



Gabriola Island Local Trust Committee Regular Meeting Agenda

Date: January 18, 2024
Time: 10:30 am
Location: Gabriola Arts & Heritage Centre
476 South Road, Gabriola Island, BC

	Pages
1. CALL TO ORDER 10:30 AM - 10:35 AM	
“Please note, the order of agenda items may be modified during the meeting. Times are provided for convenience only and are subject to change.”	
2. APPROVAL OF AGENDA	
3. REPORTS 10:35 AM - 10:55 AM	
3.1 Trustee Reports	
3.2 Chair's Report	
3.3 Electoral Area Director's Report	
3.4 First Nations Reports	
4. PUBLIC COMMENTS 10:55 AM - 11:15 AM	
5. DELEGATIONS - none	
6. MINUTES 11:15 AM - 11:20 AM	
6.1 Local Trust Committee Minutes dated November 30, 2023 – for adoption	4 - 11
6.2 Section 26 Resolutions-Without-Meeting Report - none	
6.3 Draft Advisory Planning Commission Minutes dated December 6, 2023 - for receipt	12 - 14
7. BUSINESS ARISING FROM MINUTES 11:20 AM - 11:35 AM	
7.1 Follow-up Action List dated January 10, 2023	15 - 21
8. APPLICATIONS AND REFERRALS - none	
9. LOCAL TRUST COMMITTEE PROJECTS - none	

10. CORRESPONDENCE 11:35 AM - 11:45 AM

(Correspondence received concerning current applications or projects is posted to the LTC webpage)

- | | | |
|------|---|---------|
| 10.1 | Letter dated November 21, 2023 from Drs. J. & C. Johnstone regarding extensive tree removal on Gabriola Legends Development | 22 - 23 |
| 10.2 | Letter dated January 4, 2024 from F. Weller, S. Earle, D. Ferens & G. Blee regarding Sue Big Oil Initiative | 24 - 24 |
| 10.3 | Email dated January 10, 2024 from T. Martin regarding Agricultural Co-op Rezoning | 25 - 25 |

11. NEW BUSINESS 11:45 AM - 12:15 PM

- | | | |
|------|---|---------|
| 11.1 | Thetis Island Local Trust Area Bylaw Referral Form - Bylaw Nos. 113 and 114 | 26 - 29 |
| 11.2 | Complaint - Gabriola Local Trust Committee by Centre Stage Holdings | 30 - 37 |

~ BREAK 12:15 PM - 12:45 PM ~

12. REPORTS 12:45 PM - 1:15 PM

- | | | |
|------|---|---------|
| 12.1 | Foreshore Structures - Staff Report | 38 - 63 |
| 12.2 | Trust Conservancy Report - none | |
| 12.3 | Applications Report dated January 10, 2023 | 64 - 67 |
| 12.4 | Trustee and Local Expense Report dated November, 2023 | 68 - 68 |
| 12.5 | Adopted Policies and Standing Resolutions | 69 - 72 |
| 12.6 | Local Trust Committee Webpage | |
| 12.7 | Climate Change Action Update | |
| 12.8 | First Nations Relationship Building Update | |

13. WORK PROGRAM 1:15 PM - 1:30 PM

- | | | |
|------|---|---------|
| 13.1 | Active Projects Report dated January 10, 2023 | 73 - 75 |
| 13.2 | Future Projects Report dated January 10, 2023 | 76 - 77 |

14. UPCOMING MEETINGS

- | | | |
|------|---|--|
| 14.1 | Next Regular Meeting Scheduled for Thursday, February 22, 2023 at 10:30 am at the Gabriola Arts and Heritage Centre | |
|------|---|--|

15. ADJOURNMENT

1:30 PM - 1:30 PM



Gabriola Island Local Trust Committee

Minutes of Regular Meeting

Date: November 30, 2023
Location: Gabriola Arts & Heritage Centre
 476 South Road, Gabriola Island, BC

Members Present: Peter Luckham, Chair
 Tobi Elliott, Trustee
 Susan Yates, Trustee

Staff Present: Renée Jamurat, Regional Planning Manager
 Stephen Baugh, Island Planner
 Narissa Chadwick, Island Planner, via Zoom
 Margot Thomaidis, Planner 2
 Warren Dingman, Bylaw Compliance & Enforcement Manager
 Lisa Millard, Recorder

Others Present: There were approximately 13 members of the public in attendance.

1. CALL TO ORDER

"Please note, the order of agenda items may be modified during the meeting. Times are provided for convenience only and are subject to change."

Chair Luckham called the meeting to order at 10:30 am. He acknowledged that the meeting was being held on the territory of the Coast Salish First Nations.

The Trustees introduced themselves and Trustee Elliott made her introduction in the Hul'q'umi'num language.

2. APPROVAL OF AGENDA

By general consent the agenda was approved as presented.

3. REPORTS

3.1 Trustee Reports

Trustee Yates reported the following:

- Attendance at the recent Financial Planning Committee meeting in preparation for Trust Council's upcoming budget decisions, the Regional District of Nanaimo (RDN) Recreation and Parks Master Plan meeting in which public input summary reports

were reviewed, and a meeting on water balance assessment presented by Senior Freshwater Specialist William Shulba; and

- She noted that the Local Trust Committee (LTC) will be discussing the possibility of inclusion in Bill 44 (Housing Statutes Amendment Act) and Bill 35 (Short-Term Rental Accommodations Act).

Trustee Elliott reported the following:

- Attendance at the LTC Special Meeting to discuss the water balance assessment, noting that the public can view the recording of the meeting that will be available on the LTC website for further information;
- Attendance at the Health and Wellness Collaborative, Financial Planning Committee, Regional Planning Committee, RDN Recreation and Parks Master Plan, and Islands Trust / RDN Protocol meetings; and
- She continues to participate in the Culturally Committed group gatherings.

3.2 Chair's Report

Chair Luckham reported the following:

- He also Chairs Gambier Island LTC meetings and noted that island is doing important shoreline work;
- He attended a presentation on the Ocean Protection program that is being developed by Transport Canada to deal with nation-wide matters concerning oceans; and
- He attended at the legislature when the Islands Trust annual report was put onto the floor and spoke with the Minister of Municipal Affairs, Anne Kang, whom he invited to attend a Trust Council meeting.

3.3 Electoral Area Director's Report

Electoral Area Director Vanessa Craig submitted a written report for information and noted the following:

- Desiree Thomas, Snuneymuxw First Nation, has been appointed to the Recreation and Parks Master Plan Committee;
- The RDN will be starting a water budget analysis in Area A; and
- The proposed new Health and Wellbeing Coordinator for Gabriola part-time position has been approved by the RDN and is under consideration for approval by the Ministry of Municipal Affairs and, if approved, will enter into an alternative approval process, which will provide opportunity for additional public engagement.

3.4 First Nations Reports - none

Trustee Elliott noted the Snuneymuxw First Nation publishes a monthly newsletter, which provides relevant information.

4. PUBLIC COMMENTS

- A member of the public stated that Gabriola requires a body made up of dedicated community members that have expertise in various aspects of transportation. This transportation body requires credibility and standing so that agencies that make decisions regarding road maintenance, speed limits, sidewalks, roadside trails, and bicycle and footpaths have a credible body from which to seek advice. They urge the LTC to create a Transportation Advisory Planning Commission.
- A member of the public introduced themselves as a retired hydrologist and noted they have extensive experience in doing water budgets in other areas. They indicated that, in their opinion, there is more than enough water on the islands, but the issue is lack of water storage. They are encouraged to learn that there will be consideration of a water balance assessment in the upcoming budget.
- A member of the public noted that they had an application for redevelopment before the LTC and had previously been granted an extension to submit required reports. They stated that the reports were now available and requested the LTC move the extension into the new year.
 - Staff replied that the reports had been received but not soon enough for discussion at today's meeting; however, the deadline period can be extended.
- A member of the public expressed disappointment that their development application was not on the agenda. They noted they have respect for the process and if there are any concerns brought forward by First Nations regarding artifact protection they would like to know what those concerns are so that they can address them. They also indicated that the public might believe that the sites are not protected; however, all the protections required under the Conservation Act and the Heritage Branch are in place. It was reiterated that First Nations representatives conducted site monitoring at the time the protections were put into place.
- Another member of the public, who is part of the same development permit application, stated the ongoing delays are causing the applicants hardship. They noted that they have practiced First Nations reconciliation throughout their life's work, and that their granddaughter works extensively as a representative on multiple committees as an Indigenous youth advisor. They indicated that they have been told repeatedly that they would receive a decision at a following LTC meeting; however, this has not occurred.
- A member of the public stated that they had submitted correspondence regarding light pollution and the Chair noted they would receive and review when it comes up on the agenda.

5. DELEGATIONS – none

6. MINUTES

6.1 Local Trust Committee Minutes dated October 26, 2023 – for adoption

By general consent the Local Trust Committee meeting minutes of October 26, 2023 were adopted.

6.2 Section 26 Resolutions-Without-Meeting Report – none

6.3 Advisory Planning Commission Minutes – none

7. BUSINESS ARISING FROM MINUTES

7.1 Follow-up Action List dated November 22, 2023

- It was noted that the March 30, 2023 Activity No. 2 (staff to prepare a request for proposal for work on water availability) status should state completed.
- A draft report on the June 8, 2023 Activity No. 1 (shoreline structures and setbacks bylaw) has been prepared and will be ready for presentation at an upcoming meeting.

8. APPLICATIONS AND REFERRALS

8.1 GB-DVP-2022.3 (Pink) and GB-DVP-2022.4 (Woodside) - 1160 and 1170 The Strand - Status Update

A Planner provided a verbal update. It was noted that an environmental impact report and additional supporting documents had been received and are under review. Staff and Trustees will conduct a site visit and share information about the applications with the Snuneymuxw First Nation.

8.2 GB-DVP-2023.3 (Miller) - 880 Horseshoe Rd - Request to Waive Survey Requirement - Staff Report

A Planner summarized the staff report and the Bylaw Compliance and Enforcement Manager confirmed that the shed in question was not over the lot line.

The applicant was present and indicated that the shed was built over 30 years ago, that it is not over the property line, and that the owner of the neighbouring property had a survey done in 2018 as part of a development permit application and at that time did not mention a concern about the location of the shed.

Discussion ensued.

GB-2023-082

Moved and Seconded

that the Gabriola Island Local Trust Committee waive the requirement for a survey plan signed by a B.C. Land Surveyor and direct staff to proceed with Development Variance Permit application GB-DVP-2023.3 (Miller).

CARRIED

8.3 GB-DVP-2021.4 (Harris) - 1091 Sea Fern Lane - Staff Report

A Planner summarized the staff report and highlighted the following:

- The setback variance application relates to the existing cottage, deck, tent platform and underground septic tank;

- The variance is consistent with the permitted uses of the lot;
- Granting the variance will not be detrimental to the natural environment or public health; and
- The applicant and owners have been in contact with staff from Snuneymuxw First Nation and the Nation feels that future risk to the site has been mitigated.

Discussion ensued and it was noted that:

- Most letters received that were not in favour of the variance permit were related to health concerns about the septic system being sited too close to the sea; however, the septic field is 35 metres above the setback which meets requirements;
- Provincial sewerage requirements are being met for this lot;
- It is the septic tank that is sited within the setback area not the field; and
- The system is an updated septic-engineered system.

GB-2023-083

It was MOVED and SECONDED

that the Gabriola Island Local Trust Committee approve issuance of Development Variance Permit application GB-DVP-2021.4 (Harris).

CARRIED

The meeting was recessed at 12:40 pm for a break and reconvened at 1:11 pm.

9. LOCAL TRUST COMMITTEE PROJECTS

9.1 Major Project: Gabriola Island Comprehensive OCP and Land Use Bylaw Review: Results of Community Engagement Event Recipients – Memorandum

A Planner highlighted the following:

- Funds have been made available to support community members in hosting engagement events;
- Several applications were received, and the memorandum identifies the individuals and groups that will receive the funding;
- Some community members have not been captured in this process and staff will facilitate meetings with those groups that are underrepresented;
- There will be a series of videos released which will focus on specific topics of interest to the community such as identifying what a community vision is, what land is, what an OCP is, and what a LUB is; and
- Postcards with QR codes directing people to the project website, as well as a survey, will be sent out.

9.2 Major Project: Gabriola Island Comprehensive OCP and Land Use Bylaw Review: Gabriola Visioning - Verbal Update

A Planner provided a verbal update and stated that the deadline for feedback from the engagement groups and survey responses has been extended to March 1, 2024.

10. CORRESPONDENCE

(Correspondence received concerning current applications or projects is posted to the LTC webpage)

10.1 Letter dated November 20, 2023 from J. Hall regarding Dark Sky

The correspondence was received for information. A Planner noted that there is opportunity to look at this topic within the scope of broader regulations within the OCP and LUB review process and can be included in the OCP projects list.

11. NEW BUSINESS

11.1 Advisory Planning Commission and Housing Advisory Planning Commission Regularly Scheduled Meeting Times - Trustee Yates for Discussion

Trustee Yates noted that the current system of determining Advisory Planning Commission (APC) meeting dates is inefficient and suggested that the APC determine a regular monthly meeting day and time each month and if there are no referrals to review the pre-scheduled meeting can be cancelled.

Discussion ensued.

GB-2023-084

It was MOVED and SECONDED

that the Gabriola Island Local Trust Committee Request staff to prepare an amendment to Bylaw No. 296 to include the Advisory Planning Commission set a regular monthly day and time for their meetings.

CARRIED

GB-2023-085

It was MOVED and SECONDED

that the Gabriola Island Local Trust Committee direct staff, at the orientation of the new Advisory Planning Commission body, to communicate the request of the Local Trust Committee that the Advisory Planning Commission schedule regular monthly meetings and times for the duration of their term so that notice can be provided to Trustees and the public.

CARRIED

11.2 Discussion regarding GB-RZ-2022.1 (Alley Enterprises) as brought up in Public Comments

A Planner confirmed that the information and documents previously requested had been received on time but due to the timing, the application did not get onto this agenda package for discussion, and an extension would allow staff to review the documents.

