



Lasqueti Island Local Trust Committee Special Meeting Agenda

Date: March 14, 2015
Time: 11:30 am
Location: Lasqueti Island Community Hall
Main Road, Lasqueti Island, BC

	Pages
1. CALL TO ORDER	11:30 AM - 11:35 AM
2. APPROVAL OF AGENDA AND INTRODUCTIONS	
3. COMMUNITY INFORMATION SESSION	11:35 AM - 2:25 PM
RIPARIAN AREAS REGULATION AND IMPLEMENTATION (RAR)	
3.1 Correspondence	
3.1.1 <u>Letter dated February 15, 2015 from Doug Hopwood</u>	2 - 6
3.2 Presentation by Marnie Eggen, Planner 2	
3.3 Questions and Answers Session	
4. UPCOMING MEETINGS	
Next Regular Meeting Scheduled for Thursday, April 9, 2015 at 11:00 am at the Lasqueti Arts Centre, Main Road, Lasqueti Island, BC	
5. ADJOURNMENT	2:25 PM - 3:00 PM

Susan Morrison and Tim Peterson
Lasqueti Island Local Trust Committee
By email
February 15, 2015

Dear Susan and Tim,

Re: Lasqueti Island Local Trust Committee Draft Amendments Bylaw # 90

Thank you for taking the time to hear my concerns about the proposed riparian area bylaw (Bylaw #90) at the LTC meeting on February 5. It was clear from the Town Hall discussion that there are many concerns in the community about draft Bylaw #90. Many of these concerns are due to the obligations that the Provincial government has placed on local governments through the Fish Protection Act and the Riparian Areas Regulation (RAR), and there is little the LTC can do to allay them.

It appears that in the long run, the Lasqueti LTC may have little choice but to adopt a bylaw to be RAR-compliant, no matter how unreasonable, disproportionate and ill-matched the measures required under RAR may be for conditions on Lasqueti Island. However, I believe there are some steps the Lasqueti LTC could take to make Bylaw #90 less onerous to the Lasqueti community without compromising the level of environmental stewardship and protection it would provide.

Watershed Overview Surveys by Madrone Environmental Services

Madrone Environmental Services were hired to complete overview surveys of selected streams on Lasqueti that were thought by the Ministry of Forest Lands and Natural Resources Operations (MFLNRO) to be possible candidates to provide fish habitat and therefore be classed as “streams” under RAR. As I understand it, the purpose of this phase of the process was to narrow down the area of land on Lasqueti that would fall under the 30-metre wide setbacks and screening section of Bylaw #90, by eliminating any streams that were found not to fall under the RAR definition of a stream. For example, streams with a permanent barrier to fish at tidewater and/or lack of sufficient water flow to support fish can be eliminated from RAR.

Madrone seem to have interpreted their task as being to definitively class each stream they surveyed as either having fish habitat (RAR-applicable) or lacking fish habitat (non-RAR-applicable), yet it is clear from reading Madrone’s reports that a third possibility exists. There are many streams about which it remains unknown whether or not fish are present and whether they are RAR-applicable. For example, the Madrone report dated March 31, 2013 states that “At this time, these streams and their watersheds have been included as having fish habitat because the ability to prove that there are no fish is beyond the scope of this report.” Madrone is referring in this sentence to the fact that the Islands Trust lacked sufficient budget to pay for direct sampling to establish the presence or absence of fish.

I understand that in the absence of conclusive evidence to determine if a particular watercourse is a “stream” under RAR, the Lasqueti LTC may be obliged to create a bylaw that treats such a watercourse as if it were known to be a “stream”. In other words, the screening and setback provision of Bylaw #90 will have to include streams with known fish habitat (which, to best of my knowledge includes only Boat Cove Creek, Jenkins Creek and Wamer Creek) and watercourses with unknown fish habitat. Only watersheds that have been assessed by a QEP as not RAR-applicable can be exempted. Nonetheless, the decision by Madrone to not acknowledge that there are many watercourses on Lasqueti with unknown fish habitat is not merely an academic point. It has important consequences for the Lasqueti Community.

