

STAFF REPORT

Date: February 8, 2013

File No.: GB-OCP-2012.1 (OCP/LUB
Amendment – Gabriola DPAs & DAI)

GB-OCP-2012.2 (OCP Amendment –
Mudge DAI)

GB-OCP-2012.3 (OCP Amendment –
Decourcy DAI)

To: Gabriola Island Local Trust Committee
For the meeting of February 21, 2013

From: Chloe Fox
Island Planner

CC: Courtney Simpson
A/Regional Planning Manager

**Re: Draft Development Permit Area 3 – Riparian Areas & Development
Approval Information Designations – Draft Bylaws**

OVERVIEW:

The purpose of this report is to present the results of public consultation on draft Development Permit Area 3 – Riparian Areas and to recommend first reading of bylaws to adopt the Development Permit Area as well as the Development Approval Information designations.

Public consultation on the Gabriola Island Development Permit Areas (Riparian Areas and Steep Slopes) Project was conducted in January 2013 through a mail-out to all property owners identified in the mapping for draft Development Permit Area 3 – Riparian Areas and draft Development Permit Area 6 – Steep Slopes. In addition, a Community Information Meeting was held on January 17, 2013 from 7 – 9pm at the Community Hall to present, discuss and gather comments on these draft development permit areas. As a result of community input, draft Development Permit Area 6 – Steep Slopes requires more in depth review and will be further considered in a separate report and separate bylaws.

In conjunction with the Gabriola Island Development Permit Areas (Riparian Areas and Steep Slopes) Project, staff is developing a development approval information bylaw and designations for circumstances and/or areas in which development approval information may be required. The Local Trust Committee (LTC) has requested that the development approval information bylaw cover the Gabriola, Mudge and Decourcy Planning Areas. The LTC has also requested that staff draft bylaws to move the current development permit area guidelines from the Gabriola Official Community Plan (OCP) to the Gabriola Land Use Bylaw (LUB).

BACKGROUND:

A Project Charter and Communications Strategy have been developed to guide the Gabriola Development Permit Areas (Riparian Areas and Steep Slopes) Project. These documents are standing items on all LTC meeting agendas until the project is complete. In accordance with these documents, the purpose of the project is to review and update current development permit areas in the Gabriola Island Official Community Plan (OCP) to implement the provincial *Riparian Areas Regulation* and to update the mapping and guidelines for hazardous and steep slope areas to better assist in planning future development to protect riparian ecosystems and to avoid hazardous areas.

As mentioned above, the impetus for the riparian areas portion of this project is compliance with the provincial *Riparian Areas Regulation* (RAR). The RAR is enabled under the provincial *Fish Protection Act* and came into effect in 2005. The RAR requires local governments to protect riparian habitat by only allowing development to occur within 30m of the high water mark of a stream in accordance with prescribed riparian assessment methods. A 'stream' is broadly defined under the RAR and includes any of the following that provide fish habitat:

- A watercourse, whether it usually contains water or not;
- A pond, lake, river, creek, brook; and
- A ditch, spring or wetland that is connected by surface flow to a watercourse, pond, lake, river, creek or brook.

An important point regarding the applicability of the RAR is that a 'stream', as defined under RAR, may not actually contain fish, may contain water only on a seasonal or extreme weather basis, and may include both natural and man-made features. A 'stream' simply must have the ability to provide fish habitat or must connect by surface flow, which may not be regularly occurring, to a freshwater feature that has the ability to provide habitat, at some point during the fish life cycle. Fish habitat includes all areas that fish rely on, directly or indirectly, in order to carry out their life processes. Riparian vegetation provides a number of habitat features for fish including, shade that regulates water temperatures, and large woody debris and other vegetative litter that affect stream morphology and provide nutrients to downstream areas. Indeed, the importance of riparian vegetation as fish habitat has been successfully brought before the courts, and legal judgments have identified riparian vegetation as fish habitat. Although the RAR focuses on fish, riparian areas provide habitat for a number of other species, including native plants, amphibians and birds.

The assessment methods prescribed under the RAR require a Qualified Environmental Professional (QEP) to provide an opinion, in the form of an assessment report, that a specific proposed development within 30m of the high water mark of a 'stream', as defined under RAR, will not result in a harmful alteration of habitat. The QEP is bound by a standard assessment methodology prescribed by the RAR, which is based on current science, and is required to submit their report electronically to the local, provincial and federal governments. The assessment report will determine the required setbacks for development (termed the Streamside Protection and Enhancement Area (SPEA) in the RAR) and any measures required to protect, maintain or restore the integrity of the riparian area so that it may provide habitat. Thus, the methodology provides a mechanism for allowing site-specific determination of appropriate levels of riparian protection, instead of a one-size-fits-all approach.

