

Date: June 15, 2011 **File No.:** GB/04-1(OCP/
LUB Review)

To: Gabriola Island Local Trust Committee
For meeting of June 28, 2011

From: Kaitlin Kazmierowski, Island Planner, and
Chris Jackson, Regional Planning Manager

CC:

Re: **Riparian Areas Regulation- Implementation Methodology and Timeline**

PURPOSE:

The purpose of this staff report is to provide options and recommendations for compliance with Provincial Riparian Areas Regulations (RAR) in terms of appropriate implementation methodology and timeline for Gabriola Island. Implementation of RAR was also identified as an item as part of the Official Community Plan and Land Use Bylaw (OCP/LUB) review currently underway.

BACKGROUND:

The RAR was enacted under Section 12 of the *Fish Protection Act* in July 2004 and took effect on March 31, 2006. The objectives of the Act are to: (1) ensure sufficient water for fish; (2) protect and restore fish habitat; (3) improve riparian protection and enhancement; and (4) provide stronger local government powers in environmental planning. The RAR is a policy directive from Provincial Cabinet which requires local governments (including local trust committees) to protect riparian areas during and from residential, commercial, and industrial development by ensuring that proposed activities are subject to a science-based assessment conducted by a Qualified Environmental Professional. Section 4 of the RAR prohibits a local government from approving or allowing a development to proceed in a riparian assessment area unless the local government is notified by the Ministry of Environment that the developer has provided an assessment report by a qualified environmental professional (QEP) which certifies that the development can be carried out without damaging fish habitat.

A "Riparian Assessment Area" (RAA) is defined in the RAR to mean any area within 30 metres of a stream; a "stream" is defined to include all watercourses that provide fish habitat, including ponds, lakes, rivers, creeks and brooks as well as ditches, springs, and wetlands that are connected by surface flow to such watercourses. A watercourse that does not currently have fish present may still be considered a "stream" for the purposes of the RAR if fish could potentially be present were introduced obstructions made passable. "Fish" is defined for the purposes of the RAR to include salmonids, game fish and regionally significant fish (these include all salmon species and trout).

Under the Regulation there is no authority provided to the Ministry of Environment or a QEP to regulate development. The RAR establishes that it is the **local government that must amend**

its bylaws to ensure that riparian areas are protected and that development does not proceed within a Riparian Assessment Area (RAA) without the provision of a QEP report.

Local governments may allow development within 30 metres of the high water mark of a stream or top of a ravine bank provided the prescribed riparian assessment methods have been followed. The riparian assessment method requires a QEP to provide an opinion – in an Assessment Report – that the development will not result in a harmful alteration of riparian fish habitat. In the assessment, the QEP will establish, on a site-specific basis, an area within the 30 metre RAA that cannot be developed - termed a Streamside Protection and Enhancement Area (SPEA) and those portions of the site where development may occur within the 30 metre RAA. The QEP may also provide recommendations on mitigation or enhancement measures specific to the development proposal. The Assessment Report can also identify measures to maintain the integrity of the riparian area during the development process.

“Development” is defined to mean a range of activities in the RAR that are subject to local government powers under Part 26 of the *Local Government Act*. These include applications such as rezonings, development permits (DPs), development variance permits (DVPs), temporary use permits (TUPs) and subdivisions, but do not include building permits and Board of Variance orders. The types of development that are subject to a RAR assessment are residential, commercial and industrial. The types of development not subject to assessment are: permits issued for repair or reconstruction of existing structures, pre-existing buildings or structures, agricultural activities, mining activities, hydroelectric facilities, forestry, parks, institutional development, and federal and first nations lands, as well as institutional and agricultural uses. The Regulation does not give local governments any additional powers with respect to streamside protection. Rather, it requires local governments to use their existing land use planning and management powers under the *Local Government Act* to improve the protection of fish habitat in settlement areas.

Any application to a local government for a rezoning, development variance permit, development permit, temporary use permit or subdivision can trigger the requirement for an assessment by a qualified environmental professional.