For example, Madrone’s Report of March 31, 2013 states that Monahan Brook has a definitive permanent barrier approximately 100 m upstream from the ocean. Madrone did not find any fish in

Monahan Brook. Based on the physical characteristics of the stream, they concluded that Monahan Brook has “some fish habitat, albeit limited, from the tidal boundary to the first cascade” and therefore “this stream would be applicable under RAR”. However, in the future, a landowner wishing to complete some form of development within 30 meters of Monahan Brook or one of its tributaries, might elect to hire a QEP to complete sampling to attempt to confirm fish absence in the short section of stream below the barrier, as per Section 2.2.2.2 of the Riparian Areas Regulation Assessment Methods. If the QEP hired by the landowner determined by the approved sampling methodology that fish were absent, and that therefore there is no fish habitat as defined by the Fish Protection Act, the QEP acting for the landowner would have to write a report stating the opposite of the report written by another QEP (Madrone). Clearly, this situation would create a definite chill for any consulting biologist, who would be very reluctant to flatly contradict a fellow biologist.

A second way in which Madrone’s report might be unduly onerous and actually detrimental to environmental stewardship on Lasqueti is as an impediment to micro-hydro projects, which as you know, provide a low impact alternative to burning fossil fuel for electrical generation on Lasqueti. I recognize that structures to provide micro-hydro-electricity for residential use are not prohibited within the 30-metre setback and screening area of Bylaw #90. However, micro-hydro projects require a water license from MFLNRO. Using Monahan Brook again as an example, suppose that a landowner applied to MFLNRO for a water license for micro-hydro on Monahan Brook. In assessing the application, MFLNRO staff would naturally refer to the Madrone report (which they have on file) and which says that Monahan Brook has “some fish habitat”. On this basis MFLNRO staff would likely conclude that the proposed micro-hydro project would pose a risk to fish and might reject the application on that basis, even though there is no evidence that any fish ever occupy Monahan Brook.

For these reasons, I urge the Lasqueti LTC to ask staff to contact Madrone and request a revision of their various reports, making it clear that their assessments did not determine, one way or the other, whether the following watercourses would meet the definition of a stream under RAR:

- Billdown Swamp Drainage (Fisher, Toy Bay)
- Trematon Creek
- Unnamed Stream (Osland Nature Reserve)
- Unnamed Stream (Powder Flask Cove, Driftwood Cove)
- Unnamed Stream (Windy Bay)
- Monahan Brook (Anderson Bay)
- Tucker Brook (Long Bay)
- Deanne Creek (Tucker Bay)
- Unnamed Stream (Mine Bay)
- Unnamed Stream (Johnson’s Lagoon)
- Hadley Creek

The various reports by Madrone have the term “Watershed Assessment” in their titles and in the text. However, the work performed by Madrone on Lasqueti was not an “assessment” as that term is defined under RAR. According to RAR, an “**assessment report**” means “a report prepared in accordance with the assessment methods to assess the potential impact of a proposed development in a riparian assessment area and which is certified for the purposes of this regulation by a qualified environmental professional.” However, in the case of the work done by Madrone on Lasqueti, there was no “proposed development” and no assessment of any potential impacts. The purpose of their work was to narrow down the list of watersheds where RAR might apply. For this reason, I urge the Lasqueti LTC to ask staff to contact Madrone and request a revision of their various reports, generally eliminating the misleading word “assessment” as a descriptor of their work, and substituting a more correct phrase such as “Watershed Overview Survey”.

Bylaw #90 Schedule A Map Legend

The Schedule A Map that is included with the current draft of Bylaw #90 shows four different types of watersheds, shaded in different colours, with the following labels in the legend:

- Watersheds with Perennial Fish Habitat
- Watersheds with Potential Seasonal Habitat for Anadromous Fish Below Barriers
- MFLNRO Assessed Watersheds
- Watersheds with no Fish Habitat

The first of these four categories “Watersheds with Perennial Fish Habitat” should remain as is on the map, under the heading of “RAR Applicable”.

