

DeProy, Joyce CSD:EX

From: Caskey, Marlene ENV:EX
Sent: Monday, August 27, 2007 5:32 PM
To: Dambergs, Arnis ENV:EX
Subject: Swanson's Pond

From: S22
Sent: Saturday, August 25, 2007 8:12 PM
To: Caskey, Marlene ENV:EX
Cc: S22 Dambergs, Arnis ENV:EX; Baldwin, John ENV:EX; Horncastle, Gary ENV:EX; jstarke@islandstrust.bc.ca
Subject: Re: RE: Fish presence on Gulf Islands

When I got back to the island I checked out the creek and there is still minimum water flowing into the pond from Swansons Creek upstream. Swansons Pond is an instream pond. Not off channel. It was built to drain a wetland that extended from near the elementary school area to the Valhalla townhouses. S22

S22

----- Original Message -----

From: "Caskey, Marlene ENV:EX" <Marlene.Caskey@gov.bc.ca>
Date: Friday, August 24, 2007 9:38 am
Subject: RE: Fish presence on Gulf Islands
To: S22
Cc: S22 "Dambergs, Arnis ENV:EX" <Arnis.Dambergs@gov.bc.ca>, "Baldwin, John ENV:EX" <John.Baldwin@gov.bc.ca>, "Horncastle, Gary ENV:EX" <Gary.Horncastle@gov.bc.ca>, jstarke@islandstrust.bc.ca

> I am told that Arnis Dambergs is the Water person who will be looking
> into this. He is back on Monday. He will be
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> You may want to talk directly to Arnis on Monday. 250 751-3165.
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> From: S22
> Sent: Friday, August 24, 2007 9:26 AM
> To: Caskev. Marlene ENV:EX
> Cc: S22
> Subject: Re: Fish presence on Gulf Islands
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> lower reaches at the confluence to Ganges creek the poor
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S22

S22 And then I heard that the same person has
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> wants to
> divert it into the pond so I am getting extremely concerned and

S22

S22

> ----- Original Message -----
> From: "Caskey, Marlene ENV:EX" <Marlene.Caskey@gov.bc.ca>
> Date: Wednesday, August 15, 2007 1:13 pm
> Subject: Fish presence on Gulf Islands

S22

S22

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>> Which Islands (south of Gabriola) besides Salt Spring, Saturna
> and
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>> I hope all is well with you, these days.
>>
>> P. Marlene Caskey, B.Sc., R.P.Bio
>> Senior Urban Ecosystem Biologist
>> Environmental Stewardship Division,
>> Vancouver Island Region, Ministry of Environment
>> Nanaimo
>> (250) 751-3220
>>
>>
>>
>
>

DeProy, Joyce CSD:EX

From: Hitchcock, Gord ENV:EX
Sent: Tuesday, August 28, 2007 2:53 PM
To: Caskey, Marlene ENV:EX; Pauwels, Peter ENV:EX
Subject: RE: Swanson's Pond Assessment
Follow Up Flag: Follow up
Flag Status: Red

Marlene, Peter is your immediate contact over COS involvement.

From: McHarg, Pat ENV:EX
Sent: Monday, August 27, 2007 9:48 AM
To: Caskey, Marlene ENV:EX
Cc: Hitchcock, Gord ENV:EX
Subject: RE: Swanson's Pond Assessment

Thanks you for this Marlene, I spoke with Mari Anne Jones Water Branch this morning and she will be speaking with you on this briefly as well. I advised her to direct any future questions on this matter to Gord Hitchcock S22 if there is follow up required by COS, Gord can direct accordingly.

Thank You.

P.J.McHarg

The information transmitted herein is intended only for the named recipient above and may contain information that is privileged or confidential. If you have received this message in error, or are not the named recipient, please immediately notify the sender at (250) 746-1257 or by reply to this communication and delete this message from any computer. Thank you.

From: Caskey, Marlene ENV:EX
Sent: Friday, August 24, 2007 3:02 PM
To: McHarg, Pat ENV:EX
Cc: Dambergs, Arnis ENV:EX; 'jstarke@islandstrust.bc.ca'; 'mbrodrick@islandstrust.bc.ca'
Subject: Swanson's Pond Assessment

Thanks, Pat. Interesting that Mr. Appleton is seeing barriers on Ganges Creek when I know from personal experience that fish go through some of those culverts (although not all - above Rainbow they are unable to pass through some culverts). It appears that his assessment is based on visual observations of the culverts on a single site visit. There is no indication in the report that he also did any fish sampling or took any other measurements to support his observations.

S22

S22

P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment
Nanaimo
(250) 751-3220

From: McHarg, Pat ENV:EX
Sent: Friday, August 24, 2007 1:47 PM
To: Caskey, Marlene ENV:EX; Law, Peter ENV:EX
Cc: McHarg, Pat ENV:EX
Subject: FW: Lot 10 Park Drive

Marlene

As promised, our file is COORS 200703601 titled Salt Spring Ventures. I have included our report activity to date as well. Please see attached.

P.J.McHarg

The information transmitted herein is intended only for the named recipient above and may contain information that is privileged or confidential. If you have received this message in error, or are not the named recipient, please immediately notify the sender at (250) 746-1257 or by reply to this communication and delete this message from any computer. Thank you.

From: Eric Booth S22
Sent: Friday, August 24, 2007 12:20 PM
To: McHarg, Pat ENV:EX
Subject: Lot 10 Park Drive

Hi Pat,

Attached please find the report from Balanced Environmental Services. The contact biologist at Balanced is Warren Appleton - 604-983-3111.

It is my understanding Arnis Damberg, from MoE Water Management will be following up on the background/history of the pond to confirm it's status from Water Management's perspective.

I will scan into pdf Kathy Reimer's report on the pond (from 2001) and send it over later this

afternoon.

I placed a call into Mark Brodrick at the Islands Trust office, at 11:30, and would expect to hear back from him early this afternoon. With any luck he will have time to get together for a quick update.

If you need any more information, please don't hesitate to contact me. Paging me through my office at 250-537-5553 will likely get the fastest response.

Cheers - Eric Booth

DeProy, Joyce CSD:EX

From: S22
Sent: Sunday, October 7, 2007 1:13 PM
To: Caskey, Marlene ENV:EX
Cc: S22
Subject: Re: more Swanson's Pond

Hi Marlene. I somehow want to get the Grange report -Ganges Creek Engineering -to Peter Law and John Baldwin before their meeting on Tuesday-It was done in 1987 with all the recorded flow rates and peak flows.
It clearly supports our case. It was done for the Islands trust and Water Management. Bruno often quoted it. Should I just take the first ferry and stand there at the door or could I get it to them through you .. I really am taking this too seriously but how can I possible let all those Redlegged frogs and Ducks and Muskrats and red winged blackbirds down.. I have to know I did my best. You know of course that first he will isolate the pond and then next he will drain it. S22

----- Original Message -----

From: "Caskey, Marlene ENV:EX" <Marlene.Caskey@gov.bc.ca>
To: "Dambergs, Arnis ENV:EX" <Arnis.Dambergs@gov.bc.ca>
Cc: "Barr, Larry ENV:EX" <Larry.Barr@gov.bc.ca>; "Baldwin, John ENV:EX" <John.Baldwin@gov.bc.ca>
Sent: Friday, September 21, 2007 11:46 AM
Subject: RE: [Fwd: Swanson's Pond]

Since the natural flow of water from that area has always gone to Ganges Creek, I do not see that it is relevant whether or not most of the watershed components have been ditched or otherwise modified. It is still part of the natural watershed of Ganges Creek, and not just some man-made ditches created to manage stormwater. As such, the proposal to isolate Swanson's Pond will have a deleterious impact on the creek downstream where fish are present.

Marlene

-----Original Message-----

From: Dambergs, Arnis ENV:EX
Sent: Friday, September 21, 2007 11:20 AM
To: Caskey, Marlene ENV:EX
Cc: Barr, Larry ENV:EX; Baldwin, John ENV:EX
Subject: RE: [Fwd: Swanson's Pond]

Hi Marlene

Further to our conversations about Swanson's Pond, we had a pretty up-close & personal examination of the watercourse involving the pond, from its confluence with Ganges Creek U/S to a location near the intersection of Lower Ganges Road & Atkins Road.

This watercourse has nothing natural about it throughout its length. The Islands trust identifies a stream with a source at the spring on Desmond Crescent.

Examination of the older air photos and the mapping we have, fail to show any streams U/S of the pond.

What exists is drainage system collecting surface flows into a system of ditches and pipes.

The drainage system is mostly located in places convenient for land development, such as along property boundaries and roadside ditches. In one instance the system is piped under a housing development at Valhalla Road.

After looking at all the evidence I have in front of me I can only conclude that Swanson's Pond is not a stream as defined under the Water Act.

Have A GREAT Day !
Arnis
Arnis Dambergs
Water Stewardship Officer
Ministry of Environment
2080 Labieux Road, Nanaimo BC V9T 6J9
ph: 250-751-3165
fax: 250-751-7079
email: arnis.dambergsgov.bc.ca
web: www.env.gov.bc.ca/wsd

Water For BC - Safe Sustainable and Valued By All

-----Original Message-----

From: Caskey, Marlene ENV:EX
Sent: Thursday, 30 August, 2007 10:06 AM
To: Dambergs, Arnis ENV:EX; S22
Cc: Barr, Larry ENV:EX
Subject: FW: [Fwd: Swanson's Pond]

Thanks, S22 I am forwarding your e-mail to Water Stewardship.
Marlene

From: S22
Sent: Thursday, August 30, 2007 9:00 AM
To: Philip Grange
Cc: Dambergs, Arnis ENV:EX; Caskey, Marlene ENV:EX
Subject: Re: [Fwd: Swanson's Pond]

> HI Marlene and Philip. The most important thing is that there is a defined channel running into the pond. It was still flowing yesterday, (at Wisteria) so it runs over 6 months of the year. The channel starts near Brinkworthy and flows through the Meadowbrook development where there are footbridges etc. and then further down it goes through undeveloped land and then Wisteria B and B and then into the pond. There is no other route for the water from the top of the watershed to reach the Ganges creek outfall. And not to mention the fish downstream. To say that this is just road runoff is pretty unbelievable. It is and always has been a watercourse, that is why we have been so careful to make sure it is incorporated into all the new land developments like Meadowbrook. When I was there yesterday, it looked like the property owner is attempting to divert the creek around Swanson's pond - that is why he has dug such a deep ditch in front. S22

S22

HI S22 (and Marlene),

> As you know I have mapped the watersheds of both Swanson and Ganges
> creeks which share an outfall into Ganges Harbour. I have a map
> showing the contributory catchments to the areas of interest
> including Swanson Pond itself. Many of the culverts and ditches to
> roads are recorded as well as overland sections of the watercourse.
> Most of this research & ground "truthing" I have done for my own
> interest as well as for projects we have worked on together, which all
> culminate in the fish habitat sections in the lower reaches of both
> these creeks, which Island Streams & Salmon Enhancement Association
has

> sponsored for over 20 years.
> I am happy to share this mapping so long as proprietary credit
> continues to belong to my Ltd company, and no exposure to litigation
> will result. We believe the Swanson creek system has a catchment
> area of some 70 Ha. , with about 50Ha . of this being upstream of
> Swanson Pond.
> I also have some aerial photo. records I purchased from the Provincial
> Archives--two of these may be of interest vis-a-vis
> Swanson Pond----

> #1====Roll 263 Frame 45-(my print is 6.9x enlarged)----we believe this
> is 1963--it shows a possible pond in existence with a downstream
> "ditch" clearly visible, but located some distance downstream(maybe
> where the Kanaka ball field now is) . The present site appears to be
> still wooded or on the edge of a pasture, .Enlargements may reveal
> clearer information .
> at that time only Rainbow, Atkins and LowerGanges roads are
> developed--the rest is farmland or still tree-ed areas. Brinkworthy
> looks like an extensive orchard. Ganges creek meanders some
distance
> upstream of the estuary to the harbour.
>
> #2====Roll 7408 Frame 266 (enlarged 3.7x)---believed to be
> 1974---Swanson pond clearly visible(Omega shaped), Park Drive & Kanaka
> roads are developed. The Ganges creek meander has disappeared S22

S22 & pond inlet "ditch" are visible---

> clearly a decade of urban development.
> let me know if you want to scan these images,
> we trust this information is of interest
> best regards
> Philip Grange P Eng.
>
>
> On 29 Aug 2007, at 18:56, S22 wrote:
>
>> ---Hi Phillip. I would like to talk to you about this. Maybe we need
>> to send him a simplified map showing the watershed and water course
>> That flows into the pond. S22
>>
>> ----- Original Message
>> -----
>> Subject: Swanson's Pond
>> From: "Caskey, Marlene ENV:EX" <Marlene.Caskey@gov.bc.ca>
>> Date: Wed, August 29, 2007 2:20 pm
>> To:
>> S22
>>
>> Cc: "Dambergs, Arnis ENV:EX" <Arnis.Dambergs@gov.bc.ca>
>> "Barr, Larry ENV:EX" <Larry.Barr@gov.bc.ca>
>>
>> -----
>> ---
>>
>> Arnis Dambergs would like to get the airphotos numbers so he can
>> verify the size/location of the original wetland prior to conversion
>> to a pond. He is, at this point, thinking that he will not apply the
>> Water Act to the
>> pond, as it:
>>
>> * is man-made
>> * has no indication of natural stream in-flow - just
>> culverts/ditches along the roads.
>>
>> Can you provide him with the air photo information, and any info you

>> have on catchments area and indications of an original natural creek
>> into the
>> wetland?
>> I am having problems persuading him that the present ecological
values
>> are
>> high enough to warrant Water Act involvement.
>>
>> Arnis, you can call S22 at:
>>
>>
>>
>> S22)
>>
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>>
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>>
>> From: Caskey, Marlene ENV:EX
>> Sent: Monday, August 27, 2007 5:32 PM
>> To: Dambergs, Arnis ENV:EX
>> Subject: FW: RE: Fish presence on Gulf Islands
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>> From: S22
>> Sent: Saturday, August 25, 2007 8:12 PM
>> To: Caskey, Marlene ENV:EX
>> Cc: S22 Dambergs, Arnis ENV:EX; Baldwin, John
>> ENV:EX; Horncastle, Gary ENV:EX; jstarke@islandstrust.bc.ca
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S22

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>> <Arnis.Dambergs@gov.bc.ca>, "Baldwin, John ENV:EX"
>> <John.Baldwin@gov.bc.ca>, "Horncastle, Gary ENV:EX"
>> <Gary.Horncastle@gov.bc.ca>, jstarke@islandstrust.bc.ca
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>>> Date: Wednesday, August 15, 2007 1:13 pm
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>>>> P. Marlene Caskey, B.Sc., R.P.Bio
>>>> Senior Urban Ecosystem Biologist
>>>> Environmental Stewardship Division,
>>>> Vancouver Island Region, Ministry of Environment
>>>> Nanaimo
>>>> (250) 751-3220
>>>>
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>> <untitled-2>
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No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.5.488 / Virus Database: 269.13.28/1021 - Release Date: 9/21/2007
2:02 PM

DeProy, Joyce CSD:EX

From: Law, Peter ENV:EX
Sent: Monday, October 8, 2007 8:16 PM
To: Wilkerson, Stacey L ENV:EX
Cc: Caskey, Marlene ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

Stacey

I am a bit confused.

I do not want RAR to apply where it should not be used either.

Guidance over the phone concerning the reg and hypothetical situations sound OK.

Do you get asked about specific site conditions? If so, how would you respond?

Pete

ps. by the way, I hope you do not get defensive...I just want some understanding of where you draw a line, and say to the caller, this is an item I will refer to our regional staff.

From: Wilkerson, Stacey L ENV:EX
Sent: Fri 10/5/2007 11:11 AM
To: Law, Peter ENV:EX
Cc: Caskey, Marlene ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

Hi Pete and Marlene,

The RAR only applies if it is fish habitat (i.e. fish bearing or connected by surface flow to fish bearing waters). I am very careful not to give an interpretation of site conditions; I give guidance on the legislation and the situations where it applies.

If we require people to use the RAR when it doesn't apply then we lose our credibility. Some other tool will have to be used unless you tell me that Swanson's pond is fish habitat. I understand your frustration...but the legislation is what it is. Do we have some other tool we can use?

Stacey

From: Law, Peter ENV:EX
Sent: Thursday, October 4, 2007 10:59 AM
To: Wilkerson, Stacey L ENV:EX
Subject: FW: Swansons Pond on Saltspring Island
Importance: High

Stacey

Here is (another) case of a simple phone conversation you and Andy have had with a caller, where they have taken your "interpretation" of the site conditions, and provided an opinion....which seems to be sinking our goal of wetland protection on Saltspring.

Help. We need to get our communication strategy clear cause they are using you as a "trump" over us.

Pete

From: Caskey, Marlene ENV:EX
Sent: Friday, September 28, 2007 11:14 AM
To: Law, Peter ENV:EX
Subject: FW: Swansons Pond on Saltspring Island

Importance: High

See first attachment.

This is the first I have heard that the RAR does not apply to non-fish-bearing waters.
Did you say this, or is this Victoria??????

From: Mark Brodrick [mailto:mbrodrick@islandstrust.bc.ca]
Sent: Wednesday, September 26, 2007 4:32 PM
To: Caskey, Marlene ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

Hi Marlene,

Please review the two attachments provided by Eric Booth. The first is a letter from Scott Christie, President of Balanced Environmental confirming Warren Appleton's credentials and informing that no RAR is required.

Further the second attachment is a scan of a letter provided by Eric Booth, specifically please review number 22.

Please advise if you have any further concerns or whether you are satisfied with both the credentials and that there is no need for a RAR.

Thanks

Mark

Mark Brodrick, Island Planner
Islands Trust
1-500 Lower Ganges Road
Salt Spring Island, BC V8K 2N8
250-538-5602 phone; 250-537-9116 fax
1-800-663-7867 via Enquiry BC
mbrodrick@islandstrust.bc.ca
www.islandstrust.bc.ca
Preserving Island communities, culture and environment

From: Caskey, Marlene ENV:EX [mailto:Marlene.Caskey@gov.bc.ca]
Sent: Monday, August 27, 2007 4:08 PM
To: Mark Brodrick
Subject: RE: Swansons Pond on Saltspring Island

I looked at the 2 reports on Friday. Kathy's report simply states that no fish were found within the pond.

The report by Warren Appleton is a concern. First, it would appear that he based his decisions on whether or not the culverts were barriers to fish passage strictly on observation of the structures, with no fry trapping or supplementary methods to determine presence of fish. As I myself have observed fish above some of the barriers he has identified, I would not agree that all of them are fish barriers.

We in Ecosystems have started carrying culvert assessments to determine fish access over the past couple years - these require extensive surveying and supportive computer flow modelling. Decisions are not based on a visual look at a culvert.

S22

I looked him up because his report indicates an incomplete knowledge of the RAR. If fish are present ANYWHERE downstream of a development site, then the RAR applies. His report makes the assumption that fish have to be able to access the property in question before the RAR applies. This is incorrect.

The RAR does apply to Swanson's Pond.

According to my discussion today with Arnis Damberg of our Water Stewardship Branch, the developer wishes to fill/reconfigure Swanson's Pond to create a small water feature, which he will keep at a set water level through augmentation from the nearby spring. He is also talking about making his pond a 'closed' feature - by having the present inflow diverted along Park Drive so that it bypasses the pond. As Swanson's Pond helps to ameliorate flood flows, increased flooding may be a problem downstream unless other actions are taken to deal with stormwater flows. This is something you may need to address through your development permit, IF you agree to let him modify Swanson's Pond.

P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment
Nanaimo
(250) 751-3220

From: Mark Brodrick [mailto:mbrodrick@islandstrust.bc.ca]
Sent: Monday, August 27, 2007 11:35 AM
To: Caskey, Marlene ENV:EX
Subject: Swansons Pond on Saltspring Island

Hi Marlene,

Attached are two PDF reports that Eric Booth forwarded to me this morning. I have not read these yet. Please let me know if these reports are acceptable or whether you think a RAR assessment needs to be done on Swansons Pond, Salt Spring Island.

As I am meeting with Eric tomorrow may I have your response today please? When I meet with Eric I will try to find out what he intends to do.

Below is an email I sent this morning with some additional information. Also attached are the photos I took on Friday's site inspection.

Thanks Marlene

Mark
 Mark Brodrick, Island Planner
 Islands Trust
 1-500 Lower Ganges Road

Salt Spring Island, BC V8K 2N8
250-538-5602 phone; 250-537-9116 fax
1-800-663-7867 via Enquiry BC
mbrodrick@islandstrust.bc.ca
www.islandstrust.bc.ca
Preserving Island communities, culture and environment

From: Mark Brodrick
Sent: Monday, August 27, 2007 9:53 AM
To: Peter Lamb; Justine Starke; George Leukefeld; George Ehring; Gerry Hamblin
Subject: RE: Swansons Pond on Saltspring Island

Good Morning,

I left a voice mail for Eric on Friday, August 24. Eric did return my telephone call twice on Friday but I was not available. I did a site inspection and there was no activity and no pumping. I took some photos that are attached. The surface of the pond is covered in duck weed and there is no water flowing down the outlet.

I spoke with Eric this morning and he is sending me copies of two reports, the "Balanced" report which I am told states no RAR assessment is required and a Reimer report which I am told states there are no fish in Swansons Pond.

I am meeting Eric tomorrow morning to walk the watershed.

Mark

From: Peter Lamb
Sent: Saturday, August 25, 2007 6:39 PM
To: Justine Starke
Cc: Mark Brodrick; George Leukefeld; George Ehring
Subject: RE: Swansons Pond on Saltspring Island

Justine,, Thanks. I spoke to Kathy Reimer about the RAR report on this property and she noted that, under the Implementation Guidelines for the RAR, a local government is able to question a QEP report if it has additional information or specific concerns with the report. Perhaps this should be verified and a copy of the QEP report obtained from the landowner.

