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**Gambier Island  
Local Trust Committee  
Public Hearing Record**

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**REGARDING PROPOSED BYLAW NOS. 129, 130, 131, 132, AND 133 TO FACILITATE  
THE IMPLEMENTATION OF THE PROVINCIAL RIPARIAN AREAS REGULATION**

**Date of Public Hearing:** October 13, 2016  
**Location:** Gleneagles Community Centre  
6262 Marine Drive, West Vancouver, BC

**Members Present:** Susan Morrison, Chair  
Dan Rogers, Local Trustee  
Kate-Louise Stamford, Local Trustee

**Staff Present:** Aleksandra Brzozowski, Island Planner  
Diane Corbett, Recorder

**Others Present:** Twenty-five (25) members of the public

**1. CALL TO ORDER**

Chair Morrison called the meeting to order at 11:12 a.m. She read the Chairperson's Opening Statement and explained that the Public Hearing was being conducted to hear views regarding proposed Bylaw Nos. 129, 130, 131, 132, and 133. She explained that the intent and purpose of these bylaws is to facilitate the implementation of the Provincial Riparian Areas Regulation (RAR).

**2. PROPOSED BYLAW NOS. 129, 130, 131, 132, AND 133**

- Proposed Bylaw No. 129 to amend the Keats Island Official Community Plan to include language that authorizes the protection of watersheds on Keats Island
- Proposed Bylaw No. 130 to amend the Keats Island Land Use Bylaw to include language that identifies the applicability, exemptions and guidelines to be employed for development permits dealing with watersheds
- Proposed Bylaw No. 131 to amend the Associated Islands Official Community Plan to include language that authorizes the protection of areas on Anvil, Bowyer, and South Thormanby Islands pursuant to the Riparian Areas Regulation
- Proposed Bylaw No. 132 to amend the Associated Islands Land Use Bylaw to include language that identifies the applicability, exemptions and guidelines to be employed for development permits dealing with areas pursuant to the Riparian Areas Regulation
- Proposed Bylaw No. 133 to amend Bowyer and Passage Islands Land Use Bylaw to include language that identifies the applicability, exemptions and guidelines for development permits dealing with areas pursuant to the Riparian Areas Regulation

The Island Planner announced that a copy of the Public Hearing Notice was advertised in two issues of The Coast Reporter. A copy of the Notice was mailed to property owners on Anvil, Keats, Thormanby and Bowyer Islands, and posted online. Copies of the binder were available at Islands Trust Northern Office on Gabriola Island.

The proposed bylaws were referred to nine agencies, one municipal government and three First Nations. The Island Planner summarized the referral agency responses. Comments were also received from the public: two from Mr. Shepard, Keats Island and one from Kildare Estates, Bowyer Island.

Island Planner Brzozowski pointed out the location of the Public Hearing reference binder and the Public Hearing submission box.

### **3. PUBLIC COMMENTS AND QUESTIONS**

Chair Morrison asked if there were any submissions on the proposed bylaws.

Scott Benson, 791 Mountainview Drive, Gibsons and Keats Island, discussed conversations he experienced with people from two of the affected areas on Keats, Barnabas and Andy's Beach, who have the opinion they would like fewer rules and regulations, and feel they are already protecting those riparian areas. They feel that the proposed bylaws are a duplication of rules that are already there, citing examples of the rejection of both a dock application and a building permit since these were too near the mouth of a creek. The individual with the longest section of creek affected on Keats felt the bylaws were tantamount to expropriation and assumed the land was no longer usable to him.

Mr. Benson noted that often in the Trust Area there is a Natural Area of Protection Tax Exemption Program (NAPTEP) taken advantage of. Perhaps people affected by these rules, where they are already protecting the land and staying clear of those lands, and husbanding them well, could restrict themselves and include that area in the NAPTEP program, and get a reduction in their property taxes.

Brian Clark, Maple Ridge, BC, shareholder in Kildare Estates on Bowyer Island, said he was asked to speak on behalf of Kildare Estates. Mr. Clark is a Registered Professional Biologist in BC and also was co-chair of the federal-provincial Riparian Areas Regulation Steering Committee. Understands the fish habitat protection concern and appreciates the intent of the RAR. He does not think the RAR applies to Orchid Creek.

Regarding the Madrone report, Mr. Clark did not have a problem with the way it was written. It was based, he assumed, on a morning or afternoon on Bowyer, less than a day. They walked up the creek, and identified the barrier at 16 metres. Mr. Clark believed that it is actually 15 metres, and there is a three metre drop, so there are twelve and a half square metres of habitat before a barrier. The creek itself is not accessible from the ocean, so there is no access for fish. The Madrone report suggested that a pink salmon could get into the creek. Mr. Clark challenged that assumption and outlined his observations of the conditions: need for a channel to get

there, no sign of sub-tidal vegetation, and pink salmon do not spawn in cobble. He claimed it is not a RAR system; there is no fish value in that watershed at all.

