

CITY OF NANAIMO

BYLAW NO. 5105

A BYLAW RESPECTING WATERCOURSES AND
THE PREVENTION OF PUBLIC NUISANCES THEREIN

WHEREAS the Council may, by bylaw, pursuant to Section 587 of the *Municipal Act*, prohibit persons from fouling, obstructing or impeding the flow of a stream, creek, waterway, watercourse, ditch, drain or sewer, whether or not it is situated on private property, and may provide for the imposition of penalties for the contravention of these regulations; and

WHEREAS the Council may, by bylaw, pursuant to Section 589 of the *Municipal Act*, provide for defining the channel or bed of a stream, as defined by the *Water Act*, passing through the municipality, and provide works to protect its banks of the stream from erosion or damage; and

WHEREAS the Council may, by bylaw, pursuant to Section 932 of the *Act*, prevent, abate and prohibit nuisances, and provide for the recovery of the cost of abatement of nuisances from the person causing the nuisance or other persons described in the Bylaw; and

WHEREAS the Council deems it advisable and necessary for the health, safety and protection of persons and property in the municipality to regulate streams, creeks, waterways, watercourses, ditches, drains and sewers, and to prevent, abate and prohibit nuisances from occurring in, on or near the bank, bed or channel on any streams, creeks, waterways, watercourses, ditches, drains and sewers.

NOW THEREFORE the Council of the City of Nanaimo, in open meeting assembled hereby ENACTS AS FOLLOWS:

Title

1. This Bylaw may be cited for all purposes as the City of Nanaimo "FLOOD PREVENTION BYLAW 1996 NO. 5105".

Definitions

2. In this Bylaw:

"Council"	means the Council of the City of Nanaimo
"Designated Watercourse"	means a watercourse designated by its name, or located within an area marked as a designated watercourse area, on Schedule 'D' of this Bylaw.
"Director"	means the official of the Municipality designated from time to time as the Director of Strategic Planning, Engineering and Economic Development by the Council, and includes a person appointed to assist him.

"Drainage Works"	means any waterworks, ditch, drain or sewer whether or not the same is situated on private property.
"Municipality"	means the City of Nanaimo.
"Owner"	means the registered owner of land and includes persons whose names appear on the records of the Land Title Office as having an interest in land.
"Permit"	means a permit issued pursuant to this Bylaw.
"Structure"	includes any wall, crib, weir, bulkhead, dwelling, garage, building, outbuilding, or any part thereof and anything of substance and conformation capable of affecting, influencing or controlling the flow of water in a watercourse under any circumstances and to any degree, or capable of damaging, weakening, lowering or eroding the effectiveness of the bank, bed or channel of a watercourse to contain and withhold water, including storm or flood waters.
"Top of the Bank"	means the actual point on a watercourse bank that is the top of a stable slope thereof as shown by reference to any one or other of the six (6) illustrations (cases) on Schedule 'A' hereto.
"Watercourse"	means any natural drainage course or source of water, whether usually containing water or not, and includes any lake, river, creek, spring, wetland, the sea, or source of ground water and includes portions that may be contained within a conduit or culvert.
"Watercourse Protection Area"	means the land within twenty-five (25) feet of the top of the bank of a designated watercourse.
"Wetland"	means land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, estuaries and similar areas.

Regulations

3. No person shall foul, obstruct or impede or permit anything to remain within a watercourse which may foul, obstruct or impede the flow of any watercourse or drainage works within the Municipality.
4. No person shall construct, reconstruct, place, alter, repair or demolish any structure or cause any of those acts to be done in, on, along or abutting a bank, bed or channel of a watercourse without first obtaining a permit to do so.
5. No person shall relocate, remove or deposit or cause to be relocated, removed or deposited any rock, gravel or soil from or in the bank, bed or channel of a watercourse without first obtaining a permit to do so.
6. No person shall:
 - (1) construct, reconstruct, place, alter, repair or demolish any structure; or
 - (2) relocate, remove, or deposit any sand, rock, gravel, soil, material or substance; or
 - (3) cause any of the actions in (1) or (2) to be done within, in, on or from a watercourse protection area without first obtaining a permit to do so.
7.
 - (1) The Director shall not issue a permit for the purposes of Sections 4, 5 and 6 until a Development Permit has been issued for the land disturbance by City Council where such a Development Permit is required.
 - (2) Where a permit has been issued, no person shall carry out work except in accordance with the permit and any terms and conditions upon which the permit is issued.

