

**REGIONAL DISTRICT OF NANAIMO**

**ELECTORAL AREA PLANNING COMMITTEE  
TUESDAY, JULY 11, 2006**

**A D D E N D U M**

**PAGES**

**PLANNING**

2-95

Riparian Areas Regulation Implementation OCP Amendment Bylaw Nos.  
1240.03, 1152.03, 1148.04, 814.09, 1055.03, 1115.04, 1335.02, 1007.05 and  
1400.01.



RDN			
CAO	GMES		
GMCS	GMR&P		
GMDS	GMRT&P		
JUL - 4 2006			
CHAIR	BOARD		
EAP			

MEMORANDUM

TO: Jason Llewellyn  
 Manager, Community Planning

DATE: June 30, 2006

FROM: Greg Keller  
 Planner

FILE: 6480-30-RAR

SUBJECT: Riparian Areas Regulation implementation OCP amendment Bylaw Nos. 1240.03, 1152.03, 1148.04, 814.09, 1055.03, 1115.04, 1335.02, 1007.05, and 1400.01.

PURPOSE

To consider amending all Regional District of Nanaimo Official Community Plans to implement the Riparian Areas Regulation and to consider granting 1<sup>st</sup> and 2<sup>nd</sup> readings to OCP amendment Bylaw Nos. 1240.03, 1152.03, 1148.04, 814.09, 1055.03, 1115.04, 1335.02, 1007.05, and 1400.01.

BACKGROUND

Staff previously presented this topic to the Board in staff reports dated June 7, 2005, and January 30, 2006. These reports outlined the technical details of the legislation and the approval process. These reports are available for viewing should the Board require further information on the technical aspects of the legislation. The following summarizes the Riparian Areas Regulation (RAR) requirements, procedures, and implications for the Board's consideration.

The Ministry of Environment, in cooperation with Fisheries and Oceans Canada, adopted new legislation titled the "Riparian Areas Regulation" (RAR), which came in to force on March 31, 2006. This new legislation was enacted in July of 2004 under Section 12 of the British Columbia Fish Protection Act. This legislation aims to protect the features, functions, and conditions that support fish processes in riparian areas.

As a result of the RAR, the Regional District of Nanaimo can not approve or allow to proceed any proposed development located within a Riparian Assessment Area (RAA)<sup>1</sup> until notification that an assessment report prepared by a Qualified Environmental Professional (QEP) has been accepted by the Ministry of Environment (please refer to Schedule No. 1 – Riparian Areas Regulation for further detailed information). In addition, the RAR requires local governments to protect its riparian areas in accordance with the RAR. Therefore, the Regional District of Nanaimo must have bylaws in place to protect fish habitat that are consistent with the RAR.

The RAR applies to all approvals issued under Part 26 of the Local Government Act for development within a RAA including:

- Development Permits;
- Development Variance Permits;
- Temporary Use Permits;
- Site specific Zoning Bylaw Amendments;

<sup>1</sup> The "riparian assessment area"(RAA) is defined as the area within 30 metres of the high water mark of a stream, within 30 metres of the top of a ravine bank, or within 10 metres of the top of a ravine bank where the ravine is more than 60 metres in width.

- Site specific Official Community Plan Amendments;
- Servicing Agreements; or,
- Land Use Contract amendments.

The RAR does not apply to:

- the issuance of a building permit;
- subdivision approval by Approving Officer;
- strata conversions;
- development permits or development variance permits for the purpose of enabling reconstruction or repair of a permanent structure protected under Section 911 (non-conforming use and siting) of the *Local Government Act* if the structure remains on its existing foundation;
- farm uses on Agricultural Land Reserve land;
- recreational or institutional uses on recreational or institutional zoned lands;
- Board of Variance Decisions; or,
- Forestry activities on Crown Land or private managed forest land.

In addition to the above, the RAR does not apply to the marine environment.

The requirement for an assessment is triggered where an approval is required for any permit, bylaw amendment, or agreement noted above that involves any of the following development within a riparian assessment area:

- removal, alteration, disruption, or destruction of vegetation;
- disturbance of soils;
- construction or erection of buildings or structures;
- creation of non-structural impervious or semi-impervious surfaces;
- flood protection works;
- construction of roads, trails, docks, wharves, and bridges;
- provision and maintenance of sewer and water services;
- development of drainage systems;
- development associated with subdivision; or,
- development of utility corridors.

The purpose of the QEP report is to determine the width of the protective buffer [referred to in the legislation as the Streamside Protection and Enhancement Area (SPEA)<sup>2</sup>] on each side of the stream<sup>3</sup> and other measures to protect fish habitat. In other words, how far a development must be located from a watercourse and what must be done to preserve and enhance the riparian area within this buffer area for the purpose of fish habitat protection.

There are a number of options for implementing the RAR. The January 2006 staff report outlined the various options and explained the implications of each. The report recommended that staff begin the process to amend the development permit areas as required to implement the Riparian Areas Regulation. The Board passed the following resolution in support of RAR implementation during its regular Board meeting of June 28, 2005.

---

<sup>2</sup> Streamside Protection and Enhancement Area (SPEA) means (a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream, and (b) the size of which is determined according to this regulation on the basis of an assessment report provided by a qualified environmental professional in respect of a development proposal;

<sup>3</sup> Stream includes any of the following that provides fish habitat: [a] a watercourse, whether it usually contains water or not, [b] a pond, lake, river, creek, or brook, [c] or a ditch, spring or wetland that is connected to surface flow to something referred to in [a] or [b] above.

*MOVED Director Bartram, SECONDED Director Holme, that the Board direct staff to begin the process to amend the development permit areas as required to implement the Riparian Areas Regulation.*

*CARRIED*

During this time, staff have clarified a number of outstanding issues related to liability, implementation, enforcement, monitoring, and Fisheries and Oceans Canada's role that previously delayed progress on the implementation of the RAR. Staff are now prepared to recommend the Board proceed with the required OCP amendments to bring the existing OCP's into compliance with the RAR as outlined in this report.

## **ALTERNATIVES**

1. To approve the amendment bylaws for 1<sup>st</sup> and 2<sup>nd</sup> reading and proceed to hold Public Information Meeting(s) followed by a Public Hearing.
2. To not approve the amendment application for 1<sup>st</sup> and 2<sup>nd</sup> reading.

## **OFFICIAL COMMUNITY PLAN IMPLICATIONS**

Currently, not all of the Regional District of Nanaimo's OCP bylaws are consistent with the RAR as many of the existing Watercourse Protection Development Permit Areas: do not require an assessment for proposed developments within 30 metres of a watercourse; the guidelines are not the same as the RAR standards; and/or, not all watercourses are within a Development Permit Area. Further, requiring a Riparian Area Assessment will provide staff and the public with more certainty with respect to Development Permit application submission requirements and Development Permit application processing.

In order to effectively implement the RAR through amendments to the OCP's, staff are proposing to develop a new Development Permit Area (DPA) called the "Fish Habitat Protection Development Permit Area", or in the Nanoose Bay OCP the "Watercourse Protection Development Permit Area" that would be applied in each OCP (with minor modifications to fit the overall scheme and formatting of each OCP). The RAR applies to a wide range of streams, as defined in footnote No. 3 above, including ditches, springs, and wetlands, which makes it extremely difficult to identify these streams on a map. Mapping data is currently unavailable and/or unreliable for many streams within the Regional District of Nanaimo boundaries that may be subject to the RAR. The Courts have directed that all Development Permit Areas must be mapped to provide property owners certainty with respect to whether a particular property is designated within a Development Permit Area.

It is proposed that each Official Community Plan area in its entirety be included within the Development Permit Area. The proposed Development Permit Area would include a number of exemptions to reduce the number of Development Permit applications where it is found through investigation that there are no streams subject to the RAR located on a property or when a proposed development is not located within a Riparian Assessment Area.

The said exemptions would release an applicant from requiring a Development Permit in the following circumstances:

- a) A development is located outside of the Riparian Assessment Area as determined by a British Columbia Land Surveyor or other qualified person;
- b) A development proposed outside of the Streamside Protection and Enhancement Area where notification of an assessment report prepared in accordance with Section 4(2) of the Riparian

Areas Regulation Assessment Methods has been received by the Regional District of Nanaimo and there are no measures required to protect the SPEA;

- c) Renovations, repairs, or maintenance to existing buildings within the same footprint that are protected by Section 911 of the *Local Government Act*;
- d) Removal of trees deemed hazardous by a qualified arborist that threaten the immediate safety of life and buildings;
- e) All development on lands proposed to be used for 'farm operation' as defined by the *Farm Practices Protection Act*;
- f) All development on lands subject to the *Forest Act* or *Private Managed Forest Land Act*;
- g) All park or park land ancillary uses not containing commercial, residential, or industrial activities;
- h) Stream enhancement and fish and wildlife habitat restoration works that have obtained the required Provincial and Federal approvals. Any activity within the stream channel that has or may have an impact on a stream requires compliance with Provincial and Federal legislation and notification to the RDN;
- i) The removal of invasive plants or noxious weeds on a small scale within the Development Permit Area including, but not limited to, Scotch Broom, Himalayan Blackberry, Morning Glory, and Purple Loosestrife provided such works are conducted in accordance with a vegetation management plan prepared by a certified Arborist or other Qualified person and measures are taken to avoid sediment or debris being discharged into the watercourse or onto the foreshore and the area is replanted immediately in accordance with "h" above.

With the exception of Regional District of Nanaimo Englishman River Official Community Plan, all Regional District Official Community Plans currently contain Watercourse Protection Development Permit Areas. However, most of the existing Development Permit Areas are not consistent with the RAR as they either do not require a Development Permit for development within 30.0 metres of a watercourse and/or all watercourses are not designated within a Development Permit Area. The following outlines the existing watercourse protection Development Permit Areas in each OCP and a summary of the proposed changes.

OCP Area	Development Permit Area	Development Permit Applicability	Summary of Proposed Changes
Electoral Area 'A'	Streams, Nesting Trees, & Nanaimo River Floodplain	<ul style="list-style-type: none"> <li>• Nanaimo River and Haslam Creek - 30 metres from the Natural Boundary</li> <li>• All other watercourses - 15 metres from the Natural Boundary</li> </ul>	<ul style="list-style-type: none"> <li>• Housekeeping amendments recognize the RAR.</li> <li>• Adding a new Fish Habitat Protection Development Permit Area.</li> <li>• Inserting a new Development Permit Area Map.</li> </ul>
Arrowsmith Benson – Cranberry	Watercourse Protection	<ul style="list-style-type: none"> <li>• Nanaimo River, Englishman River, and</li> </ul>	<ul style="list-style-type: none"> <li>• Housekeeping amendments recognize the RAR.</li> </ul>

OCP Area	Development Permit Area	Development Permit Applicability	Summary of Proposed Changes
<b>Bright</b>		<ul style="list-style-type: none"> <li>• Haslam Creek - 30 metres from the Natural Boundary/Top of Bank</li> <li>• All other watercourses - 15 metres from the Natural Boundary/Top of Bank</li> </ul>	<ul style="list-style-type: none"> <li>• Amendments to the existing Watercourse Protection Development Permit Area to ensure consistency with the RAR.</li> <li>• Adding a new Fish Habitat Protection Development Permit Area.</li> <li>• Inserting a new Development Permit Area Map.</li> </ul>
<b>East Wellington – Pleasant Valley</b>	Environmentally Sensitive Areas	<ul style="list-style-type: none"> <li>• All watercourses - 30 metres from the Natural Boundary</li> </ul>	<ul style="list-style-type: none"> <li>• Housekeeping amendments recognize the RAR.</li> <li>• Remove the existing Environmentally Sensitive Features Development Permit Area and replace it with the Fish Habitat Protection Development Permit Area.</li> <li>• Inserting a new Development Permit Area Map.</li> </ul>
<b>Nanoose Bay</b>	Watercourse Protection	<ul style="list-style-type: none"> <li>• All watercourses - 30 metres from the Natural Boundary</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the existing Watercourse Protection Development Permit Area. Although this plan was developed in consideration of the RAR, there have recently been clarifications on some of the previous issues and updated legal opinions that warrant the proposed changes.</li> <li>• Inserting a new Development Permit Area Map.</li> </ul>
<b>French Creek</b>	Watercourse Protection	<ul style="list-style-type: none"> <li>• French Creek - 30 metres from the Natural Boundary</li> <li>• All other watercourses - 15 metres from the Natural Boundary</li> </ul>	<ul style="list-style-type: none"> <li>• Housekeeping amendments recognize the RAR</li> <li>• Amendments to the existing Watercourse Protection Development Permit Area to ensure consistency with the RAR</li> <li>• Adding a new Fish Habitat Protection Development Permit Area</li> <li>• Inserting a new Development Permit Area Map</li> </ul>

OCP Area	Development Permit Area	Development Permit Applicability	Summary of Proposed Changes
Shaw Hill – Deep Bay	Environmentally Sensitive	All watercourses - 15 metres from the Natural Boundary	<ul style="list-style-type: none"> <li>• Housekeeping amendments recognize the RAR.</li> <li>• Amendments to the existing Environmentally Sensitive Areas Development Permit Area to ensure consistency with the RAR.</li> <li>• Adding a new Fish Habitat Protection Development Permit Area.</li> <li>• Inserting a new Development Permit Area Map.</li> </ul>
Englishman River	None at this time	N/A	<ul style="list-style-type: none"> <li>• Housekeeping amendments recognize the RAR.</li> <li>• Adding a new Fish Habitat Protection Development Permit Area.</li> <li>• Inserting a new Development Permit Area Map.</li> </ul>
Electoral Area 'H'	Environmentally Sensitive	<ul style="list-style-type: none"> <li>• Big Qualicum River, Thames Creek and Nile Creek - 30 metres from the Natural Boundary</li> <li>• All other watercourses - 15 metres from the Natural Boundary</li> </ul>	<ul style="list-style-type: none"> <li>• Housekeeping amendments recognize the RAR.</li> <li>• Amendments to the existing Environmentally Sensitive Features Development Permit Area to ensure consistency with the RAR.</li> <li>• Adding a new Fish Habitat Protection Development Permit Area.</li> <li>• Inserting a new Development Permit Area Map.</li> </ul>

As mentioned above, the majority of OCP's require housekeeping amendments to make them consistent with the RAR. For most OCPs, a new Fish Habitat Protection Development Permit Area will be added and minor amendments will be made to the existing Watercourse Protection Development Permit Area to ensure consistency with the proposed Development Permit Area.

Staff are proposing to replace/amend the existing Development Permit Areas rather than insert new Development Permit Areas in the East Wellington – Pleasant Valley and Nanoose Bay OCP's. This is primarily because the existing Development Permit Area guidelines currently contain policies related to fish habitat protection and the proposed amendments would minimize conflicts between the existing policies and the RAR amendments.

Where the existing Development Permit Area is proposed to be amended rather than inserting a new Development Permit Area, staff was concerned with maintaining the existing level of protection for environmentally sensitive features other than fish habitat. Therefore, staff has, where feasible, carried forward the relevant guidelines pertaining to the protection of the natural environment, other than fish habitat to ensure the same level of protection exists.

The Englishman River OCP currently does not have a Watercourse Protection Development Permit Area, so the proposed amendment would insert a new Fish Habitat Protection Development Permit Area. Please note, the Area 'G' OCP review is currently in progress, which would see the French Creek, Englishman River, and Shaw Hill – Deep Bay OCP's being combined into one OCP.

## **REGIONAL GROWTH STRATEGY IMPLICATIONS**

The proposed OCP amendments are consistent with Policy 4D in the "Regional District of Nanaimo Regional Growth Strategy Bylaw No. 1309, 2002," to protect streamside areas in accordance with applicable Provincial and Federal legislation. The Regional Growth Strategy also encourages the Federal and Provincial Governments to support the development and implementation of measures to protect streams and streamside areas at the local government area.

## **ZONING IMPLICATIONS**

If the proposed OCP amendments are approved, "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987," and "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 1285, 2002," would remain unaffected.

## **DEVELOPMENT APPLICATION PROCESSING AND DEVELOPMENT INQUIRY IMPLICATIONS**

As mentioned above, the Regional District of Nanaimo Planning Department, along with other regional districts are challenged by the inability to identify all streams that may be subject to the RAR, and therefore, may be open to liability for not fully complying with RAR. When development inquiries are received by the Planning Department, staff must determine whether or not there is a watercourse subject to the RAR located on the subject property. There are a few different options available to make this determination.

The first option is for staff to conduct a site visit for every development inquiry and development application. This option is not practical without a significant increase in current staffing resources.

The second option is to require the property owner/applicant to hire a Biologist/Qualified Environmental Professional prior to any development to make a determination as to whether or not there is a watercourse that is subject to the RAR on a subject property. This option is the only option that guarantees that the Regional District of Nanaimo will not be found liable for not requiring an assessment report. However, this option would be extremely onerous for property owners and developers especially when there are no watercourses on the subject property or adjacent lands.

The third option is to require the property owner/applicant to sign a property declaration stating whether or not there are/is water features of any kind located on the subject property and whether or not any development is proposed within 30.0 metres of the water feature. If there are no water features identified, the Regional District of Nanaimo would rely on that information and potentially allow the development to proceed subject to staff conducting a review of existing records and mapping to confirm the absence of a watercourse. If a watercourse is located on a subject property and development is proposed within the Riparian Assessment Area, the applicant would hire a QEP to make a determination as to whether or not the watercourse is subject to the RAR. Where time permits, staff may conduct a site visit. Where staff



conducts a site visit and is uncertain as to the status of a watercourse, the applicant will be required to hire a QEP to make the determination.

In staff's opinion, the third option is the most practical; therefore, staff recommend the use of the property declaration form and have attached a policy as Schedule No. 2 for the Board's consideration.

## **PROCEDURAL AND PUBLIC CONSULTATION IMPLICATIONS**

Pursuant to Section 879 of the *Local Government Act*, staff recommend that the Board:

1. consider whether the opportunities for consultation with one or more of the persons, organizations, and authorities should be early and ongoing; and,
2. specifically consider whether consultation is required with
  - i. the board of the regional district in which the area covered by the plan is located, in the case of a municipal official community plan;
  - ii. the board of any regional district that is adjacent to the area covered by the plan;
  - iii. the council of any municipality that is adjacent to the area covered by the plan;
  - iv. first nations;
  - v. school district boards, greater boards, and improvement district boards; and,
  - vi. the Provincial and federal governments and their agencies.

### *Proposed Public Consultation Strategy*

Should the Board grant 1<sup>st</sup> and 2<sup>nd</sup> readings to the proposed bylaws, staff is proposing two Public Information Meetings to answer questions and explain the proposed changes. Staff are proposing to hold Public Information Meetings during the month of September, one in School District 68 and one in School District 69, the locations and dates to be confirmed. While there is some urgency to proceed with the adoption of these bylaws, attendance is generally low at public meetings held during the summer months and public meetings at this time should generally be avoided. As well, staff is proposing to circulate an information bulletin in August to provide a summary of the RAR and the changes to the development permit areas proposed by the RDN. As well, the information bulletins will have details about the public meetings in September.

