



## **BYLAW NO. 83**

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### **A BYLAW TO AMEND BYLAW NO. 2224, BEING "MENZIES BAY AREA OFFICIAL COMMUNITY PLAN BYLAW, 2000"**

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**WHEREAS** the former Comox Strathcona Regional District has, by Bylaw No. 2224 "Menzies Bay Area Official Community Plan Bylaw, 2000" adopted an official community plan for a part of Electoral Area 'A' pursuant to Part 26 of the *Local Government Act*;

**AND WHEREAS** a bylaw of the former Comox Strathcona Regional District that regulates the use or development of land within the area comprising the Strathcona Regional District remains in force until amended or repealed;

**AND WHEREAS** the provisions of B.C.Reg.376/2004 enacted pursuant to the *Fish Protection Act* require the Regional District to regulate certain types of development within riparian areas;

**NOW THEREFORE** the Board of Directors of the Strathcona Regional District, in open meeting assembled, enacts as follows:

#### **Amendment**

1. Bylaw No. 2224, "Menzies Bay Area Official Community Plan Bylaw, 2000" is hereby amended as set out in Schedule "A" attached to and forming part of this bylaw.

#### **Citation**

2. This bylaw may be cited for all purposes as Bylaw No. 83, "Menzies Bay Area Official Community Plan Bylaw, 2000", Amendment No. 4".

**READ A FIRST TIME ON THE 23<sup>RD</sup> DAY OF SEPTEMBER, 2010**

**READ A SECOND TIME ON THE 23<sup>RD</sup> DAY OF SEPTEMBER, 2010**

**PUBLIC HEARING HELD ON THE 10<sup>TH</sup> DAY OF NOVEMBER, 2010**

**READ A THIRD TIME ON THE 25<sup>TH</sup> DAY OF NOVEMBER, 2010**

**APPROVED BY THE MINISTER OF COMMUNITY, SPORT AND CULTURAL DEVELOPMENT  
ON THE 13<sup>TH</sup> DAY OF MARCH, 2012**

**RECONSIDERED, FINALLY PASSED AND ADOPTED ON THE 26<sup>TH</sup> DAY OF APRIL , 2012**



Chair



Corporate Officer

**SCHEDULE 'A'****SECTION ONE TEXT AMENDMENT**

1. Bylaw No. 2224 is hereby amended by replacing all reference to Sensitive Ecosystem Development Permit with Environmentally Sensitive Areas Development Permit (ESA DP).
2. Part 202 'Environment' is hereby amended by inserting the following within 3. 'Policies' and renumbering the following items accordingly:
  3. f) The provincial Riparian Areas Regulation (RAR) shall be applied to all development, as defined by the RAR, within the Strathcona Regional District.
3. Part 301 'General Exemptions' is hereby amended by deleting in its entirety and replacing with the following:

Where one or more of the following conditions apply, a development permit is not required:

- a) Construction of farm buildings, excluding residential and associated structures;
- b) Construction involving a building floor area of 10m<sup>2</sup> or less;
- c) Internal alterations and renovations to a building or structure *or* repair or reconstruction on an existing foundation;
- d) Growing, rearing, producing and harvesting of agricultural products in accordance with recognized standards of the Farm Practices Protection Act and the Code of Agricultural Practice;
- e) Forestry activity on Private Managed Forest Land in accordance with the Private Managed Forest Lands Act;
- f) Stream habitat enhancement work and environmental compensation work directed by senior government agencies;
- g) 'In-stream' work as defined by and in compliance with the Water Act;
- h) Mining activities as defined by and in compliance with the Mines Act;
- i) Hydroelectric facilities as defined by and in compliance with the Utilities Commission Act;
- j) Restoration of natural ecosystems and removal of invasive species, provided bank instability will not result from the proposed action.
- k) Removal of hazard trees where there is an immediate threat to the safety of persons or property where an approved authorization from DFO is received.
- l) Subdivisions that are not included within the Local Government Act definition, (boundary adjustments and lot consolidations not involving the installation of underground services or the construction of roads, and plans dedicating highways or parks).
- m) Replacement of the roof of a structure, its exterior finish or sign faces.
- n) Private residential trails up to a maximum of 1.5 metres in width to access the shoreline, provided no tree removal is required for the trail's construction.

