

Date: July 28, 2011

File No.: OCP Update- RAR

To: Salt Spring Island Local Trust Committee for meeting of August 4, 2011

From: Leah Hartley, Regional Planning Manager

Re: Update on Riparian Area Regulations.

THE PROPOSAL:

The purpose of this staff report is to provide an update on the Salt Spring Region work program addressing Riparian Area Regulations.

BACKGROUND:

At the July 7, 2011 Salt Spring Island Local Trust Committee meeting, the LTC passed the following resolutions (Draft minutes):

*It was **MOVED** and **SECONDED** that the Salt Spring Island Local Trust Committee at this time proceed no further with Proposed Bylaw No. 449, "cited as Salt Spring Island Official Community Plan Bylaw No. 434, 2008, Amendment No.1, 2001" and direct staff to engage in a community consultation and communications process to implement the Riparian Areas Regulations on Salt Spring Island.*

*It was **MOVED** and **SECONDED** that the Salt Spring island Local Trust Committee direct staff to ascertain whether the Ministry of Environment will consider signing a Memorandum of Understanding with the Islands Trust supporting an amending bylaw implementing the Riparian Areas Regulation incrementally, beginning with the existing Development Permit Area 4 mapped streams in the fish bearing watersheds, with subsequent mapping of other Salt Spring Island streams; and also identifying the expected conditions and timeframe for full implementation as well as any potential consequences for lack of full implementation.*

*It was **MOVED** and **SECONDED** that the Salt Spring Island Local Trust Committee direct staff to work with various community organizations (e.g. water council, Chamber of Commerce, realtors, stewardship groups, agricultural alliance, etc.) and the advisory committees to discuss and receive input on the implementation of RAR through a Development Permit Area Bylaw.*

*It was **MOVED** and **SECONDED** that the Salt Spring Island Local Trust Committee direct staff to research ways to improve communication on RAR and its implementation (e.g. brochures, website, community participation opportunities, etc) and to initiate them in consultation with local Trustees.*

*It was **MOVED** and **SECONDED** that the Salt Spring Island Local Trust Committee direct staff to propose options and costs related to further stream mapping on Salt Spring Island regarding the implementation of the Riparian Areas Regulation.*

PROGRESS REPORT:

Staff has concluded work in closing the file on proposed Bylaw 449. No further public hearings are being scheduled and planning resources are being redirected to work with provincial officials in evaluating the feedback and determining future options.

The approach over the month of August is to focus on evaluation of options. Staff is arranging a meeting with Ministry of Forests, Lands and Natural Resource Operations (RAR responsibilities have been transferred from Ministry of Environment), and meeting with community stewardship groups that have previously been involved in watercourse mapping.

Many members of the community have come forward with positive suggestions about the communications concerning Riparian Area Regulations and identified mixed messages that led to confusion in considering implementation of RAR. Staff is intending to meet with a broad range of community groups to discuss a comprehensive work program that is based on using local knowledge and providing for meaningful dialogue before proposing a new approach to RAR implementation.

At time of and subsequent to the public hearing, correspondence was being received. Over 60 letters (including form letters and emails) from individuals are on file at Islands Trust and available for viewing. Three letters from referral agencies arrived at or post public hearing and are enclosed. The two letters from Chamber of Commerce (dated June 17 and July 24) are considered relevant to the future work program. The letter from Ministry of Forests, Lands and Natural Resource Operations (July 20, 2011) gives some information concerning mapping and partially addresses the LTC questions about consequences of not implementing Riparian Area Regulations.

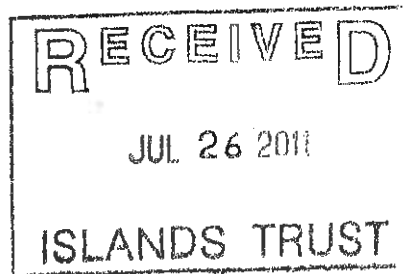
CONCLUSIONS:

This report and the attached correspondence are provided for the information of the Salt Spring Island Local Trust Committee.

