



Minutes of a Regular Council Meeting

Strata Corporation VIS 4673
Lighthouse Community Centre
240 Lions Way, Qualicum Beach, B.C.
April 15, 2019



Council Present:

Doedy Reisler, Earl O’Hara, Garry Fisher, Rob Pitter, Harry Oppenlander, Lorraine Webb, Trish Curtin, Mike McDowell

Observers Present:

Lynn and Helmut Balzer Lot 167, John Cross Lot 228, Mr and Mrs Kokaryk Lot 161

1. Call to Order

Trish Curtin, Vice-President, called the meeting to order at 6:30 p.m.

2. Approval of Agenda

Trish requested the following additions to the Agenda

- In Unfinished Business add water meter readings
- In New Business – Replace mirror or install speed bump Country Road
- In New Business – clear out storage Unit #14
- In New Business – road maintenance review
- In New Business – septic field at Mountain View Park
- In New Business – purchase of generator for well

Moved: Trish

Second: Lorraine

CARRIED UNANIMOUSLY

Garry moved to approve the agenda as amended

Moved: Garry

Second: Trish

CARRIED UNANIMOUSLY



3. Approval of minutes from the previous Strata Council Meeting March 18, 2019

Moved: Trish
Second: Garry

CARRIED UNANIMOUSLY

4. Reports

a. **Policies and Procedures** – Nothing to report.

b. **Design Review Committee**

- i. Three applications were received by the DRC. One was approved, one we are awaiting approval from the RDN and a meeting was scheduled with the owners for the week of April 22, 2019. With regards to getting a refundable building bond we do not have a bylaw for that and will propose one for the owners to vote on at the AGM.
- ii. Gate – Our gate problem is to do with the phone line only being able to either call long distance or local not both. We are looking at quotes to replace all or part of the system and council will meet to decide best option. Once decided we can opt to add an additional phone line for long distance calls until work is completed.
- iii. Garbage – apparently the company that looks after our garbage has put security cameras in the bins. Trish will follow up.
- iv. Inspections and maintenance – street sweepers will be here April 30th.
- v. Special Projects – We have engineering reports for the storage units. They were not built to code. Doors will need to be added to units without them in order to avoid damage during wind storms, or we can add anchor bolts and tie downs to concrete. The footings are not to code. We are going to have the insurance adjuster look at this as we have “meets code” coverage.
- vi. Water System – Trish provided a letter dated March 28th (attached) regarding source approval for well 15, provided certain conditions are met. The Strata Council will be sending a letter to the developer



to remind him of his commitment to cover the costs of meeting these conditions.

c. Financial Report & Expenditures for Approval

- i. Year to Date Revenue and Review of Receivables – See attached report. Fines are not revenue and the report will need correction. An insurance claim was received.
- ii. Report on Collection Decisions &/or Directives – No fines will be collected for late payment up until April 30th, 2019. Some information was not sent out properly due to having both a new Treasurer and a new accountant.
- iii. Report on Special Projects – Nothing to report.

5. Council Task List – Nothing new to report.

6. Unfinished Business

- a. Notice of Civil Claim Suit – Noel Stephen & Judith Munkholm – lawyer has refined issues (copy attached). There may be an update soon.
- b. Refinement of the Owners List is still ongoing.
- c. Waste and Recycling – Council discussed the RDN doing doorstep collection as information was posted on Facebook site. Lorraine will call them.
- d. Telus Optik Cable Line – Trish has spoken to a contact at Shaw and will follow up with Telus when that contact returns from vacation at the end of April. Lorraine is working on this as well and has also spoken to a Telus representative.
- e. Revamp of Web page/ Website Manager – we have the successful bid information from last fall. Candice will contact and work with bidder.
- f. Geotech assessment for Abbey Road – (copy attached). Doedy will follow this up as we need to plan for the expense. Mike will get started with RAR variance and RDN permits that we will need before starting to get some quotes.
- g. Water System – Monthly report attached



- h. Dunwurkin Drainage Committee – Earl has met with group of residents. First we need the ditches cleared and then we will see if more work needs to be done. We will need an assessment.
- i. Meter Readings – Earl will do the ‘move-out’ meter readings when lots are sold. Candice may have a map of meters.

7. New Business

- a. Remote access to bookkeeping information – Doedy is finding system difficult as she has no direct access to the strata accounting information. Doedy will decide if she thinks installing a remote access system is warranted.
- b. Refundables collection – Garth will resume taking care of this for 40% to cover gas.
- c. Dar’s Place mirror – Discussion on whether to replace the mirror or put in a speed bump. It was moved that we put in a speed bump across Country Road where the mirror used to be.

Moved: Trish
Second: Lorraine

CARRIED UNANIMOUSLY

- d. Storage unit #14 - Trish stated this storage unit is an asset of the Strata and we need to remove the lock and see what is inside and if it is usable. Some council members will meet at the locker at 2pm April 16th to see.

Moved: Trish
Second: Lorraine

CARRIED UNANIMOUSLY

- e. Road Review – Doedy engaged her husband and another strata owner to drive the village and assess the road maintenance required this spring/summer. They created a map showing problematic areas and immediate road concerns.



Through Mara Industries (Doedy's Husband's Business) a quote will be provided to start and complete road maintenance and the culvert repairs.

Mara will engage help from owners in the village and will back stop the work with the appropriate insurance and WCB coverage. All work will be done a cost with no markup and all individuals have agreed to work at a substantially reduced rate for both equipment and labour. Another road assessment will take place once weather improves.

- f. Mountain View Park Septic Field – We need an inspection of park septic system. It was moved that we get an independent assessment by an environmental engineer.

Moved: Doedy

Second: Trish

CARRIED UNANIMOUSLY

- g. Generator – Rob will ask Don Buchner (who looks after the water system) which well it would be best to install a generator on if we were to do only one. When well #15 is ready we will put a generator on that as well.

8. Events

Events are posted at the mailboxes.

9. Correspondence

Lot 79 – emails regarding a telecom assessment, construction concerns on lot 168, request that no preferential treatment for phone service be granted owners of homes being constructed by Mr. Peligren, and providing gate replacement quote and boom arm gate specifications.

Lot 193 – email inquiring about strata septic systems costs.

Lot 106 – email requesting the broken mirror be replaced or a speed bump be installed at the intersection of Martini and Country Road.



Lot 221 – email suggesting the old play ground equipment be replaced.

Lot 40 – email inquiring about the number of homes in the strata.

Lot 247 - email regarding lot 257 construction concerns.

Lots 258 and 259 – letter suggesting the strata require a \$5,000 construction bond and before and after surveys, before approving building construction.

Lot 279 – email inquiry regarding removing downed trees.

Lot 167 – email inquiries regarding new bookkeeping/accounting system.

Lot 243 – email regarding slope slippage along river bank side of their lot.

Lots 107, 214, 275 – DRC application

Email inquiries were received from many lots regarding the second strata fee installment invoices.

10. Bylaws

Letters were sent to the owners of RV-only lots, reminding them of the strata bylaws that pertain to RVs.

11. Next Meeting Date

- a. Next meeting is planned for 6:30 P.m. on Monday, June 3, 2019 at the Lighthouse Community Centre. Quite a few of the council members are away in May.



12. Adjournment – 10:00 p.m.

Moved: Earl
Second: Mike

CARRIED UNANIMOUSLY

Brian Gallagher, President

Date

Lorraine Webb, Secretary

Date



April 4, 2019

Belfor Property Restoration
2301 McCullough Road,
Nanaimo, B.C.
V9S 4M9

Attn: Cam Wilson

Re: STORAGE BUILDINGS
1773 Qualicum Road, Qualicum

Sotola Engineering Inc. was retained to review the structural damage to the storage buildings at the above address. The damage was caused by high winds. A site inspection was done on February 6, 2019.

