Form T2 – Development Permit Area for Streamside Protection and Enhancement (SPEA) – Bylaw No. 6349 Interpretation Guide

This document is intended to clarify Delta's interpretation of specific aspects of Bylaw No. 6349, including definitions, Development Permit (DP) exclusions, DP guidelines, and information requirements. If any discrepancy exists between this document and Bylaw No. 6349, the bylaw will prevail.

Applicants should be aware that in situations where a DP is not required, other legislation concerning streamside areas may continue to apply including, but not limited to, the Federal *Fisheries Act,* Provincial *Fish Protection Act,* flood protection requirements, and municipal zoning and other bylaws.

This Interpretation Guide is divided into three sections:

A. Streamside Protection and Enhancement Area (SPEA) Definitions

A.1 "Stream"

A.2 "Development"

B. Exclusions

C. Guidelines and Information Requirements

A. SPEA DEFINITIONS

A.1 Stream

Bylaw definition

"Stream" *includes a watercourse or source of water supply, whether usually containing water or not, a pond, lake, river, creek, brook, ditch and a spring or wetland that is integral to a stream and provides fish habitat.*

Interpretation

- Streams are defined based on Delta's watershed inventory maps, Deltamap drainage coverages, and site-specific information.
- The **Fraser River** is considered a stream according to the definition; however, a DP is not required if an application has been assessed under the Department of Fisheries and Oceans (DFO) project review process and if other conditions are met (see Section B(f) – Exemptions). Development within 30m of **Boundary Bay** and **Roberts Bank** is subject to the same review.
- Open water streams, sloughs and ditches are considered streams, as are waterways or ditches that have sections of sub-surface flow (see below).
- Ditches that contain sections of sub-surface flow or sections that have been filled-in *may be* excluded if staff is satisfied that the ditch or ditch segment is not integral to a stream and does not provide fish habitat. This determination will be based on site-specific conditions and the extent of sub-surface or filled area relative to the overall length of the ditch.

A.2 Development

Bylaw definition

"Development" *means any activity referred to in Section 920 (1) of the Local Government Act and includes alteration or development of land for residential, commercial, industrial, institutional, service, or utility uses or activities, or ancillary uses or activities, to the extent that these uses or activities are subject to local government powers under Part 26 of the Local Government Act. Examples of activities that will require a Development Permit are:*

- *removal, alteration, disruption or destruction of vegetation;*
- *removal, deposit or disturbance of soils, as defined in the Delta Soil Deposit and Removal Bylaw;*
- *construction or erection of buildings and structures as defined in the Delta Building/Plumbing Bylaw;*
- *creation of non-structural impervious or semi-impervious surfaces;*
- *flood protection works;*
- *construction of roads, trails, docks, wharves and bridges;*
- *provision and maintenance of sewer and water services;*
- *development of drainage systems;*
- *development of utility corridors; and*
- *subdivision, as defined in the Local Government Act.*

Interpretation

Interpretations of "Development" are described in the table below.

Type of "Development"	Interpretation
a) Removal, alteration, disruption or destruction of vegetation	A DP is <u>not</u> required for most works involving the alteration of lawns or gardens or for minor or routine property maintenance activities (e.g., mowing lawns, trimming trees, planting vegetation/gardens, minor soil disturbances). Notwithstanding the above, land alteration that may have a direct impact on a stream or indirect impact resulting from a change in site characteristics will require a DP (e.g., excavation works, substantive removal of trees or vegetation, activities that will alter site drainage, and most works in close proximity to the stream). The Director of Development maintains sole discretion to determine, based on a review of the site and proposed works, if a land alteration is extensive enough to require a DP.