Respectfully submitted by:

Leah Hartley, Regional Planning Manager

Attachment 1: Letter from P.M. Caskey, Ministry of Forests, Lands & Natural Resource Operations, dated July 20, 2011
Letter from Salt Spring Island Chamber of Commerce, dated July 24, 2011



July 20, 2011

File: 58000-35/ITO
35850-08/RAR Islands Trust

Islands Trust
200 - 1627 Fort Street
Victoria BC V8R 1H8

Attention: Dave Marlor, Director, Local Planning Services

Dear Mr. Marlor:

Re: Islands Trust Area Watershed Mapping

On behalf of the West Coast Region of the Ministry of Forests, Lands and Natural Resource Operations, I am confirming that the enclosed mapping depicts all known fish-bearing watersheds in the Islands Trust Area with respect to whether or not those lands fall under the Riparian Area Regulation (RAR). The Ministry is not currently able to confirm whether some specific watersheds on Lasqueti and Hornby Islands fall under the Regulation and thus have categorized those specific watersheds as “unverified” until such time as a definitive categorization can be completed. The Ministry wishes to work collaboratively with the Islands Trust to amend the categorization of the “unverified” watersheds as quickly as possible.

The Ministry is committed to sustaining the enclosed information base through the following arrangements, as discussed;

- the Ministry and the Islands Trust will share any relevant information that may change the categorization of the Islands Trust Area watersheds;
- the Ministry will review any relevant information received and advise the Islands Trust of any changes to the categorization; and,

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**Ministry of Forests, Lands &
Natural Resource Operations**

West Coast Region
Resource Stewardship Division

Mailing Address:
2080A Labicux Rd
Nanaimo BC V9T 6J9

Telephone: 250 751-3100
Facsimile: 250 751-3208
Website: www.gov.bc.ca/cnr

- the Islands Trust will amend their mapping to reflect any changes to the categorization and will recommend to local trust committees the appropriate legislative action needed to implement these changes in accordance with the Regulation.

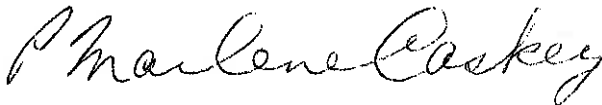
With respect to the local government legislative action to be undertaken by the local trust committees in the knowledge of the enclosed mapping, it is understood that to become compliant with the Regulation, the local trust committees:

- are required to enact appropriate local government legislative action for all watersheds designated as falling under the Regulation, and to modify the legislation due to any subsequent changes confirmed by the Ministry;
- are required to consider all watersheds categorized as “unverified” as falling under the Regulation until such time as a change to their categorization occurs; and,
- are not required to take any local government legislative action for the watersheds that are not categorized as falling under the Regulation. However, the Ministry supports riparian buffers on all watercourses to help protect other environmentally valuable resources such as birds and other wildlife.

The Islands Trust local trust committees are strongly encouraged to now undertake appropriate local government legislative actions to complete implementation of the requirements of the Regulation. We are available to review the wording of your draft legislative initiatives, to ensure their compliance with the RAR.

Upon completion of these actions, the Islands Trust will be compliant with the Regulation. Thank you for your continuing efforts to bring Islands Trust into line with the other local governments already in compliance.

Yours truly,



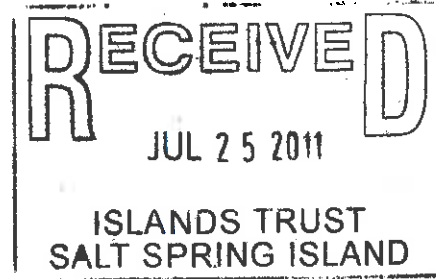
P. Marlene Caskey
Senior Urban Ecosystem Biologist
Resource Stewardship Division
Ministry of Forests, Lands and Natural Resource Operations

Enclosures: RAR Designated Watersheds



July 24, 2011

Mr. George Ehring
Salt Spring Island Local Trustee
1-500 Lower Ganges Road
Salt Spring Island, BC
V8K 2N8



Dear Trustee Ehring,

Thank you for your letter of 4 July 2011.

