

Draft



BUILDING AN ENVIRONMENTAL RESERVE BY-LAW

Environmental Reserves are very important components of the riparian (i.e. shoreline) habitat that provides many recreational and water quality benefits to our lakes. When subdividing land adjacent to a lake or stream a developer is required by the Municipal Government Act (MGA) to provide buffer zones called Environmental Reserves (ERs) between the private lots and the stream or lake and donate these strips of land to the local municipal government. In recent decades each subdivided lot is therefore separated from the Crown owned bed and shore of the lake by an ER which must be at least six metres wide and sometimes is much wider. The MGA states that the purpose of the ER is to (a) prevent pollution of the water body, and to (b) provide public access to and beside the bed and shore of the water body.

A number of municipalities have not yet passed a by-law that would protect their ERs on streams and lakes. Citizens can help their municipal governments develop and pass such by-laws. For a by-law to be effective in protecting the health of the ER, the riparian area, and the adjacent water body, the following points should be considered.

Definitions should include at least: development officer (i.e. the municipal government contact/approval person), environmental reserve, vehicle, off-highway vehicle, and service vehicle.

Protect the ER from damage by at least the following:

- damage to trees and other plants on the ER; but allow hand-pulling of designated noxious weeds; consider allowing a two metre wide, meandering trail from the lot, across the ER, to the beachtop.
- grazing of livestock on the ER.
- placing of signs on the ER, except with authorization from the municipal government.
- molesting of amphibians, reptiles, birds, and mammals on the ER.
- transporting and leaving goods or property upon the ER, and leaving property within the ER overnight except for camping in designated campsites.
- fires in the ER except in approved areas or with specific authorization of the municipal government.
- advertising, commercial or rental sales, and similar activities on the ER.
- use by amusement or entertainment activities, parades, spectator events, unless specifically authorized.
- use of motorized vehicles on the ER; consider exceptions for emergency vehicles, for deliver vehicles to lots where appropriate access cannot be achieved except through the ER, for direct crossing by motorized vehicles from the lot to the beachtop, and requiring that such crossing be done in the most direct and least damaging manner.
- digging, excavating, or building with the ER except with specific approval of the municipal government.

Activities done by, or upon the instructions of, the municipality on the ER should not be prohibited.

Signs marking the ER, installed by or for the municipality, should be protected from removal or defacing.

Enforcement of the by-law protecting environmental reserves should involve a three stage process in which (i) a development office may order in writing that harmful activities must stop, harmful developments must be removed, and restoration of the natural ER setting must be undertaken, (ii) if that order is unheeded, the municipality may, in accordance with the MGA, enter upon private land if required and take such action as necessary to carry out the order to repair and restore the ER, (iii) Council shall apply those costs to the property owner's land taxes, and (iv) a person in contravention of the by-laws is guilty of an offense and is liable on summary conviction to a substantial fine, court-ordered restoration, or, in default, imprisonment.

With a by-law containing such provisions, and with effective monitoring and enforcement, environmental reserves will be more likely to survive intact and continue to provide the very important functions that they were designed to.

The sample ER by-law below is built upon by-laws from the County of Barrhead and the County of Parkland. Copies of those counties ER by-laws can be obtained by phoning: County of Barrhead (780)674-3331, and County of Parkland (780)963-2231.

DRAFT

COUNTY/MUNICIPALITY OF _____

BY-LAW ___-01

A BY-LAW TO AUTHORIZE THE COUNCIL OF THE COUNTY/MUNICIPALITY OF _____ TO REGULATE AND CONTROL THE USE AND OPERATION OF ENVIRONMENTAL RESERVE LANDS WITHIN THE COUNTY/MUNICIPALITY OF _____.

WHEREAS the Council of the County/Municipality of _____ has passed By-law No. ___-01 being a by-law to regulate and control the use and operation of Environmental Reserve Lands within the County/Municipality of _____ in order to insure public safety and natural preservation of these lands, to prevent pollution of adjacent water bodies, and to provide public access to and beside the bed and shore of adjacent water bodies,

[Prevention of pollution and allowing public access are requirements of the Municipal Government Act.]

NOW THEREFORE the Council of the County/Municipality of _____, in the Province of Alberta, duly assembled, enacts:

1. In this By-law:

(a) "County," means the County/Municipality of _____;

(b) "Development Authority", means:

[In some jurisdictions this is the "Development Officer" or "By-law Enforcement Officer".]

i) a person appointed as a development authority pursuant to a resolution of Council, or;

ii) where a municipal planning commission is authorized to act as a development authority, the municipal planning commission, or;

iii) where a municipal planning commission is authorized to act as a development authority, in addition to a person appointed as a development authority, either or both of them;

(c) "Environmental Reserve" means an environmental reserve, as defined under the Municipal Government Act, Statutes of Alberta, 1994, and, amendments thereto;

[The ER usually is a strip of land, owned by the municipality, between private lots and a water body.]

(d) "Off-highway Vehicle" means an off-highway vehicle as defined in the Off-highway Vehicle Act, 1980, Revised Statutes of Alberta, Chapter 0-4, and amendments thereto;

[Includes four wheel drives, motorized quads and trikes, snowmobiles, etc.]