As part of the proposed public consultation strategy, staff are proposing to refer the proposed bylaws to the following agencies: Ministry of Environment, Fisheries and Oceans Canada, Ministry of Community Services, Provincial Agricultural Land Commission, City of Nanaimo, City of Parksville, District of Lantzville, Integrated Land Management Bureau, Town of Qualicum Beach, Cowichan Valley Regional District, Comox-Strathcona Regional District, Alberni-Clayoquot Regional District, Qualicum First Nation, Nanoose First Nation, Snuneymuxw First Nation, School District 69, School District 68, Ministry of Transportation, and the Vancouver Island Health Authority.

If the bylaw amendments proceed, a Public Hearing is required as part of the bylaw approval process. Staff is proposing to hold one Public Hearing in the Board Chambers of the Regional District of Nanaimo after the Public Information Meetings and before the Board's consideration of 3<sup>rd</sup> reading of the corresponding bylaws.

Staff is proposing to advertise the Public Information Meetings through a notice published in one issue of the Harbour City Star, Nanaimo News Bulletin, PQ News, the Beacon, and Take 5 (as the Take 5 is published monthly, the proposed notice may advertise both the Public Information Meeting and the Public Hearing). Staff is proposing to advertise the Public Hearing through two consecutive issues of the above newspapers, excluding the Take 5, which would only be one issue. Staff is also proposing to post notice on the Regional District of Nanaimo website and internal notice boards. Staff has already provided an

information backgrounder on the RAR published in the March 2006 edition of the Electoral Area Perspectives Newsletters, and staff is proposing to publish an RAR update in a future edition of the Electoral Area Perspectives Newsletters.

## **FINANCIAL AND WASTE MANAGEMENT PLAN IMPLICATIONS**

Staff has considered the proposed amendment bylaws in conjunction with the Regional District of Nanaimo financial plan and the waste management plans and are of the opinion that the proposed amendment bylaws have no effect on these plans.

## **VOTING**

Electoral Area Directors - one vote, except Electoral Area 'B'.

## **SUMMARY**

The provincial Riparian Areas Regulation came into force on March 31, 2006. This legislation requires that the affected local governments amend their bylaws in order to ensure that all development within a Riparian Assessment Area is assessed by a Qualified Environmental Professional. The RAR prohibits local governments from issuing any Part 26 approvals until a notification from the Ministry of Environment is received indicating that a satisfactory assessment has been conducted.

In order to meet this statutory requirement, staff are proposing to amend the OCP's to ensure, as close as possible, consistency with the RAR. This requires the implementation of a new Development Permit Area in each OCP and/or amendments to the existing Watercourse Protection Development Permit Areas, as well as some general housekeeping amendments to ensure there are no policy conflicts with the RAR.

## **RECOMMENDATIONS**

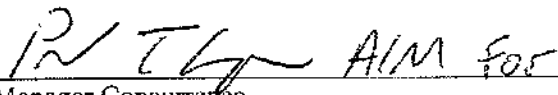
1. That the Regional District of Nanaimo Board approve the proposed public consultation strategy contained in this staff report.
2. That "Regional District of Nanaimo Electoral Area 'A' Official Community Plan Bylaw Amendment Bylaw No. 1240.03, 2006," be given 1<sup>st</sup> and 2<sup>nd</sup> reading.
3. That "Regional District of Nanaimo Arrowsmith Benson-Cranberry Bright Official Community Plan Bylaw Amendment Bylaw No. 1148.04, 2006," be given 1<sup>st</sup> and 2<sup>nd</sup> reading.
4. That "Regional District of Nanaimo East Wellington - Pleasant Valley Official Community Plan Bylaw Amendment Bylaw No. 1055.03, 2006," be given 1<sup>st</sup> and 2<sup>nd</sup> reading.
5. That "Regional District of Nanaimo French Creek Official Community Plan Bylaw Amendment Bylaw No. 1115.04, 2006," be given 1<sup>st</sup> and 2<sup>nd</sup> reading.
6. That "Regional District of Nanaimo Shaw Hill-Deep Bay Official Community Plan Bylaw Amendment Bylaw No. 1007.05, 2006," be given 1<sup>st</sup> and 2<sup>nd</sup> reading.
7. That "Regional District of Nanaimo Englishman River Official Community Plan Bylaw Amendment Bylaw No. 814.09, 2006," be given 1<sup>st</sup> and 2<sup>nd</sup> reading.
8. That "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw Amendment Bylaw No. 1335.02, 2006," be given 1<sup>st</sup> and 2<sup>nd</sup> reading.

9. That "Regional District of Nanaimo Electoral Area 'F' Official Community Plan Bylaw Amendment Bylaw No. 1152.03, 2006," be given 1<sup>st</sup> and 2nd reading.
10. That "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw Amendment Bylaw No. 1400.01, 2006," be given 1<sup>st</sup> and 2nd reading
11. That Regional District of Nanaimo Official Community Plan Amendment Bylaw Nos. 1240.03, 2006, 1148.04, 2006, 1055.03, 2006, 1115.04, 2006, 1007.05, 2006, 814.09, 2006, 1335.02, 2006, 1152.03, 2006, and 1400.01, 2006, be considered in conjunction with the Regional District of Nanaimo financial plan.
12. That Regional District of Nanaimo Official Community Plan Amendment Bylaw Nos. 1240.03, 2006, 1148.04, 2006, 1055.03, 2006, 1115.04, 2006, 1007.05, 2006, 814.09, 2006, 1335.02, 2006, 1152.03, 2006, and 1400.01, 2006, be considered in conjunction with all applicable Regional District of Nanaimo waste management plans.
13. That Regional District of Nanaimo Official Community Plan Amendment Bylaw Nos. 1240.03, 2006, 1148.04, 2006, 1055.03, 2006, 1115.04, 2006, 1007.05, 2006, 814.09, 2006, 1335.02, 2006, 1152.03, 2006, and 1400.01, 2006, be approved to proceed to Public Hearing.
14. That the Regional District of Nanaimo Board delegate an Electoral Area Director to chair the Public Hearing on Regional District of Nanaimo Official Community Plan Amendment Bylaw Nos. 1240.03, 2006, 1148.04, 2006, 1055.03, 2006, 1115.04, 2006, 1007.05, 2006, 814.09, 2006, 1335.02, 2006, 1152.03, 2006, and 1400.01, 2006.
15. That the Regional District of Nanaimo Board delegate an Electoral Area Director to act as vice chair for the Public Hearing on Regional District of Nanaimo Official Community Plan Amendment Bylaw Nos. 1240.03, 2006, 1148.04, 2006, 1055.03, 2006, 1115.04, 2006, 1007.05, 2006, 814.09, 2006, 1335.02, 2006, 1152.03, 2006, and 1400.01, 2006.
16. That the Regional District of Nanaimo Board approve the property declaration policy for use in determining the presence or absence of a watercourse subject to the Riparian Areas Regulation on a property attached as Schedule No. 2.



Report Writer

General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

*devsvs/reports/2006/ju 6480 30 RAR 1<sup>st</sup> & 2<sup>nd</sup> Report*

**Schedule No. 1**  
Riparian Areas Regulation

Definitions and interpretation

**1 (1)** In this regulation:

**"Act"** means the *Fish Protection Act*;

**"active floodplain"** means an area of land that supports floodplain plant species and is

- (a) adjacent to a stream that may be subject to temporary, frequent, or seasonal inundation, or
- (b) within a boundary that is indicated by the visible high water mark;

**"assessment methods"** means the methods set out in the Schedule;

**"assessment report"** means a report prepared in accordance with the assessment methods to assess the potential impact of a proposed development in a riparian assessment area and which is certified for the purposes of this regulation by a qualified environmental professional;

**"development"** means any of the following associated with or resulting from the local government regulation or approval of residential, commercial, or industrial activities or ancillary activities to the extent that they are subject to local government powers under Part 26 of the *Local Government Act*:

- (a) removal, alteration, disruption, or destruction of vegetation;
- (b) disturbance of soils;
- (c) construction or erection of buildings and structures;
- (d) creation of nonstructural impervious or semi-impervious surfaces;
- (e) flood protection works;
- (f) construction of roads, trails, docks, wharves and bridges;
- (g) provision and maintenance of sewer and water services;
- (h) development of drainage systems;
- (i) development of utility corridors;
- (j) subdivision as defined in section 872 of the *Local Government Act*;

**"development proposal"** means any development that is proposed in a riparian assessment area that is within or partly within the boundaries of an area administered by a local government;

**"fish"** means all life stages of

- (a) salmonids;
- (b) game fish; and,
- (c) regionally significant fish.

**"floodplain plant species"** means plant species that are typical of an area of inundated or saturated soil conditions and that are distinct from plant species on freely drained adjacent upland sites;

**"high water mark"** means the visible high water mark of a stream where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the stream a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself, and includes the active floodplain;

**"ministry"** means the Ministry of Water, Land and Air Protection;

**"natural features, functions and conditions"** include, but are not limited to the following:

- (a) large organic debris that falls into the stream or streamside area, including logs, snags, and root wads;
- (b) areas for channel migration, including active floodplains;
- (c) side channels, intermittent streams, seasonally wetted contiguous areas, and floodplains;
- (d) the multicanopied forest and ground cover adjacent to streams that
  - (i) moderates water temperatures;
  - (ii) provides a source of food, nutrients, and organic matter to streams;
  - (iii) establishes root matrices that stabilize soils and stream banks, thereby minimizing erosion; and,
  - (iv) buffers streams from sedimentation and pollution in surface runoff.
- (e) a natural source of stream bed substrates;
- (f) permeable surfaces that permit infiltration to moderate water volume, timing, and velocity and maintain sustained water flows in streams, especially during low flow periods.

**"permanent structure"** means any building or structure that was lawfully constructed, placed, or erected on a secure and long lasting foundation on land in accordance with any local government bylaw or approval condition in effect at the time of construction, placement, or erection;

**"qualified environmental professional"** means an applied scientist or technologist acting alone or together with another qualified environmental professional, if

- (a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;
- (b) the individual's area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal; and,
- (c) the individual is acting within that individual's area of expertise.

**"ravine"** means a narrow, steep-sided valley that is commonly eroded by running water and has a slope grade greater than 3:1;

**"riparian area"** means a streamside protection and enhancement area;

**"riparian assessment area"** means

- (a) for a stream, the 30 metre strip on both sides of the stream, measured from the high water mark;
- (b) for a ravine less than 60 meters wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and,
- (c) for a ravine 60 meters wide or greater, a strip on both sides of the stream measured from the high water mark to a point that is 10 metres beyond the top of the ravine bank.

**"stream"** includes any of the following that provides fish habitat:

- (a) a watercourse, whether it usually contains water or not;
- (b) a pond, lake, river, creek, or brook;
- (c) a ditch, spring, or wetland that is connected by surface flow to something referred to in paragraph (a) or (b).

**"streamside protection and enhancement area"** means an area

- (a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream; and,
- (b) the size of which is determined according to this regulation on the basis of an assessment report provided by a qualified environmental professional in respect of a development proposal.

**"top of the ravine bank"** means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 meters measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed;

"**wetland**" means land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, fens, estuaries, and similar areas that are not part of the active floodplain of a stream.

(2) For the purposes of the definition of "streamside protection and enhancement area," vegetation must be considered to be "potential" if there is a reasonable ability for regeneration either with assistance through enhancement or naturally, but an area covered by a permanent structure must be considered to be incapable of supporting potential vegetation.

#### Purposes of this regulation

2 The purposes of this regulation are

(a) to establish directives to protect riparian areas from development so that the areas can provide natural features, functions, and conditions that support fish life processes; and,

(b) to facilitate an intergovernmental cooperation agreement between the ministry, Fisheries and Oceans Canada, and the Union of British Columbia Municipalities including the ability for individual intergovernmental cooperation agreements with local governments for any of the following:

(i) the implementation of this regulation;

(ii) the confirmation of regionally significant fish by the Ministry of Water, Land and Air Protection;

(iii) providing, sharing, or confirming information on fish habitat conditions;

(iv) describing roles and responsibilities with reference to applicable and appropriate use of authority and program mandates;

(v) dispute resolution;

(vi) a compliance strategy, including education, training, monitoring, reporting, enforcement, and auditing.

#### Application

3 (1) This regulation applies to the exercise of local government powers by local governments under Part 26 of the *Local Government Act* in those local government areas to which this regulation applies.

(2) This regulation does not apply to a development permit or development variance permit issued only for the purpose of enabling reconstruction or repair of a permanent structure described in section 911 (8) of the *Local Government Act* if the structure remains on its existing foundation.

#### Assessment reports required before development

4 (1) In respect of development proposals related wholly or partially to riparian assessment areas within the jurisdiction of a local government, a local government must not approve or allow

development to proceed in those riparian assessment areas unless the development proceeds in accordance with subsection (2) or (3).

(2) A local government may allow development to proceed if

(a) a qualified environmental professional carries out an assessment and certifies in the assessment report for that proposal that he or she is qualified to carry out the assessment that the assessment methods have been followed and provides their professional opinion that

(i) if the development is implemented as proposed there will be no harmful alteration, disruption, or destruction of natural features, functions, and conditions that support fish life processes in the riparian assessment area; or,

(ii) if the streamside protection and enhancement areas identified in the report are protected from the development and the measures identified in the report as necessary to protect the integrity of those areas from the effects of the development are implemented by the developer, there will be no harmful alteration, disruption, or destruction of natural features, functions, and conditions that support fish life processes in the riparian assessment area; and,

(b) the local government is notified by the ministry that Fisheries and Oceans Canada and the ministry have been

(i) notified of the development proposal; and,

(ii) provided with a copy of an assessment report prepared by a qualified environmental professional that

(A) certifies that he or she is qualified to carry out the assessment,

(B) certifies that the assessment methods have been followed; and,

(C) provides a professional opinion that meets the requirements of subsection (2) (a) (i) or (ii) as to the potential impact of the development on the natural features, functions, and conditions that support fish life processes in the riparian assessment area.

(3) A local government may allow development to proceed if the Minister of Fisheries and Oceans Canada or a regulation under the *Fisheries Act* (Canada) authorizes the harmful alteration, disruption, or destruction of natural features, functions, and conditions that support fish life processes in the riparian assessment area that would result from the implementation of the development proposal.

Development of strategies for monitoring, enforcement, and education

5 The local government must cooperate in developing strategies with the ministry and Fisheries and Oceans Canada

(a) for obtaining certificates by qualified environmental professionals that the conditions set out in assessment reports have been properly implemented;



(b) for monitoring and enforcement to ensure that assessment reports have been properly prepared in accordance with the assessment methods and properly implemented; and,

(c) for public education with respect to the protection of riparian areas.

#### Use of local government powers for protection and enhancement of areas

6 When exercising its powers with respect to development, a local government must protect its riparian areas in accordance with this regulation.

#### Preparation of assessment report by qualified environmental professional

7 An assessment report for the purposes of this regulation must employ the assessment methods set out in the Schedule and must report on all of the following:

(a) the width of the streamside protection and enhancement area which must be protected;

(b) the measures necessary to protect the integrity of the streamside protection and enhancement area.

#### Transitional

8 (1) In this section, "**former regulation**" means the Streamside Protection Regulation, B.C. Reg 10/2001.

(2) If, before this regulation came into force, a local government had established streamside protection and enhancement areas in accordance with the former regulation, the local government is deemed to have met the requirements of this regulation in respect of those areas.

(3) Despite section 6 (5) of the former regulation, an amendment of a streamside protection and enhancement area referred to in subsection (2) of this section must be in accordance with this regulation.

**Schedule No. 2**

Board Policy for determining the presence or absence of a watercourse subject to the Riparian Areas Regulation

<b>SUBJECT:</b>	A: Property Declaration to determine the presence or absence of a watercourse on a property subject to the Riparian Areas Regulation	<b>POLICY NO:</b>	
		<b>CROSS REF.:</b>	
<b>EFFECTIVE DATE:</b>	July 27, 2006	<b>APPROVED BY:</b>	Board
<b>REVISION DATE:</b>	June 6, 2006	<b>PAGE:</b>	1 OF 5

**PURPOSE**

To ensure that property owners and developers are aware of their responsibilities with respect to the Riparian Areas Regulation and to provide staff with guidelines that aid in determining the presence or absence of a watercourse subject to the Riparian Areas Regulation on a property when handling property-related inquiries and development applications.

**POLICY**

1. The property declaration form attached as Attachment No. 1 shall be completed by a property owner(s) or authorized agent(s) when applying for a building permit or in determining whether or not a Development Permit pursuant to the Riparian Areas Regulation is required in relation to a land use or a proposed development.
2. Where a property owner(s) or authorized agent(s) indicates that there is/are a watercourse(s) on a property, and the development, including land alteration and/or vegetation removal is proposed within 30.0 metres of a watercourse, staff may consider the following in determining if a Development Permit is required:
  - i. request that the applicant hire a Qualified Environmental Professional to make a determination as to whether the watercourse is subject to the RAR.
  - ii. where time permits, conduct a site visit to determine if the watercourse appears to be subject to the Riparian Areas Regulation and where uncertainty exists recommend the applicant to hire a Qualified Environmental Professional to make a determination as to whether the watercourse is subject to the RAR.
  - iii. request that the applicant provide a survey prepared by a British Columbia Land Surveyor to determine the location of a proposed development in relation to the Riparian Assessment Area.

3. Where a property owner(s) or authorized agent(s) indicates that there is a watercourse(s) on a property and development, including land alteration and/or vegetation removal is proposed more than 30.0 metres from a watercourse staff may consider the following:
  - i. to exempt the proposed development from requiring a Development Permit;
  - ii. to explain the requirements of the *Riparian Areas Regulation*; or,
  - iii. require a survey prepared by a British Columbia Land Surveyor to determine the location of a proposed development in relation to the Riparian Assessment Area.
4. Where an applicant indicates that there are no watercourses located on a subject parcel, staff may consider the following:
  - i. to exempt the proposed development from requiring a Development Permit;
  - ii. where existing information indicates the presence of a watercourse, where time permits, conduct a visit to verify the absence of the watercourse and where uncertainty exists require the applicant to hire a Qualified Environmental Professional to make a determination as to whether the watercourse is subject to the RAR; and/or,
5. If a proposed development as defined in the *Riparian Areas Regulation* is found to be within the Riparian Assessment Area as defined in the *Riparian Areas Regulation*, the applicant shall be required to hire a Qualified Environmental Professional to conduct an assessment pursuant to the *Riparian Areas Regulation*.



Declaration For Properties Not Subject To The Provincial Riparian Areas Regulations

Property Subject to Development:

Legal Description: \_\_\_\_\_

Property Address: \_\_\_\_\_

I (We) Acknowledge that on March 31, 2006, the province of British Columbia enacted the *Riparian Areas Regulation* that aims to protect the critical features, functions, and conditions required to sustain fish habitat. Furthermore, this legislation prohibits local governments from approving or allowing a development to proceed adjacent to a stream until a report prepared by a Qualified Environmental Professional has been received by the Ministry of Environment.

(Please check the one that applies): As the Registered Owner(s) or Authorized Agent(s) of the above Property I (we) confirm

- A.  That there are no streams located on the subject property,  
or
- B.  That there are streams located on the subject property, and
  - i.  All proposed development including land alteration and vegetation removal is greater than 30.0 metres from the stream, or
  - ii.  All proposed development including land alteration and vegetation removal is equal to or less than 30.0 metres from the stream.