Might we respond by first affirming that the Chamber agrees with the LTC position of placing high value on environmental protection. We support the Trust in its mandate and will work cooperatively and constructively to help the Trust fulfill its purpose.

Nonetheless, a holistic approach to environmental and community wellbeing would dictate that ecological decisions be made in the full knowledge of their effect on economic, social and cultural factors. Some of our members have expressed a concern that the LTC believes that pursuing an environmentally driven agenda is the only duty of trustees. The Chamber believes that trustees' duty to electors extends to economic, social and cultural issues. Decisions made on environmental grounds alone have the potential to disadvantage a community in other respects and balanced judgment requires to be exercised if the health of the community as a whole is to be assured.

The Chamber has been careful to act in accordance with its mandate of seeking input from its members but also of providing leadership on behalf of them. The Chamber received overwhelming support (over 93% in favour) from members, both by telephone and in writing, for its Position Statement. We are confident our concerns reflect those of the business community. Those concerns relate to attributes of accountability, transparency and efficiency in governance and how those issues might impact island businesses and the economy. Sheila Malcolmson, chair of the LTC, has formally stated her commitment to those qualities. The LTC, in serving the community, also has a duty to fiscal prudence. We have concerns that duty was less than responsibly discharged.

We will comment only briefly on your implied suggestion that, because the Chamber finds fault with the construction of this bylaw, we are unconcerned about algal bloom or the welfare of commercial fishermen. All organizations, businesses and individuals on the island, including the Chamber, want clean drinking water and protected fish habitats. We prize biodiversity and wish to see it flourish. The Chamber welcomes solutions that would increase fish stocks. This would benefit not only fishermen but also the wildlife dependent on those stocks. However, balanced legislation would seek to achieve this goal other than at the very considerable cost which bylaw 449 threatened to impose on the community both financially and in terms of the erosion of property rights. The unprecedented numbers of islanders that attended public hearings demonstrated that this view is not only a Chamber concern but is shared very broadly within the community. We are asking the LTC to lessen the impact of the bylaw. We indicated in our Position Statement, and do so again below, how that might be achieved.

We would also observe that the LTC cannot make any supportable claim that bylaw 449 will effect measurable improvements in either algal bloom or fish habitats. In our Position Statement we made

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note that sewage disposal, practices on agricultural land and highway ditch digging were beyond the ability of the LTC to influence or this bylaw to affect. That being so, the aggregate improvement to riparian areas and drinking water supplies arising from proposed bylaw 449 is impossible to measure. If the LTC is alleging otherwise then it would be sensible to furnish the community with supporting information. An independent, scientific, peer review that endorsed such an opinion would certainly benefit the LTC. Placing the full burden of water and fish habitat betterment on home owners when no aggregate improvement can be measured or guaranteed is questionable.

We turn to your claim that all the LTC has done is seek to comply with the requirements of provincial law. That is partly true, partly false. The LTC has, indeed, a duty to comply with provincial law but has considerable discretion in how it does so. There are substantial differences in how different communities have crafted legislation. Indeed, some communities have crafted no legislation at all and each community has flexibility in how it implements provincial law. For example, most communities have elected to undertake accurate mapping although we know some of the larger authorities such as Nanaimo Regional District have not. However, NRD has a land area of over 2,000 sq.km., compared to Salt Spring's land area of 182 sq.km. Salt Spring is of a size whereby accurate mapping is certainly executable and affordable. Moreover, the geography captured by the development permit area is grossly in excess of that required by provincial law or that is necessary to protect fish habitat. If there is doubt of that claim, accurate mapping would dispel it.

