

September 17, 2009

File No.: MA-04-1-2

To: Mayne Island Local Trust Committee
For the meeting of October 5, 2009

From: Robert Kojima
Island Planner
Local Planning Services

CC: David Marlor, Regional Planning Manager

Re: Riparian Area Regulation Implementation

BACKGROUND

The LTC is in the process of considering implementation of the Riparian Area Regulation (RAR) through designation of a development permit area (DPA). At the May meeting, the LTC received a staff report recommending that a community information meeting be scheduled once legal advice had been obtained on draft DPA provisions. Legal review has been completed and a community information meeting has been scheduled in conjunction with the business meeting of October 5, 2009.

ISSUES SUMMARY

The LTC has received and reviewed a report providing background on the provincial riparian area regulation, the results of watercourse mapping on Mayne, and options and recommendations for implementing the provincial riparian area regulation. The LTC directed staff to prepare draft development permit area provisions, the intent of which are focused on meeting the requirements of the RAR: to ensure that no development is approved by the local government within a riparian area without an assessment by a Qualified Environmental Professional (QEP) being undertaken and that the mitigation measures recommended by the QEP can be included as conditions of a development permit.

In terms of mapping, the approach for Mayne Island was to have a QEP identify the watercourses that are potentially fish supporting, this has served to limit the DPA designation to lands within 30 metres of three watercourses out of the eight assessed.

Based on legal review, a number of minor changes have been made to the draft DPA provisions. The revisions of note include:

- The scope of the DPA has been extended to include not only water courses, but water bodies.

- Provision has been included that would ensure that if the land falls into two DPA, the LTC could consider a single application and permit.
- Any use not residential, commercial, or industrial is clearly exempted from the requirement for a permit
- The guidelines now authorize restoration as a permit condition if that is a recommendation of the report.

A copy of the revised draft provisions is attached to this report, along with the proposed schedule designating the DPA. The next steps in the process are to:

- prepare a draft bylaw
- circulate the draft for agency comment
- proceed through the process to amend the OCP to establish a new DPA, including bylaw readings, public hearing, Minister's approval, EC approval and final consideration and adoption
- implement the new DPA through landowner and contractor contact

COMMUNITY INFORMATION MEETING(S)

A community information meeting is scheduled for the meeting of October 5th. As implementation of RAR is a provincially legislated requirement, the purpose of the meeting is to inform residents about the fact that the RAR is in effect, that local governments are obliged to protect riparian areas, and to answer questions and explain how the Mayne Island Local Trust Committee intends to implement the provincial requirements locally.

RESULTS OF CIRCULATION

Once a draft amending bylaw is prepared, it will be circulated to affected agencies for comment. Further revisions may be recommended based the comments received by other agencies.

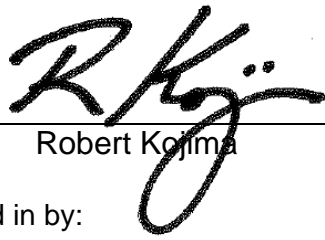
STAFF COMMENTS

The provincial RAR requires local governments to use existing land use planning tools to protect fish habitat, including streams that are potentially fish-bearing. The recommended approach of establishing DPA for the three streams subject to the RAR on Mayne will provide certainty to landowners and to the LTC that activities undertaken adjacent to those watercourses are assessed in conformity with the Riparian Area Regulations. Following the holding of the community information meeting, the LTC should direct staff to prepare a draft bylaw for referral to agencies. Once agency comments are received, the draft bylaw will be brought back to the LTC with any recommended revisions and for consideration of First Reading

RECOMMENDATIONS:

1. THAT staff be **directed** to prepared a draft bylaw that would amend the Mayne Island OCP to establish a development permit area based on the draft RAR DPA provisions.

Prepared and Submitted by:



Robert Kojima

Concurred in by:

September 17, 2009

Date

David Marlor, MCIP
Regional Planning Manager

September 21, 2009

Date

Attachments: Draft DPA provisions

RIPARIAN AREA DEVELOPMENT PERMIT AREA

Designation

This development permit area includes all land designated on Schedule XX of this plan as being within the Riparian Area DPA. This DPA includes the riparian assessment areas related to the watercourses and waterbodies identified on Schedule XX, consisting of:

1. for a stream, a 30 metre strip on both sides of the stream measured from the high water mark;
2. for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and
3. for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the high water mark to a point that is 10 metres beyond the top of the ravine bank;
4. for all other water bodies, an area encompassing the water and 30 metres around the water body measured from the natural boundary of the water body.

and Schedule XX shall be so interpreted. The actual location of the streams and the DPA may need to be determined on a site-specific basis by a qualified environmental professional or a surveyor.

Authority

This development permit area is established, pursuant to Section 919.1(1)(a) of the *Local Government Act*, for the protection of the natural environment, its ecosystems and biological diversity.

Terms used in this section that are defined in the Riparian Areas Regulation (RAR) are intended to be interpreted in accordance with the definition given in the Regulation, as it may be amended from time to time.

Special Conditions and Objectives that Justify the Designation

It is the Object of the Islands Trust to “Preserve and protect the Trust Area and its unique amenities and environment of the Trust Area for the benefit of the residents of the Trust Area, and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia.”