I (we) understand that stream means any of the following:

- a) a watercourse, whether it usually contains water or not;
- b) a pond, lake, river, creek, or brook; and/or,
- c) a ditch, culvert, spring, or wetland.

I (We) understand that if there is a stream on the property it may be necessary to hire a Qualified Environmental Professional to make a determination if the water feature is subject to the *Riparian Areas Regulation*.

Signature(s): \_\_\_\_\_

\_\_\_\_\_

Print Name(s): \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Date: \_\_\_\_\_

Witnessed By: \_\_\_\_\_ Date: \_\_\_\_\_  
Regional District of Nanaimo

## REGIONAL DISTRICT OF NANAIMO

### BYLAW NO. 1400.01

#### A Bylaw to Amend "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1400"

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

1. "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1400, 2005," is hereby amended as follows:
  - a) TABLE OF CONTENTS is hereby amended by inserting Map No. 7 – Watercourse Protection Development Permit Area immediately following Map No. 6 Development Permit Areas.
  - b) SECTION VIII – DEVELOPMENT PERMIT AREAS is hereby amended by deleting DPA III – Watercourse Protection and replacing it with the Watercourse Protection Development Permit Area that is attached as Schedule No. 1 and forms part of this Bylaw:
  - c) SECTION VIII – DEVELOPMENT PERMIT AREAS is hereby amended by deleting the fourth paragraph:

The lands shown on Map No. 6 are designated as part of the following development permit areas.

And replacing it with the following:

The lands shown on Map No. 6 and Map No. 7 are designated as part of the following development permit areas.
  - d) MAP NO. 6 – DEVELOPMENT PERMIT AREAS is hereby amended by deleting the Watercourse Protection Development Permit Area designation.
  - e) MAPS is hereby amended by inserting Map No. 7 – Watercourse Protection Development Permit Area immediately after Map No. 6 - Development Permit Areas and is attached as Schedule No. 2 and forms part of this Bylaw.
2. This Bylaw may be cited as "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw Amendment Bylaw No. 1400.01, 2006."

Introduced and read two times this day of, 2006.

Considered in conjunction with the Regional District of Nanaimo Financial Plan and applicable waste management Plans this day of, 2006.

Public Hearing held pursuant to Section 890 of the *Local Government Act* this day of, 2006.

Read a third time this day of , 2006.

Received approval pursuant to Section 882 of the *Local Government Act* this day of , 2006.

Adopted this day of , 2006.

---

Chairperson

---

Manager Administrative Services

Schedule No. 1

DPA III

# WATERCOURSE PROTECTION

---

## DPA III - PURPOSE

Development Permit Area III is designated under section 919.1(1)(a) of the *Local Government Act* (Establishment of Objectives and the Provision of Guidelines for the Protection of the Natural Environment, its Ecosystems, and Biological Diversity).

## DPA III - AREA

This Development Permit Area applies to all of the Plan Area including all mapped and unmapped streams as shown on Map No. 7. This development permit area consists of the following Riparian Assessment Areas within and adjacent to all streams, which by definition includes wetlands and lakes:

1. for a stream, a 30 metre strip on both sides of the stream measured from the natural boundary;
2. for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and,
3. for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the natural

boundary to a point that is 10 metres beyond the top of the ravine bank.

The *Riparian Areas Regulation* establishes the Riparian Assessment Areas as described above.

A development permit is required for the following development activities located within a Riparian Assessment Area where such activities involve the subdivision of land, construction of, addition to, or alteration of a building or structure, or the alteration of land, except where such activities are specifically exempt:

1. removal, alteration, disruption, or destruction of vegetation;
2. disturbance of 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;
7. provision and maintenance of sewer and water services;
8. development of drainage systems;
9. development of utility corridors;
10. subdivision as defined in section 872 of the *Local Government Act*.



### DPA III - JUSTIFICATION: WATERCOURSES AREAS

Riparian areas cover only a small portion of the land in a watershed, but because they are often more diverse and productive than upland areas, these habitats are critical to wildlife and fish. Approximately 60 percent of British Columbia's land based species at risk use riparian areas for all or part of their habitat needs. Undisturbed riparian areas can protect private property from the impacts of flooding and potential loss of land due to erosion and slope instability.

Riparian areas also protect the physical and ecological integrity of the watercourse ecosystem and provide valuable groundwater recharge.

According to Federal Fisheries and Oceans Canada (DFO) *Fisheries Act* the riparian area is considered 'fish habitat'. It is a violation of the *Fisheries Act* to cause a harmful alteration, disruption, or destruction of fish habitat (HADD), therefore any land alteration within the riparian area must be undertaken with due diligence.

The province of British Columbia's Riparian Areas Regulation (RAR), under the *Fish Protection Act*, aims to protect riparian areas for the protection of fish habitat. This regulation requires all residential, commercial, or industrial development in a Riparian Assessment Area to be subject to an assessment by a Qualified Environmental Professional (QEP).

The purpose of this environmental review is to ensure the protection of the natural environment in accordance with the *Fish Protection Act* by protecting the features, functions, and conditions critical to support fish processes and ensuring appropriate

measures are in place for the protection of the natural environment.

A Local Government must not approve or allow a development to proceed until the local government has been notified by the Ministry of Environment that the Ministry of Environment and Fisheries and Oceans Canada have been notified of the development proposal and have been provided with a copy of the assessment report prepared by a QEP or that the Minister of Fisheries and Oceans Canada has authorized the harmful alteration, disruption, or destruction of the natural features, functions, and conditions that support fish life process (HADD) in a riparian assessment area.

#### Guidelines For The Watercourse Protection Development Permit Area:

1. All development within the Development Permit Area must be consistent with the *Riparian Areas Regulation*.
2. A qualified environmental professional (QEP) must be retained at the expense of the applicant for the purpose of preparing a report pursuant to Section 4(2) of the Riparian Areas Regulation (RAR) and the RAR Assessment Methodology Guidebook. The report must be electronically submitted to the Ministry of Environment (MOE), Fisheries and Oceans Canada (DFO), and a hard copy must be provided to the RDN.
3. A Development Permit shall not be issued without notification from the MOE and the DFO that they have been notified of the proposed development and provided with an acceptable copy of the QEP assessment report or having received evidence of the Minister of

- Fisheries and Oceans Canada approval under the authority of Section 4(3) of the RAR.
4. Where the QEP report proposes a Harmful Alteration, Disruption, or Destruction (HADD) to fish habitat pursuant to Section 35(2) of the *Canada Fisheries Act*, the development permit shall not be issued unless approval under the authority of Section 4(3) of the RAR is received from the DFO. The Regional Board may consider providing comments to the DFO in regards to a proposed approval under the authority of Section 4(3) of the RAR.
  5. The RDN may, when considering comments to the DFO on a proposed approval under Section 4(3) of the RAR, require additional information from the QEP and other senior levels of government.
  6. The applicant shall be requested to provide an explanatory plan of the SPEA including the registration of a covenant prohibiting development and use in the SPEA.
  7. The owner shall implement all measures necessary to maintain the integrity of the SPEA as specified in the QEP's report, and such measures may be included as conditions of the development permit.
  8. In addition to implementing the measures contained in the QEP report, to ensure future encroachment into the SPEA is reduced, the RDN in consultation with the land owner may consider the following:
    - a. dedicating back to the Crown Provincial or RDN all or part of the SPEA;
    - b. gifting to a nature preservation organization (tax receipts may be issued) all or part of the SPEA;
    - c. registering restrictive covenant(s) or conservation covenant(s) securing the measures prescribed in the QEP assessment report.
  9. In the case of a proposed subdivision within this Development Permit Area, minimum parcel sizes should be met exclusive of the SPEA.
  10. In the case of a proposed subdivision within this Development Permit Area, subdivision within the SPEA should be avoided.
  11. Developers are encouraged to exceed the minimum standards set out in the RAR.
  12. Where a proposed development is subject to a building permit, the QEP shall be required to provide confirmation to the RDN's Planning Department that the development has been developed in accordance with the QEP's recommendations prior to final inspection or occupancy as applicable.
  13. All proposed development activity must minimize the area of encroachment into the Development Permit Area.
  14. Best practices interface fire mitigation shall be considered if it minimizes impacts on the features and functions within the Development Permit Area.
  15. Applicants are encouraged to consult the following guidelines: Sensitive Ecosystems Inventory: East

Vancouver Island and Gulf Islands 1993-1997 (Volume 2: Conservation Manual published by Canadian Wildlife Service; Stream Stewardship, 1993 and Land Development Guidelines, 1992 publications by the DFO and MELP and Develop with Care: Environmental Guidelines for Urban and Rural Land Development in British Columbia or any subsequent editions (see Appendix No. 3 for web references).

16. Where a specifically mapped watercourse as shown on Map No. 7 is found not to be subject to the RAR, a report prepared by a QEP, generally following the RAR methodology shall be required to be submitted to the Regional District of Nanaimo.
- i. All development within the Development Permit Area adjacent to those watercourses not subject to the RAR as shown on Map No. 6 must be consistent with the recommendations contained in the QEP's report.
  - ii. Where development or the alteration of land is proposed within the *Watercourse Protection Development Permit Area* adjacent to a mapped watercourse as shown on Map No. 6 not subject to the RAR, the evaluation of the proposal shall consider the following site-specific natural features, functions, and conditions that support fish life history processes, wildlife, and unique ecosystems:

- a) large organic debris that falls into the stream or on the forest floor, such as logs, snags, and root wads;
- b) areas for channel migration, including active floodplains;
- c) side channels, intermittent streams, seasonally wetted continuous areas, and floodplains;
- d) the multi-canopied and ground forest cover that:
  - i. moderates air and water temperature;
  - ii. provides a source of food, nutrients, and organic matter to the stream and forest floors;
  - iii. establishes root matrices that stabilize soils and stream banks thereby minimizing erosion; or
  - iv. buffers streams from sedimentation and pollution in surface runoff;
- e) natural sources of stream bed substrates;
- f) permeable surfaces that permit infiltration to moderate water volume, timing and velocity, and maintain sustained water flows in streams, especially during low flow periods; and
- g) topography and relative orientation of features on neighbouring properties.

Exemptions For The Watercourse  
Protection Development Permit Areas:

The following activities are exempt from the Fish Habitat Protection Development Permit Area requirements:

1. A development located outside of the Riparian Assessment Area as determined by a British Columbia Land Surveyor or other qualified person;
2. A development proposed outside of the Streamside Protection and Enhancement Area (SPEA) where notification of an assessment report prepared in accordance with Section 4(2)(a)(i)(ii) of the Riparian Areas Regulation Assessment Methods has been received by the Regional District of Nanaimo and there are no measures required to protect the SPEA;
3. Renovations, repairs, or maintenance to existing buildings within the same footprint that are protected by Section 911 of the *Local Government Act*;
4. Removal of trees deemed hazardous by a qualified arborist that threaten the immediate safety of life and buildings;
5. All development on lands proposed to be used for 'farm operation' as defined by the *Farm Practices Protection Act*;
6. All development on lands subject to the *Forest Act* or *Private Managed Forest Land Act*;
7. All park or park land ancillary uses not containing commercial, residential, or industrial activities;
8. Stream Enhancement and Fish and Wildlife habitat restoration works that have obtained the required Provincial and Federal approvals. Any activity within the stream channel that has or may have an impact on a stream requires compliance with Provincial and Federal legislation and notification to the RDN;
9. The removal of invasive plants or noxious weeds on a small scale within the Development Permit Area including, but not limited to, Scotch Broom, Himalayan Blackberry, Morning Glory, and Purple Loosestrife provided such works are conducted in accordance with vegetation management plan prepared by a certified Arborist or other Qualified person and measures are taken to avoid sediment or debris being discharged into the watercourse or onto the foreshore and the area is replanted immediately in accordance with "h" above.
10. Despite the exemption provisions, according to provincial legislation owners must satisfy themselves that they satisfy the requirements of the *Riparian Area Regulation*.

**Definitions for The Watercourse Protection Development Permit Area:**

**Assessment Report** means a report prepared in accordance with the Riparian Areas Regulation assessment methods to assess the potential impact of a proposed development in a riparian assessment area, which is certified for the purpose of the *Riparian Areas Regulation* by a qualified environmental professional.

**Fish** means all stages of:

- a) salmonids;
- b) game fish; and
- c) regionally significant fish.

**Fish Habitat** means the areas in or about a stream such as, spawning grounds and nursery, rearing, food supply and migration areas, which fish depend directly or indirectly in order to carry out their life processes.

**Qualified Environmental Professional (QEP)** means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if:

- a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;
- b) the individual's area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal; and,
- c) the individual is acting within that individual's area of expertise.

**Riparian Area** means a streamside protection and enhancement area as defined in the *Riparian Areas Regulation*.

**Riparian Areas Regulation (RAR)** means the Riparian Areas Regulation, and amendments thereto enacted pursuant to Section 12, 13(1), and 37(2) of the *Fish Protection Act*.

**Stream** includes all watercourses, whether mapped or unmapped that provide fish habitat or flows to a waterbody that provides fish habitat and includes any of the following:

- a) a watercourse, whether it usually contains water or not;
- b) a pond, lake, river, creek, or brook;
- c) a ditch, spring, or wetland that is connected by surface flow to something referred to in (a) or (b) above.

**Streamside Protection and Enhancement Area (SPEA)** means an area:

- a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream; and,
- b) the size is determined according to the *Riparian Areas Regulation* on the basis of a report provided by a qualified environmental professional in respect of a development proposal.

**Top of Ravine Bank** means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed.

REGIONAL DISTRICT OF NANAIMO

BYLAW NO. 1240.03

A Bylaw to Amend "Regional District of Nanaimo Electoral Area 'A' Official Community Plan Bylaw No. 1240"

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

1. "Regional District of Nanaimo Electoral Area 'A' Official Community Plan Bylaw No. 1240, 2001," is hereby amended as follows:

a) In "Table of Contents" The following is inserted after Development Permit Area No. 5 - Streams, Nesting Trees, & Nanaimo River Floodplain:

Development Permit Area No. 6 -- Fish Habitat Protection.....B-15

b) The following is inserted after Map No. 5 Development Permit Areas:

Map No. 6 Fish Habitat Protection Development Permit Area

c) SECTION 3 – PROTECTING THE NATURAL ENVIRONMENT

The second paragraph is deleted:

"The protection of environmental sensitive features falls under the jurisdiction of federal, provincial, and local governments. Fisheries and Oceans Canada and the Provincial Ministry of Water, Land and Air Protection are responsible for protecting fisheries and water resources through legislation such as the *Fisheries Act*, the *Water Act*, and the *Waste Management Act*. As part of this responsibility, the provincial government recently (January 2001) enacted the *Streamside Protection Regulation*, which requires local governments to protect and enhance streams and their riparian zones. This Plan incorporates the use of development permit areas as a means of protecting streams and their riparian zones."

and replaced with the following paragraph:

"The protection of environmentally sensitive features falls under the jurisdiction of federal, provincial, and local governments. Fisheries and Oceans Canada and the Provincial Ministry of Environment are responsible for protecting fisheries and water resources through legislation such as the *Fisheries Act*, *Fish Protection Act*, *Water Act*, and *Environmental Management Act*. As part of this responsibility, the provincial government recently (July 2004) enacted the *Riparian Areas Regulation*, which requires local governments to protect riparian areas. This Plan incorporates the use of development permit areas as a means of protecting the natural environment including streams and their riparian zones."

d) **SECTION 3 – PROTECTING THE NATURAL ENVIRONMENT – POLICIES**

Policy No. 3 is hereby deleted and replaced with the following:

3. The following environmentally sensitive features have been identified for protection within the development permit areas shown on Map Nos. 5 and 6:
  - a) streams including a permanent or non-permanent watercourse or source of water supply, whether usually containing water or not, a pond, lake, river, creek, brook, ditch, and a spring or wetland that is integral to a 'stream' and may provide fish habitat;
  - b) The *Riparian Assessment Area* as defined by the *Riparian Areas Regulation*;
  - c) Bald Eagle and Great Blue Heron nesting trees; and
  - d) the Nanaimo River floodplain.

c) **APPENDIX 'B' – DEVELOPMENT PERMIT AREAS**

The third paragraph is hereby deleted:

"The Development Permit Areas, designated on Map No. 5, are South Wellington Development Permit Area, Cassidy Development Permit Area, Cedar Village & Cedar Commercial/Industrial Properties Development Permit Area, Airport Lands Development Permit Area, and Streams, Nesting Trees, & Nanaimo River Floodplain."

and replaced with the following:

"The Development Permit Areas, designated on Map Nos. 5 and 6, are South Wellington Development Permit Area, Cassidy Development Permit Area, Cedar Village & Cedar Commercial/Industrial Properties Development Permit Area, Airport Lands Development Permit Area, Streams, Nesting Trees, & Nanaimo River Floodplain, and Fish Habitat Protection Development Permit Area.

f) **APPENDIX 'B' – DEVELOPMENT PERMIT AREAS – GENERAL POLICIES**

Policy No. 1 is hereby amended to read as follows: "*Designated Development Permit Areas are shown on Map Nos. 5 and 6.*"

g) **APPENDIX 'B' – DEVELOPMENT PERMIT AREAS**

Development Permit Areas is hereby amended by inserting "Development Permit Area No. 6 – Fish Habitat Protection" immediately after Development Permit Area No. 5 – Streams, Nesting Trees, & Nanaimo River Floodplain, attached as Schedule No. 1 and forming part of this Bylaw.

h) **APPENDIX 'B' – Development Permit Areas**

Development Permit Area No. 5 Guidelines is amended by inserting the following after Guideline 13:

14. All development proposals are subject to the requirements and procedures of the *Fish Protection Act* and the *Riparian Areas Regulation*.

i) MAPS

Maps is hereby amended by inserting "*Map No. 6 – Fish Habitat Protection Development Permit Area*" immediately after Map No. 5 Development Permit Areas attached as Schedule No. 2 and forming part of this bylaw.

2. This Bylaw may be cited as "Regional District of Nanaimo Electoral Area 'A' Official Community Plan Bylaw Amendment Bylaw No. 1240.03, 2006."

Introduced and read two times this day of, 2006.

Considered in conjunction with the Regional District of Nanaimo Financial Plan and applicable waste management plans this day of, 2006.

Public Hearing held pursuant to Section 890 of the *Local Government Act* this day of, 2006.

Read a third time this day of, 2006.

Received approval pursuant to Section 882 of the *Local Government Act* this day of, 2006.

Adopted this day of, 2006.

---

Chairperson

---

Manager, Administrative Services



Schedule No. 1

## DEVELOPMENT PERMIT AREA No. 6

### Fish Habitat Protection

#### Qualifying Category:

- (a) Protection of the natural environment, its Ecosystems, and biological diversity.

#### Area:



This Development Permit Area applies to all of the Plan Area including all mapped and unmapped streams as shown on Map No. 6. This development permit area consists of the following Riparian Assessment Areas within and adjacent to all streams, which by definition includes wetlands and lakes:

1. for a stream, a 30 metre strip on both sides of the stream measured from the natural boundary;
2. for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and,
3. for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the natural boundary to a point that is 10 metres beyond the top of the ravine bank.