Trustee Rogers indicated he had read Mr. Clark's submission and inquired if this is a disagreement between professionals.

Mr. Clark explained he had spoken to the Ministry of Forests, Lands and Natural Resource Operations (FLNRO) and suggested that the Madrone report was not adequate to assess it as a RAR stream; they said it was between biologists. He also talked to the consultant who authored the Madrone report, who had taken a default position based on the precautionary principle and on observations that there is a channel that at times has water where there was a possibility that pink salmon could travel. Mr. Clark had spent time on Bowyer since the 1950's and had never seen a sign of fish habitat there.

Chair Morrison noted Islands Trust has to make bylaws that look decades into the future, and inquired if Mr. Clark's observations had taken into account the possibility of sea level rise.

Mr. Clark explained that if there were ocean rise, he believed that would further limit the likelihood of fish in the creek.

Ardeth Paxton-Mann, Vancouver, President of Kildare Estates, Bowyer Island, explained that Kildare had notified Islands Trust of their particular situation. Unfortunately, the letter from Islands Trust notifying islands of today's meeting was received on September 22; it was Kildare Estates' first awareness of this process. The lawyers had been forwarding the mail to a previous president to the wrong address for the past several years. Kildare Estates was much taken by surprise, and they wanted to be sure to give Islands Trust their input.

Trustee Rogers inquired if this creek is going through a developed or wilderness area.

Mr. Clark responded it is well developed; they have fire and drinking water tanks at the headwaters. There are three or four of the roads that access cabins that go through it. The beach recreational area is adjacent; its roads access cabins. It does have infrastructure development.

Eion Finn, Bowyer Island, attested to Mr. Clark's comments, having been a shareholder of Kildare Estates for thirty years. He was party to the original Land Use Bylaw. He had never seen a fish in that stream. For those thirty years, Kildare has held a water license on that stream, to take out up to 500 gallons a day; that has affected the stream flow, which is dry for most of August. It is an intermittent flow. It is not fish habitat.

Mr. Finn said he is in favor of having the Riparian Area designation as it affords the extra protection in terms of the access to the property. The stream banks and their integrity are vital to accessing the properties. That RAR designation would afford the kind of protection to logging or having the trees stripped away that would ultimately cause the banks to erode. For that reason he would be supportive of RAR. Mr. Finn thought the RAR would have very little effect on the development of Kildare Estates, in

light of development limitations within the Official Community Plan and Land Use Bylaw. There is no cabin or cabin structure within 30 metres of the stream. The RAR designation would be helpful to preserving those banks. He did not think it would be helpful to fish now or in the future.

Jessica Bratty, North Vancouver, Secretary of Kildare Estates Board of Directors, stated she fully supports the conclusion of Brian Clark: that the stream doesn't warrant Riparian Area protection. Ms. Bratty has expertise in fisheries habitat and indicated she is well-versed in what is contemplated under RAR. In addition to Brian Clark, there is considerable additional biological expertise on the community, with people who have spent their lives there and know whether the stream would require protection. It is not just one biologist but a number of biologists in the community that have come to the same conclusion.

Glenn Stelzl, resident of Vancouver with property on Keats Island, was concerned with the method whereby these areas were created. He expressed his view that the RAR report somewhat arbitrarily identified streams on very cursory observations, such as with a short paragraph and note that there is possibility although remote that fish could live here. This designation takes up about a third of his property; it will seriously affect his ability to develop on that property. He would welcome another type of report or analysis of these waterways other than the single report being relied on; he also would like to see a clear definition of the boundaries and how they are described or surveyed. He believed that surveying these things will be crucial in the future. Suggested the bylaw details a lot of the permitting process, but doesn't actually address figuring out what the designated areas are. Has specific concern about how to demarcate the starting point of where the riparian area is in different kinds of conditions, like in swampy areas. He expressed the view that this also could have an impact on taxation and fewer dollars for property tax for the Regional District in the future.

Bruce Clark, North Vancouver and member of Kildare, a Registered Professional Biologist, Registered RAR assessor and current practitioner, with over thirty-five years as a government regulator and decision maker dealing with fish habitat issues, supported Brian Clark's assessment. He believe that there are some errors in the Madrone report that misidentify reaches and barriers, and they have tortured the precautionary principle. He expressed the following views: The access to Orchid Creek is over a bedrock bulge and high water seldom gets to the base of that bulge; you would have to have a combination of high water (June or January) and a weather event pushing the tide higher; the vegetation around it isn't salt tolerant; fish can't access it; the reach is short, way beyond the grade that salmon can spawn; it is a very thin layer, spotty, overlaid on top of hardpan; fish won't be able to spawn in that area; here are no pools; there is a hanging culvert after 15 metres; if you remove the culvert you will still have the problem of the grade; it is unlikely in the extreme that fish will get in there; there have been observations during salmon spawning time that there are no fish accessing the creek, people have checked out that portion of the watercourse regularly.

