STAFF REPORT

Date: October 15, 2013 **File No.:** 6500-20 (Gabriola RAR)

To: Gabriola Island Local Trust Committee
For the special meeting of October 23, 2013

From: Courtney Simpson, Regional Planning Manager

cc: David Marlor, Director Local Planning Services

Re: Riparian Areas Regulation Implementation – Post Public Hearing

OVERVIEW:

The Local Trust Committee (LTC) held a public hearing on bylaws 265 and 266 on Wednesday, September 4, 2013. A public hearing is a quasi-judicial process within and following which specific procedures must be followed.

Following the hearing, the LTC may choose to give further readings to a bylaw, defeat a bylaw, or alter a bylaw within certain parameters. The procedural steps following the close of the hearing are as follows:

1. Consideration of Second Reading (this may include amendments to alter a bylaw).
2. Consideration of Third Reading.
3. Forwarding of the bylaw to Executive Committee for approval.
4. Forwarding of the bylaw to the Minister's office for approval (OCP amendment bylaws only).
5. Reconsideration and adoption.

Following the close of the hearing, the LTC may not hear further submissions without holding a new hearing. The principle is that if new information is considered by the LTC, all other interested parties also need to have the opportunity to consider any new relevant material and to make further representations to the LTC. The courts have clarified that this does not open the door to endless public hearings: a local government body can legitimately decide that after a hearing it wishes to hear further from staff on issues raised at the hearing.

A bylaw may be altered after the hearing, based on information received or heard by the LTC at any point prior to the close of the hearing, provided that the amendments do not alter use or increase density, or decrease density without a landowner's consent.

If the Executive Committee and Minister approve the bylaw, the next step for the LTC would be to adopt the bylaw.

At their September 5, 2013 LTC meeting the LTC passed the following two resolutions:

It was MOVED and SECONDED,
That the Gabriola Island Local Trust Committee request that staff outline a process for the Local Trust Committee doing simple riparian area regulation assessment as a way to have landowners avoid hiring their own qualified environmental professional.

CARRIED

It was MOVED and SECONDED,
That the Gabriola Island Local Trust Committee request staff advise on the bylaw changes proposed by Trustee Rudischer and Malcolmson, and any other issues arising from the public input.

CARRIED

RECOMMENDED BYLAW AMENDMENTS

Based on submissions received at and before the public hearing, staff recommends the following changes to proposed bylaws 265 and 266. Attachment 1 shows the recommended changes inserted in the applicable portion of Bylaw 266, for discussion purposes.

Text amendments:

a) Remove definition of watercourse from the OCP

b) Add exemption for manual removal of invasive species and manual planting of native vegetation conducted in accordance with best management practices

c) Include information note to direct the reader to resources on best management practices for manual invasive species removal and planting of native vegetation

d) Add exemption for septic field repair or replacement on the same spot

e) Add "application of artificial fertilizer, pesticides or herbicides" to the list of activities requiring a development permit

Staff comments on recommended text amendments:

a) *Remove definition of watercourse from the OCP*: "Watercourse" is defined in the OCP in relation to development permit guidelines requiring setbacks for septic fields from watercourses. Because bylaws 265 and 266 move the development permit guidelines to the LUB, this definition should be removed from the OCP. This will also remove any ambiguity about the application of new DP-3 Riparian Areas in bylaw 265 that uses the term watercourse, whose definition under the RAR is much broader than the existing definition in the OCP. There are several policies that use the term "watercourse" that will remain in the OCP, but a definition is not required in these cases.

   The same definition of "watercourse" currently exists in the LUB, and provides the clarity needed for the guidelines in DP-2, 4, and 9 that use the term. Proposed DP-3 (Riparian Areas) does not use the term "watercourse" in the LUB so there is no conflict with the definition as suggested in public submissions. For further clarity, LUB section F.3.1 Definitions states that terms used in section F.3 (which is DP-3) are defined in the RAR.

b) *Exemption for invasive species removal:* there has been a strong interest in exempting invasive species removal from requiring a development permit. Staff previously advised that an outright exemption for invasive species removal was not defensible from a scientific point of view and would not comply with the RAR, because of the biological knowledge and expertise required to undertake invasive species removal and restoration

on a large scale without risking further damage to the ecosystem that the DPA is trying to protect. A review of other local government bylaws to implement RAR has revealed an option for exempting small scale invasive species removal by stipulating that manual removal is exempt.