The *Riparian Areas Regulation* establishes the Riparian Assessment Areas as described above.

#### Policy:

This Development Permit Area applies to all development proposed within the Riparian Assessment Area. A development permit is required for the following development activities where such activities involve the subdivision of land, construction of, addition to, or alteration of a building or structure, or the alteration of land, except where such activities are specifically exempt:

- (a) removal, alteration, disruption, or destruction of vegetation;
- (b) disturbance of soils;
- (c) construction or erection of buildings and structures;
- (d) creation of non-structural impervious or semi-impervious surfaces;
- (e) flood protection works;
- (f) construction of roads, trails, docks, wharves, and bridges;
- (g) provision and maintenance of sewer and water services;
- (h) development of drainage systems;
- (i) development of utility corridors;
- (j) subdivision as defined in section 872 of the *Local Government Act*.

#### Justification:

The province of British Columbia's Riparian Areas Regulation (RAR), under the *Fish Protection Act*, aims to protect riparian areas for the protection of fish habitat. This regulation requires all residential, commercial, or industrial development in a Riparian Assessment Area to be subject to an assessment by a Qualified Environmental Professional (QEP).

The purpose of this environmental review is to ensure the protection of the natural environment in accordance with the *Fish Protection Act* by protecting the features, functions, and conditions critical to

support fish processes and ensuring appropriate measures are in place for the protection of the natural environment.

A Local Government must not approve or allow a development to proceed until the local government has been notified by the Ministry of Environment that the Ministry of Environment and Fisheries and Oceans Canada have been notified of the development proposal and have been provided with a copy of the assessment report prepared by a QEP or that the Minister of Fisheries and Oceans Canada has authorized the harmful alteration, disruption, or destruction of the natural features, functions, and conditions that support fish life process (HADD) in a riparian assessment area.

#### **Exemptions:**

The following activities are exempt from the Fish Habitat Protection Development Permit Area requirements:

- a) A development located outside of the Riparian Assessment Area as determined by a British Columbia Land Surveyor or other qualified person;
- b) A development proposed outside of the Streamside Protection and Enhancement Area (SPEA) where notification of an assessment report prepared in accordance with Section 4(2)(a)(i)(ii) of the Riparian Areas Regulation Assessment Methods has been received by the Regional District of Nanaimo and there are no measures required to protect the SPEA;
- c) Renovations, repairs, or maintenance to existing buildings within the same footprint that are protected by Section 911 of the *Local Government Act*;
- d) Removal of trees deemed hazardous by a qualified arborist that threaten the immediate safety of life and buildings;
- e) All development on lands proposed to be used for 'farm operation' as defined by the *Farm Practices Protection Act*;
- f) All development on lands subject to the *Forest Act* or *Private Managed Forest Land Act*;
- g) All park or park land ancillary uses not containing commercial, residential, or industrial activities;
- h) Stream Enhancement and Fish and Wildlife habitat restoration works that have obtained the required Provincial and Federal approvals. Any activity within the stream channel that has or may have an impact on a stream requires compliance with Provincial and Federal legislation and notification to the RDN;
- i) The removal of invasive plants or noxious weeds on a small scale within the Development Permit Area including, but not limited to, Scotch Broom, Himalayan Blackberry, Morning Glory, and Purple Loosestrife provided such works are conducted in accordance with a vegetation management plan prepared by a certified Arborist or other Qualified person and measures are taken to avoid sediment or debris being discharged into the watercourse or onto the foreshore and the area is replanted immediately in accordance with "h" above.

#### **Guidelines:**

1. A qualified environmental professional (QEP) must be retained at the expense of the applicant for the purpose of preparing a report pursuant to Section 4(2) of the Riparian Areas Regulation

(RAR) and the RAR Assessment Methodology Guidebook. The report must be electronically submitted to the Ministry of Environment (MOE), Fisheries and Oceans Canada (DFO), and a hard copy must be provided to the RDN.

2. A Development Permit shall not be issued without notification from the MOE and the DFO that they have been notified of the proposed development and provided with an acceptable copy of the QEP assessment report or having received evidence of the Minister of Fisheries and Oceans Canada approval under the authority of Section 4(3) of the regulations.
3. Where the QEP report proposes a Harmful Alteration, Disruption, or Destruction (HADD) to fish habitat pursuant to Section 35(2) of the *Canada Fisheries Act*, the development permit shall not be issued unless approval under the authority of Section 4(3) of the regulations is received from the DFO. The Regional Board may consider providing comments to the DFO in regards to a proposed approval under the authority of Section 4(3) of the regulations.
4. The RDN may, when considering comments to the DFO on a proposed approval under Section 4(3) of the regulations, require additional information from the QEP and other senior levels of government.
5. The applicant shall be requested to provide an explanatory plan of the SPEA including the registration of a covenant prohibiting development and use in the SPEA.
6. The owner shall implement all measures necessary to maintain the integrity of the SPEA as specified in the QEP's report, and such measures may be included as conditions of the development permit.
7. In addition to implementing the measures contained in the QEP report, to ensure future encroachment into the SPEA is reduced, the RDN in consultation with the land owner may consider the following:
  - (a) dedicating back to the Crown Provincial or RDN all or part of the SPEA;
  - (b) gifting to a nature preservation organization (tax receipts may be issued) all or part of the SPEA;
  - (c) registering restrictive covenant(s) or conservation covenant(s) securing the measures prescribed in the QEP assessment report.
8. In the case of a proposed subdivision within this Development Permit Area, minimum parcel sizes should be met exclusive of the SPEA.
9. In the case of a proposed subdivision within this Development Permit Area, subdivision within the SPEA should be avoided.
10. Developers are encouraged to exceed the minimum standards set out in the RAR.
11. Where a proposed development is subject to a building permit, the QEP shall be required to provide confirmation to the RDN's Planning Department that the development has been developed in accordance with the QEP's recommendations prior to final inspection or occupancy as applicable.

**Definitions:**

**Assessment Report** means a report prepared in accordance with the Riparian Areas Regulation assessment methods to assess the potential impact of a proposed development in a riparian assessment

area, which is certified for the purpose of the *Riparian Areas Regulation* by a qualified environmental professional.

**Fish** means all stages of:

- a) salmonids;
- b) game fish; and
- c) regionally significant fish.

**Fish Habitat** means the areas in or about a stream such as, spawning grounds and nursery, rearing, food supply, and migration areas, which fish depend directly or indirectly in order to carry out their life processes.

**Qualified Environmental Professional (QEP)** means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if:

- a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;
- b) the individual's area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal; and,
- c) the individual is acting within that individual's area of expertise.

**Riparian Area** means a streamside protection and enhancement area as defined in the *Riparian Areas Regulation*.

**Riparian Areas Regulation (RAR)** means the Riparian Areas Regulation and amendments thereto enacted pursuant to Section 12, 13(1), and 37(2) of the *Fish Protection Act*.

**Stream** includes all watercourses, whether mapped or unmapped, that provide fish habitat or flows to a waterbody that provides fish habitat and includes any of the following:

- a) a watercourse, whether it usually contains water or not;
- b) a pond, lake, river, creek, or brook;
- c) a ditch, spring, or wetland that is connected by surface flow to something referred to in (a) or (b) above.

**Streamside Protection and Enhancement Area (SPEA)** means an area:

- a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream; and,
- b) the size is determined according to the *Riparian Areas Regulation* on the basis of a report provided by a qualified environmental professional in respect of a development proposal.

**Top of Ravine Bank** means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed.

## REGIONAL DISTRICT OF NANAIMO

### BYLAW NO. 814.09

#### A Bylaw to Amend Regional District of Nanaimo Englishman River Official Community Plan Bylaw No. 814

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

1. "Regional District of Nanaimo Englishman River Official Community Plan Bylaw No. 814, 1991" is hereby amended as follows:

a) In "Table of Contents" Section No. 8 – Development Permit Areas is hereby amended by adding "Fish Habitat Protection" on the next line after "Craig Bay"

b) SECTION 8 – DEVELOPMENT PERMIT AREAS is amended by deleting the following text:

“Development Permit Areas and or corresponding other Environmentally Sensitive or Hazardous Areas and Heritage Sites are shown on Map No. 3.”

and replacing it with the following:

“Development Permit Areas and or corresponding other Environmentally Sensitive, Fish Habitat Protection or Hazardous Areas and Heritage Sites are shown on Maps No. 3 and No. 4.”

c) SECTION 8 – DEVELOPMENT PERMIT AREAS is amended by deleting the following paragraph:

“This sets out in general terms which items may be controlled by the permit.

Notwithstanding the guidelines for each Development Permit Area, it is also recognized that specific conditions or opportunities exist where a development permit may not be required prior to development such as:

- a) where the regulatory Bylaws of the District are sufficient to implement the stated guidelines; or
- b) for the development of one dwelling unit.”

and replacing it with the following:

“This sets out in general terms which items may be controlled by the permit.

With respect to the guidelines for the East Parksville, Rath Trevor, or Craig Bay Development Permit Areas, it is recognized that specific conditions or opportunities exist where a development permit may not be required prior to development such as:

- a) where the regulatory Bylaws of the District are sufficient to implement the stated guidelines; or
- b) for the development of one dwelling unit.”

d) SECTION 8 – DEVELOPMENT PERMIT AREAS is amended by inserting the following after DEVELOPMENT PERMIT AREA (3) - CRAIG BAY ESTATES:

DEVELOPMENT PERMIT AREA (4) – FISH HABITAT PROTECTION attached as Schedule No. 1 and forming part of this Bylaw.

e) Map No. 4 Fish Habitat Protection Development Permit Area, attached as Schedule No. 2 and forming part of this Bylaw, is inserted after Map No. 3 Development Permit Areas – Heritage Sites – Environmentally Sensitive and Hazardous Sites

2. This Bylaw may be cited as "Regional District of Nanaimo Englishman River Official Community Plan Bylaw Amendment Bylaw No. 814.09, 2006".

Introduced and read two times this day of, 2006.

Considered in conjunction with the Regional District of Nanaimo Financial Plan and applicable waste management plans this day of, 2006.

Public Hearing held pursuant to Section 890 of the *Local Government Act* this day of, 2006.

Read a third time this day of, 2006.

Received approval pursuant to Section 882 of the *Local Government Act* this day of, 2006.

Adopted this day of, 2006.

---

Chairperson

---

Manager Administrative Services

Schedule No. 1

## DEVELOPMENT PERMIT AREA (4) – Fish Habitat Protection

**Category:** Protection of the natural environment, its ecosystems, and biological diversity

**Area:** This Development Permit Area applies to all of the Plan Area including all mapped and unmapped streams as shown on Map No. 4. This development permit area consists of the following Riparian Assessment Areas within and adjacent to all streams, which by definition includes wetlands and lakes:

1. for a stream, a 30 metre strip on both sides of the stream measured from the natural boundary;
2. for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and,
3. for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the natural boundary to a point that is 10 metres beyond the top of the ravine bank.

The *Riparian Areas Regulation* establishes the Riparian Assessment Areas as described above.

A development permit is required for the following development activities where such activities involve the subdivision of land, construction of, addition to, or alteration of a building or structure, or the alteration of land, except where such activities are specifically exempt:

- (a) removal, alteration, disruption, or destruction of vegetation;
- (b) disturbance of soils;
- (c) construction or erection of buildings and structures;
- (d) creation of non-structural impervious or semi-impervious surfaces;
- (e) flood protection works;
- (f) construction of roads, trails, docks, wharves, and bridges;
- (g) provision and maintenance of sewer and water services;
- (h) development of drainage systems;
- (i) development of utility corridors;
- (j) subdivision as defined in section 872 of the *Local Government Act*.

**Justification:** The province of British Columbia's Riparian Areas Regulation (RAR), under the *Fish Protection Act*, aims to protect riparian areas for the protection of fish habitat. This regulation requires all residential, commercial or industrial development in a Riparian Assessment Area to be subject to an assessment by a Qualified Environmental Professional (QEP).

The purpose of this environmental review is to ensure the protection of the natural environment in accordance with the *Fish Protection Act* by protecting the features, functions, and conditions critical to support fish processes and

ensuring appropriate measures are in place for the protection of the natural environment.

A Local Government must not approve or allow a development to proceed until the local government has been notified by the Ministry of Environment that the Ministry of Environment and Fisheries and Oceans Canada have been notified of the development proposal, and have been provided with a copy of the assessment report prepared by a QEP, or that the Minister of Fisheries and Oceans has authorized the harmful alteration, disruption, or destruction of the natural features, functions, and conditions that support fish life process (HADD) in a riparian assessment area.

**Guidelines:**

1. A qualified environmental professional (QEP) must be retained at the expense of the applicant for the purpose of preparing a report pursuant to Section 4(2) of the Riparian Areas Regulation (RAR) and the RAR Assessment Methodology Guidebook. The report must be electronically submitted to the Ministry of Environment (MOE), Fisheries and Oceans Canada (DFO) and a hard copy must be provided to the RDN.
2. A Development Permit shall not be issued without notification from MOE and DFO that they have been notified of the proposed development and provided with an acceptable copy of the QEP assessment report or having received evidence of the Minister of Fisheries and Oceans approval under the authority of Section 4(3) of the RAR.
3. Where the QEP report proposes a Harmful Alteration, Disruption, or Destruction (HADD) to fish habitat pursuant to Section 35(2) of the *Canada Fisheries Act*, the development permit shall not be issued unless approval under the authority of Section 4(3) of the RAR is received from DFO. The Regional Board may consider providing comments to DFO in regards to a proposed approval under the authority of Section 4(3) of the RAR .
4. The RDN may, when considering comments to DFO on a proposed approval under Section 4(3) of the RAR, require additional information from the QEP and other senior levels of government.
5. The applicant shall be requested to provide an explanatory plan of the SPEA including the registration of a covenant prohibiting development and use in the SPEA.
6. The owner shall implement all measures necessary to maintain the integrity of the SPEA as specified in the QEP's report, and such measures may be included as conditions of the development permit.
7. In addition to implementing the measures contained in the QEP report, to ensure future encroachment into the SPEA is reduced, the RDN in consultation with the land owner may consider the following:



- (a) dedicating back to the Crown Provincial or RDN all or part of the SPEA;
  - (b) gifting to a nature preservation organization (tax receipts may be issued) all or part of the SPEA;
  - (c) registering restrictive covenant(s) or conservation covenant(s) securing the measures prescribed in the QEP assessment report.
8. In the case of a proposed subdivision within this Development Permit Area, minimum parcel sizes should be met exclusive of the SPEA.
9. In the case of a proposed subdivision within this Development Permit Area, subdivision within the SPEA should be avoided..
10. Developers are encouraged to exceed the minimum standards set out in the RAR.
11. Where a proposed development is subject to a building permit, the QEP shall be required to provide confirmation to the RDN's Planning Department that the development has been developed in accordance with the QEP's recommendations prior to final inspection or occupancy as applicable.

**Exemptions:**

The following activities are exempt from the Fish Habitat Protection Development Permit Area requirements:

- a) A development located outside of the Riparian Assessment Area as determined by a British Columbia Land Surveyor or other qualified person ;
- b) A development proposed outside of the Streamside Protection and Enhancement Area (SPEA) where notification of an assessment report prepared in accordance with Section 4(2)(a)(i)(ii) of the Riparian Areas Regulation Assessment Methods has been received by the Regional District of Nanaimo and there are no measures required to protect the SPEA;
- c) Renovations, repairs, or maintenance to existing buildings within the same footprint that are protected by Section 911 of the *Local Government Act*;
- d) Removal of trees deemed hazardous by a qualified arbourist that threaten the immediate safety of life and buildings;
- e) All development on lands proposed to be used for 'farm operation' as defined by the *Farm Practices Protection Act*;
- f) All development on lands subject to the *Forest Act* or *Private Managed Forest Land Act*;
- g) All park or park land ancillary uses not containing commercial, residential, or industrial activities;

- h) Stream Enhancement and Fish and Wildlife habitat restoration works that have obtained the required Provincial and Federal approvals. Any activity within the stream channel that has or may have an impact on a stream requires compliance with Provincial and Federal legislation and notification to the RDN;
- i) The removal of invasive plants or noxious weeds on a small scale within the Development Permit Area including, but not limited to, Scotch Broom, Himalayan Blackberry, Morning Glory, and Purple Loosestrife provided such works are conducted in accordance with a vegetation management plan prepared by a certified Arbourist or other Qualified person and measures are taken to avoid sediment or debris being discharged into the watercourse or onto the foreshore and the area is replanted immediately in accordance with "h" above.

**Definitions:**

**Assessment Report** means a report prepared in accordance with the Riparian Areas Regulation assessment methods to assess the potential impact of a proposed development in a riparian assessment area and which is certified for the purpose of the *Riparian Areas Regulation* by a qualified environmental professional.

**Fish** means all stages of:

- a) salmonids;
- b) game fish; and
- c) regionally significant fish.

**Fish Habitat** means the areas in or about a stream such as, spawning grounds and nursery, rearing, food supply and migration areas, on which fish depend directly or indirectly in order to carry out their life processes.

**Qualified Environmental Professional (QEP)** means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if:

- a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;
- b) the individual's area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal, and
- c) the individual is acting within that individual's area of expertise.

**Riparian Area** means a streamside protection and enhancement area as defined in the *Riparian Areas Regulation*.

**Riparian Areas Regulation (RAR)** means the Riparian Areas Regulation, and amendments thereto enacted pursuant to Section 12, 13(1), and 37(2) of the *Fish Protection Act*.

**Stream** includes all watercourses, whether mapped or unmapped that provide fish habitat or flows to a waterbody that provides fish habitat and includes any of the following:

- a) a watercourse, whether it usually contains water or not;
- b) a pond, lake, river, creek, or brook;

- c) a ditch, spring, or wetland that is connected by surface flow to something referred to in (a) or (b) above.

**Streamside Protection and Enhancement Area (SPEA)** means an area:

- a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream; and,
- b) the size is determined according to the *Riparian Areas Regulation* on the basis of a report provided by a qualified environmental professional in respect of a development proposal.

**Top of Ravine Bank** means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed.

Schedule No. 2  
Map No. 4

REGIONAL DISTRICT OF NANAIMO

BYLAW NO. 1007.05

A Bylaw to Amend Regional District of Nanaimo  
Shaw Hill – Deep Bay Official Community Plan Bylaw No. 1007

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

1. "Regional District of Nanaimo Shaw Hill – Deep Bay Official Community Plan Bylaw No. 1007, 1996" is hereby amended as follows

a. **SECTION 2.1.1 – OBJECTIVE – FRESHWATER MANAGEMENT**

Section 2.1.1 is amended to read as follows:

It is the objective of the Regional Board to:

- Identify *and* protect *all* watercourses to maintain their natural habitat, environmental quality, aesthetic appeal and recreational value;
- Conserve, protect *and* enhance freshwater sources for existing and future agricultural and domestic uses in cooperation with local and provincial water authorities and landowners;
- Encourage *only appropriate* development that respects the sensitive nature of the environment; *and*,
- Protect fish habitat in accordance with the **Fish Protection Act** and the **Riparian Areas Regulation**."

b. **SECTION 8 – DEVELOPMENT PERMIT AREAS:**

The following paragraph is deleted:

*"Seven areas have been designated as Development Permit Areas in Shaw Hill – Deep Bay. These areas are identified on Map No. 2. The Plan describes the Development Permit Areas, justifies their designation and provides guidelines for development within the area."*

And replaced with the following:

*"Eight areas have been designated as Development Permit Areas in Shaw Hill -- Deep Bay. These areas are identified on Map Nos. 2 and 6. The Plan describes the Development Permit Areas, justifies their designation and provides guidelines for development within the area."*

- c. **SECTION 8 – DEVELOPMENT PERMIT AREAS** is amended by inserting "**Fish Habitat Protection**" in the list of Development Permit Areas immediately following "**Natural Hazard Development Permit Area**".