DESCRIPTION

The storage area is comprised of five buildings, varying in size, with the one inspected measuring approx 48 ft x 435 ft in plan dimensions, and 11 feet tall. The building is comprised of 12 ft x 24 ft storage rooms back-to back. with approx 35 units side-by side.

The buildings are wood-framed with a concrete footings. Framing consists of 2x10 roof joists at 24" c/c spanning in the 12 ft direction and supported by 2x 4 at 24" stud wall. The footings consist of concrete strips varying in size, but commonly 10" x 6" in size with a 6" curb on top. The footing size is considerably smaller than required by the BC Building Code

Some units are occupied but a large number of them are vacant and the exterior door or wall has not been installed. In these cases, the supporting walls are exposed to the elements without protection. These walls between the units are exposed to weather and are badly deteriorated.

COMMENTS AND STRUTURAL ANALYSIS

These building have been built without a Building permit as the RDN did no have jurisdiction in this area at the time of construction. However, this still means that any building built needs to meet the BC Building Code at the time of construction.

The BC Building Code is split up into two separate sections. Part 9, which deals with smaller buildings and has less stringent structural requirements, and Part 4, which is intended for larger buildings. For Part 4 buildings, higher snow loads, full wind and seismic loads are used for design. The foot-print area that separates these two sections is approx 6000 sq. ft. Since these buildings are approx. 20,000 sq ft in plan area, they fall under Part 4.

Since these buildings have large openings, due to the unfinished and unoccupied state of the units, the wind load is doubled, and more importantly, the uplift on the roof is 2.7 times higher than if the buildings had a closed exterior wall.

Many of the walls are bare studs with blocking at mid-height with no sheathing.

ANALYSIS / REPAIR RECOMMENDATIONS

There are some options as to how to proceed with reconstruction. Construction drawings will be prepared once these decisions have been finalized.

EXTERIOR OF BUILDING

The building is in an unfinished state. The choice is as follows:

1. Install exterior walls or doors to finish the building. The advantage of this is that it would protect the interior of the building from weather and decrease the wind load uplift on the roof system.
2. Leave the building open as-is. This would mean that the exposed stud walls would need to be protected from weather as an exterior wall. This would entail sheathing, paper and cladding. This would also entail adding hurricane clips to the roof joists and adding in hold-down anchors to the foundation.

LOAD-BEARING STUDS

The 2x4 stud walls load-bearing stud walls are structurally inadequate. For snow loads the studs need to be doubled-up. This is further complicated if the building is left with large openings, and some walls sheathed. The sheathed walls are now subject to wind loads, which means the walls will need to be 2x6 studs at 16" c/c.

LATERAL LOADS

In order for the buildings to meet the BC Building Code requirements, the building will need to withstand full seismic and wind loads. Presently, there are inadequate number of shearwalls. Each load-bearing wall between the units will need a section built as a shearwall. This will entail, sheathing with OSB, blocking, nailing and installing hold-down anchors and hurricane clips. The length of shearwall in each wall would be about 4 to 6 ft long, depending on the foundation size.

FOUNDATIONS

The minimum size of foundations required are 8" x 16" with a 6" wall on top. From grade to the underside of footing is 18" minimum. These footings are considerably smaller than required.

the footings have not been checked for reinforcing steel.

The Footings can be left-as-is as long as there is understanding that they might not perform as well as if they met the code requirements, and some differential settlement might occur which might distress the building.

One complication with the footing is that the shearwalls mentioned above will have an uplift load at the ends, and the foundations do not provide the necessary weight to prevent uplift. This can be alleviated by one of the following options. 1. Install a new footing under each end of each shearwall and connect to the existing concrete. 2. Increase the length of the shearwalls until uplift is minimal. this would entail building the shearwall approx 8 ft long.

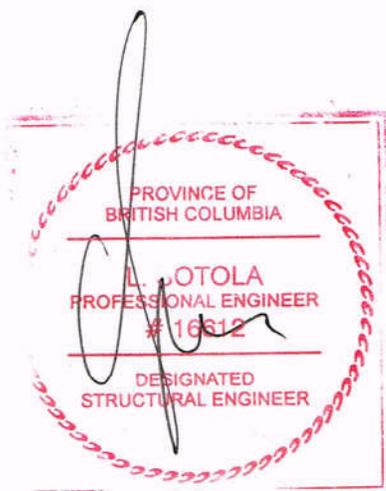
CONCLUSIONS

Once this report has been reviewed and decisions made as to which way this will proceed, we can prepare repair drawings for reconstruction.

If you have further questions regarding this report, or if further damage is observed during reconstruction, contact the undersigned.

Ludek Sotola, P.Eng, Struct.Eng.

19-057



Excellent health and care for everyone,
everywhere, every time.



March 28, 2019

Little Qualicum River Village
Strata Corporation VIS4673
1773 Country Road
Qualicum Beach, BC V9K 2S3

Dear Mr. Gallagher:

Re: Source Water Approval for Little Qualicum River Village, Well # 15

Island Health has reviewed the information you provided to Elizabeth Thomson, Island Health Environmental Health Officer in support of approving the Well # 15 (Well Identification Plate 23235) as a drinking water source for the Little Qualicum River Village Water System and the following is provided.

Comments:

- a. Well #15 is located on Strata Lot 242, 1850 Taylor Walk, Qualicum Beach, which is located within Little Qualicum River Village.
- b. Well #15 is to provide additional capacity to the drinking water system to limit the use of water from Well #13. Well #13 has arsenic at levels above the Maximum Acceptable Concentration (MAC) for health concerns listed in the Guidelines for Canadian Drinking Water Quality, and requires blending of the water at the reservoir to reduce levels below the MAC.
- c. The drinking water system has indicated that it intends to pump Well #15 towards Well #1, where it will tie into the existing distribution system. Water is chlorinated prior to entering the reservoir.
- d. It is noted that the distribution line to connect Well #15 to the system is already installed without benefit of a construction permit or waiver, as required under the *Drinking Water Protection Act*, Section 7. A construction permit can not be issued retroactively.
- e. Lot 242 does not have a dwelling or septic system at this time.
- f. There are wells located on adjoining properties. A hydrogeological assessment report for Well #15 was prepared by Hy-Geo Consulting on September 26, 2013. In the conclusions and recommendations, it was recommended that the long term pumping rate should not exceed 35 USgpm (2.21 L/s) to minimize interference effects to not more than 30% of their available drawdown.
- g. The Hy-Geo report also recommended long-term monitoring of water levels and pumping rates in Well #15 to ensure the well continues to be a low risk situation for containing pathogens under GWUDI conditions.

- h. A Stage 1: Hazard Screening and assessment was conducted on this well by Hy-Geo Consulting (2013) and reviewed by Elizabeth Thomson (2018). Some hazards were identified as requiring monitoring to ensure there are no changes including raw water bacteriological and turbidity.
- i. The BC Ministry of Environment aquifer database does not show any information on the aquifers in this area. The Regional District of Nanaimo water map, based on DRASTIC information gathered through the Nanoose Bay – Deep Bay Area, Nanaimo Lowland Groundwater Study, shows this aquifer to be moderately vulnerable.
- j. The Hy-Geo report concludes that the aquifer supplying this well is “under confined conditions”.
- k. It is noted that this well has not been registered in the BC Ministry of Environment Wells Database.

