



DATE OF MEETING: June 26, 2017
TO: Mayne Island Local Trust Committee
FROM: Gary Richardson, Island Planner
Southern Team
COPY: Robert Kojima, Regional Planning Manager
SUBJECT: Riparian Area Regulation Implementation

Location: Mayne Island Local Trust Area

RECOMMENDATION

- 1. That the Mayne Island Local Trust Committee request staff arrange Community Information Meeting for July 24, 2017 to obtain community input on draft Bylaw 171.**
- 2. That the Mayne Island Local Trust Committee request staff arrange for a staff member from Madrone Environmental Ltd. to attend the July 24, 2017 Community Information meeting.**

REPORT SUMMARY

This report provides comment on the implementation of the Riparian Area Regulation on Mayne Island using Streamside Protection and Enhancement Areas (SPEAs) calculated by Madrone Environmental Ltd. The new DPA text and mapping is shown on Draft Bylaw 171 (attached).

BACKGROUND

The Riparian Areas Regulation, enacted under Section 12 of the *Riparian Areas Protection Act* in July 2004, requires local governments to protect riparian areas during residential, commercial and industrial development by ensuring that proposed activities are subject to a science based assessment, conducted by a Qualified Environmental Professional (QEP). There have been various staff reports prepared summarizing the RAR and the LTC's options for implementation (available on the Mayne Island LTC webpage).

The LTC previously contracted two Qualified Environmental Professionals (QEPs) to provide reports on RAR applicable streams, both of whom identified three streams as subject to the RAR. The Mayne Island Landowners Coalition also contracted two reports from a QEP to determine fish absence in two streams.

At its May 30, 2016 business meeting the LTC endorsed a project charter which directed staff to engage the services of a Qualified Environmental Professional (QEP) to review existing QEP reports and carryout further fieldwork.

As a result of the LTC's direction a QEP was contracted (Madrone Environmental Ltd.) and a report was prepared by the QEP titled "Review of Mayne Island Riparian Area Regulation Requirements – Recommendations Resulting from Application of the Detailed RAR Assessment Methodology". The [Madrone report](#) dated March 7, 2017 is posted on the Mayne LTC website for reference.

Madrone also completed an overview of RAR Detailed Assessment on applicable streams to assist Islands Trust staff and the Mayne Island Local Trust Committee in establishing a refined Development Permit Area (DPA) that would be reflective of specific stream characteristics and RAR assessment methodology.

Staff recommended in a report prepared for the March 27, 2017 LTC meeting that Riparian Area DPAs be implemented on Deacon Creek and Horton Creek using the DPA distances (including buffer areas) as recommended in the Madrone report for the following reasons:

- Campbell Creek has been deemed to not be RAR applicable and therefore should not be included in the DPA;
- Deacon Creek and Horton Creek have been determined to be subject to the RAR and therefore should have DPAs in place;
- The Streamside Protection and Enhancement Areas (SPEAs) as identified in the Madrone report for Deacon Creek and Horton Creek have been calculated using RAR methodology and can be used as the basis for creating a DPA; and
- Buffer areas outside of the SPEA are required in order to contain measures to protect the SPEA in the event development occurs in the vicinity of the stream.

The LTC passed the following resolutions at its March 27, 2017 LTC meeting:

MA-2017-011

It was MOVED and SECONDED

that Mayne Island Local Trust Committee direct staff to prepare a draft bylaw to establish a Riparian Area Regulation Development Permit area for Deacon Creek and Horton Creek.

MA-2017-012

It was MOVED and SECONDED

that Mayne Island Local Trust Committee endorse the Riparian Area Regulation Development Permit area implementation project charter dated March 14, 2017 as amended.

Staff has prepared a draft bylaw (Bylaw 171) that uses the SPEAs identified in the Madrone report to define Riparian DPAs for Deacon and Horton Creek. In addition to the SPEAs identified by Madrone report staff is recommending up to 5 metre buffers be added to the SPEAs to allow for an area for mitigation measures to be located if necessary to protect the SPEAs.

ANALYSIS

Policy/Regulatory

Fish Protection Act:

The Riparian Area Protection Act requires that local governments establish regulations to protect riparian areas.

Islands Trust Policy Statement:

It is the Object of the Islands Trust to “Preserve and protect the Trust Area and its unique amenities and environment of the Trust Area 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.

Official Community Plan:

Development Permit Areas should be applied to environmentally sensitive areas.

Objective: To preserve and protect the natural environment of the Mayne Island Local Trust Area, the quality and quantity of its surface and ground water.