- d. **SECTION 8 – DEVELOPMENT PERMIT AREAS** is amended by inserting *Section 8.7 Fish Habitat Protection Development Permit Area* immediately following *Section 8.6 Hazard Lands Development Permit Area* attached as Schedule No. 1 and forming part of this Bylaw.
- e. **SECTION 8.5 – ENVIRONMENTALLY SENSITIVE AREAS DEVELOPMENT PERMIT AREA** is amended by adding the following guideline to read as follows:
- "All development proposals are subject to the requirements and procedures of the *Fish Protection Act* and the *Riparian Areas Regulation*."
- f. **MAPS**
- "Map No 6 – *Fish Habitat Protection Development Permit Area*", attached as Schedule No. 2, is inserted immediately after Map No. 5.
2. This Bylaw may be cited as "Regional District of Nanaimo Shaw Hill - Deep Bay Official Community Plan Bylaw Amendment Bylaw No. 1007.05, 2006".

Introduced and read two times this day of, 200 .

Considered in conjunction with the Regional District of Nanaimo Financial Plan and applicable waste management plans this day of , 200

Public Hearing held pursuant to Section 890 of the *Local Government Act* this day of , 200 .

Read a third time this day of October, 200 .

Received approval pursuant to Section 882 of the *Local Government Act* this day of , 200 .

Adopted this day of , 200 .

---

Chairperson

---

Manager Administrative Services

Schedule No. 1

**8.7 FISH HABITAT PROTECTION DEVELOPMENT PERMIT AREA**

<b>Category:</b>	'A' – Protection of the natural environment, its ecosystems and biological diversity
<b>Location:</b>	<p>This Development Permit Area applies to all of the Plan Area including all mapped and unmapped streams as shown on Map No. 6. This development permit area consists of the following Riparian Assessment Areas within and adjacent to all streams, which by definition includes wetlands and lakes:</p> <ol style="list-style-type: none"> <li>1. for a stream, a 30 metre strip on both sides of the stream measured from the natural boundary;</li> <li>2. for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and,</li> <li>3. for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the natural boundary to a point that is 10 metres beyond the top of the ravine bank.</li> </ol> <p>The <i>Riparian Areas Regulation</i> establishes the Riparian Assessment Areas as described above.</p>
	<p>A development permit is required for the following development activities located within the Riparian Assessment Area where such activities involve the subdivision of land, construction of, addition to, or alteration of a building or structure, or the alteration of land, except where such activities are specifically exempt:</p> <ol style="list-style-type: none"> <li>(a) removal, alteration, disruption, or destruction of vegetation;</li> <li>(b) disturbance of soils;</li> <li>(c) construction or erection of buildings and structures;</li> <li>(d) creation of non-structural impervious or semi-impervious surfaces;</li> <li>(e) flood protection works;</li> <li>(f) construction of roads, trails, docks, wharves, and bridges;</li> <li>(g) provision and maintenance of sewer and water services;</li> <li>(h) development of drainage systems;</li> <li>(i) development of utility corridors;</li> <li>(j) subdivision as defined in section 872 of the <i>Local Government Act</i>.</li> </ol>
<b>Purpose and Justification</b>	<p>The province of British Columbia's Riparian Areas Regulation (RAR), under the <i>Fish Protection Act</i>, aims to protect riparian areas for the protection of fish habitat. This regulation requires all residential, commercial or industrial development in a Riparian Assessment Area to be subject to an assessment by a Qualified Environmental Professional (QEP).</p> <p>The purpose of this environmental review is to ensure the protection of the natural environment in accordance with the <i>Fish Protection Act</i> by protecting the features, functions, and conditions critical to support fish processes and ensuring appropriate</p>

	<p>measures are in place for the protection of the natural environment.</p> <p>A Local Government must not approve or allow a development to proceed until the local government has been notified by the Ministry of Environment that the Ministry of Environment and Fisheries and Oceans Canada have been notified of the development proposal, and have been provided with a copy of the assessment report prepared by a QEP, or that the Minister of Fisheries and Oceans has authorized the harmful alteration, disruption, or destruction of the natural features, functions, and conditions that support fish life process (HADD) in a riparian assessment area.</p>
<p><b>Guidelines</b></p>	<ol style="list-style-type: none"> <li>1. A qualified environmental professional (QEP) must be retained at the expense of the applicant for the purpose of preparing a report pursuant to Section 4(2) of the Riparian Areas Regulation (RAR) and the RAR Assessment Methodology Guidebook. The report must be electronically submitted to the Ministry of Environment (MOE), Fisheries and Oceans Canada (DFO) and a hard copy must be provided to the RDN.</li> <li>2. A Development Permit shall not be issued without notification from MOE and DFO that they have been notified of the proposed development and provided with an acceptable copy of the QEP assessment report or having received evidence of the Minister of Fisheries and Oceans approval under the authority of Section 4(3) of the RAR.</li> <li>3. Where the QEP report proposes a Harmful Alteration, Disruption, or Destruction (HADD) to fish habitat pursuant to Section 35(2) of the <i>Canada Fisheries Act</i>, the development permit shall not be issued unless approval under the authority of Section 4(3) of the RAR is received from DFO. The Regional Board may consider providing comments to DFO in regards to a proposed approval under the authority of Section 4(3) of the RAR .</li> <li>4. The RDN may, when considering comments to DFO on a proposed approval under Section 4(3) of the RAR, require additional information from the QEP and other senior levels of government.</li> <li>5. The applicant shall be requested to provide an explanatory plan of the SPEA including the registration of a covenant prohibiting development and use in the SPEA.</li> <li>6. The owner shall implement all measures necessary to maintain the integrity of the SPEA as specified in the QEP's report, and such measures may be included as conditions of the development permit.</li> <li>7. In addition to implementing the measures contained in the QEP report, to ensure future encroachment into the SPEA is reduced, the RDN in consultation with the land owner may consider the following:             <ol style="list-style-type: none"> <li>(a) dedicating back to the Crown Provincial or RDN all or part of the SPEA;</li> <li>(b) gifting to a nature preservation organization (tax receipts may be issued) all or part of the SPEA;</li> <li>(c) registering restrictive covenant(s) or conservation covenant(s) securing the measures prescribed in the QEP assessment report.</li> </ol> </li> </ol>



	<p>8. In the case of a proposed subdivision within this Development Permit Area, minimum parcel sizes should be met exclusive of the SPEA.</p> <p>9. In the case of a proposed subdivision within this Development Permit Area, subdivision within the SPEA should be avoided.</p> <p>10. Developers are encouraged to exceed the minimum standards set out in the RAR.</p> <p>11. Where a proposed development is subject to a building permit, the QEP shall be required to provide confirmation to the RDN's Planning Department that the development has been developed in accordance with the QEP's recommendations prior to final inspection or occupancy as applicable.</p>
<p><b>Exemptions:</b></p>	<p>The following activities are exempt from the Fish Habitat Protection Development Permit Area requirements:</p> <ul style="list-style-type: none"> <li>a) A development located outside of the Riparian Assessment Area as determined by a British Columbia Land Surveyor or other qualified person;</li> <li>b) A development proposed outside of the Streamside Protection and Enhancement Area (SPEA) where notification of an assessment report prepared in accordance with Section 4(2)(a)(i)(ii) of the Riparian Areas Regulation Assessment Methods has been received by the Regional District of Nanaimo and there are no measures required to protect the SPEA;</li> <li>c) Renovations, repairs, or maintenance to existing buildings within the same footprint that are protected by Section 911 of the <i>Local Government Act</i>;</li> <li>d) Removal of trees deemed hazardous by a qualified arbourist that threaten the immediate safety of life and buildings;</li> <li>e) All development on lands proposed to be used for 'farm operation' as defined by the <i>Farm Practices Protection Act</i>;</li> <li>f) All development on lands subject to the <i>Forest Act</i> or <i>Private Managed Forest Land Act</i>;</li> <li>g) All park or park land ancillary uses not containing commercial, residential, or industrial activities;</li> <li>h) Stream Enhancement and Fish and Wildlife habitat restoration works that have obtained the required Provincial and Federal approvals. Any activity within the stream channel that has or may have an impact on a stream requires compliance with Provincial and Federal legislation and notification to the RDN;</li> <li>i) The removal of invasive plants or noxious weeds on a small scale within the Development Permit Area including, but not limited to, Scotch Broom, Himalayan Blackberry, Morning Glory, and Purple Loosetrife provided such</li> </ul>

	<p>works are conducted in accordance with a vegetation management plan prepared by a certified Arbourist or other Qualified person and measures are taken to avoid sediment or debris being discharged into the watercourse or onto the foreshore and the area is replanted immediately in accordance with "h" above.</p>
<p><b>Definitions:</b></p>	<p><b>Assessment Report</b> means a report prepared in accordance with the Riparian Areas Regulation assessment methods to assess the potential impact of a proposed development in a riparian assessment area and which is certified for the purpose of the <i>Riparian Areas Regulation</i> by a qualified environmental professional.</p> <p><b>Fish</b> means all stages of:</p> <ul style="list-style-type: none"> <li>a) salmonids;</li> <li>b) game fish; and</li> <li>c) regionally significant fish.</li> </ul> <p><b>Fish Habitat</b> means the areas in or about a stream such as, spawning grounds and nursery, rearing, food supply and migration areas, on which fish depend directly or indirectly in order to carry out their life processes.</p> <p><b>Qualified Environmental Professional (QEP)</b> means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if:</p> <ul style="list-style-type: none"> <li>a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;</li> <li>b) the individual's area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal, and</li> <li>c) the individual is acting within that individual's area of expertise.</li> </ul> <p><b>Riparian Area</b> means a streamside protection and enhancement area as defined in the <i>Riparian Areas Regulation</i>.</p> <p><b>Riparian Areas Regulation (RAR)</b> means the Riparian Areas Regulation, and amendments thereto enacted pursuant to Section 12, 13(1), and 37(2) of the <i>Fish Protection Act</i>.</p> <p><b>Stream</b> includes all watercourses, whether mapped or unmapped that provide fish habitat or flows to a waterbody that provides fish habitat and includes any of the following:</p> <ul style="list-style-type: none"> <li>a) a watercourse, whether it usually contains water or not;</li> <li>b) a pond, lake, river, creek, or brook;</li> <li>c) a ditch, spring, or wetland that is connected by surface flow to something referred to in (a) or (b) above.</li> </ul> <p><b>Streamside Protection and Enhancement Area (SPEA)</b> means an area:</p> <ul style="list-style-type: none"> <li>a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream; and,</li> </ul>

- b) the size is determined according to the *Riparian Areas Regulation* on the basis of a report provided by a qualified environmental professional in respect of a development proposal.

**Top of Ravine Bank** means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed.

Schedule No. 2 – Development Permit Area Map

REGIONAL DISTRICT OF NANAIMO

BYLAW NO. 1055.03

A Bylaw to Amend "Regional District of Nanaimo  
East Wellington – Pleasant Valley Official Community Plan Bylaw No. 1055"

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

1. "Regional District of Nanaimo East Wellington – Pleasant Valley Official Community Plan Bylaw No. 1055, 1998," is hereby amended as follows:

a) In "Table of Contents" the following is deleted from SECTION 8 –DEVELOPMENT PERMIT AREAS:

"8.1 Environmentally Sensitive Areas"

b) In "Table of Contents" the following is inserted preceding Natural Hazard Areas:

"8.1 Fish Habitat Protection"

c) SECTION 2.2 – ENVIRONMENTALLY SENSITIVE AREAS

The following paragraph:

"Development permits are useful tools in protecting the natural environment, which complement conventional mechanisms (such as setbacks) by addressing the negative aspects of development or land use on a site-specific basis. In recognition of the community's desire to assume the primary responsibility for environmental protection, this Plan proposes the use of development permits only where the potential for environmental impact, as a result of land use change or development, is the greatest; as such, development permits are only required on environmentally sensitive land designated as Rural Residential in this Plan (see Section 4)."

is amended to read as follows:

"Development permits are useful tools in protecting the natural environment, which complement conventional mechanisms (such as setbacks) by addressing the negative aspects of development or land use on a site-specific basis. In recognition of the community's desire to assume the primary responsibility for environmental protection, this Plan proposes the use of development permits only where the potential for environmental impact, as a result of land use change or development, is the greatest; as such, development permits are only required on environmentally sensitive land designated as Rural Residential in this Plan (see Section 4)." However, notwithstanding the above, as of March 31, 2006, Local Governments are required by the *Fish Protection Act* to protect all 'streams', as defined in the *Riparian Areas Regulation*. Therefore, development permit areas are designated adjacent to all watercourses within this plan area (see Section 4).

d) SECTION 2.2 – ENVIRONMENTALLY SENSITIVE AREAS

Policy number 3 is amended to read as follows:

"All watercourses which meet the definition of 'stream' in the *Riparian Areas Regulation*, shall be included within a Development Permit Area in this Plan."

e) SECTION 8 – DEVELOPMENT PERMIT AREAS

The following paragraphs:

"In recognition of the community's desire to assume the primary responsibility for environmental protection, this Plan employs development permits only where the potential for environment impact, as a result of land use change or development, is the greatest. As such, development permits are only required on lands designated as *Rural Residential*. With respect to natural hazard areas, this Plan specifies the use of development permits only within the floodplain of the Millstone River. This is considered the most significant natural hazard in the Plan Area. The Plan also requires development permits for development on industrial land.

Development Permit Areas are outlined on Map No. 5, attached to and following part of this Plan."

is amended to read as follows:

"As of March 31, 2006, Local Governments are required by the *Fish Protection Act* to protect all 'streams', as defined in the *Riparian Areas Regulation*. Therefore, development permit areas are designated adjacent to all watercourses within this plan area. With respect to natural hazard areas, this Plan specifies the use of development permits only within the floodplain of the Millstone River. This is considered the most significant natural hazard in the Plan Area. The Plan also requires development permits for development on industrial land.

Development Permit Areas are outlined on Maps No. 5 and 6, attached to and following part of this Plan."

- f) SECTION 8.1 – "ENVIRONMENTALLY SENSITIVE AREAS" is deleted and replaced with "8.1 Fish Habitat Protection" attached as Schedule No. 1 and forming part of this Bylaw
  - g) Figures 8.1 and 8.2 are deleted.
  - h) Map No. 5 is hereby amended by deleting all reference to Environmentally Sensitive Development Permit Areas.
  - i) Map No. 6 is hereby inserted following Map No. 5 attached as Schedule No. 2, and forming part of this Bylaw
2. This Bylaw may be cited as "Regional District of Nanaimo East Wellington – Pleasant Valley Official Community Plan Bylaw Amendment Bylaw No. 1055.03, 2006".

Introduced and read two times this day of, 2006.

Considered in conjunction with the Regional District of Nanaimo Financial Plan and applicable waste management plans this day of, 2006.

Public Hearing held pursuant to Section 890 of the *Local Government Act* this day of, 2006.

Read a third time this day of , 2006.

Received approval pursuant to Section 882 of the *Local Government Act* this day of , 2006.

Adopted this day of , 2006.

---

Chairperson

---

Administrator

## Schedule No. 1

### 8.1 Fish Habitat Protection

#### Category:

'A' Protection of the natural environment, its ecosystems, and biological diversity

#### Area:

This Development Permit Area applies to all of the Plan Area including all mapped and unmapped streams as shown on Map No. 6. This development permit area consists of the following Riparian Assessment Areas within and adjacent to all streams, which by definition includes wetlands and lakes:

1. for a stream, a 30 metre strip on both sides of the stream measured from the natural boundary;
2. for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and,
3. for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the natural boundary to a point that is 10 metres beyond the top of the ravine bank.

The *Riparian Areas Regulation* establishes the Riparian Assessment Areas as described above.

This Development Permit Area applies to all development proposed within the Riparian Assessment Area. A development permit is required for the following development activities where such activities involve the subdivision of land, construction of, addition to, or alteration of a building or structure, or the alteration of land, except where such activities are specifically exempt:

- (a) removal, alteration, disruption, or destruction of vegetation;
- (b) disturbance of soils;
- (c) construction or erection of buildings and structures;
- (d) creation of non-structural impervious or semi-impervious surfaces;
- (e) flood protection works;
- (f) construction of roads, trails, docks, wharves, and bridges;
- (g) provision and maintenance of sewer and water services;
- (h) development of drainage systems;
- (i) development of utility corridors;
- (j) subdivision as defined in section 872 of the *Local Government Act*.

#### Justification:

The province of British Columbia's Riparian Areas Regulation (RAR), under the *Fish Protection Act*, aims to protect riparian areas for the protection of fish habitat. This regulation requires all residential, commercial or industrial development in a Riparian Assessment Area to be subject to an assessment by a Qualified Environmental Professional (QEP).

The purpose of this environmental review is to ensure the protection of the natural environment in accordance with the *Fish Protection Act* by protecting the features, functions, and conditions critical to support fish processes and ensuring appropriate measures are in place for the protection of the natural environment.

A Local Government must not approve or allow a development to proceed until the local government has been notified by the Ministry of Environment that the Ministry of Environment and Fisheries and Oceans



Canada have been notified of the development proposal, and have been provided with a copy of the assessment report prepared by a QEP, or that the Minister of Fisheries and Oceans has authorized the harmful alteration, disruption, or destruction of the natural features, functions, and conditions that support fish life process (HADD) in a riparian assessment area.

**Guidelines:**

1. A qualified environmental professional (QEP) must be retained at the expense of the applicant for the purpose of preparing a report pursuant to Section 4(2) of the Riparian Areas Regulation (RAR) and the RAR Assessment Methodology Guidebook. The report must be electronically submitted to the Ministry of Environment (MOE), Fisheries and Oceans Canada (DFO) and a hard copy must be provided to the RDN.
2. A Development Permit shall not be issued without notification from MOE and DFO that they have been notified of the proposed development and provided with an acceptable copy of the QEP assessment report or having received evidence of the Minister of Fisheries and Oceans approval under the authority of Section 4(3) of the RAR.
3. Where the QEP report proposes a Harmful Alteration, Disruption, or Destruction (HADD) to fish habitat pursuant to Section 35(2) of the *Canada Fisheries Act*, the development permit shall not be issued unless approval under the authority of Section 4(3) of the RAR is received from DFO. The Regional Board may consider providing comments to DFO in regards to a proposed approval under the authority of Section 4(3) of the RAR .
4. The RDN may, when considering comments to DFO on a proposed approval under Section 4(3) of the RAR, require additional information from the QEP and other senior levels of government.
5. The applicant shall be requested to provide an explanatory plan of the SPEA including the registration of a covenant prohibiting development and use in the SPEA.
6. The owner shall implement all measures necessary to maintain the integrity of the SPEA as specified in the QEP's report, and such measures may be included as conditions of the development permit.
7. In addition to implementing the measures contained in the QEP report, to ensure future encroachment into the SPEA is reduced, the RDN in consultation with the land owner may consider the following:
  - (a) dedicating back to the Crown Provincial or RDN all or part of the SPEA;
  - (b) gifting to a nature preservation organization (tax receipts may be issued) all or part of the SPEA;
  - (c) registering restrictive covenant(s) or conservation covenant(s) securing the measures prescribed in the QEP assessment report.
9. In the case of a proposed subdivision within this Development Permit Area, minimum parcel sizes should be met exclusive of the SPEA.
10. In the case of a proposed subdivision within this Development Permit Area, subdivision within the SPEA should be avoided..
11. Developers are encouraged to exceed the minimum standards set out in the RAR.