The RAR applies only to new commercial, residential and industrial development, as well as ancillary activities related to these uses. Existing permanent structures, roads and other development within the legislated 30m riparian assessment area are 'grand parented' and residents may continue to use these existing developments as they always have, including

renovating, repairing or reconstructing a permanent structure on its existing foundation, as long as the existing footprint is not moved or extended into the 30m riparian assessment area. The RAR also does not apply to new or existing agricultural, resource or institutional uses.

While the RAR is provincial legislation, to which the responsibility for implementation has been delegated to local government, the RAR plays a strong complementary role to the federal *Fisheries Act*. It is the opinion of the federal Department of Fisheries and Oceans (DFO) that a proponent who has fully implemented the recommendations of a QEP, who has correctly and fully followed the RAR assessment methodology, has exercised all due diligence in preventing the harmful alteration, disruption and destruction of fish habitat due to the removal of riparian vegetation. DFO may also become involved in the development approvals process legislated by the RAR where a proponent wishes to develop inside a SPEA recommended by a QEP. In this case, the proponent would need to apply for and be granted authorization from DFO under the federal *Fisheries Act* for the proposed development in order for local government approval to be granted.

The RAR is a prescriptive regulation that allows little flexibility for local government in terms of implementation options. Local governments must use their land use planning powers to confer a level of protection that is equivalent to or exceeds that prescribed under the RAR. The key consideration for local governments implementing the RAR is ensuring a mechanism is in place to trigger the requirement for QEP assessment of applicable development proposed within 30m of the high water mark of a 'stream', as defined under the RAR. The means of achieving this recommended for the Gabriola Planning Area is by designating the legislated 30m assessment areas around applicable streams as development permit areas and as areas for which development approval information, in the form of an assessment report from a QEP, is required.

RESULTS OF CONSULTATION:

1) Public Consultation

As part of this project, public consultation was conducted on draft provisions for new development permit areas for riparian areas and steep slopes. Consultation was conducted through a blog on the project website (<http://gabrioladpas.com>), through a mail-out in early January 2013 and through a Community Information Meeting held on Thursday, January 17, 2013 from 7-9pm at the Community Hall. The deadline for commenting was Sunday, January 20, 2013.

All comments received before the deadline have been compiled and are included in separate sub-sections on the February 21, 2013 agenda. The following sections provide an overview of the number and type of comments received on draft Development Permit Area 3 – Riparian Areas by method of delivery:

a) *Project Website*

The project website was launched in late August, 2012. At the time of writing, over 3,000 visits have been made to the site since its launch and 19 individuals currently follow the site. Despite the number of visits, only 9 comments have been posted to the site, 2 with regard to draft Development Permit Area 3 – Riparian Areas. The vast majority of the visits and comments made were done so between January 2, 2013 and January 20, 2013, following the mail-out to affected property owners.

b) *Written Submissions*

23 written submissions regarding draft Development Permit Area 3 – Riparian Areas were received prior to the commenting deadline. Of these, the vast majority were

received between January 2, 2013 and January 20, 2013, following the mail-out to affected property owners. All written submissions received before the deadline are included under a separate sub-section on the February 21, 2013 LTC meeting agenda.

c) *Community Information Meeting*

As mentioned above, a Community Information Meeting to discuss draft Development Permit Area 6 – Steep Slopes and draft Development Permit Area 3 – Riparian Areas was held on January 17, 2013 from 7-9pm at the Community Hall. 170 people signed in to the meeting; however, staff estimates that there may have been up to 200 attendees at the event. Comments were gathered via meeting minutes, comment sheets and ‘sticky note’ comments. The majority of comments received at this event were with regard to draft Development Permit Area 6 – Steep Slopes and are discussed in a separate report. The minutes of this meeting are included under a separate sub-section on the February 21, 2013 LTC meeting agenda, while the comment sheets and sticky-note comments are included with the written submissions.

The majority of those in attendance at the Community Information Meeting expressed concern regarding draft Development Permit Area 6 – Steep Slopes and, accordingly, the majority of the evening was dedicated to this portion of the project. Some of those in attendance specifically for draft Development Permit Area 3 – Riparian Areas may have felt that their concerns were not adequately addressed. Due to the prescriptive nature of the provincial RAR, however, staff recommends moving forward with the legislative process for implementation of draft Development Permit Area 3 – Riparian Areas. There will be a public hearing as part of this process, which will serve as an additional forum for public comment. The LTC may wish to consider conducting a second Community Information Meeting immediately before the public hearing to answer any outstanding questions. Alternatively, the LTC could consider additional public education utilizing the existing project website and the existing *Living Near Riparian Areas* brochure as a forum to communicate the intent and local government obligations under RAR.

d) *Comments – Draft Development Permit Area 3 – Riparian Areas*

Of the total comments on draft Development Permit Area 3 – Riparian Areas received via the methods described above, 26 were received on draft Development Permit Area 3 – Riparian Areas. Among the comments gathered, common themes included:

- The application of the provincial *Riparian Areas Regulation* to watercourses that are seasonal, man-made and/or do not contain fish;
- The anticipated burden landowners will be faced with when wanting to undertake development in areas covered by draft Development Permit Area 3 – Riparian Areas, including process, time, costs and restrictions on development;
- The inclusion of the legislated 30m Riparian Assessment Areas as the basis for draft Development Permit Area 3 – Riparian Areas, especially in cases where the stream itself is located on a particular property and this area extends across a roadway and on to a property across the road from a mapped stream;
- The question of why it is necessary to move forward with draft Development Permit Area 3 – Riparian Areas and why the current setback provisions in the Gabriola Island Land Use Bylaw are not enough for compliance with provincial legislation;
- The potential effects of draft Development Permit Area 3 – Riparian Areas on property values;
- The scientific basis of draft Development Permit Area 3 – Riparian Areas; and
- The question of how existing development is treated under draft Development Permit Area 3 – Riparian Areas.

2) Comments from Ministry of Forests, Lands and Natural Resource Operations (MFLNRO)

In addition, a set of comments was received on draft Development Permit Area 3 – Riparian Areas from staff at MFLNRO responsible for the RAR. Staff met with MFLNRO staff on February 6, 2013 to discuss these comments and has amended draft Development Permit Area 3 – Riparian Areas in accordance with changes discussed at the meeting and subsequently reviewed internally. These comments, along with a follow-up email indicating the changes to draft Development Permit Area 3 – Riparian Areas subsequently made, are included as Attachment 1 to this report.

3) Advisory Planning Commission (APC)

The APC was referred draft Development Permit Area 3 – Riparian Areas by the LTC on September 6, 2012. The APC met on November 5, 2012 to discuss this referral and the minutes of this meeting were presented to the LTC for information at their November 29, 2012 regular business meeting. In consideration of the referral, the APC passed the following resolutions:

The APC recommends:

GBAPC-2012-001 That the Gabriola Local Trust Committee insert the following statement: “Riparian Areas are necessary for stream and watershed health. Our job as stewards of the land are to ensure continuation and function well into the future.”

CARRIED

GBAPC-2012-002 That the Gabriola Local Trust Committee attempt to get the development permit guidelines into the LUB (Land Use Bylaw) in a timely fashion.

CARRIED

GBAPC-2012-003 That the Gabriola Local Trust Committee work with the local Gabriola Stream-keepers to identify watercourses that support fish outside the watercourses identified in DPA 3.

CARRIED

GBAPC-2012-004 That the Gabriola Local Trust Committee consider clarifying where a report or survey is required by QEP / or other professionals.

CARRIED

GBAPC-2012-005 That the Gabriola Local Trust Committee ensure that the draft DPA 3 be consistent with current provincial and federal legislation, in particular, item #9, page 3, regarding the *Fisheries Act*.

CARRIED

GBAPC-2012-006 That the Gabriola Local Trust Committee consider exceeding RAR in protecting watersheds and watercourses on the island.

CARRIED

4) Consultation on Development Approval Information Bylaw

As outlined in the November 15, 2012 staff report on the development approval information bylaw component of this project, staff does not recommend any additional public consultation, aside from the required public hearing, on the required OCP amendments to designate circumstances for which development approval information may be required. The designation of development approval information areas and/or circumstances is simply an administrative mechanism to legally require information from applicants that is currently encouraged through

OCP policies and/or requested by staff or the LTC on a case-by-case basis. Nevertheless, the development approval information designations are included in the same bylaws, in the case of the Gabriola Planning Area, and bylaws being advanced at the same time, in the case of the Mudge and Decourcy Planning Areas, as those designating new Development Permit Area 3 – Riparian Areas. As such, should the LTC wish to consider a Community Information Meeting prior to the required public hearing on these bylaws there would be an opportunity to answer questions from the public with regard to the designation of development approval information areas and/or circumstances.

DISCUSSION & STAFF COMMENTS:

Draft Bylaws 265, 266, 267 and 268 are included on the February 21, 2013 agenda under separate sub-headings for consideration of first reading. They are, however, briefly described in the following sections.

Bylaws 265 & 266 – Gabriola Island OCP / LUB Amendments

Draft Bylaw 265 is to amend the Gabriola Island OCP to:

1. Designate circumstances and/or areas for which development approval information may be required;
2. Move the development permit area guidelines from the OCP; and
3. Include designations for Development Permit Area 3 – Riparian Areas.

Draft Bylaw 266 is to amend the Gabriola Island LUB to accompany the changes proposed by draft Bylaw 265; that is, adding the existing development permit area guidelines to the LUB and adding new development permit area guidelines for Development Permit Area 3 – Riparian Areas.

