



# Regional District Okanagan Similkameen Information for modifying Floodplain Regulations

## Purpose

The purpose of Floodplain Regulation is to reduce or prevent injury, human trauma and loss of life, and to minimize property damage during flooding events. Experience has shown that regulation of land development to keep people out of harm's way is the most practical and cost effective way of achieving this goal.

## Background

Through amendments enacted in 2003 and 2004 of s. 910 of the *Local Government Act*, local governments acquired exclusive jurisdiction over floodplain designations within their boundaries. Such designations were made after local government considered guidelines established by the Ministry of Environment. Local government may specify different flood levels and setbacks in relation to different flood hazard characteristics and different types of uses, buildings, structures, and machinery and equipment within buildings and structures.

RDOS floodplain regulations are contained in each Electoral Area Zoning Bylaws. These can be found on the RDOS website ([www.rdos.bc.ca](http://www.rdos.bc.ca)) or at our office.

## Useful Definitions

**Natural Boundary:** The visible watermark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual and so long continued in all ordinary years as to mark upon the soil of the bed of the lake, river, stream or other water body a character distinct from that of the banks thereof, in respect to vegetation, as well as in respect to the nature of the soil itself (*Land Act*, s. 1)

**Habitable Area:** Any room or space within a building or structure that is or can be used for human occupancy, commercial, industrial, or business use, or storage of goods, possessions or equipment (including furnaces) which would be subject to damage if flooded.

**Flood Construction Level:** means a designated flood level plus an allowance for freeboard, or where a designated flood level cannot be determined, a height assessed above a natural boundary or a watercourse, lake or other body of water or natural ground elevation.

**Freeboard:** means a vertical distance added to a designated flood level to establish a flood construction level.

## Requests for Modifying Bylaws

*Legal opinion: A local government considering an exemption application must first consider the same guidelines it must consider when adopting flood plain regulations, or receive a report from a geotechnical engineer indicating that the land may be used safely for the use intended in spite of the flood hazard. In granting an exemption, the local government may impose terms and conditions contemplated by the provincial guidelines or recommended in the engineer's report, and require that the applicant grant a covenant under s 219 of the LTA to the local government. – B Buholzer, BC Planning Law and Practice, issue 16- 11/08*

Guidelines taken from *Flood Hazard Area Land Use Management Guidelines*, May 2004, prepared by Ministry of Water, Land and Air Protection:

Subject to review by and if acceptable to the local government, a floodplain bylaw may be modified. This discretion extends to the reduction of elevation requirements, where floodplain mapping exists, by the freeboard, provided the subject property is in the floodplain fringe area and there are no major erosion or channel avulsion hazards in the immediate vicinity.

Prior to agreeing to a modification, other exceptions in the surrounding area should be reviewed to ensure consistency and a summary report prepared. Review by the local government may not support modifications on technical grounds but the applicant may nevertheless have demonstrated a hardship.

Setback requirements should not be reduced unless a serious hardship exists and no other reasonable option is available. A valid hardship should only be recognized where the physical characteristic of the lot (e.g. exposed bedrock, steep slope, etc) and size of the lot are such that the building development proposals, consistent with the land use zoning bylaws, cannot occur unless the requirements are reduced.

In order to avoid setting difficult precedents these site characteristics should be unique to the subject property and environs. The economic circumstances or design and siting preferences of the owner should not be considered as grounds for hardship. Before agreeing to a modification, consideration should be given to other options such as the use of alternate building sites, construction techniques and designs (e.g. constructing an additional storey and thereby reducing the size of the 'building footprint').

### **Requirements**

To reduce an 'across the board' elevation noted in the zoning bylaw (e.g. 1.5 metres), an assessment is required to establish the 200 year frequency flood level for the stream in question. This can be accomplished by a hydrologist or a qualified engineer with suitable flood protection experience, through a watershed assessment, a review of historical records and an onsite evaluation, etc. The report must indicate that the land may be used safely for the intended use in spite of the flood hazard. Mitigation measures for reasonably protecting the development should also be included in the variance request.

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These measures only address the floodplain regulations contained in the Electoral area zoning bylaws. The applicant must also address other possible requirements prior to obtaining a building permit including the Riparian Area Regulations (RAR) and other possible geotechnical issues.

If a variance is successful, the applicant must also be prepared to enter into a covenant to 'save harmless' the Regional District. If a prior floodplain covenant currently exists on the property, the applicant must apply to modify it through Land Titles office. Ministry of Environment must approve the covenant modification. The applicant should provide proof the covenant will be able to be modified prior to the bylaw variance proceeds to the Regional Board for consideration.