12. Where a proposed development is subject to a building permit, the QEP shall be required to provide confirmation to the RDN's Planning Department that the development has been developed in accordance with the QEP's recommendations prior to final inspection or occupancy as applicable.
13. Development activities should be undertaken in such a manner as to limit soil disturbance, removal, fill erosion, sedimentation or other impacts on the quality or quantity of surface water. Soil disturbed as a result of development activities should be revegetated to a level evident prior to the initiation of such activities. Such activities shall be undertaken in accordance with *Develop with Care: Environmental Guidelines for Urban and Rural Land Development in British Columbia*.
14. Where a specifically mapped watercourse as shown on Map No. 5 is found not to be subject to the RAR, a report prepared by a QEP, generally following the methodology shall be required to be submitted to the Regional District of Nanaimo.
15. All development within the Development Permit Area adjacent to those watercourses not subject to the RAR as shown on Map No. 6 must be consistent with the recommendations contained in the QEP's report.
16. All development within the Development Permit Area adjacent to those watercourses not subject to the RAR as shown on Map No. 6 shall be evaluated by a registered professional biologist who shall prepare a report(s) assessing the environmental components of the proposal. The proposal should generally include the following information, in the form of plans and/or written documents:
  - i) detailed site plan identifying the environmentally sensitive area within the site, location of existing and proposed buildings and structures, new lot lines, and an assessment of existing natural vegetation;
  - ii) criteria used to define the boundaries of the environmentally sensitive area;
  - iii) inventory of fisheries species and related habitat;
  - iv) impact statement describing affects of proposed development or subdivision on natural conditions or any neighbouring sensitive ecosystem as identified in the province's Sensitive Ecosystem Inventory (SEI); and guidelines for mitigating habitat degradation including limits of proposed leave areas.
17. A restrictive covenant may be requested to maintain and or enhance the natural environmental features.

**Exemptions:**

The following activities are exempt from the Fish Habitat Protection Development Permit Area requirements:

- a) A development located outside of the Riparian Assessment Area as determined by a British Columbia Land Surveyor or other qualified person, except within the 100 year floodplain of the Millstone River;
- b) A development proposed outside of the Streamside Protection and Enhancement Area (SPEA) where notification of an assessment report prepared in accordance with Section 4(2)(a)(i)(ii) of the Riparian Areas Regulation Assessment Methods has been received by the Regional District of Nanaimo and there are no measures required to protect the SPEA;

- c) Renovations, repairs, or maintenance to existing buildings within the same footprint that are protected by Section 911 of the *Local Government Act*;
- d) Removal of trees deemed hazardous by a qualified arbourist that threaten the immediate safety of life and buildings;
- e) All development on lands proposed to be used for 'farm operation' as defined by the *Farm Practices Protection Act*;
- f) All development on lands subject to the *Forest Act* or *Private Managed Forest Land Act*;
- g) All park or park land ancillary uses not containing commercial, residential, or industrial activities;
- h) Stream Enhancement and Fish and Wildlife habitat restoration works that have obtained the required Provincial and Federal approvals. Any activity within the stream channel that has or may have an impact on a stream requires compliance with Provincial and Federal legislation and notification to the RDN;
- i) The removal of invasive plants or noxious weeds on a small scale within the Development Permit Area including, but not limited to, Scotch Broom, Himalayan Blackberry, Morning Glory, and Purple Loosestrife provided such works are conducted in accordance with a vegetation management plan prepared by a certified Arbourist or other Qualified person and measures are taken to avoid sediment or debris being discharged into the watercourse or onto the foreshore and the area is replanted immediately in accordance with "h" above.

**Definitions:**

**Assessment Report** means a report prepared in accordance with the Riparian Areas Regulation assessment methods to assess the potential impact of a proposed development in a riparian assessment area and which is certified for the purpose of the *Riparian Areas Regulation* by a qualified environmental professional.

**Fish** means all stages of:

- a) salmonids;
- b) game fish; and
- c) regionally significant fish.

**Fish Habitat** means the areas in or about a stream such as, spawning grounds and nursery, rearing, food supply and migration areas, on which fish depend directly or indirectly in order to carry out their life processes.

**Qualified Environmental Professional (QEP)** means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if:

- a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;
- b) the individual's area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal, and
- c) the individual is acting within that individual's area of expertise.

**Riparian Area** means a streamside protection and enhancement area as defined in the *Riparian Areas Regulation*.

**Riparian Areas Regulation (RAR)** means the Riparian Areas Regulation, and amendments thereto enacted pursuant to Section 12, 13(1), and 37(2) of the *Fish Protection Act*.

**Stream** includes all watercourses, whether mapped or unmapped that provide fish habitat or flows to a waterbody that provides fish habitat and includes any of the following:

- a) a watercourse, whether it usually contains water or not;
- b) a pond, lake, river, creek, or brook;
- c) a ditch, spring, or wetland that is connected by surface flow to something referred to in (a) or (b) above.

**Streamside Protection and Enhancement Area (SPEA)** means an area:

- a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream; and,
- b) the size is determined according to the *Riparian Areas Regulation* on the basis of a report provided by a qualified environmental professional in respect of a development proposal.

**Top of Ravine Bank** means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed.

Schedule No.2  
Map No. 6

**REGIONAL DISTRICT OF NANAIMO**

**BYLAW NO. 1115.04**

**A Bylaw to Amend "Regional District of Nanaimo  
French Creek Official Community Plan Bylaw No. 1115"**

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

"Regional District of Nanaimo French Creek Official Community Plan Bylaw No. 1115, 1998," is hereby amended as follows:

- a) "TABLE OF CONTENTS" the following is inserted after DPA11 Watercourse Protection:

"DPA12 – Fish Habitat Protection"

- b) The following is inserted after Map No. 13 – French Creek Harbour Centre Development Concept:

"Map No. 14 Development Permit Areas: Fish Habitat Protection"

- c) SECTION 2.1 – ENVIRONMENTALLY SENSITIVE AREAS

The following is inserted as Policy No. 6 after Policy No. 5:

In addition to the above, all development proposals are subject to the requirements and procedures of the *Fish Protection Act* and the *Riparian Areas Regulation*.

- d) SECTION 10 – PERMIT AREAS

The following sentence from paragraph four is deleted:

*"Eleven development permit areas are designated in the French Creek Official Community Plan."*

and replaced with the following:

*"Twelve development permit areas are designated in the French Creek Official Community Plan."*

- e) SECTION 10 – PERMIT AREAS

DPA 12 – Fish Habitat Protection is inserted after DPA 11 - Watercourse Protection

- f) SECTION 10 – PERMIT AREAS

The following paragraph is deleted:

*"These Development Permit Areas are illustrated on Map No. 10 (Development Permit Areas: Form and Character and Farm Protection) and Map No. 11 (Development Permit Areas: Natural Environment/Hazard Conditions)."*

and replaced with the following:

*"These Development Permit Areas are illustrated on Map No. 10 (Development Permit Areas: Form and Character and Farm Protection), Map No. 11 (Development Permit Areas: Natural Environment/Hazard Conditions), and Map No 14 (Development Permit Areas: Fish Habitat Protection)."*

g) SECTION 10 – DEVELOPMENT PERMIT AREAS

DPA11 Watercourse Protection Development Permit Area guidelines is hereby amended by adding the following after No. 13

*" 14. All development proposals are subject to the requirements and procedures of the Fish Protection Act and the Riparian Areas Regulation."*

h) SECTION 10 – DEVELOPMENT PERMIT AREAS

DPA11 Watercourse Protection Development Permit Area guidelines are hereby amended by renumbering 14-18 to 15-19.

i) SECTION 10 – DEVELOPMENT PERMIT AREAS

Development Permit Areas is hereby amended by adding "Development Permit Area No. 12 – Fish Habitat Protection" immediately after Development Permit Area No. 11 -- Watercourse Protection, attached as Schedule No. 1 and forming part of this Bylaw.

j) LIST OF MAPS

List of Maps is hereby amended by inserting "*Map No. 14 – Development Permit Areas: Fish Habitat Protection*" attached as Schedule No. 2 immediately after Map No. 13 French Creek Harbour Centre Development Concept.

2. This Bylaw may be cited as "Regional District of Nanaimo French Creek Official Community Plan Bylaw Amendment Bylaw No. 1115.04, 2006."

Introduced and read two times this day of 2006.

Considered in conjunction with the Regional District of Nanaimo Financial Plan and applicable waste management plans this day of 2006.

Public Hearing held pursuant to Section 890 of the *Local Government Act* this    day of 2006.

Read a third time this    day of 2006.

Received approval pursuant to Section 882 of the *Local Government Act* this    day of 2006.

Adopted this    day of 2006.

---


Chairperson

---

Manager Administrative Services



Schedule No. 1

	<p><b>FISH HABITAT PROTECTION</b></p> <p><i>Purpose:</i></p>
	<ul style="list-style-type: none"> <li>• To protect the natural environment, its ecosystems and biological diversity.</li> </ul>
	<p><i>Area:</i></p>
	<p>This Development Permit Area applies to all of the Plan Area including all mapped and unmapped streams as shown on Map No. 14. This development permit area consists of the following Riparian Assessment Areas within and adjacent to all streams, which by definition includes wetlands and lakes:</p> <ol style="list-style-type: none"> <li>1. for a stream, a 30 metre strip on both sides of the stream measured from the natural boundary;</li> <li>2. for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and,</li> <li>3. for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the natural boundary to a point that is 10 metres beyond the top of the ravine bank.</li> </ol> <p>The <i>Riparian Areas Regulation</i> establishes the Riparian Assessment Areas as described above.</p>
	<p><i>Justification:</i></p>
	<p>The province of British Columbia's Riparian Areas Regulation (RAR), under the <i>Fish Protection Act</i>, aims to protect riparian areas for the protection of fish habitat. This regulation requires all residential, commercial, or industrial development in a Riparian Assessment Area to be subject to an assessment by a Qualified Environmental Professional (QEP).</p>
	<p>The purpose of this environmental review is to ensure the protection of the natural environment in accordance with the <i>Fish Protection Act</i> by protecting the features, functions, and conditions critical to support fish processes and ensuring appropriate measures are in place for the protection of the natural environment.</p>

	<p>A Local Government must not approve or allow a development to proceed until the local government has been notified by the Ministry of Environment that the Ministry of Environment and Fisheries and Oceans Canada have been notified of the development proposal and have been provided with a copy of the assessment report prepared by a QEP or that the Minister of Fisheries and Oceans Canada has authorized the harmful alteration, disruption, or destruction of the natural features, functions, and conditions that support fish life process (FIADD) in a riparian assessment area.</p>
	<p>This Development Permit Area applies to all development proposed within the Riparian Assessment Area. A development permit is required for the following development activities where such activities involve the subdivision of land, construction of, addition to, or alteration of a building or structure, or the alteration of land, except where such activities are specifically exempt:</p> <ul style="list-style-type: none"> <li>(a) removal, alteration, disruption, or destruction of vegetation;</li> <li>(b) disturbance of soils;</li> <li>(c) construction or erection of buildings and structures;</li> <li>(d) creation of non-structural impervious or semi-impervious surfaces;</li> <li>(e) flood protection works;</li> <li>(f) construction of roads, trails, docks, wharves, and bridges;</li> <li>(g) provision and maintenance of sewer and water services;</li> <li>(h) development of drainage systems;</li> <li>(i) development of utility corridors;</li> <li>(j) subdivision as defined in section 872 of the <i>Local Government Act</i>.</li> </ul>

<p><b>Guidelines:</b></p>	
<p>1. A qualified environmental professional (QEP) must be retained at the expense of the applicant for the purpose of preparing a report pursuant to Section 4(2) of the Riparian Areas Regulation (RAR) and the RAR Assessment Methodology Guidebook. The report must be electronically submitted to the Ministry of Environment (MOE), Fisheries and Oceans Canada (DFO), and a hard copy must be provided to the RDN.</p>	
<p>2. A Development Permit shall not be issued without notification from MOE and DFO that they have been notified of the proposed development and provided with an acceptable copy of the QEP assessment report or having received evidence of the Minister of Fisheries and Oceans approval under the authority of Section 4(3) of the RAR.</p>	

3. Where the QEP report proposes a Harmful Alteration, Disruption, or Destruction (HADD) to fish habitat pursuant to Section 35(2) of the <i>Canada Fisheries Act</i> , the development permit shall not be issued unless approval under the authority of Section 4(3) of the RAR is received from the DFO. The Regional Board may consider providing comments to the DFO in regards to a proposed approval under the authority of Section 4(3) of the RAR.	
4. The RDN may, when considering comments to the DFO on a proposed approval under Section 4(3) of the RAR, require additional information from the QEP and other senior levels of government.	
5. The applicant shall be requested to provide an explanatory plan of the SPEA including the registration of a covenant prohibiting development and use in the SPEA.	
6. The owner shall implement all measures necessary to maintain the integrity of the SPEA as specified in the QEP's report and such measures may be included as conditions of the development permit.	
7. In addition to implementing the measures contained in the QEP report, to ensure future encroachment into the SPEA is reduced, the RDN in consultation with the land owner may consider the following:  <ul style="list-style-type: none"> <li>(a) dedicating back to the Crown Provincial or RDN all or part of the SPEA;</li> <li>(b) gifting to a nature preservation organization (tax receipts may be issued) all or part of the SPEA;</li> <li>(c) registering restrictive covenant(s) or conservation covenant(s) securing the measures prescribed in the QEP assessment report.</li> </ul>	
9. In the case of a proposed subdivision within this Development Permit Area, minimum parcel sizes should be met exclusive of	

the SPEA.	
10. In the case of a proposed subdivision within this Development Permit Area, subdivision within the SPEA should be avoided.	
11. Developers are encouraged to exceed the minimum standards set out in the RAR.	
12. Where a proposed development is subject to a building permit, the QEP shall be required to provide confirmation to the RDN's Planning Department that the development has been developed in accordance with the QEP's recommendations prior to final inspection or occupancy as applicable.	

<b><i>Exemptions from Requiring Application for a Development Permit</i></b>	
The following activities are exempt from the Fish Habitat Protection Development Permit Area requirements:	
1. A development located outside of the Riparian Assessment Area as determined by a British Columbia Land Surveyor or other qualified person;	
2. A development proposed outside of the Streamside Protection and Enhancement Area (SPEA) where notification of an assessment report prepared in accordance with Section 4(2)(a)(i)(ii) of the Riparian Areas Regulation Assessment Methods has been received by the Regional District of Nanaimo and there are no measures required to protect the SPEA;	
3. Renovations, repairs, or maintenance to existing buildings within the same footprint that are protected by Section 911 of the <i>Local Government Act</i> ;	

4. Removal of trees deemed hazardous by a qualified arborist that threaten the immediate safety of life and buildings;	
5. All development on lands proposed to be used for 'farm operation' as defined by the <i>Farm Practices Protection Act</i> ;	
6. All development on lands subject to the <i>Forest Act</i> or <i>Private Managed Forest Land Act</i> ;	
7. All park or park land ancillary uses not containing commercial, residential, or industrial activities;	
8. Stream Enhancement and Fish and Wildlife habitat restoration works that have obtained the required Provincial and Federal approvals. Any activity within the stream channel that has or may have an impact on a stream requires compliance with Provincial and Federal legislation and notification to the RDN;	
9. The removal of invasive plants or noxious weeds on a small scale within the Development Permit Area including, but not limited to, Scotch Broom, Himalayan Blackberry, Morning Glory, and Purple Loosestrife provided such works are conducted in accordance with a vegetation management plan prepared by a certified Arborist or other Qualified person and measures are taken to avoid sediment or debris being discharged into the watercourse or onto the foreshore and the area is replanted immediately in accordance with "h" above.	

<b>Definitions</b>	
<p><b>Assessment Report</b> means a report prepared in accordance with the Riparian Areas Regulation assessment methods to assess the potential impact of a proposed development in a riparian assessment area and which is certified for the purpose of the <i>Riparian Areas Regulation</i> by a qualified environmental professional.</p>	

<p><b>Fish</b> means all stages of:</p> <ul style="list-style-type: none"> <li>a) salmonids;</li> <li>b) game fish; and</li> <li>c) regionally significant fish.</li> </ul>	
<p><b>Fish Habitat</b> means the areas in or about a stream such as, spawning grounds and nursery, rearing, food supply, and migration areas on which fish depend directly or indirectly in order to carry out their life processes.</p>	
<p><b>Qualified Environmental Professional (QEP)</b> means an applied scientist or technologist acting alone or together with another qualified environmental professional, if:</p> <ul style="list-style-type: none"> <li>a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;</li> <li>b) the individual's area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal; and,</li> <li>c) the individual is acting within that individual's area of expertise.</li> </ul>	
<p><b>Riparian Area</b> means a streamside protection and enhancement area as defined in the <i>Riparian Areas Regulation</i>.</p>	
<p><b>Riparian Areas Regulation (RAR)</b> means the Riparian Areas Regulation and amendments thereto enacted pursuant to Section 12, 13(1), and 37(2) of the <i>Fish Protection Act</i>.</p>	
<p><b>Stream</b> includes all watercourses, whether mapped or unmapped, that provide fish habitat or flows to a waterbody that provides fish habitat and includes any of the following:</p> <ul style="list-style-type: none"> <li>a) a watercourse, whether it usually contains water or not;</li> <li>b) a pond, lake, river, creek, or brook;</li> <li>c) a ditch, spring, or wetland that is connected by surface flow to something referred to in (a) or (b) above.</li> </ul>	
<p><b>Streamside Protection and Enhancement Area (SPEA)</b> means an area:</p> <ul style="list-style-type: none"> <li>a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream; and,</li> <li>b) the size is determined according to the <i>Riparian Areas Regulation</i> on the basis of a report provided by a qualified environmental professional in respect of a development proposal.</li> </ul>	

<p><b>Top of Ravine Bank</b> means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed.</p>	
---	--

Schedule No. 2  
Map No. 14 – Development Permit Area: Fish Habitat Protection



**REGIONAL DISTRICT OF NANAIMO**

**BYLAW NO. 1148.04**

**A Bylaw to Amend “Regional District of Nanaimo  
Arrowsmith Benson – Cranberry Bright Official Community Plan Bylaw No. 1148”**

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

1. “Regional District of Nanaimo Arrowsmith Benson – Cranberry Bright Official Community Plan Bylaw No. 1148, 1999,” is hereby amended as follows:

a) In “Table of Contents” – Appendix A, the following is inserted after Sensitive Ecosystems:

“Fish Habitat Protection”.....55

b) In “Table of Contents” List of Maps, the following is inserted after Map No. 7 – Development Permit Areas, Sheets 1 to 5:

“Map No. 8 – Fish Habitat Protection Development Permit Area, Sheet 1 of 1

c) Policy No. 3 under GOAL 4 - PROTECT THE NATURAL ENVIRONMENT – FRESHWATER MANAGEMENT is deleted and replaced with the following:

“The Regional District may require development approval information within the Plan Area for zoning amendment or temporary use applications. Development approval information will consist of a hydrological impact assessment certified by a professional engineer with experience in hydrologic analysis and/or a Riparian Area Assessment pursuant to the **Riparian Area Regulations** conducted by a Qualified Environmental Professional. The impact assessment will identify the long-term impact of the application on fish habitat, the surface and groundwater resources of the watershed, and adjacent properties and aquifers. The assessment must specify the necessary measures to ensure that viable fish habitat and receiving waters would not be negatively impacted, including channel stability and flow maintenance. The special objective that justifies this requirement for development approval information within the Plan Area is to preserve the quantity and quality of the surface and groundwater systems for domestic, agricultural, fisheries, wildlife, and recreational needs in cooperation with landowners and local and provincial water authorities.”

d) Policy No. 6 in GOAL 4 – PROTECT THE NATURAL ENVIRONMENT – FRESHWATER MANAGEMENT is deleted and replaced with the following:

“Watercourse and Fish Habitat Protection development permit areas will be established. (See Appendix A – Development Permit Areas.)”

e) Policy No. 7 in GOAL 4 – PROTECT THE NATURAL ENVIRONMENT – FRESHWATER MANAGEMENT is deleted and replaced with the following:

“The Regional District will assist senior levels of government in ensuring that developments conform to policies and regulations intended to protect fish habitat and surface and groundwater quantity or quality.”