GB-2023-086

It was MOVED and SECONDED

that the Gabriola Island Local Trust Committee request staff to proceed with processing application GB-RZ-2022.1 (Alley Enterprises) for Local Trust Committee consideration of next steps.

CARRIED

12. REPORTS

12.1 Trust Conservancy Report – none

12.2 Applications Report dated November 22, 2023

Received for information.

12.3 Trustee and Local Expense Report dated September, 2023

Received for information.

12.4 Adopted Policies and Standing Resolutions

Received for information.

12.5 Local Trust Committee Webpage - no update

12.6 Climate Change Action Update - no update

12.7 First Nations Relationship Building

A Planner noted that there have been staff-to-staff meetings between Islands Trust and Snuneymuxw First Nation to discuss questions and concerns regarding the Islands Trust planning and referral processes and the intent of these discussions is to look at reconciliation actions in ways that might improve processes as well as the priorities of Trust Council.

Trustee Elliott said that she will be putting together a gift to present to the outgoing Snuneymuxw First Nation Chief and Council as a gesture of thanks and for their work.

12.8 2024 LTC Meeting Schedule - Staff Report

GB-2023-087

It was MOVED AND SECONDED

that the Gabriola Island Local Trust Committee schedule its regular business meetings on the following dates in 2024: January 18, February 22, March 21, April 18, May 23, June 27, August 8, September 5, and November 7.

CARRIED

13. WORK PROGRAM

13.1 Active Projects Report dated November 22, 2023

Received for information.

13.2 Future Projects Report dated November 22, 2023

Received for information.

14. UPCOMING MEETINGS

14.1 Next Regular Meeting scheduled for Thursday January 18, 2024, time and location to be determine.

15. CLOSED MEETING

15.1 Motion to Close the Meeting

GB-2023-088

It was MOVED and SECONDED

that the meeting be closed to the public in accordance with the Community Charter, Part 4, Division 3, s.90(1)(a), (d), (f) for the purpose of considering:

- (a) appointment of Advisory Planning Commission members;
- (d) adoption of In Camera Meeting Minutes dated October 26, 2023; and
- (f) law enforcement, if the council considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of an enactment;

and that the Recorder and Staff attend the meeting.

CARRIED

The meeting was closed to the public to go to an in-camera meeting at 2:30 pm.
The regular meeting was recalled to order at 2:57 pm.

15.2 Recall to Order

Chair Luckham rose and reported that the in camera meeting minutes of October 26, 2023 were adopted, that a legal update was received, and that the Gabriola Island Local Trust Committee appoint Jennefer Laidley, Carly McMahon, Lisa Webster, Jeff Malmgren, David Reid, Burt Fidler, Rick Mitchell, Devlin Semmler, and Howard Bashaw to the Gabriola Island Advisory Planning Commission, commencing immediately for a term ending November 30, 2025.

16. ADJOURNMENT

By general consent, the meeting was adjourned at 2:58 pm.

Peter Luckham, Chair

Certified Correct:

Lisa Millard, Recorder



Minutes of the Gabriola Island Housing Advisory Planning Commission

Date of Meeting: Wednesday, December 6, 2023

Location: Islands Trust Northern Office
700 North Road
Gabriola, BC

HAPC Members Present: Steven Earle
Felix Addison
Jenni Gehlbach
Angela Pounds
John Woods
Dylan Wallinger (via Zoom)
Emily Carson-Apstein (via Zoom)

Regrets: Ardyth Cooper

Staff Present: Narissa Chadwick, Island Planner
Stephen Baugh, Island Planner
Chloë Straw, Planning Team Assistant
Lisa Millard, Recorder

Others Present: John Steil, BC Ferries and 1 member of the public

1. **CALL TO ORDER AND WELCOME**

Steve Earle, called the meeting to order at 3:02 pm. He acknowledged that the meeting was being held on the territory of Snuneymuxw First Nations.

Those present introduced themselves.

2. **APPROVAL OF AGENDA**

By general consent, the agenda was approved as presented.

3. **REFERRAL FROM GABRIOLA ISLAND LOCAL TRUST COMMITTEE**

Planner Chadwick summarized the Referral and noted the following:

- The Local Trust Committee (LTC) is requesting feedback from the Housing Advisory Planning Commission (HAPC) to determine what regulatory changes might be considered during the Official Community Plan (OCP) and Land Use Bylaw (LUB) review project regarding housing.
- The HAPC needs to determine what they want to offer to the LTC, the approach they will take, and the amount of detail they will provide.

- A lot of work, and public engagement, has previously been done and the HAPC can use the materials produced from said work to determine key recommendations to provide to the LTC.
- Reference materials that can be used as tools for the HAPC discussion include the Gabriola Housing Matters Report, the Islands Trust Housing Options Tool Kit, the Denman Island APC Recommendations Report, the Mayne Island Action Plan, and the Islands Trust Housing Strategic Action Plan which is currently under review by Trust Council.
- A wide-level strategy is necessary, and changes often require funding. It is important to be ready for funding when it is made available. There is opportunity for the HAPC to identify recommendations for advocacy actions.

Discussion ensued and HAPC Members made the following comments:

- One method of working on the referral would be to have discussions, propose recommendations to the LTC for feedback and then, based on the feedback, work on a more precise set of recommendations.
- Is it feasible for the group to work within an informal, intercommunications, web-based platform for the purpose of exchanging ideas and having a more fluid, interactive means of communication rather than a formal meeting format?
 - It was determined that due to the APC Bylaw requiring deliberations to take place in a public facility, and be open to the public, that a formal meeting setting is required.
- The HAPC can invite public participation or comments by encouraging members of the public to attend a meeting as a delegation.
- The HAPC determines the level of information to provide to the LTC; however, it cannot be assumed that the LTC have in-depth knowledge of the reference materials provided.
- In addition to housing ownership and affordability, other elements to consider include environmental impact, sustainability, legality of structures, and habitats that allow for a thriving and healthy community.
- Recommendations require funding and, while you can change the OCP or LUB, funds need to be available to realize any changes that are made.
- Is it possible to incentivize individuals to build more houses?
- There are 300 vacant homes on Gabriola and the owners do not want to rent them long-term. Are there options to provide short-term rental management for some of these homes and use some of the proceeds toward funding for affordable housing?
- It is important to construct recommendations in a way that makes them eligible for various types of government funding.
- It was suggested that the group go through the zoning table in the Islands Trust Housing Strategic Action Plan as a place to start.
- The Mayne Island Action Plan might be used as a template for the HAPC's work.

It was determined that the deadline for feedback to the LTC will be moved from January, 2024 to later in the spring, and that HAPC members were willing to commit to two meetings a month starting in January, 2024 and to have up to six meetings and will request Staff to attend every second meeting.

4. REFERRAL OF BC FERRIES APPLICATION FOR DESCANSO BAY TERMINAL

It was noted that the HAPC had previously deferred this referral to the Advisory Planning Commission; however, a representative from BC Ferries was not present at that meeting and a motion had not been made. The applicant is in attendance.

GB-HAPC-2023-001

It was MOVED and SECONDED

that the Gabriola Island Housing Advisory Planning Commission defer the BC Ferries referral to the Advisory Planning Commission.

CARRIED

6. ADJOURNMENT

By general consent, the meeting was adjourned at 4:25 pm

Steven Earle, Chair

Certified Correct:

Lisa Millard, Recorder

Follow Up Action Report

Gabriola Island

29-Sep-2022

Activity	Responsibility	Dates	Status
1 GB-RZ-2022.1 (Alley Enterprises) - Staff to prepare draft bylaws to amend the OCP and LUB; notify Snuneymuxw and advise applicant of requirements for water and sewage reports prior to LTC consideration of first reading. Update application website with preliminary staff report package from Sept 2022 LTC meeting. <i>Staff report uploaded to website.</i>	Stephen Baugh		In Progress

01-Dec-2022

Activity	Responsibility	Dates	Status
1 Planning staff to prepare a summary report for a future LTC meeting on past LTC discussions re: heritage register for Gabriola island; potential funding opportunities and alignment with other LTC projects; what's entailed with a MOU with commission under heritage act; analysis of designation of a commission vs a bylaw to establish the heritage register. Incorporate any comments from senior policy advisor staff on this approach. See minutes for further details on this discussion. UPDATE: Moved to future projects list.			Completed

30-Mar-2023

Activity	Responsibility	Dates	Status
1 The GB LTC asks the Bylaw Enforcement staff to provide a report on item c) standing resolution GB-2022-089 for the October 2023 meeting.	Warren Dingman		In Progress

Follow Up Action Report

Gabriola Island

30-Mar-2023

Activity	Responsibility	Dates	Status
2 Staff to prepare a request for proposal for work on a water availability assessment.	Narissa Chadwick	Target: 28-Nov-2023	Completed

08-Jun-2023

Activity	Responsibility	Dates	Status
1 Write a report on shoreline structures and setbacks bylaw contraventions in the Gabriola Local Trust Area, as well as references to any relevant court decisions on the jurisdiction of the Islands Trust with regard to Shoreline Structures and Setbacks in the Trust Area.	Warren Dingman		In Progress

20-Jul-2023

Activity	Responsibility	Dates	Status
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Follow Up Action Report

Gabriola Island

20-Jul-2023

Activity	Responsibility	Dates	Status
1 Actions for the Major Project - OCP Review - Major Project Business Case and Project Charter: 1. Staff to post Project Charter to project website, re: Official Community Plan and Land Use Bylaw Review Project (Phase 1) - <i>complete</i> 2. Staff note business case endorsed for the OCP and LUB Review Project (Phase 2). - <i>complete</i> 3. Staff to prepare actions for Engagement Option 2. 4. Staff to prepare options for First Nations engagement Phases 1 & 2. 5. Staff to refer July 20th staff report to the APC for feedback due by September 1, 2023, on: - <i>complete</i> - the engagement options. - identification of groups and the broader community, including under represented members. - Feedback on engagement and communications (Phase 1). 6. Staff to refer materials related to the Housing Options and Impact Review Process to the HAPC for review and feedback by January 2024. - <i>complete</i> 7. Post materials for the Official Community Plan and Land Use Bylaw Review Project to the project website. <i>complete</i> 8. Staff to schedule an orientation meeting for the APC to review the terms of reference for their participation in the OCP and LUB review project, and collect feedback on the Phase 1 engagement strategy and	Chloe Straw Narissa Chadwick Wil Cottingham		In Progress

Follow Up Action Report

Gabriola Island

20-Jul-2023

Activity	Responsibility	Dates	Status
communications.			
9. Staff to schedule an orientation meeting for the HAPC to review the terms of reference for their participation in the OCP and LUB review project (Phase 1). - <i>complete</i>			
10. Staff to develop messaging and communications materials for the September 2023 soft launch of the in the OCP and LUB review project. - <i>complete</i>			
2 Regarding LTC Consideration of becoming Covenant Holder, Gabriola Commons - 675 North Road, Gabriola Island: Staff to seek a legal review of draft covenant prepared by the registered owners of the Gabriola Commons - 675 North Road, Gabriola Island [Lot 1, Plan VIP27281, Section 19, Land District 32, Gabriola Island (PID 002-600-992)].	Stephen Baugh	Target: 26-Oct-2023	In Progress

14-Sep-2023

Activity	Responsibility	Dates	Status
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Follow Up Action Report

Gabriola Island

14-Sep-2023

Activity	Responsibility	Dates	Status
1 Regarding the Ecological Protection Zone project (Proposed Bylaw No. 313), staff to finalize the Capacity agreement for signing between the CAO on behalf of the Local Trust Committee and the Snuneymuxw First Nation. UPDATE: Staff are working with SFN to receive comments through referral process. No longer pursuing capacity agreement.	Stephen Baugh	Target: 29-Sep-2023	Completed
2 Staff to prepare a communications plan with respect to the Official Community Plan Land Use Review Project.	Narissa Chadwick	Target: 16-Oct-2023	In Progress

26-Oct-2023

Activity	Responsibility	Dates	Status
1 Staff to prepare a request to EC on behalf of LTC to approve funds for screening Dust and Bones movie and public discussion on Gabriola in 2023/2024. - Nov.22: Dlr.TAS will note the request for EC and confirm funds for screening.	Clare Frater		In Progress

Follow Up Action Report

Gabriola Island

26-Oct-2023

Activity	Responsibility	Dates	Status
2 Two Letters from LTC: 1. Gabriola Local Trust Committee draft a letter to formally request the Provincial and Federal governments' support and direction to aid the Gabriola Local Trust Committee in preserving and protecting Indigenous cultural heritage sites that may be at risk due to impacts of development. In the absence of clear legislation and guidelines to support local governments' obligations to international, national and provincial frameworks, interim guidance and direction from the Province would be welcome, to ensure the Islands Trust can fulfill its obligations and duties to the preservation and protection of sacred cultural heritage sites. 2. That the Chair of the Gabriola Island Local Trust Committee work with staff write to seek support from Snuneymuxw First Nation and to understand if there would be interest in working on a joint call to the Provincial and Federal government to request support and direction to aid the Gabriola Local Trust Committee in preserving and protecting Indigenous cultural heritage sites that may be at risk due to impacts of development.	Renee Jamurat		In Progress

30-Nov-2023

Activity	Responsibility	Dates	Status
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Follow Up Action Report

Gabriola Island

30-Nov-2023

Activity	Responsibility	Dates	Status
1 Extension granted for GB-RZ-2022.1, staff to continue processing application and bring back report to LTC.	Stephen Baugh		In Progress
2 Staff to prepare amendments to Bylaw No. 296 to require that APCs set a regular monthly meeting date and time. Add to future projects list.	Stephen Baugh		Completed
3 Staff to include the following in APC orientation for Gabriola: request from the LTC that the APC schedule regular monthly meeting dates and times for the duration of their term.	Chloe Straw Renee Jamurat		In Progress
4 2024 LTC Meeting Schedule approved for the following dates: January 18, February 22, March 21, April 18, May 23, June 27, August 8, September 5, and November 7.	Wil Cottingham		Completed
5 New APC appointed, send letters to appointees.	Chloe Straw		Completed

November 21, 2023

Drs. John and Carol Johnstone

Gabriola, BC

Re: Extensive tree removal on Gabriola Legends Development

To: Trustees:

By way of introduction, we are scientists from a US national laboratory, Fermilab, which is a sister laboratory to TRIUMF in Vancouver. Fermilab is a designated National Environmental Research Park, one of only 6 in the US set on 6800 acres with restored wetlands, and prairies including a herd of bison. We work in partnership with climatologists and environmental engineers.