In summary, the Regulation specifies that:

- local governments must protect riparian areas in accordance with the regulations when exercising their powers with respect to commercial, residential and industrial development; and
- local governments must meet or better the regulations, but cannot reduce them without specific authorization from Fisheries and Oceans Canada. For example, a local government could not issue a development variance permit for a new residential, commercial or industrial building except in accordance with the Riparian Area Regulations.

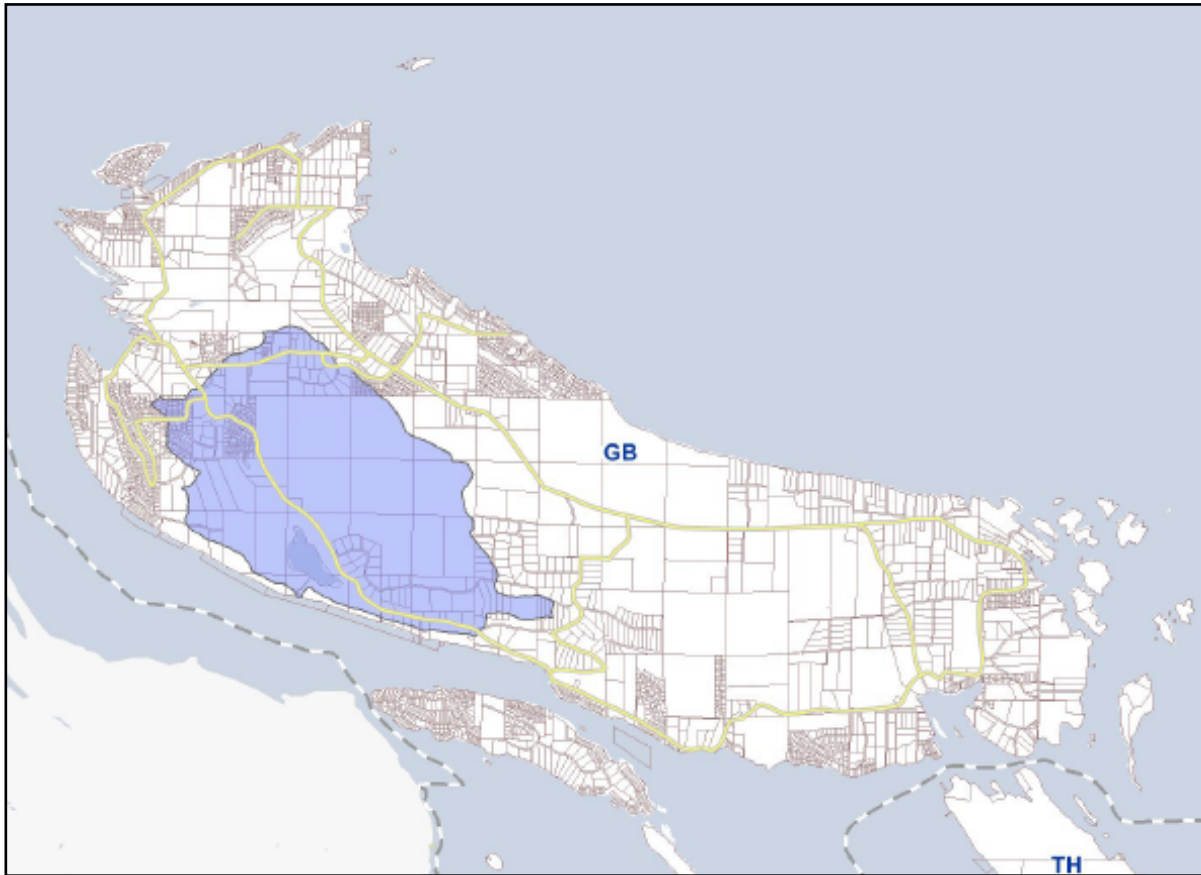
As the RAR has been in effect for over 4 years, any Part 26 application can trigger the requirements for an assessment. For example, an unrelated variance for work that happens to be within 30 metres of a watercourse within a RAR designated watershed would trigger the requirement for an assessment.