- f) Policy No. 6 in GOAL 7 - IMPROVE SERVICE AND RESOURCE USE EFFICIENCY Park and Community Facilities is deleted and replaced with the following:

"At the time of subdivision of land adjacent to a stream as defined in the *Riparian Area Regulation*, it may be recommended to the Approving Officer that access to the stream be provided only where the applicant is proposing access in the location with the least environmental impact as identified in a report prepared by a Qualified Environmental Professional subject to the approval of the Department of Fisheries and Oceans Canada and the Ministry of Environment. In the case of public beach access roads, the Regional District will require an assessment of location options for suitable public beach access road designations prior to a decision by an Approving Officer for locating a beach access road right-of-way pursuant to Section 75 of the *Land Title Act* and the *Highway Act*. The assessment of public beach access location suitability will be pursuant to 'Access Near Aquatic Areas Guidelines' of the Ministry of Environment, Lands and Parks, and the *Fish Protection Act*."

- g) APPENDIX A – DEVELOPMENT PERMIT AREAS is deleted and replaced with the following:

"This section of the Official Community Plan identifies those areas of Arrowsmith Benson – Cranberry Bright where the issuance of a development permit is required prior to the commencement of development. For those areas designated as development permit areas, the special conditions or objectives that justify the designation are described, and the guidelines respecting the manner by which the special conditions or objectives must be addressed are provided. Categories of development which are excluded from development permit requirements are also specified.

Pursuant to the *Local Government Act*, development permit areas may be designated for one or more of the following purposes:

- To protect the natural environment, its ecosystems, and biological diversity;
- To protect development from hazardous conditions;
- To protect farm land;
- To revitalize an area where commercial use is permitted; or
- To establish objectives and provide guidelines for the form and character of commercial, industrial, or multiple family residential development.

The following development permit areas are designated in the Plan:

- Village Centre – Commercial, Development Permit Area (form and character)
- Farm Land Protection, Development Permit Area (protect farm land)
- Watercourse Protection, Development Permit Areas (protect natural environment)
- Sensitive Ecosystems, Development Permit Areas (protect natural environment)
- Fish Habitat Protection, Development Permit Area (protect natural environment)

Where land is subject to more than one development permit designation, a single development permit will be required; and the application will be subject to the requirements of all the applicable development permit designations."

h) APPENDIX A - WATERCOURSE PROTECTION DEVELOPMENT PERMIT AREAS  
Exemptions:

Exemption 4(b) is amended by deleting the words "including fish habitat"

i) APPENDIX A – WATERCOURSE PROTECTION DEVELOPMENT PERMIT AREAS  
Guidelines

Guideline Number 3(b) is amended by deleting the words "fish and"

j) APPENDIX A – WATERCOURSE PROTECTION DEVELOPMENT PERMIT AREAS  
Guidelines

Guideline Number 7 is added following Guideline Number 6 as follows:

"All development proposals are subject to the requirements and procedures of the *Fish Protection Act* and the *Riparian Areas Regulation*."

k) APPENDIX A – DEVELOPMENT PERMIT AREAS

is hereby amended by inserting Fish Habitat Protection Development Permit Area immediately after Sensitive Ecosystems Development Permit Areas, attached as Schedule No. 1 and forming part of this Bylaw.

l) MAPS

Maps is hereby amended by inserting "Map No 8 – Fish Habitat Protection Development Permit Area," attached as Schedule No. 2, immediately after Map No. 7 Sheet 5 of 5 Development Permit Areas.

2. This Bylaw may be cited as "Regional District of Nanaimo Arrowsmith Benson – Cranberry Bright Official Community Plan Bylaw No. 1148.04, 2006."

Introduced and read two times this day of, 2006.

Considered in conjunction with the Regional District of Nanaimo Financial Plan and applicable waste management Plans this day of, 2006.

Public Hearing held pursuant to Section 890 of the *Local Government Act* this day of, 2006.

Read a third time this day of October, 2006.

Received approval pursuant to Section 882 of the *Local Government Act* this day of, 2006.

Adopted this day of, 2006.

---

Chairperson

---

Manager Administrative Services

Schedule No. 1

## **FISH HABITAT PROTECTION DEVELOPMENT PERMIT AREA**

### **Purpose**

- To protect the natural environment, its ecosystems, and biological diversity.

### **Area:**

This Development Permit Area applies to all of the Plan Area including all mapped and unmapped watercourses as shown on Map No. 8.

### **Justification**

The province of British Columbia's Riparian Areas Regulation (RAR), under the *Fish Protection Act*, aims to protect riparian areas for the protection of fish habitat. This regulation requires all residential, commercial, or industrial development in a Riparian Assessment Area to be subject to an assessment by a Qualified Environmental Professional (QEP).

The purpose of this environmental review is to ensure the protection of the natural environment in accordance with the *Fish Protection Act* by protecting the features, functions, and conditions critical to support fish processes and ensuring appropriate measures are in place for the protection of the natural environment.

A Local Government must not approve or allow a development to proceed until the local government has been notified by the Ministry of Environment that the Ministry of Environment and Fisheries and Oceans Canada have been notified of the development proposal and have been provided with a copy of the assessment report prepared by a QEP or that the Minister of Fisheries and Oceans Canada has authorized the harmful alteration, disruption, or destruction of the natural features, functions, and conditions that support fish life process (HADD) in a riparian assessment area.

### **Application**

This Development Permit Area applies to all of the Plan Area including all mapped and unmapped streams as shown on Map No. 8. This development permit area consists of the following Riparian Assessment Areas within and adjacent to all streams, which by definition includes wetlands and lakes:

1. for a stream, a 30 metre strip on both sides of the stream measured from the natural boundary;
2. for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and,
3. for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the natural boundary to a point that is 10 metres beyond the top of the ravine bank.

The *Riparian Areas Regulation* establishes the Riparian Assessment Areas as described above.

This Development Permit Area applies to all development proposed within the Riparian Assessment Area. A development permit is required for the following development activities where such activities involve the subdivision of land, construction of, addition to, or alteration of a building or structure, or the alteration of land, except where such activities are specifically exempt:

- (a) removal, alteration, disruption, or destruction of vegetation;
- (b) disturbance of soils;
- (c) construction or erection of buildings and structures;
- (d) creation of non-structural impervious or semi-impervious surfaces;
- (e) flood protection works;
- (f) construction of roads, trails, docks, wharves, and bridges;
- (g) provision and maintenance of sewer and water services;
- (h) development of drainage systems;
- (i) development of utility corridors;
- (j) subdivision as defined in section 872 of the *Local Government Act*.

**Exemptions:**

The following activities are exempt from the Fish Habitat Protection Development Permit Area requirements:

- a) A development located outside of the Riparian Assessment Area as determined by a British Columbia Land Surveyor or other qualified person;
- b) A development proposed outside of the Streamside Protection and Enhancement Area (SPEA) where notification of an assessment report prepared in accordance with Section 4(2)(a)(i)(ii) of the Riparian Areas Regulation Assessment Methods has been received by the Regional District of Nanaimo, and there are no measures required to protect the SPEA;
- c) Renovations, repairs, or maintenance to existing buildings within the same footprint that are protected by Section 911 of the *Local Government Act*;
- d) Removal of trees deemed hazardous by a qualified arborist that threaten the immediate safety of life and buildings;
- e) All development on lands proposed to be used for 'farm operation' as defined by the *Farm Practices Protection Act*;
- f) All development on lands subject to the *Forest Act* or *Private Managed Forest Land Act*;
- g) All park or park land ancillary uses not containing commercial, residential, or industrial activities;
- h) Stream Enhancement and Fish and Wildlife habitat restoration works that have obtained the required Provincial and Federal approvals. Any activity within the stream channel that has or may have an impact on a stream requires compliance with Provincial and Federal legislation and notification to the RDN;

The removal of invasive plants or noxious weeds on a small scale within the Development Permit Area including, but not limited to, Scotch Broom, Himalayan Blackberry, Morning Glory, and Purple Loosestrife provided such works are conducted in accordance with a vegetation management plan prepared by a certified Arborist or other Qualified person; and measures are taken to avoid sediment or debris being discharged into the watercourse or onto the foreshore and the area is replanted immediately in accordance with "h" above.

## Guidelines

1. A qualified environmental professional (QEP) must be retained at the expense of the applicant for the purpose of preparing a report pursuant to Section 4(2) of the Riparian Areas Regulation (RAR) and the RAR Assessment Methodology Guidebook. The report must be electronically submitted to the Ministry of Environment (MOE), Fisheries and Oceans Canada (DFO) and a hard copy must be provided to the RDN.
2. A Development Permit shall not be issued without notification from the MOE and the DFO that they have been notified of the proposed development and provided with an acceptable copy of the QEP assessment report or having received evidence of the Minister of Fisheries and Oceans Canada approval under the authority of Section 4(3) of the RAR.
3. Where the QEP report proposes a Harmful Alteration, Disruption, or Destruction (HADD) to fish habitat pursuant to Section 35(2) of the *Canada Fisheries Act*, the development permit shall not be issued unless approval under the authority of Section 4(3) of the RAR is received from the DFO. The Regional Board may consider providing comments to the DFO in regards to a proposed approval under the authority of Section 4(3) of the RAR.
4. The RDN may, when considering comments to the DFO on a proposed approval under Section 4(3) of the RAR, require additional information from the QEP and other senior levels of government.
5. The applicant shall be requested to provide an explanatory plan of the SPEA including the registration of a covenant prohibiting development and use in the SPEA.
6. The owner shall implement all measures necessary to maintain the integrity of the SPEA as specified in the QEP's report, and such measures may be included as conditions of the development permit.
7. In addition to implementing the measures contained in the QEP report to ensure future encroachment into the SPEA is reduced, the RDN, in consultation with the land owner, may consider the following:
  - (a) dedicating back to the Crown Provincial or RDN all or part of the SPEA;
  - (b) gifting to a nature preservation organization (tax receipts may be issued) all or part of the SPEA;
  - (c) registering restrictive covenant(s) or conservation covenant(s) securing the measures prescribed in the QEP assessment report.
8. In the case of a proposed subdivision within this Development Permit Area, minimum parcel sizes should be met exclusive of the SPEA.
9. In the case of a proposed subdivision within this Development Permit Area, subdivision within the SPEA should be avoided.
10. Developers are encouraged to exceed the minimum standards set out in the RAR.
11. Where a proposed development is subject to a building permit, the QEP shall be required to provide confirmation to the RDN's Planning Department that the development has been

developed in accordance with the QEP's recommendations prior to final inspection or occupancy as applicable.

### **Definitions**

**Assessment Report** means a report prepared in accordance with the Riparian Areas Regulation assessment methods to assess the potential impact of a proposed development in a riparian assessment area, which is certified for the purpose of the *Riparian Areas Regulation* by a qualified environmental professional.

**Fish** means all stages of:

- a) salmonids;
- b) game fish; and
- c) regionally significant fish.

**Fish Habitat** means the areas in or about a stream such as, spawning grounds and nursery, rearing, food supply, and migration areas, which fish depend directly or indirectly in order to carry out their life processes.

**Qualified Environmental Professional (QEP)** means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if:

- a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;
- b) the individual's area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal, and
- c) the individual is acting within that individual's area of expertise.

**Riparian Area** means a streamside protection and enhancement area as defined in the *Riparian Areas Regulation*.

**Riparian Areas Regulation (RAR)** means the Riparian Areas Regulation and amendments thereto enacted pursuant to Section 12, 13(1), and 37(2) of the *Fish Protection Act*.

**Stream** includes all watercourses, whether mapped or unmapped, that provide fish habitat or flows to a waterbody that provides fish habitat and includes any of the following:

- a) a watercourse, whether it usually contains water or not;
- b) a pond, lake, river, creek, or brook;
- c) a ditch, spring, or wetland that is connected by surface flow to something referred to in (a) or (b) above.

Schedule No. 2 – Development Permit Area Map



REGIONAL DISTRICT OF NANAIMO

BYLAW NO. 1152.03

**A Bylaw to Amend "Regional District of Nanaimo  
Electoral Area 'F' Official Community Plan Bylaw No. 1152"**

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

1. "Regional District of Nanaimo Electoral Area 'F' Official Community Plan Bylaw No. 1152, 1999," is hereby amended as follows:

- a) TABLE OF CONTENTS, Appendix A: Watercourse Protection Development Permit Area, is hereby deleted and replaced with the following:

Appendix A: Development Permits

A1 Watercourse Protection Development Permit Area

A2 Fish Habitat Protection Development Permit Area

- b) Section 1 - Organization of this Plan, paragraph five is deleted and replaced with the following:

"The Official Community Plan also contains two appendices: **Appendix A1** states the regulations and guidelines for the **Watercourse Protection Development Permit Area** and **Appendix A2** states the regulations and guidelines for the **Fish Habitat Protection Development Permit Area**."

- c) Section 4: The Natural Environment, Watercourse Protection Development Permit Area is amended by deleting from the 1<sup>st</sup> paragraph:

Appendix A sets out the guidelines of the Watercourse Development Permit Area

And replacing it with the following:

Appendix A1 sets out the guidelines of the Watercourse Development Permit Area

- d) Section 4: The Natural Environment is amended by adding the following after "Watercourse Protection Development Permit Area"

**FISH HABITAT PROTECTION DEVELOPMENT PERMIT AREA**

The Fish Habitat Protection Development Permit Area is designated on all mapped and unmapped streams, pursuant to the *Fish Protection Act* and the *Riparian Areas Regulation*. This Development Permit Area is shown on Map No. 7. Appendix A sets out the guidelines of the Fish Habitat Protection Development Permit Area."

- e) APPENDIX A - Watercourse Protection Development Permit Area is deleted and replaced with

"APPENDIX A1 – Watercourse Protection Development Permit Area"

- f) APPENDIX A - Watercourse Protection Development Permit Area is hereby amended by inserting the following after Section 4.2.2:

"4.2.3 All development proposals are subject to the requirements and procedures of the *Fish Protection Act* and the *Riparian Areas Regulation*."

- g) APPENDIX A is hereby amended by adding "APPENDIX A2 Fish Habitat Protection Development Permit Area" after "APPENDIX A1 Watercourse Protection Development Permit Area" attached as Schedule No. 1 and forming part of this Bylaw.

- h) MAPS

Map No. 7 "Fish Habitat Protection Development Permit Area" is hereby inserted after Map No. 6 "Community Service Areas" attached as Schedule No. 2 and forming part of this Bylaw.

1. This Bylaw may be cited as "Regional District of Nanaimo Electoral Area 'F' Official Community Plan Bylaw Amendment Bylaw No. 1152.03, 2006".

Introduced and read two times this day of, 2006.

Considered in conjunction with the Regional District of Nanaimo Financial Plan and applicable waste management Plans this day of, 2006.

Public Hearing held pursuant to Section 890 of the *Local Government Act* this day of, 2006.

Read a third time this day of, 2006.

Received approval pursuant to Section 882 of the *Local Government Act* this day of, 2006.

Adopted this day of, 2006.

---

Chairperson

---

Manager, Administrative Services

Schedule No. 1

**Appendix A2**  
**Fish Habitat Protection Development Permit Area**

**1.0 PURPOSE:**

The area shown on Map No. 7 as the Fish Habitat Protection Development Permit Area is designated for the purpose of protecting the natural environment, its ecosystems, and biological diversity. This area is also designated a development approval information area according to Section 920.01 of the *Local Government Act*.

This Development Permit Area applies to all of the Plan Area including all mapped and unmapped streams as shown on Map No. 7.

**2.0 AREA**

2.1 *This development permit area consists of the following Riparian Assessment Areas, which by definition includes wetlands and lakes:*

- 2.1.1 for a stream, a 30 metre strip on both sides of the stream measured from the natural boundary;
- 2.1.2 for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and,
- 2.1.3 for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the natural boundary to a point that is 10 metres beyond the top of the ravine bank.

2.2 The *Riparian Areas Regulation* establishes the Riparian Assessment Areas as described above.

2.3 A development permit is required for the following development activities except where such activities are specifically exempt:

- 2.3.1 removal, alteration, disruption, or destruction of vegetation;
- 2.3.2 disturbance of soils;
- 2.3.3 construction or erection of buildings and structures;
- 2.3.4 creation of non-structural impervious or semi-impervious surfaces;
- 2.3.5 flood protection works;
- 2.3.6 construction of roads, trails, docks, wharves, and bridges;
- 2.3.7 provision and maintenance of sewer and water services;
- 2.3.8 development of drainage systems;
- 2.3.9 development of utility corridors;
- 2.3.10 subdivision as defined in section 872 of the *Local Government Act*.

**3.0 JUSTIFICATION:**

The province of British Columbia's Riparian Areas Regulation (RAR), under the *Fish Protection Act*, aims to protect riparian areas for the protection of fish habitat. This regulation requires all residential, commercial or industrial development in a Riparian Assessment Area to be subject to an assessment by a Qualified Environmental Professional (QEP).

The purpose of this environmental review is to ensure the protection of the natural environment in accordance with the *Fish Protection Act* by protecting the features, functions, and conditions critical to support fish processes and ensuring appropriate measures are in place for the protection of the natural environment.