After driving up the west coast through Oregon, California, the Olympic peninsula, and Vancouver Island, we then explored the West Gulf Islands for our next home (John is a Canadian citizen from BC). After visiting Salt Springs and Galiano, we immediately recognized Gabriola as unique with a temperate rainforest ecosystem. In December 2019, just before the borders closed, we purchased a lot on Bonnie View Rd and spent the pandemic years designing an efficient zero-energy house to minimize our carbon and ecosystem footprint, doing our part to preserve the rainforest and uniqueness of Gabriola with the stated expectation and reassurance of forest conservation in surrounding areas. (We recently received an occupancy permit from RDN and have started moving into the house.)

However, since we first purchased the land and on returning post pandemic, we have been shocked at the extensive expanses of trees removed from the development to the south of our property (Legends II) and have started asking questions. We have been unable to discover an approved plan indicating the final lots nor any reference to the already executed cutting done during the pandemic. This is of serious concern as the following conditions require an environmental impact analysis to protect the island community at large, not just the Gabriola ecosystem.

General:

- Temperate rainforests are critical to slowing climate change and are notoriously fragile; temperate rainforests are considered as important as preserving the Amazon rainforest. Due to development, Gabriola is less forested percentagewise than other Gulf Islands.
- Complex wetlands are critical habitats to all wildlife on Gabriola and are extremely sensitive to any surrounding disruption; Gabriola has the highest percentage of wetlands of any Gulf Island.
- Extensive removal of tree canopy results in more rapid evaporation of surface water and increasingly dry vegetation conditions. Drier soil caused by development places the remaining isolated forest stands at risk. Many tree species will disappear from the island under drought conditions and the fire risk on Gabriola will increase.

Gabriola-specific:

- Gabriola has very thin and nutrient-poor soil (as does the Amazon). Copses of Douglas Fir/Arbutus trees hold Gabriola's thin topsoil in place above the underlying bedrock - other trees cannot survive the low soil/low moisture conditions. These Douglas Fir/Arbutus stands are

classified as ecologically sensitive Woodland habitats and were previously numerous in this development.

- The Gabriola community relies on wells and septic systems. Canopy removal impacts both surface and ground water – evaporation occurs rather than diffusion into the aquifers supplying the wells. Water tables are sensitive to the ecosystem and fluctuating levels will affect all neighbouring homesteads and the overall sustainability of local human occupancy.
- There appears to be a request to remove the trees on the steep bluffs between the properties on Bonnie View to South Rd in this development – there is a significant elevation drop. Erosion of topsoil will occur. The risk of damage from a mud or rock slide is much higher than from a tree falling. Homeowners may find that Insurance will require protections such as a steel reinforced netting on the escarpment slopes and a risk evaluation by experts.
- Continued removal of trees will devalue properties - turning this scenic area instead into an overlook view of a housing development.
- The destruction of natural habitat on Gabriola is now higher than any other Gulf Island with the exception of Mayne in the Islands Trust. Even with hundreds of lots still undeveloped, Gabriola has reached the 30% habitat disturbance level, a tipping point at which the sustainability of not only the ecosystem but also the local community is jeopardized.

A final question – there is a recent \$0.5B conservation agreement signed between BC, Ottawa, and the First Nations to protect 30% of lands and waters (natural habitat) by 2030 – to protect land, species, and biodiversity, but also to restore biodiversity with \$200M specifically earmarked for land restoration in BC. How does this new agreement affect new development projects and potential access to federal conservation funding for Gabriola – will it supersede existing by-laws, for example.

Sincerely,
Drs. John and Carol Johnstone

January 4th, 2024

The Gabriola Local Trust Committee
Gabriola Island, BC

Dear Chair Luckham and Trustees Yates and Elliot.

We are deeply concerned about the present and future impacts of anthropogenic climate change on Gabriola Island, in the Trust Area as a whole, and everywhere else on our planet. Accordingly, we urge the Gabriola LTC to express to Trust Council that you support the Sue Big Oil initiative so that the Trust can deliver the goals of the Sue Big Oil declaration, including to:

- act urgently to tackle climate change and protect us from future heat waves, flooding, wildfires, drought and other climate impacts,
- join with other local governments to file a class action lawsuit to recover a fair share of our climate costs,
- allocate at least \$0.5 per resident towards a community fund to sue Big Oil,
- build equitable and sustainable communities that put people and the planet before corporate profits, and
- cooperate with Indigenous peoples in doing so.

Yours sincerely

Fay Weller
Steven Earle
Deb Ferens
Greg Blee

From: talyn martin [REDACTED]
Sent: Wednesday, January 10, 2024 1:43 PM
To: Tobi Elliott <tobi.elliott@gmail.com>; Susan Yates <susanemilyyates@gmail.com>; northinfo <northinfo@islandstrust.bc.ca>
Cc: Peter Luckham <pluckham@islandstrust.bc.ca>
Subject: Agi Co-op rezoning

Hello everyone.

This is Talyn emailing on behalf of the Gabriola Agricultural Co-op. We submitted our rezoning application (from institutional to commercial) to the Islands Trust today - yay! Part of our application includes asking for a fee waiver for the application portion - \$7956. I understand this is a process that goes through the LTC. I am just writing to give you a heads up that this is coming your way and that I plan to attend the meeting on the 18th to speak to our proposal. Thanks so much for all you do.

Talyn (she/her) - board director - Gabriola Agricultural Co-operative

I am grateful to live, grow, work and play on the traditional territory of the Snuneymuxw First Nation.



Islands Trust

BYLAW REFERRAL FORM

700 North Road
Gabriola Island BC V0R 1X3
Ph: (250) 247-2063
Fax: (250) 247-7514
northinfo@islandstrust.bc.ca
www.islandstrust.bc.ca

Island: Thetis Island Local Trust Area Bylaw No.: 113 and 114 Date: December 5, 2023

You are requested to comment on the attached Bylaw for potential effect on your agency's/organization's interests. We would appreciate your response by **January 26, 2024**. If no response is received within that time, it will be assumed that your agency's/organization's interests are unaffected.

APPLICANTS NAME / ADDRESS:

THETIS ISLAND LOCAL TRUST COMMITTEE

PURPOSE OF BYLAW:

Amendments to the Thetis Associated Islands Official Community Plan (OCP) and Land Use Bylaw (LUB) are part of the Thetis Island OCP/LUB Marine Areas Review Project to ensure the marine area surrounding Scott, Dayman and Hudson Island permits uses that are consistent with the object of the Islands Trust.

The intent of **Bylaw No. 113**, if adopted, would be to amend both Schedule Maps B and C in the Thetis Associated Islands Official Community Plan No. 93, 2014 (OCP) to include undesignated area in the area of application. The proposed subject area is a sensitive ecosystem and inclusion in the OCP bylaw application area offers greater protection and regulation.

The intent of **Bylaw No. 114**, if adopted, would be to amend Thetis Associated Islands Land Use Bylaw No. 94, 2014 to include the unzoned area surrounding Scott, Dayman and Hudson Island in the Marine General (W1) zone. The following uses and structures are permitted in the W1 zone subject to the regulations set out in this section and the general regulations, and all other uses are prohibited:

- a) Mooring buoys, for mooring a private vessel accessory to the residential use of an upland lot;
- b) Docks accessory to the residential use of an adjacent upland lot;
- c) Community docks;
- d) Floats and swimfloats; and,
- e) Marine navigational aids.

GENERAL LOCATION:

Marine area surrounding Scott, Dayman and Hudson Island

SIZE OF PROPERTY AFFECTED:

Approximately 1.32 sq km of marine area

ALR STATUS:

n/a

OFFICIAL COMMUNITY PLAN DESIGNATION:

n/a

OTHER INFORMATION:

The Thetis Island Local Trust Committee gave First and Second Reading to proposed Bylaw Nos. 113 and 114 on November 7, 2023. A copy of the staff report and the proposed bylaw is included in this referral for background information. All relevant background information, including staff reports and public correspondence received is posted to the Thetis Projects webpage:

<https://islandstrust.bc.ca/island-planning/thetis/projects/>

Please direct any communications regarding this referral to Nadine Mourao at 250-247-2206, or by email to nmourao@islandstrust.bc.ca.

Please fill out the Response Summary on the back of this form. If your Nation or Agency's interests are "Unaffected", no further information is necessary. In all other cases, we would appreciate receiving additional information to substantiate your position and, if necessary, outline any conditions related to your position. Please note any legislation or official government policy which would affect our consideration of this Bylaw.

(Signature)

Name:

Margot Thomaidis

Title:

Planner 2

This referral has been sent to the following agencies:

Federal Agencies

Fisheries & Oceans, Canada - Pacific Region

First Nations

Semiahmoo First Nation
Tsawwassen First Nation
Snuneymuxw First Nation
Halalt First Nation
Stz'uminus First Nation
Cowichan Tribes
Lake Cowichan First Nation
Penelakut Tribe
Lyackson First Nation
Tsawout First Nation
Pauquachin First Nation
Tseycum First Nation
Tsartlip First Nation

Regional Agencies

Islands Trust – Islands Trust Conservancy
Cowichan Valley Regional District
School District 79

Adjacent Local Trust Committees and Municipalities

Salt Spring Island Local Trust Committee
Gabriola Local Trust Committee

Provincial Agencies

Ministry of Agriculture and Food
Ministry of Transportation & Infrastructure
Ministry of Forests

**BYLAW REFERRAL FORM
RESPONSE SUMMARY**

- ☐ Approval Recommended for Reasons Outlined Below
- ☐ Approval Recommended Subject to Conditions Outlined Below
- ☐ Interests Unaffected by Bylaw
- ☐ Approval Not Recommended Due to Reason Outlined Below

Thetis Island Local Trust Area
(Island)

(Signature)

(Date)

113 (OCP)
(Bylaw Number)

(Name and Title)

(Agency)

**BYLAW REFERRAL FORM
RESPONSE SUMMARY**

- ☐ Approval Recommended for Reasons Outlined Below
- ☐ Approval Recommended Subject to Conditions Outlined Below
- ☐ Interests Unaffected by Bylaw
- ☐ Approval Not Recommended Due to Reason Outlined Below

Thetis Island Local Trust Area
(Island)

(Signature)

(Date)

114 (LUB)
(Bylaw Number)

(Name and Title)

(Agency)

October 6, 2023

Chair of the Trust Council
Mr. Peter Luckham

I, reluctantly, make a formal complaint regarding the recent meetings of July 20, 2023 and Sept. 14, 2023 in relation to the subject DP application GB-DP2021.1 at which I feel the process was unfair, biased and the conduct of the same was intimidating, personal and beneath the standards for such meetings.

Although the subdivision, consultation and DP process are very stressful, the aggression, bias, unfairness and, perhaps, even slanderous statements at these meetings were so hurtful and distressing that my husband, shortly after, was caused to visit the emergency ward where I found he had suffered a heart condition.

This bias was apparent in the first meeting when it was declared this land should never be subdivided due to its importance to the SFN and continued throughout that and the second meeting by the tone of the questions, the aggressive behaviour including eye rolling, the blatant effort to catch us in a lie, the surprise presentation of SFN's April 14, 2021 letter as the ultimate undisputed authority on the unsubstantiated allegations contained therein and the failure to carefully and professionally obtain or provide the applicants an opportunity to provide the comprehensive correspondence contradicting that letter or to even objectively consider any response to the same and the effort to portray us as disrespectful of First Nations interests and dishonest in relation to the timing or registration of Archaeological covenants.

It became even more concerning when it became apparent the current DP application as well as any other Trust bylaw criteria required for subdivision would likely not be applied fairly, objectively and administratively but so as to accomplish the personal bias and goals of obstructing the subdivision.

Not only do I believe the meetings were intimidating, unfair and biased but I also feel they were libelous and slanderous and caused damage to our credibility and require rectification. The use of and references to the SFN's April 14, 2021 letter that was, allegedly, supportive of SFN's interests was, in effect, an effort to tarnish our credibility and establish a reason to defer the DP application.

1. It was demonstrative that no effort was taken to enquire whether:

a) before presenting a 2 1/2 year old letter as being an accurate reflection of the facts, SFN maintained these allegations were then or now still accurate,

b) SFN had received a response to that letter,

c) CSH had responded to any other Government agency or whether

d) the Trustees checked their own files for communications that might reflect more accurately on the allegations and be more objective and definitive of the actual issues contained therein.

2. Goal accomplished....use a 2 1/2 year old, one sided letter to suggest that;

a) CSH is conducting “**unauthorized**” works when, in fact, no authorization is required for work on private property and such work is permitted and was supported under the Heritage Act

b) including the **disturbance of SFN artifacts**, based upon which SFN elders unanimously decided such works were unconscionable and undesirable and that **the site is of significant cultural value and any development of the site in this manner is unacceptable** when, in fact, no artifacts have ever been disturbed

c) that CSH had continued with “unauthorized and unpermitted” works **notwithstanding SFN's request to stop such work** in Oct 2020 when, in fact, such work was supported by Heritage

Branch and, even though it had no obligation to do, so CSH did stop work.

d) that CSH had **misled or been dishonest with the Heritage Branch about having registered archaeological covenants** when, in fact, the Trust, in particular, as well as Heritage Branch and MOTI were all aware the requirement to register, **at the time of subdivision**, such covenants on lots which contained Archaeological sites within their boundaries.

e) that it was MOTI who requested an updated AIA and **SFN simply supported such request** when in fact, notwithstanding CSH's Archaeologist's confirmation, as requested from MOTI, that no further work was required and the Heritage Branch's confirmation in March 26, 2021 that they had provided their opinion to MOTI that the original assessments by I.R. Wilson in 2002 were thorough even by today's standards it was, in fact, SFN who insisted on the updated AIA.

Each of these allegations were, at the time, and continue to be, demonstrably wrong.