In 2006 Trust Council adopted a resolution directing staff to prepare development permit area provisions to implement the RAR. Local trust committees were also requested to consider

amending setback provisions in their Land Use Bylaws as a first step prior to implementing development permit areas.

The implementation of RAR development permit areas in the Trust Area has been delayed since 2006. Principally, the delay is attributable to issues with identifying watercourses that are subject to the RAR and in accurately mapping those watercourses.

In 2009-10 fiscal year, funding was made available to undertake RAR implementation. The Islands Trust had previously obtained watershed mapping derived from 2-metre contour Digital Elevation Mapping (DEM) for most of the Trust Area. Ministry of Environment (MOE) regional staff identified those watersheds within the Trust Area that, based on their records and knowledge, would be subject to the RAR. A letter from MOE is forthcoming, which will confirm these RAR applicable watersheds. On Gabriola, one watershed, known as the Hoggan Lake watershed, was identified by the Ministry of Environment as RAR applicable. Using the MOE information, RAR would only be triggered for this one watershed on Gabriola. A map of the Hoggan Lake watershed is included below:



Map 1: Hoggan Lake RAR Identified Watershed

COMMUNITY INFORMATION MEETING(S):

On March 22, 2011 the Gabriola Island Local Trust Committee hosted a Community Information Meeting on RAR featuring Michele Jones, a QEP with Mimulus Biological Consultants. The general concept of RAR was explained and questions from the public were answered. As part of

the process to become compliant with RAR it is recommended that one or more information meetings be held not only to remind residents about the fact that the RAR is in place, and that the Province obligates local governments to protect riparian areas, but to consult and receive comment on how to implement RAR locally as part of the OCP/ LUB review. These implementation strategies will be explored further below.

DISCUSSION:

The provincial RAR requires local governments to use their existing land use planning authority to protect fish habitat. The Gabriola LTC has identified RAR compliance as part of the OCP/ LUB review. Staff were directed to provide options and recommendations on how to proceed with this work in terms of timeline, methodology and within the context of both resources and other work program priorities.

Ministry of Environment documents¹ suggest that local governments apply zoning or Development Permit Areas (DPA) to implement the regulation. Changes to zoning would establish a setback consistent with the 30 metre riparian assessment area. However, there are three concerns with this approach:

1. Zoning would only regulate the siting of buildings and structures and would not affect land alteration, although a landscape strip provision could be established within the RAA to prevent vegetation removal.
2. Any work within the RAA would require a variance and conditions cannot be attached to a variance in the manner that they can be included in development permit.
3. Establishing zoning setbacks does not provide the level of certainty for landowners that designating a DPA on a map schedule does.

Implementation of the DPA option would manage land alteration, including vegetation removal, provide a map schedule showing the designated streams and 30 metre buffers, and provide for the flexibility inherent in considering issuance of a development permit, which can attach conditions and include variances.

In summary, the approach taken to date in identifying the RAR streams for Gabriola Island has been to:

- Create watershed mapping.
- Identify the watersheds considered subject to the RAR by the Ministry of Environment.
- Include RAR compliance as a topic area within the OCP/ LUB review.

In a briefing to Trust Council in February 2010, planning staff identified four approaches an LTC may consider in order to become compliant with the RAR, or to exceed the RAR and extend protections:

1. **Amend the LUB to establish both a 30 metre setback and a landscape strip for all watercourses within the RAR-identified watersheds.** This zoning approach is

¹ Ministry of Water Land and Air Protection. Riparian Areas Regulation Implementation Guidebook. 2006.

possible, particularly as an interim approach, but not recommended in the long term for the reasons outlined above.