The category “Watersheds with Potential Seasonal Habitat for Anadromous Fish Below Barriers” is an extremely inaccurate description. As I explained above, these are watersheds in which it remains unknown whether fish habitat or fish are present under the RAR definition. Therefore, the Legend title for these watersheds should be revised to “Watersheds with Unknown Presence/Absence of Fish Habitat” and appear under the heading “RAR Applicable Pending Further Information”. RAR requires that a watercourse must be assumed to be RAR applicable unless or until someone does an assessment that establishes that it is not, but that does not mean that any watercourse with unknown fish habitat meets the definition of a stream under RAR. I am concerned that if watersheds in this category stay under the heading of simply “RAR Applicable” there will be great difficulty getting any of these watersheds ever removed from being considered RAR applicable even if future assessments should show that they do not support fish.

The category “MFLNRO Assessed Watersheds” is also misleading. Firstly, as I understand it, these watersheds were put forward by MFLNRO as being RAR applicable on the basis of information MFLNRO have on file. MFLNRO clearly did not complete an “assessment” of these watersheds as per the RAR definition of “assessment report” so it is incorrect and misleading to call them “MFLNRO Assessed Watersheds” Secondly, whatever information MFLNRO has about watersheds on Lasqueti is obviously not reliable. For example, MFLNRO originally put forward Sam Creek as RAR Applicable, but Sam Creek has a 12-meter high waterfall right at tidewater that poses a definitive barrier to fish, and according to Madrone, “overall fish habitat attributes within Sam Creek are poor”. Thirdly, for the purposes of Bylaw #90, it doesn’t matter what the source of information is. The purpose of the Schedule A map is simply to show clearly where the RAR screening and setbacks apply.

At present there are only two watersheds in the “MFLNRO Assessed Watersheds” category. I think everyone agrees that Boat Cove Stream has fish, so it should go in the category “Watersheds with Perennial Fish Habitat” under the heading of “RAR Applicable.”

Hadley Creek, as I explained in my letter to Marnie Eggen dated February 3, 2013, was not subject to a definitive assessment by Madrone. Further to this point, I would cite an email message to me from Justin Lange R.P.Bio, the Madrone biologist who visited Hadley Creek. As Justin says, “If the property owner had provided us with access to the site, the outcome may have been different,” and “It is also possible that in the future, the property owner immediately upstream of tidewater may grant permission to assess the upstream habitat. This would help determine whether anadromous fish species could persist in Hadley Creek, should the barrier be removed.” This shows that the presence or absence of fish and/or fish habitat in Hadley Creek remains an open question that might be answered definitively by further assessments, possibly including sampling for fish presence. Therefore, Hadley Creek should go in the category of “Watersheds with Unknown Presence/Absence of Fish Habitat” under the heading “RAR Applicable Pending Further Information”.

Finally, the category “Watersheds with no Fish Habitat” is unnecessary for the purposes of Bylaw #90 and should be deleted from the map and legend.

Bylaw #90 Wording Revisions

I would like to suggest the following wording revisions to Bylaw #90.

Section (2) (d) (iv) “the removal of trees that have been examined by an arborist and certified to pose an immediate threat to life or property”. I suggest delete “immediate” and add “or a Registered Professional Forester” after “arborist”.

Section (2) (d) (xi) “emergency procedures to prevent, control or reduce immediate threats to life or property including. . .” I suggest delete “immediate”.

Section (2) (d) (xvii) “Structures used to provide micro-hydro-electricity for residential use.” I suggest delete “for residential use” and substitute “of 10 kW capacity or less”.

Section (3) (a) (vi) “Structures used to provide micro-hydro-electricity for residential use.” I suggest delete “for residential use” and substitute “of 10 kW capacity or less”.

Wamer Creek

Wamer Creek is known to have fish, but this is due to the extensive restoration work undertaken by Wayne Bright and the Lasqueti Stream-keepers. There is now a concern that RAR setback and screening provisions of Bylaw #90 will have a serious impact on the ability of landowners in the Wamer Creek watershed (including Wayne Bright and some of his neighbours) to use their land for growing food. Section (2) (d) (xii) exempts “farm operations”; however most homestead scale farming on Lasqueti does not meet the definition of farming used for RAR, even though significant amounts of food are produced.

