

PROPOSED

GAMBIER ISLAND LOCAL TRUST COMMITTEE BYLAW NO. 149

A BYLAW TO AMEND GAMBIER ISLAND LAND USE BYLAW, 2004

The Gambier Island Local Trust Committee, being the Trust Committee having jurisdiction in respect of the Gambier Island Local Trust Area under the *Islands Trust Act*, enacts as follows:

1. Citation

This bylaw may be cited for all purposes as “Gambier Island Land Use Bylaw, 2004, Amendment No. 1, 2018”.

2. Gambier Island Land Use Bylaw No. 86, 2004, is amended as follows:

2.1 PART 1 – INTERPRETATION, Section 1.1 Definitions, is amended by:

- a) replacing the definition of “WATERCOURSE” with the following: “means a lake, pond, river, creek, spring, ravine or gulch, whether or not usually containing water.”
- b) replacing the definition of “WETLAND” with the following: “means a swamp, marsh or fen.”
- c) replacing the definition of “RIPARIAN AREA” with the following: “means an area adjacent to a *watercourse* or *wetland* that links aquatic to terrestrial ecosystems and includes both the riparian vegetation and the adjacent upland vegetation that exerts an influence on the *watercourse* or *wetland*.”
- d) deleting the term and definition of “HIGH WATERMARK or HWM” and replacing it with the following: “HIGH WATER MARK means the point at which the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil or rock of the bed of the *watercourse* or the soil of the *wetland* a character distinct from that of its banks or the adjacent land in the case of a *wetland*, in vegetation as well as in the nature of the soil itself.”
- e) deleting the definition of “CONSTRUCTED DITCH.”
- f) deleting the definition of “RIPARIAN.”
- g) deleting the definition of “STREAMSIDE PROTECTION AND ENHANCEMENT AREA.”

2.2 PART 9 – DEVELOPMENT PERMIT AREA GUIDELINES AND EXEMPTIONS, is amended by removing Section 9.3 Development Permit Area No. 3 (Riparian Areas) in its entirety and inserting the following:

9.3 Development Permit Area No. 3 (Riparian Areas)

Definitions

- (1) Unless otherwise defined in this bylaw, terms used in Section 9.3 that are defined in the *Riparian Areas Regulation* have the same meaning as the definition given in the *Regulation*. Italicized terms (other than legislation) are defined in this bylaw.

Applicability

- (2) The following activities shall require a Development Permit whenever they occur within Development Permit Area No. 3, unless specifically exempted under Subsection 9.3(3):
- (a) removal, alteration or destruction of vegetation
 - (b) disturbance of soils
 - (c) construction of, addition to, or alteration of a building or other structure
 - (d) creation of non-structural, impervious or semi-impervious surfaces
 - (e) subdivision of land

Exempted Activities

- (3) The following activities are exempt from any requirement for a development permit in Development Permit Area No. 3:
- (a) development taking place outside of the areas described below in 9.3(3)(b)(i) through 9.3(3)(b)(iv):
 - (i) For a *watercourse* that is not located in a ravine, a 30 metre strip on both sides of the *watercourse* measured from the *high water mark*;
 - (ii) For a *watercourse* located within a ravine that is less than 60 metres wide, a strip on both sides of the *watercourse* measured from the *high water mark* to a point that is 30 metres beyond the top of the ravine bank;
 - (iii) For a *watercourse* located within a ravine that is 60 metres wide or greater, a strip on both sides of the *watercourse* measured from the *high water mark* to a point that is 10 metres beyond the top of the ravine bank;
 - (iv) For a *wetland*, the area within 30 metres of the *high water mark* of the *wetland*;
 - (b) interior or exterior alterations, renovations, maintenance, reconstruction or repair to a pre-existing building or structure to an extent that does not alter, extend or otherwise increase the ground floor area of the building or structure including all impermeable accessory structures such as decks and patios
 - (c) repair or replacement of a septic field within the same area of land as the existing septic field;
 - (d) the removal of trees that have been examined by an International Society of Arboriculture Certified Arborist and certified in writing to pose a threat to life or property;

