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COURT APPEAL PLANNED FOR B.C. SUPREME COURT DECISION IN FAVOUR OF OWNERS' RIPARIAN RIGHTS

VICTORIA — Following its business meeting on Friday, October 12, the Gabriola Island Local Trust Committee announced it will appeal a decision of the B.C. Supreme Court in *Fonseca v. Gabriola Island Trust Committee* to enforce its zoning regulations in respect of a retaining wall that owners of land on Mudge Island constructed to protect their shoreline property from erosion.

The Gabriola Island Local Trust Committee previously sought a declaration from the court to enforce its zoning regulations against property owners who had constructed retaining walls and other accessory structures within the required 30-metre ocean setback on Mudge Island.

While the B.C. Supreme Court upheld the Local Trust Committee's zoning regulations ordering the removal of a deck, fences and other structures, the court found in favour of the owners' argument that the zoning regulation interfered with their riparian rights to protect their property from erosion.

The judgement, referencing old English and Roman law, expressed that the Local Trust Committee is unable to prevent the owners from building an embankment wall on the edge of their property, because the *Local Government Act* and related provincial legislation does not explicitly repeal or do away with the common law riparian right.

"We are disappointed with the Court's narrow interpretation of the law and decision that B.C. local governments cannot enact zoning regulations to prohibit seawalls," said Local Trust Committee Chair, Laura Busheikin. "The decision strikes at the heart of the Islands Trust's preserve and protect mandate and our government's efforts to protect the natural environment while preparing for climate change."

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The Islands Trust is a federation of local government bodies representing 26,000 people living within the Islands Trust Area and another 10,000 non-resident property-owners. The Islands Trust's local trust committees are responsible for preserving and protecting the unique environment and amenities of the Islands Trust Area through planning and regulating land use, development management, education, co-operation with other agencies, and land conservation. The area covers the islands and waters between the British Columbia mainland and southern Vancouver Island. It includes 13 major islands and more than 450 smaller islands covering 5200 square kilometres.