Peter

Peter Lamb
Salt Spring Island Trustee
Tel: Office; 250-537-9144
Home; S22
Email; plamb@islandstrust.bc.ca

DeProy, Joyce CSD:EX

From: Law, Peter ENV:EX
Sent: Monday, October 8, 2007 8:32 PM
To: S22
Subject: RE: Swanson's Pond

What???
You want to meet me on the road on Tuesday morning??
Hold off on travelling S22
Pete

From: S22
Sent: Sat 10/6/2007 4:57 PM
To: Law, Peter ENV:EX
Subject: RE: Swanson's Pond

Hi Peter. I have the Grange Report the community did in 1987, the engineering report of the watershed showing all the peak flows etc. Bruno and Walter used it a lot. I was wondering if I can meet you before work on the road somewhere on Tuesday and give you the 3 copies. S22

-----Original Message-----
From: Law, Peter ENV:EX [<mailto:Peter.Law@gov.bc.ca>]
Sent: Friday, October 05, 2007 7:35 AM
To: S22
Cc: CallaK@pac.dfo-mpo.gc.ca
Subject: RE: Swanson's Pond

S22
in answer to your RAR question, perhaps you can just wait until we meet about this file early next week.
Pete

-----Original Message-----
From: S22
Sent: Thursday, October 4, 2007 4:35 PM
To: Law, Peter ENV:EX
Cc: CallaK@pac.dfo-mpo.gc.ca
Subject: RE: Swanson's Pond

Hi Peter. Thanks for helping sort this out. I did a RAR S22
S22 Now
that the channel has been completely filled in -see the attached before and after pictures. do we declare that RAR invalid? S22
S22 will be delighted with that!! By the way Greg Galpin informs me that he did not permit that ditching along the road.

What this is telling me is that any property owner who wants to avoid RAR can just ditch the creek off his property and then drain the wetlands and get away with it. I cannot believe this happening after 25 years of work on this island. The problem is that the creek has been so culverted over in spots like the school playing fields. And there are no salmon in it. The pond is full of red winged blackbirds, ducks, red-legged frogs, muskrats, otter and there used to be fish but I

couldn't catch any when I did my study and did not want to electroshock because of all the other creatures.

The pictures are of exactly the same spot

S22

-----Original Message-----

From: Law, Peter ENV:EX [<mailto:Peter.Law@gov.bc.ca>]
Sent: Thursday, October 04, 2007 12:57 PM
To: S22
Cc: Caskey, Marlene ENV:EX
Subject: Swanson's Pond

S22

Marlene has already discussed this with me. I have walked over to Water Stewardship, and asked that we meet about this file on Tuesday. They must have a good rationale for how they have proceeded with this, and we will talk about that.
Pete

--

Internal Virus Database is out-of-date.
Checked by AVG Free Edition.
Version: 7.5.476 / Virus Database: 269.11.4/936 - Release Date: 8/4/2007 2:42 PM

--

Internal Virus Database is out-of-date.
Checked by AVG Free Edition.
Version: 7.5.476 / Virus Database: 269.11.4/936 - Release Date: 8/4/2007 2:42 PM

DeProy, Joyce CSD:EX

From: Wilkerson, Stacey L ENV:EX
Sent: Tuesday, October 9, 2007 1:38 PM
To: Caskey, Marlene ENV:EX
Cc: Law, Peter ENV:EX
Subject: RE: Swansons Pond on Saltspring Island
Follow Up Flag: Follow up
Flag Status: Red

I agree, Marlene. Culverted streams are considered surface flow for the RAR...until they become very long. I also struggle with this definition. Andy and Karen have indicated that once water is flowing through a culvert for a long period of time (i.e. 500m) then it no longer provides a nutrient source and the RAR doesn't apply. I can't offer a better response, unfortunately, because I don't have a scientific distance to refer to. I'll speak to Andy and see if he has a better rationale than I can provide.

From: Caskey, Marlene ENV:EX
Sent: Tuesday, October 9, 2007 11:39 AM
To: Wilkerson, Stacey L ENV:EX
Cc: Law, Peter ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

As I understand this situation, the QEP claims that he was told, and had it confirmed through you and Andy, that, since the creek flows through some long culverts prior to discharge to fish-bearing waters, the RAR does not apply.

So, if there are culverted stretches in a creek, you no longer consider it a 'surface flow' connection? What length of culvert is your cut-off? What diameter of culvert?

To me, it should be the proportion of the watershed flowing through the culvert, or some measure of volume/culvert diameter, which should be used to determine whether or not the RAR applies. Not length of culvert.....the water quality impacts downstream are the same no matter what the length of culvert!

*P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment
Nanaimo
(250) 751-3220*

From: Wilkerson, Stacey L ENV:EX
Sent: Friday, October 5, 2007 11:12 AM
To: Law, Peter ENV:EX
Cc: Caskey, Marlene ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

Hi Pete and Marlene,
The RAR only applies if it is fish habitat (i.e. fish bearing or connected by surface flow to fish bearing waters). I am very careful not to give an interpretation of site conditions; I give guidance on the legislation and the situations where it applies.

If we require people to use the RAR when it doesn't apply then we lose our credibility. Some other tool will have to be used unless you tell me that Swanson's pond is fish habitat. I understand your frustration...but the legislation is what it is. Do we have some other tool we can use?

Stacey

From: Law, Peter ENV:EX
Sent: Thursday, October 4, 2007 10:59 AM
To: Wilkerson, Stacey L ENV:EX
Subject: FW: Swansons Pond on Saltspring Island
Importance: High

Stacey

Here is (another) case of a simple phone conversation you and Andy have had with a caller, where they have taken your "interpretation" of the site conditions, and provided an opinion....which seems to be sinking our goal of wetland protection on Saltspring.

Help. We need to get our communication strategy clear cause they are using you as a "trump" over us.
Pete

From: Caskey, Marlene ENV:EX
Sent: Friday, September 28, 2007 11:14 AM
To: Law, Peter ENV:EX
Subject: FW: Swansons Pond on Saltspring Island
Importance: High

See first attachment.

This is the first I have heard that the RAR does not apply to non-fish-bearing waters.
Did you say this, or is this Victoria??????

From: Mark Brodrick [mailto:mbrodrick@islandstrust.bc.ca]
Sent: Wednesday, September 26, 2007 4:32 PM
To: Caskey, Marlene ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

Hi Marlene,

Please review the two attachments provided by Eric Booth. The first is a letter from Scott Christie, President of Balanced Environmental confirming Warren Appleton's credentials and informing that no RAR is required.

Further the second attachment is a scan of a letter provided by Eric Booth, specifically please review number 22.

Please advise if you have any further concerns or whether you are satisfied with both the credentials and that there is no need for a RAR.

Thanks

Mark

Islands Trust
1-500 Lower Ganges Road
Salt Spring Island, BC V8K 2N8
250-538-5602 phone; 250-537-9116 fax
1-800-663-7867 via Enquiry BC
mbrodrick@islandstrust.bc.ca
www.islandstrust.bc.ca
Preserving Island communities, culture and environment

From: Caskey, Marlene ENV:EX [mailto:Marlene.Caskey@gov.bc.ca]
Sent: Monday, August 27, 2007 4:08 PM
To: Mark Brodrick
Subject: RE: Swansons Pond on Saltspring Island

I looked at the 2 reports on Friday. Kathy's report simply states that no fish were found within the pond.

The report by Warren Appleton is a concern. First, it would appear that he based his decisions on whether or not the culverts were barriers to fish passage strictly on observation of the structures, with no fry trapping or supplementary methods to determine presence of fish. As I myself have observed fish above some of the barriers he has identified, I would not agree that all of them are fish barriers.

We in Ecosystems have started carrying culvert assessments to determine fish access over the past couple years - these require extensive surveying and supportive computer flow modelling. Decisions are not based on a visual look at a culvert.

S22

I looked him up because his report indicates an incomplete knowledge of the RAR. If fish are present ANYWHERE downstream of a development site, then the RAR applies. His report makes the assumption that fish have to be able to access the property in question before the RAR applies. This is incorrect.

The RAR does apply to Swanson's Pond.

According to my discussion today with Arnis Damberg of our Water Stewardship Branch, the developer wishes to fill/reconfigure Swanson's Pond to create a small water feature, which he will keep at a set water level through augmentation from the nearby spring. He is also talking about making his pond a 'closed' feature - by having the present inflow diverted along Park Drive so that it bypasses the pond. As Swanson's Pond helps to ameliorate flood flows, increased flooding may be a problem downstream unless other actions are taken to deal with stormwater flows. This is something you may need to address through your development permit, IF you agree to let him modify Swanson's Pond.

P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment
Nanaimo
(250) 751-3220

From: Mark Brodrick [mailto:mbrodrick@islandstrust.bc.ca]
Sent: Monday, August 27, 2007 11:35 AM
To: Caskey, Marlene ENV:EX
Subject: Swansons Pond on Saltspring Island

Hi Marlene,

Attached are two PDF reports that Eric Booth forwarded to me this morning. I have not read these yet. Please let me know if these reports are acceptable or whether you think a RAR assessment needs to be done on Swansons Pond, Salt Spring Island.

As I am meeting with Eric tomorrow may I have your response today please? When I meet with Eric I will try to find out what he intends to do.

Below is an email I sent this morning with some additional information. Also attached are the photos I took on Friday's site inspection.

Thanks Marlene

Mark
Mark Brodrick, Island Planner
Islands Trust
1-500 Lower Ganges Road
Salt Spring Island, BC V8K 2N8
250-538-5602 phone; 250-537-9116 fax
1-800-663-7867 via Enquiry BC
mbrodrick@islandstrust.bc.ca
www.islandstrust.bc.ca
Preserving Island communities, culture and environment

From: Mark Brodrick
Sent: Monday, August 27, 2007 9:53 AM
To: Peter Lamb; Justine Starke; George Leukefeld; George Ehring; Gerry Hamblin
Subject: RE: Swansons Pond on Saltspring Island

Good Morning,

I left a voice mail for Eric on Friday, August 24. Eric did return my telephone call twice on Friday but I was not available. I did a site inspection and there was no activity and no pumping. I took some photos that are attached. The surface of the pond is covered in duck weed and there is no water flowing down the outlet.

I spoke with Eric this morning and he is sending me copies of two reports, the "Balanced" report which I am told states no RAR assessment is required and a Reimer report which I am told states there are no fish in Swansons Pond.

I am meeting Eric tomorrow morning to walk the watershed.

Mark

From: Peter Lamb
Sent: Saturday, August 25, 2007 6:39 PM
To: Justine Starke
Cc: Mark Brodrick; George Leukefeld; George Ehring
Subject: RE: Swansons Pond on Saltspring Island

Justine,, Thanks. I spoke to Kathy Reimer about the RAR report on this property and she noted that, under the Implementation Guidelines for the RAR, a local government is able to question a QEP report if it has additional information or specific concerns with the report. Perhaps this should be verified and a copy of the QEP report obtained from the landowner.

Peter

Peter Lamb
Salt Spring Island Trustee
Tel: Office; 250-537-9144
Home; S22
Email; plamb@islandstrust.bc.ca

DeProy, Joyce CSD:EX

From: Law, Peter ENV:EX
Sent: Friday, October 12, 2007 4:43 PM
To: 'Magnan, Alain'
Cc: Caskey, Marlene ENV:EX
Subject: RE: Urgent threat to Salt Spring Island watercourses

Al.

We are meeting with Water staff on Oct 18th about this.

Marlene has been trying to resolve this. There have been a couple of issues here:

- our water stewardship staff have been out to the site, and ruled that it not a stream.
- our Victoria contacts with RAR have provided some verbal and written communication to a QEP that a watercourse that flows through culverts is not considered as having fish values, and therefore RAR does not apply. This is really problematic....they agree...poor communication, but it's now out there.

So, as I said we will be discussing it with water stewardship, and looking over their material, so that we can either agree or disagree.

You are more than welcome to attend.

Judging from the emails and phone calls, there has been work on the site Pete

-----Original Message-----

From: Magnan, Alain [mailto:MagnanA@pac.dfo-mpo.gc.ca]
Sent: Friday, October 12, 2007 3:03 PM
To: Law, Peter ENV:EX
Cc: Caskey, Marlene ENV:EX
Subject: RE: Urgent threat to Salt Spring Island watercourses

Pete and Marlene,

Is the province doing anything regarding this issue on Saltspring Island? Despite it not being an "official" watercourse under RAR or the Water Act, it still appears as though it is fish habitat as per the Fisheries Act. F.O. Willi Jansen has been in discussion with C.O. Gary Horncastle and he's indicated he's waiting for some direction from your habitat staff. Can you let me know if the province has reviewed this issue and if you have, what your conclusions were. Thanks.

Alain (Al) Magnan, R.P.Bio., CPESC
Project Assessment Biologist
Habitat Management
South Coast
Fisheries and Oceans Canada
3225 Stephenson Point Road
Nanaimo, BC V9T 1K3
Tel: (250) 756-7021
Cel: (250) 714-9196
Fax: (250) 756-7162

Biologist, Evalueur de projets
Peches et Oceans
Gestion de l'habitat
Cote sud
3225, chemin Stephenson Point
Nanaimo (C.-B.) V9T 1K3

-----Original Message-----

From: S22
Sent: Friday, October 12, 2007 10:13 AM
To: Magnan, Alain
Cc: Marlene.Caskey@gov.bc.ca

Subject: RE: Urgent threat to Salt Spring Island watercourses

> Hi Alain. Thanks so much for replying to our distress emails. Yes it
> WAS
definitely connected , and the trout still use the lower reaches of this
litte branch of Ganges Creek. That is, it was connected until the two
property owners, one who had just had a RAR done decided to completely
dam off the inlet creek and divert the watercourse around their land. So
NOW the developer , Eric Booth S22 Creek House realty, 537-5533,
is saying that it is not subject to RAR. It is absolutely outrageous,
and he actually has tried to convince water management that the stream
was not a watercourse. S22 an engineering report done in 1987, before
all the money was spent on the Ganges creek system. The little creek
represents 20% of the Ganges creek watershed. There are some springs
along it and it trickled year round. A big issue for us is why a land
developer can take water manangement on a tour and convince them that
one of our small island streams is not a watercourse, without any public
notification. No one familiar with the creek was consulted before he
dammed up the stream, we were alerted by the neighbours. Suddenly we
were told the decision had been made. Was someone from Federal Fisheries
consulted? Apparently he had someone tell him it was not subject to RAR
because of culverts down stream-where we have also been working on
improving the situation. So yes all of us environmental types on the
island are united on this issue and agree that it is Fish Habitat under
the Fisheries act. I would really like to find out who his QEPs were
becasuse surely we can contest the validity of their reports.

Not Responsive

> Is the pond directly connected (e.g. flows into) the watercourse that
> supports the resident trout? If it does, then both the pond and
> watercourse would be considered fish habitat under the Fisheries Act.
> Can you please confirm if the two systems are connected. Also, do you

> have any more information on the proposed development and/or a contact

> name and number for the developer. Thanks.

>

> Alain (Al) Magnan, R.P.Bio., CPESC

> Project Assessment Biologist

> Habitat Management

> South Coast

> Fisheries and Oceans Canada

> 3225 Stephenson Point Road

> Nanaimo, BC V9T 1K3

> Tel: (250) 756-7021

> Cel: (250) 714-9196

> Fax: (250) 756-7162

> Biologist, Evalueateur de projets

> Peches et Oceans

> Gestion de l'habitat

> Cote sud

> 3225, chemin Stephenson Point

> Nanaimo (C.-B.) V9T 1K3

>

>

>

> -----Original Message-----

> From: S22

> Sent: Wednesday, October 03, 2007 3:20 PM

> To: Murray.coell.mla@leg.bc.ca

> Cc: Arnis.Damberg@gov.bc.ca; John.Baldwin@gov.bc.ca;

> Gary.Horncastle@gov.bc.ca; plamb@islandstrust.bc.ca; Rutherford, Tom;
> Magnan, Alain; Calla, Karen; Peter.Law@gov.bc.ca;
> mfraser@islandstrust.bc.ca; Greg.Galbin@gov.bc.ca: S22
> ssiconservancy@saltspring.com; S22
> Subject: Urgent threat to Salt Spring Island watercourses
>
>

> Dear Murray S22 are writing to ask that you intervene in an
urgent
> matter on SSI. It concerns the small watercourses S22

S22

> A developer has recently bought property that has a creek and
large
> wetland (Swansons Pond) on it. The pond has ducks, red- legged frogs
> and muskrats in it and there are native sea run cutthroat trout
> downstream. A Great Blue Heron occasionally nests there . The new
> owner has approached Water management and MOE and has asked to turn
> Swanson's Pond into developable land. He is arguing that the pond and
> its inlet creek are not a watercourse under the water act.
>

> We need time to bring information to MOE and other government
> agencies so that we can put forward evidence that will help preserve
> this important habitat now. This case could set a precedent for the
> many other small streams and their endangered habitats on Salt Spring
> Island.
>

> Request
>

> Would you please intervene and stop the decision making process
until

> Salmon Enhancement and other groups can present evidence that this
> stream is a true watercourse.

> We would very much appreciate your action in this matter and
would be

> glad to give you additional details.
>

> Sincerely,
>
>
>
>
>
>
>
>

S22

DeProy, Joyce CSD:EX

From: S22
Sent: Tuesday, December 4, 2007 4:33 PM
To: Law, Peter ENV:EX
Subject: Re: QEP Assessment Reports

No problem. Thanks for letting me know.

S22

On Dec 4, 2007 7:30 PM, Law, Peter ENV:EX <Peter.Law@gov.bc.ca> wrote:
Sorry, but I am out of the office, and will not be able to answer your questions until Friday.
Pete Law

From: S22
Sent: Tue 12/4/2007 9:33 AM
To: Law, Peter ENV:EX
Subject: Fwd: QEP Assessment Reports

Hi Pete,

Just to keep you in the loop... Stacey or someone else at MoE had Craig Rosser get in touch with me about locating the QEP reports. I've let him know that I got them from the local govt. But, I also asked about the filing/location system, since he brought it up. I assume that I can rely on you to answer my other questions. Thanks,

S22

----- Forwarded message -----

From: S22
Date: Dec 4, 2007 11:58 AM
Subject: Re: QEP Assessment Reports
To: "Rosser, Craig L ENV:EX" <Craig.Rosser@gov.bc.ca>

Yes, thanks. The two QEP reports that I am asking about have incompatible determinations on whether a watercourse is a "stream"/fish habitat. They are for adjacent properties on the same stream. They were prepared within one week of each other. The fact that both were accepted as valid by MoE suggests that there is a problem of making consistent determinations under the RAR for the same streams. In fact, MoE's notification to the local government affirming

the QEP 'not-fish-habitat' opinion also conflicts with the local Official Community Plan bylaw specifying that property and watercourse as "potential and existing fish habitat" in accordance with a QEP assessment of all such freshwater in the local government's jurisdiction done in 1995/6. I would presume that if the MoE had a system whereby it tracked QEP opinions and assessment reports by watercourse, in addition to Site Registry ID, they could flag these for potential conflict with other QEP opinions and local bylaw designations of fish habitat and thereby apply greater scrutiny. Also, in this case, it raises questions about the quality of analysis done by one or another QEP, so that might also be a concern for the professional association and MoE when dealing with future assessments by a particular QEP. So, being able to track by QEP (in addition to watercourse) may also be useful for determining what level of review is required by MoE of an assessment report before providing any notification to the local government.

Just my thoughts.

S22

On Dec 4, 2007 11:23 AM, Rosser, Craig L ENV:EX <Craig.Rosser@gov.bc.ca> wrote:

> Hi Peter,
>
> Land remediation reports are linked to the Site Registry ID and stored
> in files that use that ID for reference that is how we track reports.
>
> Hope this answers your question.
>
> Regards,
> Crag
>
> -----Original Message-----
> From S22
> Sent: Monday, December 3, 2007 3:10 PM
> To: Rosser, Craig L ENV:EX
>
> Subject: Re: QEP Assessment Reports
>
> Hi Craig,
>
> Thank you for this. The local government has since provided me with
> copies of the two that I was looking for. But I am also wondering
> whether it is possible to look up reports by the name of the QEP who has
> prepared them, or by the company that the QEP works for? Is the SITE id
> the only means by which these reports are tracked?
>
> Thanks,
>

> S22
 >
 > On Dec 3, 2007 6:02 PM, Rosser, Craig L ENV:EX < Craig.Rosser@gov.bc.ca >
 > wrote:
 >> Hello Peter,
 >>
 >> You will need to find the SITE id for the properties you mention as we
 >
 >> have no way of looking up the reports without it.
 >>
 >> Once found we can look in our file room for any reports associated
 >> with the Site id.
 >>
 >> If you do not have access to BC Online you can submit the attached
 >> application to have us search for it.
 >>
 >> Best regards,
 >> Craig Rosser
 >> Site Information Advisor
 >> Ministry of Environment
 >> Environmental Management Branch
 >> 3rd Floor - 2975 Jutland Road
 >> Victoria BC V8W 9M1
 >>
 >> PH: (250) 356-0334
 >> Fax: (250) 953-3856
 >>
 >>
 >>
 >> -----Original Message-----
 >> From: S22
 >> Sent: Thursday, November 29, 2007 8:55 PM
 >> To: Rosser, Craig L ENV:EX
 >> Subject: Fwd: QEP Assessment Reports
 >>
 >> Sorry, mistyped the address
 >>
 >>
 >> -----
 >> From: S22
 >> Date: Nov 29, 2007 11:05 PM
 >> Subject: QEP Assessment Reports
 >> To: craigrosser@gov.bc.ca
 >> Cc: "Wilkerson, Stacey L ENV:EX" < stacey.wilkerson@gov.bc.ca >
 >>
 >>
 >> Hi Craig,
 >>
 >> Thank you for your phone message. I am looking for two QEP Assessment
 >> Reports done this past summer for adjacent properties on Swanson
 >> Creek/North Ganges Creek in Upper Ganges Village on Salt Spring

> Island.