- (e) With the exception of trees and vegetation containing nests protected under Section 34 of the *Wildlife Act*, cutting of vegetation and trees more than 20 metres from a *watercourse* or *wetland's high water mark* or the top of the ravine bank, provided the roots and stumps are left in the ground.
- (f) gardening and yard maintenance activities, within a pre-existing *landscaped area*, including mowing, pruning, planting, and minor soil disturbance that does not alter the general contours of the land;
- (g) manual removal of invasive species and manual planting of native vegetation conducted on the basis of advice from a Qualified Environmental Professional;
- (h) pruning of not more than two trees in one growing season which does not involve: the lift pruning of lower limbs to the extent that the live crown ratio is less than 50%, the removal of more than 25% of the crown in one growing season, topping, or the pruning or removal of a structural root within the critical root zone;
- (i) work authorized by Fisheries and Oceans Canada under Section 35 of the *Fisheries Act*;
- (j) emergency procedures to prevent, control or reduce immediate threats to life or property including:
 - (i) emergency actions for flood-protection and erosion protection;
 - (ii) clearing of an obstruction from a bridge or culvert or an obstruction to drainage flow;
 - (iii) repairs to bridges and safety fences carried out in accordance with the *Water Act*; and
 - (iv) creation of a fire break in accordance with the *Wildfire Act*.
- (k) The construction of a fence if no 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;
- (l) The construction of a trail if all of the following apply:
 - (i) The trail is 1 metre (1.6 feet) wide or less;
 - (ii) No trees are removed;
 - (iii) The surface of the trail is pervious;
 - (iv) The trail is designed and constructed to prevent soil erosion where slopes occur; and
 - (v) Where the trail parallels a *watercourse* or *wetland*, the trail is more than 5 metres away from the *high water mark*.
- (m) Disturbance of soils more than 20 metres from a *high water mark* or the top of the ravine bank if the total area of soil disturbance is less than 5 square metres;
- (n) The construction of a small accessory building more than 20 metres from a *high water mark* or the top of the ravine bank if the building is located within an existing landscaped area and the total area of small accessory building is less than 10 square metres;

Information Note: Despite these exemption provisions, owners are required to satisfy any other applicable local, provincial or federal requirements.

Guidelines

- (4) Prior to undertaking any non-exempt development activities within Development Permit Area No. 3, an owner of property shall apply to the Local Trust Committee for a development permit.

A development permit application must include an initial report prepared by a Qualified Environmental Professional that establishes, in relation to any *watercourse* or *wetland* on the parcel that is the subject of the application, whether it is a “stream” as defined in the *Riparian Areas Regulation*. Part 1 of these Guidelines apply to any application related to a “stream” that meets that definition, and Part 2 of these Guidelines apply to all other applications.

Part 1 Guidelines:

General

- (a) Applications for development permits must also include an assessment report prepared by a Qualified Environmental Professional (QEP) in accordance with the assessment methods described in the Riparian Areas Regulation and submitted to the B.C. Ministry of Environment’s Riparian Areas Regulation Notification System. The report must include the QEP’s recommendations regarding development approval conditions including the monitoring of development activities and subsequent reporting by the QEP to the applicant and the Local Trust Committee. The report may be combined with the initial report described above.
- (b) In general, all development in this Development Permit Area should be undertaken in a manner that restores or maintains the proper function and condition of the *riparian area*, water bodies and ecosystems. Where a QEP has, as part of the assessment report, made recommendations for mitigation measures, enhancement or restoration in order to lessen impacts on the *riparian area* and ecosystems, or monitoring and reporting, the Local Trust Committee may impose permit conditions, including a requirement for security in the form of an irrevocable letter of credit, to ensure the restoration and/or protection of *riparian areas* and ecosystems is consistent with the measures and recommendations described in the assessment report.
- (c) The development permit should not allow any development activities to take place within any Streamside Protection and Enhancement Area (SPEA) identified in the assessment report and the owner should be required to follow any measures identified by the QEP for protecting the SPEA over the long term, which measures should be included as conditions of the development permit.

- (d) Where an assessment report describes an area within the DPA as suitable for development, the development permit should only allow the development to occur in that area.
- (e) If the nature of the proposed project within the DPA changes after the RAR assessment 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 applicant to have the professional update the assessment at the applicant's expense and development permit conditions may be amended accordingly.
- (f) 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 SPEA, riparian buffer or riparian ecosystem in accordance with the recommendations in a QEP's assessment report.

Subdivision

- (g) Land should not be subdivided so as to create new parcel boundaries intersecting or within 30 m of the *high water mark* of a stream, unless the boundary is being created for an ecological reserve under the *Ecological Reserve Act* for dedication to the Crown, or the subdivision complies with the recommendations of a QEP.
- (h) A development permit may designate areas of land within a subdivision that must remain free of development in accordance with recommendations of a QEP.
- (i) No subdivision plan should indicate the dedication or construction of a highway, driveway, access route or utility corridor of any kind within 30 metres of a stream, except in accordance with the recommendations of a QEP.
- (j) No subdivision plan should be designed in such a way that activities described in 9.3(2) would be likely to occur within 30 metres of the *high water mark* of a stream, unless the development will comply with the recommendations of the QEP who assessed the impact of the subdivision on the *riparian area*. In such situations, the development permit may stipulate the extent of the area in which development may occur, in accordance with the QEP's assessment report.

Part 2 Guidelines

General

- (k) A Qualified Environmental Professional (QEP) experienced in riparian, stream or wetland ecology must be retained to inspect the development site, identify the location of *watercourses* and *wetlands*, and prepare a report that includes recommendations on the location and width of riparian buffers that will maintain the biological integrity of the *riparian*

area and associated *watercourses* and *wetlands*. The report may be combined with the initial report described above the Part 1 Guidelines.

