

# REGIONAL DISTRICT OF NANAIMO

## P O L I C Y

SUBJECT:	<b>Exemption from Floodplain Bylaw</b>	POLICY NO:	B1.27
		CROSS REF.:	None
EFFECTIVE DATE:	<b>November 09, 2023</b>	APPROVED BY:	Board
REVISION DATE:	None	PAGE:	1 of 3

### PURPOSE

This policy is to provide staff with guidance for reviewing and preparing recommendations for applications for site-specific exemptions from floodplain regulations.

### PART A – FLOODPLAIN REGULATIONS

Section 524(2)(3) of the *Local Government Act* gives the Board the authority to designate regulatory floodplain areas, set minimum setbacks from the waterbody and establish the Flood Construction Level (FCL)<sup>1</sup> for the habitable area of new buildings and structures. The Regional District of Nanaimo (RDN) Board has adopted these provisions through the “Regional District of Nanaimo Flood Hazard Mitigation Bylaw No. 1872, 2023”, referred to as the “Floodplain Bylaw”.

In the development and implementation of the regulations, the Board is required to consider the Provincial Guidelines<sup>2</sup> as defined by the *Local Government Act* and the Floodplain Bylaw.

Section 524(8) of the *Act* enables the Board to grant a site-specific exemption to the floodplain regulations, specifically the Floodplain Bylaw. This discretionary authority extends to the reduction of the FCL and Setback requirements for the building, structural support or landfill and is subject to review and the terms and conditions a local government considers necessary or advisable, including:

- imposing any term or condition contemplated by the Provincial Guidelines in relation to floodplain regulation exemptions;
- requiring the property owner/agent to submit a Flood Hazard Assessment report, prepared by a qualified professional with recommendations, certifying the land may be used safely for the use intended; and
- requiring the property owner enters into a covenant under section 219 of the *Land Title Act*.

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<sup>1</sup> ‘Flood Construction Level’ means the minimum elevation as specified in Flood Hazard and Mitigation Bylaw No. 1872 of the underside of a floor system or top of any structural support for any Habitable Area including any Manufactured Home.

<sup>2</sup> As defined in the Floodplain Bylaw, includes Flood Hazard Area Land Use Management Guidelines, 2004 (and as amended 2018).

## **PART B – SITE-SPECIFIC FLOODPLAIN REGULATION EXEMPTION APPLICATIONS**

Planning staff are directed to consider this policy, the Provincial Guidelines, applicable Official Community Plans and Floodplain Bylaw when structuring their review and forming their professional recommendations to the Board based on, but not limited to, the following:

1. The proposed exemption is consistent with the application of the Provincial Guidelines inclusive of a **valid hardship**, and no other reasonable option is available.
  - a. A valid hardship shall only be recognized where the physical characteristics of the lot (e.g., topography) and size of the lot are such that building development proposals consistent with the current land use zoning cannot occur under the requirements of the Floodplain Bylaw.
  - b. The economic circumstances or architectural design and siting preferences of the owner shall not be considered as grounds for hardship.
2. The property owner/agent has provided a geotechnical evaluation (Flood Hazard Assessment report) that:
  - a. is certified by a qualified professional engineer;
  - b. is consistent with professional best practices for considering flood hazards and associated risks;
  - c. the engineer shall consider all aspects of the future coastal flood hazard including potential wave, debris and related splash impacts to buildings, and coastal erosion over the life of the building;
  - d. proposes construction methods designed to reduce flood risks to property, people and the natural environment (particularly coastal shoreline); and
  - e. proposes Flood Construction Level and/or Setback from the hazard represent the minimum practical variation from the requirements of this bylaw given the location, configuration, and intended use of the land, specifically without regard to the economic circumstances or siting preference of the Owner.
3. For proposed exemptions on the **coastal floodplain**, the following is also required:
  - a. the assessment is prepared by a suitably qualified professional engineer experienced in coastal engineering; and
  - b. the engineer shall consider all aspects of the future coastal flood hazard including potential wave, debris and related splash impacts to buildings, and coastal erosion over the life of the building.

4. Where a Flood Hazard Assessment report has been submitted, to the satisfaction of the Regional District, and the Owner grants a restrictive covenant, under Section 219 of the *Land Title Act*, for the use and development of the land that includes:
  - a. a copy of the Flood Hazard Assessment report with any recommendations, restrictions or conditions;
  - b. an indemnity in favour of the Regional District to indemnify and save harmless the Regional District against any loss or damage with respect to the flooding to the property, or flood damage to the land, structures and contents thereof, or any injury (including death) to any person or animal arising from the flooding of the property or flood damage to the land; and
  - c. for development in the coastal floodplain the covenant shall require that future reconstruction shall meet the setbacks and FCL in force at the time of redevelopment.
5. Failure to meet any of the above conditions is grounds for staff to recommend the Board deny a floodplain exemption application.

#### **PART C - TERMS OF USE OF THIS POLICY**

1. This policy is intended to apply to staff evaluation of site-specific exemptions applications to the Floodplain Bylaw adopted by the Board.
2. The Board of the RDN is not in any way bound by this policy and is free to apply, or not apply, any evaluation criterion it deems appropriate in its consideration of applications.