

**Date:** October 22, 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

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**Re: Riparian Areas Regulation Implementation – Post Public Hearing**

## SUPPLEMENTAL REPORT

### OVERVIEW:

In the staff report dated October 15, a number of questions and suggestions submitted by Trustee Malcolmson prior to the public hearing were not addressed. The purpose of the report is to address these, and it should be read as a supplement to the October 15 report.

### RECOMMENDED BYLAW AMENDMENTS

Based on submissions received at and before the public hearing, staff recommends the following change to proposed bylaw 266.

#### Text amendments:

- To F.3.2 Applicability, to the list under F.3.2.1, amend clause e by inserting “impervious” between “non-structural” and “or”

This change would make the clause consistent with other bylaws such as the North Pender OCP, and more accurately follows the *Riparian Areas Regulation* (RAR).

### POSSIBLE BYLAW AMENDMENTS

Staff does not recommend the following suggested change as it is seen to have little or no benefit, but at the same time does not recommend against it, if the LTC prefers the amended wording.

1. **Amend the exemption for gardening and yard maintenance in existing landscaped areas and add a definition of “landscaped area”.**

The following amended exemption is proposed by Trustee Malcolmson, underlined text is added:

*d. gardening and yard maintenance activities within a pre-existing landscaped area, including mowing, pruning, planting and minor soil disturbance that does not alter the general contours of the land.*

And the following is a definition of “landscaped area” from the District of Saanich RAR DPA:

***Landscaped area*** means an area significantly altered by human activity where there is the continuous maintenance of no vegetation, cultivated vegetation and/or landscape materials, including but not limited to stones, boulders, cobbles, pavers and decorative concrete.

There are benefits and risks to the proposed changes. The benefit is more clarity for the reader as to what constitutes a previously landscaped area. The risk is that there remains a need for judgement, for example as to what “significantly altered” means. As well, the added clarity of listing examples of yard maintenance activities might lead to a lack of clarity if some other yard maintenance activity is planned in the future that is not anticipated at this time.

## **OTHER COMMENTS WHERE CHANGES ARE NOT RECOMMENDED**

Below is a summary of other comments from Trustee Malcolmson before the public hearing where changes to the bylaws are not recommended, with staff comment. Reducing the DPA based a simple assessment as recommended in the October 15 report is expected to alleviate many of the concerns indicated below.

- 1. To the end of clause f under F.3.2.1 Applicability, add “(for certainty, existing development is not affected by this DPA)”.**

This is not recommended because although it is understood that some property owners may misunderstand the proposed DPA and may have a fear that they will have to retroactively get permits for existing development, this explanation does not fit here and would be better addressed in a FAQ document or similar. As well, the preamble to that list is that “the following activities shall require a development permit”; existing development is not an activity, but it’s the creation of new development that is the activity, which is why staff recommend the suggested amendment does not fit here.

- 2. To Exemption i, add the following text (underlined) to indicate that agriculture and horticulture as defined in the Gabriola Land Use Bylaw (LUB) is exempt:**

*i. farm operations as defined in the Farm Practices Protection (Right to Farm) Act, farm uses as defined in Section 2(2) of the Agricultural Land Reserve Use, Subdivision, and Procedure Regulation, and agriculture and horticulture as defined in the Gabriola Island Land Use Bylaw, No 177.*

This is not recommended as it is the definition under the *Farm Practices Protection Act* that is important in determining whether or not the “farm operation” is exempt from the RAR, and in case of inconsistency between the LUB definition and the *Farm Practices Protection Act* definition the *Act* would supersede. Further, refer to the Q&A from the August 28, 2013 Q&A document:

**Q. Are farming activities outside of the Agricultural Land Reserve but within the Riparian Assessment Area exempt from the RAR?**

A. Yes. The land in question must be zoned for the agricultural uses taking place there, but those uses are exempt from the RAR insofar as they can be considered “farm uses” under the Farm Practices Protection Act. The most important consideration in this case is whether those activities are being carried out as part of a “farm business.” If the produce is being sold for profit, then the activity is running a farm business, the use is agricultural and is thus RAR exempt. If the produce is being grown only for personal consumption, then the activity is gardening, the use is residential and the RAR applies.