Had there been any objective intention to present accurate facts we would have been apprised of the intended use of the letter and given a fair opportunity to address those concerns.

This same letter and inaccurate or false premises were used in 2021 as a basis to encourage MOTI to require an updated AIA and now, 2 1/2 years later, being presented again to justify delays in the DP process and undermine the integrity and credibility of CSH in seeking the DP and subdivision approval.

Although Ms. Elliot indicated she had spoken to two SFN representatives prior to the meeting, she failed, it seems, to ask either of these representatives the fundamental and obvious questions whether SFN, subsequent to April 14, 2021 received any subsequent communications from CSH or any other authority reflecting on the accuracy of those allegations, whether SFN became aware the allegations were, in fact, untrue nor did she make any enquiry of the Trust, MOTI, Heritage Branch or CSH in that regard either before the meeting, during her process of gathering information or at the meeting itself.

Had she asked SFN, MOTI, Heritage Branch or CSH if any subsequent communications occurred reflecting on these allegations she would have been aware of the following communications that addressed each of the allegations in SFN's April 14, 2021 letter;

- a) CSH's April 21, 2021 letter to SFN
- b) CSH's April 26, 2021 letter to MOTI
- c) CSH's April 27, 2021 letter to the Heritage Branch and MOTI
- d) Don's April 28, 2021 to MOTI, the Heritage Branch and MOTI
- e) Don's April 29, 2021- Don wrote to MOTI and Heritage Branch regarding SFN's allegation about the registered/unregistered covenants

Had she enquired of MOTI, Heritage Branch, CSH or, indeed, SFN she would have known that the site work for the updated AIA insisted upon by SFN had been completed by Nov 25, 2022 with the onsite monitoring of SFN's Earl Manson and confirmed no additional sites had been discovered.

Had she made the effort to review the Trust's own files she would have found the letter from the Trust to CSH dated July 7, 2021 expressing support for concerns of SFN that relate to the "disturbance and intrusion on land and the alienation of access to the cultural location considered of special interest to the SFN" and that the Trust "respected and supported these concerns". She would also, however, have found CSH's response to the Trust dated July 13, 2021 in which CSH confirmed it felt the Trust letter had, innocently, projected a "negative, inaccurate or incomplete overview of the professional archaeological studies and consultation to date, of CSH's decades long efforts to respect

First Nation's interest relating to our private property and perhaps even an accurate or incomplete description of the state of the law relating to consultation.”

In the same letter CSH offered to provide any reports, photographs, or documents and to meet with the Trust should it wish further input and clarification.

Had she asked CSH she would have known we have extended open invitations and welcomed SFN and other First Nations to visit the site, have engaged with many Elders of SFN and other First Nations on site, arranged several site visits with SFN Chief and Elders and representatives and invited SFN to attend a ceremony conducted on site by well respected Elders and have never restricted any access to the site by SFN or any other First Nation.

A superficial effort to conduct any objective due diligence would have confirmed that a) the initial Trust covenant required Archaeological covenants **at time of subdivision**, b) the Trust had, on Feb. 15, 2006, approved a resolution that the lot layout proposed by CSH satisfied the conditions of the initial Trust covenant c) the **Trust's confirmation that covenants were not required until final subdivision** of lots containing such sites d) the Trust request for a letter of undertaking from CSH to register the covenants upon subdivision e) CSH's May 7, 2016 letter of undertaking to register at the time of subdivision of any lots that contained Archaeological sites f) on Sept. 21, 2016, the Heritage Branch approved the Archaeological covenants g) the Branch had supported subdivision of five lots without the covenant being registered as these lots did not contain any such sites within their boundaries and h) that the Heritage Branch, Trust and CSH were all aware the covenants accepted by Heritage Branch would be registered upon registration of a final subdivision plan and on those lots that contained Archaeological sites in accordance with the initial Trust covenant and letter of undertaking to do so.

Had she requested or reviewed any of the above letters or even asked SFN, the Heritage Branch or CSH she would have known that no damage has ever occurred to any of the Archaeological sites as evidenced by site inspections by SFN representatives themselves as well as a Heritage Branch site investigation on October 8 2020 which concluded “The owners have deep personal and family reasons to keep the sites intact and have gone above and beyond to keep them unharmed.”

She would have known, had she made any reasonable enquiry of MOTI, CSH or the Heritage Branch, that CSH had confirmed with the Branch, on several occasions, that the Heritage Act permitted site work outside the Archeological sites and only restricted such work if such sites were disturbed or a new site discovered and that the Branch had been notified by CSH of the work being conducted and had obtained the Branches confirmation such work was permissible.

Further she would have known the work being conducted was in relation to CSH's private property and not subject to any Government or First Nations approval .

She would also have learned that even though CSH had no obligation to stop work it did so.

Had any objective thought been part of the process she would have recognized SFN does not have the authority to stop a home owner from preparing his land for a home or for any reason and that the Heritage Act provides protection for any known or discovered sites with substantial consequences and penalties.

Had she made any reasonable enquiry she would have known SFN's statement that disturbance of ancestral remains, petroglyphs and the inland midden site to make way for development will not be supported was premised on the false assumptions they recited in the April 14, 2021 letter.

The fact that none of these questions were asked, no objective diligence conducted combined with the hostile, aggressive and totally unobjective position taken in conjunction with a preliminary opening statement that our lands should never be subdivided and seemingly undying commitment to advocate the Snuneymuxw First Nations interests at the expense of an objective administrative process focussed on bylaw requirements and full consideration of all communications demonstrates what we feel has been an unfair and biased process.

I cannot express how hurtful and damaging it was to be subjected to such an unjustified, unsubstantiated, public attack on our decades long efforts to satisfy all conditions or requirements in relation to First Nations interests and our commitments to honour our initial Trust covenant, Heritage Branch recommendations, our letter of undertaking to the Trust and our open efforts to engage with SFN and other First Nations.

Regarding the DP and subdivision process themselves, the bias was also evident in the disparaging references to past Trustees or staff failure with respect to the creation of the DP criteria and, as I understood, criticism of having initially approved the density transfer and re-zoning.

The fact is previous Trustees and staff were very conscientious in ensuing the process was thorough, in ensuring the community was fully engaged and that Snuneymuxw First Nation was fully consulted.

The result was the preservation in perpetuity of 707 acres and the assurance that if we followed the bylaws the subdivision would be approved.

CSH, past Trustees and staff even went to the extent of preparing draft layouts for the subdivision and the Trustees of the day passed a resolution confirming our layout satisfied the conditions of the Trust covenant in order that we had some certainty of the viability of the subdivision before purchasing and dedicating the 707 acres.

The DP bylaw is clear and requires only a geo tech report which we provided and which confirmed slope stability.

The Archaeological sites are well identified and surveyed, have been the subject of three AIA's, one major Mortuary Analysis (with respect to all of which SFN participated), at least two updated Archaeological field inspections and reports, a Heritage Branch inspection, numerous site visits by SFN and Elders, are protected by the Heritage Branch legislation, the initial Trust covenant to register Archaeological covenants at time of subdivision and a letter of undertaking requested by the Trust and provided by CSH as well as the Heritage Branch's acceptance of the draft covenant itself, again, to be registered on subdivision of lots containing Archaeological sites.

The geo tech is clear that even removal of trees from slopes in excess of 80 % (of which slopes there are few) will not cause slope instability and the Forest Stand Assessment also makes it clear the removal the trees in that report are consistent with a healthy forest on Gabriola and which in, itself, is also consistent with principals of Fire Smarting the lands for the benefit of the whole community.

Not a mention was made of the benefits of creating a healthy, safer forest. The only focus was on deferring the application pending a decision on whether the current Trustees can impose new conditions premised on a false theory that the Archaeological sites are not already protected, registered covenant or not, when it seemed evident considering the opening remarks that the real premise is opposition to the subdivision itself based on the false statements intended to show that CSH, by its allegedly disrespectful, dishonest past behaviour cannot be trusted to comply with its ' commitments and undertakings to provide and register covenants which have already been approved by the Branch, or to comply with the Heritage Protection Act.

I understand you require acknowledgement in writing that my complaint is not confidential with respect to affected staff or local Trust committees and I so confirm.

I have not included copies of correspondence referred to in this complaint or any other information assuming the investigation will request the same as part of the process.

Thank you for your consideration

Centre Stage Holdings Ltd.
Glenna Borsuk (Pres)

[REDACTED]
[REDACTED]
[REDACTED]



200-1627 Fort Street, Victoria, BC, BC V8R 1H8
Telephone **250. 405.5151** Fax 250. 405-5155

Toll Free via Enquiry BC in Vancouver 660-2421. Elsewhere in BC **1.800.663.7867**

Email information@islandstrust.bc.ca

Web www.islandstrust.bc.ca

December 22, 2023

File Number: 2220-20-Centre Stage

Centre Stage Holdings Ltd
Glenna Borsuk
601 – 33 Mt. Benson St
Nanaimo, BC
V9S 5L2

Dear Glenna Borsuk:

Re: Complaints Regarding Actions of the Gabriola Island Local Trust Committee

This confirms receipt of your correspondence to Peter Luckham, Chair, Islands Trust Council dated October 6, 2023 in which you raise issues about the conduct of the Gabriola Island Local Trust Committee. Specifically, you have expressed concerns regarding the Local Trust Committee consideration of your development permit application at the July 20, 2023 Gabriola Island Local Trust Committee meeting.

You have confirmed that you have no objection to having your concerns made known to affected trustees. In keeping with Trust Council's *Policy 7.1.ii – Handling of Administrative Fairness Complaints* your complaint will be referred to the relevant local trust committee and staff, and then considered in late January by the Standards of Conduct Review Panel, which is made up of the Islands Trust Executive Committee and the Chief Administrative Officer.

A written response will be provided to you by February 2, 2024. Thank you for advising us of your concerns.

Sincerely,

David Marlor
Director, Legislative Services

pc: Russ Hotsenpiller, CAO

DATE OF MEETING: January 18, 2024
TO: Gabriola Island Local Trust Committee
FROM: Warren Dingman Bylaw Compliance & Enforcement Manager
SUBJECT: Foreshore Structures

RECOMMENDATION

1. That the Gabriola Island Local Trust Committee receive this report for information only.

REPORT SUMMARY

This report summarizes the current shoreline structures and setback contraventions, and legal action involving such structures.

CASE FILES

There are currently 14 files in Gabriola Local Trust Area that deal with shoreline structures or setback contraventions. These files are equally divided between Gabriola and Mudge Islands, which has a 30 metre setback from the sea, while the setback from the natural boundary of the sea is only 7.5 metres on Gabriola Island.

It should be noted that the majority of the files involve structures on private property and not the actual foreshore below the natural boundary of the sea. The 'foreshore' reference in our file system reflects a need to identify contraventions and concerns within a specific environmentally sensitive area.

A total of 20 Bylaw Violation Notices have been issued for five of the files. All of the other files have been actioned and respondents have received notice that there are contraventions within the setback of the sea or on the foreshore and the majority will move towards compliance without the need for further enforcement action. Small Claims court proceedings have been commenced for one property, and if debts are not paid, they will be registered on the property title. One property owner failed to meet the conditions of a compliance agreement and further enforcement action will proceed because of the non-compliance.

COURT DECISIONS

Legal action has only been taken against one property owner on Mudge Island, and this file was opened in 2012, making it the oldest enforcement file for this specific issue. The subject property had multiple structures located within the setback from the sea, including multiple seawalls, decks, walkways and fencing. A development variance permit was sought by the property owner but that permit was denied by a previous Local Trust Committee.

This case has been subject to civil claims by the Local Trust Committee, and the property owner, and an appeal to the British Columbia Court of Appeal after a British Columbia Supreme Court decision that stated the certain structures were unlawful but that a seawall could remain as the owner had a right to protect his property from

erosion. Islands Trust legal counsel appealed that ruling and the property owner cross-appealed the decision that he had to remove structures from the setback area.

After a loss of the cross-appeal in the Court of Appeal by the property owner, and a successful appeal by Islands Trust that stated the Local Trust Committee could regulate structures within the setback from the sea, there was non-compliance with court orders and proceedings began for contempt. The property owner was found in contempt of court and fined, but the unlawful structures remain in place.

The attached *Fonseca v. Gabriola Island Local Trust Committee* legal case represents the only such legal action involving shoreline or foreshore structures on Gabriola since the creation of Islands Trust in 1974.

ANALYSIS

There is a general misunderstanding amongst property owners regarding their rights to build on their property, especially when it comes to the setback from the sea. Some view the setback regulations as a seizure of land by Islands Trust and many will maintain that they have a right to protect their property from erosion or freely build on their private property right up to any property border.

The legal case for 874 Driftwood on Mudge Island (*Fonseca v. Gabriola Island Local Trust Committee*) was precedent setting, and the Court of Appeal ruling has established that local governments have the right to regulate the exercise of private rights through a zoning bylaw, and stated the following regarding the right to protect property from erosion:

“A right to protect one’s property from the impact of erosion might exist at common law, but it operates to govern the relations between private persons, not to circumscribe the scope of statutory grants of municipal power.”

There is also jurisdictional confusion when it comes to building on the actual foreshore. There is a common belief that any activities below the high water mark are governed by the federal government. Multiple court decisions have established that local governments in British Columbia may regulate the placement of permanent structures in the water zones with their jurisdiction and also regulate their uses. Each new compliance and enforcement file involves providing property owners with education and information regarding Islands Trust jurisdiction and ability to regulate uses and structures on or near any water body.

RECOMMENDATIONS

There are no recommendations being made by staff at this time and this report should be received for information only. There are no identifiable trends observed from the current open files and there is no reason to believe that there is an increase in the number of unlawful structures being built.