Conditions:

1. The March 27, 2009 source approval for Little Qualicum River Village wells #1, #2, #9 and #13, listed as a condition of source approval, that “residual disinfection of the water is required”. Well #15 is to be chlorinated to maintain consistency throughout the drinking water system. A contact time adequate to meet a 4 log inactivation of viruses is required. As there are sewage disposal systems located within 300 m of well #15, the target virus is to be adenovirus. Prepare a contact time calculation to demonstrate a 4 log inactivation of adenovirus is achieved.
2. A wellhead protection plan must be developed, or an existing one amended to include this source, and any issues which might be specific to it, that is acceptable to the Environmental Health Officer. The wellhead protection plan should use an appropriate method as defined in the BC Ministry of Environment, Step 2 of Well Protection Toolkit.
3. The water system owner should own the property where the wells are situated and for a minimum distance of 30 m of each well. A sanitary control easement must be in place if ownership cannot be secured. The water system owner should also consider extending the sanitary easement for a distance of up to 60 m, or for a further distance as determine by the wellhead protection plan around each well.
4. For any further work to connect this well to the water system, a construction permit must be applied for and received, prior to any construction, installation, alteration or extension of the water supply system.
5. Develop and/or amend an existing your written plan for monitoring all existing wells, including test wells and monitoring wells, and the distribution system for both bacteriological and chemical parameters, acceptable to the Environmental Health Officer.
6. The long term pumping rate for Well #15 should not exceed 35 USgpm (2.21 L/s) to minimize interference effects to not more than 30% of their available drawdown. Well interference from this well is to be included in your written well monitoring plan.
7. Please note, a ground water license will be required under the BC *Water Sustainability Act* to divert and use groundwater legally (applications received prior to March 1, 2022 will have the application fee waived). I strongly recommend you contact the Ministry of Forests, Lands and Natural Resource Operations to understand your obligations under the Act.

This is neither a construction permit, nor an operating permit. Construction permits must be obtained through the Island Health Public Health Engineer, and an operating permit for the water supply system must be obtained from the local Environmental Health Officer in accordance with Sections 7 and 8 of the *Drinking Water Protection Act*. The issuing officials may include additional terms and conditions they consider advisable with respect to the construction or operation of the water supply system.

Please contact Murray Sexton, Public Health Engineer, Island Health, telephone 250.755.6215 for the construction permit, and Elizabeth Thomson, Environmental Health Officer, Island Health, telephone 250.947.8222, with respect to the operating permit.

Sincerely,



Lynne Magee, BSc, CPHI(C)
Regional Drinking Water Coordinator
Health Protection and Environmental Services

e.c.: Elizabeth Thomson, Environmental Health Officer
Murray Sexton, Public Health Engineer
Dr. Paul Hasselback, Medical Health Officer
Don Buchner, LQRV Drinking Water Operator
Brian Gallagher, Strata President



[C-1]

Amended Pursuant to Rule 6(1)(a) of the *Supreme Court Civil Rules*
Originally Filed: December 8, 2016

NO. VLC-S-S-1611350
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NOEL STEPHEN and JUDITH MUNKHOLM

PLAINTIFFS

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS THE MINISTRY OF
TRANSPORTATION AND INFRASTRUCTURE, CITY OF NANAIMO, REGIONAL DISTRICT OF NANAIMO, JOHN
DOE GOVERNMENT ENTITY 1-3, 0528872 BC LTD., 0761349 BC LTD., TIMOTHY BRUCE PELIGREN, JOHN DOE
CORP 1-10, JOHN DOE 1-5, AND THE OWNERS STRATA PLAN VIS4673**

DEFENDANTS

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the Plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

PART 1: STATEMENT OF FACTS

1. The plaintiffs, Noel Stephen and Judith Munkholm, are individuals and have an address for service c/o Lindsay LLP, 1000 – 564 Beatty Street, Vancouver, British Columbia.
2. The defendant, the Owners, Strata Plan VIS4673 (the "Strata"), is a strata corporation established under the *Strata Property Act*, SBC 1998, c.43 for Strata Plan VIS4673, which refers to a strata property known as Little Qualicum River Village, and comprises 575 acres of land approximately 20 kilometers west of Qualicum Beach in the Regional District of Nanaimo (the "Strata Property"). The Strata Property contains 286 building strata lots. The Strata has a mailing address of 1773 Country Road, Qualicum Beach, British Columbia, V9K 2S3.
3. The defendant, Her Majesty the Queen in Right of the Province of British Columbia as represented by the Ministry of Transportation and Infrastructure ("MOT") has an address for service at Ministry of the Attorney General, Legal Services Branch, 2nd Floor, 1001 Douglas Street, Victoria, British Columbia.
4. The defendant, the City of Nanaimo, is a municipal corporation pursuant to the *Local Government Act*, RSBC 1996, c. 323. It has its office at 455 Wallace Street, Nanaimo, British Columbia.
5. The defendant, the Regional District of Nanaimo is a municipal corporation pursuant to the *Local Government Act*, RSBC 1996, c. 323. It has its office at 6300 Hammond Bay Road, Nanaimo, British Columbia.

6. The defendants, John Doe Government Entities 1 to 3 are government entities whose identity is not currently known to the plaintiffs.

7. The defendant, 0528872 BC Ltd. is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 1625 Meadowood Way, Qualicum Beach, British Columbia, V9K 2S3.

8. The defendant, 0761349 BC Ltd. is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 1625 Meadowood Way, Qualicum Beach, British Columbia, V9K 2S3.

9. The defendant, Timothy Bruce Peligren, is an individual with a mailing and delivery address at 1625 Meadowood Way, Qualicum Beach, British Columbia, V9K 2S3.

10. The defendants, John Doe Corp 1 to 10 and John Doe 1 to 5 are corporations and individuals whose identities are not known to plaintiffs, but were involved in the design, development, construction, and/or inspection of the Strata Property.

Background Facts of Loss

11. The plaintiffs were at all material times the registered owners of a house located at lot 261 of the Strata Property (the "House"). The House is adjacent to a hill that ascends to other residential lots on the Strata Property, namely, lots 265 and 266 (the "Hill").

12. At a time not known to the plaintiffs, but before the Strata took ownership of the Strata Property, the MOT, the City of Nanaimo, the Regional District of Nanaimo, or John Doe Government Entities 1 to 3 (collectively, the "Approving Government Entities") were the owner of, and had authority over the subdivision approvals of, the land that is now the Strata Property.

13. At all material times, 0528872 BC Ltd., 0761349 BC Ltd., Timothy Bruce Peligren, John Doe Corp 1 to 10 and/or John Doe 1 to 5 (collectively, the "Developers") developed lands and constructed the houses on the Strata Property, including the House.
14. The Developers started developing the Strata Property in or about the 1990s.
15. At a time not known to the plaintiffs, but prior to December 10, 2014, the Developers were granted a subdivision application for the Strata Property from one or more of the Approving Government Entities. Unknown to the plaintiffs at any time prior to December 10, 2014, the original approval for the development contemplated a campground or RV park in which the strata buildings were storage lockers in support of such a contemplated development. At the time that the strata plan was deposited, it was a building strata as opposed to a bare-land strata. The strata lots were however sold as bare-land strata lots suitable for residential use as opposed to building strata lots suitable for storage of camping and RV accessories. For a considerable number of years following deposit of the plan, the vast majority of the strata buildings were not constructed contrary to what was represented on the strata plan. This failure to construct was at all times known to the Developers and such intention was furthered by the Developer leasing to his personal company for a term of 20 years, those very same strata buildings. Area F in which the strata development was located within the Regional District of Nanaimo, was at the time of development a 'no-zone area' and a 'no building permit required area'. The Approving Government Entities, with the knowledge that the development was taking place in a 'no-zone' and 'no-building permit' area, failed to closely monitor its development. The strata was not permitted or approved to be developed as, a residential development.
16. As part of the development, the Developers were required to have geotechnical studies completed throughout various regions within the development, to and including the Hill and to conduct the development in reasonable compliance with those requirements.
17. In response to these compliance requirements, the Developers undertook the development in the geotechnically sensitive areas based on their own personal knowledge and experience.