>> I believe the properties are located on Park Drive, but I am not
>> certain and do not know their addresses.

>>

>> The QEP Assessment Reports were done by:

>> 1) Kathy Reimer

>> 2) Warren Appleton

>>

>> Thanks,

>>

>> S22

>>

>

DeProy, Joyce CSD:EX

From: S22
Sent: Friday, December 7, 2007 2:28 PM
To: Law, Peter ENV:EX
Subject: Re: "Stream" under RAR

Attachments: QEP AR for Booth Pty.pdf; QEP AR for Grayson Pty.pdf



QEP AR for Booth
Pty.pdf (934...



QEP AR for
Grayson Pty.pdf (2..

On Dec 7, 2007 5:22 PM,

S22

wrote:

> Hi Peter,
>
> I'll give you a call, if you are in now.
>

S22

>
> On Dec 7, 2007 5:19 PM, Law, Peter ENV:EX <Peter.Law@gov.bc.ca> wrote:
> > Peter
> > You have had many emails, and I am a bit confused what you would
> > like to speak to me about. Perhaps this is a discussion that we
> > should have by phone.
> > Here is my phone number, or give me yours and I will phone you.
> > Peter Law
> > Ecosystem Biologist*
> > Ministry of Environment
> > Vancouver Island Region
> > 2080 Labieux Road
> > Nanaimo B.C. V9T 6J9
> > *Habitat Officer under the Water Act - Section 9
> >
> > Peter.Law@gov.bc.ca
> > Phone: (250) 751-3229
> > Fax: (250) 751-3103
> >
> >

> > -----Original Message-----

> > From: S22
> >
> > Sent: Monday, December 3, 2007 10:01 AM
> > To: Wilkerson, Stacey L ENV:EX
> > Cc: Law, Peter ENV:EX
> > Subject: Re: "Stream" under RAR
> >

> > Thank you. I assume that also applies where the culvert may pose a
> > barrier to upstream passage of fish - since, in this context, the
> > consideration is largely the dependence of downstream fish habitat.
> >

> > On Dec 3, 2007 12:51 PM, Wilkerson, Stacey L ENV:EX
> > <Stacey.Wilkerson@gov.bc.ca> wrote:

> > >
> > >
> > > Culverted streams are still considered surface flow.
> > >

> > >
> > >

> > > From:

S22

> > > Sent: Monday, December 3, 2007 9:48 AM
> > >
> > > To: Wilkerson, Stacey L ENV:EX
> > > Cc: Law, Peter ENV:EX
> > >
> > >
> > > Subject: Re: "Stream" under RAR
> > >
> > >
> > > Unfortunately, it repeats my question. I guess, I was wondering if
> > > the "surface flow" requirement in RAR negates all waters that
> > > provide fish habitat (in that they provide stream flow, nutrients,
> > > etc for fish
> > > downstream) where they travel subsurface for a distance. MoE says
> > > on
> > > its
> > > website that "fish habitat includes watercourses, streams,
> > > ditches,
> > > ponds
> > > and wetlands that provide water, food or nutrients into a
> > > fish-bearing stream even if they do not contain fish and/or if
> > > they only have
> > > temporary
> > > or seasonal flows".
> > > (eg: whether I drink water straight out of the glass or through a
> > > straw does
> > > not alter the benefit I receive from it). Anyway, I'll check with
> > > Pete.
> > >
> > >
> > >
> > >
> > > On Dec 3, 2007 12:17 PM, Wilkerson, Stacey L ENV:EX <
> > > Stacey.Wilkerson@gov.bc.ca> wrote:
> > >
> > > > If a watercourse is fish habitat (i.e. directly or indirectly)
> > > > then
> > > > it
> > > > is a stream under the RAR. For example, if a roadside ditch was
> > > > connected by surface flow to a fish bearing stream, then the RAR
> > > > would
> > > > apply to the ditch...even if there were not fish in it. We
> > > > require local governments to have definitions that are
> > > > consistent with the
> > > RAR-
> > > > if they don't then their bylaws are not in compliance with the
> > > > RAR
> > > > and
> > > > they need to include consistent definitions so that they are
> > > > meeting
> > > > or
> > > > beating the level of protection set out in RAR. If there is
> > > > evidence
> > > > that a watercourse is fish habitat, then the RAR applies. If
> > > > there
> > > > is
> > > > uncertainty, it should default to fish habitat.
> > > >
> > > > Hope that helps,
> > > >
> > > > Stacey
> > > >
> > > > -----Original Message-----
> > > > From:

S22

> > > > Sent: Friday, November 30, 2007 8:19 AM
> > > > To: Wilkerson, Stacey L ENV:EX
> > > >
> > > >
> > > > Subject: Re: "Stream" under RAR
> > > >
> > > > Sorry, I have two other questions. One that I forgot to ask and
> > > > the other that just came up.
> > > >
> > > > Does the Fisheries Act definition of "stream" still apply in the
> > context
> > > > of RAR? For example, if fish indirectly depend on a watercourse
> > > > in
> > order
> > > > to carry out their life processes, is this a stream under RAR,
> > > > even
> > if
> > > > it does not match the limitations of the definition in RAR?
> > > >
> > > > On a related note, where two definitions conflict, does the more
> > > > specific definition prevail for the purposes of the Ministry of
> > > > Environment or the local government? RAR would seem more
> > > > specific
> > than
> > > > the Fisheries Act, yet I understand that it is intended to
> > > > implement
> > the
> > > > Fisheries Act definition. However, it is meant to take effect
> > through
> > > > local bylaws. If the local bylaw incorporates the definition of
> > > > RAR,
> > but
> > > > also another bylaw designates a particular stream as "existing
> > > > or potential fish habitat", it would seem that the bylaw
> > > > defining the stream as fish habitat would be the more specific
> > > > than RAR and
> > should
> > > > remove any questions or difficulty of interpretation. I believe
> > > > that
> > the
> > > > bylaw identifying fish habitat in this local government area was
> > drafted
> > > > using DFO data. Would that have any bearing on its authority?
> > > >
> > > > Thanks again, and sorry for all of these questions.
> > > >
> > > > - S22
> > > >
> > > > On Nov 30, 2007 12:13 AM, S22 wrote:
> > > > Hi Stacey,
> > > >
> > > > I assume you are the one who asked Craig Rosser to give me a
> > > > call regarding the QEP Assessment Reports, thanks. I look
> > > > forward to getting those. I have some other questions that I
> > > > am having
> > difficulty
> > > >
> > > > getting answers to. If you know anyone that can help, I would
> > > > be grateful.
> > > >
> > > > Under s.4(1) of the Riparian Area Regulations a local
> > > > government
> > must
> > > > not approve or allow development to proceed in riparian
> > > > assessment areas unless the development proceeds in accordance

> > > > with
 > > subsection
 > > > > (2) (obtaining a QEP Assessment Report) or (3) (Approval from
 > > DFO). I
 > > > > am told that one of the two QEP Assessment Reports that I've
 > > requested
 > > >
 > > > > found that Swanson Creek is not a stream and is not a riparian
 > > > > assessment area. But in the Schedule to RAR this includes
 > > > > streams
 > > that
 > > >
 > > > > are "currently or potentially fish-bearing." I understand that
 > > > > the schedule is a legally binding part of RAR. I checked local
 > > > > Salt
 > > Spring
 > > >
 > > > > bylaw 345 which governs development and Map 12 lists Swanson
 > > Creek up
 > > >
 > > > > to and above Swan Pond as "Existing and Potential Fish Habitat."
 > > As
 > > > > well, Map 21 lists the same Creek area as "Lakes, Streams and
 > > > > Wetlands". Someone told me that Swanson Pond was just beyond
 > > > > the identified areas on the maps, but I enlarged both maps and
 > > overlaid
 > > > > them with a cartographer's map and this creek up to and beyond
 > > > > the pond was captured by both bylaw maps. Is it possible for
 > > > > the local government to issue a development approval under the
 > > > > authority of
 > > a
 > > > > bylaw when that same bylaw designates that property as a "stream"
 > > and
 > > > > "existing and potential fish habitat"? There must be some
 > > > > conflict with its RAR responsibilities, is there not?
 > > > >
 > > > > If approval is on the basis of one of the QEP Assessment
 > > > > Reports,
 > > I am
 > > >
 > > > > wondering how a QEP determination of whether it is a stream
 > > > > and
 > > fish
 > > > > habitat can override the bylaw determination, especially when
 > > > > the
 > > BC
 > > > > Fish Protection Act requires municipalities to meet or exceed
 > > > > RAR standards. Shouldn't the more stringent protection prevail?
 > > > >
 > > > > Isn't it possible for a local government to designate "streams"
 > > under
 > > > > the RAR? What if those streams were already designated as
 > > "existing
 > > > > and potential fish habitat" before RAR came into existence?
 > > > >
 > > > > I notice also that SSI Local Trust Committee has not yet
 > > implemented
 > > > > its obligations under the BC Fish Protection Act or RAR by
 > > amending
 > > > > its bylaws with respect to development and zoning. Is there a
 > > deadline
 > > >
 > > > > for compliance?
 > > >
 > > > > If a watercourse was previously fish-bearing, does it maintain
 > > > > its status as "potentially" fish-bearing if man-made

> > > > obstacles, such
> > as
> > > > culverting, are introduced? I have a 2001 report concerning a
> > proposed
> > > >
> > > > development on one of the properties, and it provides accounts
> > > > of
> > both
> > > >
> > > > native trout and introduced small mouth bass in Swanson Pond.
> > > > Ironically, one of the authorities cited for that information
> > > > is
> > one
> > > > of the current developers (Eric Booth).
> > > >
> > > > If you can help me find answers to these questions, I would be
> > most
> > > > grateful. Thanks.
> > > >
> > > >
> > > >
> > >
> > >
> >
> >
>

S22

DeProy, Joyce CSD:EX

From: S22
Sent: Friday, December 7, 2007 6:47 PM
To: Law, Peter ENV:EX
Subject: Re: Appleton's letter in a nutshell

One thing that bothered me about the situation is that the developer had the report sent to him, rather than directly to MoE. I don't know if this is standard practice, but by this arrangement the developer had the power to vet whatever correspondence MoE would receive.

Combined with the fact that the developer hired a company by the name of "Balanced Environmental" with its offices located adjacent to railyard and heavy industrial area in Vancouver (about 4-5 hours travel from the property) gives the impression he was "QEP shopping"

and vetting the report. S22 is a QEP who knows this watercourse better than anyone and has done the RAR training, unlike Warren Appleton, who I don't believe had taken RAR training and might never have seen this watercourse before in his life - which I suspect is exactly what the developer wanted. I think the circumstances would affect the relative credibility between the two assessments. Anyway, just my thoughts.

- PW

On Dec 7, 2007 9:07 PM, S22 wrote:
> Hi Peter,
>
> In a nutshell, here are the problems that I have with Appleton's letter.
>
> He concludes (rightly or wrongly) that Swanson Pond is "not fish habitat".
> To reach this conclusion he must find that "fish do not depend
> directly or indirectly on this watercourse for their life processes."
> But he doesn't say that.
>
> Instead, Appleton says "A) there are no fish present, B) there are
> permanent barriers to fish." Under RAR, this is the necessary premise
> for a "non-fish-bearing status report," which is not the same as
> saying, this is "not fish habitat." The RAR makes this distinction
> clear by saying that "non-fish-bearing streams are still protected
> under the Riparian Areas Regulation if they provide water, food or
> nutrients to a fish-bearing stream."
>
> However, under RAR to make a finding of "non-fish-bearing" status, one
> must consider whether a stream is also potentially fish bearing. RAR
> states "Fish-bearing streams are ones in which fish are present or
> potentially present if introduced obstructions could be made
> passable." To be potentially fish bearing, a stream must have A) no
> fish, B) barriers to fish... that can be made passable. While Appleton
> declares the culverting to be a permanent barrier, he did not do any
> assessment of whether they could be made passable or bypassed. I have
> seen what Salmon Enhancement can do to make obstacles passable. Also,
> there are proposals (eg Grange) to run the watercourse above ground
> for flood control purposes. Appleton also omitted mentioning that the
> 2001 report he cites provides historical accounts of trout and bass
> above the "permanent barriers". All of which suggest this may be potentially fish
bearing.
>
> In determining the culverting to be a barrier, he does minimal visual
> testing and does not follow MoE guidelines on making this
> determination. He does minimal observation on one day at a time of
> year when fish would not be migrating in this area. I believe Salmon
> Enhancement helped purchase or was consulted on the purchase of
> culverting on this creek to ensure that it was navigable by fish. I
> could be wrong, but some of that information is in the 'reams' provided by S22

S22

>
> As well, Appleton doesn't test for the presence of fish. Instead, he
> relies on a 2001 report by another QEP (who considers this to be fish
> habitat and who, unlike Appleton, knows this watercourse well
> (extremely well) and had taken RAR training). He also doesn't mention
> that that QEP had done an assessment of all "potential and existing
> fresh-water fish habitat" on the island in 1995 and had included that
> stream and pond as "existing and potential fish habitat. That
> assessment is enacted in the existing OCP bylaw.
>
> As RAR says "The only watercourses that are exempt from the Riparian
> Areas Regulation are those that are clearly isolated from a fish-bearing system."
> In previous years the lower reaches of this stream have provided
> spawning beds for searun cutthroat trout and chum salmon. As well, it
> flows into Ganges Creek which is also salmon spawning habitat.
> Doubtless, this is a low flow urban stream that is highly sensitive,
> but cannot yet be protected under s.8 of the BC Fish Protection Act,
> although I believe it would be sensible to nominate it for that status
> once that provision comes into force.
>
> Anyway, suffice to say, Appleton's letter is at best a
> "non-fish-bearing status report" (although omitting certain RAR
> considerations) and does not provide sufficient grounds for concluding
> that Swanson Pond is not fish habitat and not subject to RAR. As well,
> it conflicts with more informed determinations of this watercourse as potential and
existing fish habitat.
> At the very least the developer ought to be required to obtain a
> proper Assessment Report under RAR to ensure that he isn't damaging
> fish habitat, or comply with the local bylaw which would provide for
> something similar (with smaller default set-backs).
>
> I think MoE would do well to support the work of S22 who has
> been very accommodating to the needs of property owners, government
> and businesses, at the same time that she has found mutually
> acceptable solutions for preserving and enhancing fish habitat on SSI.
> She might be MoE's best asset on the island. If someone conflicts with
> her assessment, it is worth taking a second look at the situation.
>
> Thanks,
>
> S22
>
>
>
>

DeProy, Joyce CSD:EX

From: S22
Sent: Thursday, December 13, 2007 4:23 AM
To: Law, Peter ENV:EX
Subject: Re: Appleton's letter in a nutshell

Hi Peter,

Just a reminder, if you could let me know if MoE has given the Trust any 'notification' or communication on the basis of the Warren Appleton letter.

In the meantime, I thought you might enjoy this photo/article.

[http://www.telegraph.co.uk/earth/main.jhtml;jsessionid=MWYC5AWNHA VGLQFIQMFSFF4AVCBQ\(xml=/earth/2007/12/11/eat trout111.xml](http://www.telegraph.co.uk/earth/main.jhtml;jsessionid=MWYC5AWNHA VGLQFIQMFSFF4AVCBQ(xml=/earth/2007/12/11/eat trout111.xml)

S22

On Dec 7, 2007 9:07 PM,

S22

wrote:

Hi Peter,

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He concludes (rightly or wrongly) that Swanson Pond is "not fish habitat". To reach this conclusion he must find that "fish do not depend directly or indirectly on this watercourse for their life processes." But he doesn't say that.

Instead, Appleton says "A) there are no fish present, B) there are permanent barriers to fish." Under RAR, this is the necessary premise for a "non-fish-bearing status report," which is not the same as saying, this is "not fish habitat." The RAR makes this distinction clear by saying that "non-fish-bearing streams are still protected under the Riparian Areas Regulation if they provide water, food or nutrients to a fish-bearing stream."

However, under RAR to make a finding of "non-fish-bearing" status, one must consider whether a stream is also potentially fish bearing. RAR states "Fish-bearing streams are ones in which fish are present or potentially present if introduced obstructions could be made passable." To be potentially fish bearing, a stream must have A) no fish, B) barriers to fish... that can be made passable. While Appleton declares the culverting to be a permanent barrier, he did not do any assessment of whether they could be made passable or bypassed. I have seen what Salmon Enhancement can do to make obstacles passable. Also, there are proposals (eg Grange) to run the watercourse above ground for flood control purposes. Appleton also omitted mentioning that the 2001 report he cites provides historical accounts of trout and bass above the "permanent barriers". All of which suggest this may be potentially fish bearing.

In determining the culverting to be a barrier, he does minimal visual testing and does not follow MoE guidelines on making this determination. He does minimal observation on one day at a time of year when fish would not be migrating in this area. I believe Salmon Enhancement helped purchase or was consulted on the purchase of culverting on this creek to ensure that it was navigable by fish. I could be

wrong, but some of that information is in the 'reams' provided by

S22

As well, Appleton doesn't test for the presence of fish. Instead, he relies on a 2001 report by another QEP (who considers this to be fish habitat and who, unlike Appleton, knows this watercourse well (extremely well) and had taken RAR training). He also doesn't mention that that QEP had done an assessment of all "potential and existing fresh-water fish habitat" on the island in 1995 and had included that stream and pond as "existing and potential fish habitat. That assessment is enacted in the existing OCP bylaw.

As RAR says "The only watercourses that are exempt from the Riparian Areas Regulation are those that are clearly isolated from a fish-bearing system." In previous years the lower reaches of this stream have provided spawning beds for searun cutthroat trout and chum salmon. As well, it flows into Ganges Creek which is also salmon spawning habitat. Doubtless, this is a low flow urban stream that is highly sensitive, but cannot yet be protected under s.8 of the BC Fish Protection Act, although I believe it would be sensible to nominate it for that status once that provision comes into force.

Anyway, suffice to say, Appleton's letter is at best a "non-fish-bearing status report" (although omitting certain RAR considerations) and does not provide sufficient grounds for concluding that Swanson Pond is not fish habitat and not subject to RAR. As well, it conflicts with more informed determinations of this watercourse as potential and existing fish habitat. At the very least the developer ought to be required to obtain a proper Assessment Report under RAR to ensure that he isn't damaging fish habitat, or comply with the local bylaw which would provide for something similar (with smaller default set-backs).

I think MoE would do well to support the work of S22 who has been very accommodating to the needs of property owners, government and businesses, at the same time that she has found mutually acceptable solutions for preserving and enhancing fish habitat on SSI. She might be MoE's best asset on the island. If someone conflicts with her assessment, it is worth taking a second look at the situation.

Thanks,

S22

DeProy, Joyce CSD:EX

From: Caskey, Marlene ENV:EX
Sent: Tuesday, December 18, 2007 6:01 PM
To: Law, Peter ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

Yes, I did.

S13

From: Law, Peter ENV:EX
Sent: Tuesday, December 18, 2007 4:57 PM
To: Caskey, Marlene ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

Marlene

I did want to speak to you about this.

I understand your frustration.

Yes, we should move on.

The point I wanted to try to get clarity on was whether we (you) told the planner at Island's Trust that RAR applies. It appears you did. That's all I was looking for.

Pete

From: Caskey, Marlene ENV:EX
Sent: Tue 12/18/2007 2:54 PM
To: Law, Peter ENV:EX
Subject: Swansons Pond on Saltspring Island

S13, S22

S13, S22

Marlene

From: Wilkerson, Stacey L ENV:EX
Sent: Tuesday, October 9, 2007 1:58 PM
To: Caskey, Marlene ENV:EX
Cc: Law, Peter ENV:EX
Subject: RE: Swansons Pond on Saltspring Island-Andy's response

I put the question to Andy and here is his response:

It comes down to when does the upstream section cease to be "fish habitat". If the culvert is of a significant length (and we have not come up with a good rule of thumb to define "significant" we feel we may be able to do that based on the examples that are brought forward over the next while) the upstream area stops delivering warm water, LWD, sediment etc. It is not if there are "some" culverted sections. We have had situations where the stream flows into a culvert which flows under an established subdivision. There are no fish in the stream (or this case pond), and there is no way it is going to be connected by surface flow again. It has been a call that Karen and I have been making on a case by case basis. This is a situation where people are looking to use the RAR to protect things other than "fish habitat".

From: Caskey, Marlene ENV:EX
Sent: Tuesday, October 9, 2007 11:39 AM
To: Wilkerson, Stacey L ENV:EX
Cc: Law, Peter ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

As I understand this situation, the QEP claims that he was told, and had it confirmed through you and Andy, that, since the creek flows through some long culverts prior to discharge to fish-bearing waters, the RAR does not apply.

So, if there are culverted stretches in a creek, you no longer consider it a 'surface flow' connection? What length of culvert is your cut-off? What diameter of culvert?

To me, it should be the proportion of the watershed flowing through the culvert, or some measure of volume/culvert diameter, which should be used to determine whether or not the RAR applies. Not length of culvert.....the water quality impacts downstream are the same no matter what the length of culvert!

*P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment
Nanaimo
(250) 751-3220*

From: Wilkerson, Stacey L ENV:EX
Sent: Friday, October 5, 2007 11:12 AM
To: Law, Peter ENV:EX
Cc: Caskey, Marlene ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

Hi Pete and Marlene,
The RAR only applies if it is fish habitat (i.e. fish bearing or connected by surface flow to fish bearing waters). I am very careful not to give an interpretation of site conditions; I give guidance on the legislation and the situations where it applies.

If we require people to use the RAR when it doesn't apply then we lose our credibility. Some other tool will have to be used unless you tell me that Swanson's pond is fish habitat. I understand your frustration...but the legislation is what it is. Do we have some other tool we can use?