2. **Amend the OCP to designate all RAR-identified watersheds as a Development Permit Area (DPA).** This approach may be optimal where there are a limited number of larger properties in the watershed, where subdivision is anticipated, or where it is not anticipated that any watercourse(s) will be mapped. The advantage of this approach is that the flexibility of DPA provisions can be used to establish exemptions for work that is found to be further than 30 metres from a watercourse and a Development Permit (DP) can incorporate any conditions recommended by the QEP's assessment report. The disadvantage of this approach is that all land within the watershed would be designated as a DPA, regardless of where the actual watercourse is, imposing requirements on landowners to determine if development activity actually requires an assessment and DP.
3. **Amend the OCP to designate all land within 30 metres of watercourses in RAR-identified watersheds as a Development Permit Area (DPA).** The advantage of this approach is that it provides greater certainty with respect to the DPA and limits reviews and applications to work within 30 metres of fish-bearing or potential fish-bearing streams. The disadvantage is that a DPA would not be applied to areas more than 30 metres from a watercourse but still within a RAR-identified watershed, and would not designate non-RAR watercourses.
4. **Exceed RAR:** by designating a DPA within a minimum of 30 metres of all watercourses, regardless of fish habitat status. In order to implement this additional mapping work would be required. Terrestrial Ecosystem Mapping (TEM), which is the basis of the Sensitive Ecosystem Mapping (SEM) used to identify and designate the sensitive ecosystem DPA, does not identify watercourses or streams. However it does provide a high resolution classification of terrestrial ecosystems that is consistent with accepted classification standards and could be used to identify additional non-stream features such as freshwater ecosystems, mixed wetlands, and wet forest ecosystems beyond those identified in the current SEM.

The LTC should provide direction to staff on proceeding with the Riparian Area Regulation work.

STAFF COMMENTS

There are several considerations staff address below in terms of the process and outcomes of this work.

Current Mapping and Regulation

The current Ministry of Environment (MOE) mapping for Gabriola identifies the Hoggan Lake watershed as likely the only RAR identified watershed on the island; however, this has yet to be officially confirmed by MOE. This watershed covers a significant portion of Gabriola, and the LTC may wish to consider contracting a consultant to do further mapping within the watershed to identify the RAR watercourses within it (as per option #3, above). This further mapping would protect fish and fish habitat in accordance with RAR, and reduce the areas that would require a permit but that do not fall within 30 metres or a watercourse. Based on similar mapping in the Trust Area, it is estimated that this type of mapping would cost approximately \$5,000 - \$7,500 and take a month to complete.

If the MOE do not provide written confirmation the LTC will need to conduct mapping throughout the Local Trust Area to identify those watercourse RAR applicable. At this time, staff anticipate that this letter will provide certainty and that the LTC focus could be on the Hoggan Lake watershed only.

The LTC needs to consider funding for the mapping. Subsequent public process work and bylaw amendment processes could occur within the OCP/ LUB review and the associated budget. However, funding for mapping must be addressed.

Currently, the Gabriola Island OCP contains provisions for DP-3 Hoggan Lake Area. This provides an opportunity to build RAR provisions into an existing DP Area, rather than creating a new one. This approach could reduce any overlap between existing DP-3 and a new RAR Development Permit Area, which would reduce additional burden on the landowner.

The option to exceed RAR requirements was brought up by some community members during the March 22, 2011 Community Information Presentation by Michele Jones. As mentioned above, this would require significant additional mapping, staff resources and time, but the LTC may wish to direct staff to report back on the logistics and planning of this option.

Recently, North Pender's Proposed Bylaw No. 184, a bylaw to amend the North Pender OCP for RAR compliance, was given approval from the Ministry of Community, Sports and Cultural Development. It is attached for information. The Salt Spring Island LTC is moving through creating a RAR development permit area. The bylaw attached could be used as a framework for Gabriola Island.

Timing

Phase One of the OCP/ LUB review will end in conjunction with the current LTC term. Should the LTC wish to map the RAR applicable watercourses within the Hoggan Lake watershed, and as an OCP amendment is required, final adoption of a bylaw is not possible before this end of term.

If the LTC wishes to pursue this mapping, staff identifies the following sources for funding: LTC expense budget; OCP / LUB review budget; budget request for 2011/12 fiscal; or scientific studies budget. Staff suggests that the LTC request the Director of Local Planning Services to release funds from the scientific studies budget for RAR mapping work.