Each category of amendment included in draft Bylaws 265 and 266 is briefly discussed in the following sections:

1. Development Approval Information Circumstances / Areas

A November 15, 2012 report from staff included suggested designations for circumstances and/or areas for which development approval information may be required. These included:

- Zoning Amendments for:
 - Density transfer
 - Multi-dwelling affordable housing
 - Expansion of commercial uses
 - Expansion of light industrial uses
 - Any amendment in a marine designation
- Temporary Use Permits; and
- Development Permits for environmental development permit areas:
 - DP-1 The Tunnel
 - DP-2 Lock Bay
 - *DP-3 Riparian Areas – draft new designation*
 - DP-4 Flat Top Islands Area
 - DP-5 Gabriola Pass Area
 - *DP-6 Steep Slopes – draft new designation*

The suggestions for zoning amendment applications were devised based on those types of applications supported by the OCP. Since that time, staff has reviewed this suggestion and has revised the recommendation to include all zoning amendment applications. This approach will encompass additional zoning amendment applications that may be applied for, whether or not they are supported by the OCP, and will be a more robust designation should future OCP amendments support additional classes of zoning amendments. In addition, staff has left out the designation of draft Development Permit Area 6 – Steep Slopes as a development approval information area. Next steps with regard to this portion of the project are discussed in detail in the February 8, 2013 staff report entitled “Draft Development Permit Area 6 – Steep Slopes: Consultation Results and Next Steps” appearing on the February 21, 2013 LTC meeting agenda.

2. *Moving Development Permit Area Guidelines from OCP to LUB*

A November 15, 2012 report from staff recommended relocating the development permit area guidelines from the OCP to the LUB. The rationale for this recommendation is that, in the Islands Trust Area, local trust committee bylaws adopting or amending an official community plan must be approved by the Minister of Community, Sport and Cultural Development. Land use bylaws, on the other hand, only require approval of the Executive Committee. Ministerial approval can be time-consuming, delaying the eventual adoption of OCP amendments. The LTC currently has a number of projects within the broader review of the Gabriola OCP that may involve development permit area amendments. Given the possibility of extensive review of existing development permit area guidelines in the near future, staff has recommended using the current Gabriola Development Permit Areas (Riparian Areas and Steep Slopes) Project and the accompanying Development Approval Information Bylaw project as an opportunity to move the development permit area guidelines from the Gabriola OCP to the Gabriola LUB. This recommendation is included in draft Bylaws 265 and 266.

Section 919.1(1) & (2) of the *Local Government Act* enable an official community plan to designate development permit areas and require that, where a development permit area has been designated, an official community plan must describe the special conditions or objectives that justify the designation. Guidelines respecting the manner by which the special conditions or objectives of a development permit area will be addressed must also be included but Section 919.1(3) of the *Local Government Act* allows these guidelines to be specified in a zoning bylaw, as opposed to an official community plan. As such, in order to comply with the *Local Government Act* with respect to the designation of development permit areas, the development permit areas must still be designated and justified in an official community plan, while the guidelines may be housed in a zoning bylaw. Draft Bylaws 265 and 266 have been prepared to comply with this requirement.

3. *New Development Permit Area Designations*

a. *Development Permit Area 3 – Riparian Areas*

Draft Development Permit Area 3 – Riparian Areas has been drafted based on bylaws adopted in other jurisdictions within the Trust Area with the aim of achieving compliance with the provincial RAR and has been reviewed and amended based on feedback from the public, the APC, MFLNRO staff, trustees, and Islands Trust staff. The resulting proposed Development Permit Area 3 – Riparian Areas is incorporated into draft Bylaws 265 and 266.

Proposed Development Permit Area 3 – Riparian Areas has been amended to incorporate changes discussed with MFLNRO staff, as indicated in Attachment 1 to this report.

In addition, with respect to the comments and recommendations made by the APC, proposed Development Permit Area 3 – Riparian Areas includes language in the 'Justification' section in draft Bylaw 265 regarding riparian areas being necessary for stream and watershed health and regarding the role of the local government and the broader community in the stewardship of these areas. With respect to other comments provided by the APC, staff has reviewed the draft development permit area with MFLNRO staff and confirms that the exemption for work authorized under Section 35 of the federal *Fisheries Act* is consistent with current provincial and federal legislation. Finally, while staff recognizes the importance of exceeding the RAR through conferring protection to other watercourses and wetlands outside those required for compliance with RAR, staff recommends the LTC consider this as potential future project work and not within the scope of the current project. RAR has been in place at the provincial level for a number of years now and staff recommends focusing the present project on achieving compliance. The identification of additional streams will likely involve a significant amount of time and resources and, while an important task, should not delay the process of achieving compliance with the RAR.

