

DPA 2 – Eagle and Heron Nesting Trees¹⁰

DESIGNATION

The Eagle and Heron Nesting Trees Development Permit Area is shown on Map No. 6. The development permit area is defined as follows:

- a) For **Bald Eagle Nesting Trees** – the development permit area applies to all mapped and unmapped trees containing bald eagle nests and is a 60 metre radius measured from the base of the nesting tree.
- b) For **Great Blue Heron Nesting Trees** – the development permit area applies to all mapped and unmapped trees containing great blue heron nests, and shall be
 - i. a 60 metre radius from the base of the nesting tree on lots 1.0 hectare or smaller; and
 - ii. a 100 metre radius from the base of the nesting tree on lots larger than 1.0 hectare.

Where the colony consists of more than one tree, the radius is measured from a line drawn around the outer perimeter of the base of all nest trees.

The locations of the eagle and heron nesting trees identified on Map No. 6 of this plan are intended to provide an approximate location only. Ground-truthing may be required by Regional District staff, a Registered Professional Biologist, or British Columbia Land Surveyor, to accurately determine the location of the tree or trees.

AUTHORITY

The Eagle and Heron Nesting Trees Development Permit Area is designated a development permit area for protection of the natural environment, its ecosystems and biological diversity, pursuant to Section 488(1)(a) of the *Local Government Act*.

JUSTIFICATION

Nesting birds such as the Great Blue Heron and Bald Eagle are sensitive to impact from development and disturbance by human activity and require special treatment in order to protect their ecological value, now and for the future.

Pacific Great Blue Herons are a Species of Special Concern in Canada and are Blue-listed in British Columbia. There are only about 500 nests on Vancouver Island and the Gulf Islands. Bald Eagles are territorial and generally require 1000 meters between nesting sites. Both species nest near lakes, rivers and shorelines throughout BC where they are close to their food source. The loss of available nesting habitat near their food source, as well as disturbance from human presence, reduces the birds' ability to thrive and successfully raise their young. While Section 34 of the *Wildlife Act* provides for the protection of Bald Eagles and Pacific Great Blue Herons and several other at risk bird species, this development permit area protects the nesting habitat essential to ensuring breeding populations are maintained.

The objectives of this development permit area are:

1. To implement Regional Growth Strategy Policy 2.14 to protect environmentally sensitive areas from the impacts of development.
2. To protect eagle and heron nesting sites from the impacts of development.

¹⁰ Bylaw 1335.07, adopted December 4, 2018

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Information Note: the designation of this development permit area and description of the special conditions or objectives that justify the designation are located in the applicable official community plans.

APPLICABILITY

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 natural features, including plants, trees and shrubs;
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-pervious surfaces; and
5. subdivision of land as defined in the *Land Title Act* or *Strata Property Act*.

EXEMPTIONS

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

1. Development or alteration of land to occur outside the designated development permit area, as determined by a BC Land Surveyor, Registered Professional Biologist, or by the Regional District.
2. The landowner has offered and entered into a restrictive covenant to maintain an acceptable no disturbance buffer as determined by a registered professional biologist.
3. A Registered Professional Biologist with relevant experience has confirmed in writing that no Bald Eagle or no Great Blue Heron has established a nest and is present during the breeding and nesting season of the past five years. In general terms, this is from January to September for Great Blue Herons; and January to September for Bald Eagles.
4. Removal, trimming or alteration of vegetation other than the nest tree; onsite sewage disposal system installations and well drilling within the nest tree development permit area is permitted without a development permit where:
 - a) the activity is conducted entirely outside of the nesting season which is from January 15 to September 15 for Pacific Great Blue Herons and January 1 to September 1 for Bald Eagles, or
 - b) a Registered Professional Biologist with relevant experience has confirmed in writing that the activity will not negatively impact the nest tree, or its associated Great Blue Herons or Bald Eagles.
5. Subdivision involving only lot line adjustment or lot consolidation. 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.
6. Removal of trees deemed hazardous by a certified Arborist or Registered Professional Forester that pose an immediate threat to buildings or life safety. Removal of hazardous trees that also

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contain an eagle or heron nest is exempt only if a permit under the *Wildlife Act* has been obtained.

7. 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 Plant Council of BC's 'Grow Me Instead' publication.
8. 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.

9. Works conducted and/or approved by the Regional District, 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*, and where they have been made aware of the eagle or heron nest.
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.

GUIDELINES

Development permits shall be issued in accordance with the following:

1. Development shall be located where it will cause the least impact to the nesting activity of eagles or herons. It should be demonstrated that locating development entirely outside of the development permit area has been considered, and a description of why that is not being proposed should be provided.
 - a) An assessment must be prepared by a Registered Professional Biologist with relevant experience to assess the potential impact of the proposed development on the function of the nest tree and development or land alteration within the development permit area on the subject property. The report should include, but is not limited to, the following:
 - b) definition of the study area and the proposed activities in relation to the nesting tree, including a map to identify the location including geographic coordinates of nesting tree or trees, the development permit area, and proposed or existing buildings and structures;

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- c) identification of the breeding season;
 - d) assessment of the impacts of the proposed activities in relation to the resident birds (Bald Eagle or Great Blue Heron) and prescribe appropriate measures to preserve, protect, restore or enhance the function of the nesting tree area and any alteration of the development permit area on the subject property;
 - e) recommendations on how to mitigate negative impacts during and after construction, if permitted under the *Wildlife Act*, to protect the long term integrity of the nesting habitat; and
 - f) reference to ‘Guidelines for Ecosystem and Species Protection’ and/or ‘Guidelines for Raptor Conservation during Urban and Rural Land Development in BC’ found in ‘Develop with Care: Environmental Guidelines for Urban and Rural Land Development in British Columbia’ published by the Province of BC, or any subsequent editions.
2. The recommendations within the assessment report will form part of the development permit terms and conditions, which may include registration of a Section 219 covenant, prepared at the applicant’s expense, to the satisfaction of the Regional District.
 3. To avoid encroachment within the area to be protected as identified in the Assessment Report, prior to construction commencing and through to the completion of the development, installation of temporary fencing or flagged stakes is required at a distance from the nesting tree as prescribed in the Assessment Report.
 4. The applicant’s biologist may be required to provide confirmation to the Regional District that the property has been developed in accordance with their recommendations.