Administering a contract for mapping work is not a large work program item for staff on its own. Such mapping is available to the next LTC for implementation. However, if the LTC wishes to proceed with RAR bylaw process work at this time, and outside of an OCP/ LUB review, the staff suggests that the top priority list of the LTC's work program be revised to include RAR compliance. In doing so, existing work program items would have to be set aside.

RECOMMENDATIONS

Staff recommends that the Gabriola Island Local Trust Committee:

- Request the Director of Local Planning Services release \$7,500 from the scientific studies budget for RAR compliance within the Hoggan Lake watershed;
- Direct staff to undertake drafting of new DPA guidelines that would supplement RAR watercourse mapping;
- Defer undertaking RAR bylaw amendment and public consultation processes until amending bylaws from Phase One of the OCP / LUB review are given final consideration and the RAR watercourse mapping and draft DPA guidelines are prepared, by the winter of 2011;
- Add the subject of exceeding RAR in Phase Two of the OCP / LUB review.

Respectfully submitted by:

Kaitlin Kazmierowski

June 15, 2011

Kaitlin Kazmierowski
Island Planner

Date of signature

Concurred in by:

Chris Jackson

June 15, 2011

Chris Jackson, MCIP
Regional Planning Manager

Date of signature

Attachments:

1. Proposed North Pender Island Local Trust Committee Bylaw No. 184

NORTH PENDER ISLAND LOCAL TRUST COMMITTEE
BYLAW No. 184

A BYLAW TO AMEND NORTH PENDER ISLAND OFFICIAL COMMUNITY PLAN
BYLAW NO. 171, 2007

WHEREAS the North Pender Island Local Trust Committee is the Local Trust Committee having jurisdiction on and in respect of the North Pender Island Local Trust Area, pursuant to the Islands Trust Act;

AND WHEREAS Section 29 of the Islands Trust Act gives the North Pender Island Local Trust Committee the same power and authority of a Regional District under Part 26, except sections 932 to 937 and 939, of the Local Government Act;

AND WHEREAS the North Pender Island Local Trust Committee wishes to amend the North Pender Island Official Community Plan Bylaw No. 171, 2007;

AND WHEREAS the North Pender Island Local Trust Committee has held a Public Hearing;

NOW THEREFORE the North Pender Island Local Trust Committee enacts as follows:

CITATION

- 1. This Bylaw shall be cited as the "North Pender Island Official Community Plan Bylaw No. 171, 2007, Amendment No. 2, 2010".

ORGANIZATION

- 2. North Pender Island Local Trust Committee Bylaw No. 171, 2007 is altered as shown on Schedules 1 and 2 of this amending bylaw.

SEVERABILITY

- 3. If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

READ A FIRST TIME this 10th day of November, 2010

READ A SECOND TIME this 27th day of January, 2011

PUBLIC HEARING HELD this 26th day of February, 2011

READ A THIRD TIME this 31st day of March , 2011

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this 19th day of April , 2011

APPROVED BY THE MINISTER OF COMMUNITY, SPORTS AND CULTURAL DEVELOPMENT this 17th day of May 2011

ADOPTED this day of , 2011

DEPUTY SECRETARY

CHAIRPERSON

NORTH PENDER ISLAND LOCAL TRUST COMMITTEE
BYLAW No. 184
SCHEDULE 1

North Pender Island Official Community Plan No. 171, 2007 is amended as follows:

1. By amending Policy 5.1.3 of Schedule A (Policy Document) by deleting the words “use of zoning regulations” and replacing them with the words “designation of a development permit area.”
2. By amending Schedule A (Policy Document) by inserting the following as a new Subsection 5.2.11:

“5.2.11 DEVELOPMENT PERMIT AREA TEN - RIPARIAN AND AQUATIC
DEVELOPMENT PERMIT AREA

5.2.11.1 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.

5.2.11.2 Development Approval Information

The Riparian and Aquatic 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 herein.