Despite comments from the public and trustees questioning the inclusion of properties separated by a road from the actual mapped watercourse but that have areas of the 30m Riparian Assessment Area, and, therefore, draft Development Permit Area 3 – Riparian Areas, that encroach onto their properties, these areas remain included in draft Development Permit Area 3 – Riparian Areas. Staff has reviewed the inclusion of these areas with MFLNRO staff and has concluded that these areas must be included in the development permit area in order to comply with RAR. There is limited flexibility available to local governments in achieving compliance with RAR. Local governments have legislated requirements for areas to be included in a RAR-compliant development permit area in order to ensure a mechanism is in place to trigger a QEP assessment of applicable development.

Additional responses and explanations to concerns commonly expressed by the public are provided in the Additional Responses to Public Feedback section of this report.

Bylaws 267 & Bylaw 268 – Mudge & Decourcy Island OCP Amendments

As recommended by staff in the November 15, 2012 report on this topic, draft Bylaws 267 and 268 designate all zoning amendment applications in the Mudge and Decourcy Planning Areas and all temporary use permit applications in the Mudge Planning Area as circumstances for which development approval information may be required. The designation of these circumstances will help ensure that proposed development is consistent with the goals of the Mudge and Decourcy OCPs, may be adequately serviced and may be accommodated in a manner that sustains natural resources, environmentally sensitive areas and the rural character of the Mudge and Decourcy Planning Areas.

The Mudge Island OCP does not designate development permit areas, while the Decourcy Island OCP does not designate development permit areas or areas where temporary uses may be allowed through the issuance of a temporary use permit. As such, draft Bylaws 267 and 268

do not contain any designation of development approval information for these types of applications.

Bylaw Referrals

In accordance with Section 879 of the *Local Government Act*, in the case of bylaws to amend official community plans, the LTC must consider whether to consult with certain agencies and First Nations. Section 879 specifically requires local governments to consider whether to consult with the following:

- The board of the regional district in which the area covered by the plan is located and/or is adjacent to the area covered by the plan
- The council of any municipality (or local trust committee of any Local Trust Area) that is adjacent to the area covered by the plan
- First Nations
- Greater boards and improvement district boards, and
- Provincial and Federal governments and their agencies.

In addition, Section 881 of the *Local Government Act* requires consultation with the local school board.

Should draft Bylaws 265 and 266 receive first reading, staff recommends the bylaws be referred to the following agencies and First Nations:

Regional Agencies:

- Regional District of Nanaimo
- School District #68 (Nanaimo-Ladysmith)

Provincial Agencies:

- Provincial Ministry of Community, Sport and Cultural Development
- Provincial Ministry of Forests, Lands and Natural Resource Operations – Ecosystems Branch
- Agricultural Land Commission

Federal Agencies:

- Fisheries and Oceans Canada

First Nations (as determined from the Provincial Consultative Areas Database):

- Cowichan Tribes
- Halalt First Nation
- H'ul'qumi'num Treaty Group
- Stz'uminus First Nation
- Lake Cowichan First Nation
- Lyackson First Nation
- Penelakut Tribe
- Snaw'Naw'As Nation
- Te'Mexw Treaty Association
- Semiahmoo First Nation
- Snuneymuxw First Nation

Other:

- Islands Trust Fund

Should draft Bylaws 267 and 268 receive first reading, staff recommends the bylaws be referred to the following agencies and First Nations:

Regional Agencies:

- Regional District of Nanaimo
- School District #68 (Nanaimo-Ladysmith)

Provincial Agencies:

- Provincial Ministry of Community, Sport and Cultural Development

First Nations (as determined from the Provincial Consultative Areas Database):

- Cowichan Tribes
- Halalt First Nation
- H'ul'qumi'num Treaty Group
- Stz'uminus First Nation
- Lake Cowichan First Nation
- Lyackson First Nation
- Penelakut Tribe
- Snaw'Naw'As Nation
- Te'Mexw Treaty Association
- Semiahmoo First Nation
- Snuneymuxw First Nation

Other:

- Islands Trust Fund

ADDITIONAL RESPONSES TO PUBLIC FEEDBACK:

Common questions on draft Development Permit Area 3 – Riparian Areas identified in the public consultation process are listed in the Results of Consultation section of this report. Staff provides the following additional information in response to some of these common questions:

- *Why do we need to include watercourses that are seasonal, man-made and/or do not contain fish?*

As indicated in the Background section of this report, a 'stream' under RAR is broadly defined and does not necessarily need to contain fish, to contain water year-round, or to be natural. A 'stream' must, however, have the ability to provide fish habitat or must connect by surface flow, which may or may not be regularly occurring, to a freshwater feature that has the ability to provide habitat, at some point during the fish life cycle.