18. The Developers were (or alternatively should have been) aware of the risks associated with this area, as concerns developed with respect to sliding decks and other geotechnical hazards within the area and its associated surroundings.

19. The Strata was, at all material times, in possession of a development plan outlining those areas which were geotechnically sensitive concerning strata lots 168 through 284 adjacent to a nearby river.

20. At a time not known to the plaintiffs, but prior to December 10, 2014, there were landslides on slopes adjacent to the Hill, and many of the trees thereon leaned downslope, all of which indicates the slopes, including the Hill was a landslide hazard.

21. Prior to the subdivision application, one or more of the Approving Government Entities oversaw the construction and maintenance of the logging roads on the land that became the Strata Property.

22. At a time not known to the plaintiffs, but prior to December 10, 2014, and during the course of the development of the Strata Property, the Developers installed several drainage pipes that discharged water at the top of the Hill (the "Drainage Pipes").

23. At a time not known to the plaintiffs, but prior to December 10, 2014, and during the course of the development of the Strata Property, the Developers installed about 3 to 4 meters of soil fill material at the top of the slopes adjacent to the Hill, burying at least one of the Drainage Pipes.

24. At a time not known to the plaintiffs, but prior to December 10, 2014, and during the course of the development of the Strata Property, the Developers installed water lines and drainage pipes along Spirit Way on or near the Strata Property. The size, function and placement of those lines, however, was inadequate and inappropriate for the purposes contemplated and failed to meet relevant requirements and reasonable standards.

25. At a time not known to the plaintiffs, but prior to December 10, 2014, and during the course of the development of the Strata Property, a number of trees were cut on nearby strata lots 163 and 164. At that time, Peligren and/or the Developers were aware that the area in question was considered geotechnically sensitive and was a high-risk slide area.

26. At a time not known to the plaintiffs, but prior to December 10, 2014, and during the course of the development of the Strata Property, the Developers and/or their agents, constructed (or caused to be constructed) a house on a slope in the vicinity of strata lot 173 (in which vicinity the Developers had conducted or ordered further deforestation activities). Shortly after completion of construction, the deck attached to that residence began to visibly sink and detach from the structure itself.

27. The Approving Government Entities, or several of them, were advised of concerns by local residents within the development relating to non-compliance with reasonable construction and development standards as well as geotechnical safety issues regarding the Strata Property.

28. In or about 2010, the Developers constructed or caused to be constructed the House.

29. On or about December 10, 2014, an earth-moving event occurred on or about the top of the Hill, which caused a debris flow down the hill that in turn destroyed everything in its path, including the House and the contents therein (the "Landslide").

30. The plaintiff, Noel Stephen, was trapped in the basement under the debris of the House and the Landslide. He was rescued by the Dashwood Fire Department who cut him out using saws and hand tools.

31. From December 10, 2014, to December 12, 2014, engineers retained by the Regional District of Nanaimo investigated the slopes in and around the Hill determined that the area was a landslide hazard and advised that an area encompassing over ten strata lots should be evacuated.

Liability of the Strata

32. The Strata knew, or ought to have known, prior to the date of the Landslide, that the Hill was a landslide hazard.

33. The Strata owed a duty of care to the plaintiffs, and breached its duty, the particulars of which negligence include, but are not limited to:

- (a) failing to conduct regular inspections of the Strata Property so as to detect potential dangers to the House, including but not limited to, the impact of the design and construction of the Strata Property on the stability of the land adjacent to the House and the diversion of natural watercourses;
- (b) failing to investigate the Hill as a landslide hazard;
- (c) failing to warn the plaintiffs that the Hill was a landslide hazard;
- (d) failing to investigate the Hill as a landslide hazard in light of the historical landslides on slopes around the Hill;
- (e) failing to warn the plaintiffs about the historical landslides on slopes around the Hill;
- (f) having at least one of the Drainage Pipes buried by soil fill material, creating a landslide hazard;
- (g) failing to have any, or in the alternative adequate, drainage and/or diversions of natural watercourses on the Strata Property;
- (h) failing to employ competent employees, contractors, counsel and agents involved in the development and maintenance of the strata lots in and around the House and Strata Property;
- (i) failing to maintain, over-see and fulfill its responsibilities under the Strata Property Act for the proper and/or appropriate development of residential dwellings on the Strata Property in furtherance of its residential use;
- (j) failing to have or install proper or adequate water and drainage lines in compliance with

required construction standards:

- (k) failing to construct the House and other structures on the Strata Property in accordance with applicable construction drawings and/or industry construction standards;
- (l) failing to require the Developers to comply with the Strata Plan, geo-technical assessments, as-built drawings and other necessary standard development requirements; and
- (m) Failing to over-see the sale of and use of strata lots and the construction of residences on the Strata Property (including the House) in light of inadequate or inappropriate zoning, drainage or watercourse management and/or of other geotechnical hazards on or about the Strata Property and the risks and hazards posed by those conditions; and
- (n) such further and other particulars as become known to the plaintiffs.

(“Strata’s Negligence”)

34. The Strata’s Negligence was the cause, in whole or in part, of the Landslide, which was the reasonably foreseeable result of the Strata’s Negligence.

Liability of the Developers

35. The Developers knew, or ought to have known, prior to the date of the Landslide, that the Hill was a landslide hazard.

36. The Developers owed a duty of care to the plaintiffs, and breached its duty, the particulars of which negligence include, but are not limited to:

- (a) failing to take any or any reasonable steps to ensure that the Strata Property was designed, developed, and constructed in a manner that did not pose an unreasonable risk of damage to the House;
- (b) failing to obtain and/or comply with proper or appropriate industry standard construction, building, assessments and studies during the course of development of the Strata Property as a residential development;

- (c) installing inadequate drainage and/or diversions of natural watercourses in or about the Hill;
- (d) failing to have the Hill assessed as a landslide hazard despite the historical landslides on the slopes around the Hill;
- (e) failing to have a geotechnical/slope stability assessment and/or geohazard assessment carried out by a qualified geotechnical professional engineer prior to the development of the Strata Property and/or construction of the House;
- (f) burying at least one of the Drainage Pipes with soil fill material, creating a landslide hazard;
- (g) overburdening the top of the Hill with approximately 3 to 4 meters of soil fill material, when the surrounding slopes had only approximately 1 meter of soil fill material;
- (h) failing to conduct regular inspections of the Strata Property so as to detect potential dangers to the House, including but not limited to, the impact of the design and construction of the Strata Property on the stability of the land adjacent to the House and the diversion of natural watercourses;
- (i) failing to employ competent employees, contractors and agents involved in the development of the Strata Property and the construction of the House;
- (j) failing to employ competent employees, contractors, counsel and agents involved in the development and maintenance of the strata lots in and around the House and Strata Property;
- (k) failing to have or install proper or adequate water and drainage lines in compliance with required construction standards;
- (l) failing to construct the House and other structures on the Strata Property in accordance with applicable construction drawings and/or industry construction standards;
- (m) failing to warn prospective purchasers and/or users of strata lots and/or houses on the Property (including the House) of inadequate or inappropriate zoning, drainage or watercourse management and/or of other geotechnical hazards on the Strata Property.

and the risks and hazards posed by those conditions; and

(n) such further and other particulars as become known to the plaintiffs.