It is a policy of the Islands Trust Council that local trust committees shall in their Official Community Plans and regulatory bylaws, address means to prevent further loss or degradation of freshwater bodies or water courses, wetlands or riparian zones and to protect aquatic wildlife.

Furthermore, the province of British Columbia's *Fish Protection Act*, requires that local governments establish regulations to protect riparian areas. The reason for this designation is to protect riparian areas from development so that the areas can provide natural features, functions and conditions that support fish life processes.

Development Approval Information

The Riparian Area DPA is designated as an area for which development approval information may be required as authorized by Section 920.01 of the *Local Government Act*. Development approval information in the form of a report from a qualified environmental professional (QEP) may be required due to the special conditions and objectives described above.

Application Requirements

The applicant must, in addition to any other application requirements enacted or imposed by the Local Trust Committee, provide at their expense an assessment report from a Qualified Environmental Professional (QEP) which has been reviewed and approved by the Ministry of Environment.

Applicability

The following activities shall require a development permit whenever they occur within the DPA, unless specifically exempted below.

- a) removal, alteration, disruption, or destruction of vegetation;
- b) disturbance of soils;
- c) construction or erection of buildings and structures;
- d) creation of non-structural impervious or semi-impervious surfaces;
- e) construction of flood protection works;
- f) construction of roads, trails, docks, wharves and bridges;
- g) provision and maintenance of sewer and water services;
- h) development of drainage systems;
- i) development of utility corridors;
- j) subdivision as defined in section 872 of the *Local Government Act*.

A separate development permit, or additional development permit conditions in a single permit, may be required or imposed if the development is occurring in another development permit area designated in this plan.

Exemptions

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

- a) development where an assessment report prepared by a qualified environmental professional provides an unqualified certification that if the development is

- implemented as proposed there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area;
- b) the reconstruction, repair or maintenance of a pre-existing permanent structure on its existing foundation.
 - c) forest management activities, as defined in the Private Managed Forest Land Regulation, on land classified as managed forest land under the *Private Managed Forest Land Act*;
 - d) forest management activities on land that is the subject of a woodlot license or tree farm license under the *Forest Act*;
 - e) agricultural activities conducted in a manner consistent with normal farm practices as defined in the *Farm Practices Protection (Right to Farm) Act*;
 - f) mining activities regulated by the *Mines Act*;
 - g) all park uses not consisting of commercial, residential, or industrial activities;
 - h) for certainty, all uses that are not residential, commercial or industrial or accessory to such a use;
 - i) for certainty, actions undertaken by the Crown or an agent of the Crown;
 - j) the removal of trees that have been examined by an arborist and certified to pose an immediate threat to life or property;
 - k) gardening and yard maintenance activities within an existing landscaped area, including mowing, pruning, planting and minor soil disturbance that does not alter the general contours of the land;
 - l) the construction of a fence if no native trees are removed and the disturbance of native vegetation is restricted to 0.5 metres on either side of the fence;
 - m) the construction of a trail if all of the following apply:
 - the trail is 1 metre wide or less;
 - no native trees are removed;
 - the surface of the trail is pervious;
 - the trail is designed to prevent soil erosion where slopes occur; and
 - where the trail parallels the stream, the trail is more than 5 metres away from the high water mark of the stream;
 - n) ecological restoration and enhancement projects undertaken or authorized by a public body;
 - o) work that is authorized by Fisheries and Oceans Canada by permit under section 35 of the *Fisheries Act*;
 - p) changes in or about a stream authorized under Section 9 of the *Water Act*;
 - q) for certainty, any work that is not “development” as that term is defined in the *Riparian Area Regulation*.

Guidelines

Prior to undertaking any development activities within the Riparian Area DPA an owner of property shall apply to the LTC for a development permit, and the following guidelines apply:

- a) In general, all development in this DPA should be undertaken in a manner that minimizes impact on the riparian area. Where a QEP has made recommendations for mitigation measures, subdivision design, enhancement or restoration in order to lessen impacts on the riparian area, the LTC may impose permit conditions, including a requirement for security in the form of an irrevocable letter of credit, to ensure the protection of riparian areas, consistent with the measures and recommendations described in the report.
- b) The development permit should not allow any development activities to take place within any Streamside Protection and Enhancement Area (SPEA) identified by the QEP, and the owner should be required to implement a plan for protecting the SPEA over the long term through measures that may be implemented as conditions of the development permit.
- c) Where the QEP report describes an area as suitable for development with special mitigating measures, the development permit should only allow the development to occur in compliance with the measures described in the report. Monitoring and regular reporting by a QEP at the applicant's expense may be required during construction and land development phases, as specified in a development permit.
- d) If the nature of the proposed project in a riparian assessment area changes after the QEP report has been prepared such that it is reasonable to assume that the QEP's assessment of the impact of the development may be affected, the LTC may require the applicant to have the QEP update the assessment at the applicant's expense and DP conditions may be revised accordingly.
- e) The LTC may consider variances to subdivision or building siting or size regulations where the variance may result in enhanced protection of a riparian assessment area in compliance with recommendations of a QEP report.

PROPOSED DPA SCHEDULE