- *Why are the current setback provisions in the Gabriola Island Land Use Bylaw not enough for compliance with provincial legislation?*

Currently, the *Gabriola Island Land Use Bylaw, No. 177* contains requirements for a 15m setback from the natural boundary of any stream, lake or wetland (see Section B.2.1.1). While these setbacks assist in protecting riparian areas, they do not go far enough to achieve compliance with the RAR. Compliance with RAR requires the adoption of bylaw provisions consistent with the regulation, that is, that protect the 30m riparian assessment area through requiring a QEP assessment of any proposed residential, commercial or industrial development proposed in that area. Alternatively, local governments who had established streamside protection and enhancement areas in accordance with the former provincial *Streamside Protection Regulation* are deemed to meet the requirements of the RAR. The Gabriola Island Local Trust Committee did not adopt bylaws establishing streamside protection and enhancement areas under the former *Streamside Protection Act* and, therefore, must achieve compliance through the adoption of bylaws under RAR.

- *How will draft DPA 3 – Riparian Areas affect property values?*
Development permit areas are a very commonly used land use planning tool in British Columbia enabled by the provincial *Local Government Act*. All but two local governments subject to RAR have adopted bylaws in compliance with the regulation, the majority of which have done so through the adoption of development permit areas. Development permits cannot vary the use or density of development permitted through zoning. As such, the designation of development permit areas is unlikely to have any direct affect on property values. They may, however, increase costs associated with land development with added time and costs associated with the development approvals process.
- *What is the scientific basis of draft DPA 3 – Riparian Areas?*
Draft Development Permit Area 3 – Riparian Areas has been prepared based on compliance with RAR. The RAR adopts a science-based approach to land use management in riparian areas. QEPs are bound by a standard assessment methodology prescribed by the RAR, which is based on current science, and which determines the required setbacks for development and any measures required to protect, maintain or restore the integrity of the riparian area so that it may provide habitat. Riparian vegetation provides a number of habitat features for fish including, shade that regulates water temperatures, and large woody debris and other vegetative litter that affect stream morphology and provide nutrients to downstream areas.
- *How is existing development treated under draft DPA 3 – Riparian Areas?*
Draft Development Permit Area 3 – Riparian Areas will apply only to new commercial, residential and industrial development, as well as ancillary activities related to these uses. Existing permanent structures, roads and other development within the legislated 30m riparian assessment area will be ‘grand parented’ and residents may continue to use these existing developments as they always have, including renovating, repairing or reconstructing a permanent structure on its existing foundation, as long as the existing footprint is not moved or extended into the 30m riparian assessment area. Draft Development Permit Area 3 – Riparian Areas also does not apply to new or existing agricultural, resource or institutional uses.

RECOMMENDATIONS:

Staff recommends:

THAT the Gabriola Island Local Trust Committee give first reading to Amendment Bylaw 265, cited as “Gabriola Island Official Community Plan (Gabriola Island) Bylaw 166, 1997, Amendment No. 1, 2012”;

THAT the Gabriola Island Local Trust Committee give first reading to Amendment Bylaw 266, cited as “Gabriola Island Land Use Bylaw 177, 1999, Amendment No. 1, 2012”;

THAT the Gabriola Island Local Trust Committee refer Amendment Bylaw 265, cited as “Gabriola Island Official Community Plan (Gabriola Island) Bylaw 166, 1997, Amendment No. 1, 2012” and Amendment Bylaw 266, cited as “Gabriola Island Land Use Bylaw 177, 1999, Amendment No. 1, 2012”, to the following agencies and First Nations:

- Regional District of Nanaimo
- School District #68 (Nanaimo-Ladysmith)
- Provincial Ministry of Community, Sport and Cultural Development
- Provincial Ministry of Forests, Lands and Natural Resource Operations – Ecosystems Branch

- Agricultural Land Commission
- Fisheries and Oceans Canada
- Islands Trust Fund
- Cowichan Tribes
- Halalt First Nation
- H'ul'qumi'num Treaty Group
- Stz'uminus First Nation
- Lake Cowichan First Nation
- Lyackson First Nation
- Penelakut Tribe
- Snaw'Naw'As Nation
- Te'Mexw Treaty Association
- Semiahmoo First Nation, and
- Snuneymuxw First Nation;

THAT the Gabriola Island Local Trust Committee give first reading to Amendment Bylaw 267, cited as “Mudge Island Official Community Plan Bylaw 227, 2007, Amendment No. 1, 2012”;

THAT the Gabriola Island Local Trust Committee give first reading to Amendment Bylaw 268, cited as “Decourcy Island Official Community Plan Bylaw 16, 1981, Amendment No. 1, 2012”; and

THAT the Gabriola Island Local Trust Committee refer Amendment Bylaw 267, cited as “Mudge Island Official Community Plan Bylaw 227, 2007, Amendment No. 1, 2012” and Amendment Bylaw 268, cited as “Decourcy Island Official Community Plan Bylaw 16, 1981, Amendment No. 1, 2012”, to the following agencies and First Nations:

- Regional District of Nanaimo
- School District #68 (Nanaimo-Ladysmith)
- Provincial Ministry of Community, Sport and Cultural Development
- Islands Trust Fund
- Cowichan Tribes
- Halalt First Nation
- H'ul'qumi'num Treaty Group
- Stz'uminus First Nation
- Lake Cowichan First Nation
- Lyackson First Nation
- Penelakut Tribe
- Snaw'Naw'As Nation
- Te'Mexw Treaty Association
- Semiahmoo First Nation, and
- Snuneymuxw First Nation.