Stacey

From: Law, Peter ENV:EX
Sent: Thursday, October 4, 2007 10:59 AM
To: Wilkerson, Stacey L ENV:EX
Subject: FW: Swansons Pond on Saltspring Island
Importance: High

Stacey

Here is (another) case of a simple phone conversation you and Andy have had with a caller, where they have taken your "interpretation" of the site conditions, and provided an opinion....which seems to be sinking our goal of wetland protection on Saltspring.

Help. We need to get our communication strategy clear cause they are using you as a "trump" over us.

Pete

From: Caskey, Marlene ENV:EX
Sent: Friday, September 28, 2007 11:14 AM
To: Law, Peter ENV:EX
Subject: FW: Swansons Pond on Saltspring Island
Importance: High

See first attachment.

This is the first I have heard that the RAR does not apply to non-fish-bearing waters.
Did you say this, or is this Victoria??????

From: Mark Brodrick [mailto:mbrodrick@islandstrust.bc.ca]
Sent: Wednesday, September 26, 2007 4:32 PM
To: Caskey, Marlene ENV:EX
Subject: RE: Swansons Pond on Saltspring Island

Hi Marlene,

Please review the two attachments provided by Eric Booth. The first is a letter from Scott Christie, President of Balanced Environmental confirming Warren Appleton's credentials and informing that no RAR is required.

Further the second attachment is a scan of a letter provided by Eric Booth, specifically please review number 22.

Please advise if you have any further concerns or whether you are satisfied with both the credentials and that there is no need for a RAR.

Thanks

Mark

Mark Brodrick, Island Planner
Islands Trust
1-500 Lower Ganges Road
Salt Spring Island, BC V8K 2N8
250-538-5602 phone; 250-537-9116 fax
1-800-663-7867 via Enquiry BC
mbrodrick@islandstrust.bc.ca
www.islandstrust.bc.ca
Preserving Island communities, culture and environment

From: Caskey, Marlene ENV:EX [mailto:Marlene.Caskey@gov.bc.ca]
Sent: Monday, August 27, 2007 4:08 PM
To: Mark Brodrick
Subject: RE: Swansons Pond on Saltspring Island

I looked at the 2 reports on Friday. Kathy's report simply states that no fish were found within the pond.

The report by Warren Appleton is a concern. First, it would appear that he based his decisions on whether or not the culverts were barriers to fish passage strictly on observation of the structures, with no fry trapping or supplementary methods to determine presence of fish. As I myself have observed fish above some of the barriers he has identified, I would not agree that all of them are fish barriers.

We in Ecosystems have started carrying culvert assessments to determine fish access over the past couple years - these require extensive surveying and supportive computer flow modelling. Decisions are not based on a visual look at a culvert.

S22

I looked him up because his report indicates an incomplete knowledge of the RAR. If fish are present ANYWHERE downstream of a development site, then the RAR applies. His report makes the assumption that fish have to be able to access the property in question before the RAR applies. This is incorrect.

The RAR does apply to Swanson's Pond.

According to my discussion today with Arnis Damberg of our Water Stewardship Branch, the developer wishes to fill/reconfigure Swanson's Pond to create a small water feature, which he will keep at a set water level through augmentation from the nearby spring. He is also talking about making his pond a 'closed' feature - by having the present inflow diverted along Park Drive so that it bypasses the pond. As Swanson's Pond helps to ameliorate flood flows, increased flooding may be a problem downstream unless other actions are taken to deal with stormwater flows. This is something you may need to address through your development permit, IF you agree to let him

modify Swanson's Pond.

*P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment
Nanaimo
(250) 751-3220*

From: Mark Brodrick [mailto:mbrodrick@islandstrust.bc.ca]
Sent: Monday, August 27, 2007 11:35 AM
To: Caskey, Marlene ENV:EX
Subject: Swansons Pond on Saltspring Island

Hi Marlene,

Attached are two PDF reports that Eric Booth forwarded to me this morning. I have not read these yet. Please let me know if these reports are acceptable or whether you think a RAR assessment needs to be done on Swansons Pond, Salt Spring Island.

As I am meeting with Eric tomorrow may I have your response today please? When I meet with Eric I will try to find out what he intends to do.

Below is an email I sent this morning with some additional information. Also attached are the photos I took on Friday's site inspection.

Thanks Marlene

Mark
Mark Brodrick, Island Planner
Islands Trust
1-500 Lower Ganges Road
Salt Spring Island, BC V8K 2N8
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1-800-663-7867 via Enquiry BC
mbrodrick@islandstrust.bc.ca
www.islandstrust.bc.ca
Preserving Island communities, culture and environment

From: Mark Brodrick
Sent: Monday, August 27, 2007 9:53 AM
To: Peter Lamb; Justine Starke; George Leukefeld; George Ehling; Gerry Hamblin
Subject: RE: Swansons Pond on Saltspring Island

Good Morning,

I left a voice mail for Eric on Friday, August 24. Eric did return my telephone call

twice on Friday but I was not available. I did a site inspection and there was no activity and no pumping. I took some photos that are attached. The surface of the pond is covered in duck weed and there is no water flowing down the outlet.

I spoke with Eric this morning and he is sending me copies of two reports, the "Balanced" report which I am told states no RAR assessment is required and a Reimer report which I am told states there are no fish in Swansons Pond.

I am meeting Eric tomorrow morning to walk the watershed.

Mark

From: Peter Lamb
Sent: Saturday, August 25, 2007 6:39 PM
To: Justine Starke
Cc: Mark Brodrick; George Leukefeld; George Ehring
Subject: RE: Swansons Pond on Saltspring Island

Justine,,Thanks. I spoke to S22 about the RAR report on this property and she noted that, under the Implementation Guidelines for the RAR, a local government is able to question a QEP report if it has additional information or specific concerns with the report. Perhaps this should be verified and a copy of the QEP report obtained from the landowner.

Peter

Peter Lamb
Salt Spring Island Trustee
Tel: Office; 250-537-9144
Home; S22
Email; plamb@islandustrust.bc.ca

Caskey, Marlene ENV:EX

From: Mark Brodrick [mbrodrick@islandstrust.bc.ca]
Sent: Monday, March 10, 2008 4:40 PM
To: Caskey, Marlene ENV:EX
Subject: re: Swansons Pond, Salt Spring Island

Hi Marlene,

This is a follow up to our telephone conversation earlier today.

1.

At the March 6, 2008 LTC meeting I recommended that the submitted design sketches for the proposed Swansons Pond development be referred to the Advisory Design Panel for further consideration. The recommendation was denied and the LTC directed the applicant and myself to work on a variety of issues. (I will be meeting with the applicant again this Thursday). One of the LTC's main concerns pertained to the RAR assessment. You may recall that I previously forwarded the QEP's (Warren Appleton) report to you last August 27, 2007, via email. The LTC feels that some confusion remains about whether the submitted QEP report was acceptable or not.

- Please provide me with a written response, on letterhead, that explicitly states MoE's position on the QEP report that asserted that the Swansons Pond inlet, outlet and pond is not subject to a RAR assessment. Further, please provide an explanation as to why a RAR assessment was required for the adjacent and upstream property but not for the Swansons Pond property. You will appreciate that there is a lot of interest and controversy around the subject proposed development. Both the LTC and the MoT has asked me for clarification - and so your response is critical. An immediate response would be appreciated - preferably no later than Friday, March 21, 2008. Thanks Marlene

no point what Debbie & Greg heard. They want a drainage/stormwater plan that addresses watershed

The applicant has applied to the MoT to divert the incoming water from going onto the subject property and to improve the existing ditches along the road right-of-ways that are located along Park Drive and along the undeveloped road right-of-way located along the east side of the Swansons Pond property. Based on a meeting with MoT earlier today I understand that the MoT is not adverse to the proposed re-routing of water, but a drainage plan is required. The drainage plan should show how the pre and post development runoff should be the same and the "time of concentration" must remain the same. I understand that MoE does not want any increase in downstream runoff. The applicant proposes rain gardens, bioswails and informs that the subject development could be engineered so that normally there would be no runoff. If you have any thoughts or concerns could you please let me know - an email response is fine.

- * they do have watershed*
3. During our conversation earlier today I mentioned that on several occasions S22 had informed me that a local government can require a RAR assessment even when a QEP determines that an assessment is not required. However, based on our conversation earlier today I understand that there is no legislative provision granting this authority. Rather, the local government's land use bylaws may identify such a requirement. SSI's land use bylaws are pre-RAR and therefore currently have no authorizing provisions. I must rely only on the existing development permit area guidelines. If you have any other thoughts please let me know- and again an email response is fine.

thanks Marlene

Mark

Mark Brodrick, Island Planner
Islands Trust
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Preserving Island communities, culture and environment

Pages 48 through 49 redacted for the following reasons:

S22

Caskey, Marlene ENV:EX

From: Law, Peter ENV:EX
Sent: Wednesday, April 9, 2008 5:07 PM
To: Caskey, Marlene ENV:EX
Subject: FW: Swanson Pond

my notes from a couple of nights ago.

From: Peter Law S22
Sent: Monday, April 7, 2008 9:09 PM
To: Law, Peter ENV:EX
Subject: Swanson Pond

Question as to whether the Swanson Pond property should have been the subject of a RAR assessment. Yes.

1. It was on the the local government watercourse DPA 4 maps that required an assessment of the watercourse prior to any development. This means that the community had placed this site within their environmental areas of interest, so the RAR assessment should have been a minimum requirement. I also note that the DPA maps included 2 tributaries to Swanson's Creek, which are located within or close to (30 meters) of the subject property.

2. - Swanson Creek from the subject property flows into a fish bearing watercourse. - contains a substantial "surface" flow component. - Historically known to provide habitat for sea-run cutthroat trout population, and if culverts were removed in the future, the habitats could become viable again.

3. Swanson Pond is identified as fish habitat, as it provides an essential component to the hydrology of this small watershed, it provides a wetland/detention component to the Swanson Creek system since it's creation in the 1950's. Prior to that date, it is our considered opinion that much of the lower reaches of Swanson Creek was a wetland, that has been filled (from the school area downstream). To divert the wetland, and ignore the importance this wetland as a buffer in providing in attenuating peak flows in the winter and low flows in the spring/early summer is a factor that will limit the productive capacity of the Swanson Creek system in the future. The wetland also provides a significant role in maintaining water quality in the lower reaches of the stream by slowing the flows and allowing a deposition of sediments generated from upstream sources.

Does it make sense to require a RAR assessment at this time. No,

- 1) A QEP has provided an opinion that the site would not be subject to a RAR, as fish could not access the site. The opinion was supported by our Victoria office (although no site visits were made to confirm the comments).
- 2) There has been an MoE report to the developer that identified the pond as not being part of a stream (under the Water Act).
- 3) The developer has proceeded with design plans without prejudice.

What are the concerns of MoE (Ecosystems) and DFO (Habitat) with the proposed development strategy as described on April 7, 2008?

- the wetland has been "disconnected" to the mainstem flows in the upper watershed, diverting 100% of the runoff to the ditchline of Park Ave. This is being done in recognition that this wetland provides no "flow attenuation" and "water quality" values to downstream reaches of Swanson Creek. This is a problem from our perspective, as the wetland does have considerable value in achieving these objectives, and we believe this needs to be assessed.

- The development site, along with all development proposals in the local settlement area of Ganges is subject to a mish mash of government jurisdictions that are ignoring the issue of "drainage" for environmental health of the streams and property protection. This landowner is following a long history of development permitting with respect to drainage management, which is to move the drainage issue into the road r/w, where the Ministry of Highways have jurisdiction to allow for "road drainage". This mode of operation has allowed Ganges to ignore the need to allow for rainwater surface flows in Swanson Creek, and the preservation of a stream to allow for this stream to maintain a healthy channel and riparian condition for aquatic species.

- April 7/08 Swanson Pond
- ~~Attracted~~ the spring (Hickey) at Desmond Rd.
- S22 contractor - Maniroad - ditching - 2 miles ago

- the pond is now being drained - a 4" dia pipe has been placed into the pond - to partially

- there is a commitment from the developer to look at re-establishing a more permanent stream area
- looking towards stormwater plan for the site - predevelopment run off has been done - but the developer wants to manage stormwater at the site
- the swanson pond will be the stormwater detention pond for larger rainfall events.

- ~~the~~ the ecological conditions of the site will not exist after the development.
- only a 24' setback for buildings - that seems to be the only requirement at this time.

[- At Magnan, Marlene Caskey, Peter Law, Eric Booth
- Wayne Lee - Region or project]

- the ditchline on Park Drive is not seen as an area that can be restored for fish habitat

- at Park Drive - 900m culvert

→ ? it's interesting to note that this was not considered to be a stream

- Walked the lower creek - & saw how it passes through

- * discussion - the pond is fish habitat, primarily due to the hydrology & water quality provisions that it has provided to fish habitat in lower Swanson Pond. - the discussion about storm drainage at this site concern only the flows generated on the site - for the sponge that
- = we agree that a full assessment "technically" should have been done for the site back in summer 07 - but now, with how the development issues have moved forward - it is unrealistic to require this now.
- = our recommendation that at this time the developer be requested to provide a address flow retention an maintenance. - We believe there will exist in the property that

Caskey, Marlene ENV:EX

From: Law, Peter ENV:EX
Sent: Wednesday, April 9, 2008 5:07 PM
To: Caskey, Marlene ENV:EX
Subject: FW: Swanson Pond

my notes from a couple of nights ago.

From: Peter Law
Sent: Monday, April 7, 2008 9:09 PM
To: Law, Peter ENV:EX
Subject: Swanson Pond

S22

Lot 10 Park Drive development

Question as to whether the (Swanson Pond) property should have been the subject of a RAR assessment. Yes.

Classics
 1. It was on the the local government watercourse DPA 4 maps that required an assessment of the watercourse prior to any development. This means that the community had placed this site within their environmental areas of interest, so the RAR assessment should have been a minimum requirement. I also note that the DPA maps included ~~8~~ tributaries to Swanson's Creek, which are located within or close to (30 meters) of the subject property.

2. - Swanson Creek from the subject property flows into a fish bearing watercourse. - contains a substantial "surface" flow component. - Historically known to provide habitat for sea-run cutthroat trout population, and if culverts were removed in the future, the habitats could become viable again. — *bring forward the requirements for a RAR screen*

3. Swanson Pond is identified as fish habitat, as it provides an essential component to the hydrology of this small watershed, it provides a wetland/detention component to the Swanson Creek system since it's creation in the 1950's. Prior to that date, it is our considered opinion that much of the lower reaches of Swanson Creek was a wetland, that has been filled (from the school area downstream). To divert the wetland, and ignore the importance this wetland as a buffer in providing in attenuating peak flows in the winter and low flows in the spring/early summer is a factor that will limit the productive capacity of the Swanson Creek system in the future. The wetland also provides a significant role in maintaining water quality in the lower reaches of the stream by slowing the flows and allowing a deposition of sediments generated from upstream sources.

*end of the pollutants
low sediment*
~~Does the Andromeda Creek should be brought forward in explaining why the opinion was not~~
 Does it make sense to require a RAR assessment at this time. No,

1) A ~~REP~~ has provided an opinion that the site would not be subject to a RAR, as fish could not access the site. The opinion was supported by our Victoria office (although no site visits were made to confirm the comments).

2) There has been an MoE report (to the developer) that identified the pond as not being part of a stream (under the Water Act). — *clearly state that the term "Stream" under the Water Act does not conflict w/ the Fish Act.*

3) The developer has proceeded with design plans without prejudice.

What are the concerns of MoE (Ecosystems) and DFO (Habitat) with the proposed development strategy as described on April 7, 2008?

- the wetland has been "disconnected" to the mainstream flows in the upper watershed, diverting 100% of the runoff to the ditchline of Park Ave. This is being done in *assumption* recognition that this wetland provides no "flow attenuation" and "water quality" values to downstream reaches of Swanson Creek. This is a problem from our perspective, as the wetland does have considerable value in achieving these objectives, and we believe ~~this needs to be assessed~~. *these need to be assessed / compensated for in the development design*

- The development site, along with all development proposals in the local settlement area of Ganges is subject to a mish mash of government jurisdictions that are ignoring the issue of "drainage" for environmental health of the streams and property protection. This landowner is following a long history of development permitting with respect to drainage management, which is to move the drainage issue into the road r/w, where the Ministry of Highways have jurisdiction to allow for "road drainage". This mode of operation has allowed Ganges to ignore the need to allow for rainwater surface flows in Swanson Creek, and the preservation of a stream to allow for this stream to maintain a healthy channel and riparian condition for aquatic species.

- The importance of the headwater spring on Desmond Road cannot be overstated. The ditching of the roadside that was viewed on April 7th was a concern for us - & ~~there~~ is ~~an indicator that~~ ^{an indication} that ditch/side issues are being dealt with ~~by~~ ^{drainage} without any drainage planning. The plan, as proposed by Mr. Booth to provide a creek "feature" on the road/rw that is undeveloped - has some merit, but will need to ensure that downstream ^{fish & fish habitat} objectives.

Golding, Cheryl ENV:EX

From: Heath, Dick ENV:EX
Sent: Friday, May 16, 2008 11:00 AM
To: Teskey, Judy ENV:EX
Subject: FW: Lot 10 Park Drive Development Permit Application

Judy, I may be getting a call from the Deputy's office on this so an update would be appreciated

From: Eric Booth S22
Sent: Friday, May 16, 2008 10:51 AM
To: Caskey, Marlene ENV:EX
Cc: Teskey, Judy ENV:EX; Heath, Dick ENV:EX; Vouriot, Harmony ENV:EX; Moreau, Denise ENV:EX; Brodrick, Mark ISLT:IN; Kojima, Robert ISLT:IN
Subject: Re: Lot 10 Park Drive Development Permit Application

Ms. Marlene Caskey

Senior Ecosystem Biologist
Environmental Stewardship Division
Ministry of Environment

Re - Development Permit Application for Lot 10, Plan 14710, Park Drive, Salt Spring Island, BC

Dear Marlene,

It has now been nearly 6 weeks since you, Peter Law and Alain Magnan, did your site visit to Salt Spring on April 7th, and well over two months since the Islands Trust asked you for an official response to their referral to you. I understand from Islands Trust Planer, Mark Brodrick, you had told him you would be responding to him last week (May 5-9th). However, having just checked with Mark today, he has still not yet heard back from you.

As we stated in our March 26th letter to you, we wished to **"avoid any further and/or unnecessary delays in the processing of our development permit application,"** and, given our position regarding the non-applicability of the RAR's to our project, and, without any indication from MoE to the contrary, we do not understand the delay we are currently experiencing, which is now well beyond the standard 30 day inter agency referral process.

Could you please advise us **when** your official response will be sent to the Islands Trust?

Thank you once again for your attention to this matter.

Eric Booth

Salt Spring Ventures Inc.

140 Fruitvale

Salt Spring Island, BC

cc -
Ms. Judy Teskey, Section Head
Mr. Dick Heath, Regional Manager
Ms. Nancy Wilken, Assistant Deputy Minister
Ms. Joan Hesketh, Deputy Minister
Mr. Mark Brodrick, Islands Trust Planner, Salt Spring Island

Mr. Robert Kojima, Acting Regional Planning Manager, Salt Spring Island

----- Original Message -----

From: Eric Booth

To: Marlene.Caskey@gov.bc.ca

Cc: Judy.Teskey@gov.bc.ca ; Dick.Heath@gov.bc.ca ; Harmony.Vouriot@gov.bc.ca ; Denise.Moreau@gov.bc.ca ; [Mark Brodrick](#) ; [Gerry Hamblin](#)

Sent: Wednesday, March 26, 2008 10:07 AM

Subject: Lot 10 Park Drive Development Permit Application

Ms. Marlene Caskey

Senior Ecosystem Biologist
Environmental Stewardship Division
Ministry of Environment

Re - Development Permit Application for Lot 10, Plan 14710, Park Drive, Salt Spring Island, BC

Dear Ms. Caskey,

I understand you received an email request two weeks ago from the Islands Trust office on Salt Spring, for a response from your department as to whether, in MoE's opinion, a Riparian Area Assessment is required on our property prior to development.

It is also my understanding, from your August 27th, 2007 email to Mr. Mark Brodrick, Islands Trust planner (attached for your convenience), you may still have some doubts as to the validity of the report on the property from our biologist, Mr. Warren Appleton, Balanced Environmental Services.

Further, it is now my understanding you have indicated to the Islands Trust staff you will not be able to respond to their request until mid to late April, evidently due to "some internal meetings."

It is also my understanding, that for the past seven months, since September 2007, you have been requested by Islands Trust staff on a number of occasions, both verbally and via email, to clarify the position you set out in your August 27th, 2007 email to the Trust, however, for whatever reason(s) you have been unable to, perhaps due to a lack of correct and/or enough information.

However, I am at a loss to understand your current delay in responding to the Islands Trust requests since the provisions of the RAR do not yet legally apply to Salt Spring Island, and I would hope/trust you have already verified that essential fact.

I direct you to the opinion of Mr. Bill Buholzer (legal counsel for the Islands Trust) at page 3-26 of his BC Planning Law and Practice manual, which states quite clearly:

3.56 Geographically, the Riparian Area Regulation applies in the same regional district and trust areas as the Streamside Protection Regulation. **It does not apply, though, in areas whose local governments were in compliance with the Streamside Protection Regulation on March 31, 2005, except to the extent that they "amend" their streamside protection and enhancement areas.**

I understand this to mean:

The Riparian Area Regulation does not apply to the Islands Trust Area, because, in the opinion of the Local Trust Committees (**local governments**), they **were in compliance with the Streamside Protection Regulation** on March 31, 2005, (because they had previously established Development Permit Areas for the protection of riparian areas) except to the extent that if they "amend" their streamside protection and enhancement areas (through amendments of DP Area provisions and/or zoning bylaws), any amendments must then be compliance with the provisions of the RAR.