Other options were considered such as including a list of invasive species in the bylaw, allowing their removal by permission of staff, or using the term "small scale" instead of "manual removal" but are judged to be less clear, practical or appropriate for Gabriola.

Exemption for restoration and enhancement: The public comments received regarding this exemption are focused more on individual property owners being able to steward their land without a development permit than on large-scale, neighbourhood or region-wide projects. The exemption currently reads "ecological restoration or enhancements undertaken or authorized by a public body". This exemption is mean to apply to significant stream habitat restoration projects for which there would be an in-stream component and would require approvals from the provincial and/or federal government under legislation other than the *Riparian Areas Regulation.* The purpose of exempting this work from requiring a development permit is that through the process of obtaining these other approvals, the considerations that would be required for a development permit would be duplicated.

Previously the LTC asked for staff to clarify how a "public body" is defined with the hope that it could include local conservation organizations. After discussion with the Ministry of Forests, Lands and Natural Resources Operations, staff previously reported that if the group proposing the work has the relevant, science-based expertise, and understands that this exemption would only include work outside the wetted width of the stream (i.e. no in-stream enhancements, as this is covered under different legislation), then there does not appear to be a conflict with the RAR. Further, staff advised that the Local Trust Committee could, as a follow up step to implementing the new development permit area, direct staff to develop criteria for acceptable "public bodies" and keep a list in the office of those who can undertake restoration or enhancement without the need for a development permit.

After a careful review of the public submissions received and direction from trustees to have this exemption not rely on staff developing criteria outside the bylaw, staff believes that property owners can be enabled to steward their property by undertaking small scale, manual restoration through a new exemption specifically regarding planting with native vegetation.

c) *Best management practices for invasive species removal and native vegetation planting*: staff further recommends that an information note is added to the bylaw to direct the reader to resources containing best management practices for invasive species removal. In a later section of this staff report, staff also note that we will ensure these resources are available at the Islands Trust Northern Office front counter.

d) *Add exemption for septic field repair or replacement on the same spot:* as confirmed by Ministry of FLNRO staff at the June CIM, this can be included as an exemption to the DPA.

e) *Application of artificial fertilizer, pesticides or herbicides:* A submission from the public suggested prohibiting the application of artificial fertilizer, pesticides or herbicides within 15m of a stream. In response, trustees directed staff to provide advice on an amendment to the exemption for yard maintenance activities in a previously landscaped area to clarify that the exemption does not include application of cosmetic pesticides.

Staff recommends as well, that "application of artificial fertilizer, pesticides or herbicides" is added to the list of activities requiring a development permit. Staff does not recommend that this is limited to the area within 15m of the stream. Mapping amendments described in the next section are expected to reduce the DPA to less than 30m in some areas, but where the DPA remains at 30m it is appropriate to have restriction apply to that area. This is also consistent with the restriction on the use of chemicals within 30m of the natural boundary of the sea in the current DP-2 and DP-4.

Mapping amendments:

To respond to the September 5, 2013 resolution requesting that staff outline a process for doing a simple *Riparian Areas Regulation* assessment, staff contacted Madrone Environmental Services Ltd (Madrone) for a proposal to do this work as a follow up to their February 2012 stream identification report.

The work would involve following the simple assessment methodology to establish a Streamside Protection and Enhancement Area (SPEA) large enough to include any "measures" required by the RAR, so that the LTC could establish the boundary of the DPA at that SPEA. This is similar to the approach taken by the District of Saanich that the LTC asked staff to look into at their September 5, 2013 meeting.

With the simple assessment SPEA as the DPA boundary, a property owner still has the option of further reducing the SPEA by hiring a QEP to conduct a detailed assessment and obtaining a development permit. It is not possible to set the DPA boundaries based on a detailed assessment because "measures" are prescribed by the QEP for a detailed assessment that apply outside the SPEA; the DPA must include the area where measures could be prescribed in order to be compliant with the RAR.

To determine the SPEA under a simple assessment, Madrone will follow the RAR Assessment Methods which is a schedule to the Regulation itself. An excerpt from the Assessment Methods is included as Attachment 2 to this report. Madrone's initial assessment for the purpose of providing a proposal for this work is that, pursuant to the RAR simple assessment methodology, the SPEA on many of the undeveloped areas would remain at 30m and the SPEA would likely be less than 30m in areas where streams flow adjacent to roads or are in built up areas.