(“Developers’ Negligence”)

37. The Developers’ Negligence was the cause, in whole or in part, of the Landslide, which was the reasonably foreseeable result of the Developers’ Negligence.

Liability of the Approving Government Entities

38. The Approving Government Entities knew, or ought to have known, prior to the date of the subdivision application approval for the Strata Property, that there were historical landslides on this land, and landslide hazards existed thereon.

39. The Approving Government Entities owed a duty of care to the plaintiffs, and breached that duty, the particulars of which negligence include, but are not limited to:

(a) approving the subdivision application for the Strata Property without considering:

- i. if the land had inadequate draining installations; or
- ii. if the land is subject, or could reasonably be expected to be subject, to erosion, land slip, or avalanche;

(b) approving the subdivision application for the Strata Property without requiring a report certified by a professional engineer or geoscientist experienced in geotechnical engineering that the land may be used safely for the use intended;

(c) falling to inspect, review, or otherwise take any or reasonable steps to ensure that the development of the Strata Property occurred and progressed in compliance with the uses and purposes for which the development was zoned and/or approved, when they knew or ought to have known of concerns brought to their attention about those matters;

- (d) failing to take any or reasonable steps to ensure that the Strata Property was designed and constructed in a way that did not pose an unreasonable risk of damage to the House;
- (e) failing to conduct regular inspections of the Strata Property so as to detect potential hazards to the House, including but not limited to, the impact of the development on the Strata Property on the stability of the land in and around the House and the diversion of natural watercourses;
- (f) causing or permitting the Strata Property to be constructed in such a way as to increase the risk of damage to the House due to erosion, land slip, and/or the diversion of natural watercourses;
- (g) failing to properly consider potential risks to the House due to erosion, landslip, and/or diversion of natural watercourses;
- (h) Failing to regulate the sale of and use of strata lots and the construction of residences on the Strata Property (including the House) in light of inadequate or inappropriate zoning, development, drainage or watercourse management and/or of other geotechnical hazards on or about the Strata Property and the risks and hazards posed by those conditions; and
- (i) such further and other particulars as become known to the plaintiffs.

(“Approving Government Entities’ Negligence”)

40. The Approving Government Entities’ Negligence was the cause, in whole or in part, of the Landslide, which was the reasonably foreseeable result of the Approving Government Entities’ Negligence.

Damages

41. The Landslide caused extensive loss and damage to the House and contents of the plaintiffs situated therein.

42. As a result of the Landslide, the plaintiffs suffered loss, damage and expense, particulars of which include but are not limited to:

- a) the cost to investigate the Landslide;
- b) the cost of replacing damaged contents and fixtures;
- c) the cost of replacing to the House;
- d) the loss of use and enjoyment of the House; and
- e) such further loss, damage and expense that may be proven at trial.

PART 2: RELIEF SOUGHT

1. The plaintiffs seek from the defendants an award for damages for:

- a) general damages;
- b) special damages;
- c) costs;
- d) interest pursuant to the *Court Order Interest Act*, R.S.B.C., Chapter 79; and
- e) such further and other relief as this Honourable Court deems just.

PART 3: LEGAL BASIS

- 1. The Landslide was caused or contributed to by the negligence, breach of duty of the defendants, their employees, servants and/or agents singularly or in combination.
- 2. The defendants are each jointly and severally liable to the plaintiffs for the plaintiffs' loss, damage and expense,
- 3. The damage caused by the Landslide amounts to a nuisance to the plaintiffs and to their use and enjoyment of the House.

4. The Plaintiffs plead and rely upon the provisions of the *Negligence Act*, RSBC 1996, c. 333; the Occupiers Liability Act, RSBC 1996, c. 337; the Land Title Act RSBC 1996, c 250; the Strata Property Act, SBC 1998, c. 43; and the Court Order Interest Act, RSBC 1996.

Plaintiffs' address for service: Lindsay LLP
Barristers
1000 – 564 Beatty Street
Vancouver, B.C. V6B 2L3
Attention: Roger S. Watts

Fax number address for service (if any): 778-945-5198
E-mail address for service (if any): none

Place of Trial: Vancouver

Address of the Registry: Vancouver Law Courts
800 Smithe Street
Vancouver, B.C. V6Z 2E1

Dated: December 6, 2018



Roger S. Watts
Lawyer for the plaintiffs

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

APPENDIX**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

~~1. The plaintiffs are claiming against the Owners, Tenants, BBQ Manufacturer and BBQ Vendor for damage and expense caused by a fire that started in an apartment occupied by the Tenants.~~

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

- a motor vehicle accident
- personal injury, other than one arising from a motor vehicle accident
- a dispute about real property (real estate)
- a dispute about personal property
- the lending of money
- the provision of goods or services or other general commercial matters
- an employment relationship
- a dispute about a will or other issues concerning the probate of an estate
- construction defects
- a matter not listed here

Part 3: THIS CLAIM INVOLVES

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above

Part 4:

Negligence Act, R.S.B.C. 1996, C. 333.

Court Order Interest Act, R.S.B.C. 1996.

ATTENTION: Harry Opp**PROJECT: ABBEY ROAD, BETWEEN PADY PLACE AND CAMERON CRESCENT,
LITTLE QUALICUM RIVER ESTATES, QUALICUM BEACH, B.C.****SUBJECT: GEOTECHNICAL SITE OBSERVATIONS – SLIDE**

1. As requested, Lewkowich Engineering Associates Ltd. (LEA) has carried out a limited geotechnical assessment of the above noted property. The purposes of the assessment was to investigate and comment on the soils conditions at the above noted property, with respect to geotechnical concerns, and to provide recommendations pertaining to the road structure in the area of a recent slide event. The method of assessment utilized direct observations of the site conditions.
2. Mr. Darron Clark, P.Eng. of LEA visited the site, on March 14, 2019 after receiving a call about trees that had toppled and carried some road structure down a slope. The following is a brief summary of the observations made during the site visit.
3. The area of concern is located on the southeast side of Abbey Road, northeast of the Cameron Crescent intersection and southwest of the Pady Place intersection. The slide area is approximately 60m long, on the south east shoulder of the road and intrudes up to 4m onto the road surface. The soil that has moved has travel approximately 0.3 to 1.2m down slope and has taken several trees with it. The mass of mobile soil appears to be composed of fill material that was cast over the edge during the road construction operation. Bedrock exposures are noted on the uphill side of the roadway and a crevasse in the road surface appears to delineate the bedrock-fill interface. The site possesses a steep ($>60^\circ$ from horizontal) slope to the southeast, down to the flood plain of the Little Qualicum River. The Little Qualicum River is observed to flow on the level area between two steep slopes.
4. Since the remaining road surface is barely wide enough to allow passage of a single vehicle and that the near down slope is hazardous to traffic, it is recommended that the road surface be widened and made safe, in the near future.