Regarding ocean level rise and moving forward, Mr. Clark remarked that he believed there would be no habitat to spawn in. It doesn't have the attributes that RAR is looking for. If they establish there are no fish in this creek, then RAR wouldn't apply. Mr. Clark was concerned that this would result in a dead bylaw. He suggested

deferring the bylaw and allowing Kildare to do the work that is necessary under the RAR procedures and register it as a non-fish bearing watercourse.

Maurice Bridge, President of Welcome Pass Land Holdings, South Thormanby Island, remarked that the stream on the property isn't a stream in his view; it is mostly a swamp. In forty-seven years he had never seen fish in there. Hearing proposed legislation based on something that increasingly sounds pretty thin in terms of underpinnings, and that has impacts on properties, gives rise to concerns.

Tom Watson, fish biologist, PhD, with forty years doing work on fisheries issues, has been involved with Keats Island, Plumper Cove. Also owns property on Nelson Island. Complimented the Island Planner on her presentation, which gave a nice summary of the regulation. He made the following comments: under RAR there is a simple and a detailed assessment. Simple assessment is based on the precautionary principle; it has defaults to certain widths, and includes shade, stream width and so on. If there are no fish, it kicks out a minimum of 15 metres. We need to consider the simple and detailed. For some streams, simple assessment is suitable; other streams require detailed assessment to really understand how it should be managed and what the Streamside Protection and Enhancement Area (SPEA) would be. Also in the bylaw package that was sent out, there was wording that said that no development should occur in SPEA; he believed the wording should add "as per RAR" and "as per the exemptions". If you say "no development", it is pretty black and white and is inconsistent with what can be done in SPEA. If landowners had a creek and wanted to cross it they could do that under other legislation.

Mr. Watson noted that "other professionals" is used. Qualified Environmental Professional (QEP) has a very specific definition in RAR; he suggests the bylaw say "as per the RAR definition". QEPs follow codes of ethics and also fall under a Provincial Act. "RAR" is a Provincial Regulation; Regulations can be repealed. It is a good thing to look at and consider always things to protect the environment. RAR doesn't mean sterilizing. There are ways to assess your streams. If you have a QEP, do a detailed assessment.

Mr. Watson expressed the view that the Madrone report has limitations but in defense of Madrone, they had limited time and limited budget. They did a field walk to highlight the location of streams for consideration under RAR. Respectfully, Mr. Watson thought the Local Trust Committee maybe went a step too far to call it RAR applicable without doing a simple or a detailed assessment. He noted comments of Brian and Bruce Clark are quite appropriate for Bowyer, and accepted all their points. Lastly, fish presence is one of three or four things to consider in a simple and detailed assessment, not the only thing.

Curt Shepard, Keats Island, Plumper Cove, has been there for fifty years and never seen a fish in the stream. On the creek, he has a water license to draw water out of that creek. He gave the Local Trust Committee a letter today that referred to Development Permit Area No. 1 (Bylaw 129 and 130) and noted that the map should reflect what is in the words. Mr. Shepard observed in reading the documentation that Andrew Appleton made a suggestion regarding moving the 15 metres to 10 metres – Mr. Shepard hoped this was going to happen. Going back to his July 26 letter: Mr. Watson spoke to that. Under RAR there are some flexibilities that can be worked with,

but he believed the wording on subsection 4 b) precludes that. Maybe change wording to “conform to the RAR”.

Trustee Rogers inquired further about the statement that the RAR does not apply if it is positively established there are no fish in the creek.

Brian Clark replied that the process Madrone did was not a RAR assessment process, but to identify if there was potential for fish. They made a precautionary comment. Access is the issue. Madrone said it was technically possible. Mr. Clark expressed that view that it might have been worthwhile taking a step to determine which of the creeks actually have a fish presence in them. He reiterated his view that if the creek drains directly to a marine environment, RAR wouldn't apply. There are prescribed methods to determine absence of fish based on: gradient; man-made structures present; an assessment to see if you can find fish.

Richard Beard, West Vancouver and Keats Island, wanted to understand what is happening. It seems RAR is the only way that land can be effectively protected when on private property. Is it possible to look at creeks, wetlands, recognizing environmentally sensitive areas? Fish habitat is just one reason; others are birds, trees, marine life, slope stability, sediment in the ocean, spawning beds.

Chair Morrison asked two times if there were further comments.

Chair Morrison asked again if there were any further comments.

#### **4. ADJOURNMENT**

Seeing that there were no further comments, Chair Morrison declared the public hearing closed at 12:17 p.m.

**I CERTIFY THAT THIS IS A FAIR AND ACCURATE SUMMARY OF THE NATURE OF REPRESENTATIONS RESPECTING THE MEETING HELD.**

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Diane Corbett, Recorder