This opinion is substantiated by the fact the Islands Trust has not yet made any changes to implement the RAR into its OCP and/or bylaws, and is not expected to make any such proposals for change until sometime in either 2008 or 2009.

This opinion is further substantiated by the Ministry of Environment's "Local Government Status Database", updated as of February 2008 -

http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/RAR_Local_Govt_Impl_Status_s.xls

which clearly reports **none** of the local governments in the **Islands Trust Area**, which includes the **Salt Spring Island Local Trust Committee Area**, have yet implemented the provisions of the RAR, nor have any of them adopted the RAR tools.

Without evidence to the contrary on your part, I request you **immediately** inform the Islands Trust that:

- (a) the Ministry of Environment itself has no authority to require a property owner to have a Riparian Area Assessment done, as the authority to require a Riparian Area Assessment lies solely with the local government, and only if it has implemented or adopted the provisions of the Riparian Area Regulation into its OCP and/or land use bylaws,
- (b) in accordance with the RAR only a local government which has implemented and adopted the Riparian Area Regulation **provisions** has the authority to require a Riparian Area Assessment,
- (c) the **provisions** of the Riparian Area Regulations do not yet apply on Salt Spring Island,
- (d) your assertion on August 27, 2007 that "The RAR does apply to Swanson's Pond" was/is incorrect.

I also request you confirm to Islands Trust staff that MoE accepts Mr. Scott Chrisite, RPBio, President, Balanced Environmental Service's statements, (in response to the assertions you made in your August 27th email) made in his letter of September 21, 2007, (which I attach for your convenience) that:

1. Mr. Appleton is a member of the College of Applied Biologist and a QEP with respect to the work that was conducted on Swanson Pond.

2. Balanced's decision on whether the RAR applies was based on the following:

- No fish observed in Swanson Pond (Reimer 2001).
- MOE confirmation (twice) that the RAR does not apply to an anthropogenic pond that has no fish presence and drains through an elaborate culvert network several hundred metres in length (barrier to fish passage) into fish bearing waters because "the pond would not constitute Fish Habitat. The RAR only applies to Fish Habitat",
- DFO stated their only concern given that Swanson Pond held no fish (Reimer 2001) and the presence of an elaborate culvert system that prevented fish from reaching the pond was to "maintain water quality", and,
- Field investigations confirming that the cumulative effect of the culvert system leading from Swanson Pond represented a barrier to fish passage including, long underground runs, some with slopes that do not support water column, except under significant rainfall events, and two vertical culvert drops of one and four feet at Sites 9 and 10 respectively (Balanced 2007).

If the above is not your understanding of the Riparian Area Regulation as it applies (or does not apply) to Salt Spring Island, and/or if you disagree with the content of Mr. Christie's letter, and/or Mr. Appleton's report (and, therefore evidently, DFO and MoE Habitat Management's opinion in this matter), I would appreciate a clear response from you as to how and why MoE Environmental Stewardship Division's opinion differs with our understanding of the RAR, and, Balanced, DFO and MoE HM's opinions as they apply to our property.

I hope I have made the above requests clear enough, and that perhaps the above information will help to clarify your/MoE's position, and avoid us any further and/or unnecessary delays in the processing of our development permit application.

If you have any questions, please don't hesitate to write me.

Thank you for your attention to this matter, and I look forward to your prompt response.

Yours truly,

Eric Booth

Salt Spring Ventures Inc.

140 Fruitvale

Salt Spring Island, BC

cc -

Ms. Judy Teskey, Section Head

Mr. Dick Heath, Regional Manager

Ms. Nancy Wilken, Assistant Deputy Minister

Ms. Joan Hesketh, Deputy Minister

Mr. Mark Brodrick, Islands Trust Planner, Salt Spring Island

Mr. Gerry Hamblin, Acting Regional Planning Manager, Salt Spring Island



June 27, 2008

File: 58000-35/05-IT13

XRef: 70000-45/11-SALT-SPRING

Islands Trust Office
1 - 500 Lower Ganges Rd
Salt Spring Island BC V8K 2N8

ATTENTION: Mark Brodrick
Island Planner

Dear Mark Brodrick:

Re: Implementation of the Riparian Areas Regulation (RAR)/Implications to the OCP

I wish to provide some clarity around how RAR will impact the OCP and Development Permits.

First, although the present OCP and Development Permit (DP) #4 do not specifically meet the requirements, RAR IS already in effect on Salt Spring Island and has been since the Regulation was implemented on March 31, 2006.

Consequently, we notified you (Islands Trust) that you must include riparian area protection provisions in your zoning bylaws and permits.

The proposed modifications to the OCP and DP #4 will make the implementation of RAR smoother and the process clearer for all Salt Spring Island residents.

Although you (Islands Trust) have not yet implemented a RAR compliant bylaw for Salt Spring Island, you must ensure that no development proceeds that is contrary to the regulation. It is the activity as defined in the definition of 'development' that triggers the requirement to meet the RAR directives, not the existence of the regulatory tools.

The RAR requires that a riparian assessment be carried if any development is proposed within 30 metres of a fish-bearing watercourse. 'Fish-bearing' refers to watercourses which support salmon or trout, and the RAR applies to the entire watershed, even if fish are not present beyond a certain point. As not all watercourses on Salt Spring are fish-bearing, it does not apply to all watercourses.

... 2/

The 30 metre riparian assessment area, like DP areas, acts as a 'flag' – within it a qualified environmental professional (QEP) determines the actual setback distance, which is often less than the 30 metres. It is primarily within this lesser setback distance that there are restrictions on how the vegetation is maintained.

Another approach you may wish to consider when modifying your DP is to hire a QEP to pre-determine the setback distances on each section of the fish-bearing watercourses – a 'made on Salt Spring Island' solution. Then your DP would reflect only the setback area impacted, and not entire assessment area.

Having a riparian assessment done and following the resulting report helps ensure that property owners are not violating either the *Fisheries Act* or the *Water Act*. Hence it helps protect them from possible legal action.

I hope this provides some clarity around the proposed modifications to your Development Permit area. We are looking forward to helping you develop a solution which fits your needs as well as ours.

Yours truly,



P. M. Caskey
Sr. Ecosystems Biologist - Urban

PMC/gb i:\envstewardship_share\general\typing\it ocp rar1.doc

Caskey, Marlene ENV:EX

From: Caskey, Marlene ENV:EX
Sent: Thursday, May 22, 2008 12:04 PM
To: Caskey, Marlene ENV:EX
Subject: FW: Swanson's Pond and the Riparian Areas Regulation

Attachments: pmc_pdl_swansonponddebooth.pdf



pmc_pdl_swans
ponddebooth.pdf

From: Caskey, Marlene ENV:EX [mailto:Marlene.Caskey@gov.bc.ca]
Sent: Wednesday, May 21, 2008 4:22 PM
To: Mark Brodrick; Eric Booth
Cc: Teskey, Judy ENV:EX; MagnanA@pac.dfo-mpo.gc.ca; XT:Rushton, Brad
Fisheries and Oceans EAO:IN; Galpin, Greg TRAN:EX; OBrien, Debbie
TRAN:EX; Dambergs, Arnis ENV:EX; Mac Fraser
Subject: Swanson's Pond and the Riparian Areas Regulation

<<pmc_pdl_swansonponddebooth.pdf>>

P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment Nanaimo
(250) 751-3220



May 21, 2008

File: 72000-45-IT-SALT/Swanson Creek

Eric Booth
Salt Spring Ventures Inc.
140 Fruitvale Road
Salt Spring Island BC V8K 2M1

Mark Brodrick, Planner
Salt Spring Islands Trust Office
1-500 Lower Ganges Rd
Salt Spring Island BC V8K 2N8

*Planned via
email - see
attached*

Dear Eric Booth and Mark Brodrick:

Re: Swanson's Pond; Lot 10 Park Drive

We apologize for the delay in providing both of you with a letter outlining our findings concerning the development proposal for Lot 10 Park Drive (the subject property). We appreciate that your patience is wearing thin on this issue, and we hope that you will both understand that our delay was a result of poor time management on our part, and not because we do not see this issue as a high priority.

Subsequent to our onsite with you and Alain Magnan of Fisheries and Oceans Canada (DFO) on April 7, 2008, we met with Greg Galpin, Area Manager and Debbie OBrien, Senior District Development Technician, of the Ministry of Transportation, to discuss the challenges of drainage management in Swanson Pond and the associated watershed.

The reason for our visit was in response to an email from Mark Brodrick, who requested that the Ministry of Environment provide a statement about whether the subject property is (or is not) subject to a Riparian Areas Regulation (RAR) assessment. Eric recently sent an email stating the "non applicability" of the RAR to the subject property for the following reasons:

- No fish observed in Swanson Pond (Reimer 2001);

... 2/

- MOE confirmation (twice) that the RAR does not apply to an anthropogenic pond that has no fish presence and drains through an elaborate culvert network a few hundred metres in length (barrier to fish passage) into fish bearing waters because "the pond would not constitute Fish Habitat. The RAR only applies to Fish Habitat";
- DFO statement that their only concern, given that Swanson Pond held no fish and flowed through an elaborate culvert system that prevented fish from reaching the pond, was to "maintain water quality"; and
- Field investigations confirming that the cumulative effect of the culvert system leading from Swanson Pond represented a barrier to fish passage, including long underground runs, some with steep slopes, and two vertical culvert drops of one and four feet at Sites 9 and 10 respectively (Balanced 2007).

Prior to April 7, 2008, the Ministry and DFO had not visited the site to determine whether the RAR applied or not. In hindsight, we regret this lack of an earlier response, as we found the site visit very informative. We learned about the proposed development from Eric and his engineer, we listened to the planning issues raised by Mark, and we were able to see Swanson Pond and assess the viability of this tributary (Swanson Creek) to contribute to fish and fish habitat in the lower Ganges watershed.

A central design principle for the Riparian Areas Regulation model is that it must satisfy the requirements of the federal *Fisheries Act*. The focus of the RAR assessment is on riparian vegetation and its functional role in maintaining **fish habitat**. It involves a determination of whether, and how, the site provides those features, functions and conditions that maintain fish habitat. The federal *Fisheries Act* (section 35 (1)) notes that "no person shall carry on work or undertaking that results in the harmful alteration, disruption, or destruction of **fish habitat**." Fish Habitat means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.

The question we needed to answer in regards to Swanson Pond is whether the site can be considered to be fish habitat. Based on our site visit, it was our position, and Alain Magnan's, that, **Yes**, the Swanson Pond is fish habitat, and therefore should have been subject to the RAR.

We believe Swanson Pond is fish habitat as it provides an essential component to the hydrology of this small tributary watershed. We do not argue that Swanson Pond "directly" contributes to fish habitat, as trapping assessments have confirmed an absence of fish. It is our opinion that this wetland has maintained a positive influence on surface flows from the Swanson Creek system into lower Ganges Creek since its creation in the 1950s. The

... 3/

wetland has contributed to attenuating peak flows in the winter and maintaining low flows in the spring/early summer time period, such that cutthroat trout and coho salmon (salmonid) productive capacity downstream has benefited. The wetland also provided a role in maintaining water quality in the lower reaches of the stream by slowing the flows and allowing a deposition of sediments and other pollutants generated from upstream sources. Swanson Pond is, in our opinion, contributing to fish habitat "indirectly", and to ignore this contribution will cause harm to salmonids in the lower reaches of Ganges Creek. The extensive culverting of the Swanson Creek through the school properties is an unfortunate legacy of ignorance for which we can all accept some form of blame. In our opinion, the culverts do **not** represent a complete loss of hydrologic connectivity between Swanson Creek and Ganges Creek, and the upper reaches remain an important source of flow. This is based on our assessment of the conditions onsite, and is contrary to the earlier opinion provided by Andy Witt of our Ministry during telephone conversations, and by DFO prior to the onsite assessment.

It is important to point out that it is also the collective opinion of the DFO and MOE staff attending the site on April 7, 2008, that the Ganges Creek/Swanson Creek watershed is in poor biological health. The condition of fish habitat in this watershed reflects a lack of understanding of the impacts of land development on drainage and fish habitat. Also, the recent ditching of Desmond Road showed a lack of understanding of the importance of the upwelling spring that flows from this area to the lower watershed, and of the implications of siltation in flowing water. Clearly the jurisdictions responsible for land development (Islands Trust) and drainage (Ministry of Highways) must re-assess current operating practices, and look to adopting a model of integrating stormwater management with goals of maintaining aquatic habitats for fish, before it is too late for salmonids to continue to survive in Ganges Creek. We have brought this issue forward to Mac Fraser (Islands Trust - Director of Local Planning Services) and Greg Galpin, and have offered to work with them to find a solution to the poor state of stormwater planning in the Village of Ganges.

In reflecting on the delays associated with confusion as to whether RAR should apply to the subject property or not, the passage of time since our site inspection and delay costs (to Eric) in seeking a decision on how to proceed with this development request, we have come to the conclusion that a RAR assessment is not appropriate at this time.

This does not mean that we support the development as described on April 7, 2008. We are very concerned with the current state of the wetland and how it has been "disconnected" from the upper watershed. Diverting 100% of the surface flow away from the subject property to the MOT ditch line along Park Avenue is not a strategy we can support. The Ministry remains concerned that the permanent disconnection of the wetland will have negative hydrologic impacts and contribute to a decline in water quality to lower Ganges Creek. We believe these issues must be addressed. We request that Eric engage a

... 4/

qualified professional(s) to assess the (former) function of the pond on the property to determine the effects of eliminating the pond on flooding/flow attenuation, flow maintenance and water quality to lower Swanson's and Ganges creeks. From the fisheries perspective, this wetland probably provided flow attenuation and pollutant removal in the summer and 'shoulder' seasons during smaller storm events. Addressing the loss of the wetland during these smaller events is important here – it may be that during extreme storm events the wetland was not large enough to have a significant impact.

What are some of the solutions to the situation? Any solution will require compromises on all sides. Some issues that should be discussed include:

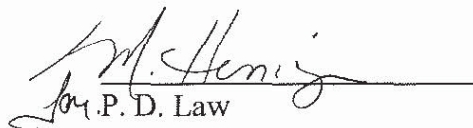
- Re-establishing stream flows and wetland functions on the subject property in a suitable location that will provide land development opportunities, flow attenuation and water quality maintenance. A hydrology study would help to define this.
- Tying the headwater spring on Desmond Road into any restoration plans for the stream channel.
- Allowing some form of stream channel restoration in the unopened road r/w, or transferring the MOT r/w to this development property in lieu of wetland retention on Lot 10.
- Establishing a framework for an Integrated Stormwater Plan for Ganges Creek by Islands Trust and MOT prior to continued development in the watershed.

In closing, we apologize again for the delay in providing this letter clarifying our position concerning the Riparian Areas Regulation and how the *Fisheries Act* applies to this development site. We have identified some possible solutions to the situation, and recommend that Islands Trust host a closed door meeting between the all parties for the purpose of laying out the next steps in moving this application forward. Peter Law would be available for consultation during the week of May 26, 2008, Marlene Caskey is not available until mid-June.

Yours truly,



P. Marlene Caskey
Sr. Ecosystem Biologist - Urban



P. D. Law
Ecosystem Biologist

PMC/PDL/gb i:\envstewardship_share\general\typing\pmc_pdl_swansonpondbooth.doc

pc: Al Magnan/Brad Rushton, Fisheries and Oceans Canada
Greg Galpin/Debbie OBrien, Ministry of Transportation
Judy Teskey, Ecosystem Section Head, Nanaimo
Mac Fraser, Islands Trust, Victoria
Arnis Dambergs, Water Stewardship, Nanaimo

Law, Peter ENV:EX

From: Eric Booth S22
Sent: Tuesday, June 17, 2008 8:45 AM
To: Law, Peter ENV:EX; Caskey, Marlene ENV:EX
Cc: Brodrick, Mark ISLT:IN
Subject: RAR on Salt Spring
Importance: High

Dear Marlene and Peter,

Thank you for your letter of May 21, 2008.

Unfortunately, your letter appears to be ambiguous with regards to the RAR question. You have not unequivocally stated that the Riparian Area Regulations apply either to our property, or, to the Salt Spring Island Local Trust Area, just that, in your opinion, "Swanson's Pond is fish habitat and therefore **should have** been subject to the RAR." and, "...we have come to the conclusion an RAR assessment **is not appropriate** at this time."

Since last August, on a number of occasions, you have been asked by both Islands Trust Planner, Mr. Mark Brodrick, and myself, in writing and/or telephone conversations, to answer the question as to whether the Riparian Area Regulations have been **implemented** within the Salt Spring Island Local Trust Committee Area.

While I believe the question has been made exceedingly clear, none of your correspondence to date has actually answered this underlying question.

Therefore, for clarity, I am asking for yes or no answers to the following questions:

1. "Have the Riparian Area Regulations **been adopted and/or implemented** by the local government, the Salt Spring Island Local Trust Committee?" Yes or No?
2. "If the Riparian Area Regulations **have NOT been adopted and/or implemented** by the Salt Spring Island Local Trust Committee, do the Riparian Area Regulations apply on Salt Spring Island? Yes or No?
3. "If the Riparian Area Regulations have **NOT** been adopted and/or implemented by the Salt Spring Island Local Trust Committee, do **only** the existing Official Community Plan Development Permit bylaws (which have designated streamside protection areas) apply?" Yes or No?

even though Islands Trust has not implemented a RAR compliant bylaw, Islands Trust must not proceed that is in contravention to the RAR

I trust the above questions are clear enough for you to respond with yes or no answers, and additional comments if you wish.

If you need the questions to be clarified in any way, before responding, please don't hesitate to contact me for clarification.

As you are likely aware, the Local Trust Committee is now proposing the following changes to the Official Community Plan which would possibly see the implementation of the Riparian Area Regulations:

"A.5.2.8 (a.) The Local Trust Committee will update watercourse mapping and development permit area designations and guidelines to comply with provincial Riparian Area Regulations (RAR)."

This appears to be more support for my argument the RAR's have not yet been implemented on Salt Spring, and that existing OCP Development Permit guidelines DO NOT comply with the provincial RAR's, but DO comply with the previous Streamside Protection regulations.

Your answers to the above questions will help form the basis upon which the electorate of Salt Spring Island makes its decision as to whether to our community supports including the above proposal or not. As such, any

information you supply must accurately reflect **the existing** legislation.

As the Local Trust Committee has announced the public hearing on the above proposed change to the OCP will likely occur early in July, time is now of the essence in this matter.

Thank you once again for your assistance, and I look forward to your prompt reply.

Yours truly,

Eric Booth
Salt Spring Ventures Inc.

Law, Peter ENV:EX

From: Law, Peter ENV:EX
Sent: Friday, July 25, 2008 5:13 PM
To: Kojima, Robert ISLT:IN
Cc: Fraser, Mac ISLT:IN; Drew, Miles ISLT:IN; Phillips, Peter ISLT:IN; Starke, Justine ISLT:IN; Porter, Brodie ISLT:IN
Subject: RE: Swanson's Pond

Robert

Yes, I attended the Swanson Pond site yesterday with Conservation Officer Stuart Bates, and spoke with Mr. Booth about works he has undertaken to drain the pond and clear vegetation. Mr. Booth has dug a 27 meter long trench from the edge of the property to the pond, and is in the process of draining it slowly. I viewed about 1.5 to 2 litres per minute being discharged when I was there.

I did not direct Mr. Booth to stop work. His work is not causing harm to downstream fish habitat at this time (which I checked later the same day). Flows exiting the pond are making it to the church park in Ganges, where the water then stops. The lower 75 meters of Swanson Creek (to the confluence of Ganges Creek) is dry. There were no sediment issues in the water at this time.

I attempted to get a clear sense of what Mr. Booth's objective was with the amount of clearing and drainage work. He told me that he wants to reduce the surface area of the pond, however he wants to dig it deeper to provide more volume. These works are all in preparation for a (second) design for a development he wants to place on the site. Our discussion did not focus on this design, but I did tell him that development proposals for the property would have to involve MoE, as we have stated in a recent letter that there are potential downstream impacts to fish habitat. I attempted to convince Mr. Booth that it is in his best interest that he seek the services of a QEP to assist him in environmental management of the site. At this time, there are few if any provisions for sediment control, should a major storm event occur. He agreed.

This development has obvious community concerns associated with it, judging from the 4 phone messages on my phone yesterday, the PEP emergency call-out yesterday to our Conservation Officer Service and DFO Officers also being phoned. I observed people yelling at Mr. Booth from the road and a trail next door.

We do not have a stick that can be used at this time. I am attempting to keep some communication open.

Peter Law
 Ecosystem Biologist*
 Ministry of Environment
 Vancouver Island Region
 2080 Labieux Road
 Nanaimo B.C. V9T 6J9
 *Habitat Officer under the Water Act - Section 9

Peter.Law@gov.bc.ca
 Phone: (250) 751-3229
 Fax: (250) 751-3103

From: Robert Kojima [mailto:rkojima@islandstrust.bc.ca]
Sent: Friday, July 25, 2008 3:53 PM
To: Law, Peter ENV:EX

Cc: Fraser, Mac ISLT:IN; Drew, Miles ISLT:IN; Phillips, Peter ISLT:IN; Starke, Justine ISLT:IN; Porter, Brodie ISLT:IN

Subject: Swanson's Pond

Hi Peter,

I understand you were at Swanson's Pond on Salt Spring yesterday with a conservation officer and directed Eric Booth to cease work at the site until certain conditions were met. I was informed today that Eric Booth has returned to the site and is continuing work, although I can't confirm this personally as S22

S22

Robert Kojima
Island Planner
Southern Team
Islands Trust
200-1627 Fort Street
Victoria, BC V8R 1H8
Phone: 250-405-5159
Fax: 250-405-5155
www.islandstrust.bc.ca

Preserving Island communities, culture and environment

July 25/08

Phone Calls -

- spoke to ^{S22} from Salt Spring Island. She wanted to tell me that work continues on Lot 10 Park Dr. - she wanted me to stop it. I told her I could not stop it. I explained that I had to prove that harmful damage has been done to fish habitat - at this time I could not provide that opinion. The release of water from the pond ~~was~~ is providing a net benefit. I told her the pond was not designated as a stream.