Submitted By:	Warren Dingman, Bylaw Compliance & Enforcement Manager	January 10, 2024
Concurrence:	Renée Jamurat, RPP MCIP, Regional Planning Manager	January 11, 2024

ATTACHMENTS

1. FONSECA V. GABRIOLA ISLAND LOCAL TRUST COMMITTEE, 2021 BCCA 27

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Fonseca v. Gabriola Island Local Trust Committee*,
2021 BCCA 27

Date: 20210122
Docket: CA45681; CA45682

Docket: CA45681

Between:

**Joaquim Mamede Da Fonseca
Olinda Maria Carvalho Da Fonseca**

Respondents
(Plaintiffs)

And

Gabriola Island Local Trust Committee

Appellant
(Defendant)

– and –

Docket: CA45682

Between:

Gabriola Island Local Trust Committee

Appellant/
Respondent on Cross Appeal
(Petitioner)

And

**Joaquim Mamede Da Fonseca
Olinda Da Fonseca**

Respondents/
Appellants on Cross Appeal
(Respondents)

Before: The Honourable Mr. Justice Harris
The Honourable Mr. Justice Goepel
The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia, dated October 1, 2018 (*Fonseca v. Gabriola Island Trust Committee*, 2018 BCSC 1684, Vancouver Dockets S177664 and S1611967).

Counsel for the Appellant
(via videoconference):

S.S. Manhas

Counsel for the Respondent
(via videoconference):

A.C. Bjornson

Place and Date of Hearing:

Vancouver, British Columbia
November 4, 2020

Place and Date of Judgment:

Vancouver, British Columbia
January 22, 2021

Written Reasons by:

The Honourable Mr. Justice Harris

Concurred in by:

The Honourable Mr. Justice Goepel

The Honourable Mr. Justice Abrioux

Summary:

The Gabriola Island Local Trust Committee appeals an order that its Land Use Bylaw is inapplicable to a seawall constructed by the landowners, the FONSECAS, on their property. The judge held the bylaw inapplicable to the structure for the reason that the purpose of a seawall is to protect one's property from erosion, a right held at common law by a landowner that can only be abrogated by clear legislative intent. The FONSECAS cross appeal the order that other structures on their property, including fences and a deck/walkway, contravened the bylaw and that they be removed. Held: Appeal allowed; cross appeal dismissed. A right to protect one's property from the impact of erosion might exist at common law, but it operates to govern the relations between private persons, not to circumscribe the scope of statutory grants of municipal power. Local governments have the authority to regulate the exercise of private rights through zoning bylaws, as did the Island Local Trust here. The seawall contravenes the bylaw and must be removed. On cross appeal, the judge correctly determined that the fences, gates and deck/walkway were offending structures under the bylaw and ordered their removal.

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[Analysis](#)[The Approach to Statutory Interpretation of a Grant of Zoning Authority.](#)[The Riparian Right to Protect Property.](#)[Disposition](#)**[THE CROSS APPEAL](#)**[The Gates](#)[The Fences](#)[The Walkway.](#)[Disposition](#)**[CONCLUSION](#)****Reasons for Judgment of the Honourable Mr. Justice Harris:****Introduction**

[1] This appeal turns on the circumstances in which a common law right to use or protect property is subject to regulation by local government land use zoning bylaws. Specifically, the appeal and cross appeal concern the authority of the Gabriola Island Local Trust Committee (“Island Local Trust” or “Local Trust Committee”) to control the location of structures on waterfront property on Mudge Island through its zoning powers. The structures in issue are a “deck”, fences, a set of gates on a boat ramp, and a sea or embankment wall intended to prevent the erosion of the property by the sea.

[2] The issue before the judge was whether the structures contravened the Mudge Island Land Use Bylaw No. 228, 2007 (“Land Use Bylaw”) and should be removed. The judge ordered the removal of all of the structures except what I will refer to as the seawall. He concluded that the Land Use Bylaw did not authorize the regulation of the location of the seawall because the Island Local Trust’s empowering legislation was not sufficiently clear to abrogate the common law right of the property owner to erect erosion control structures on the shoreline to protect the property. The Land Use Bylaw, however, permissibly regulated the location of the other structures.

[3] The Island Local Trust appeals the order concluding that the Land Use Bylaw did not apply to the seawall. The property owners seek to uphold the order

in respect of the seawall but argue, in their cross appeal, the judge erred in his order requiring the removal of the other structures.

[4] I will refer to the respondents and cross appellants as the FONSECAS.

[5] For the reasons that follow, I would allow the appeal and dismiss the cross appeal.

The Land Use Bylaw

[6] On September 18, 2008, the Island Local Trust adopted the Land Use Bylaw. The ultimate source of its authority to do so is s. 479 of the *Local Government Act*, R.S.B.C. 2015, c. 1.

[7] The Island Local Trust derives its powers from the *Islands Trust Act*, R.S.B.C. 1996, c. 239. The purpose of the Island Local Trust is to carry out the object of the Islands Trust, including through the regulation of “the development and the use of land in [its] local trust area by exercising powers conferred by [the *Islands Trust Act*], including powers that would otherwise belong to the regional district for each area.” (s. 4(4)).

[8] The object of the Islands Trust is set out in s. 3 of the *Islands Trust Act*:

The object of the trust is to preserve and protect the trust area and its unique amenities and environment 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.

[9] Sections 24, 28, 29, 31 and 32 of the *Islands Trust Act* confer powers on the Island Local Trust to achieve the object of the Islands Trust. Sections 24, 28, and 29 confer on the Island Local Trust the powers of regional districts under the *Local Government Act* to enact bylaws that regulate the development and use of land in its local trust area and to enforce those bylaws.

[10] In particular, s. 29(1)(b) confers on the Island Local Trust the powers found in Part 14 of the *Local Government Act*, including:

479 (1) A local government may, by bylaw, do one or more of the following:

(a) divide the whole or part of the municipality or regional district into zones, name each zone and establish the boundaries of the zones;

(b) limit the vertical extent of a zone and provide other zones above or below it;

(c) regulate the following within a zone:

(i) the use of land, buildings and other structures;

(ii) the density of the use of land, buildings and other structures;

(iii) the siting, size and dimensions of

(A) buildings and other structures, and

(B) uses that are permitted on the land;

(iv) the location of uses on the land and within buildings and other structures;

...

[Emphasis added.]

[11] It is clear from reading the *Islands Trust Act* together with Part 14 of the *Local Government Act* that the Island Local Trust may regulate the siting, size, location and dimensions of buildings and other structures within zones under its jurisdiction through the use of bylaws.

[12] In furtherance of its mandate, the Island Local Trust passed an official community plan in 2008 setting out the goals and principles of regulation for Mudge Island: Bylaw No. 227, *Mudge Island Official Community Plan, 2007* ("Official Community Plan").

[13] The Official Community Plan sets out the approach to land regulation:

The Bylaw's approach to land use and development growth is one of consideration and caution. It is hoped that by laying out a pattern of low impact land use, adopting a cautious approach to development, and fostering a cooperative relationship among the local community and other governmental agencies, reasonable land use and development will take place without requiring complex and expensive facilities and services, thereby maintaining the Islands' unique character as a place where the human community lives in and with nature.

[14] The Official Community Plan sets out the general zoning policy related to ecosystem protection, including:

Policy 5 Permits, bylaw amendments or other approvals should include protection of environmentally sensitive and hazardous areas including: wetlands, watercourses, riparian areas, groundwater, intertidal areas, forests and bluffs; a

precautionary principle approach should be taken whereby decisions are not made until adequate information is obtained.

...

Policy 7 Zoning provisions should establish a minimum building setback from wetlands, watercourses and the sea.

[15] The Plan also sets out policies specific to the regulation of the coastline and foreshore:

Objectives

- Objective 1 To minimize disturbance and pollution of the foreshore and the surrounding waters.
- Objective 2 To minimize conflicts between marine and foreshore users and uses.

Policies

- Policy 1 In addition to setbacks for all buildings and structures, land immediately upland of the foreshore and extending out over the water may be designated as a development permit area.
- Policy 2 Zoning should allow for low impact recreational opportunities in coastal and foreshore areas.
- Policy 3 Coastal and foreshore zoning shall be designed to protect against disruption of natural beach systems and limit development.
- Policy 4 Public beach access areas should have minimal clearing, retain vegetation and not be unduly obstructed by development.

[16] To give effect to the policies contained within the Official Community Plan, the Island Local Trust enacted the Land Use Bylaw, dividing Mudge Island into zones pursuant to s. 479(1)(a) of the *Local Government Act*. It contains land use regulations for each zone, including regulations enacted pursuant to s. 479(1)(c). The FONSECAS' property is zoned rural residential.

[17] Section 3.3 of the Land Use Bylaw sets out regulations applicable in every zone, including the siting regulation under s. 3.3(4) of the Land Use Bylaw, which is at issue in these appeals. Section 3.3(4) provides as follows:

3.3. Siting and Setback Regulations

...

- (4) Despite all other provisions in this Bylaw, buildings and structures must be sited a minimum of 30 metres (98.4 feet) from and 1.5 metres (4.9 feet) above the natural boundary of a wetland, watercourse, the sea or other body of water, except for barge/boat ramps, stairs and walkways

with an average maximum elevated floor height of 0.3 metres (0.9 feet).

[18] I do not think there can be any reasonable doubt about the following. The Island Local Trust is empowered to pass a bylaw (by virtue of s. 479) that creates zones. The zoning power includes the power to regulate the use, siting, size, location and dimensions of buildings and other structures and uses that are permitted on the land. The Island Local Trust is also authorized to enforce its bylaws. There is also no reasonable dispute that the structures in issue on the land are structures within the meaning of s. 479, hence the Island Local Trust is empowered to regulate them. This latter proposition is subject to the caveat that the FONSECAS argue that the seawall is not a structure for the purposes of s. 479 for reasons I shall develop.

The FONSECAS' Structures

[19] It is sufficient for current purposes to record that the property has a house set back more than 30 metres from the natural boundary of the sea. It also has a deck, fences, and a stone and concrete seawall. The fences and the seawall abut the sea's natural boundary. The seawall is intended to prevent erosion of the property by the sea. The property is also serviced by a gated boat ramp. The gates, which sit atop the boat ramp, are extensions of the fence.

[20] These structures, the Island Local Trust argues, do not comply with s. 3.3(4) of the Land Use Bylaw. The FONSECAS constructed them without contacting the Island Local Trust. If the structures are structures for the purposes of the Land Use Bylaw, their location is not in conformity with its siting requirements. The Land Use Bylaw defines 'structure' in s. 1.1 as meaning "any construction and human made land alteration fixed to, supported by, or sunk into land or water; for clarity septic fields, septic tanks, absorption fields and related appurtenances, concrete and asphalt paving or similar surfacing of the land, and retaining structures are considered structures."

[21] Beginning in 2012, the Island Local Trust began to attempt to enforce the Land Use Bylaw by demanding the removal of the non-conforming structures. In May 2015, the FONSECAS applied to the Island Local Trust for a development variance permit seeking permission to keep them. That permission was granted for

some structures, but denied for others, including the “deck”, seawall and fences. The FONSECAS did not remove the offending structures.

[22] Eventually, two proceedings started in the Supreme Court. The Island Local Trust sought a declaration that the structures violated the Land Use Bylaw and should be removed. The FONSECAS sought a variety of declarations in support of their position that the Land Use Bylaw did not apply to the structures.

The Judgment Below

[23] The judge dealt first with the deck, stairs and fences. He rejected the FONSECAS’ argument that the deck was actually a walkway, which is a permitted use under s. 3.3(4). He concluded that the structure’s primary function was as a deck and would be seen as such by any reasonable person. The judge concluded that if the stairs could be used separate and apart from the deck to permit access to the foreshore, then they could remain. He then went on to find that the fences which sat on top of the seawall and gates at the top of the boat ramp violated s. 3.3(4) and should be removed. It was material to his decision that neither the fences nor the gates existed to prevent erosion by the sea.

[24] The judge reached a different conclusion about the seawall. After rejecting certain constitutional arguments, not in issue here, he turned his mind to whether the Land Use Bylaw applied to limit construction of a seawall. In his view, this would require that the *Local Government Act* empowered the Island Local Trust to abrogate a property owner’s common law riparian right to protect property from erosion by the sea. He decided it did not and therefore the Land Use Bylaw did not apply to the seawall.

[25] The judge accepted first that a common law riparian right existed to protect one’s property from erosion caused by inroads of the sea. The judge also accepted that the Island Local Trust had the authority to regulate the siting, size and dimensions of structures through a bylaw by virtue of s. 479(1)(c)(i) of the *Local Government Act*. He then reasoned:

[58] However, that does not mean the Local Trust Committee has the ability to prevent the FONSECAS from building an embankment wall on the edge of their property, which would require a complete abrogation of their common law riparian right to protect their property where it bounds the sea. To do so, the *Local Government Act* and related provincial legislation would

have to either abrogate the common law right or authorize the Local Trust Committee [to] abrogate the right.

[59] Modification, alteration, or abrogation of a common law right must be explicit or by necessary implication. In respect to the latter, the implication must be necessary and clear, not just reasonable. In the present case, it is neither explicit nor necessarily implied.

[26] The judge drew support for his view that the common law riparian right had not been abrogated by legislation by relying on the reasoning of this Court in *Bryan's Transfer Ltd. v. Trail (City)*, 2010 BCCA 531. At issue in *Bryan's Transfer* was whether ss. 94–96 of the *Land Title Act*, R.S.B.C. 1996, c. 250 modified the common law doctrine of accretion, such that a landowner would need to apply through the process set out in the *Act* in order to vindicate riparian rights acquired over accreted land owned by the Crown. In the result, the Court of Appeal held that the statute lacked the requisite clear intent to modify, alter, or abrogate the common law, either expressly or by necessary implication. In applying *Bryan's Transfer*, the judge concluded that:

[63] The scope of Bylaws is valid only insofar as the authorizing statute permits. In the present case, there is no specific extinguishment of the subject riparian right in the authorizing legislation, the *Local Government Act* and the *Islands Trust Act*, nor any reference to the subject riparian right. Also, I do not find that the language has the “irresistible clearness” to conclude that the subject right was extinguished by necessary implication. As such, the Bylaws cannot operate to prohibit the construction of an embankment wall at the marine boundary whose purpose is to protect against erosion.

[27] Accordingly, the judge granted the declaration that s. 3.3 of the Land Use Bylaw infringes the Fonsecas' common law riparian right to protect the property from erosion and is inapplicable to the embankment walls.

On Appeal

[28] The issues on appeal and cross appeal are distinct. I will deal with each separately.

[29] The Island Local Trust contends that the judge fell into a series of related errors.