b) Removal, deposit or disturbance of soils	A DP is required for soil removal or deposit activities requiring a permit according to the *Delta Soil Deposit and Removal Bylaw.* This includes the movement on to or off of a property of more than 10 cubic metres of soil. Notwithstanding the above, land alteration that may have a direct impact on a stream or indirect impact resulting from a change in site characteristics will require a DP (e.g., excavation works, substantive removal of trees or vegetation, activities that will alter site drainage, and most works in close proximity to the stream). The Director of Development maintains sole discretion to determine, based on a review of the site and proposed works, if a land alteration is extensive enough to require a DP.
c) Construction or erection of buildings and structures	A DP is required for any building or structure requiring a building or plumbing permit as per *Delta Building/Plumbing Bylaw,* unless the development is otherwise exempted. Additions or structural alterations to existing buildings (except attached garages) require a DP, but only if the building footprint is altered. Accessory buildings (e.g., detached garages and sheds) or structures (e.g., patios or decks) associated with single-family residential use will not require a DP but are subject to all other requirements (e.g., zoning setbacks, flood protection and geotechnical requirements). Accessory buildings associated with other types of land use will require a DP.
d) Creation of non-structural impervious or semi-impervious surfaces	Swimming pools require a DP. Non-structural impervious/semi-impervious surfaces will be reviewed in the context of the broader development with which they are associated. For example, a driveway associated with the construction of a building will be considered under the DP process for that building. If no other permits are required, in general, a DP will not be required if the impervious/semi-impervious surface is ancillary to a permitted primary use of the property, is of an appropriate size in relation to the primary use of the property, is located in an appropriate location, and is within zoning bylaw provisions limiting impervious surfaces, if applicable. An assessment of the proposal through a DFO project review may be requested. Notwithstanding the above, the Director of Development maintains sole discretion to determine, based on a review of the site and proposed works, if the creation of an impervious/semi-impervious surface constitutes a land alteration extensive enough to require a DP.
e) Flood protection works	See *Delta Building/Plumbing Bylaw*. Any flood protection works that require a Building Permit will also require a DP unless otherwise exempted. For example, retaining structures greater than 1.2 metres in height require a

	Building Permit and therefore will require a DP. Additions to retaining structures or dikes if not altering the footprint may not require a DP depending on the extent of alteration and methods of construction.
f) Construction of roads, trails, docks, wharves and bridges	See *Delta Building/Plumbing Bylaw*. Any of these development types that require a Building Permit will also require a DP unless otherwise exempted.
g) Provision and maintenance of sewer and water services	A DP is not required if the works are undertaken by the City of Delta or its contractors *and* if the works have been assessed under the DFO project review process. Otherwise, a DP is required. Note that for private works, a DP is required but should be processed in the context of the broader development that the works are servicing.
h) Development of drainage systems	
i) Development of utility corridors	
j) Subdivision	A DP is required for land subdivision as defined in the *Local Government Act.*

B. EXCLUSIONS

Bylaw No. 6349 identifies types of development that do not require a Development Permit (DP). These are described further below.

Exclusion*	**Interpretation**
a) Emergency actions required to prevent, control or reduce an immediate threat to life or to public or private property	A DP is not required for: • Emergency actions for flood protection, erosion protection, and clearing of obstructions; • Emergency works to protect repair or replace public utilities; • Clearing of an obstruction from a bridge, culvert or drainage flow; and repairs to bridges or safety fences; and • Removal of a tree when there is an imminent danger of the tree falling and causing an injury to persons or property, or when a tree failure has already occurred as a result of a natural cause and presents an immediate hazard.
b) Public works and services	A DP is not required for the following public works and services if these works and services: a) are undertaken by the City of Delta or their contractors; b) have been approved by the Director of the appropriate department; and c) have been reviewed and approved by DFO via the project review process or a comparable process where the results have been documented:

Exclusion*	Interpretation
	• The construction or maintenance of a public utility placed in or upon a public thoroughfare or public utility easement; • The construction, widening, improvement, maintenance or repair of any land, watercourse, highway, street, bridge, dyke or public thoroughfare; and • The improvement or maintenance of any lands within the municipal parks system or on municipal streets or boulevards.
c) Agricultural uses	A DP is not required for any agricultural use regardless of where it occurs (i.e., inside or outside of the ALR). The *Delta Zoning Bylaw*'s A1 Agriculture zone does, however, specify setbacks from watercourses. Agricultural use includes any "farm operation" or "normal farm practice" as defined in and protected by the Provincial *Farm Practices Protection (Right to Farm) Act*. Further, a DP is not required to build or add on to a farmhouse.
d) Re-establishment of a stream setback area by removing non-native vegetation and/or planting vegetation	A DP is not required to undertake vegetation planting or to remove non-native vegetation generally. For major planting activities, or for planting associated with a broader development application, this exclusion would be subject to the approval of the Director of Development of a Landscape/Planting Plan or Vegetation Planting/Management Plan prepared to a professional standard (see Section C). This exclusion does not infer that the City can enter onto private property and undertake such works without the permission of the owner.
e) In-stream development and habitat restoration, not otherwise requiring a permit from Delta	A DP is not required for in-stream works that are not associated with a broader development application if the works comply with all Federal standards and requirements *and* if DFO approval has been received. If the in-stream works are part of a broader development application, then the in-stream component will be considered as part of that application, including any DP requirements.
f) Any proposed "development" on properties located within 30 m of the Fraser River Estuary, including Boundary Bay and Roberts Bank.	A DP is not required for development along the Fraser River estuary; however, this exemption applies only if the proposed development has been assessed under the DFO project review process, and the development application is accompanied by a letter from DFO identifying environmental protection criteria, and the proposed development meets or will meet all of the criteria identified in the letter.

Exclusion*	Interpretation
	Note that DFO does not review subdivision applications and therefore a DP is required for subdivision of land along the Fraser River. If, for whatever reason, DFO does not review a development application, then a DP is required.

* ***Refer to Bylaw No. 6349 for exact wording.***

C. GUIDELINES AND INFORMATION REQUIREMENTS

Bylaw No. 6349 identifies DP Guidelines. In general, these guidelines are intended to provide some flexibility (as opposed to zoning for example). Additional clarification is provided for some of the guidelines below, mainly with respect to information requirements.

Guideline*	Interpretation and Information Requirements
The distance that the development will be set back from the stream is equivalent to the width of the "SPEA" as determined according to Schedule SPEA-1 of the Development Permit Area and Guidelines (see Bylaw No. 6349).	Applicants will be required to confirm, through survey, the top of the stream bank or ravine bank in relation to the property lines and existing and proposed development. Applicants may be required to provide information regarding the stream, fish presence, streamside vegetation and other ecosystem conditions in the form of a report prepared by a qualified professional and to a standard of quality that is acceptable to Delta (see below). The requirement for such a report may be waived if, at the sole discretion of the Director, it is believed that sufficient information is already available. If the report is required, it should be prepared by a Registered Professional Biologist (R.P. Bio.) or person with similar qualifications, and should outline all significant aquatic and terrestrial environmental features in relation to the site and proposed development, including significant features in relation to the stream and watercourse, as applicable. The report should also describe which design alternatives and mitigation options have been considered, and recommend natural site enhancements or other measures to mitigate and/or compensate for the impacts of the development.
All existing tree cover should be preserved on the entire property except in areas proposed for buildings, structures and site accesses, all of which should be designed to minimize site coverage.	Site plans submitted with the DP application should identify all trees to be removed and all trees to be retained. Where trees are proposed for removal, and the removal is not necessary to accommodate a proposed building, structure or site access, a report prepared by a Certified Arborist would be required to confirm the type, species, size and condition of the trees and document a rationale for removal.