The quote for the work is $3,510 which can be accommodated in the current fiscal year's budget for the OCP/LUB Review project. The assessment would not require additional field work but will be based on field work already completed, air photo interpretation, and determination of stream periodicity (how much of the year water flows in the stream). No fish sampling will be carried out which means that a "fish bearing" status will be assigned to all streams.

The approach described here and recommended by staff differs from that of the District of Saanich that the LTC specifically requested advice on adopting. The Saanich DPA is 30m throughout, but within the 30m is a SPEA that varies from 5m to 30m as identified on a map. Within the SPEA, a QEP report is required, and in the area between the SPEA and the 30m DPA boundary, no QEP report is required but some guidelines still apply. Staff expertise and discretion is required to determine the "degree of potential impacts of the development on the SPEA and the condition of the SPEA" in the Saanich DPA. Saanich has an Environmental Services department within the Planning Department and has staff able to make these determinations. At the Islands Trust we do not have comparable staff positions, so a development permit area should not rely on this kind of decision-making by staff.

RECOMMENDED IMPLEMENTATIONS STEPS

Following adoption of bylaws 265 and 266, there are a number of recommended implementation steps that will address some concerns heard at the public hearing. For one of these in the list below, direction from the LTC is needed to ensure it is on the work program.

- Adoption of a development approval information bylaw
    - *currently drafted, Top Priority #2, no further direction needed*
- Amendment of fees bylaw to reduce the fee for a development permit in DP-3 to $200
    - *LTC has directed this be added to the scope of the Riparian Areas Regulation Implementation component of Top Priority #1, no further direction needed*
- Staff to develop and maintain resources in the Northern Office regarding best management practices for manual invasive species removal
    - *No direction needed from LTC*
- Staff to meet with Regional District of Nanaimo Building Inspection Department to discuss implications of the bylaw for building permit approvals
    - *No direction needed from LTC*
- Identification of other watersheds applicable to the RAR, mapping of their streams and addition to the DPA.
    - *Staff recommends adding to Projects List*

SUMMARY OF OTHER PUBLIC HEARING SUBMISSIONS

Below is a summary of other comments received at and before the public hearing where changes to the bylaws are not recommended, with staff comment. Reducing the DPA based a simple assessment as recommended earlier in this report is expected to alleviate many of the concerns below.

1. The DPA should be 5m around ditches

There are no ditches that have been mapped in the Gabriola RAR-applicable watersheds that this 5m provision applies to. What appear to be “ditches” in these mapped stream systems on Gabriola are in fact “channelized streams”. This means the natural stream has been modified to move where it flows. It appears this was done probably at the time of subdivision of the small lots, and on agricultural land. Channelized streams receive special considerations in determining the SPEA, but the DPA cannot be reduced to 5m as it could for true ditches.

Under a detailed assessment, a stream is a ditch if it is determined to be wholly man made (not part of the historic drainage pattern), straight, *and* has no significant headwaters such as a wetland or lake. Roadside ditches that receive only runoff from the immediately adjacent lands are often classified as ditches under the RAR.

2. The LTC should refuse to comply with the RAR in its current form

Although there was a general understanding that the LTC is required by the provincial RAR to amend their bylaws to implement this legislation, there were many submissions calling for the LTC to not amend their bylaws to comply with it.

The Riparian Areas Regulation (RAR), enacted under Section 12 of the Fish Protection Act in July 2004, requires local governments to protect riparian areas during residential, commercial, and industrial development by ensuring that proposed activities are subject to a science based assessment conducted by a Qualified Environmental Professional (QEP).

Staff cannot recommend that the LTC not comply with legal requirements under provincial law. A local government that refuses to meet its obligations is vulnerable to legal challenge.

One public hearing submission recounted a telephone conversation with Narissa Chadwick of the Ministry of Community, Sport and Cultural Development (MCSCD) who, the author of the submission asserted, said that the Minister would not refuse to approve LTC bylaws if the LTC did not comply with the RAR. Staff has since learned from Ms. Chadwick that her comments were taken out of context.

