

Meadow Valley Properties, Strata VIS5168

To Thetis Island Local Trust Committee

17th February 2017

By Electronic Mail.

Re: Riparian Areas Regulation and Ralston Creek

We have noticed in the agenda package for the 21st February 2017 Thetis Island Local Trust Committee (LTC) meeting a letter (November 21st 2016) from Andrew Appleton, MFLNRO. The letter is in reply to one sent to the LTC by Meadow Valley Properties strata. It was our understanding the Islands Trust staff would forward to us for comment any reply received from MFLRNO. Unfortunately we have only just been made aware of the letter and so we are writing to give our initial comments and to ask that the LTC do not take a decision based on the partial response in the MFLNRO letter.

Reading the letter it seems that Mr Appleton has misunderstood the situation in two critical points:

1. We put forward the point that Ralston Creek is non-RAR applicable. This was based on a report by a QEP, Sarah Bonar of Aquaparian. In support of the approach taken by this report we also have a legal opinion and can cite the very clear language in the RAR Assessment Methods. However, the letter from Mr Appleton does not address this point in any way, but rather sets out information about the application of the RAR to streams that are RAR applicable. This is further discussed below.
2. Mr Appleton's letter suggests that there is a conflict in the advice from Mimulus and Aquaparian. This is not the case, as has been stated several times in the past (including in Aquaparian's report and the legal opinion we obtained). Mimulus did not undertake an RAR assessment of Ralston Creek, and did not determine whether it was RAR applicable. Aquaparian was retained to assess whether Ralston Creek was RAR applicable, following the RAR Assessment Methods wording and approach. Their report built on and did not contradict Mimulus, who only offered an initial suggestion that Ralston Creek was potentially fish bearing—not whether it was fish bearing or not. It is our opinion that this supposed "difference of professional opinion" may be being used to obfuscate the main issue.

As previously stated in letters and submissions to the LTC, Ralston Creek is non-RAR applicable. We would refer the LTC to the attached RAR Schedule, "Riparian Areas Regulation Assessment Methods".

Section 1.4.2 of the Schedule defines "streams" under the RAR. The section begins by quoting definitions of a stream and fish, together with a description of the importance of upstream non fish bearing streams that flow into fish bearing streams.

The section goes on to state that the definition of "stream" is broad, and then to clarify when watercourse is not a "stream" under the RAR:

"When is a watercourse not a stream under the Riparian Areas Regulation? When it does not support fish or drain into a watercourse that supports fish; e.g., an isolated wetland that is not connected to a stream system; or a roadside ditch that is not directly connected to a fish-bearing stream. Note, however, that these 'non-fish' watercourses may still provide important functions as habitat to other aquatic organisms, food, water and migration corridors for birds and wildlife, water storage and cleansing, and greenway and aesthetic values for people. The fact that the Riparian Areas Regulation

focuses on fish streams does not prevent governments from regulating development around these other watercourses in the interests of protecting a wider range of values.

The key question in determining if a watercourse is a stream is whether it connected by surface flow to a stream that provides fish habitat. If so, then it is a stream under the Riparian Areas Regulation.”

It should be clear that this definition is of great importance, as without this definition every watercourse in BC would be a “stream” and RAR applicable.

Aquaparian has determined that Ralston Creek is not a “stream” under the RAR. To make this determination they followed the procedures established by the Schedule.

Aquaparian were retained to determine whether Ralston Creek was a “stream” based on verbal advice received from Mimulus and from the LTC. It is to be noted that Mimulus also presented a proposal to undertake the same work (with the same methods). In relation to point #2 (above), this provides further clarity that Mimulus and Aquaparian are not at odds over the assessment of Ralston Creek.

As Mr Appleton notes, the Schedule includes within the “Simple Assessment” clearly defined methods to determine fish absence (section 2.2.2.3 and Appendix 3 of the Schedule). He is therefore incorrect in saying that the Aquaparian report is inconsistent the Assessment Methods, this may be because he did not follow the intent of the report and missed the point that the entire watercourse, up to its exit to the ocean, is non fish bearing (does not contain fish). If there is a need for Aquaparian to revise their report to follow a specific format defined by MFLNRO then we could ask them to do so, at the time the report was written MFLRNO had not provided a form or electronic reporting format for this situation.

Given that the key point we were putting forward in our letter was that Ralston Creek has been demonstrated to be non-RAR applicable (i.e. not a “stream” under the RAR), it is surprising and of considerable concern that Mr Appleton’s letter does not reference section 1.4.2 of the Schedule—since it is that section that is intended to define which watercourses are “streams” under the RAR.

As before, we would like to ask the LTC to accept the Aquaparian report as the RAR intended. That is, as confirmation that Ralston Creek is not a “stream” under the RAR and that, therefore, the RAR does not apply to development related to Ralston Creek.

It is our understanding that the RAR places this responsibility on the QEP, and that the QEP makes the determination after following the Assessment Methods defined by the RAR Schedule. As stated in Mr Appleton’s letter, MFLNRO provide assistance in interpretation of the RAR standards—but we would like it to be clear that they cannot change the meaning of the regulation by their interpretations.

If the LTC needs to further engage MFLNRO so that they understand the import of the Aquaparian report and the RAR Schedule, we hope that we may be involved in this or kept aware of the MFLNRO responses as they arrive. We would be willing to meet with Mr Appleton to clarify the points noted above, if necessary.

Sincerely



Ian Ralston

On behalf of the Meadow Valley Properties strata