[30] First, he misunderstood the nature of riparian rights to prevent erosion of property. These rights are not “positive” rights capable of being asserted against

and in the face of clear legislative intent to regulate them. They are not a distinct form of property right. The Island Local Trust submits that there was no basis on which the judge could properly distinguish the seawall from the other structures to which s. 3.3(4) applied.

[31] Second, he misapprehended the interpretive principle about legislation “abrogating” common law rights. In the contention of the Island Local Trust, that interpretive principle applies only where legislation might be interpreted as altering, or authorizing the alteration of, common law rules or principles (i.e., only where it might change the general law itself). It has no application to an ordinary regulation like the Land Use Bylaw that makes unlawful, as a public law matter, activities that remain lawful at common law, as a private law matter.

[32] Third, the judge improperly interpreted s. 479 of the *Local Government Act*. The judge erred by, in effect, reading down the section so that it did not authorize the bylaw regulating an erosion control structure, contrary to the plain meaning of the legislation.

[33] The FONSECAS, for their part, support the reasoning of the judge, but also argue that the Island Local Trust has changed its position on appeal, having argued below that the riparian right had been abrogated. Now, they say, the Island Local Trust is impermissibly resiling from its earlier position and recasting its argument.

Analysis

[34] In my opinion, the judge fell into two errors in his analysis. It may well be that he was led into error by the Island Local Trust which stressed the argument that the right to construct a seawall to prevent erosion had been abrogated by the regulatory scheme. From there, it was a short step for the judge to deploy an approach to statutory interpretation that looks for irresistible clearness and explicit targeting of the affected right in the grant of legislative authority.

[35] First, the judge erred in his approach to the statutory interpretation of grants of legislative authority to pass zoning bylaws that regulate the exercise of property rights. This error was confined to his consideration of the seawall. In my opinion, he approached the issue of the authority to regulate the other structures by applying the proper approach to statutory interpretation. Had he applied that

approach consistently, he would have reached a different conclusion about the seawall.

[36] Second, in my opinion, the judge erred in his approach to the riparian right to protect one's property from erosion caused by the inroads of the sea. In effect, he treated the right as a positive or special right, different in its essential character from other property rights, that can be asserted in the face of a regulatory scheme, in effect limiting the scope of the regulatory body's grant of statutory authority, unless that grant overrides the right explicitly, either with irresistible clarity or by necessary implication. The error lies, as I see it, in conferring on the riparian right a privileged status, not shared by other types of property rights, and then searching for a degree of specificity in a grant of authority to abrogate it.

[37] The two errors, as I see them, are related. What I see as the error in statutory interpretation may have sprung from the judge's evaluation of the nature of the property right. I will begin by considering the proper approach to interpreting grants of authority to regulate property rights. I consider that the zoning power granted here is appropriately viewed as regulating the exercise of private common law rights as a matter of public law, and not as abrogating those rights, which continue to exist as a private law matter between neighbouring landowners. Approaching the issue this way leads me to the conclusion that the zoning power applies to the regulation of all property rights falling properly within its scope, irrespective of their differing character.

The Approach to Statutory Interpretation of a Grant of Zoning Authority

[38] I begin by acknowledging two important propositions of interpretation. First, it is commonplace that we must interpret the statutory powers in accordance with the modern principle. This requires that the words of a provision be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.": *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87. While plain meaning is important, plain meaning alone is not determinative because statutory interpretation is incomplete without considering the context, purpose and relevant legal norms: *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67

at para. 43. This is so because words that appear to have a clear meaning may in fact prove to be ambiguous once placed in their context.

[39] Second, the zoning powers of the local government should be interpreted in accordance with the purposes of the *Local Government Act* and the *Islands Trust Act*. As Chief Justice Bauman explained in *Society of Fort Langley Residents for Sustainable Development v. Langley (Township)*, 2014 BCCA 271:

[13] Again, in the context of municipal empowering legislation and bylaws enacted pursuant thereto, this Court said in *Neilson v. Langley (Township)* (1982), 134 D.L.R. (3d) 550 (at 554 per Hinkson J.A.):

In the present case, in my opinion, it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the Municipal Council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.

[14] In *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, Mr. Justice Bastarache stated for the Court (at paras. 6 and 8):

[6] The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities. ... The "benevolent" and "strict" construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced...

...

[8] A broad and purposive approach to the interpretation of municipal legislation is also consistent with this Court's approach to statutory interpretation generally. ...

[15] These common law rules must be married with the expressions of intent by the Legislative Assembly.

[16] Generally, in s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 we are told that:

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[17] Specifically, under s. 4(1) of the *Community Charter*, S.B.C. 2003, c. 26, we are directed so:

4(1) The powers conferred on municipalities and their councils under this Act or the Local Government Act must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

[18] Frankly, the Court can take the hint – municipal legislation should be approached in the spirit of searching for the purpose broadly targeted by the enabling legislation and the elected council, and in the words of the Court in *Neilson*, "with a view to giving effect to the intention of the

Municipal Council as expressed in the bylaw upon a reasonable basis that will accomplish that purpose”.

[40] The interpretive principle to be applied is also set out in s. 187(1) of the *Local Government Act*:

187 (1) The powers conferred on regional districts and their boards under this Act must be interpreted broadly in accordance with the purposes of this Act and in accordance with regional district purposes.

[41] There is no doubt that a legislature may authorize the regulation of private conduct, and in doing so may impair rights that might otherwise exist. As Chief Justice Bauman said in *H. Coyne & Sons Ltd. v. Whitehorse (City)*, 2018 YKCA 11 at para. 46, “the impairment of private rights lies at the core of the zoning power.” The scope of regulation may simply focus on the use, for example, a landowner may make of his or her own land, but do so without affecting private property rights that exist at common law as they govern relations between landowners. Alternatively, it is conceivable that a statutory conferral of power to regulate may also affect, impair or abrogate common law rules, principles, or rights as they run between private persons. There is nothing in the scope of the zoning power at issue before us that purports to displace or affect any common property rule that governs the relations between private landowners.

[42] It appears to me that on a plain reading of the text of s. 479, the Island Trust Committee has the power to regulate the use of land and the siting of structures. It has done so by the enactment of the Land Use Bylaw. This power is also, in my opinion, consistent with the purposes and objects of the statutory scheme, including the purposes set out in the *Islands Trust Act*.

[43] Furthermore, I can see no basis on which one could interpret the power to regulate structures as excluding a structure such as a seawall or, for that matter, any other structure, on the basis that the structure’s purpose was to protect the property from erosion.

[44] The use of the general term ‘structure’ to identify the subject matter of regulation indicates a broad grant of authority. A structure is virtually anything that is constructed or put together: *Black’s Law Dictionary* (11th ed., 2019). Nothing in the grant of authority in s. 479 indicates an intention to capture only some kinds of structures and not others. As the judge correctly recognized, the seawall is a

structure, the regulation of which is captured at least by the plain language of the enabling legislation and the Land Use Bylaw (as quoted above in para. 20).

[45] The Island Local Trust has chosen to exercise its power by regulating the siting of structures. The Land Use Bylaw stipulates that no structures can be sited within 30 metres of, and 1.5 metres above, the natural boundary of the sea. The seawall contravenes this aspect of the Land Use Bylaw.

[46] The FONSECAS argue that the Island Local Trust is not authorised to pass a bylaw regulating the siting of a seawall for another reason; namely, the legislature did not intend to confer a grant of authority on the Island Local Trust to regulate erosion control works (such as the seawall) because that subject matter is more specifically dealt with, apart from the general zoning power, in s. 312 of the *Local Government Act*. Accordingly, the seawall, or other structures erected for the purpose of erosion control, cannot be structures for the purposes of s. 479 which are subject to the Land Use Bylaw's siting requirements.

[47] Section 312 of the *Local Government Act* expressly gives local governments the power to establish requirements, by bylaw, that must be met by persons undertaking the construction of works, to protect part of the land mass of the regional district from erosion by action of the sea:

312 (1) In this section and section 313, "stream" has the same meaning as in section 1 (1) of the *Water Sustainability Act*.

(2) A board may, by bylaw,

(a) establish requirements that must be met by owners of dikes, and

(b) establish requirements that must be met by persons undertaking the construction of

(i) dikes,

(ii) works to maintain the proper flow of water in a stream, ditch, drain or sewer in the regional district, or

(iii) works to reclaim or to protect part of the land mass of the regional district from erosion by action of the sea or a stream or from any other cause.

[48] The FONSECAS argue that s. 479 does not cover structures the purpose of which is to protect land from erosion. Power to regulate such structures is given to "a board" under s. 312, not the Island Local Trust. They contend that the power in s. 312 can only be exercised by the Islands Trust Council. The Islands Trust

Council has not enacted any bylaws intended to restrict the ability of landowners to erect erosion-protection works. Moreover, the use of the word “works” in the section indicates the legislature’s intention to distinguish between works intended to protect against erosion, such as a seawall, and structures subject to the zoning power.

[49] Respectfully, I am unable to give effect to this argument. In the first instance, the argument depends on the proposition that a more specific grant of authority should be interpreted as derogating from a more general grant or as not falling within the more general grant. This suggestion runs afoul of the interpretive guidance found in the *Local Government Act* itself. Section 187(2) reads:

(2) If

(a) an enactment confers a specific power on a regional district or board in relation to a matter, and

(b) the specific power can be read as coming within a general power conferred under this Act,

the general power must not be interpreted as being limited by that specific power, but that aspect of the general power that encompasses the specific power may only be exercised subject to any conditions and restrictions established in relation to the specific power.

[50] Here, it seems to me, the general zoning power controls the siting of a structure, and s. 312 permits the imposition of requirements on the construction of a structure intended to control erosion. These requirements may take many forms, including design, appearance, and materials, by way of example.

[51] In my opinion, the power to impose requirements under s. 312 for the construction of erosion-protection works does not limit the more general grant of authority to regulate the siting of those structures found in s. 479. Bylaws setting out requirements for the same structure or works could be enacted under each provision, respectively, and a landowner would have to comply with both.

[52] Furthermore, I do not think that the use of “works” in s. 312 signals a legislative intent to distinguish between works and structures for the purposes of s. 479. “Works” is arguably a more encompassing term than “structure”, but the terms overlap and a work can certainly be a structure, and a structure a work. On any reasonable view of the seawall at issue here, it is both a work and a structure.

[53] By relying on s. 187(2) of the *Local Government Act* to arrive at this conclusion, I should not be taken as expressing any view on the entity empowered to enact bylaws under s. 312. Section 187(2) makes clear that, under the scheme, a specific power does not oust or limit a more general power. That is sufficient to conclude that s. 312 does not limit the Island Local Trust's authority to regulate the siting of the seawall pursuant to s. 479.

[54] In sum, I do not think there is anything in the grant of authority to pass bylaws regulating the siting of structures that supports an argument that the legislature did not intend to grant to a local authority the power to regulate any structure sited on land. There is no basis to distinguish between different types of structures according to the purpose for which they are built, or the property right that is engaged in constructing them. The Land Use Bylaw in issue is, therefore, effective to regulate a structure such as the seawall. In my opinion, we are compelled to this conclusion once the approach to interpreting grants of statutory power set out above is applied.

The Riparian Right to Protect Property

[55] The judge based his analysis on his view that a riparian right to protect property from erosion could be extinguished or abrogated only by clear legislative intent. In that respect, the riparian right is inherently different from other rights to use property in the absence of regulation.

[56] I acknowledge the line of authority dealing with the clarity courts look for before concluding that a legislature intended to abrogate common law rights, rules or principles. But I am not persuaded that that line of authority applies in this case.

[57] A landowner has a right at common law to take steps to protect land from erosion. In some instances, that right is a riparian right. It is clear that such a right governs the private relations between neighbouring landowners. It is based in common law rules governing neighbours' private rights against each other. Accordingly, a landowner who exercises a riparian right may have causes of action against or defences to claims by neighbours if the landowner engages in conduct that affects them.

[58] From this, two points emerge. First, the existence of private property rights running between adjoining landowners does not, without more, have any

implications for the scope of a grant of authority to a local government to regulate the same subject matter. Second, the mere regulation of that subject matter by a local government does not affect or abrogate the common law rules governing the private relations between adjoining landowners.

[59] In the case at bar, neither s. 479 nor the Land Use Bylaw purport to change the common law rules or rights running between private landowners. Accordingly, I do not think the cases relied on by the FONSECAS, which are examples concerning whether a legislature has intended to alter or abrogate common law rules, are of any assistance.

[60] Moreover, many of the cases they rely on arose in the context of private law disputes and do not deal with the effect of government regulation on common law property rights or vice versa. For example, *Rhineland (Municipality) v. Letkeman*, [1978] M.J. No. 33, 3 W.W.R. 97 (M.B.C.A.), concerned, not regulation, but a permanent injunction sought by a municipality against a farmer to prevent him from damming up a watercourse that threatened to flood his property. Though the municipality had the authority to regulate surface watercourses such as the one which traversed the farmer's land, it had not passed any bylaw doing so—a fact relied upon by Justice O'Sullivan in arriving at his conclusion:

[14] In the case now before us on this appeal, there is no suggestion that the municipality ever passed any by-law determining that there was a surface watercourse across the defendant's land. There was never any by-law to prevent the obstruction of such a surface watercourse in any manner. There was no suggestion that the municipality ever attempted to provide any outlet for a surface watercourse which it now alleges ran across the defendant's land.

[61] In the absence of any applicable regulation, the court held that the farmer had a right to build the dike, and dismissed the appeal. But that case is inapposite to one in which a bylaw *is* in force regulating the subject matter in question, as it is here.