- Spoke to

S22

- she was distressed - told me that she will be proceeding with an "injunction" to stop work on the property.

S22

S22

- We discussed what has been completed in terms of development to last Thursday on the property.
- Flows being discharged are being seen in the lower portion of Swanson Creek (by the Church Park).
- She told me that these flows were marginal or had stopped a few weeks ago. Recently she & her "helpers" had salvaged 5 trout & 20 stickleback in the church area.
- she wanted to tell me that work was continuing on the site - she felt that the works will damage heron habitat (?).

- left message w/

S22

Oct 16/08

- Mark - Balances - environmental -
Thompson
- a
- well drilled in early September - 6 gals/minute pump rate
- pond to be redug - but he wants to dig it deeper & supplement the pond height with walls from the drilled well.
- there will be continuous flow - year round from the pond.
- 987 m² is the new ponds surface area.
- during excavation - Eric found bedrock in a corner
- during the summer - " excavated test holes - most of the area is blue clay.
- Mark indicated that stormwater management issues will remain, as it is today. Eric's current proposal for development on the site does not include 'accepting' stormwater on the site. - abatement a possibility.
- the development is going to be townhouse development with ^{42 parking lots} parking (ring road) approach - there are ~ 10-20 Town houses.
- There is a DP4 polygon on the property which seems to be seen by Eric as a "no go" area - it seems to me that the DP4 designation on the site is a topic to consider relict on so that the design.
- The riparian setbacks as designed into the development plan seen today are too close to the pond, and should be re-designed into appropriate DP4 setbacks - using the DP4 area that currently sits on a corner of the pond.

- Mark indicated that Eric Booth wanted a letter from me indicating that I was OK with this proposed development layout & design features.
- I said I would not provide a letter like that now - without having the opportunity to discuss the scenarios with Islands Trust & AIDT.
- I told Mark that I was supportive of the development of a pond feature & will jump as a means to maintain an flow in the downstream catch area.
- I asked Mark to tell Eric to organize a meeting to discuss his dev. plan
- I also told Mark to do an assessment on JPA 4 - as this info/assessment may be worthwhile.

Jim

Law, Peter ENV:EX

From: Mark Thompson [mark@balanced.ca]
Sent: Friday, October 17, 2008 10:14 AM
To: Law, Peter ENV:EX
Subject: Swanson's Pond

Hello Peter,

I appreciate your time yesterday; this is an interesting project and thinks we're close to a solution. I talked with Eric after our meeting yesterday regarding our discussion about the constricting design of the proposed new development and the potential for an expanded riparian area with the removal/shift of the DP 4 area. Eric's reaction was disappointment; S21
c S21 have been spent on this specific development design and consequently he not in a position to step back and redesign the development once again. Eric tells me that the design drawings we looked at yesterday were sent to you approximately the beginning of September (perhaps they were somehow lost in cyberspace?); he obviously feels this would have been valuable information before money was spent to further implement the design. Regardless, we talked about potential solutions and I believe there is a compromise here that will be beneficial to all parties involved.

The DP 4 area, as we discussed yesterday, is likely no more than a mapping exercise; and in my opinion, having personally observed this area, do not believe it is sensitive habitat; it is certainly not a functioning wetland at this point. This leaves great potential for this area to be enhanced and restored into a properly functioning wetland that deserves designation as sensitive habitat. A second, smaller pond could be built into this area for the development pond to flow into, shallowing out into wetland habitat planted with bull rushes, reeds and native riparian vegetation. Not only could this be considered compensation for the smaller potential the development pond has for its own riparian vegetation, it also works to further control water flow and quality into the Ganges Creek fish habitat below.

I believe this is a potential solution that benefits both the environment and fish habitat below. Islands trust: the greatest obsacle to our initial solution (removal/shift of the DP 4 area), would no longer need to reverse any bylaws and should in theory be quite happy to have this area returned to a proper wetland that deserves a sensitive habitat status.

If you can give me your feedback on this compromise/solution, I can communicate to Eric what the next step will be; ie: biological assessment of the area in question and a meeting with yourself, Islands Trust and possibly MOT.

Thanks for your time Peter,

Mark Thompson,
Balanced Environmental Services

604 988 3033
mark@balanced.ca

Oct 22/08

- phone call from Mark Brodinick
 - he wanted to know about whether the MOE would be providing any approval in writing so that he could write his report for submission to the Board on Nov 8th meeting.
- I told him that there had been a meeting with Mark Robinson ~~at~~ RFB but that I still saw 3 issues that were still show stoppers for MOE

- ① Stormwater Mgt from offsite
 - needs to be addressed
- ② Setbacks around the pond
new
- ③ DPA 4 - a mapping exercise that is currently "excluded" from his design - so as not to incur the IT review. I think that this causes a lot of grief & needs to be re-worked.

- he understands



Oct 23 / 08

- Greg Galpin - MOH

- phoned to ask me about the meeting with the Env. Balanced consultant - in particular he wanted to know about ~~the~~ whether the plan spoke about off site stormwaters - I told him that the plan did not address the issue.

- he says he's attempting to get legal council to provide an opinion, as he has another complaint from S22

- I told Greg that I see the next step regarding a meeting to resolve issues. not - it and not.

Caskey, Marlene ENV:EX

From: Mark Thompson [mark@balanced.ca]
Sent: Thursday, October 30, 2008 9:54 AM
To: Caskey, Marlene ENV:EX
Subject: RE: Lot 10 Park Drive Salt Spring - Ministry Perspective
Follow Up Flag: Follow up
Flag Status: Red
Attachments: swanson pond.pdf

Hello Marlene,

Thank you for the update and your call yesterday; I have attached my response to your email as a PDF. I agree, to create a solution to this project, we need to meet at the soonest possible date. I look forward to hearing from you.

Mark

-----Original Message-----

From: Caskey, Marlene ENV:EX [mailto:Marlene.Caskey@gov.bc.ca]
Sent: Tuesday, October 28, 2008 2:52 PM
To: Brodrick, Mark ISLT:IN
Cc: mark@balanced.ca; Eric; Galpin, Greg TRAN:EX
Subject: Lot 10 Park Drive Salt Spring - Ministry Perspective

S22

I will be the lead on all future input into this development proposal.

We continue to have concerns with the development proposal which Peter discussed with Mark Thompson of Balanced Environmental on October 16, 2008.

The current development layout proposal does not address all of our environmental concerns. We identified the following issues in our May 21, 2008 letter:

- Swanson's Pond was 'attenuating peak flows in the winter and maintaining low flows in the spring/early summer time period...' Diversion of the creek away from the wetland and around the property has a negative impact on these functions/values.
- the wetland would have provided some flow attenuation and polishing effect on water quality during the smaller storm events.

The development proposal Peter discussed with Mark Thompson only addresses one of these issues - stream flow augmentation - by pumping well water into a pond feature at the site of the former wetland, with continuous outflows into Swanson's Creek downstream. We acknowledge that this process would provide downstream benefits to the creek and its aquatic inhabitants.

We believe that there are three items which need clarity before we in Ecosystems section, Ministry of Environment, could support this project:

1. The location of the Environmental Development Permit Area #4 on the property. The map associated with the Development Permit Area bylaw covers the stream channel up to the wetland, but does not include the wetland. As the focus of the bylaw is on lakes, streams and wetlands, and since the scale of the mapping does not allow for precise accuracy of all stream channels, interpreting the location of the Development Permit Area on the property so that it does not follow the former creek outlet channel to the edge of the wetland does not

make sense, to me. The INTENT of the map was to cover the outlet stream to the wetland, not to cross the outlet channel and cover an upland area, as is shown on the proposed development layout.

2. This development proposal does not address our concerns regarding changes to storm flows and water quality through the loss of the connected wetland.
3. The buildings/development proposal comes to the edge of the proposed pond feature. As this pond is hydraulically connected to Swanson Creek and then Ganges Creek downstream, it does constitute 'fish habitat', as outlined in our previous letter. The maintenance of a riparian buffer between a development and fish habitat is important.

For these reasons we are not in favour of the present development proposal. We recommend that all of the interested parties (including Islands Trust and Highways) meet together to further discuss a mutually satisfactory solution.

P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment
Nanaimo
(250) 751-3220

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Hello Marlene,

I appreciate your interest in this project and agree with you that we should meet asap to create the compromise all parties are satisfied with. Considering your email, however, and your absence from the project to this point I would like to clarify progress that has been made over the past weeks. Eric continues to compromise in an effort to create a solution that is beneficial to both the environment and the proposed development; moving back to square one at this point is yet another delay and represents the inflexibility of MOE to compromise and reach a solution.

S22 I will be the lead on all future input into this development proposal.

We continue to have concerns with the development proposal which Peter discussed with Mark Thompson of Balanced Environmental on October 16, 2008.

The current development layout proposal does not address all of our environmental concerns. We identified the following issues in our May 21, 2008 letter:

- Swanson's Pond was 'attenuating peak flows in the winter and maintaining low flows in the spring/early summer time period...' Diversion of the creek away from the wetland and around the property has a negative impact on these functions/values.

Discussions with Peter on October 16, 2008 clarified (from our previous onsite observations) that the pond was a highly eutrophic, deoxygenated system. Water quality reports discussed during the meeting go further to show exceptionally high coliform concentrations (> 2420 MPN) in the Park Dr. pond inlet. It was agreed that without removal of large amounts of sludge and garbage from the bottom of the pond, water quality would likely be detrimentally affected by the unhealthy condition of the pond itself (ie: attenuation of water, considering these conditions, in this pond would not be beneficial to habitat below).

- the wetland would have provided some flow attenuation and polishing effect on water quality during the smaller storm events.

The development proposal Peter discussed with Mark Thompson only addresses one of these issues - stream flow augmentation - by pumping well water into a pond feature at the site of the former wetland, with continuous outflows into Swanson's Creek downstream. We acknowledge that this process would provide downstream benefits to the creek and its aquatic inhabitants.

The proposed pond not only addresses the year round augmentation of water into the creek below, but also water quality concerns. Water from the well feeding the pond is clean, will be oxygenated and will be flowing into a pond uncontaminated with sludge and garbage. The proposed pond is consequently an improvement over the previous system and given support would benefit the Ganges Creek habitat below.

We believe that there are three items which need clarity before we in Ecosystems section, Ministry of Environment, could support this project:

1. The location of the Environmental Development Permit Area #4 on the property. The map associated with the Development Permit Area bylaw covers the stream channel up to the wetland, but does not include the wetland. As the focus of the bylaw is on lakes, streams and wetlands, and since the scale of the mapping does not allow for precise accuracy of all stream channels, interpreting the location of the Development Permit Area on the property so that it does not follow the former creek outlet channel to the edge of the wetland does not make sense, to me. The INTENT of the map was to cover the

outlet stream to the wetland, not to cross the outlet channel and cover an upland area, as is shown on the proposed development layout.

The DP 4 area was taken from the official map and overlaid onto the development drawing. This drawing was confirmed and approved by the Islands Trust to be accurate. Eric has based his development plans on the bases that these drawings are legal and cannot be otherwise changed, by himself or any governing body. To request that the development be reconfigured due to possible "intent" is unacceptable.

2. This development proposal does not address our concerns regarding changes to storm flows and water quality through the loss of the connected wetland.

This concern has been addressed as discussed above.

3. The buildings/development proposal comes to the edge of the proposed pond feature. As this pond is hydraulically connected to Swanson Creek and then Ganges Creek downstream, it does constitute 'fish habitat', as outlined in our previous letter. The maintenance of a riparian buffer between a development and fish habitat is important.

The DP 4 area, was discussed during the meeting with Peter; it was agreed that its location was likely no more than a mapping exercise (ie: this may have once been sensitive habitat/wetland, but this is no longer the case). This leaves great potential for this area to be enhanced and restored into a properly functioning wetland that deserves designation as sensitive habitat. This idea has been communicated with Peter since the meeting, however, the opportunity to discuss this further has not come about.

The enhancement of the DP 4 area will create additional hydraulic quality control, providing a buffer between the development pond and the Ganges Creek fish habitat below; compensating for reduced riparian potential above. A second, smaller pond could be built into this area for the development pond to flow into, shallowing out into wetland habitat planted with bull rushes, reeds and native riparian vegetation.

The package proposed here is a substantial improvement over the previous system. Water quality has been improved; water quantity has been augmented to provide year round flow and the DP 4 area will be enhanced into habitat that justifies protection.

For these reasons we are not in favour of the present development proposal. We recommend that all of the interested parties (including Islands Trust and Highways) meet together to further discuss a mutually satisfactory solution.

Considering the history of this project, the perpetual delays and the potential enhancement to habitat, provided Eric is given support to move ahead, we agree entirely with your recommendation to meet with all interested parties.

I look forward to meeting with you at your earliest convenience to discuss and finalize a plan; is there a time that both yourself and Mark Brodrick are available?

Thank you for your time,

Mark Thompson
Balanced Environmental

604 988 3033
mark@balanced.ca

December 9, 2008

Balanced File No.: P-5128

P. Marlene Caskey, R.P.Bio
Sr. Ecosystem Biologist, Urban
Ministry of Environment
Nanaimo BC V9T 6J9

Re: Swanson's Pond Habitat Balanced Sheet

Dear Marlene,

Balanced Environmental has completed a habitat balanced sheet for the Swanson's Pond project located in Ganges, Salt Spring Island. The habitat balanced sheet has been created to provide the Ministry of Environment with comparison data pertaining to pre and post construction pond conditions and consequent effects linked to the surrounding environment.

Data for the pre-existing and proposed ponds are based on the [?]model created by John Charowsky, Aqion Water Technologies; water quality analysis performed by John Harris, Agrichem Analytical, and the 2001 Reimer report pertaining to Swanson's Pond. Proposed development plans have been provided by Eric Booth, Salt Spring Ventures.

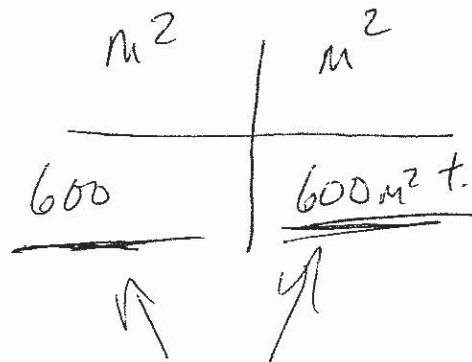
The purpose of this sheet is a balanced comparison of both the positive and negative effects resulting from the re-construction of Swanson's Pond in an effort aid the Ministry of Environment in their assessment of the project. We are requesting that the Ministry of Environment objectively examine these data and provide Balanced Environmental with an assessment of the proposed pond as it pertains to approval for development.

For further information, or if you have any questions regarding the results of this habitat balance sheet please call me.

Sincerely,
BALANCED ENVIRONMENTAL SERVICES INC.

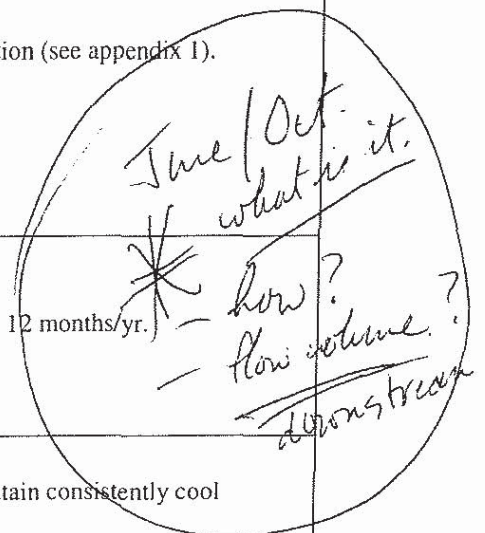
Mark Thompson, BSc. BIT

Tel: 604 988 3033
Fax: 604 988 3026
Email: mark@balanced.ca



Swanson's Pond Habitat Balanced Sheet

Before	After
Stormwater Quality Flow through Swanson Pond: May 24, 2007 <ul style="list-style-type: none"> • Coliforms Park Drive: 770 MPN/100ml Pond Inlet: >2420 MPN/100ml <i>who did this?</i> Pond Outlet: 248 MPN/100ml • E. coli Park Drive: 22 MPN/100ml Pond Inlet: 1046 MPN/100ml * Pond Outlet: 2 MPN/100ml • Nutrients < .01ml/L Nitrate < .02ml/L Phosphate • Turbidity Park Drive: 1.05 NTU Pond Inlet: 1.55 NTU Pond Outlet: 2.46 NTU ? • Total Dissolved Solids Park Drive: 199 mg/L Pond Outlet: 142 mg/L • Garbage Estimated 20 - 30 kg garbage • Sludge 10 to 30 cm potentially toxic sludge 	Stormwater Quality Flow around Swanson Pond: May 23, 2008 <ul style="list-style-type: none"> • Coliforms Park Drive: >2420 MPN/100ml * Pond Inlet: N/A Pond Outlet: >2420 MPN/100ml * • E. coli Park Drive: 4 MPN/100ml Pond Inlet: N/A Pond Outlet: 2 MPN/100ml • Nutrients < .01ml/L Nitrate < .02ml/L Phosphate • Turbidity Park Drive: 1.02 NTU Pond Inlet: N/A Pond Outlet: 0.77 NTU • Total Dissolved Solids Park Drive: 217 mg/L Pond Outlet: 213 mg/L • Total Dissolved Solids: Nov. 6, 2008 Park Drive: 43 mg/L Pond Outlet: 55 mg/L • Garbage 0 kg garbage • Sludge 0 cm sludge
Pond Health <ul style="list-style-type: none"> • Non Point Source (NPS) Pollution Residential and agricultural stormwater; Rainfall runoff. • Biofiltration No system in place. • Garbage Estimated 20 - 30 kg garbage. • Sludge 10 to 30 cm potentially toxic sludge. 	Pond Health <ul style="list-style-type: none"> • Water Source Onsite clean well water; Property rainfall runoff. • Biofiltration Active Biofiltration (see appendix 1). • Garbage 0 kg garbage. • Sludge 0 cm sludge.
Water Quantity <ul style="list-style-type: none"> • Pond water Uncontrolled flow: 8 - 9 months/yr. • Stormwater No change. 	Water Quantity <ul style="list-style-type: none"> • Pond water Controlled flow: 12 months/yr. • Stormwater No change.
Water Temperature (Reimer, 2001) <ul style="list-style-type: none"> • 20 C (Sept 2001); 8C (Nov 2001). 	Water Temperature <ul style="list-style-type: none"> • Expected to maintain consistently cool Temperatures.



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Oxygen Content <ul style="list-style-type: none"> • 4 – 7 ppm (Reimer, 2001). • No aeration system. • Probable sludge deoxygenation. 	Oxygen Content <ul style="list-style-type: none"> • Anticipated above 7 ppm. • Underwater aeration system. • Absence of sludge.
Stormwater Attenuation Charowsky, 2008: Pond Attenuation Model. 5 Year Return Storm. Cubic meters per second (cms) <ul style="list-style-type: none"> • 1 hrs: .02 cms inflow; .00 cms outflow <ul style="list-style-type: none"> ○ Attenuation: 72 m³ • 2 hrs: .12 cms inflow; .04 cms outflow <ul style="list-style-type: none"> ○ Attenuation: 288 m³ • 3 hrs: .24 cms inflow; .13 cms outflow <ul style="list-style-type: none"> ○ Attenuation: 396 m³ • 4 hrs: .29 cms inflow; .21 cms outflow <ul style="list-style-type: none"> ○ Attenuation: 288 m³ • 5 hrs: .31 cms inflow; .26 cms outflow <ul style="list-style-type: none"> ○ Attenuation: 180 m³ • 6 hrs: .37 cms inflow; .35 cms outflow <ul style="list-style-type: none"> ○ Attenuation: 72 m³ • 12 hrs: .41 cms inflow; .38 cms outflow <ul style="list-style-type: none"> ○ Attenuation: 108 m³ • 24 hrs: .36 cms inflow; .34 cms outflow <ul style="list-style-type: none"> ○ Attenuation: 72 m³ 	Stormwater Attenuation Attenuation capacity (volume) for secondary pond: 180 m ³ <p><i>- empty pond?</i></p> <p><i>X no context for how the new development will "retain" or manage stormwater on site?</i></p> <p><i>So they are going to use DP 4 as a stormwater pond?</i></p>
Pond Dimensions <ul style="list-style-type: none"> • Surface area (Summer): 1530 m² • Surface area (Winter): 4370 m² • Depth (Summer): 0.3 m • Depth (Winter): 0.6 m <i>wrong</i> • Volume (Summer): 1520 m³ • Volume (Winter): 3070 m³ 	Pond Dimensions Primary pond (Development): <ul style="list-style-type: none"> • Surface area: 960 m² • Depth: 2.0 m avg. • Volume: 1450 m³ Secondary (DP Area 4): <ul style="list-style-type: none"> • Surface area: 120 m² • Depth: 1.5 m avg. • Volume: 180 m³ <p><i>> for what?</i></p>
Riparian Area Measured according to Riparian Area Regulations (RAR) <ul style="list-style-type: none"> • 0.71 Ha riparian area surrounding pond. 15 m RAR boundary. 	Riparian Area <ul style="list-style-type: none"> • 1 – 5 m riparian vegetation boundary. <p><i>big difference</i></p> <p><i>ditch</i></p>
Shading <ul style="list-style-type: none"> • 0.71 Ha riparian vegetation. • Trees: approximately 7.0 m high. 	Shading <ul style="list-style-type: none"> • Development plans will incorporate shading vegetation around both ponds. • Condominiums: 7.0 m height.