Ms Chadwick has confirmed in writing that the process at the MCSCD office remains as Islands Trust planning staff had previously understood – that 'not having RAR may hold up a bylaw approval process if there are objections raised by FLNRO'. MCSCD staff recommends that local governments not submit bylaws for approval, if referral comments from other ministries include objections. Such objections must be brought to the minister's attention when a bylaw is submitted for approval. This puts the minister of CSCD in the position of either having to approve a bylaw over the objections of another provincial ministry, or of refusing approval at the end of the bylaw process, neither of which is desirable. Instead, MCSCD staff asks local governments to resolve issues with other ministries before submitting bylaws for approval. While MCSCD staff can't definitively state that their minister will approve or reject any particular bylaw, the future submission of an OCP that doesn't comply with RAR runs the risk of raising objections from the FLNRO. Experience from other local trust areas give staff every reason to expect that bylaws submitted to the minister of CSCD with objections from FLNRO or any other ministry will experience significant delays.

Given the reporting in the local media to the contrary, staff sought to have MCSCD staff issue a correction to the media. Citing inaccurate reporting of their previous communications, they did not agree, fearing further confusion. Instead, they recommended that staff from FLNRO provide clarification. We understand that a representative from FLNRO did give an interview to the Gabriola Sounder to clarify some misunderstandings about the RAR.

MCSCD staff did provide the following summary points related to their approval of OCP bylaw amendments:

- Islands Trust OCP amendments require ministerial (MCSCD) approval
- if a provincial ministry/agency identifies a conflict between a bylaw and provincial interest it is brought to the minister's (MCSCD) attention
- the ministry responsible for RAR is MFLNRO and I am pleased to hear that you are in contact with them on this issue

Public hearing submissions cited numerous other reasons why the LTC should not comply with the RAR based on perceived flaws in the legislation and the Implementation Guidebook. These reasons will not be evaluated here as staff does not consider them to be within the scope of consideration for the LTC. Those with objections to provincial legislation such as the RAR have the option of communicating their concerns with provincial representatives. Further, staff does not recommend waiting for completion of the Ombudsman's report on the RAR as we understand the review has to do with

provincial management of the RAR. Relieving local governments from their responsibilities under RAR is not within the scope of that review.

3. The DPA should exempt vegetation management to reduce the risk of wildfire

This issue was first raised by the Gabriola Fire Chief in relation to the now deferred Steep Slopes DPA. Steep slopes are areas where wildfire is known to accelerate. The RAR does not allow for a blanket exemption for vegetation management to reduce the risk of wildfire. Public comments on this topic were both regarding protecting homes by clearing an area around them, and reducing the risk of wildfire generally by clearing brush in all areas.

Staff researched other how local governments in the Okanagan where wildfire risk can be severe have addressed this apparent conflict between the RAR and reducing wildfire risk. No clear model has been discovered demonstrating a successful balance between implementing the RAR and allowing vegetation removal to reduce wildfire risk without a development permit. Property owners could raise this issue with the province who has established the RAR.

4. The DPA should exempt food gardens to promote local food and food security

A number of public hearing comments and submissions opposed putting the protection of riparian areas ahead of encouraging local food production in the 30m riparian assessment area (RAA). This was particularly concerning for small lots where most or all of the property is within the 30m RAA, meaning that establishing a new food garden would require a development permit.

5. Exemption F.3.3.1(h) should be amended since some of these things are instream works

Exemption F.3.3.1(h) reads as follows:

> emergency procedures to prevent, control or reduce immediate threats to life or property including:
>
> i. emergency actions for flood-protection and erosion protection,
> ii. clearing of an obstruction from a bridge or culvert or an obstruction to drainage flow, and
> iii. repairs to bridges and safety fences carried out in accordance with the *Water Act*

Item *ii* is an instream work and this exemption is not necessary. However, it's also not necessary to include any of the exemptions that relate to authorizations under other legislation, but these have been included for clarity. At a previous meeting the LTC discussed the list of exemptions in detail and decided to include those that are in the currently proposed bylaw for reasons of clarity even if they are not technically necessary.

6. Requirement to maintain native vegetation should only apply to within 5m of a stream

The public hearing submission that proposed this amendment provided rationale related to the biological functioning of streams, Castell Brook in particular, and argued that retaining native vegetation in an area greater than 5m from the stream is unnecessary. The LTC does not have the authority to make this determination under the RAR, but it is a QEP who can determine this and does so by determining a SPEA based on established methodology for assessing the 30m riparian assessment area

7. Minor gardening and yard maintenance that does not involve pesticide or fertilizer application and planting of trees and shrubs in accordance with recommended or appropriate low-impact methods and times should be exempt

Gardening and yard maintenance activities in a pre-existing landscaped area are an exemption in the DPA as proposed. For clarity, fruit tree pruning would be included in this exemption as the area where fruit trees are can be considered a pre-existing landscaped area by virtue of fruit trees being planted and maintained there.