[62] In addition, none of the cases cited to us establish that a riparian right to protect property has a privileged or different status from other property rights. Cases like *Laxton & Company v. West Vancouver (District)*, 2010 BCSC 1297, confirm the existence of the right at common law generally; an issue that is not contested in this proceeding. But, in that case, the court also distinguishes the

existence of the right to protect one's property at common law from the ability of a municipal government to regulate that right through zoning bylaws:

[23] Laxton argued that he has a common law right to protect his property against the elements, which right is not subject to regulation. To support this proposition, he took us back to *Rex v. The Commissioners of Sewers for Pagham, Sussex* (1828), 8 B. & C. 355; 108 E.R. 1075, and *McBryan v. The Canadian Pacific Railway Company* (1899), 29 S.C.C. 359. These indeed established the first part of Laxton's proposition, which the district does not dispute. As between adjoining landowners:

...every landowner exposed to the inroads of the sea has a right to protect himself, and is justified in making and directing such works as are necessary for that purpose....(per Bayley J. in *Pagham* at p. 361)

[24] Where such a landowner acts *bona fide* and does no more than is reasonably and honestly necessary for the protection of his property, then an adjoining landowner who suffers damage as a result has no claim. But that is not what concerns us here. The question is whether a landowner's exercise of that common law right can be the subject of municipal regulation.

[25] As a general principle, that question must be answered in the affirmative. There is no doubt that the district has the power to pass zoning bylaws that regulate the use of the foreshore and foreshore waters as well as the land: *Salt Spring Island Local Trust Committee v. B&B Ganges Marina Ltd.*, 2007 BCSC 892, upheld 2008 BCCA 544; *North Pender Island Trust Committee v. Hunt*, 2008 BCSC 391, 2009 BCCA 164; see also *Ovcharick v. North Saanich (District)* (1998), 46 M.P.L.R. (2d) 128 (B.C.S.C.), upheld (1999), 50 M.P.L.R. (2d) 147 (B.C.C.A.). ...

[Emphasis added.]

[63] In short, the right to protect one's property from the inroads of the sea, or other threats, is not a positive right of a nature that may operate to circumscribe or limit a grant of statutory authority, nor does the right support reading down a grant of regulatory authority.

Disposition

[64] Ultimately the question before the court below and this Court is whether the regulation of the siting of the seawall fell within the grant of authority to the Island Local Trust and whether the Land Use Bylaw did so regulate its siting. This is a matter of statutory interpretation. To the extent that the Island Local Trust has recast its argument, I think it is appropriate for this Court to consider the argument as reframed. The issue here is about interpreting statutory authority. I see no prejudice to the FONSECAS in considering the argument which now brings the real

legal issues into proper focus. For the reasons I have given, I would allow the appeal.

The Cross Appeal

[65] The judge upheld the determination of the Island Local Trust that the gates at the top of the boat ramp, the fences, and the deck or walkway be removed. The issues here, as they are raised in the cross appeal, do not turn on whether the Land Use Bylaw applies to these structures, at least in principle, but whether the decisions that they be removed were reasonable or were properly before the judge.

[66] The FONSECAS allege the judge erred in ordering relief that had not been sought in the petition (removal of the metal gates), removal of the fences without a proper factual basis, and the removal of the walkway without analysing its use, i.e., what had been a deck (and contrary to the Land Use Bylaw) had since been converted to a walkway that did not violate the Land Use Bylaw.

The Gates

[67] The contention here is that the removal of a set of metal gates at the top of the boat ramp had not been sought in the petition. The petition sought the removal of “a deck, a fence and seawalls.”

[68] The factual context for this argument is the suggestion that the Island Local Trust had made a demand for the removal of a “concrete ramp structure with large gates inside ocean setback” but had dropped that demand during discussions between the parties. It is clear that the Island Local Trust did drop its demand for the removal of the boat ramp. The question is, does this mean that when read with the petition, no order was sought to remove the gates and the removal of the gates was included within the boat ramp issue.

[69] The FONSECAS argue that if the Island Local Trust was seeking an order that the gates be removed, they should have had notice of that claim so that they could present evidence and make arguments about whether the gates are properly part of the boat ramp, or whether they are structures for the purposes of the Land Use Bylaw.

[70] While I agree that a judge ought not to grant an order not sought by a party, and that proper notice of what orders are sought should be given, I am not persuaded that these principles are engaged on the facts. The Island Local Trust did “drop” the boat ramp issue, but I think the fact that it considered the gates on the boat ramp to be part of the illegal fences was clearly communicated to the FONSECAS.

[71] During the course of the dispute, the FONSECAS had applied for a development variance permit related to the structures in dispute. That application was approved, but only in part. On February 26, 2016, the Island Local Trust informed the FONSECAS that the application for a variance in respect of the “[f]ences, fence footings, and gate attached to the fence at the top of the boat ramp” had been denied. Clearly, the position of the Island Local Trust was that the gates were part of the fences. This is, in my view, evident from the photographs in evidence. I do not think the judge erred in treating the relief sought to remove the fences as including the gates or in treating the gates, in fact, as part of the fences.

[72] I would not accede to this ground of cross appeal.

The Fences

[73] The simple point here is that the FONSECAS assert that the fences were built before the current Land Use Bylaw came into effect, and that they did not contravene any applicable bylaw when they were constructed. The fences may, accordingly, be continued as a non-conforming use pursuant to s. 528(1) of the *Local Government Act*.

[74] The FONSECAS argue that the bylaw in force when the fences were built stipulated that “no building or structure except a sign, fence or pumphouse, shall be sited within six (6) metres (19.68 ft.) of the front end and rear lot lines ...”: s. 9.4 D(i) of the previous bylaw (emphasis added in factum). The issue is whether the FONSECAS are correct that the fences, if they were constructed under the previous bylaw, were exempt under the applicable setback rules.

[75] The current Land Use Bylaw provides:

3.3. Siting and Setback Regulations

...

(2) No buildings or structures may be sited within setback areas established in this Bylaw, except a fence, utilities, navigation aid, driveway, foot path, pump/utility house, fire fighting water tower and signs.

...

(4) Despite all other provisions in this Bylaw..., buildings and structures must be sited a minimum of 30 metres (98.4 feet) from and 1.5 metres (4.9 feet) above the natural boundary of a wetland, watercourse, the sea or other body of water, except for:

(a) barge/boat ramps; and

(b) stairs and walkways with an average maximum elevated floor height of 0.3 metres (0.9 feet) and a maximum width of 1.5 metres (4.92 feet).

...

[76] The relevant provisions under the prior bylaw were sections 9.4 D and 4.1 A, and the definition of “structure” under that bylaw. Section 9.4 D provided:

9.4 Regulations Pertaining to the R-3 Zone

The following regulations shall apply to every development in all areas designated by this Bylaw as R-3:

...

D. Siting

i) Lots Equal to or Less than Four Thousand (4,000) Square Metres in Area

On a lot having an area equal or less than four thousand (4,000) square metres (.99 acre), no building or structure except a sign, fence or pumphouse, shall be sited within six (6) metres (19.68 ft.) of the front end and rear lot lines nor within one decimal five (1.5) metres (4.92 ft.) of any side lot line, except that the minimum setback for an accessory building from a rear lot line shall be two (2) metres (6.56 ft.).

...

[Emphasis added.]

[77] Section 4.1 A provided:

4.1 Floodplain Provisions and Setback from Water

A. Notwithstanding any other provisions of this Bylaw, no building except a boathouse or pumphouse or any part thereof shall be constructed,

reconstructed, moved or extended nor shall any mobile home or unit, modular home or structure be located:

- i) within seven point five (7.5) metres (24.6 ft.) of the natural boundary of the sea, a lake, swamp or pond;

...

[Emphasis added.]

[78] It is apparent that both bylaws establish a minimum setback from the natural boundary of the sea for certain types of structures. Those setback requirements operate despite other provisions of the respective bylaw. That means they operate to override other setback requirements found in other parts of the bylaw, including exemptions from those requirements. I am persuaded that, in respect of the prior bylaw, s. 4.1, rather than s. 9.4, sets out the applicable setback, and prohibits the siting of a fence within the stipulated setback, if it is a structure for the purpose of that section. Section 4.1 operates notwithstanding the other provisions of the bylaw, such as the exemption for fences from the general setback requirement established by s. 9.4. I take the view that s. 4.1 A governs and imposes the applicable setback where the lot boundary in question is the sea, and the exemption for fences found in s. 9.4 D is not applicable.

[79] The issue reduces, in my opinion, to the question of whether the fences (including the gates) should be considered a structure for the purposes of s. 4.1 A of the previous bylaw.

[80] It is certainly arguable that the use of the term “structure” in s. 4.1 A could be read as being qualified by the preceding words in the provision, which refer to buildings, mobile homes, or modular homes. Certainly a fence is not a building or a dwelling. I do not think, however, that the bylaw should be read so restrictively in light of the proper approach to the statutory construction of local government powers. We must have due regard for the purpose of the section, which is to limit the erection of substantial structures close to the sea. Under the bylaw, a structure is defined as “any construction fixed to, supported by, or sunk into land or water.” This broad definition seems to me to support a reading of the section as restricting the location of buildings (of all kinds—except a boathouse or pumphouse), dwellings of various kinds and any other “structure” that meets the definition, as certainly do the fences built here.

[81] I would not accede to this ground of cross appeal.

The Walkway

[82] A walkway is a permitted use, although some aspects of its dimensions are subject to regulation. The FONSECAS argue that the judge erred in treating as a deck a structure that had been converted into a walkway and hence in ordering its removal. They say the judge erred by not considering its current use, after modification. The failure to consider its current use, they say, was a legal error, relying on *Salt Spring Island Local Trust Committee v. B & B Ganges Marina Ltd.*, 2008 BCCA 544. *Salt Spring Island* involved an oil-tank barge, moored in a marina on Salt Spring Island, which was no longer being used as a vessel, but rather had been recommissioned as the office and reception area for the marina. The Court of Appeal upheld the judgement of Justice Tysoe (as he then was), who had found that the structure contravened the Salt Spring Island Land Use Bylaw in force at the time, which set out sizing restrictions for buildings and structures. Tysoe J. determined that the barge was no longer properly characterized as a ship or vessel, but as a floating building or structure which exceeded the bylaw's size limits, given its current use.

[83] I do not think that *Salt Spring Island* can be taken as laying down a general principle that what a structure is can only be determined by its use. That case turned on unusual facts. Rather, I think that, although purpose may bear on what something is, it is not the only or a necessary part of the analysis. Often it is possible to identify what something is objectively, as I think the judge did here.

[84] The structure in question had undoubtedly been built and used as a deck in the past. As originally constructed, it was an elevated platform extending from the rear of the property, alongside the boat ramp, without stairs to the boat ramp. After the dispute arose with the Island Local Trust, the FONSECAS modified the structure by adding stairs to the boat ramp and dividing the structure into two sections by means of a railing, one section of which is used for storage.

[85] Looking at the photographs, I fail to see how the modifications transformed the structure from something prohibited (a deck) into something permitted (a walkway). I cannot conclude the judge fell into error in concluding that the structure was objectively a deck, nor that the Island Local Trust's determination that the structure was a non-compliant deck can be disturbed.

[86] I would not accede to this ground of cross appeal.

Disposition

[87] I would dismiss the cross appeal.

Conclusion

[88] I would allow the appeal and dismiss the cross appeal. In my opinion, each party should bear their own costs of the appeal. The Island Local Trust did in certain respects recast the argument on appeal from that advanced below. Had it framed the issue properly before the judge, the judge may not have fallen into error and the appeal may not have been necessary. I see no reason, however, to depart from the ordinary costs rule respecting the cross appeal.

“The Honourable Mr. Justice Harris”

I agree:

“The Honourable Mr. Justice Goepel”

I agree:

“The Honourable Mr. Justice Abrioux”



Applications

Development Variance Permit

File Number	Applicant Name	Date Received	Purpose
GB-DVP-2021.4	Kevin Barfoot Contracting	14-Nov-2021	PID: 004-537-262 Variance to setback compliance. Civic address: 1091 Sea Fern Lane, Mudge Island, BC.

Planner: Margot Thomaidis

Planning Status

Status Date: 08-Dec-2023

Permit approved at November 30, 2023 LTC mtg. Staff issued permit and closed file.

Status Date: 11-Oct-2023

Application being considered at November 30, 2023 LTC Regular Business meeting.

Status Date: 01-Jun-2023

Planner preparing staff report.

File Number	Applicant Name	Date Received	Purpose
GB-DVP-2022.3	Pink, Thomas	23-Jun-2022	PID: 008-828-067 Shoreline protection variance. Civic address: 1160 The Strand, Gabriola Island, BC.

Planner: Margot Thomaidis

Planning Status

Status Date: 17-Oct-2023

Meeting with applicants of 1160 and 1170 The Strand. Oct. 17, 2023.

Status Date: 17-Oct-2023

Applicants for 1160 and 1170 preparing a QEP report to assess shoreline habitat impacts.

Status Date: 16-Oct-2023

Staff intend to present options for 1160 and 1170 The Strand at November 30, 2023 LTC Regular Business Mtg.



Development Variance Permit

File Number	Applicant Name	Date Received	Purpose
GB-DVP-2022.4	Woodside, Mark & Gail	30-Jun-2022	PID: 008-828-059 Foreshore protection variance. Civic address: 1170 The Strand, Gabriola Island, BC.

Planner: Margot Thomaidis

Planning Status

Status Date: 15-May-2023

Coastal Geotechnical Report received. Planner reviewing.

Status Date: 05-Dec-2022

Mtg with Applicant: option of rezoning water zone or removal - planner awaiting decision

Status Date: 27-Oct-2022

Site visit with WD + MT

File Number	Applicant Name	Date Received	Purpose
GB-DVP-2023.3	Miller, Sandra	23-Jun-2023	PID: 002-347-733 request for DVP for woodshed built too close to property line in 1991 at 880 Horseshoe Rd on Gabriola Island.

Planner: Margot Thomaidis

Planning Status

Status Date: 11-Oct-2023

Request for exemption from survey to go to November 30, 2023 LTC Regular Business Meeting.

Status Date: 04-Jul-2023

Applicant requesting exemption from requiring a survey signed by a B.C. land surveyor.

File Number	Applicant Name	Date Received	Purpose
GB-DVP-2023.5	Shaw, Douglas	14-Nov-2023	PID: 006-981-615 variance for lot coverage at 733 Berry Point Rd. on Gabriola Island.

Planner: Stephen Baugh

Planning Status

Status Date: 07-Dec-2023

Staff waiting for additional information from applicant.