5. The most expedient method to repair the road structure would be to cut down the present centerline profile and use this material to restore the southeast shoulder structure of the road. It will be necessary to remove the sloughed material from the area of repair and to prepare a level strip at least 3.5m wide to accept the new compacted fill. LEA has no objections to the sacrificial sloughed material being cast further from the slope toe, in order to aid in the efficiency of operations and to provide material that will protect the new fill material from unforeseen erosion from the nearby Little Qualicum River that lies adjacent to the slope.
6. It is noted that the cut operations will likely require rock breaking or blasting, but this will have the advantage of improving the centerline profile of the road, which currently has a vertical blind spot. As well this operation will widen the area of road structure that is supported by bedrock and not fill. It is the goal of this exercise to have a nearly balanced 'cut-fill'.
7. Once the strip is cleared to receive fill, operations can begin to place and compact the fill in 0.2m thick layers, using heavy equipment such as excavators, small caterpillar dozers and large vibratory steel drum compactors. Geotextile may be called for if the proposed design of the slope is steeper than 1H:1V incline. It is expected that the slope design would provide for a 2m shoulder (with concrete barriers) to allow for a measure of safety from inadvertent travel of the top of the slope. If further design parameters are required, please advise.
8. It is noted that the recommendations may change as additional soil information is made available during construction. It is also understood that environmental factors (such as permits, committees and agencies) may further affect the realization of the required works.
9. Lewkowich Engineering Associates Ltd. appreciates the opportunity to be of service on this project. If you have any comments, or if we can be of further assistance, please contact us at your convenience.

Respectfully Submitted,
Lewkowich Engineering Associates Ltd.

Darron G. [Signature]
Senior Geotechnical Engineer



Lewkowich Engineering Associates Ltd.

Feb 2 2019 Daily Reservoir Readings

Date	Time	depth	Temp.	Well#1	Well#2	Well#9	Well#13	Res.Flow	total
					60180	55239		171231	
1	850	10.9							
2	820	10.8						171318	
3	830	10.9						171397	
4	900	10.9						171486	
5	920	10.9						171593	
6	845	10.9						171682	
7	815	10.8						171759	
8	805	10.8						171840	
9	845	10.8						171928	
10	815	10.8						172010	
11	810	10.9						172092	
12								172182	
13	870	10.9							
14	900	10.9						172347	
15	850	10.9						172431	
16	830	10.8						172510	
17	840	10.8						192589	
18	835	10.8						172709	
19	810	10.9						172808	
20	810	10.9						172964	
21	900	10.8						173068	
22	905	10.8						173186	
23	815	10.8						173304	
24	820	10.8						173420	
25	830	10.8						173546	
26	845	10.8						173688	
27	830	10.9						173812	
28	920	10.8						173940	
29								174084	
30									
31									2853 CM
Meter Readings					60922	56261			
Total consumption					742	1022			
comments									
Don Buchner									

SNOW

TOTAL CONSUMPTION FOR Feb 2019 = 2853^{CM} or 627.660 Imp Gal.
 DAILY CONSUMPTION = 102 or 22,440

THANK GOODNESS IT HAS BEEN A QUIET MONTH WITH NO SURPRISES OR MISHAPS. AU IS RUNNING SMOOTHLY AND ALL TESTS HAVE COME BACK CLEAN.

Business as usual:

Don Buchner

EOCP # 6464



April 18, 2019

Strata Council
 Little Qualicum River Village Strata Corporation VIS4673
 1773 Country Road
 Qualicum Beach BC V9K 2S3

**Re: Land Alteration and Development Permit Requirements
 Little Qualicum River Village - Cameron Crescent
 Electoral Area F**

To whom it may concern:

RDN representatives attended the site on March 29th with a provincial Natural Resource Officer to investigate complaints originating from strata members about land alteration and clearing that had allegedly occurred off of Cameron Crescent within the Freshwater and Fish Habitat Development Permit Area (DPA) without the required Development Permit (DP).

With respect to our observations from our site visit, we are writing to address the following items:

1. development permit requirements
2. building permit requirements
3. management of downed and hazardous trees within the DPA
4. potential slope instability
5. strata responsibility for RDN bylaw compliance and enforcement

1. Development Permit Requirements

a. A Development Permit May be Required

As a result of the significant tree damage, we were unable to confirm if vegetation removal had occurred within the Fresh Water and Fish Habitat Development Permit Area (DPA). However, we note that it appears that land alteration has occurred on a number of areas along Cameron Crescent as follows:

Address (Note: Address is approximate location will need to be confirmed by survey)	Activity
1810 Cameron Crescent	Land alteration and fill has been placed.
1784 Cameron Crescent	Wooden stairway constructed.
1768 Cameron Crescent	Land alteration.
1762 Cameron Crescent	Land alteration and placement of fill
1750 Cameron Crescent	Footbridge over side channel

A Development Permit (DP) is required prior to any development activities, vegetation removal, or land alteration taking place on any lands located within the DPA (see attached DPA guidelines). We note that there appeared to be at least one side channel west of the Little Qualicum River at this location.

b. Meeting to discuss Coordinated Approach to Riparian Management

To assist the strata corporation and individual property owners in fulfilling their obligations to comply with local government bylaws and provincial statutes and regulations, the RDN would like to encourage the strata to undertake a coordinated and consistent approach to riparian protection on behalf of all property owners in the Strata. The intended result would provide greater clarification and more certainty with respect to development activities on private yard areas adjacent to any stream located within Little Qualicum River Village. We request a meeting with you at your earliest convenience to discuss opportunities for a coordinated approach to Riparian management.

c. Proposed Repairs to Abby Road

We have been contacted by Harry Oppenlander, who indicates that he is a member of the Strata Corporation regarding the condition of Abby Road. Harry advised that the road is unstable and in need of repair. We have advised Harry to provide us with a report prepared by a Geotechnical Engineer to confirm if the required roadworks would qualify for an exemption from the Freshwater and Fish Habitat DPA guidelines. Once this information is received, we will confirm if a DP or any additional approvals are required.

2. Building Permit Requirements

We noted that several dwelling units sustained structural damage as a result of the December windstorm. Please note, some of the repairs may require a building permit from the RDN. We ask that you please advise your members of this requirement and advise them to contact the RDN building department prior to undertaking any structural repairs. The Building Department can be reached by phone at (250) 390-6530 and are located at 6300 Hammond Bay Road in Nanaimo.

3. Management of Downed and Hazardous Trees

During our site visit we observed a significant number of downed and hazardous trees as well as numerous instances of structural and property damage that were likely a result of the December 2018 windstorm. In recognition of the significant tree damage which has occurred, we have prepared the information below to share with your members and provide you with guidance.

a. Management of downed trees within the DPA

The following is provided as clarification with respect to what is considered acceptable for removing fallen trees and branches within the DPA without a DP:

- fallen trees and branches that are directly impacting the use and enjoyment of previously cleared and improved portions of private yard areas may be bucked and removed by hand (i.e no vehicles may be used).
- no machinery is permitted to be used within the DPA to remove fallen trees or branches without first obtaining a DP.
- Fallen trees and branches located in previously undisturbed or natural private yard areas within the DPA must be left in place as course woody debris.
- Trees and branches which are obstructing an existing river access pathway may be bucked to the extent of reestablishing access that existed prior to the tree falling down. The remainder of the tree must be left on the ground as course woody debris.

b. Hazard tree mitigation

Numerous hazardous trees were noted during our site visit. A concern is that the next big windstorm could result in further property damage and risk to life safety. We strongly recommend that you obtain the services of a Qualified Environmental Professional (QEP) with a danger tree assessment course or ISA Tree Risk Assessment in Urban Areas and the Urban/Rural Interface course to conduct a hazard tree assessment and mitigation plan.

c. Fuel loads on the forest floor

Despite the ecological benefits of maintaining woody debris, the volume of downed wood may also pose a fire risk due to increased fuel loads. You may wish to consult with a Registered Professional Forester in conjunction with a QEP and/or FLNRO to determine if fuel management is recommended. Please note, we anticipate that the Ministry of Forests, Lands, and Natural Resource Operations is in the process of seeking advice to develop an approach which balances the removal of windfall in a way that does not unduly interfere with natural processes in the riparian zone.