Attachments:

Attachment 1 – Comments and Correspondence on Draft Development Permit Area 3 – Riparian Areas between Islands Trust staff and MFLNRO staff

Prepared and Submitted by:

Chloe Fox

RPP, MCIP, Island Planner

February 12, 2013

Date

Concurred in by:

Courtney Simpson

RPP, MCIP, Acting Regional Planning
Manager

February 13, 2013

Date

From: [Henigman, Margaret FLNR:EX](#)
To: [Chloe Fox](#)
Subject: Gabriola draft RAR bylaw
Date: January-14-13 4:04:16 PM

Hi Chloe; I've had a look through the draft bylaw. There are definitely some wording issues we need to deal with before this is adopted. Perhaps it would be best if we got together? At the end of the day we need to see that the bylaw includes a trigger and definitions consistent with RAR.

Location:

- 1) You need to think about what it is that triggers the bylaw. It may be that the "Location" section defines what triggers an assessment but I couldn't make out the meaning of the 2nd paragraph in that Section, starting with "Riparian assessment areas..." Perhaps this could be reworded?
- 2) Objectives #6: I'm not sure I agree with the concept of trying to list every type of land use that the RAR doesn't apply to. Usually the local governments simply list what it does apply to: residential, commercial and industrial activities. If you are going to do this then why only include agriculture in this statement since all resource lands, forestry, mining etc is exempt.
- 3) Exemptions: This is where we often get into trouble
 1. #4&6 – we/you cannot authorize the removal of trees, pruning etc within a SPEA, or in the absence of a SPEA within 30m of a stream (RAA), without DFO authorization – and they will simply tell the proponent to get a RAR assessment done to establish the width of the SPEA.
 2. #7 only pre-existing activities/structures are permitted within the SPEA. The addition of benches, tables garden ornaments leads to more encroachment and degradation. Existing gardens, benches, lawns can all be maintained just not expanded into the SPEA.
 3. #10-17 – this list includes activities that are covered by Section 9 emergency works under the Water Act. Works in and About a Stream are not relevant to the RAR. Upland support to install flood protection works and erosion protection certainly may have an effect on the riparian zone but would be included as either emergency works under the Water Act and/or within the scope of planning with DFO and/or us, but would not specifically be relevant to the RAR. That is, emergency flood works would supersede RAR, if in fact flooding was occurring.
 4. #11 - again Section 9 has no direct relevance under RAR – Section 9 is for instream works, the RAR is for the upland out to 30m from the HWM. Mentioning instream works under your exemptions seems confuses things.
 5. #12 – as noted above I'm not sure if makes sense to try to list every resource activity that would be exempt under RAR. RAR doesn't apply to any of the

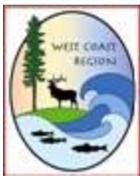
resource land use activities, forestry included so why mention this here?
Same with # 13-17

4) Development Guidelines

1. First sentence "...that restores or maintains the proper function and condition..."
2. This sentence makes it sound like the storage of things other than chemicals in the SPEA might be OK. I'm also not sure about the part about the owner implementing a plan for protecting the SPEA. They simply need to follow the "measures" provided by the QEP in the assessment report.
3. Not sure what this section is getting at but the only way a landowner could "develop" within a SPEA is if they have an authorization from DFO.
6. I'm not sure that information regarding floats ramps or docks is relevant in this DP. A trail, stairs etc to a dock, ramp or float might apply and it's very possible that the developer of said structure would need the permission of whoever owns the bed of the lake and/or a Section 9 but the RAR wouldn't apply in and of itself.

I hope I haven't missed anything. Note that VIU is putting together a RAR course for local governments which we are helping with. They think it could be ready to go by ~April. You might want to keep an eye out for that. Let me know if you are having any trouble with my hieroglyphs!