Issues and Opportunities

The provincial RAR requires local governments to use existing land use planning tools to protect fish habitat, including streams that are potentially fish-bearing. The recommended approach of establishing DPA for the two streams subject to the RAR on Mayne will provide certainty to landowners and to the LTC that activities undertaken adjacent to those watercourses are assessed in conformity with the Riparian Area Regulations.

Consultation

A community information meeting is recommended as part of the bylaw review process. Also the draft DPA bylaw will be forwarded to government agencies, First Nations and other groups and individuals as appropriate. If the draft DPA bylaw proceeds to public hearing all statutory notification requirements will be complied with.

Rationale for Recommendation

The provincial RAR requires local governments to use existing land use planning tools to protect fish habitat, including streams that are potentially fish-bearing. The recommended approach of establishing DPA for the three streams subject to the RAR on Mayne will provide certainty to landowners and to the LTC that activities undertaken adjacent to those watercourses are assessed in conformity with the Riparian Area Regulations.

ALTERNATIVES:

- 1) Request amendments to draft bylaw prior to proceeding.

NEXT STEPS:

- Schedule a Community Information Meeting for July 24, 2017
- Forward draft bylaw to First Nations and agencies.
- Proceed through the process to amend the OCP to establish the new DPA, including bylaw readings, public hearing, executive approval and ministerial approval.
- Implement the new DPA through landowner and contractor contact.

Submitted By:	Gary Richardson, Island Planner	June 14, 2017
Concurrence:	Robert Kojima, Regional Planning Manager	June 15, 2017

ATTACHMENTS

1. Draft Bylaw 171

**MAYNE ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 171**

**A BYLAW TO AMEND MAYNE ISLAND OFFICIAL COMMUNITY PLAN
BYLAW NO. 144, 2007**

The Mayne Island Local Trust Committee enacts in open meeting assembled as follows:

1. CITATION

This Bylaw may be cited for all purposes as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2017”.

2. SCHEDULES

Mayne Island Official Community Plan No. 144, 2007 is amended as shown on Schedule 1, attached to and forming part of this bylaw.

3. SEVERABILITY

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 _____ DAY OF _____ 20__

PUBLIC HEARING HELD THIS _____ DAY OF _____ 20__

READ A SECOND TIME THIS _____ DAY OF _____ 20__

READ A THIRD TIME THIS _____ DAY OF _____ 20__

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS
_____ DAY OF _____ 20__

APPROVED BY THE MINISTER COMMUNITY, SPORT AND CULTURAL
DEVELOPMENT THIS _____ DAY OF _____ 20__

ADOPTED THIS _____ DAY OF _____ 20__

Chair

Secretary

DRAFT

**MAYNE ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 171**

SCHEDULE 1

The MAYNE Island Official Community Plan No. 144, 2007, is amended as follows:

1. Schedule A (Policy Document) of Mayne Island Official Community Plan No. 144, 2007 is amended by inserting the following as new Sections 2.8.7, 2.8.8 and Section 2.8.9 following Section 2.8.6:

“2.8.7 Riparian Area Development Permit Area

Designation

This development permit area includes all land that is designated as the Riparian Area Development Permit Area on Schedule I. The Development Areas shown on Schedule I have been designated as a result of a detailed assessment carried out by Madrone Environmental Services Ltd. (Madrone) which are detailed in a March 7, 2017 report prepared by Madrone. In the report Madrone identified Streamside Protection and Enhancement Areas (SPEAS) for the Riparian Area designated watercourses on Mayne Island. The Development Permit Areas on Schedule I consist of the SPEAs identified by Madrone with a buffer area of up to 5 metres on each side of a watercourse to contain mitigation measures that may be required if development occurs near the SPEA.

Authority

This development permit area is established, pursuant to Section 488(1)(a) of the *Local Government Act*, for the purpose of establishing objectives for the protection of the natural environment, its ecosystems and biological diversity.

Objectives

The objective of this development permit area is to protect the biological diversity and habitat values of aquatic ecosystems.

It is the Object of the Islands Trust to “Preserve and protect the Trust Area and its unique amenities and environment of the Trust Area 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 Riparian Area Regulation (RAR), under the *Riparian Areas 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.

General Applicability

The following residential, commercial, and/or industrial activities shall require a development permit whenever they occur within the DPA, unless specifically exempted below:

- (a) construction of, addition to, or alteration of a building or other structure;
- (b) removal, alteration, or destruction of vegetation;
- (c) soil removal, soil deposit or soil disturbance;
- (d) development of drainage systems;
- (e) creation of non-structural impervious or semi-impervious surfaces;
- (f) subdivision, as defined in the *Local Government Act*; and
- (g) development, as that term is defined under the provincial *Riparian Areas Regulation*.