Further, in respect to the application of industrial development permits only, the erection of fences less than 2.0 metres (6.6 feet) in height are exempt from the requirement for an Industrial DP.

4. Part 303 'General Applicability' is hereby amended by deleting in its entirety and replacing with the following:

The following activities shall require a development permit whenever they occur within a Development Permit Area (DPA):

- a) Subdivision, as defined by the Local Government Act;
- b) Alteration of land, including the disturbance of soils;
- c) Land clearing, including the removal, alteration, disruption or destruction of vegetation;
- d) The siting and construction of:
  - i) Buildings and structures with a building floor area greater than 10 m<sup>2</sup>, including additions to existing buildings or structures within the Riparian Assessment Area;
  - ii) Retaining walls;
  - iii) Septic tanks, drainage fields, sewage treatment systems and discharges, irrigation or water systems, swimming pools and stormwater management systems;
  - iv) Impervious paving, roads, and driveways;
  - v) Docks, wharves, bridges, shoreline protection devices and flood protection works; and
- e) The placement or storage of:
  - i) Contaminated soils and substances
- f) Metal recycling operation.

If a property is subject to more than one Development Permit, there shall be one application fee and one review process.

5. Part 304 'Development Permit Areas' is hereby amended by replacing Part 304.1(a) with the following:

**304 DEVELOPMENT PERMIT AREAS**

**1) Environmentally Sensitive Areas Development Permits (ESA DP)**

- a) **Designated Areas:**
- ii) **DEVELOPMENT PERMIT AREA NO. 304.1B: WATERCOURSE ESA DPAs**

To comply with the Ministry of Environment's (MOE's) Riparian Areas Regulation (RAR) requirements and to protect the natural environment, a development permit is required for any area located within 30.0 metres from top of bank of a stream connected to fish habitat as identified within Schedule 'C' Fish Habitat and Sensitive Ecosystems of this bylaw, including all map amendments, or as defined by RAR.

6. Part 304.1(b) is hereby deleted in its entirety and replaced with the following:

**b) Justification**

Declining fish stocks in the Strait of Georgia have led to the need for protection of fish habitat in areas adjacent to rivers, lakes, streams, wetlands, estuaries and the coast. Therefore, development within these areas requires assessment to ensure protection of fisheries values from potentially harmful development activities. The role of a Sensitive Ecosystem Development Permit (SEDP) is to protect riparian ecosystem features, conditions and functions that contribute to fish life processes and fish habitat and to encourage the rehabilitation, restoration and enhancement of degraded riparian ecosystem features, conditions and functions that contribute to fish life processes and fish habitat.

7. Part 304.1(c) is hereby deleted in its entirety and amended as follows:

**c) Triggers – DPA 304.1B: Watercourse ESA DPA**

***Activities that Trigger a Riparian Area Assessment and ESA DP:***

- a) Subdivision, as defined by the Local Government Act;
- b) Alteration of land, including the disturbance of soils;
- c) Land clearing, including the removal, alteration, disruption or destruction of vegetation;
- d) The siting and construction of:
  - i) Buildings and structures with a building floor area greater than 10 m<sup>2</sup>, including additions to existing buildings or structures within the Riparian Assessment Area;
  - ii) Retaining walls;
  - iii) Septic tanks, drainage fields, sewage treatment systems and discharges, irrigation or water systems, swimming pools and stormwater management systems;
  - iv) Impervious paving, roads, and driveways;
  - v) Docks, wharves, bridges, shoreline protection devices and flood protection works; and
- e) The placement or storage of:
  - i) Contaminated soils and substances.

8. Part 304.1(d) is hereby deleted in its entirety and replaced with the following:

**d) Exemptions – DPA 304.1B: Watercourse ESA DPA and associated Riparian Area Assessment Requirements**

- a) Construction of farm buildings, excluding residential and associated structures;
- b) Construction involving a building floor area of 10m<sup>2</sup> or less;
- c) Internal alterations and renovations to a building or structure **or** repair or reconstruction on an existing foundation;
- d) Growing, rearing, producing and harvesting of agricultural products in accordance with recognized standards of the Farm Practices Protection Act and the Code of Agricultural Practice;
- e) Forestry activity on Private Managed Forest Land in accordance with the Private Managed Forest Lands Act;