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From: Chloe Fox
To: Marlene.Caskey@gov.bc.ca
Cc: [Henigman_Margaret_FLNR:EX_\(Margaret.Henigman@gov.bc.ca\)](mailto:Henigman_Margaret_FLNR:EX_(Margaret.Henigman@gov.bc.ca)); [Courtney Simpson](mailto:Courtney.Simpson)
Subject: Confirmation of Changes to be made to draft Development Permit Area 3 - Riparian Areas (Gabriola)
Date: February-07-13 2:45:00 PM

Good afternoon Marlene:

Further to our meeting of yesterday, and further to Maggie Henigman's emailed comments of January 14, 2013, I want to confirm my understanding that we have agreed that the following changes will be made to draft Development Permit Area 3 – Riparian Areas and that these changes will adequately address Ministry of Forests, Lands and Natural Resource Operations staff comments and will achieve RAR-compliance for the Gabriola Local Trust Area:

- 1) Objective #6 – “To honour provincial designations of certain lands as for agricultural purposes” – will be removed
- 2) Exemption #4 – “the removal of trees that have been examined by an arborist and certified to pose an immediate threat to life or property” – will be retained
- 3) Exemption #6 – “pruning conducted in accordance with the standards ... or removal of a structural root within the critical root zone” – will be revised as follows:
 - a. To include the qualification that exempt pruning does not involve the removal of more than 25% of the crown in one **growing** season; and
 - b. To exempt the pruning of only two (2) trees in one growing season
- 4) Exemption #7 – “the placement of impermanent or movable structures, such as benches, tables and garden ornaments” – will be removed
- 5) Exemption #10 – “emergency procedures to prevent, control or reduce immediate threats to life or property, including...the *Water Act*” – will be retained
 - a. We had discussed removal of this exemption as this is covered under Exemption # 11 – “changes in or about a stream authorized under Section 9 of the *Water Act*”. However, upon internal review, we are going to keep this in for clarification and comfort for the public. This is a question that will inevitably be asked and we would prefer to have it clear in the bylaw.
- 6) Development Guideline #1 will be revised to amend “proper functioning condition” to “proper function and condition”
- 7) Development Guideline #2 will be revised to remove the clause, “including the storage or application of pesticides and other chemicals for non-essential cosmetic purposes” and to clarify the language regarding the role of property owners in following the measures provided by the QEP and implemented as conditions in a development permit
- 8) Development Guideline #3 will be revised to clarify that area described as suitable for development would be within the Riparian Assessment Area (i.e. the DPA) and to remove the clause, “with special mitigating measures”
- 9) Development Guideline #6 will be removed as the required authorization under Section 9 of the *Water Act* for any floats or associated structures has been deemed, upon internal review, to be satisfactory to meet the original intent of this guideline.
 - a. We had discussed revising this guideline to clarify that construction below the high water mark shall only be authorized through a development permit in conjunction

with the issuance of the appropriate authorization under Section 9 of the *Water Act*. Upon internal review, we have decided it is unnecessary to duplicate the approvals process in this regard.

- 10) We will, in a Development Approval Information Bylaw developed to accompany draft Development Permit Area 3 – Riparian Areas:
- a. Specify that QEP reports must meet the assessment methodology prescribed in the *Riparian Areas Regulation* (RAR)
 - b. Include a mechanism for Islands Trust staff to reject reports that are determined not to meet the RAR assessment methodology
 - c. Include a mechanism for independent review of QEP reports where deemed necessary by Islands Trust staff.

Please confirm, at your earliest convenience, that this accurately reflects the changes we discussed and agreed upon at our meeting yesterday and that any changes we have made to these agreed changes upon internal review are satisfactory in terms of compliance with RAR.

Kind regards,
Chloe

Chloe Fox, RPP, MCIP

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Please consider the environment before printing this email

From: Caskey, Marlene FLNR:EX [mailto:Marlene.Caskey@gov.bc.ca]
Sent: February-12-13 2:01 PM
To: Chloe Fox
Cc: Henigman, Margaret FLNR:EX
Subject: RE: Confirmation of Changes to be made to draft Development Permit Area 3 - Riparian Areas (Gabriola)

Most of it looks fine, Chloe.

8 (Guideline 3): should be written to ensure that there is no development within the SPEA, only within the remainder of the RAA.

However, for the DAI, you also want to have wording which allows the local government to invoke further (more restrictive) provisions than just those in the QEP's report. Remember that the RAR report is focussed only on fish protection and, for instance, there may be other values such as rare amphibians which could use more extensive protection. Or, you (Islands Trust) may feel that the setback created by the SPEA doesn't meet your preferred siting provisions.

Also, the RAR process is set up so that even danger trees, when certified as such by an arborist, which are within the SPEA, require approval of DFO for their removal. With DFO in flux right now, it is difficult to support this, but the removal of the trees may constitute damage to fish habitat. I'm not sure how to deal with this - perhaps this exemption should have the provisos - one tree, able to be felled without damage to the remainder, and to be left untouched if it is within the SPEA. If more than one tree or with potential damage..... etc., DFO support must be obtained.

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