(e) "Service Vehicle" means a vehicle, as defined in this by-law, used for the purpose of servicing lots within the various subdivisions, with such commodities as fuel, boat gas, propane, fire wood, etc. Service Vehicle also means a fire truck, ambulance, water truck, delivery vehicle, etc., and a vehicle used to pump out sewage holding tanks and septic tanks.

(f) "Vehicle" means a device in, on or by which a person or thing may be transported or drawn on a highway. *[Includes cars, trucks, trailers, motorcycles, etc.]*

2. No person shall deface or in any way disrupt the natural growth of any tree or plant life within an environmental reserve, except by (i) hand-pulling weeds (as identified in the Weed Control Act, Revised Statutes of Alberta, 1980, Chapter W-6, and amendments thereto), or by (ii) mowing a single meandering trail, a maximum of two metres wide, from a landowner's private lot directly across the environmental reserve to the lakeward side of the environmental reserve.

[Native vegetation must be left intact; hand-pulling of formal weeds & mowing of narrow trail is allowed.]

3. No person shall allow livestock in their possession to graze vegetation in any environmental reserve.

4. No signage shall be placed on, altered, or removed from environmental reserves, except as authorized by the development authority.

5. No person in an environmental reserve shall tease, molest or injure any amphibian, reptile, bird, or mammal or throw any substance at or near such animals in such a way as causes, or is likely to cause, injury to any such animal.

6. No person shall transport any goods or property (chattels) over, or place and leave property upon, any environmental reserve without authorization from the development authority; and further, any goods and property used for personal recreational purposes shall be removed from an environmental reserve prior to 11:00 p.m. and shall not be left within an environmental reserve overnight except for camping in designated campsites.

[Camping on ERs is allowed only in specified sites; belongings cannot be stored on ERs without approval.]

7. Fires shall be permitted in an environmental reserve only in approved areas; otherwise, no fires are permitted unless approved by the development authority.

8. No person, firm, agency or corporation shall advertise, promote or carry on commercial or rental sales within any environmental reserve.

[ERs are for protection of water bodies and public access and enjoyment, not commercial purposes.]

9. The holding of any and all commercial amusements, entertainments, parades and spectator events is prohibited within an environmental reserve without first obtaining authorization from the development authority.

[Certain activities might be approved if non-damaging and appropriate to the ER.]

10. No person shall operate, drive or abandon a vehicle, an off-highway vehicle, or a service vehicle within or upon any environmental reserve unless it is (i) a service vehicle responding to an emergency, (ii) a service vehicle for which there is no other reasonable access to the subdivision lot that requires the respective service and that necessary access is conducted in the most direct and least damaging manner, or (iii) any type of vehicle that is crossing directly across the environmental reserve from a private lot to the lakeward side of the environmental reserve and its crossing is conducted in the most direct and least damaging manner.

[Emergency vehicles, service vehicles with no other options, and direct crossing by a vehicle is allowed.]

11. No person shall conduct any digging, excavation, or building operations within or upon any environmental reserve unless authorized by the development authority.

[ER restoration or other construction work requires approval.]

12. The provisions of this By-law do not apply to actions and operations of the County or persons acting upon the instructions of the County in respect to any activities within environmental reserves.

13. Enforcement:

[The following is wording similar to Land Use Bylaw enforcement provisions.]

(a) Where the development authority finds that a development or use of an environmental reserve is not in accordance with this Bylaw, the development authority may, by notice in writing, order the person in possession of the adjacent land or the person responsible for the contravention or all or any of them to:

- (i) stop the development or use of the land in whole or in part as directed by the notice; and
- (ii) demolish, remove, or replace the development and restore the natural features of the environmental reserve; and
- (iii) take such other measures as are specified in the notice so that the development or use of the environmental reserve is in accordance with the Act, the regulations, a development permit, a subdivision approval, or this Bylaw, as the case may be.

[The municipality's agent can stop, remove, etc. unauthorized works or intrusions.]

(b) Where a person fails or refuses to comply with an order directed to him under subsection (a) or an order of the Subdivision and Development Appeal Board within the time specified, the development authority may, in accordance with Section 542 of the Act, enter upon the private land and take such action there and on the environmental reserve as is necessary to carry out the order.

[When necessary, the municipality's agent can enter upon lands to repair and protect the ER.]

(c) Where the development authority carries out an order, the Council shall cause the costs and expenses incurred in carrying out the order to be placed on the tax roll as an additional tax against the property concerned and that amount shall be collected in the same manner as taxes on the land.

[Following (b), the person's taxes will be adjusted to include the municipality's repair/restoration costs.]

(d) A person who contravenes any provision of this By-law either by doing something which he is prohibited from doing or failing to do something which he is required to do is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000.00, exclusive of costs; and/or to environmental reserve restoration works or other habitat protection activities as determined by a Court by way of creative sentencing; or, in default of payment of the fine and costs of the committal, or in default of such site restoration works or other activities as determined by a Court, to imprisonment for a period not exceeding six months or until such fine and costs are sooner paid or such restoration works or other ordered activities are sooner completed.

[In extreme circumstances the municipality may have to take a person to court.]

READ A FIRST TIME, this day of , A.D., 2001.

READ A SECOND TIME this day of , A.D., 2001.

READ A THIRD TIME, by unanimous consent of the Councillors present and finally passed this day of , A.D., 2001.