging of test pits for geotechnical investigation under supervision of a Professional Engineer.
9. Works conducted and/or approved by the Department of Fisheries and Oceans and/or Ministry of Environment with respect to trail construction, stream enhancement, fish and wildlife habitat restoration and in-stream works as defined by Section 11 of the *Water Sustainability Act*.
10. All forest management activities on lands subject to the *Forest Act* or *Private Managed Forest Land Act* and classified as 'Forest Lands' on the property assessment.
11. Works conducted by the Regional District or its agents where appropriate measures have been undertaken to satisfy the applicable development permit area guidelines as determined by the Regional District.
12. Subdivision where the minimum lot size is met exclusive of the exclusive of the development permit area, and no works are proposed within the development permit area.

Exemptions Applicable to Streams under the RAR only:

13. Subdivision where the minimum lot size is met exclusive of the Streamside Protection and Enhancement Area (SPEA), and no works are proposed within the Riparian Assessment Area.
14. Within Electoral Area A, development activities more than 30 metres from the Nanaimo River or Haslam Creek, measured from the top of bank or present natural boundary, whichever is greater, where:
 - a. a RAR assessment report has been completed by a Qualified Environmental Professional (QEP) in accordance with the RAR Assessment Methods and submitted to the province; and
 - b. notification of the assessment report has been received by the provincial ministry responsible and the Regional District.
15. For streams subject to the RAR, in the case where a simple assessment is submitted which assigns a SPEA, a development proposed outside of the SPEA where:
 - a) the assessment report has been completed by a QEP in accordance with the RAR Assessment Methods; and
 - b) notification of the assessment report has been received by the provincial ministry responsible and the Regional District, and there are no measures outside of the SPEA required to protect the SPEA.

Exemptions Applicable to this development permit area where the RAR does not apply:

16. Subdivision involving only lot line adjustment. For lot line adjustment to be exempt there must be sufficient developable area outside the development permit area as



confirmed by the Regional District, BC Land Surveyor, or Registered Professional Biologist, and there are no works proposed within the development permit area.

17. A property owner may construct a single trail within this development permit area in accordance with the principles and standards of 'Access Near Aquatic Areas' of the Stewardship Series published by the provincial and federal governments, and subject to the following conditions:
 - a) the trail provides the most direct route or feasible passage through the development permit area while minimizing the extent of vegetation removal or disturbance and minimizing excavation and removal of native soils;
 - b) the ground is stable, ie. erodible stream banks or other erosion prone areas shall be avoided;
 - c) no motorized vehicles are permitted on the trail;
 - d) the trail is not to exceed a maximum width of 1.5 metres;
 - e) no trees, which are greater than five metres in height and 10 centimetres in diameter, are to be removed; instead limbing and pruning of trees shall be done, where necessary, to facilitate the construction of the single trail;
 - f) the trail's surface shall only be composed of pervious materials.
18. Minor additions to existing buildings or structures to a cumulative maximum of 25 percent of the original ground floor area, if the addition is located on the side or part of the building or structure most distant from the waterbody or stream.
19. The construction of a small accessory building or structure if all the following apply:
 - a) the building or structure is located within an existing landscaped area;
 - b) no native trees with a diameter at breast height of 20 centimetres or greater are removed;
 - c) there is no permanent foundation;
 - d) the building or structure is located a minimum of 10 metres from the high water mark or, where the bank has a slope greater than 3:1, 10 metres from the top of the bank; and
 - e) the total area of the accessory building or structure is less than 10 square metres.



GUIDELINES

Development permits shall be issued in accordance with the following.

Guidelines applicable to all watercourses:

1. An assessment must be prepared by a Registered Professional Biologist (a QEP for streams applicable to the RAR) for the purpose of identifying sensitive biophysical features on or near the development permit area and providing recommendations and conditions for development to avoid or mitigate impacts to these features. The assessment should list each guideline with an explanation of how the development is consistent with the guideline, or an explanation as to how the guideline is not applicable. The site plan should indicate the areas for yard and driveway and areas to remain free from development. See Guideline 13 for additional requirements of this report for streams applicable to the RAR.
2. If development or alteration of land is proposed within the development permit area, it shall be located so as to minimize the impact on the stream or waterbody. The assessment report shall include an explanation as to how locating development entirely outside of the development permit area has been considered, and the reason that it is not being proposed. Variances to the zoning bylaw regulations to minimize development in the development permit area should be considered.
3. Sensitive biophysical features to be assessed in this development permit area include but are not limited to:
 - a) forest cover and ecological communities;
 - b) surface drainage patterns;
 - c) site topography and channel morphology;
 - d) aquatic and riparian habitat values, condition and function; and
 - e) an overall assessment of the ecological importance of the watercourse.
4. Mitigation measures that should be considered in the biological assessment include but are not limited to:
 - a) minimization of vegetation removal;
 - b) maintenance of linkages with adjacent sensitive ecosystems to minimize habitat fragmentation and maintain wildlife corridors;
 - c) sediment and erosion control;
 - d) protection of sensitive areas through fencing or other permanent demarcation; and
 - e) timing of construction to minimize potential impacts.
5. Where the applicant's biologist or other qualified professional recommends revegetation and/or enhancement works, the Regional District may require the



applicant to submit a landscaping plan and a security deposit equal to the total estimated costs of all materials and labour as determined by a Landscape Architect or other qualified professional to the satisfaction of the Regional District.