Rezoning

File Number	Applicant Name	Date Received	Purpose
GB-RZ-2022.1	Wild Rose Garden Centre	07-Jun-2022	PID: 023-005-629 Change zoning to accommodate multiple changes in use. Civic address: 750 Tin Can Alley, Gabriola Island, BC.

Planner: Stephen Baugh

Planning Status

Status Date: 03-Jan-2024

Application re-assigned to different planner.

Status Date: 11-May-2023

application extended to November 30, 2023 to allow time for applicant to provide reports.

Status Date: 08-Jul-2022

File opening procedure finished and file given to planner.

File Number	Applicant Name	Date Received	Purpose
GB-RZ-2023.1	on behalf of BC Ferry Services Inc.	13-Jun-2023	PID: 025-798-090 and 025-798-103 renovation and expansion of ferry terminal at Descanso Bay Ferry Terminal on Gabriola Island.

Planner: Stephen Baugh

Planning Status

Status Date: 22-Sep-2023

Referrals sent to agencies, organizations and first nations.

Status Date: 14-Sep-2023

First reading.

Status Date: 13-Sep-2023

Bylaws drafted and application to be presented to LTC at September 14 LTC mtg.



Applications

Temporary and Industrial Use Permit

File Number	Applicant Name	Date Received	Purpose
GB-TUP-2023.4	Plotnikoff & Penner, Nadine & Siegfried Planner: Stephen Baugh	16-Oct-2023	PID: 004-801-270 to offer short-term rentals on the property when the owners are not there at 376 Tinson Rd on Gabriola Island.
Planning Status			
<u>Status Date:</u>			

File Number	Applicant Name	Date Received	Purpose
GB-TUP-2023.5	Georgiev & Godfrey, Geneen & Alex Planner: Stephen Baugh	16-Oct-2023	PID: 006-985-742 temporary use permit for short-term rental at 868 Chichester Rd W on Gabriola Island.
Planning Status			
<u>Status Date:</u> 06-Dec-2023 Staff requested additional information from applicant.			

Islands Trust
LTC EXP SUMMARY REPORT F2024
Invoices posted to Month ending November 2023

620 Gabriola	Invoices posted to Month ending November 2023	<u>Budget</u>	<u>Spent</u>	<u>Balance</u>
65000-620	LTC "Trustee Expenses"	681.00	317.01	363.99
LTC Local				
65200-620	LTC - Local Exp - LTC Meeting Expenses	1,488.00	3,371.10	-1,883.10
65210-620	LTC - Local Exp - APC Meeting Expenses	399.00	1,021.00	-622.00
65220-620	LTC - Local Exp - Communications	1,000.00	449.00	551.00
65230-620	LTC - Local Exp - Special Projects	612.00	0.00	612.00
TOTAL LTC Local Expense		<u>3,499.00</u>	<u>4,841.10</u>	<u>-1,342.10</u>
Projects				
73001-620-2001	Gabriola OCP/LUB	18,000.00	665.23	17,334.77
73001-620-4105	Gabriola Ecological Protection Zone	2,000.00	0.00	2,000.00
TOTAL Project Expenses		<u>20,000.00</u>	<u>665.23</u>	<u>19,334.77</u>

Gabriola Island Local Trust Committee Policies & Standing Resolutions

No	Meeting Date	Resolution No.	Issue	Policy and Description
1.	June 14, 2018	GB-2018-040	Processing non-medical cannabis retail license applications	It was MOVED and SECONDED that the Gabriola Island Local Trust Committee adopt the following standing resolution with respect to the processing of non-medical cannabis retail license applications: - Proposed or amended licenses for non-medical cannabis retail establishments require an application to the Local Trust Committee; - The application process shall comprise a public consultation component, which includes at least one notification to neighbours, one public meeting, posting of public notices and one advertisement in a local periodical; - The public consultation process shall be determined by the Local Trust Committee after initial review of the proposal; and - However, as a minimum, the Local Trust Committee will mail or otherwise deliver a notice to all owners and residents of properties within a 500 metre radius of the subject property where the establishment is proposed at least 10 days before adoption of a resolution providing comment on the application. The required notice shall include the following information: - Name of the applicant and a description of the proposal in general terms; - The location of the proposed establishment and the subject site; - The place where, and date and time when, both a public meeting will be held and a resolution of the local trust committee considered; - The name and contact information of the Islands Trust planning staff member who can provide copies of the proposed or amended license application; and - How public comments may be submitted to the Local Trust Committee.
2.	November 22, 2018	GB-2018-122	Applications for Federal Cannabis License	It was MOVED and SECONDED that the Gabriola Island Local Trust Committee requests that Notices of Intention to Apply for a Federal Cannabis License be forwarded to the Local Trust Committee upon receipt by the Islands Trust.
3.	February 28, 2019	GB-2019-031	First Nations - Community Reconciliation	It was MOVED and SECONDED that the Gabriola Island Local Trust Committee adopt the following standing resolution: Whereas the Local Trust Committee seeks to engage in Reconciliation with local

				First Nations, governments and the island community by honouring the Truth and Reconciliation Commission Calls to Action, United Nations Declaration on the Rights of Indigenous Peoples, Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples, and Islands Trust First Nations Engagement Principles, the Local Trust Committee endeavours to: a) Annually, write a letter to First Nations, (re)introducing Trustees and Staff and provide a schedule of known Local Trust Committee meetings for the upcoming year, as well as provide an update of current projects and advocacy activities; b) For various Local Trust Committee meetings, invite elders from local First Nations to attend and provide a traditional welcome to the territory; c) Work with First Nation governments on cooperative initiatives, including and not limited to, language, place names, territorial acknowledgements, and community education on Coast Salish and local First Nations' cultural heritage and history; d) Work with First Nation governments on engagement principles for inclusive land use, marine use and climate change planning; advocacy, protection and stewardship; and knowledge and information sharing protocols; and e) Establish and maintain government to government dialogue with First Nations, now and into the future, based on respect and recognition of Aboriginal rights and title, treaty rights, and First Nations' traditional territories within the Islands Trust Area.
4.	April 11, 2019	GB-2019-038	Limited Public Markets Enforcement	It was MOVED and SECONDED that the Gabriola Island Local Trust Committee adopt the following standing resolution with respect to limited public markets: a) Islands Trust Bylaw Enforcement Staff are directed to not enforce Section B.6.2 of Gabriola Island Land Use Bylaw No. 177, 1999 when limited public markets are operated indoors, but rather to inform the operators of the applicable land use regulations; b) This enforcement policy does not permit violation of the Land Use Bylaw and the Gabriola Island Local Trust Committee may at any time, by resolution, modify or rescind this policy or give direction to expand enforcement activities.
5.	April 11, 2019	GB-2019-040	S219 Covenant	It was MOVED and SECONDED

			Signatories	that the Gabriola Island Local Trust Committee adopt the following standing resolution: that the Gabriola Island Local Trust Committee is authorized to enter into section 219 covenants, in the form of the 'Model Covenant for Secondary Suites' attached and in satisfaction of subsection B.6.6.8 of the Gabriola Island Land Use Bylaw No. 177, provided that such covenants must be executed on behalf of the Local Trust Committee by two members of the Local Trust Committee.
6.	January 23, 2020	GB-2020-002	Consultation for Communication Towers	It was MOVED and SECONDED that the Gabriola Island Local Trust Committee adopt the "Model Strategy for Antenna Systems" prepared by the Local Planning Committee of the Islands Trust, as the Gabriola Local Trust Committee strategy to assess any future potential tower proposals in the Gabriola Local Trust Area.
7.	July 30, 2020	GB-2020-053	Proactive unlawful STVR enforcement	It was MOVED and SECONDED that the Gabriola Island Local Trust Committee adopt as a standing resolution to authorize proactive enforcement of unlawful Short Term Vacation Rentals.
8.	October 27, 2022	GB-2022-089	Defer enforcement on all existing non-compliant dwellings being used for residential purposes except.....	It was MOVED and SECONDED a) that the Gabriola Island Local Trust Committee note that given the lack of housing options on Gabriola, Bylaw Staff will defer enforcement on all existing non-compliant dwellings being used for residential purposes except in the following circumstances: i. It is determined that there are risks to health and safety; ii. It is determined that sewage is not being disposed of in an approved septic or sewage disposal system; or that septic or sewage disposal systems are beings used in excess of capacity or ability as a result of non-compliant dwellings; iii. It is determined that there is contamination of wells or other drinking water sources; iv. Non-permitted residential uses are in water zones or environmentally sensitive areas; v. That the Gabriola Island Local Trust Committee may give direction to resume enforcement on activities on any property that poses risk to the health and safety of residents or to the environment. b) Nothing in this enforcement policy should be interpreted as giving permission to violate the Land Use Bylaw and the Gabriola Island Trust Committee may change this policy at any time and may give direction to expand enforcement activities at any time.

				c) The Gabriola Local Trust Committee will review this standing resolution at a minimum of once per year with updates from the Bylaw Compliance and Enforcement Manager to measure results and impacts, as amended. d) That the Gabriola Local Trust Committee recommend to the incoming Gabriola Local Trust Committee that it conduct a community consultation regarding the Standing Resolution.
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Active Projects Report

Gabriola Island

1. Minor Project - Develop Ecological Protection Zone

Responsible

Dates

To develop a new ecological protection zone for the Gabriola Island Land Use Bylaw No. 177, which includes the rezoning of Elder Cedar Nature Reserve to a park or conservation/protection type zone.

Stephen Baugh

2. Major Project - Gabriola Island Comprehensive OCP and LUB

Responsible

Dates

- Establish opportunities to incorporate First Nations perspectives on indigenous housing needs and intergovernmental collaboration for effective decision making.
- Consider new Development Permit areas for water conservation; form and character; and protection of biodiversity.
- Consider and incorporate RCP goals as part of the housing project.
- Develop an island wide water sustainability plan that builds on the RDN water budget data, rainwater catchment and requirements of the Water Sustainability Act.
- Review definitions of 'affordable' and 'attainable' housing.
- Review OCP policies respecting affordable, rental, seniors, special needs housing, social needs, social well-being and social development; develop a new 'housing first' policy.
- Review amenity zoning and housing agreements; density bank policies; opportunities for rental zoning.
- Consider secondary suites on lots smaller than 2 hectares.
- Consider OCP designations, density provisions, LUB regulations, and Development Permit guidelines for multi-dwelling housing and mixed use buildings.

Narissa Chadwick

Active Projects Report

Gabriola Island

- Review OCP and LUB to improve protection of coastal areas; development of a comprehensive DPA for shorelines in the Gabriola Island Local Trust Area
- Hazardous areas/Steep Slopes DPA: Consider hazardous areas and steep slopes development permit area designation; consider how to address areas of potentially problematic soils, shoreline erosion, and localized areas of steep terrain
- Consider implementing Eelgrass protection regulations
- Gabriola Village Plan: Undertake a comprehensive review of policies and regulations with respect to the Gabriola Village Core
- Green Energy: Consider policy and regulatory mechanisms to encourage green and renewable energy
- Review bylaws with respect to temporary use permits for commercial vacation rentals
- Review of temporary sawmill regulations
- Definition of personal use of animals for SRR zoned lots
- Review of how cisterns, solar panels and parking are regulated as structures subject to lot coverage calculations
- Review of section B.2.1.1 for variances within DP3
- Review minimum average parcel size calculations in LUB and OCP to ensure consistent and supportive of more than 5% dedication of parkland
- Review definition and regulations for limited public market, and INI zone uses pertaining to market sales

Active Projects Report

Gabriola Island

- correction to WC3 mapped location to coincide with Green Wharf
 - Water Resource Planning: Review of water requirements at the time of subdivision
 - Protection of the Coastal Douglas-fir and Associated Ecosystems: An Islands Trust Tool Kit (2018): Implementation of the report recommendations into OCP policy and LUB regulations.
 - Accessory Buildings: Review of regulations pertaining to the order of construction of accessory buildings on lots.
 - Review options to allow cannabis production in zones other than 'agriculture' and possible ways to regulate odour, noise, water use and light pollution related to agricultural activities when permitted in a zone.
 - Recognize areas of cultural significance - consider designation of a Heritage Conservation Areas or adopt Heritage Bylaws to protect heritage cultural resources similar the projects completed on South Pender and Saturnina.
 - Review regulations to ensure flexibility for housing options in ALR are consistent with recent ALC changes.
 - Consider establishment of a 'Community Service' land use designation in the OCP.
-

Future Projects Report

Gabriola Island

1. *DeCourcy Island OCP and LUB Review*

Responsible

Date Received

Review OCP and regulatory bylaws; establish an Advisory Planning Commission. Topics include: park areas without park zoning; zoning; DAI Bylaw; subdivision policies and regulations.

2. *Snuneymuxw Relationship Building*

Responsible

Date Received

Strengthen relationship with Snuneymuxw First Nation.

3. *Development Permit Area Review Topics*

Responsible

Date Received

GB-2023-O576

20-Jul-2023

It was MOVED and SECONDED that the Gabriola Island Local Trust Committee request staff to add "Review and Update of Development Permit Area 6 - Steep Slopes" to the future project list.

4. *Minor - Review and update Development Approval Information (DAI) bylaw*

Responsible

Date Received

*Nov. 30, 2023: As a bylaw re-write, to be initiated after OCP, LUB reviews. Update Gabriola Island Bylaw No. 150, DAI Bylaw.

30-Nov-2023

LTC resolution passed June 16, 2022 - Trustee Langereis noted that DAI bylaw not up to date with current DPAs, particularly after adoption of DPA 8 - Mutli-Dewlling Affordable Housing and DPA 9- Light Industrial Use.

Future Projects Report

Gabriola Island

5. *Advisory Planning Commission bylaw*

Responsible

Date Received

Amendments to Bylaw No. 296 to require that APCs set a regular monthly meeting date and time.

30-Nov-2023

6. *Heritage Register*

Responsible

Date Received

Planning staff to prepare a summary report for a future LTC meeting on past LTC discussions re: heritage register for Gabriola island; potential funding opportunities and alignment with other LTC projects; what's entailed with a MOU with commission under heritage act; analysis of designation of a commission vs a bylaw to establish the heritage register. Incorporate any comments from senior policy advisor staff on this approach. See minutes from December 1, 2022 for further details on this discussion.