4. *Potential Slope Instability*

We are aware of slope instability in the area, including a landslide at 1761 Abbey Road. During our site visit we observed a number of trees had fallen or had been removed from steep slopes. Trees were being actively felled from the toe of a slope below 1804 Canuck Crescent at the time nearly directly below where there had been significant tree damage and removal at the top of the same slope. While the RDN has no requirements for tree removal or development in relation to steep slopes at this location, the observed activities suggest that an overall slope stability strategy is needed. We strongly encourage the strata corporation to take a proactive approach and hire a qualified Geotechnical Engineer to undertake a terrain assessment to determine appropriate protective measures and identify actions that the Strata can take to protect property and ensure the safety of its members.

5. *Strata responsibility for Bylaw Compliance*

The LQRV Strata Corporation represents a very large, unconventional building strata located within a remote rural setting. As such, our expectation is that the Strata Corporation will

play an active role in assisting us with RDN Bylaw compliance. Going forward, the RDN will limit its response to bylaw enforcement complaints received from the strata corporation unless the complaint is geared towards works being undertaken by the strata itself. We request that we be provided with one point of contact who will be responsible for representing LQRV Strata Corporation. This must be supported by a motion passed by the Strata Council designating an agent to be the spokesperson for the strata corporation.

Please contact our Strategic & Community Development Department at (250) 390-6510 **upon receipt of this letter** to arrange for a suitable time to meet. If we do not hear from you by **April 30, 2019**, the RDN may consider further enforcement action.

I can be reached by telephone at (250) 390-6510 or by email at gkeller@rdn.bc.ca.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Keller", written in a cursive style.

Greg Keller
Senior Planner

T: 250-390-6527 | Email: gkeller@rdn.bc.ca

Encl. Freshwater and Fish Habitat Development Permit Area Guidelines

Appendix A1^{1 2}

Freshwater and Fish Habitat Development Permit Area

1.0 PURPOSE

The Freshwater and Fish Habitat Development Permit Area is designated a development permit area for the protection of the natural environment, its ecosystems and biological diversity, and protection of development from hazardous conditions pursuant to Section 488(1)(a) and (b) of the *Local Government Act*.

2.0 AREA

The Freshwater and Fish Habitat Development Permit Area is shown on Map No. 3, and applies to the riparian assessment areas of mapped and unmapped streams subject to the *Riparian Areas Regulation* (RAR) of the *Riparian Areas Protection Act*, as well as all other mapped lakes, wetlands, ponds and watercourses not subject to the RAR. Specifically, the Development Permit Area is defined as follows:

1. All mapped and unmapped riparian assessment areas as defined in the RAR as follows:
 - a) for a stream, a 30 metre strip on both sides of the stream measured from the high water mark;
 - b) 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
 - c) for a ravine 60 metres 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.
2. All mapped watercourses, lakes, wetlands, and ponds, that are not subject to the RAR; 15 metres as measured from the natural boundary or top of ravine bank, whichever is greater. This includes estuarine areas (areas of tidal influence) of all watercourses and streams. For clarity, in estuarine areas the Marine Coast Development Permit Area also applies.

The following definitions are used for the purpose of defining the development permit area as above:

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

'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; and
- c) a ditch, spring or wetland that is connected by surface flow to something referred to in paragraph a) or b).

'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 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed.

¹ Bylaw No. 1152.03 adopted January 23, 2007

² Bylaw No. 1152.05 adopted December 4, 2018

3.0 JUSTIFICATION

Freshwater and riparian ecosystems perform a number of valuable services to humans, plants and animals alike. They support a diversity of plants and animals, provide important refuges and migration routes for birds and wildlife, and support fish life processes. Vegetation in riparian areas moderates the volume and rate of water flowing through the watershed contributing to effective rainwater management and stabilizes stream banks by holding soil in place. Plant root systems enhance the soil's ability to absorb water by making it more porous. This allows water to be stored and released slowly into the watercourse, reducing erosion and flooding. Soils also filter impurities and sediment from runoff water, improving water quality in the stream channel.

Riparian vegetation provides food and shelter for fish. Shade from trees within the riparian area regulates water temperatures within the stream, which is critical for salmon, trout and other fish species that need cool water to survive. Logs and other woody debris fall into streams from the riparian area, influencing stream channel morphology, dissipating the stream's natural erosive energy and providing habitat for a diverse range of species. Erosion of banks and steep slopes can also pose a hazard to development, and maintaining and enhancing natural features and vegetation and siting buildings and structure appropriately, can reduce this hazard.

Land use practices including land clearing, road building, construction of buildings and structures, and location of wastewater disposal systems in or near riparian areas can jeopardize these habitats and water quality. Protection of riparian vegetation and watercourses is therefore necessary to protect the natural environment, ecosystems and biological diversity of the Plan Area. Land use practices can also change the hydraulic flow of a stream and create or exacerbate a flooding hazard.

Furthermore, the Province of British Columbia's *Riparian Areas Protection Act*, requires that local governments establish regulations to protect riparian areas, and not allow development to proceed until the requirements of the RAR are met.

The objectives of this development permit area are:

1. To protect freshwater ecosystems to maintain their natural habitat and environmental quality.
2. To restore freshwater ecosystems to improve their natural habitat and environmental and hazard mitigation quality if they have been previously degraded.
3. To protect riparian areas from development so that the areas can provide natural features, functions and conditions that support fish life processes.
4. To protect development from flood and slope hazard.

**DEVELOPMENT PERMIT AREAS****SECTION 7****7.1 Development Permit Area Organization**

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

7.2 Freshwater and Fish Habitat Development Permit Area**APPLICABILITY**

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

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

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

EXEMPTIONS

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

Exemptions Applicable to all Watercourses:

1. Development in an area where no stream or watercourse exists, or where the proposed development is clearly outside the development permit area, as determined by the Regional District, a BC Land Surveyor, or a Registered Professional Biologist. This exemption does not apply if the stream or watercourse ecosystem was previously filled or realigned without a development permit.



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

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

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



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

Exemptions Applicable to Streams under the RAR only:

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

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

16. Subdivision involving only lot line adjustment. For lot line adjustment to be exempt there must be sufficient developable area outside the development permit area as confirmed by the Regional District, BC Land Surveyor, or Registered Professional Biologist, and there are no works proposed within the development permit area.
17. A property owner may construct a single trail within this development permit area in accordance with the principles and standards of 'Access Near Aquatic Areas' of the



Stewardship Series published by the provincial and federal governments, and subject to the following conditions:

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

GUIDELINES

Development permits shall be issued in accordance with the following.

Guidelines applicable to all watercourses:

1. An assessment must be prepared by a Registered Professional Biologist (a QEP for streams applicable to the RAR) for the purpose of identifying sensitive biophysical features on or near the development permit area and providing recommendations and conditions for development to avoid or mitigate impacts to these features. The assessment should list each guideline with an explanation of how the development is



consistent with the guideline, or an explanation as to how the guideline is not applicable. The site plan should indicate the areas for yard and driveway and areas to remain free from development. See Guideline 13 for additional requirements of this report for streams applicable to the RAR.