- (l) The QEP's report must clearly describe the context and inherent value of the riparian area and associated *watercourse* or *wetland* and identify mitigation measures that ensure the long-term protection of the specified buffer from any nearby development activities. Mitigation measures should include (but not be limited to):
 - (i) erosion control during ground disturbance activities to minimize the potential for sediment transportation;
 - (ii) protection of critical tree root zones;
 - (iii) protection of riparian buffers from potential blow-down of trees associated with any increases in exposure to wind;
 - (iv) management of deleterious substances brought onto the land for the purpose of development activities;
 - (v) proper management of storm water from any impermeable surfaces; and
 - (vi) prevention of encroachment into the riparian buffer (e.g. through the implementation of temporary construction-phase and/or long term fencing/signage).

The mitigation measures may be included as conditions of the development permit.

- (m) A QEP should assess and report on the status of the riparian area and *watercourse* or *wetland* with regards to biological integrity and should note the occurrence of invasive species (both plant and animal) where applicable. *Wetlands* should be classified as either bog, fen, marsh, swamp, shallow water or wet meadow. The QEP should also assess for and report on any previous disturbance or constraints imposed on the *riparian area* and associated *watercourse* or *wetland* (e.g. wetland infilling, channelization, bank destabilization, vegetation removal or dam construction) and recommend appropriate restoration where necessary. Where restoration is recommended, prescriptive replanting plans should be included in the QEP's report. Prescriptive invasive species removal, long-term management and disposal methods should also be included in the QEP's report where appropriate.
- (n) The QEP's assessment of the *riparian area* and associated *watercourse* or *wetland* should describe habitat suitability for rare elements including species at risk, provincially red or blue listed plants, animals and ecosystems. The QEP should also report on any documented occurrences of rare elements noted in relevant databases, such as the provincial Conservation Data Centre, and note any confirmed observations of rare elements encountered during the inspection of the site.
- (o) In addition to assessing the general integrity and condition of the *riparian area* and associated *watercourse* or *wetland*, the QEP should assess for any specific habitat attributes such as wildlife trees, raptor nests, coarse woody debris abundance/distribution (influencing

- terrestrial foraging/security habitat values for amphibians), and amphibian breeding habitat potential, especially for rare species.
- (p) The QEP's report should also include appropriate measures for addressing hazard tree management in or nearby the riparian buffer, if applicable. Tree management must be undertaken in such a way that it decreases any potential impacts to the riparian area. Appropriate measures such as topping to remove dangerous tree stems and/or pruning to remove dangerous tree limbs should be considered. Any tree stems and/or large limbs should be left in the riparian area.
 - (q) The QEP should consider recommending the establishment of specific buffers that limit construction activities adjacent to permanent riparian buffers, where necessary to protect the integrity of riparian habitat (e.g. establishing critical root zones around trees where excavations are to be avoided).
 - (r) Any work within the watercourse or wetland (e.g. culverts or bridges) should be done in a way that avoids any negative changes to surface or subsurface hydrology and maintains pre-existing connectivity throughout the *watercourse* or *wetland*.

Subdivision

- (s) Land should not be subdivided so as to create new parcel boundaries intersecting or within 30 m of the *high water mark* of a *watercourse* or *wetland*, unless otherwise supported by a Qualified Environmental Professional's report based on the Part 2 general guidelines (k) through (r) of this Development Permit Area, which certifies such parcel boundary creation will not negatively impact riparian habitat or unless the boundary is being created for an ecological reserve under the Ecological Reserve Act for dedication to the Crown.
- (t) A development permit may designate areas of land within a subdivision that must remain free of development, in accordance with recommendations of a QEP.
- (u) No subdivision plan should indicate the dedication or construction of a highway, driveway, access route or utility corridor of any kind within 30 metres of a *watercourse* or *wetland*, except in accordance with the recommendations of a QEP.
- (v) No subdivision plan should be designed in such a way that activities described in 9.3(2) would be likely to occur within 30 metres of the *high water mark* of a *watercourse* or *wetland*, unless the development will comply with the recommendations of the QEP who assessed the impact of the subdivision on the *riparian area*. In such situations, the development permit may stipulate the extent of the area in which development may occur, in accordance with the QEP's report.

READ A FIRST TIME THIS 28TH DAY OF JUNE , 2018

PUBLIC HEARING HELD THIS 25TH DAY OF JULY , 2019

READ A SECOND TIME THIS 25TH DAY OF JULY , 2019

READ A THIRD TIME THIS 25TH DAY OF JULY , 2019

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS

14TH DAY OF AUGUST , 2019

ADOPTED THIS DAY OF , 201X

Chair

Secretary