I note that Section 1.4.3 of the Riparian Areas Regulation Assessment Methods discusses “day-lighting” of streams, which is a form of habitat restoration, and says that “MOE and DFO staff are able to negotiate specific riparian protection standards to enable these positive projects to proceed.” I would urge the LTC to ask staff to contact MOE and DFO to negotiate specific riparian protection standards for Wamer Creek, such as reduced screening and setbacks from streams for food-growing activities within the Wamer Creek watershed so that Wayne and his neighbours do not end up facing an unduly onerous curtailment of the opportunity to grow food as a result of his extraordinary stewardship efforts.

I also would suggest that the Lasqueti LTC might consider contributing part of the cost (for example, up to 50% of costs to a maximum of \$1000) for a QEP assessment as necessary to allow land-owners in the Wamer Creek watershed to use their land fully to grow food. The purpose of this would be largely symbolic, as a way for the community to say to Wayne, “we’re sorry you’re getting screwed by RAR as a result of your good efforts, here’s how we’d like to help.”

Second Opinion on Marginal Watersheds

Several members of the Lasqueti community have expressed concern that the report by Madrone does not seem to represent an objective and impartial application of professional scientific judgment with respect to the presence or absence of fish habitat in several Lasqueti streams.

There are several lines of evidence to support this view. For example, biologists who have worked with the Lasqueti stream-keepers over the years have looked at most of the streams on Lasqueti and concluded that all but a few of them lack the potential to support fish, in contradiction to the findings of Madrone.

Justin Lange R.P.Bio. from Madrone stated in an email to me dated February 3, 2015 “Since we have been doing these types of stream mapping/RAR type assessments, our final conclusions are typically very conservative. Situations such as this have been encountered previously and the Ministry of Forests, Lands and Natural Resource Operations (MFLNRO) has encouraged us as Qualified

Environmental Professionals (QEPs) to be conservative in our decision making.” Justin also said that “Whenever we undertake assessments of this nature we typically consider advice that we have received previously from MFLNRO staff.” I don’t know exactly what this means, but it does create a concern that MFLNRO is inclined to pressure consultants to declare watercourses RAR applicable even in cases where objective professional judgment might lead to a different conclusion, and that Madrone in turn allows their conclusions to be influenced by pressure of this kind. For this reason, I suggest that the Lasqueti LTC might see value in seeking a second opinion from another QEP with regards to the RAR status of some of the more marginal streams, such as Windy Bay and Mine Bay. (Both of these watercourses have a very small catchment area, intermittent stream flow even in winter, and an impenetrable gravel bar with no surface water at the mouth.)

Watersheds that were not surveyed due to lack of access

Two watersheds that were on the list from MFLNRO were not surveyed because the land-owner’s permission to enter private land was not obtained (Johnson’s and Hadley Creeks). It might be helpful for one of the Trustees to talk directly with these landowners and learn more about their concerns, and perhaps to point out that the landowners have the option of hiring a QEP of their own choosing to survey the stream and express an opinion as to its RAR status.

More Community Consultation

I appreciate that the LTC is committed to going slowly and consulting with the community before proceeding with Bylaw #90. However, more meetings and more explaining of RAR to the community may not do much to increase community acceptance and support. RAR is patently not a fair or reasonable way to protect fish habitat on Lasqueti, and no amount of explaining is going to persuade the Lasqueti community that it is.

It seems to me the main point to explain is that the BC government has imposed RAR on local government and has a lot of power to pressure local government to adopt it. Once we have taken whatever steps we can to soften its impacts (perhaps including the steps I have suggested here) we may have to accept the inevitable, adopt the Bylaw, and remember this at the next provincial election. Of course, no one can force you, as elected Trustees, to adopt a bylaw you don’t support, and I would not encourage you to go against the wishes of the community at large or your own conscience.

I feel frustrated by the incompetence and high-handedness of the Provincial government in the way they have designed and implemented RAR, but I don’t think it’s the right hill to die on. If our community has energy to come together and resist the policies of the Provincial government I would sooner we rallied to oppose some of the extreme threats to our environment and way of life such as increasing oil tankers on the coast, coal shipments in Sabine Channel, coal mining at Union Bay, etc.

Thanks for considering my point of view.

Sincerely,



cc. Laura Busheikin, Marnie Eggen