The RAR is clear that any new gardening or landscaping cannot be done within the 30m assessment area without a QEP report, and cannot be done within the SPEA established by the QEP. The suggestion is that this "minor" landscaping and gardening cannot be imagined to have a negative impact on the riparian area, but the LTC cannot make this determination. The hope is that with the simple assessment, in some areas the SPEA will be less than 30m so the area of a lot where new gardening or landscaping cannot take place without a further QEP report (detailed assessment) would be reduced.

8. There should be a property tax break similar to NAPTEP for protecting riparian areas

Staff has done some research into available options, and has found that the Cowichan Valley Regional District is exploring a tax incentive to encourage compliance with the RAR. At the time or writing this report staff does not have any further information.

Some riparian areas may be eligible for the NAPTEP program, and as per the request by the LTC, the Islands Trust Fund staff is planning a presentation on this program on Gabriola before the end of this calendar year.

9. The bylaw should require consultation with a biologist on re-establishing native vegetation at the time of building permit application

This is a good idea to achieve restoration of riparian areas and is not explicitly required by the RAR. If a property owner applies for a development permit, the required QEP report may require restoration in the SPEA as a condition of the proposed development occuring in the assessment area.

Adding a condition to development permits that native vegetation must be re-established is possible, and this would exceed the requirements of the RAR. If the LTC would like staff to draft bylaw wording to this effect they should direct staff to do so. For clarity the LTC cannot link this requirement to a building permit because they do not have the authority for issuing building permits but it could be a condition of a development permit.

10. Notification of mapping being conducted not received

Since hearing from numerous property owners at and before the public hearing that they had not received notification of Madrone entering their property to conduct the mapping, and/or that they had not authorized Madrone to do so, staff has thoroughly reviewed the notifications that were sent and the addresses they were sent to. Copies of the mail-outs are now posted to the Islands Trust website and listed below:

- Just the Facts mail-out - November 2011
- Landowner notification letter regarding mapping - November 17, 2011
- Landowner notification letter regarding mapping - December 7, 2011
- Letter regarding draft bylaws and community information meeting - January 2, 2013
- Postcard regarding community information meeting - June, 2013

The “Just the Facts” mail out was included in the landowner notification letters from November and December, 2011. There are two separate notification letters to reflect later dates for field visits by Madrone to one area. Staff does not understand how so many people have said they did not receive these mail-outs. The envelopes were addressed to property owners by name, and we do not believe they had the appearance of junk mail. It should be mentioned that the January, 2013 mail-out was sent to the 240 properties in the 30m assessment area of the mapped streams, and the 2011 mail-outs went to fewer property owners, where the properties may have required access to investigate the streams.

The landowner notification letters indicated that Madrone may be entering private property unless the Islands Trust is contacted that a property owner does not want Madrone to do so. We heard from several people that they did not want Madrone entering their property and to the best of our knowledge that was respected.

It was based on legal advice and a short timeline that we did not take the approach of requiring a positive conformation of permission to enter private property. Given the public criticism of this approach on Gabriola, in the future staff recommends that the contractor be required to obtain this positive confirmation before entering private property, and this is a requirement of the request for proposals for RAR mapping currently out for Denman, Hornby and Salt Spring Island.

11. Other concerns:

Several other concerns were mentioned in public hearing submissions:

- Fear of unfounded bylaw enforcement complaints regarding exempt development in the new DPA (ie maintenance of a previously landscaped area)
- Reduction in property values
- MoTI ditch clearing introducing sediment
- Social inequity

12. Misunderstandings:

Public hearing submissions that reflect misunderstandings on a number of points were also received, and the following is an attempt to correct those misunderstandings:

- The RAA is a not a “leave strip” that is used for minimum lot size calculation, and does not make some property sizes legally non-conforming
- The definition of stream in the Forest Practices Act does not impact the validity of the Fish Protection Act and its definition of stream
- Those portions of stream that do not contain fish may still be fish habitat under the RAR
- The proposed riparian areas development permit does not exceed the requirements under the RAR.
- It was appropriate to conduct mapping in the winter as opposed to the dry months. The mapping did not include fish sampling, which does have to be conducted, in part, in the dry summer months.