A Local Government must not approve or allow a development to proceed until the local government has been notified by the Ministry of Environment that the Ministry of Environment and Fisheries and Oceans Canada have been notified of the development proposal and have been provided with a copy of the assessment report prepared by a QEP or that the Minister of Fisheries and Oceans Canada has authorized the harmful alteration, disruption, or destruction of the natural features, functions, and conditions that support fish life process (HADD) in a riparian assessment area.

#### 4.0 GUIDELINES:

- 4.1 A qualified environmental professional (QEP) must be retained at the expense of the applicant for the purpose of preparing a report pursuant to Section 4(2) of the Riparian Areas Regulation (RAR) and the RAR Assessment Methodology Guidebook. The report must be electronically submitted to the Ministry of Environment (MOE), Fisheries and Oceans Canada (DFO), and a hard copy must be provided to the RDN.
- 4.2 A Development Permit shall not be issued without notification from the MOE and the DFO that they have been notified of the proposed development and provided with an acceptable copy of the QEP assessment report or having received evidence of the Minister of Fisheries and Oceans Canada approval under the authority of Section 4(3) of the RAR.
- 4.3 Where the QEP report proposes a Harmful Alteration, Disruption, or Destruction (HADD) to fish habitat pursuant to Section 35(2) of the *Canada Fisheries Act*, the development permit shall not be issued unless approval under the authority of Section 4(3) of the RAR is received from the DFO. The Regional Board may consider providing comments to the DFO in regards to a proposed approval under the authority of Section 4(3) of the RAR.
- 4.4 The RDN may, when considering comments to the DFO on a proposed approval under Section 4(3) of the RAR, require additional information from the QEP and other senior levels of government.
- 4.5 The applicant shall be requested to provide an explanatory plan of the SPEA including the registration of a covenant prohibiting development and use in the SPEA.
- 4.6 The owner shall implement all measures necessary to maintain the integrity of the SPEA as specified in the QEP's report, and such measures may be included as conditions of the development permit.
- 4.7 In addition to implementing the measures contained in the QEP report, to ensure future encroachment into the SPEA is reduced, the RDN in consultation with the land owner may consider the following:
  - (a) dedicating back to the Crown Provincial or RDN all or part of the SPEA;
  - (b) gifting to a nature preservation organization (tax receipts may be issued) all or part of the SPEA;
  - (c) registering restrictive covenant(s) or conservation covenant(s) securing the measures prescribed in the QEP assessment report.

- 4.8 In the case of a proposed subdivision within this Development Permit Area, minimum parcel sizes should be met exclusive of the SPEA.
- 4.9 In the case of a proposed subdivision within this Development Permit Area, subdivision within the SPEA should be avoided.
- 4.9 Developers are encouraged to exceed the minimum standards set out in the RAR.
- 4.9 Where a proposed development is subject to a building permit, the QEP shall be required to provide confirmation to the RDN's Planning Department that the development has been developed in accordance with the QEP's recommendations prior to final inspection or occupancy as applicable.

## 5.0 EXEMPTIONS:

The following activities are exempt from the Fish Habitat Protection Development Permit Area requirements:

- a) A development located outside of the Riparian Assessment Area as determined by a British Columbia Land Surveyor or other qualified person;
- b) A development proposed outside of the Streamside Protection and Enhancement Area (SPEA) where notification of an assessment report prepared in accordance with Section 4(2)(a)(i)(ii) of the Riparian Areas Regulation Assessment Methods has been received by the Regional District of Nanaimo and there are no measures required to protect the SPEA;
- c) Renovations, repairs, or maintenance to existing buildings within the same footprint that are protected by Section 911 of the *Local Government Act*;
- d) Removal of trees deemed hazardous by a qualified arborist that threaten the immediate safety of life and buildings;
- e) All development on lands proposed to be used for 'farm operation' as defined by the *Farm Practices Protection Act*;
- f) All development on lands subject to the *Forest Act* or *Private Managed Forest Land Act*;
- g) All park or park land ancillary uses not containing commercial, residential, or industrial activities;
- h) Stream Enhancement and Fish and Wildlife habitat restoration works that have obtained the required Provincial and Federal approvals. Any activity within the stream channel that has or may have an impact on a stream requires compliance with Provincial and Federal legislation and notification to the RDN;
- i) The removal of invasive plants or noxious weeds on a small scale within the Development Permit Area including, but not limited to, Scotch Broom, Himalayan Blackberry, Morning Glory, and Purple Loosestrife provided such works are conducted in accordance with a vegetation management plan prepared by a certified Arborist or other qualified person and measures are taken to avoid sediment or debris being discharged into the watercourse or onto the foreshore and the area is replanted immediately in accordance with "h" above.

## 6.0 Definitions:

### Definitions:

**Assessment Report** means a report prepared in accordance with the Riparian Areas Regulation assessment methods to assess the potential impact of a proposed development in a riparian assessment area, which is certified for the purpose of the *Riparian Areas Regulation* by a qualified environmental professional.

**Fish** means all stages of:

- a) salmonids;
- b) game fish; and
- c) regionally significant fish.

**Fish Habitat** means the areas in or about a stream such as, spawning grounds and nursery, rearing, food supply, and migration areas, which fish depend directly or indirectly in order to carry out their life processes.

**Qualified Environmental Professional (QEP)** means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if:

- a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association;
- b) the individual's area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal; and,
- c) the individual is acting within that individual's area of expertise.

**Riparian Area** means a streamside protection and enhancement area as defined in the *Riparian Areas Regulation*.

**Riparian Areas Regulation (RAR)** means the Riparian Areas Regulation and amendments thereto enacted pursuant to Section 12, 13(1), and 37(2) of the *Fish Protection Act*.

**Stream** includes all watercourses, whether mapped or unmapped that provide fish habitat or flows to a waterbody that provides fish habitat and includes any of the following:

- a) a watercourse, whether it usually contains water or not;
- b) a pond, lake, river, creek, or brook;
- c) a ditch, spring, or wetland that is connected by surface flow to something referred to in (a) or (b) above.

**Streamside Protection and Enhancement Area (SPEA)** means an area:

- a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream; and,
- b) the size is determined according to the *Riparian Areas Regulation* on the basis of a report provided by a qualified environmental professional in respect of a development proposal.

**Top of Ravine Bank** means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed.

**Schedule No. 2**  
**Map No. 7**

## REGIONAL DISTRICT OF NANAIMO

### BYLAW NO. 1335.02

#### A Bylaw to Amend "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw No. 1335, 2003"

The Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

1. "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw No. 1335, 2003," is hereby amended as follows:

a) In "Table of Contents – Appendix A – Development Permit Areas" The following is inserted after A-6 Resort Commercial and Recreation Lands DPA:

"A-7 Fish Habitat Protection DPA"

b) **SECTION 2 – THE NATURAL ENVIRONMENT**

Paragraph 3 is amended by deleting "*Fish Protection Act Streamside Protection Regulation*" and replacing it with "*Fish Protection Act Riparian Areas Regulation*."

c) **SECTION 2.3 – FRESHWATER RESOURCES (SURFACE AND AQUIFER)**

Policy No. 1 is hereby deleted and replaced with the following:

1. All streams and watercourses as defined in Bylaw No. 500 and/or the *Fish Protection Act Riparian Areas Regulations*, and/or the *Fisheries Act* in Electoral Area 'H', in addition to those shown on Map No. 2, are designated as Development Permit Areas and will be protected in accordance with the *Fish Protection Act* and the *Fisheries Act*.

d) **APPENDIX A – DEVELOPMENT PERMIT AREAS**

The following paragraph is hereby deleted:

*"The development permit areas, designated on Map Nos. 6 and 7, are the:*

- *Village Centres Development Permit Area;*
- *Highway Corridors Development Permit Area;*
- *Environmentally Sensitive Areas Development Permit Area;*
- *Hazard Lands Development Permit Area;*
- *Resort Commercial Development Permit Area; and*
- *Recreational Lands Development Permit Area."*

and replaced with the following:

*"The development permit areas, designated on Map Nos. 6, 7, and 8, are the:*

- *Village Centres Development Permit Area;*
- *Highway Corridors Development Permit Area;*



- *Environmentally Sensitive Areas Development Permit Area;*
- *Hazard Lands Development Permit Area;*
- *Resort Commercial Development Permit Area;*
- *Recreational Lands Development Permit Area; and,*
- *Fish Habitat Protection."*

e) **APPENDIX A – A.1 DEVELOPMENT PERMIT AREA – GENERAL POLICIES**

Policy No. 1 is hereby deleted and replaced with the following: "*Designated Development Permit Areas are shown on Map Nos. 6, 7, and 8.*"

f) **APPENDIX A – A.4 ENVIRONMENTALLY SENSITIVE FEATURES DEVELOPMENT PERMIT AREA - GUIDELINES**

The following is inserted as guideline number 15:

"All development proposals are subject to the requirements and procedures of the *Fish Protection Act* and the *Riparian Areas Regulation.*"

g) **APPENDIX A – DEVELOPMENT PERMIT AREAS**

Appendix A is amended by inserting "A.7 – Fish Habitat Protection Development Permit Area" attached as Schedule No. 1 and forming part of this Bylaw.

h) **APPENDIX 'A' – DEFINITIONS:**

DEFINITIONS is amended to read as follows:

**Alteration of land** includes removal, alteration, or disruption of vegetation, and soil deposit or removal. (**Fish Protection Act**)

**Assessment Report** means a report prepared in accordance with the Riparian Areas Regulation assessment methods to assess the potential impact of a proposed development in a riparian assessment area, which is certified for the purpose of the Riparian Areas Regulation by a qualified environmental professional.

**Fish** means all stages of:

- a. salmonids;
- b. game fish; and,
- c. regionally significant fish.

**Fish Habitat** means the areas in or about a stream such as, spawning grounds and nursery, rearing, food supply, and migration areas on which fish depend directly or indirectly in order to carry out their life processes.

**Qualified Environmental Professional (QEP)** means an applied scientist or technologist acting alone or together with another qualified environmental professional if:

- a. the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act acting under that association's code of ethics and subject to disciplinary action by that association;

- b. the individual's area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal; and,
- c. the individual is acting within that individual's area of expertise.

**Riparian Area** means the area adjacent to a stream that may be subject to temporary, frequent, or seasonal inundation and supports plant species that are typical of an area of inundated or saturated soil conditions that are distinct from plant species on freely drained adjacent upland sites because of the presence of water. (**Fish Protection Act**)

**Riparian Areas Regulation (RAR)** means the *Riparian Areas Regulation* and amendments thereto enacted pursuant to Section 12, 13(1), and 37(2) of the *Fish Protection Act*.

**Stream, for the purposes of all development permit areas except for the Fish Habitat Protection Development Permit Area,** means a permanent or non-permanent watercourse or source of water supply whether usually containing water or not, a pond, lake, river, creek, brook, ditch, spring, or wetland that is integral to a 'stream' and may provide fish habitat.

**Stream, for the purposes of the Fish Habitat Protection Development Permit Area only,** includes all watercourses, whether mapped or unmapped that provide fish habitat or flows to a waterbody that provides fish habitat and includes any of the following:

- a. a watercourse, whether it usually contains water or not;
- b. a pond, lake, river, creek, or brook; and,
- c. a ditch, spring, or wetland that is connected by surface flow to something referred to in (a) or (b) above.

**Streamside Protection and Enhancement Area (SPEA)** means an area:

- a. adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream; and,
- b. the size is determined according to the *Riparian Areas Regulation* on the basis of a report provided by a qualified environmental professional in respect of a development proposal.

**Top of Ravine Bank** means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed.

**Top of bank means:**

- a. the point closest to the natural boundary of the stream where a break in the slope of the land occurs such that the grade beyond the break is flatter than 3:1 at any point from a minimum distance of 15 metres measured perpendicularly from the break; and,
- b. for a floodplain, the edge of the active floodplain. (**Fish Protection Act**)

**Wetland** means land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and under normal conditions that does support vegetation typically adapted for life in saturated soil conditions including swamps, marshes, bogs, fens, estuaries, and similar areas. (**Fish Protection Act**)

i) **MAPS**

Maps is hereby amended by inserting "*Map No. 8 – Fish Habitat Protection Development Permit Area*" attached as Schedule No. 2 immediately after Map No. 7 Environmentally Sensitive Development Permit Areas.

2. This Bylaw may be cited as "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw Amendment Bylaw No. 1335.02, 2006."

Introduced and read two times this day of 2006.

Considered in conjunction with the Regional District of Nanaimo Financial Plan and any applicable waste management Plans this day of 2006.

Public Hearing held pursuant to Section 890 of the *Local Government Act* this day of 2006.

Read a third time this day of 2006 .

Received approval pursuant to Section 882 of the *Local Government Act* this day of ,2006.

Adopted this day of 2006.

---

Chairperson

---

Manager Administrative Services

Schedule No. 1

## **A.7 FISH HABITAT PROTECTION DEVELOPMENT PERMIT AREA**

### **DESIGNATION:**

That part of Electoral Area 'H' shown as Fish Habitat Protection Development Permit Area on Map No. 8 is designated as a Development Permit Area. This development permit area consists of the following Riparian Assessment Areas within and adjacent to all streams, which by definition includes wetlands and lakes:

1. for a stream, a 30 metre strip on both sides of the stream measured from the natural boundary;
2. for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and,
3. for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the natural boundary to a point that is 10 metres beyond the top of the ravine bank.

The *Riparian Areas Regulation* establishes the Riparian Assessment Areas as described above.

This Development Permit Area applies to all development proposed within the Riparian Assessment Area. A development permit is required for the following development activities where such activities involve the subdivision of land, construction of, addition to, or alteration of a building or structure, or the alteration of land, except where such activities are specifically exempt:

1. removal, alteration, disruption, or destruction of vegetation;
2. disturbance of 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;
7. provision and maintenance of sewer and water services;
8. development of drainage systems;
9. development of utility corridors;
10. subdivision as defined in section 872 of the *Local Government Act*.

### **PURPOSE OF DESIGNATION:**

- A. Protection of the natural environment, its ecosystems, and biological diversity

**JUSTIFICATION:**

The province of British Columbia's Riparian Areas Regulation (RAR), under the *Fish Protection Act*, aims to protect riparian areas for the protection of fish habitat. This regulation requires that an assessment by a Qualified Environmental Professional (QEP) be conducted for all proposed residential, commercial, or industrial development in a Riparian Assessment Area.

The purpose of this assessment is to ensure the protection of the natural environment in accordance with the *Fish Protection Act* by protecting the features, functions, and conditions critical to support fish processes and ensuring appropriate measures are in place for the protection of the natural environment.

A Local Government must not approve or allow a development to proceed until the local government has been notified by the Ministry of Environment that the Ministry of Environment and Fisheries and Oceans Canada have been notified of the development proposal and have been provided with a copy of the assessment report prepared by a QEP or that the Minister of Fisheries and Oceans Canada has authorized the harmful alteration, disruption, or destruction of the natural features, functions, and conditions that support fish life process (HADD) in a riparian assessment area.

**EXEMPTIONS:**

The following activities are exempt from the Fish Habitat Protection Development Permit Area requirements:

1. A development located outside of the Riparian Assessment Area as determined by a British Columbia Land Surveyor or other qualified person;
2. A development proposed outside of the Streamside Protection and Enhancement Area (SPEA) where notification of an assessment report prepared in accordance with Section 4(2)(a)(i)(ii) of the Riparian Areas Regulation Assessment Methods has been received by the Regional District of Nanaimo and there are no measures required to protect the SPEA;
3. Renovations, repairs, or maintenance to existing buildings within the same footprint that are protected by Section 911 of the *Local Government Act*;
4. Removal of trees deemed hazardous by a qualified arborist that threaten the immediate safety of life and buildings;
5. All development on lands proposed to be used for 'farm operation' as defined by the *Farm Practices Protection Act*;
6. All development on lands subject to the *Forest Act* or *Private Managed Forest Land Act*;
7. All park or park land ancillary uses not containing commercial, residential, or industrial activities;
8. Stream Enhancement and Fish and Wildlife habitat restoration works that have obtained the required Provincial and Federal approvals. Any activity within the stream channel

that has or may have an impact on a stream requires compliance with Provincial and Federal legislation and notification to the RDN;

9. The removal of invasive plants or noxious weeds on a small scale within the Development Permit Area including, but not limited to, Scotch Broom, Himalayan Blackberry, Morning Glory, and Purple Loosestrife provided such works are conducted in accordance with a vegetation management plan prepared by a certified Arborist or other Qualified person and measures are taken to avoid sediment or debris being discharged into the watercourse or onto the foreshore and the area is replanted immediately in accordance with "Exemption 8" above.

**GUIDELINES (SEE DEVELOPMENT GUIDELINE CRITERIA SECTION 5.1):**

1. A qualified environmental professional (QEP) must be retained at the expense of the applicant for the purpose of preparing a report pursuant to Section 4(2) of the Riparian Areas Regulation (RAR) and the RAR Assessment Methodology Guidebook. The report must be electronically submitted to the Ministry of Environment (MOE), Fisheries and Oceans Canada (DFO), and a hard copy must be provided to the RDN.
2. A Development Permit shall not be issued without notification from the Ministry of Environment (MOE) and the Ministry of Fisheries and Oceans Canada (DFO) that they have been notified of the proposed development and provided with an acceptable copy of the QEP assessment report or having received evidence of the Minister of Fisheries and Oceans Canada approval under the authority of Section 4(3) of the RAR.
3. Where the QEP report proposes a Harmful Alteration, Disruption, or Destruction (HADD) to fish habitat pursuant to Section 35(2) of the **Canada Fisheries Act**, the development permit shall not be issued unless approval under the authority of Section 4(3) of the RAR is received from DFO. The Regional Board may consider providing comments to DFO in regards to a proposed approval under the authority of Section 4(3) of the RAR.
4. The RDN may, when considering comments to DFO on a proposed approval under Section 4(3) of the RAR, require additional information from the QEP and other senior levels of government.
5. The applicant shall be requested to provide an explanatory plan of the SPEA including the registration of a covenant prohibiting development and use in the SPEA.
6. The owner shall implement all measures necessary to maintain the integrity of the SPEA as specified in the QEP's report, and such measures may be included as conditions of the development permit.
7. In addition to implementing the measures contained in the QEP report, to ensure future encroachment into the SPEA is reduced, the RDN in consultation with the land owner may consider the following:
  - a. dedicating back to the Crown Provincial or RDN all or part of the SPEA;
  - b. gifting to a nature conservation organization (tax receipts may be issued) all or part of the SPEA;
  - c. registering restrictive covenant(s) or conservation covenant(s) securing the measures prescribed in the QEP assessment report;

8. In the case of a proposed subdivision within this Development Permit Area, minimum parcel sizes should be met exclusive of the SPEA;
9. In the case of a proposed subdivision within this Development Permit Area, subdivision within the SPEA should be avoided;
10. Developers are encouraged to exceed the minimum standards set out in the RAR;
11. Where a proposed development is subject to a building permit, the QEP shall be required to provide confirmation to the RDN's Planning Department that the development has been developed in accordance with the QEP's recommendations prior to final inspection or occupancy as applicable.