This hardening of the riparian zone - esp. with the ~~new~~ walkway is not in the best interest of maintaining high water quality

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ENVIRONMENTAL

Wetland Habitat <ul style="list-style-type: none"> Poetentially unhealthy, limited wetland. <i>opinion</i> 	Wetland Habitat <ul style="list-style-type: none"> Enhanced DP Area 4 to create protected wetland habitat.
Downstream Fish Habitat <ul style="list-style-type: none"> Water Quality NPS pollution: stormwater. Water Quantity Flow 8-9 months/yr. 	Downstream Fish Habitat <ul style="list-style-type: none"> Water Quality NPS pollution: stormwater. Biofiltered clean ground water. Water Quantity Flow 12 months/yr.

* seems they want to develop in DP 4.
? - we should not agree to any works that are only to benefit the townhouse development

Balanced Environmental Services Inc.
Tel: 604.988.3033
Fax: 604.988.3026
Email: mark@balanced.ca
Web: <http://www.balanced.ca/>

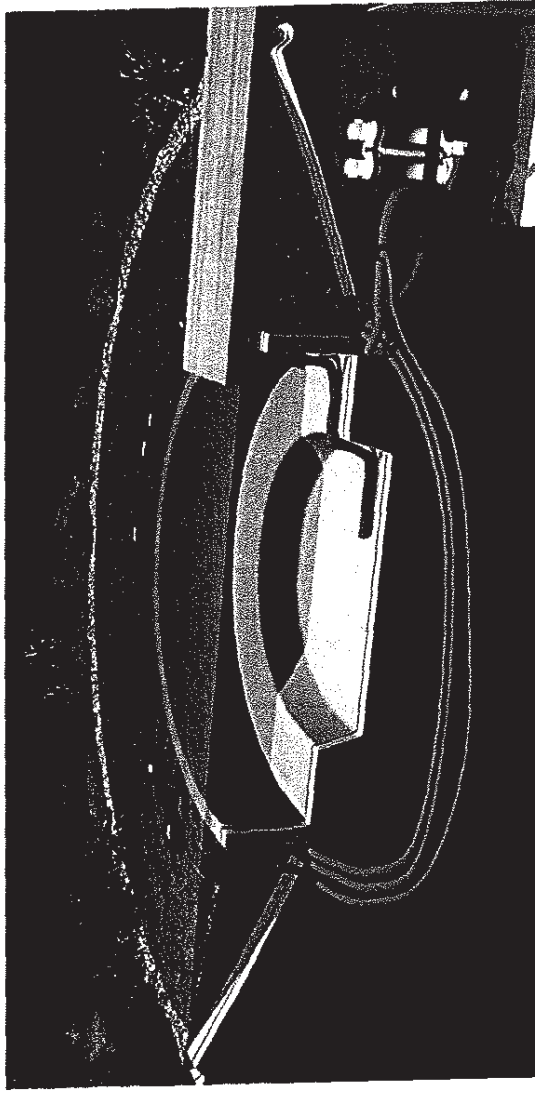
* What about watershed stormwater mgmt issue?

Active Biofilter for Pond

The concept is to create a "clear water" zone within a pond. Around this zone is the planted regeneration zone. A retaining wall between these two areas keeps them apart. The retaining wall tends to finish about 300mm below the water surface so that water can flow freely from the clear water zone to the filter zone. From a visual perspective, this allows the clear water zone to merge into the overall feel of the pond.

The clear water area is lined and the regeneration zone outside the clear water area filled with suitable aggregate which allows bacteria plenty of surface area to cling too. The bacteria are essential, performing the task of cleaning the water. A variety of bacteria decompose any organic matter releasing nitrates and phosphates. Above the aggregates, plants not only feed on these nitrates and phosphates, but also transform the clear water zone in to a natural pond nesting in its environment. Plants range from those that prefer deeper water such as lilies to those living in the margins and bog areas. Perforated pipes beneath the regeneration zone allow cleaned water to be drawn by a pump and returned to the clear water zone. Other components in the plumbing system includes skimmers for removing leaves and large debris, filters for finer particles and UV filters for decrease of coliform levels.

The bacteria that do the work in the regeneration zone are aerobic so need oxygen. The plants help channel oxygen via their root systems but additional aeration will be built into a feature such as a waterfall or fountain. Depending upon results, the addition of a biofilters may be beneficial. These are boxes filled with a mesh material into which you introduce the bacteria. The water then passes through the filter and is cleaned.



The regeneration zone is where the cleaning takes place using bacteria and plants. In the bottom of the zone, perforated drainage pipes connected to the suction side of the pump, draw water through the filter bed. This bed can be made of many materials providing they are pH neutral and give plenty of surface area for bacteria to colonize. Gravels can be used, but material such as expanded clay or pumice (lava rock) with their open structure are much more effective. The bacteria transform the waste materials into nitrates which the plants use to grow.

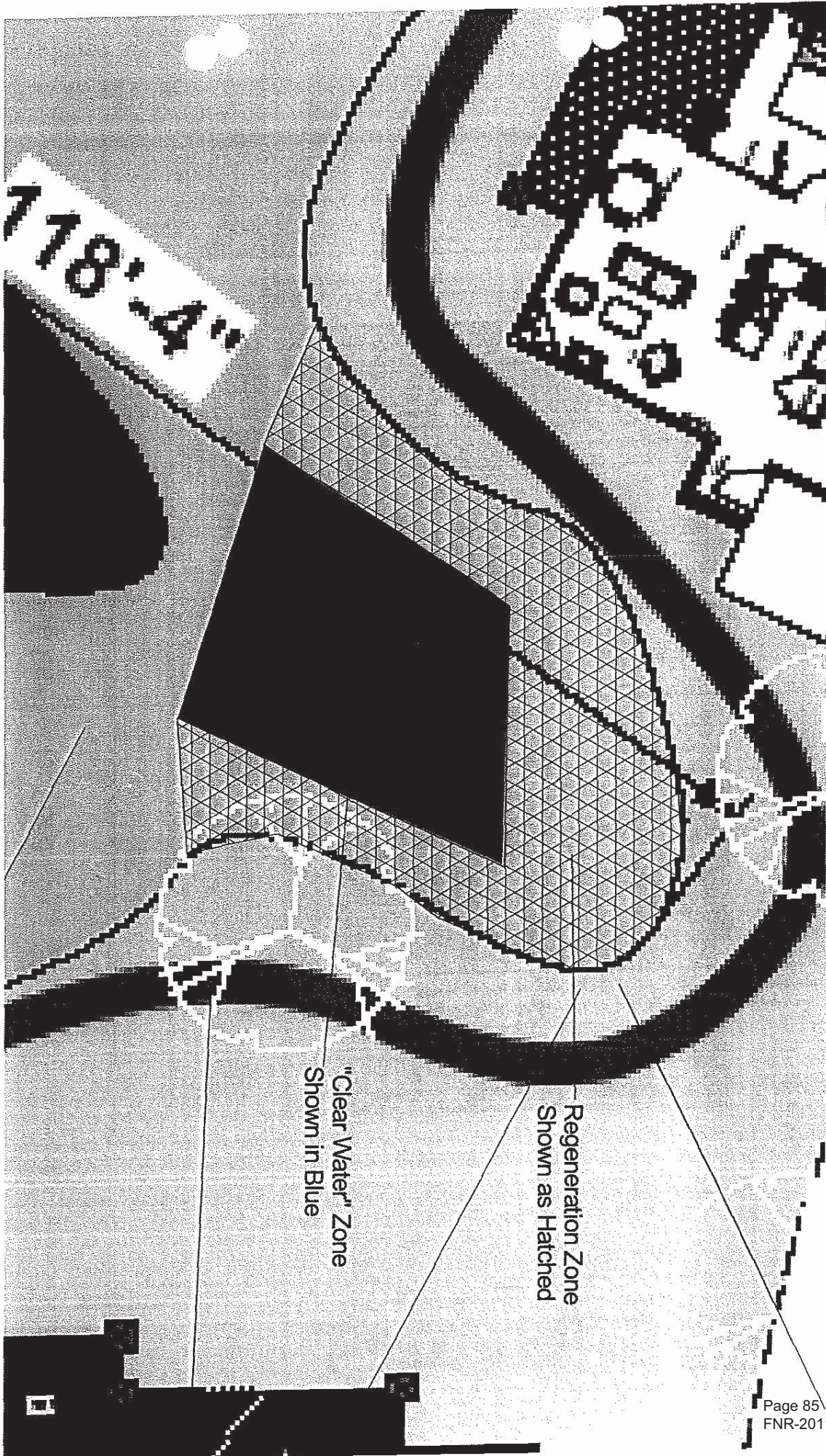
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→ water quality
parameters

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- Temp



Law, Peter ENV:EX

From: Caskey, Marlene ENV:EX
Sent: Monday, January 26, 2009 5:33 PM
To: Law, Peter ENV:EX
Subject: RE: Habitat compensation - Swanson's pond

Tomorrow (Tuesday morning, then).

From: Law, Peter ENV:EX
Sent: Monday, January 26, 2009 9:54 AM
To: Caskey, Marlene ENV:EX
Cc: Teskey, Judy ENV:EX
Subject: RE: Habitat compensation - Swanson's pond

Marlene
 I agree that we need to discuss this situation. I am around most of this week.
 Pete

From: Caskey, Marlene ENV:EX
Sent: Friday, January 23, 2009 2:31 PM
To: Law, Peter ENV:EX
Subject: FW: Habitat compensation - Swanson's pond

Since you are, if only indirectly, once again involved, you should see this and we should talk.

From: Eric Booth S22
Sent: Friday, January 23, 2009 11:28 AM
To: Caskey, Marlene ENV:EX
Cc: Mark Thompson
Subject: Re: Habitat compensation

Hi Marlene,

In response to your latest email, no, we haven't had Balanced Environmental out to look at the current flooding situation. Given the amount of silt which has already been washed "down stream" as a result of the blockage of the Ministry of Transportation ditch, we feel this is a matter which should be dealt with by the authorities - i.e. conservation officers. Ron Heusen has asked me to contact him when we get the next round of rainfall which will result in further siltation.

In response to the questions you raised in your December 15 email to Mark Thompson, given the nature of the questions, I have told Mark I would respond to them myself:

1. The amount of flow from the well will be dependent upon the ability of the well to produce. When the well was drilled, it had a reported output of 12 gallons per minute. However, it has been recommended by our engineer that the flow be set at a rate between 1 and 2 gallons per minute to ensure there is continuous supply.
2. The water from the well will go directly into the large pond. From there the pond water will overflow through the piped outlet, into the proposed smaller pond. From there it will overflow out the piped outlet of the smaller pond into the MoT ditch on Gustaf Road,

? not sure why it has to go through this maze but maybe it is better

10% of MAD
 May 21 - Oct 31

3. Regarding the temperature of the pond water during summer months and any water leaving the property, it will be reduced below its natural temperature by:

- (i) the introduction of well water which is at a lower temperature.
- (ii) the recirculation of water through the biofilter (warmer upper level of water being drawn down through a sand/gravel strata) and reintroduced in a cooler state into the pond at the top.
- (iii) the use of submerged outlet pipes drawing from the lower reaches of each of the two ponds.

4. The Dissolved Oxygen levels, due to aeration, will obviously be greater than which occurs naturally. And, Dissolved Oxygen levels are greater now, since the pond sludge was taken out of the "formula" of the watercourse, and, since the storm water now goes around the property.

5. The Total Dissolved Solids will be less than what would occur naturally (and therefore which were occurring previously) due to:

- (a) the introduction of well water which will be filtered, and, which will make up the majority of water being introduced into the watercourse during the summer months
- (b) the use of the biofilter which will reduce TDS
- (c) virtually the only water on the site which will not be prefiltered by some medium (grass, vegetation, sand, gravel, etc) before entering the pond will be the roof water. We are planning on using roofing material which will not add to TDS (e.g. not asphalt tiles, but either metal or solid roofing tiles). We are also looking at installing cisterns for rainwater catchment to be used for landscaping, irrigation and/or potentially grey water systems in the development.

6. The pre and post development stormwater retention rates from the site are addressed by the Aqion Storm Water report. It should be noted we will be using permeable (NOT impermeable) paving for both the paths and the driveway, thus reducing storm water runoff rates. There is a certain amount of detention storage designed into the primary pond.

7. The pond to be created in the DPA 4 will provide some flow attenuation. The secondary pond will be a wet pond, with a storm water detention storage capacity of about 180 cubic meters. It will not be used to "treat water quality/quantity from the development site." The water leaving the main pond will be of sufficient quality to meet "fish habitat" water quality standards. We do not see this proposed secondary pond or wetland as being necessary to the development. In that regard, "the pond in DPA #4 is to be used to help address water quality/quantity issues with the storm water (creek) flowing through the unopened road right of way. This would include the trapping of some sediment from the storm water. However, it should be noted the 600' of vegetated ditching also helps trap some of the sediment."

8. As mentioned above, the proposed walkway around the pond is NOT impervious and therefore DOES NOT intensify "the impact of this narrow buffer." As stated previously we will rely on Balanced's advice for riparian vegetation on either side of the walkway, including the use of the appropriate native species and overhanging weeping willows for shade.

9. Regarding your question, "Also, are you proposing measures to address the watershed stormwater management issue?" I'm not sure you are referring to. If you're talking about the stormwater from the 100 acre watershed above our property, I would suggest that question should be best put to MoT, as we do not see it is our responsibility, nor do we see how we could effectively do anything to address the issue, apart from the positive actions we have taken and are currently proposing.

10. Finally, it should be noted that during the majority of the year (Oct - May), the water quantity leaving the property will be a very small percentage of the overall storm water from the rest of the watershed. In that regard, even though our water will be of better quality, it will have little beneficial effect on the rest of the storm water quality - likely negligible. During the summer months, we will be providing a quantity of water which never before previously existed in the water course, and, which will arguably be of superior quality than that of the storm water for the rest of the year.

We trust the above answers to your questions regarding the habitat balance sheet prepared by Balanced, are satisfactory.

From our perspective we believe the current proposal, as supplied to you by Balanced, is the fair compromise which you suggested in your May 21, 2008 letter could hopefully be achieved between the

parties.

As you are aware, for our part, over the past eight months, we have made a number of compromises. During the same time, we are not aware of any compromises being made by the Ministry. We believe it is now time for you to carefully consider what is being offered. If, however, you feel you are not willing to make any concessions, and that you feel our current proposal is not acceptable, we will unfortunately have to explore other options available to us to bring this matter to a close.

Thank you once again for your consideration, and we look forward to your response.

Salt Spring Ventures Inc.
Eric Booth
140 Fruitvale Rd.
Salt Spring Island, BC
V8K 2M1

PS - I was wondering if you, or anyone else at MoE, since November 17th, have spoken with anyone at the Ministry of Transportation or Islands Trust regarding your suggestion of having the Islands Trust, MoE and MoT try and establish a framework for an "Integrated Stormwater Plan for Ganges Creek"?

cc - Mark Thompson, Balanced Environmental

----- Original Message -----

From: Caskey, Marlene ENV:EX

To: Eric Booth

Sent: Wednesday, January 21, 2009 6:16 PM

Subject: Development on Park Drive

Sorry I didn't get back to you earlier. I had a call in to the Conservation Officer Service and was planning to try again today to find out if anyone had been out. However, Ron Heusen came by and said that you had talked directly to him.

Taking a closer look at the photos of the water on your property, I am wondering if you have had your Qualified Environmental Professional out to seek his advice.

*P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment
Nanaimo
(250) 751-3220*

Caskey, Marlene ENV:EX

From: Caskey, Marlene ENV:EX
Sent: Monday, February 23, 2009 11:58 AM
To: 'Eric Booth'
Cc: Mark Thompson; Brodrick, Mark ISLT:IN; Galpin, Greg TRAN:EX
Subject: RE: Habitat compensation

Sorry to be so long responding.

S22

S22

Thank you for providing this information. I will respond using your numbering system.

1. When determining the flow rate for summer habitat compensation/restoration (May 31 to Aug 31), the normal criteria is 10% of the Mean Annual Discharge (MAD). How does the proposed 1 - 2 gallons per minute compare to the MAD of Swanson's Creek?

3. Circulating the pond water through the bio-filter will tend to even out the temperature at all levels of the pond. On hot summer days, this may result in higher than desirable temperatures in the lower reaches. I am not familiar with the proposed biofilter you plan to use. Is there a similar system in operation which has tracked water temperatures, to show what temperature range the water will remain at?

4. Again, I am not familiar with this biofilter. What dissolved oxygen (D/O) rating will the water be at when it leaves the pond?

5 and # 6. It is commendable that you are looking at addressing stormwater quality issues on site through some innovative techniques. As we have not reviewed the Aqion Storm Water report, I am not aware of what other techniques you are using, now whether this development will maintain the same pre- and post-development flow rates. If not, the Water Balance Model can provide suggestions for managing **all** stormwater onsite. Their web address is <http://www.waterbucket.ca/>.

7. This statement is unclear to me. If there will be any increased outflow from Pond # 1 due to stormwater, and the secondary pond is intended to address that, then it is not a 'fish enhancement feature'. If it is being designed primarily to take the flow from the ditch in the unopened road right-of-way and 'treat' that water, then we would consider it an enhancement feature. Could you provide some designs showing how this pond will interact with Swanson's Creek? You mention the 'vegetated ditch' as helping to address water quality issues in Swansons' Creek. However, if the creek continues to flow around the property, in order to address the capacity limitations in the ditch system, clean out and re-design would be necessary. This would have an adverse effect on the capacity of the 'vegetated ditch' to ameliorate stormwater quality.

8. Riparian buffers provide many functions, including shade, filtration of surface flow, absorption of stormwater, nutrient cycling, nutrient input to the water, temperature buffering, and more. Scientific research throughout North America and the world has addressed minimum buffer widths for many of these functions. The proximity of the buildings and the presence of a trail, whether or not its surface material is pervious, renders the buffer ineffective for many of these functions. For information on what some of these distances are, I recommend that you look at: Establishing fisheries management and reserve zones in settlement areas of coastal British Columbia, available through the DFO website, or the Riparian Areas Assessment Process, available at this web link:
http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/riparian_areas.html

Again, I apologize for being slow to respond to your e-mail, and look forward to some clarity around these points.

*P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment*

Nanaimo
(250) 751-3220

From: Eric Booth
Sent: Friday, January 23, 2009 11:28 AM
To: Caskey, Marlene ENV:EX
Cc: Mark Thompson
Subject: Re: Habitat compensation

S22

Hi Marlene,

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flowing through the unopened road right of way. This would include the trapping of some sediment from the storm water. However, it should be noted the 600' of vegetated ditching also helps trap some of the sediment.

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Thank you once again for your consideration, and we look forward to your response.

Salt Spring Ventures Inc.
Eric Booth
140 Fruitvale Rd.
Salt Spring Island, BC
V8K 2M1

PS - I was wondering if you, or anyone else at MoE, since November 17th, have spoken with anyone at the Ministry of Transportation or Islands Trust regarding your suggestion of having the Islands Trust, MoE and MoT try and establish a framework for an "Integrated Stormwater Plan for Ganges Creek"?

cc - Mark Thompson, Balanced Environmental

----- Original Message -----

From: Caskey, Marlene ENV:EX

To: Eric Booth

Sent: Wednesday, January 21, 2009 6:16 PM

Subject: Development on Park Drive

Sorry I didn't get back to you earlier. I had a call in to the Conservation Officer Service and was planning to try again today to find out if anyone had been out. However, Ron Heusen came by and said that you had talked directly to him.

Taking a closer look at the photos of the water on your property, I am wondering if you have had your Qualified Environmental Professional out to seek his advice.

P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist

Environmental Stewardship Division,
Vancouver Island Region, Ministry of Environment
Nanaimo
(250) 751-3220

Hi Marlene,

Thank you for your email of February 23rd. In response to your questions:

1. When determining the flow rate for summer habitat compensation/restoration (May 31 to Aug 31), the normal criteria is 10% of the Mean Annual Discharge (MAD). How does the proposed 1 - 2 gallons per minute compare to the MAD of (the water course)?

Unfortunately, to the best of our knowledge, no one has ever measured the MAD for the storm water drainage system, so it is impossible for us to say how the proposed 1-2 gallons per minute compares. However, as noted previously, we are prepared to supply a continuous flow of water from the well, in the 1-2 gallons average per minute range.

However, we would appreciate a clearer understanding of the Ministry's position as to whether you think some water, as opposed to no water, would be valuable to any fish habitat further down the drainage system during the summer months.

On a related matter, it has recently been brought to our attention that currently the spring water from Hickey Spring flows into a relatively newly (2003) manmade created pond at S22 Rd. As part of a natural watercourse (therefore a "stream" under the Water Act), and, since your department has already stated the water course is fish habitat, **could you please confirm to us whether the owner of S22 ever applied for, or received permission or authorization to construct the pond, from any department of the Ministry of Environment, including your own?**



Pond a S22 showing restricted out flow.

Our primary concern is that during the drier summer months, while there is water in that pond which originated from Hickey Spring, there is no outflow from that pond. It is our understanding that at the time of construction, the owner (a) deepened the MoT ditch, (b) diverted water into the new pond, and (c) raised the outlet level, without securing permission or a licence from MoE Water Management. This appears to have resulted in a reduction of the spring water which would historically have flowed through this area prior to the construction of that pond. Since you have raised concerns over summer flow from Hickey Spring previously, we thought you should be made aware of this.

We do not know whether the pond was clay lined at the time of construction or whether it allows seepage of the spring water back into the ground. In addition, the owner's proposal (in his Island Trust Development Permit and Development Variance Permit registered on title) did not propose a deepening of the "creek bed," but, instead the engineered drawing specifically proposed the "creek bed" would be "widen(ed)." If the creek bed had only be widened (and not deepened), and if the construction of the pond had not raised the level of the creek bed (at the newly created pond outlet), this would have allowed summer flow of spring water to pass through the pond, rather than be trapped in it.