13. Mapping

The following is explanation of question that were raised related to the Madrone Report and mapping of streams

McClay Creek: Several questions were asked about the application of RAR to this creek that runs across and/or beside Horseshoe Rd, Gallagher Way, McClay Way, Roxanne Blvd and Barrett Rd. Section 3.2.2 of the Madrone report discusses this stream, a tributary of Castell Brook, and its characteristics as it is considered a stream under the RAR.

Lock Bay: Questions were raised about the application of Castell Brook to the RAR given the log jam at Lock Bay, both at the June CIM and at the public hearing. Trystan Wilmot further explained his classification of the stream as applicable to RAR in a follow up email to Robert Seaton who asked the question at the CIM. This portion of his email is below:

> *I was intrigued by the log jam/barrier issue that you raised last night on Castell Creek. I again checked through the bio-inventory report and RAR assessment that had previously been completed for the area in question, and can confirm that Castell Creek discharges into the salt marsh habitat, which is connected to the ocean along the north-eastern margins of the marsh. There is an accumulation of driftwood where the salt marsh drains into the ocean, which was described in the bio-inventory report as restricting fish access. In my opinion, an accumulation of driftwood is not a definitive barrier to fish, which could potentially enter the salt marsh habitat and the stream, which flows directly into channels within the salt marsh. In addition, the previous report does not classify the driftwood accumulation as a barrier to fish, but describes it as restricting fish access, which was based only on a visual assessment. The description of the stream in our mapping report is consistent with the RAR report that has already been applied to this stream (part of the bio-inventory report). For example, we noted the same gradient barrier downstream of Daniel Way. As we discussed last night, fish were observed in the pond that also discharges into the salt marsh by the author of the bio-inventory report (he did not confirm species); we did not see fish in the pond, but made note of the previously documented observation. As a RAR had already been completed on this stream, we knew it was an obvious watercourse to include in our mapping project.*

SUMMARY OF OPTIONS

In summary, staff believes the changes to bylaws 265 and 266 recommended in this report address a number of the concerns raised in public hearing submissions. The additional contract with Madrone to determine a SPEA based on simple assessment methodology will address many more of the concerns.

It should be emphasized that in a number of areas that are currently undeveloped the SPEA will likely be 30m and the DPA in those areas will not be reduced from the currently drafted bylaw. However, it is the developed, small lot areas that appear to be of the most concern to property owners, and reducing the DPA in those neighbourhoods is expected to have a significant impact in reducing the impact on properties.

However, the option remains for the LTC to give further readings to bylaws 265 and 266 with the recommended text changes but without this additional mapping. This will enable the bylaws to be adopted sooner, and will leave staff resources available to work on the other top priority projects.

Procedurally, bylaws 265 and 266 have been given first reading and a public hearing has been held. If the LTC would like to proceed with further mapping, staff recommends giving second reading to the amended bylaws now, and third reading would be given once mapping changes had been made. The reason for recommending second reading now in advance of defining the SPEA is simply to have the bylaw progress by making what changes are possible now. If the LTC wishes to defer further readings until the further mapping is available, there is no procedural problem with that approach.

Given that staff has been in close contact with MFLNRO staff about the approach of using pre-determined SPEAs, an additional formal referral to them is not seen as necessary, neither is additional referral to any other agency or First Nation.

A second public hearing is not required as the bylaw alterations are to address information received or heard by the LTC prior to the close of the hearing, and the amendments do not alter use or increase density.

RECOMMENDATIONS:

Staff recommends THAT the Gabriola Island Local Trust Committee:

1. amend proposed bylaw No. 265 cited as "Gabriola Island Official Community Plan (Gabriola Island) Bylaw 166, 1997, Amendment No. 1, 2012 by deleting the definition of watercourse from Appendix 1 [definitions];
2. give second reading to proposed Bylaw No. 265, cited as "Gabriola Island Official Community Plan (Gabriola Island) Bylaw 166, 1997, Amendment No. 1, 2012", as amended;
3. amend proposed Bylaw No. 266, cited as "Gabriola Island Land Use Bylaw 177, 1999, Amendment No. 1, 2012" by:
    a. adding a new activity to the list requiring a development permit in section F.3.2.1: "application of artificial fertilizer, pesticides or herbicides"
    b. adding a new exemption to the list in F.3.3.1: "repair or replacement of a septic field on the same spot
    c. adding a new exemption to the list in F.3.3.1: "manual removal of invasive species and manual planting of native vegetation conducted in accordance with best management practices"
    d. adding a new information note after the list in F.3.3.1: "Information Note: For best management practices on manual removal of invasive species and planting of native vegetation, property owners should contact organizations such as the Invasive Species Council of British Columbia and the Coastal Invasive Species Committee."
4. give second reading to proposed Bylaw No. 266, cited as "Gabriola Island Land Use Bylaw 177, 1999, Amendment No. 1, 2012" , as amended;
5. add "identification of additional watersheds applicable to the RAR" to the Projects List with an activity column reading "stream mapping and addition to DP-3"; and
6. direct staff to contract with Madrone Environmental Consulting Ltd to conduct a simple assessment of the streams mapped in their 2012 "Gabriola Island Riparian Area Regulation Stream Identification" report.

Prepared and Submitted by:

Courtney Simpson	October 17, 2013
Regional Planning Manager	Date

Attachments:

1. Excerpt from proposed bylaw No. 266 showing recommended amendments
2. Excerpt from Riparian Areas Regulation Assessment Methods

ATTACHMENT 1: Excerpt from proposed bylaw No. 266 showing recommended amendments

F.3 DP-3 Riparian Areas

F.3.1 Definitions

F.3.1.1 Terms used in Section F.3 that are defined in the provincial *Riparian Areas Regulation* are intended to be interpreted in accordance with the definition given in the Regulation, as it may be amended from time to time.

F.3.2 Applicability

F.3.2.1 The following activities shall require a development permit whenever they occur within the DPA, unless specifically exempted under Policy F.3.3.1:

a. subdivision, as defined in Section 872 of the *Local Government Act*
b. construction of, addition to, or alteration of a building or other structure
c. removal, alteration or destruction of vegetation
d. disturbance of soils
e. creation of non-structural or semi-impervious surfaces
~~e.~~f. application of artificial fertilizer, pesticides or herbicides
~~f.~~g. development, as that term is defined under the provincial *Riparian Areas Regulation*

F.3.2.2 In the event that a parcel of land is subject to more than one development permit area, all development permit area guidelines shall apply and only one development permit, containing conditions based on guidelines in all applicable development permit areas, is required.

F.3.3 Exemptions

F.3.3.1 The following activities are exempt from any requirement for a development permit. Despite these exemption provisions, owners must satisfy themselves that they meet any other applicable local, provincial or federal requirements.

a. for certainty, all uses that are not residential, commercial or industrial or accessory to such a use
b. interior or structural exterior alterations, renovations, maintenance, reconstruction or repair to a pre-existing permanent building or structure on an existing foundation or footprint to an extent that does not alter, extend or increase the footprint
~~b.~~c. repair or replacement of a septic field on the same spot
~~c.~~d. the removal of trees that have been examined by an arborist and certified to pose an immediate threat to life or property
e. gardening and yard maintenance activities within a pre-existing landscaped area
~~d.~~f. manual removal of invasive species and manual planting of native vegetation conducted in accordance with best management practices
~~e.~~g. pruning of not more than two trees in one growing season and that is conducted in accordance with the standards and recommendations of the International Society of Arboriculture, and that does not involve: the lift pruning of lower limbs to the extent that the live crown ratio is less than 50%, the removal of more than 25% of the crown in one growing season, topping, or the pruning or removal of a structural root within the critical root zone
~~f.~~h. ecological restoration or enhancement projects undertaken or authorized by a public body
~~g.~~i. work that is authorized by Fisheries and Oceans Canada by permit under Section 35 of the *Fisheries Act*
~~h.~~j. emergency procedures to prevent, control or reduce immediate threats to life or property including:
    iv. emergency actions for flood-protection and erosion protection,
    v. clearing of an obstruction from a bridge or culvert or an obstruction to drainage flow, and
    vi. repairs to bridges and safety fences carried out in accordance with

the *Water Act*

~~i.~~k. farm operations as defined in the *Farm Practices Protection (Right to Farm) Act* and farm uses as defined in Section 2(2) of the *Agricultural Land Reserve Use, Subdivision, and Procedure Regulation*

Information Note: For best management practices on manual removal of invasive species and planting of native vegetation, property owners should contact organizations such as the Invasive Species Council of British Columbia and the Coastal Invasive Species Committee.