5.2.11.3 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 submitted to RAR Notification System.

5.2.11.4 General 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, floats, ramps and bridges;
- g) provision and maintenance of residential sewer and water services;
- h) development of residential drainage systems;
- i) development of residential 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.

5.2.11.5 Development Permit Exemptions

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

- a) the reconstruction, repair or maintenance of a pre-existing permanent structure on its existing foundation.
- b) 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*;
- c) forest management activities on land that is the subject of a woodlot license or tree farm license under the *Forest and Range Practices Act*;
- d) farm operations as defined in the *Farm Practices Protection (Right to Farm) Act* and farm uses as defined in Section 2(2), (3), (4) and (5) of the *Agricultural Land Reserve Use, Subdivision, and Procedure Regulation*
- e) mining activities regulated by the *Mines Act*;
- f) for certainty, all uses that are not residential, commercial or industrial or accessory to such a use;
- g) for certainty, actions undertaken by the Crown or an agent of the Crown;
- h) the removal of trees that have been examined by an arborist and certified to pose an immediate threat to life or property;
- i) gardening and yard maintenance activities, not involving the cosmetic application of pesticides, within an existing landscaped area, including mowing, pruning, planting and minor soil disturbance that does not alter the general contours of the land;
- j) 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;
- k) ecological restoration and enhancement projects undertaken or authorized by a public body;
- l) work that is authorized by Fisheries and Oceans Canada by permit under section 35 of the *Fisheries Act*;
- m) changes in or about a stream authorized under Section 9 of the *Water Act*;

5.2.11.6 Designation

This development permit area includes all land designated on Schedule P of this plan as being within the Riparian and Aquatic DPA. This DPA includes the riparian assessment areas related to the watercourses and water bodies identified on Schedule P, consisting of the stream and:

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; and
4. for all other water bodies, an area encompassing the water body and 30 metres around the water body measured from the natural boundary of the water body.

and Schedule P shall be so interpreted. Development Permit Area Ten is shown in a generalized representation on Schedule P. The designation and delineation of Development Permit Area Ten consists of a digital record compiled by means of air photograph interpretation. This digital record is stored and maintained in a Geographic Information System (GIS) at the offices of the Islands Trust. The actual location of the streams and water bodies may need to be determined on a site-specific basis by a qualified environmental professional or a surveyor.

5.2.11.7 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 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.

5.2.11.8 Guidelines

Prior to undertaking any development activities within the Riparian and Aquatic 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 impacts on the riparian area and on aquatic ecosystems, including from the application of pesticides and other chemicals for non-essential cosmetic purposes. Where a QEP has made recommendations for mitigation measures, enhancement or restoration in order to lessen impacts on the riparian area and aquatic ecosystems, 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 and aquatic ecosystems, 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 development phases, as specified in a development permit.
 - d) The following guidelines are applicable to floats and associated structures within the development permit area:
 - i) floats should not be placed in areas identified as important to fish life processes where installation of a float would compromise the functioning of the feature;
 - ii) a ramp or float should not rest on the bed of the water body;
 - iii) the use of treated wood in the waterbody should be avoided;
 - iv) floatation material should be contained within a durable shell to prevent disintegration;
 - v) semi-transparent surfacing should be used on ramps and floats (e.g. grating or separated boards);
 - vi) any areas disturbed during installation should be restored;
 - vii) where a float is being replaced, all old materials should be removed.
 - e) If the nature of the proposed project in a riparian assessment area or the surface of a waterbody 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.
 - f) The LTC may consider variances to subdivision or siting or size regulations where the variance may result in enhanced protection of the SPEA or aquatic ecosystem in compliance with recommendations of a QEP report.”
3. By inserting Schedule 2, attached to and forming part of this amending bylaw, as a new Schedule P (Development Permit Area Ten (Riparian and Aquatic Development Permit Area)).

**NORTH PENDER ISLAND LOCAL TRUST COMMITTEE
BYLAW No. 184
SCHEDULE 2**