2. If development or alteration of land is proposed within the development permit area, it shall be located so as to minimize the impact on the stream or waterbody. The assessment report shall include an explanation as to how locating development entirely outside of the development permit area has been considered, and the reason that it is not being proposed. Variances to the zoning bylaw regulations to minimize development in the development permit area should be considered.
3. Sensitive biophysical features to be assessed in this development permit area include but are not limited to:
 - a) forest cover and ecological communities;
 - b) surface drainage patterns;
 - c) site topography and channel morphology;
 - d) aquatic and riparian habitat values, condition and function; and
 - e) an overall assessment of the ecological importance of the watercourse.
4. Mitigation measures that should be considered in the biological assessment include but are not limited to:
 - a) minimization of vegetation removal;
 - b) maintenance of linkages with adjacent sensitive ecosystems to minimize habitat fragmentation and maintain wildlife corridors;
 - c) sediment and erosion control;
 - d) protection of sensitive areas through fencing or other permanent demarcation; and
 - e) timing of construction to minimize potential impacts.
5. Where the applicant's biologist or other qualified professional recommends revegetation and/or enhancement works, the Regional District may require the applicant to submit a landscaping plan and a security deposit equal to the total estimated costs of all materials and labour as determined by a Landscape Architect or other qualified professional to the satisfaction of the Regional District.
6. For the SPEA or where the applicant's biologist or other qualified professional recommends other specific areas that must remain free from development:
 - a) the Regional District may require a Section 219 covenant to be prepared at the applicant's expense, to the satisfaction of the Regional District, to ensure that the identified areas remain free from development; and



- b) prior to construction commencing, the installation of temporary fencing or flagged stakes marking the protection area is required to avoid encroachment within the areas to be protected through to the completion of the development.
7. The applicant's biologist or QEP may be required to provide confirmation to the Regional District that the property has been developed in accordance with the QEPs recommendations.

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

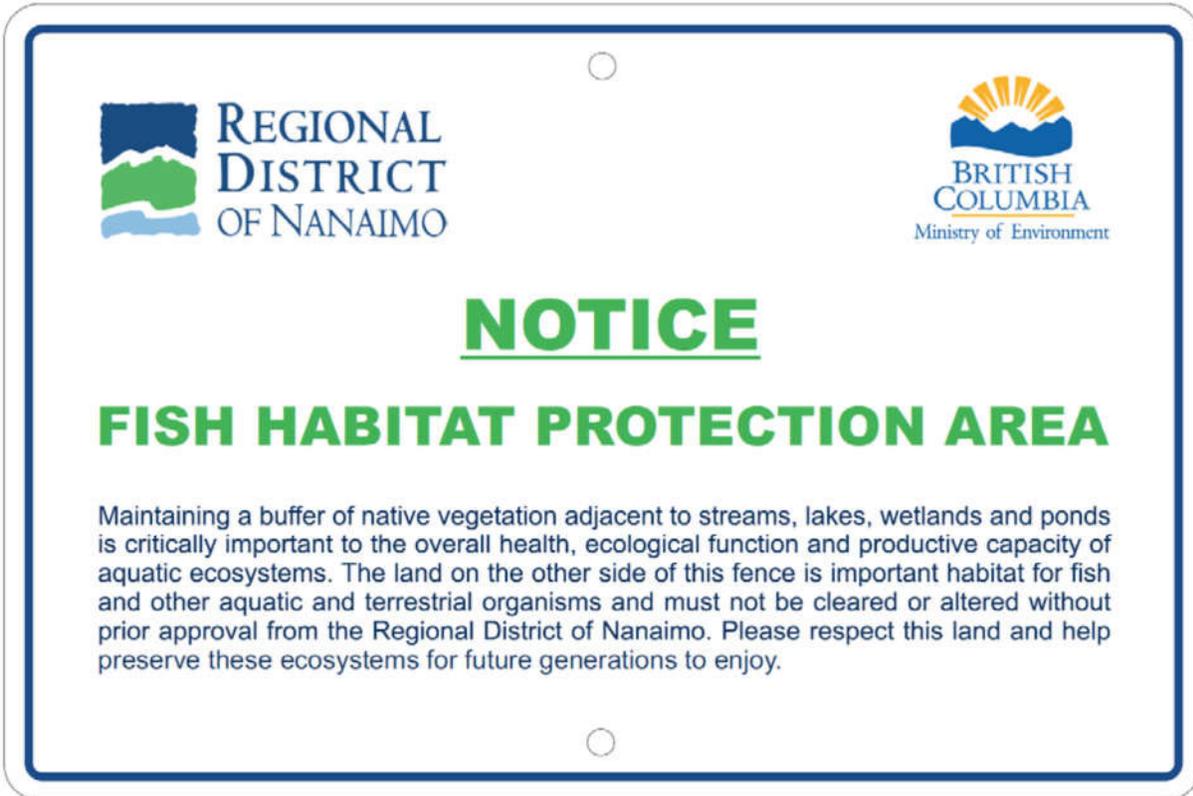
- 8. On any development where there is potential for silt, petroleum or any other contaminants to enter a watercourse either directly or indirectly through infiltration, provision of oil, grease and sediment removal facilities and the ongoing maintenance of these features will be required.
- 9. Directing drainage of rainwater from development sites into the SPEA and other watercourses and water bodies shall be avoided. Instead, rainwater is to be managed onsite with an emphasis on infiltration approaches to management. If impacts cannot be avoided through onsite infiltration, a sediment and erosion control plan may be required, and grading plan may be required where fill is placed near the freshwater feature.
- 10. In low-lying areas subject to flooding, development should not increase the flood risk on the subject property or on adjacent or nearby properties. Where the placement of fill is proposed within a floodplain as defined by the RDN Floodplain Management Bylaw, it shall be designed by a Professional Engineer to ensure that the placement of the proposed fill will not restrict the passage of flood waters, redirect flood flows, decrease natural flood storage, result in higher flood flows or result in higher flood potential elsewhere in the floodplain.
- 11. Where there is a slope greater than 30 percent over a minimum horizontal distance of 10 metres, an assessment report prepared by a Professional Engineer with experience in geotechnical engineering may be required to assist in determining what conditions or requirements shall be included in the development permit so that proposed development is protected from the hazard and no increase in hazard is posed to existing development. The geotechnical report will form part of the development permit terms and conditions, and may include registration of a Section 219 Covenant, prepared at the applicant's expense and to the satisfaction of the Regional District.

Additional Guidelines Applicable to Streams Subject to the RAR only:

- 12. No development shall take place within any SPEA except where:
 - a) a QEP has determined that no serious harm is likely to occur or that it can be mitigated by following prescribed measures; or



- b) the owner has obtained an authorization under subsection 35(2) [serious harm to fish] of the *Fisheries Act* or Section 11 [changes in and about a stream] of the *Water Sustainability Act*.
13. The Regional District shall require the applicant to retain a QEP, at the expense of the applicant, for the purpose of preparing an assessment report, pursuant to Section 4(2) of the RAR and the RAR Assessment Methodology Guidebook, and the assessment report must be electronically submitted to the provincial ministry responsible, via the Riparian Area Regulations Notification System, and a copy must be provided to the Regional District.
14. In addition to implementing the measures in the assessment report, to ensure the integrity of the SPEA the Regional District and landowner may consider the following:
- a) gift to a nature preservation organization all or part of the SPEA; or
 - b) register a restrictive covenant or conservation covenant on title securing the measures prescribed in the assessment report.
15. For the purpose of subdivision design, proposed lot configuration shall consider the protection of the SPEA and minimize new lot lines in the SPEA. The proposed lot configuration should demonstrate that enough developable land is available on each lot to establish a development envelope that includes a reasonable yard area outside of the SPEA to accommodate wastewater disposal field, driveway, accessory buildings and yard.
16. Permanent fencing and/or other means of clearly delineating the SPEA boundary such as signage must be designed to follow the standard established by the Regional District and Ministry of Environment shown below. Signage should be installed to the satisfaction of the Regional District prior to land alteration and in the case of subdivision prior to the Regional District notifying the Approving Officer that the conditions of the development permit have been met. Fencing must be maintained in good order.



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