Information Note: Some activities not listed here that are regulated under other provincial or federal legislation may not require a development permit.

2.4 Calculating the SPEA for the Simple Assessment

Once answers to the key questions are determined the SPEA can be determined from Table 2-4., except for Ravines greater than 60 meters in width where the SPEA is 10 meters beyond the top of the ravine bank (Section 2.5.4.1). For three combinations there are multiple outcomes that are based on the location of permanent structures (Figures 2-2 and 2-3).

Vegetation Category	***Existing or potential streamside vegetation conditions***	***Streamside Protection and Enhancement Area Width****		
		Fish bearing	***Non-Fish bearing***	
			Permanent	***Non Permanent***
1	Continuous areas ≥30 m or discontinuous but occasionally > 30 m to 50 m	30 m		Minimum 15 m Maximum 30m Refer to Figure 2-2
2	Narrow but continuous areas = 15 m or discontinuous but occasionally > 15 m to 30 m	Minimum 15 Maximum 30 Refer to Figure 2-2	15 m	
3	Very narrow but continuous areas up to 5 m or discontinuous but occasionally > 5 m to 15 m	15 m	Minimum 5m Maximum 15 m Refer to Figure 2-3	

Table 2-4: Streamside Protection and Enhancement Area Widths for the Simple Assessment

***SPEA is measured from Top of Bank or Top of Ravine Bank.**

Assessment methods definition - top of bank " " means

(a) the point closest to the boundary of the active floodplain of a stream where a break in the slope of the land occurs such that the grade beyond the break is flatter than 3:1 at any point for a minimum distance of 15 metres measured perpendicularly from the break, and

(b) for a floodplain area not contained in a ravine, the edge of the active floodplain of a stream where the slope of the land beyond the edge is flatter than 3:1 at any point for a minimum distance of 15 metres measured perpendicularly from the edge.

Figure 2-2 Determining SPEA width for Vegetation Category 1/non-fish bearing/non permanent and Vegetation Category 2/Fish bearing.

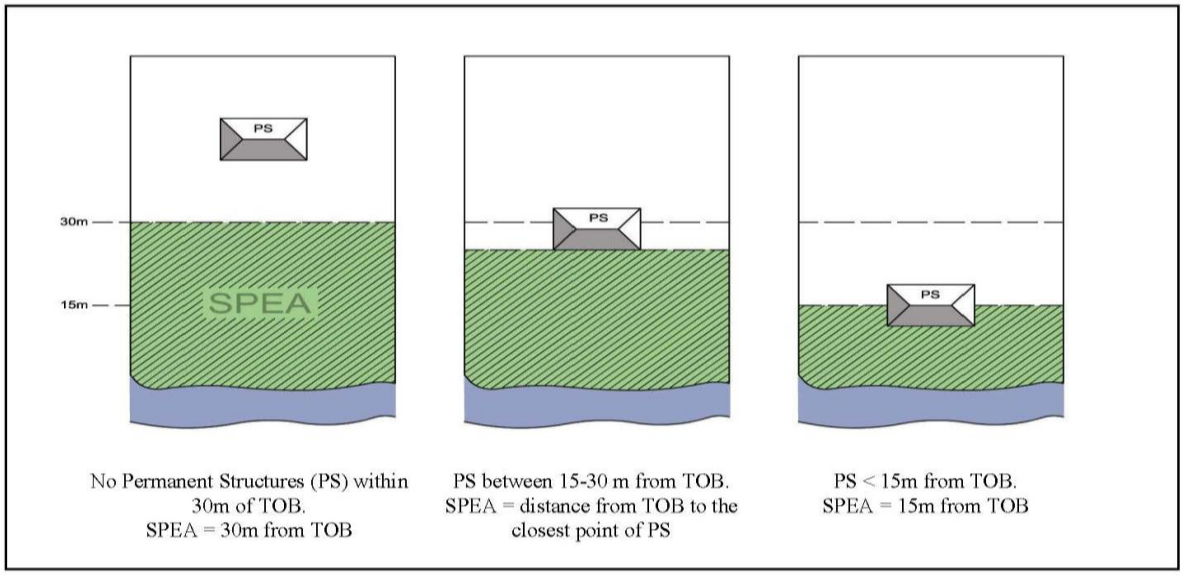

Figure 2-3 Determining SPEA width for Vegetation Category 3/non-fish bearing