Pender, Colwood, Highlands and Langford have chosen not to protect ditches. Central Saanich protects only major ditches. Salt Spring's LTC has elected to protect all ditches, even if they contain neither fish nor water.

These are only two indicative examples of interpretative decisions of judgment made by the LTC with which the Chamber takes issue. Others are:

Good governance and astute fiscal management would normally demand that a community consultation and education process be instructed *before* policy and legislation are framed. The LTC saw fit to do otherwise. The consultation exercise which the LTC has belatedly instructed staff to undertake is to begin not at the outset of the process, but after the LTC has been obligated to abandon its bylaw because of overwhelming public opposition. The cost of framing that abortive legislation, which the Driftwood described as "dead but not buried", is not definitively known but the Chamber would venture that it would approach \$200,000: say \$100,000 in abortive contract planner's fees, plus the cost of staff support, the cost of venues, legal fees, meetings, advertising, etc. This seems a heavy burden of cost for the community to bear so that the LTC might learn they needed a consultation and education process. It also begs the question whether it is the LTC or the community that requires education. Island taxes are already increasing at several times the rate of inflation. This example of poor fiscal management hints at why that might be the case.

The LTC's first attempt at framing bylaw 449 was crafted in a manner whereby Jack Giles QC was compelled to write a letter to the community newspaper bringing the LTC's attention to his opinion that the legislation, without accurate mapping, would be invalid. The LTC has elected not to respond to that charge, at least publicly. Doubts about the validity of the bylaw are in the public domain as a result and the LTC owes the community a reasoned and authoritative response. We would suggest an appropriate means might be via the publication of the formal legal opinion which we are advised the LTC commissioned on the bylaw but which staff have been instructed to keep concealed from the public. This not only runs contrary to Sheila Malcolmson's pronouncements in favour of transparency and

accountability, it raises the suspicion that Jack Giles QC might indeed be right and the LTC are at pains to keep that knowledge from the community.

The LTC elected to ignore staff advice to accurately map the island's streams and watercourses. No cogent reason was offered and, according to planning staff, this decision was made early in the process by trustees. The reason offered the community for doing so is that the cost was "impossible". Staff clearly did not think so or would not have made the recommendation they did, and the LTC inexplicably passed judgment on the affordability of accurate mapping without even obtaining a quotation. The LTC needs to revisit staff advice even though doing so will be seen as a reversal. The mapping undertaken on island in 1996 by Kathy Reimer was never intended to be accurate and framing policy around inaccurate maps that have such extensive impact for islanders and the economy is a decision the Chamber cannot support.

The LTC has ignored a detailed nine page opinion penned by a former trustee that the island is already in compliance. Dismissing such an opinion without providing an explanation leaves many in the community wondering whether they are having unnecessary legislation thrust on them. It is in the LTC's interest to offer a detailed rebuttal to that opinion or explain why it refuses to do so.

Finally, we would observe that the Chamber did no more than was sought by the LTC when it invited comment on bylaw 449 from the community and organizations within it. In doing so, the Chamber reflected the concerns expressed by its members. That the LTC, in a four page response to our Position Statement, finds it necessary to robustly defend legislation it has effectively been forced to scrap raises concerns about whether the LTC is willing or able to accept constructive criticism and assimilate the community's suggestions in a manner that both serves democracy and improves the bylaw.

In conclusion we would summarize our belief that the correct course of action for the LTC to pursue is to:

- publish the legal opinion they commissioned at public expense;
- respond formally and publicly to Jack Giles QC's letter;
- issue a formal and detailed response to former trustee Booth's documented opinion;
- accept staff advice to accurately map and seek quotations for doing so;
- desist with the provocative suggestion that those who oppose this bylaw somehow oppose environmental protection;
- consult the community before they seek to amend the bylaw further;
- ensure adequate management and organization of future public hearings so that cancellation or postponement is unnecessary;
- only implement a bylaw that has broad community endorsement.

On behalf of the Board of Directors,



Robert Steinbach
President
Salt Spring Island Chamber of Commerce

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