Guideline*	Interpretation and Information Requirements
Planting of vegetation within the stream setback area should be provided to ensure that fish habitat are protected, restored and enhanced, and drainage and erosion impacts are mitigated.	If planting is to be provided, the applicant should submit a Landscape/Planting Plan and/or Vegetation Management Plan that has been prepared by a R.P.Bio. or Landscape Architect with experience in riparian area enhancement. Plans should be consistent with accepted standards for riparian enhancement (e.g., Provincial *"Planting Criteria and Recommended Native Tree and Shrub Species for Restoration and Enhancement of Fish and Wildlife Habitat")*. Variances from accepted standards will be considered based on site-specific factors such as the size, extent, condition, and characteristics of the setback area. The planting of vegetation native to the region is preferred over the planting of non-native vegetation, particularly species of an invasive nature. Non-native species will be considered only when recommended by a qualified person and when site conditions or other factors dictate that non-native species are more suitable than native species. The requirement for an illustrated Landscape/Planting Plan may be waived if the area of planting is relatively small in scale, and if a qualified person certifies in a report format the details of the planting (e.g., species, size/height of plants, planting density, landscape specification, etc.). The applicant may be required to register plans on title, provide security, and maintain plants for a specified period of time.
Fencing or other such works will be provided by the applicant to preserve and protect natural watercourses, newly planted areas, or other specified natural features.	The need for fencing will be determined on a case-by-case basis. If fencing is required, the location should be illustrated on plans and the type of fencing should be sufficient to discourage encroachment into the area intended to be protected by the fencing.
Where a net benefit for fish habitat can be demonstrated, Delta may consider proposals from applicants to enhance fish habitat, including in-stream works or the creation of wetland areas, as part of alternative design options for development projects.	Alternative design proposals are not required but may be proposed by the applicant in a format of their choice. However, Delta may request additional information or details upon review. Alternative design proposals will be subject to approval from Delta as well as applicable Federal and Provincial government authorities.

Guideline*	Interpretation and Information Requirements
Alteration of the natural drainage of the site and adjacent properties should be minimized.	Applicants should provide an assessment, prepared by a qualified professional of the predicted changes to site drainage and propose measures to manage drainage impacts. The plan should be prepared by a BC Land Surveyor, Registered Professional Engineer (P. Eng.), or other appropriately qualified person.
Applicants shall provide a proposal, prepared by a qualified professional, for the management of sediment during construction.	This sediment management proposal should show how the stream and any associated drainages will be protected from sediment, erosion and runoff impacts that may result from construction or land clearing activities. For major works, the proposal should be prepared by a P. Eng. or R.P. Bio.
Opportunities to register covenants or dedicate land will be considered.	The applicant may propose or may be asked by the City or DFO to register covenants prior to the onset of any development. Covenants should ensure that the SPEA remains in as natural a state as possible with no or limited encumbrances. Covenants should be registered in favour of the City of Delta, other public agencies, including the Province, or a non-governmental organization such as a private land trust committed to the management of watercourses and streamside areas. Dedication of such land is not required but may be considered by the applicant as an alternative to a covenant.
Financial security, as determined by the City of Delta, should be provided prior to the onset of any development.	Financial security may be required to ensure that works, such as landscaping or fencing, are undertaken as specified in the DP. A cost estimate for the proposed works prepared by a qualified professional (e.g., P. Eng., R.P. Bio. or Landscape Architect) should be submitted to the Municipality. The value of the financial security should be equal to the amount, plus inflation, that would be required for the City to undertake the works should the applicant not fulfill their obligation.

Guideline*	Interpretation and Information Requirements
Subject to Provincial or Federal agency review, Delta may, as part of the DP, allow "development" within the SPEA where it can be demonstrated in a less than desirable existing situation that a "net positive improvement" for fish habitat will result, or in a more desirable existing situation that "no net loss" will result.	Delta will review all information submitted with the DP application and decide whether or not to recommend that Council approve a new development within the SPEA. The decision will be based on the merits of the application, site-specific factors and constraints, and the degree to which other DP guidelines are met.
If an existing legally constructed building within a SPEA is damaged or destroyed, to the extent of 75% or more of its value above the foundation, it will be considered for reconstruction on its existing foundation where it can be demonstrated that the reconstruction would result in no impacts to fish and fish habitat.	Section 911 of the *Local Government Act* applies with respect to the reconstruction of non-conforming buildings. An owner applying to replace a building or structure that had been located within a setback area would be required to obtain a DP; however, the building or structure generally would be allowed to be reconstructed at the same location subject to other guidelines being met and subject to DFO review to ensure there are no impacts to fish and fish habitat. Notwithstanding the above, preference would be for the replacement building or structure to be set back from the stream as much as feasible on the property. This applies only to legally-constructed buildings damaged or destroyed to the extent of 75% or more of its value above the foundation. Undamaged buildings or illegally constructed buildings may not be allowed to be reconstructed in the same location.

**** Refer to Bylaw No. 6349 for exact wording.***