6. For the SPEA or where the applicant's biologist or other qualified professional recommends other specific areas that must remain free from development:
 - a) the Regional District may require a Section 219 covenant to be prepared at the applicant's expense, to the satisfaction of the Regional District, to ensure that the identified areas remain free from development; and
 - b) prior to construction commencing, the installation of temporary fencing or flagged stakes marking the protection area is required to avoid encroachment within the areas to be protected through to the completion of the development.
7. The applicant's biologist or QEP may be required to provide confirmation to the Regional District that the property has been developed in accordance with the QEPs recommendations.

Guidelines Related to Rainwater Management and Protection of Development from Hazardous Conditions:

8. On any development where there is potential for silt, petroleum or any other contaminants to enter a watercourse either directly or indirectly through infiltration, provision of oil, grease and sediment removal facilities and the ongoing maintenance of these features will be required.
9. Directing drainage of rainwater from development sites into the SPEA and other watercourses and water bodies shall be avoided. Instead, rainwater is to be managed onsite with an emphasis on infiltration approaches to management. If impacts cannot be avoided through onsite infiltration, a sediment and erosion control plan may be required, and grading plan may be required where fill is placed near the freshwater feature.
10. In low-lying areas subject to flooding, development should not increase the flood risk on the subject property or on adjacent or nearby properties. Where the placement of fill is proposed within a floodplain as defined by the RDN Floodplain Management Bylaw, it shall be designed by a Professional Engineer to ensure that the placement of the proposed fill will not restrict the passage of flood waters, redirect flood flows, decrease natural flood storage, result in higher flood flows or result in higher flood potential elsewhere in the floodplain.
11. Where there is a slope greater than 30 percent over a minimum horizontal distance of 10 metres, an assessment report prepared by a Professional Engineer with experience in geotechnical engineering may be required to assist in determining what conditions or requirements shall be included in the development permit so that proposed development is protected from the hazard and no increase in hazard is posed to existing development. The geotechnical report will form part of the development permit terms





and conditions, and may include registration of a Section 219 Covenant, prepared at the applicant's expense and to the satisfaction of the Regional District.

Additional Guidelines Applicable to Streams Subject to the RAR only:

12. No development shall take place within any SPEA except where:
 - a) a QEP has determined that no serious harm is likely to occur or that it can be mitigated by following prescribed measures; or
 - b) the owner has obtained an authorization under subsection 35(2) [serious harm to fish] of the *Fisheries Act* or Section 11 [changes in and about a stream] of the *Water Sustainability Act*.
13. The Regional District shall require the applicant to retain a QEP, at the expense of the applicant, for the purpose of preparing an assessment report, pursuant to Section 4(2) of the RAR and the RAR Assessment Methodology Guidebook, and the assessment report must be electronically submitted to the provincial ministry responsible, via the Riparian Area Regulations Notification System, and a copy must be provided to the Regional District.
14. In addition to implementing the measures in the assessment report, to ensure the integrity of the SPEA the Regional District and landowner may consider the following:
 - a) gift to a nature preservation organization all or part of the SPEA; or
 - b) register a restrictive covenant or conservation covenant on title securing the measures prescribed in the assessment report.
15. For the purpose of subdivision design, proposed lot configuration shall consider the protection of the SPEA and minimize new lot lines in the SPEA. The proposed lot configuration should demonstrate that enough developable land is available on each lot to establish a development envelope that includes a reasonable yard area outside of the SPEA to accommodate wastewater disposal field, driveway, accessory buildings and yard.
16. Permanent fencing and/or other means of clearly delineating the SPEA boundary such as signage must be designed to follow the standard established by the Regional District and Ministry of Environment shown below. Signage should be installed to the satisfaction of the Regional District prior to land alteration and in the case of subdivision prior to the Regional District notifying the Approving Officer that the conditions of the development permit have been met. Fencing must be maintained in good order.



 REGIONAL DISTRICT OF NANAIMO


BRITISH COLUMBIA
Ministry of Environment

NOTICE

FISH HABITAT PROTECTION AREA

Maintaining a buffer of native vegetation adjacent to streams, lakes, wetlands and ponds is critically important to the overall health, ecological function and productive capacity of aquatic ecosystems. The land on the other side of this fence is important habitat for fish and other aquatic and terrestrial organisms and must not be cleared or altered without prior approval from the Regional District of Nanaimo. Please respect this land and help preserve these ecosystems for future generations to enjoy.

Aluminum or Dibond 12"x18" Radius corners
Inline border .14"
RDN logo: 2"x5.17"
Ministry of Environment logo: 2.5"x2.92"
Notice: Arial black type .90"
Fish Habitat Protection Area: Arial black type .60"
All other text: Arial bold type .27"