Permit Application

8. Application for a permit for the purposes of Sections 4, 5 and 6 of this Bylaw shall be made in writing to the Director and shall specify the following:
 - (1) the date of the application;
 - (2) name, address and telephone number of applicant;
 - (3) location of proposed work;
 - (4) name of the owner of the property and, if the owner is not the applicant, a letter from the owner consenting to the application;
 - (5) detailed drawing or plan, by a professional civil engineer who is competent in the disciplines related to the project,
 - (a) clearly describing the proposed structure or work, the materials and type of construction to be employed;
 - (b) showing cross-sections of the proposed structure and of the watercourse; and
 - (c) detailing how the design flow will be handled;
 - (6) a detailed plan of existing structures located upon the land for which the permit is applied for, and which may be affected by the proposed structure or work;
 - (7) a detailed drawing or plan clearly describing any area where sand, rock, gravel or soil will be relocated, removed or deposited;

- (8) the nature and purpose of the work and structure proposed;
- (9) the name, address and telephone number of the person or contractor, if any, who will do the work;
- (10) the time required for completion of the work in calendar days;
- (11) an estimate, by the contractor or engineer, of the cost of the work.

9. The Director may, at his discretion, require the applicant to provide further information relating to the design, construction, or structural detail of any part of the proposed works, or soil tests.

10. Prior to the issuance of a permit, the Director may require the owner of the land for which the permit is applicable, to execute and deliver to the Municipality an agreement pursuant to Section 215 of the *Land Title Act*, in registerable form, and substantially in the form attached as Schedule 'B' to this Bylaw, which shall contain the following:

- (1) a covenant that the land to which the permit applies shall not be built upon or used except in accordance with the permit; and
- (2) an indemnity to save harmless the Municipality from any and all claims by third parties, as well as a release and discharge by the owner of and from any claims that the owner or his successors in title may have against the Municipality, arising out of the carrying out or existence of the works and structures authorized by the permit.

Inspection

11. The Director may inspect or cause to be inspected the construction, placing, alteration, repair or demolition of structures and the relocation, removal or deposit of sand, rock, gravel or soil from or in the banks, bed and channel of any watercourse or within any watercourse protection area for which he has issued a permit.

12. (1) A permit shall identify, if necessary, the stages of the work requiring inspection by the Director before the next stage may be commenced.

(2) No person shall perform or cause to be performed any further work until the required inspection has been made and the work to that time has been approved by the Director in writing.

13. (1) The Director is hereby authorized to determine in the first instance all questions relating to methods of construction and materials used or to be used in the carrying out of works in watercourse protection areas and in the bank, bed or channel of a watercourse, whether pursuant to a permit or not.

(2) A decision of the Director may be appealed to the Council for final determination by the Council, and notice of an appeal shall be filed with the City Clerk within ten days of the Director's decision.

14. Notwithstanding any other provision of this Bylaw, no permit shall be issued unless the applicant has complied, in respect of the premises upon which the work proposed is located, and with respect to the work itself, with the Building Bylaw and any other bylaw of the Municipality, and with the *Water Act and Regulations*.

15. The Council may refuse to issue a permit if it considers that the issuance of a permit is against the public interest.

Operation of Permit

16. A permit issued under this Bylaw may be assigned and transferred by the holder only to the owner or his successor in title of the land to which the permit applies.

17. (1) If the work authorized by a permit has not been either commenced or completed within one month of the commencement or completion date, respectively, set out in the permit, the permit lapses, and is of no further effect or validity.

(2) No person shall carry out any work authorized by a permit which has lapsed, after the day of lapsing.

(3) Where a permit has lapsed subsequent to the commencement of the work authorized by it, the Director may recommend that the Council proceed pursuant to Section 735 of the *Municipal Act* or have the works commenced but not completed removed at the expense of the owner pursuant to the authority given by Section 311 of that *Act* to recover the expenses in the same manner as Municipal taxes.

18. A permit issued under the authority of this Bylaw shall not constitute a promise or guarantee, direct or implied, on the part of the Municipality, that the construction or work permitted, inspected or approved by the Director pursuant to this Bylaw, will be sound and adequate for the purpose intended and the Municipality does not accept any liability or responsibility for any damage or loss suffered by the owner or any other person, which may result from the carrying out of the work authorized by the permit.