- f) Stream habitat enhancement work and environmental compensation work directed by senior government agencies;
- g) 'In-stream' work as defined by and in compliance with the Water Act;
- h) Mining activities as defined by and in compliance with the Mines Act;
- i) Hydroelectric facilities as defined by and in compliance with the Utilities Commission Act;
- j) Restoration of natural ecosystems and removal of invasive species, provided bank instability will not result from the proposed action.
- k) Removal of hazard trees where there is an immediate threat to the safety of persons or property where an approved authorization from DFO is received.
- l) Subdivisions that are not included within the Local Government Act definition, (boundary adjustments and lot consolidations not involving the installation of underground services or the construction of roads, and plans dedicating highways or parks).
- m) Replacement of the roof of a structure, its exterior finish or sign faces.
- n) Private residential trails up to a maximum of 1.5 metres in width to access the shoreline, provided no tree removal is required for the trail's construction.

9. Part 304.1 is hereby amended to include Part 304.1(e) as follows:

**e) ESA DP Guidelines**

Development permit applications shall be applied for and issued in accordance with the following guidelines. Where it appears that one or more of the following guidelines is not applicable to an application, the guidelines(s) may be waived by the Planning Manager or Community Services Manager or the Regional Board:

- i) Development and alteration of land or vegetation within the development permit area (DPA) should be avoided where site-specific constraints, such as but not limited to topography, property area, covenants, easements, and rights of way, reasonably allow the development activity to occur outside of DPA.
- ii) All development proposals subject to this permit shall be in compliance with the regulations and requirements of DFO and MOE, including the Stream Stewardship and Land Development Guidelines and the Environmental Requirements and BMPs for the Review of Land Development Proposals.
- iii) In order to avoid encroachment into the DPA, the requirements of other applicable bylaws may be varied as follows:
  - a) setbacks from lot lines and public road right-of-ways may be reduced by up to 30% of the required setback; and
  - b) height limits may be extended by up to 10% of the maximum permitted height.

- iv) Where encroachment into the DPA is deemed unavoidable, the development or land/vegetation altering activity should:
  - a) Take a form that minimizes the area of encroachment into the DPA;
  - b) Be located so as to cause the least impact on the environmental values of the DPA and so as not to impact negatively upon any adjacent fish habitat;
  - c) Be conducted at a time of year and use construction methods that minimize the impact on the DPA;
  - d) Include environmental monitoring by an "approved consultant", where applicable;
  - e) Include permanent or temporary fencing measure to ensure no encroachment occurs; and
  - f) Include the preparation and implementation of a 'Sediment and Erosion Plan' where applicable.
- v) Owners of land adjacent to watercourses may be encouraged to enter into an environmental Covenant with the Regional District for the protection of the leave strip.
- vi) The planting of native species of vegetation and trees, as well as the retention or replanting of vegetation, in order to preserve, protect, restore or enhance the natural features and environmental values of the DPA.
- vii) Additional works or protective measures may also be required to control drainage or erosion, and to protect banks.
- viii) Discharge from swimming pools, hot tubs and spas shall not be directed into any waterbody, but rather disposed of in a manner which meets the approval of DFO and MOE.

10. Part 304.1 is hereby amended to include the following section, given that the existing application requirements section under 304.1(d) has been previously deleted in its entirety:

**f) Application Requirements – DPA's 304.1A and 304.1B**

*As specified within Schedule A-5 of Bylaw No. 5, being the "Planning Procedures & Fees Bylaw, 2008", as amended.*

11. Part 500 'GLOSSARY OF TERMS' is hereby amended as follows:

- a) Delete 'Wetlands' and replace with the following term:

*WETLAND includes 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.*

- b) Insert the following terms:

**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 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.

**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.

**RIPARIAN AREA** means a Streamside Protection and Enhancement Area (SPEA).

**RIPARIAN ASSESSMENT AREA** means:

- (a) for a stream, the 30.0 metre strip on both sides of the stream, measured from the high water mark,
- (b) for a ravine less than 60.0 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30.0 metres beyond the top of the ravine bank, and
- (c) for a ravine 60.0 metres wide or greater, a strip on both sides of the stream measured from the high water mark to a point that is 10.0 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 (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 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.