Work Not Requiring a 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. Interior or structural exterior alterations, renovations, maintenance, reconstruction or repair to a pre-existing permanent building or structure on an existing foundation or footprint to an extent that does not alter, extend or increase the footprint. For clarity, this includes pre-existing septic and water systems.
- c. The removal of trees that have been examined by an arborist and certified to pose an immediate threat to life or property.
- d. Emergency procedures to prevent, control or reduce immediate threats to life or property including: emergency actions for flood-protection and erosion protection, clearing of an obstruction from a bridge or culvert or an obstruction to drainage flow, and repairs to bridges and safety fences carried out in accordance with the *Water Act*.
- e. 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.
- f. Restoration and enhancement activities by persons undertaking to only restore and enhance the natural features, functions and conditions of riparian areas as approved in a signed and sealed letter from a Qualified Environmental Professional.
- g. Proposals for the subject property which have an existing development permit and demonstrate that the proposed development shall not in any way compromise the permit and continue to demonstrate meeting or beating all protective measures and recommendations in accordance with a Riparian Assessment Report from a Qualified Environmental Professional submitted to the *Riparian Areas Regulation* Notification System.
- h. Farm Operations as defined in the *Farm Practices Protection (Right to Farm) Act* and farm uses as defined in the Agricultural Land Reserve

Use, Subdivision, and Procedure Regulation. For clarity, a farm operation or farm use means agricultural activities conducted by a farm business.

- i. 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*;
- j. forest management activities on land that is the subject of a woodlot license or tree farm license under the *Forest and Range Practices Act*;

2.8.8 Guidelines

Prior to undertaking any development activities within the Riparian Area DPA an owner of property shall apply to the LTC for a development permit, and the following guidelines apply:

1. The property owner shall be required, in addition to any other application requirements enacted or imposed by the Local Trust Committee, to provide at their expense an assessment report from a Qualified Environmental Professional which has been submitted per the *Riparian Areas Regulation*.
2. The Local Trust Committee should impose permit conditions based on the assessment report including:
 - a. Require specified natural features or areas to be preserved, protected, restored or enhanced in accordance with the permit.
 - b. Require natural water courses to be dedicated.
 - c. Require works to be constructed to preserve, protect, restore or enhance natural water courses or other specified natural features of the environment.
 - d. Require protection measures, including that vegetation or trees be planted or retained in order to:
 - i. preserve, protect, restore or enhance fish habitat or riparian areas;
 - ii. control drainage, or;
 - iii. control erosion or protect banks.
3. The Local Trust Committee may require a security for developments clearing greater than 280m² (3,012 ft²) of land within the Development Permit Area. Security shall be returned upon confirmation by a Qualified Environmental Professional that assessment report conditions have been satisfactorily addressed.
4. Security shall be provided to secure satisfactory completion of habitat protection works, restoration measures, or other works for the streams and streamside habitat (the "required works"). The security shall be 150% of the estimated value of the required works as determined by the Local Trust Committee.
5. The development permit should not allow any development activities to take place within any Streamside Protection and Enhancement Area identified by the Qualified Environmental Professional and the property owner should be required to follow any measures identified by the Qualified Environmental Professional for protecting the Streamside Protection and Enhancement

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Area over the long term and these measures should be included as conditions of the development permit. The width of the Streamside Protection and Enhancement Area may be less than the width of the Development Permit Area.

6. Where a Qualified Environmental Professional or other professional's report describes an area within the Development Permit Area as suitable for development, that is, where the Streamside Protection and Enhancement Area is less than the width of the Development Permit Area, 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 Qualified Environmental Professional or other professional at the property owner's expense may be required during construction and development phases, as specified in a development permit.
 7. If the nature of the proposed project within the Development Permit Area changes after the professional report has been prepared such that it is reasonable to assume that the professional's assessment of the impact of the development may be affected, the Local Trust Committee may require the property owner to have the professional update the assessment at the property owner's expense and development permit conditions may be amended accordingly.
 8. The Local Trust Committee may consider variances to the subdivision, siting or size regulations of this Bylaw where the variance may result in enhanced protection of a Streamside Protection Enhancement Area, riparian buffer or riparian ecosystem in compliance with recommendations of a professional's report.
 9. If a proposed land subdivision is to create additional new lots within this Development Permit Area, then any new lots, roads, building sites, septic fields and driveways should be located and constructed in a way that meets the objectives of this Area."
2. Mayne Island Official Community Plan No. 144, 2007 is amended by adding the following Maps as Schedule I - Riparian Area Development Permit Areas.

MAYNE ISLAND OFFICIAL COMMUNITY PLAN

Bylaw No. 144

SCHEDULE I

RIPARIAN AREA DEVELOPMENT PERMIT AREAS