**3. Add new exemption for planting trees, shrubs or groundcover as follows:**

- *the planting of trees, shrubs, or groundcovers for the purpose of enhancing the habitat values and/or soil stability provided the planting is carried out in accordance with the guidelines provided in “Develop with Care: Environmental Guidelines for Urban and Rural Land Development in British Columbia” published by the BC Ministry of the Environment*

The intent of this proposed addition is captured in the recommended addition by staff described in the October 15 staff report for manual planting of native vegetation. “Manual” planting is recommended by staff as clearer criteria for the type of planting exempt from requiring a permit than planting carried out following a particular set of guidelines.

**4. Add exemption for construction of a fence as follows:**

- *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, or 1.5 metres on either side of the fence in agricultural areas*

This exemption is in the North Pender DPA and the District of Saanich, but does not comply with the RAR and has not been reviewed by FLNRO for the Gabriola bylaw. Staff has had discussion with FLNRO about this exemption, and believes they would object as it doesn’t comply with the RAR. For example in the January, 2013 draft an exemption for “the placement of impermanent or moveable structures, such as benches, tables and garden ornaments” was in the bylaw, and on review, FLNRO objected on the grounds that those structures are not allowed in the SPEA. That exemption is probably less impactful to the riparian area, yet FLNRO objected.

**5. Add exemption for cutting of vegetation and trees as follows:**

- *with the exception of nesting trees protected under Section 34 of the Wildlife Act, cutting of vegetation and trees more than 15 metres from the stream’s high water mark or the top of the ravine bank, provided the cutting is not a precursor to development, the roots/stump are left in the ground, and the cutting does not result in land alteration.*

This is not recommended as it doesn’t comply with the RAR; cutting of vegetation cannot occur in the SPEA. Based on comments received from FLNRO in January 2013

regarding draft wording of the exemption for two-tree pruning and for danger tree removal, staff believes FLNRO would oppose this exemption.

This exemption does appear in at least one other local government RAR DPA. Staff cannot explain how these bylaws were adopted with this exemption in them, either they did not receive close scrutiny by FLNRO staff and did not receive opposition from the on referral, or they are municipalities where the Ministry of Community, Sport and Cultural Development does not approve their OCP's, and they proceeded with opposition from FLNRO, or did not refer to them in the first place.

**6. Add exemption for the disturbance of soils as follows:**

- *disturbance of soils more than 15 metres from the stream's high water mark or the top of the ravine bank if the total area of soil disturbance is less than 5 m<sup>2</sup>*

Same explanation as for number 5 above.

**7. Add exemption for construction of small accessory building in previously landscaped area as follows:**

- *the construction of a small accessory building such as a pump house, gazebo, garden shed or playhouse more than 15 metres from the stream's high water mark or the top of the ravine bank if the building is located within an existing landscaped area and the total area of small accessory buildings is less than 10 m<sup>2</sup>.*

Same explanation as for number 5 above.

**8. Add exemption for construction of private trail as follows:**

- *the construction of a private trail if all of the following apply:*
  - the trail is 1 meter wide or less;*
  - no native trees are removed;*
  - the surface of the trail is pervious (for example, soil, gravel or wood chips);*
  - the trail is designed to prevent soil erosion where slopes occur; and*
  - where the trail parallels the stream, the trail is more than 5 meters away from the high water mark of the stream;*

Same explanation as for number 5 above.

## **SUMMARY OF OPTIONS**

The on amendment recommended by staff is to amend Bylaw 266 as follows:

- To F.3.2 Applicability, to the list under F.3.2.1, amend clause e by inserting "impervious" between "non-structural" and "or"

If the LTC wishes to make any other amendments, the bylaw should be referred to the Ministry of FLNRO again.

**RECOMMENDATIONS:**

Staff recommends THAT, the Gabriola Island Local Trust Committee should, in addition to any other amendments recommended in the October 15, 2013 staff report, amend proposed Bylaw No. 266, cited as “Gabriola Island Land Use Bylaw 177, 1999, Amendment No. 1, 2012” by adding the word “impervious” between the words “non-structural” and “or” to F.3.2.1 e.

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Prepared and Submitted by:

*Courtney Simpson*

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Regional Planning Manager

October 22, 2013

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Date