



STAFF REPORT

Date: October 31, 2013 **File No.:** 6500-20
(Riparian Areas Regulation)

To: Thetis Island Local Trust Committee
For meeting of November 20, 2013

From: Aleksandra Brzozowski, Island Planner

CC: Courtney Simpson, Regional Planning Manager (Northern Office)

Re: **Riparian Areas Regulation Compliance**

PURPOSE:

The purpose of this report is to provide the Local Trust Committee (LTC) with an update on Thetis Island's work to comply with the provincial Riparian Areas Regulation in the Ralston Creek Watershed. This work is Priority #2 on the LTC's Work Program.

INTRODUCTION:

To become compliant with the provincial *Riparian Areas Regulation* (RAR), the Islands Trust contracted with Mimulus Biological Consultants to map streams in the one watershed on Thetis Island identified by the Ministry of Environment as being applicable to the RAR. The March, 2011 Mimulus report mapped the watercourses and waterbodies that meet the definition of a "stream" under the RAR:

STREAM: Any of the following that provide or support fish habitat:

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

The RAR applies to any area within 30 metres of a "stream". The majority of the areas on Thetis Island that meet the RAR criteria are on the Meadow Valley Strata property.

Meadow Valley Properties is "a unique 206 acre bare land strata real estate development based on environmental planning"ⁱ. Extensive planning has gone into the strata design based on "Greenquest" principles, meaning "appropriate, environmentally sensitive, land use based on an understanding of the land". Meadow Valley Properties has covenanted three areas totaling 9 hectares of land, for conservation purposes. Their conservation objectives are also described on their website, and their values favour stewardship rather than regulation.

The provincial *Riparian Areas Regulation* (RAR) of the *Fish Protection Act* came into force after Meadow Valley Property's land use planning was complete, and is a regulation that affects much of the streams and wetlands on the property.

The LTC is required by the province to implement the RAR.

BACKGROUND:

Previous reports dated July 7, 2010; May 24, 2011; April 5, 2012; October 3, 2012; and November 21, 2012 deal with a number of other considerations and options that were considered for meeting the RAR requirements in the Ralston Creek watershed.

CURRENT STATUS OF SUBJECT LANDS:

Conservation Covenants

There are two conservation covenants on Lot A of the property, covering three areas:

Covenant ET13258:

- Held by TLC The Land Conservancy and Cowichan Community Land Trust
- 6 hectares on the west side of the property including the head of a marsh and the upper stretches of an ephemeral creek, together with surrounding riparian area and some drier upland. This is outside the RAR-applicable watershed and is not pertinent to this report
- 1.6 hectares on the south side of the property including a Willow Fen and a surrounding buffer. This is within the RAR-applicable watershed and is discussed further in the report.

Covenant EX28284:

- Held by TLC The Land Conservancy and the Trust Fund Board
- Consists of a strip of land of area approximately 1.4 hectares, below Pilkey Point Road. The site is a preserves bluff and dry grass/moss area and is not pertinent to stream protection under the RAR.

Lot B of the property features the following conservation covenant:

Covenant EX13394.

- Held by the Thetis Island Resident and Ratepayers Association and the Local Trust Committee
- The area is protected by a no disturbance covenant, with the intention to provide Thetis Island with a natural state community linear park.

Flood protection covenant:

Covenant ET013369:

- Between the owner, the Ministry of Water Land and Air Protection, and the mortgagee.
- The covenant restricts construction within 15 metres of the natural boundary of a watercourse or wetland, and within an elevation less than 1.5 metres of the natural boundary of a watercourse or wetland.
- The purpose of the covenant is to prevent damage to property from flooding.

STATUS UPDATE:

Existing Protection

The property owner has expressed an interest in achieving RAR compliance through covenants on the property. The LTC passed the following resolution at its November 21, 2012 business meeting:

*It was **MOVED** and **SECONDED** that the Local Trust Committee request staff to provide a report on existing levels of protection of Ralston Creek, options for enhanced levels of protection, and future plans for the development.*

Below is a summary of the current freshwater protection in place through covenants on the subject property compared with the level of protection required under the RAR.

The Willow Fen area at the south end of the property is the only area subject to a conservation covenant that is also a stream applicable to the RAR. This area is called the “hardhack wetland” in the Mimulus report. As shown in Attachment 2, the covenanted area includes the wetland, but does not include the full extent of the associated streams.

The covenant on the watercourses and wetlands (ET013369) is intended to protect damage to property caused by flooding. The covenant effectively creates a “no build zone” 15 metres on either side of the streams and wetlands, or to where an elevation 1.5 metres from the stream, whichever is greater. The map in attachment 2 shows the 30 metre buffer from the high water mark of the streams / wetland required by the RAR, as well as 2 metre contour lines. It can be seen here that the elevation gain is greater than 2 metres within this 30 metre zone, so the covenant does not cover the whole 30 metre area.

The covenant on Lot B up at Cufra Inlet is intended to provide the public with a linear park that remains in a natural state. The terms of the covenant prohibit buildings and structures in the area. Disturbance of the watercourse is prohibited, as is pruning and removing vegetation (without consent of the Local Trust Committee). These terms meet the requirements of the Riparian Area Regulation.