Fees

19. An applicant for a permit shall pay the fees set out in Schedule 'C' to this Bylaw.

Enforcement

20. The Director is hereby authorized and empowered to enforce the regulations and provisions of this Bylaw.

21. The Director is hereby authorized to enter, at all reasonable times, on any property, whether or not a permit has been issued under this Bylaw with respect to that property, to ascertain whether the provisions of this Bylaw are being observed.

22. (1) The Director may direct the suspension of all or any part of work which:
- (a) is being performed contrary to Sections 3, 4, 5, or 6, or any of them, of this Bylaw,
 - (b) is contrary to the terms and conditions of a permit, or
 - (c) is carried on without a permit.
- by posting a notice of the suspension on the land upon which the work is being carried out.
- (2) Failure to comply with the notice of suspension may result in the Municipality taking action pursuant to Sections 735 and 311 of the *Municipal Act*.
- (3) Fouling a watercourse is deemed a nuisance and the person responsible shall undertake such work as may be ordered in writing by the Director to abate the nuisance and restore the watercourse to its natural state. On that person's default the Municipality may undertake the work at their expense.

Exemptions

23. The provisions of this Bylaw do not apply to officers, employees, agents and contractors of the Municipality lawfully engaged in carrying out works for the protection of watercourses, the waters therein and lands affected thereby within the Municipality whether pursuant to this Bylaw or otherwise.

24. Sections 4, 5, and 6 do not apply to land situated in:

- (1) development permit areas designated by Council pursuant to Section 717 of the *Municipal Act*, or
- (2) prohibited areas designated in a bylaw passed in exercise of the authority conferred on Council by Section 930(d) and (e) of the *Municipal Act*.

Schedules

25. Schedules 'A', 'B', 'C' and 'D' attached to this Bylaw are deemed to be an integral part of, and enforceable in the same manner as, this Bylaw.

Offence

26. A person who violates a provision of this Bylaw, or who suffers or permits any act or thing to be done in contravention of or in violation of a provision of this Bylaw, or who neglects to do or refrains from doing anything required to be done by this Bylaw, commits an offence and is liable on conviction to a fine of not more than Two Thousand (\$2,000.00) dollars.

Severability

27. Should any portion of this Bylaw be found by a court of competent jurisdiction to be void or unenforceable, it shall be severable from this Bylaw, and the remainder of this Bylaw shall remain in full force and effect.

Leave Strip Requirements

28. This Bylaw does not deal with watercourse leave strip requirements for the protection of aquatic habitat and interested parties should refer to the Zoning and Subdivision Control Bylaws regarding leave strip requirements.

Repeal

29. "CREEK MANAGEMENT BYLAW 1983 NO. 2608" and all amendments thereto is hereby repealed.

PASSED FIRST, SECOND AND THIRD READINGS 1996-FEB-19.
ADOPTED 1996-MAR-04.

G. R. KORPAN

M A Y O R

J.T. BOWDEN

CITY CLERK

- (2) It is understood and agreed to by the Grantor that the Municipality does not represent to the Grantor or to any other person that any works presently or hereafter constructed on the said lands within the bed and banks of or the said lands themselves will not be damaged by flooding. The Grantor further covenants to hold harmless the Municipality, its servants and agents from all liability to them or to any other person which may arise by reason of such flooding.
- (3) It is understood and agreed that this covenant shall run with the said lands and shall bind the owner of the said lands from time to time and neither the Grantor nor any successor shall have any liability under this agreement after he has ceased to be an owner of the said lands.

IN WITNESS WHEREOF the Grantor has hereunto set his/her hand and seal on the day first above written.

SIGNED, SEALED and DELIVERED
by the Grantor in the Presence of:

Name

Address

Occupation

SCHEDULE 'C'

SCHEDULE OF FEES:

1. For each permit issued pursuant to the Bylaw:
 - \$20.00 or 1 percent of the cost of the work as estimated in accordance with Section 8, whichever is greater.

2. For the preparation and registration of any covenant or agreement mentioned in Section 10:
 - \$75.00 plus any fees or charges payable on registration under the *Land Title Act*.