The measures in place by Meadow Valley Properties to protect ecosystems and create a no-build buffer around streams and wetlands do not cover as great an area as required by the RAR. However, the 30 metre Riparian Assessment Area (RAA) designated in the RAR, does not represent a 30 metre “no build zone”. It represents the study area that must be subject of a report by a Qualified Environmental Professional (QEP) to determine the Streamside Protection and Enhancement Area (SPEA). Should a report be completed by a QEP and a SPEA set, there is the possibility that it would be covered by existing covenant measures.

Compliance through Covenants

On July 15, 2013, the property owner provided to Staff a draft plan for watercourse protection, focusing on the option of proposed covenants. This proposal has been reviewed by staff to identify areas that are not adequately addressed through covenants, and to determine the feasibility of complying with the RAR through covenants.

On October 22, 2013, Staff met with the property owner to review the draft proposal and identify next steps in pursuit of a possible compliance with the RAR through covenants. It is essential that such covenants must be supported by a RAR assessment to determine a SPEA and measures, that the covenants must ensure that no development takes place in the SPEA (unless exempt or previously authorized) and that the measures are followed.

STAFF COMMENTS:

Typically, a RAR applicable stream will fall across a number of properties spanning a wide spectrum of development plans. The most common approach for local governments implementing the RAR is to designate a development permit area within the 30 metre Riparian Assessment Area; if a property owner wishes to develop within the 30 metre RAA, they are then required to retain a QEP to determine the SPEA on their property. The SPEA is typically less, sometimes significantly less, than the 30 metre RAA and is determined based on careful study of the specific site.

In the instance of Thetis Island, however, the RAR applicable stream falls within one large strata property that is in mid-point of development. The property owner, having already established a number of conservation covenants, would like to pursue the option of introducing further conservation covenants on the property which would satisfy the RAR. As such, Staff recommends the following approach:

i. Conduct a RAR assessment first, then register a conservation covenant on the SPEA

A simple RAR assessment, done by a QEP, is one option available to establishing the SPEA width. On the Meadow Valley Strata, much of this work has already been done thorough the two existing QEP reports for the watershed; the Mimulus report that mapped the streams, and the Aquaparian Fish Presence Survey, both from 2011.

If the Meadow Valley Strata has particular plans for development within the 30 metre RAA, they should advise the QEP who can address these plans in their report. This report could then be used as the basis for the baseline for a conservation covenant.

Note that although the SPEA width is typically less than the 30 metre RAA width, even a SPEA set at 15 metres or less would require new covenant measures; the existing flood protection covenant is not sufficient to meet the requirements of the RAR. The flood protection covenant only speaks to structures where the RAR limits land alteration including thing such as vegetation removal and landscaping, as well as subdivision.

Other RAR Implementation Options

There are three other options available to the LTC to move forward on RAR compliance on the Meadow Valley Properties:

ii. Register a conservation covenant on the 30 metre RAA

A conservation covenant is much more restrictive than a development permit area. The purpose of a development permit area is to allow development under certain conditions, and a conservation covenant is usually meant completely prevent development.

Requiring a conservation covenant for the 30 metre RAA would be a very restrictive approach to complying with the RAR. There would likely be instances where the 30m RAA would encroach into the property's strata lots.

iii. Adopt a development permit area covering the 30 metre RAA

The most immediately straight forward option is for the Thetis Island LTC to adopt a development permit area covering the 30 metre RAA using model development permit areas from other islands. With such a development permit area in effect, property owners would need to obtain a development permit on a case-by-case basis before

doing any construction, subdivision or land alteration in the area. A requirement of the development permit application would be a QEP report to determine the SPEA, and ultimately to determine if, where and under what conditions the proposed development can take place in order to prevent impacting the stream.

iv. *Conduct a simple assessment first, then adopt a development permit area on the SPEA*

A simple assessment, done by a QEP, is another option available to establishing the SPEA width. A detailed assessment is the other option. The SPEA width is typically less than the 30 metre RAA width.

If the Meadow Valley Strata has particular plans for development within the 30 metre RAA, they could advise the QEP who can address these plans in their report and if allowed by the QEP in the SPEA, these can be included as exemptions in the development permit area, so a development permit would not be required for these specific, future developments.

Cost of hiring the QEP to conduct a simple assessment:

Throughout this project there has been a desire by the LTC to cover the costs of a QEP report when possible. If the preferred approach is to proceed with a simple assessment, a cost of a few thousand dollars is likely.

There remains the bulk of \$1500 in the Thetis LTC Special Projects budget for 2013/2014; this budget item is intended to be spent on work program work items not previously budgeted through project charters. Staff suggests a sharing of costs with the property owner should this option be chosen.

Watershed Protection measures island-wide:

At the November 21, 2012 meeting, the LTC placed Island-Wide Watershed Protection as an item on the Projects List. While this is not likely to be tackled before the end of the 2011-2014 term, it should be remembered moving forward with protection measures for this RAR-applicable watershed.

RECOMMENDATIONS:

Based on the above considerations, staff recommends that the Thetis Island Local Trust Committee:

1. Direct staff to work with a Qualified Environmental Professional and the Meadow Valley Strata owner-developer, Mr. Ian Ralston, to conduct a simple assessment under the Riparian Areas Regulation for Ralston Creek streams;
2. Change the Activity column of Top Priority No. 2 to: "Ensure protection of freshwater ecosystem in the Ralston Creek watershed through review of current regulation and covenants, and possible bylaw amendment".

Prepared and Submitted by:

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November 8, 2013

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Date

Concurred in by:

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November 8, 2013

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