We are also now concerned that that pond may also have the effect of sponging up some of the additional water we are proposing to send down the water course to supplement the water from Hickey Spring, with the intent to benefit downstream fish habitat during the summer months.

If the pond does unnecessarily divert/store water during the summer months, and, if permission was not given for that diversion/storage, then perhaps that property owner could be required by MoE to reconfigure his pond in such a way that during times of low summer flow the water from the spring would not enter the pond. This would be relatively easily achieved by restoring the MoT creek bed to it's original levels, and, requiring a concrete "lip/weir" on the pond side which would act to channel the spring water downstream during the dry summer months, while allowing water during rainfall events to spill over the "lip/weir" and enter into the pond.

Also, on the same subject, the next time you are on the island, we suggest you inspect the MoT ditch on the east side of Gustaf Rd.. That ditch is part of the watercourse from Hickey Spring. Unfortunately, over the years, the ditch has filled in with organic material, vegetation and trees, and is preventing the spring water from flowing freely through to Kanaka Rd.. We would recommend that you request MoT clean that ditch to improve the summer flow conditions from the spring. Currently the outlet of the 12" culvert under Park Drive is plugged half full due to the amount of organic debris in the ditch to the south.



12" culvert south side of Park Drive showing standing water.

This would help to achieve your suggestion of more efficient/effective use of the spring water for benefiting fish habitat.

I would be happy to meet with you onsite to go over, point out, explain, or discuss any of the above in greater detail.

3. Circulating the pond water through the bio-filter will tend to even out the temperature at all levels of the pond. On hot summer days, this may result in higher than desirable temperatures in the lower reaches. I am not familiar with the proposed biofilter you plan to use. Is there a similar system in operation which has tracked water temperatures, to show what temperature range the water will remain at?

Actually the proposed biofilter will not "tend to even out the temperature at all levels of the pond." If you study the information we have supplied you will note the supply water is drawn from the top of the pond (where the temperature is highest), down through the sand and gravel filter (which will have a cooling effect), is then directed to the smaller contained pond area, from which it then overflows back into top few inches of the main pond. The overall effect will be one of cooling the main pond, not warming or evening out temperatures.

4. Again, I am not familiar with this biofilter. What dissolved oxygen (D/O) rating will the water be at when it leaves the pond?

The biofilter itself will not be increasing D/O rating. That will be achieved through the use of a fountain/aerator located in the same area as the biofilter. Given the number of variables it is

impossible to give a rating to the increase in oxygen content, however, it is certainly safe to say the oxygen content will be significantly higher than it is today, and, certainly much higher than it was prior to the pond reconfiguration.

7. This statement is unclear to me. If there will be any increased outflow from Pond # 1 due to stormwater, and the secondary pond is intended to address that, then it is not a 'fish enhancement feature'. If it is being designed primarily to take the flow from the ditch in the unopened road right-of-way and 'treat' that water, then we would consider it an enhancement feature. Could you provide some designs showing how this pond will interact with (the water course)?

You mention the 'vegetated ditch' as helping to address water quality issues in (the water course).

We are currently waiting for further information from a number of sources regarding the existing and potential paths for the storm water from the properties above our property. We hope to have that in the next month. That information may or may not change plans we currently have with regard to it's potential interaction with the proposed secondary pond.

However, if the creek continues to flow around the property, in order to address the capacity limitations in the ditch system, clean out and re-design would be necessary. This would have an adverse effect on the capacity of the 'vegetated ditch' to ameliorate stormwater quality.

As evidenced by the quick regrowth in the Desmond Crescent MoT ditches after they were completely cleaned out last year at this time, any "adverse effect" would be temporary, and, we suggest, would be no more "adverse" than any other fish habitat restoration project of MoT ditches which has occurred previously on Salt Spring.

8. Riparian buffers provide many functions, including shade, filtration of surface flow, absorption of stormwater, nutrient cycling, nutrient input to the water, temperature buffering, and more. Scientific research throughout North America and the world has addressed minimum buffer widths for many of these functions. The proximity of the buildings and the presence of a trail, whether or not its surface material is pervious, renders the buffer ineffective for many of these functions. For information on what some of these distances are, I recommend that you look at: Establishing fisheries management and reserve zones in settlement areas of coastal British Columbia, available through the DFO website, or the Riparian Areas Assessment Process, available at this web link:

http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/riparian_areas.html

After careful consideration it is our position our proposed development plans will provide adequate shade, vegetation, filtration of surface flow, oxygenation, absorption of stormwater, nutrient cycling, nutrient input to the water and temperature buffering.

I trust the above helps to answer your questions, and when new information is available, I will contact you.

In the meantime it would be helpful if you could please send me a copy of all information the Ministry has on file with regard to reports of fish, fish habitat, and/or spawning, in the lower reaches of the water course, including recorded sitings, numbers, dates, species, locations, etc. We would also appreciate receiving a copy of all of the statistical information on file with regard to the water course's water quantity, quality, temperature, turbidity, nutrient content, oxygen levels, Mean Annual Discharge, which may have also been collected over the years.

Thanks again.

Salt Spring Ventures Inc.
President, Eric Booth

DeProy, Joyce CSD:EX

From: Caskey, Marlene ENV:EX
Sent: Thursday, July 9, 2009 10:40 AM
To: Brodrick, Mark ISLT:IN
Cc: Dambergs, Arnis ENV:EX
Subject: FW: Lot 10 Park Drive

This is the last correspondence I received from Eric.
So, no, there has been no progress.

S16, S13

I will actually be on Salt Spring on Tuesday the 14th.
Marlene

From: Eric Booth [S22]
Sent: Wednesday, April 8, 2009 12:30 PM
To: Dambergs, Arnis ENV:EX
Cc: Brodrick, Mark ISLT:IN; lhartley@islandstrust.bc.ca; Law, Peter ENV:EX; Caskey, Marlene ENV:EX; Diederichs, Ron ENV:EX
Subject: Re: Lot 10 Park Drive

Hi Arnis

Thanks for your email.

Hope all is well with you and you're enjoying some of this great spring weather.

Marlene mentions "(my) proposal to modify (the pond at S22)". I just want to make it clear, I have no intention of modifying the pond since it is not on our property. It is in fact straddling the property owner's lot and the MoT's right of way. It was my suggestion to Marlene that (a) her department may wish to ask the owners to modify it, since it appears no permit was issued for it's creation, and, (b) the modification I suggested should help to improve fish habitat downstream.

I will leave my suggestion, to the powers that be, to decide what they wish to do with it.

Cheers - Eric

----- Original Message -----

From: Dambergs, Arnis ENV:EX
To: Eric Booth
Cc: Brodrick, Mark ISLT:IN; lhartley@islandstrust.bc.ca; Diederichs, Ron ENV:EX; Law, Peter ENV:EX; Caskey, Marlene ENV:EX
Sent: Wednesday, April 08, 2009 10:03 AM
Subject: RE: Lot 10 Park Drive

Mr Booth

Further to Marlene Caskey's note I write to indicate that proposals to make changes in and about a stream do require authorisation under the Water Act.

Further information on this is available at our website.

Refer to; http://www.env.gov.bc.ca/wsd/water_rights/licence_application/section9/index.html

Feel free to get in touch if you wish to discuss.

Have A GREAT Day !

Arnis

Arnis Dambergs
Water Stewardship Officer
Ministry of Environment
2080 Labieux Road, Nanaimo BC V9T 6J9
ph: 250-751-3165
fax: 250-751-7079
email: arnis.damberg@gov.bc.ca
web: www.env.gov.bc.ca/wsd

Water For BC - Safe Sustainable and Valued By All

From: Caskey, Marlene ENV:EX

Sent: Tuesday, April 7, 2009 8:23 PM

To: 'Eric Booth'

Cc: Brodrick, Mark ISLT:IN; 'lhartley@islandstrust.bc.ca'; Diederichs, Ron ENV:EX; Law, Peter ENV:EX; Dambergs, Arnis ENV:EX

Subject: RE: Lot 10 Park Drive

Thank you for your response of March 25, 2009. Unfortunately your letter does not adequately address many of our concerns. In order to provide 'science-based advice' regarding this proposal, we need additional information.

As you will remember, in April 2008 we carried out a joint onsite review with Federal Fisheries to determine whether or not the Riparian Areas Regulation (RAR) should have been applied to Swanson's Pond. Our unanimous decision was that, yes, RAR should have applied. This was based on our determination that the creek flowing through Swanson's Pond and the pond itself did contribute to fish habitat downstream. Due to the time lapse before our visit and the modifications which you had carried out based your understanding that RAR did not apply, we felt that applying the RAR to your pond was not feasible; however, the FISHERIES ACT still applies. Our letter of May 21, 2008 defined those issues which we felt were the minimum needed to maintain fish habitat downstream. As such, we are not in a position to 'compromise' by accepting less, as we are not in a position to condone a 'Harmful Alteration, Disruption or Destruction of Fish Habitat' (HADD) under the Fisheries Act. I am attaching the letter again so that you can review those issues which are still outstanding.

It is our desire that we get clarity on how you plan to address to these issues, so that we can move forward. As I stated above, our intention is to make an assessment of the impact of your proposed development and of the diverted creek channel based on 'science-based advice'. I recommend that you contact your professional consulting team to assist you in answering our questions of February 23, 2009, including a determination of Mean Annual Discharge, whether your proposed stormwater management system meets today's standards, how your modified pond will impact (both positively and negatively) Swanson's Creek downstream of your property, what improvements in water quality the proposed bio-filter technique has achieved in other applications, and the impacts of your development on the riparian area around your new pond. We also need information on how you will address the diverted creek channel, to ensure that downstream fish habitat does not continue to be affected by your diversion. I am attaching that e-mail again too, so that you have it at hand.

You have asked for some additional information in your letter of March 25th. I will answer these.

- As stated previously, we are supportive of the release of water from your pond on a year-round basis. I had asked for clarification of how this flow compares to the previous flow regime. Your engineer should be able to help you determine this.
- I am unaware of any permits issued to the owner of S22 to create the pond. I have passed your proposal to modify it to Arnie Dambergs in Water Stewardship Division.

- There is no specific file in which the reports and information you request would be located in this office. It is unlikely that there is very much data in this office on the smaller Salt Spring Island streams, including Swanson's Creek. Typically, this information would be collected by a consultant. I recommend that you ask your biological consulting team to pull it together. Our office allows researchers to check through our files. There may also be some information in the internet mapping tools. Again, your consultant would be the best person to gather this information.

I am looking forward to receiving the information requested so that we can reach a conclusion on this project. I feel that we are close to a solution to these issues.

Marlene Caskey,
Senior Ecosystems Biologist,
Environmental Stewardship Division,
Nanaimo

From: Eric Booth S22
Sent: Wednesday, March 25, 2009 11:22 AM
To: Caskey, Marlene ENV:EX
Subject: Lot 10 Park Drive

Hi Marlene

Please find attached our response to your email of February 23rd.

Cheers - Eric

DeProy, Joyce CSD:EX

From: Law, Peter ENV:EX
Sent: Friday, October 30, 2009 1:30 PM
To: Caskey, Marlene ENV:EX
Subject: FW: Drainage Issues related to Lot 10, Park Drive, Ganges, Salt Spring Island

Marlene

I am not sure, but I will defer to you for reviewing any drainage reports.

Pete

-----Original Message-----

From: Mark Brodrick [mailto:mbrodrick@islandstrust.bc.ca]
Sent: Friday, October 30, 2009 1:18 PM
To: Law, Peter ENV:EX
Subject: RE: Drainage Issues related to Lot 10, Park Drive, Ganges, Salt Spring Island

Hi Peter,

Thanks for your response. I have been respectfully suggesting to the various agencies to contact the applicant, Eric Booth, or the applicant's engineer, Wayne Lee, directly to satisfy any concerns or questions that you may have and then if you could let this office know if you are satisfied with the drainage reports it would be appreciated.

thanks Peter

Mark

-----Original Message-----

From: Law, Peter ENV:EX [mailto:Peter.Law@gov.bc.ca]
Sent: Friday, October 30, 2009 8:59 AM
To: Mark Brodrick
Subject: RE: Drainage Issues related to Lot 10, Park Drive, Ganges, Salt Spring Island

Thanks Mark. I have re-read your report, and made a comment (in an email yesterday) concerning "mitigation" of flows from the site to sustain low flows downstream. I do not believe this issue has been finalized, but I think we are close.

Pete

-----Original Message-----

From: Mark Brodrick [mailto:mbrodrick@islandstrust.bc.ca]
Sent: Thu 10/29/2009 2:13 PM
To: Law, Peter ENV:EX
Subject: FW: Drainage Issues related to Lot 10, Park Drive, Ganges, Salt Spring Island

Hi Peter,

As requested I am resending the reports that are attached to this email.

thanks

Mark

From: Mark Brodrick
Sent: Monday, October 26, 2009 2:50 PM
To: Caskey, Marlene ENV:EX; Law, Peter ENV:EX; Bob Webb; Baldwin, John ENV:EX
Subject: Drainage Issues related to Lot 10, Park Drive, Ganges, Salt Spring Island

Hi Marlene, Peter, John and Bob,

This email pertains to the Development Permit application by Salt Spring Ventures Inc. (Eric Booth) which is located at Lot 10, Park Drive, Ganges. There are three attachments to this email. The first attachment is the latest staff report that was presented to the SSI Local Trust Committee (LTC) on October 8, 2009 and one of the appendices attached to the staff report contains a drainage report. The second attachment is Appendix B of the drainage report. The third attachment clarifies Appendix B.

The submitted drainage reports appear to meet the Development Permit Area 1 guidelines. We ask that you please review the attached and provide any comments that you may have. The applicant is anxious for the development permit to be issued.

Marlene: I have also forwarded this email to Peter Law as I understand you are away. Please forward this email to the DFO if you feel necessary. It is quite some time since DFO has been involved and I am no longer certain of the appropriate contact person. Thanks

Bob: We look forward to hearing if the MOTI has any comments.

Thank you for your attention to this matter.

Mark

Mark Brodrick, Island Planner
Islands Trust
1-500 Lower Ganges Road
Salt Spring Island, BC V8K 2N8
250-538-5602 phone; 250-537-9116 fax
1-800-663-7867 via Enquiry BC
mbrodrick@islandstrust.bc.ca
www.islandstrust.bc.ca <[file://www.islandstrust.bc.ca/](http://www.islandstrust.bc.ca/)> Preserving Island communities,
culture and environment

P Please consider the environment before printing this email

DeProy, Joyce CSD:EX

From: Caskey, Marlene ENV:EX
Sent: Monday, November 16, 2009 2:56 PM
To: Diederichs, Ron ENV:EX
Subject: RE: Aqion report and Lot 10 Park Drive Salt Spring Island
Importance: High

S13

From: Caskey, Marlene ENV:EX
Sent: Tuesday, April 7, 2009 8:23 PM
To: 'Eric Booth'
Cc: Brodrick, Mark ISLT:IN; 'lhartley@islandstrust.bc.ca'; Diederichs, Ron ENV:EX; Law, Peter ENV:EX; Dambergs, Arnis ENV:EX
Subject: RE: Lot 10 Park Drive

Thank you for your response of March 25, 2009. Unfortunately your letter does not adequately address many of our concerns. In order to provide 'science-based advice' regarding this proposal, we need additional information.

As you will remember, in April 2008 we carried out a joint onsite review with Federal Fisheries to determine whether or not the Riparian Areas Regulation (RAR) should have been applied to Swanson's Pond. Our unanimous decision was that, yes, RAR should have been applied. This was based on our determination that the creek flowing through Swanson's Pond and the pond itself did contribute to fish habitat downstream. Due to the time lapse before our visit and the modifications which you had carried out based on your understanding that RAR did not apply, we felt that applying the RAR to your pond was not feasible; however, the FISHERIES ACT still applies. Our letter of May 21, 2008 defined those issues

which we felt were the minimum needed to maintain fish habitat downstream. As such, we are not in a position to 'compromise' by accepting less, as we are not in a position to condone a 'Harmful Alteration, Disruption or Destruction of Fish Habitat' (HADD) under the Fisheries Act. I am attaching the letter again so that you can review those issues which are still outstanding.

It is our desire that we get clarity on how you plan to address to these issues, so that we can move forward. As I stated above, our intention is to make an assessment of the impact of your proposed development and of the diverted creek channel based on 'science-based advice'. I recommend that you contact your professional consulting team to assist you in answering our questions of February 23, 2009, including a determination of Mean Annual Discharge, whether your proposed stormwater management system meets today's standards, how your modified pond will impact (both positively and negatively) Swanson's Creek downstream of your property, what improvements in water quality the proposed bio-filter technique has achieved in other applications, and the impacts of your development on the riparian area around your new pond. We also need information on how you will address the diverted creek channel, to ensure that downstream fish habitat does not continue to be affected by your diversion. I am attaching that e-mail again too, so that you have it at hand.

You have asked for some additional information in your letter of March 25th. I will answer these.

- As stated previously, we are supportive of the release of water from your pond on a year-round basis. I had asked for clarification of how this flow compares to the previous flow regime. Your engineer should be able to help you determine this.
- I am unaware of any permits issued to the owner of S22 to create the pond. I have passed your proposal to modify it to Arnie Dambergs in Water Stewardship Division.
- There is no specific file in which the reports and information you request would be located in this office. It is unlikely that there is very much data in this office on the smaller Salt Spring Island streams, including Swanson's Creek. Typically, this information would be collected by a consultant. I recommend that you ask your biological consulting team to pull it together. Our office allows researchers to check through our files. There may also be some information in the internet mapping tools. Again, your consultant would be the best person to gather this information.

I am looking forward to receiving the information requested so that we can reach a conclusion on this project. I feel that we are close to a solution to these issues.

Marlene Caskey,
Senior Ecosystems Biologist,
Environmental Stewardship Division,
Nanaimo

From: Diederichs, Ron ENV:EX
Sent: Friday, November 13, 2009 1:22 PM
To: Caskey, Marlene ENV:EX
Subject: FW: Aqion report and Lot 10 Park Drive Salt Spring Island

Are you available, today? Call me: S17

Ron Diederichs
Head, Ecosystems Section
Ministry of Environment, Nanaimo
Phone: 250-751-3223

Keep a green tree in your heart and perhaps a singing bird will come.

From: Clark, Brian J ENV:EX
Sent: Friday, November 13, 2009 1:00 PM
To: Williams, Bryan ENV:EX
Cc: Diederichs, Ron ENV:EX
Subject: Fw: Aqion report and Lot 10 Park Drive Salt Spring Island

S13

Brian Clark, R.P.Bio
Regional Operations Director
Environmental Stewardship and
Parks and Protected Areas Divisions

"If you don't like change, you're going to like irrelevance even less." - Eric Shinseki

From: Eric Booth <S22>
To: Caskey, Marlene ENV:EX
Cc: Heath, Dick ENV:EX; Clark, Brian J ENV:EX; Vouriot, Harmony ENV:EX; Moreau, Denise ENV:EX
Sent: Thu Nov 12 12:56:06 2009
Subject: Aqion report and Lot 10 Park Drive Salt Spring Island

November, 12, 2009

Ms. Marlene Caskey
Senior Urban Biologist
Ministry of Environment Environmental Stewardship Division

Dear Ms. Caskey,

I have been advised, by the Islands Trust, that on October 26th, Mr. Mark Brodrick forwarded to you for your review and comment, the Aqion Water Technologies Ltd. report on our proposed development on Lot 10, Park Drive.

As you will note, the Aqion report clearly concludes the pre-existing pond on our property had an insignificant effect on the attenuation of peak storm water flows.

While we have consistently stated this, for the past 2 years, it is my understanding from past correspondence from you, that you were concerned this was not in fact the case.

I trust the MoE, now having had a chance to review the Aqion report, is satisfied the pre-existing pond had no significant attenuation effect, and, that the redirection of the storm water into the Park Drive and Gustaf Road ditches, has not altered in any significant way the effect on downstream properties, or, negatively affected water quality or quantity in the water course.

In fact, water sampling done in 2008 indicates the water course is near Canadian Drinking Water Standards, and is entirely suitable for fish habitat.

And, while the Aqion report shows peak flows have been virtually unaffected, summer water quantity has been positively increased due to changes we have made to storm water flow patterns, including the recent cleaning out of the MoTI ditches on Park Drive and Gustaf, thereby providing a net benefit to "downstream" fish habitat.

That having been said, I am greatly concerned over what has become apparent as a result of our Freedom of Information request to the Ministry of Environment earlier this year.

Having had a chance to thoroughly go through, digest, and cross reference that information, it is evident, in spite of my best efforts to bring to your attention to, and request for action on my HADD complaint regarding the siltation of the water

which occurred as the result of the flooding of our property in December 2008 (which you referred to at the time would be a "'worst case' situation;"), your actions were diametrically opposed to your past and present stated opinions on the issue of water quality in the water course.

It appears from your actions you have not really been concerned with water quality in this water course at all, which suggests there may be a hidden agenda of some sort on your part, an agenda which may yet again result in a delay of our application.

Your consistent reliance upon S22 reporting to you regarding events surrounding our property, including her opinion of what was occurring at the time of my HADD complaint, and your subsequent advice to DFO staff that "no action (was) needed" on my formal HADD complaint, is questionable at best, given S22 in the matter, which you evidently have been well aware of since her first complaint to you in August 2007.

Additionally it appears you have misled Islands Trust staff, regarding the applicability of the RAR on Salt Spring Island, and to our property in particular, since your first contact with the Islands Trust regarding this matter on August 27, 2007, when you stated to Mr. Brodrick that the "RAR applies to Swanson's Pond." In fact you knew, as you related to Ms. Reimer, RPBio, the Executive Director of the Island Stream and Salmon Enhancement Society, three days previously, on August 24, 2007, "As Islands Trust does not yet have any legislation in place which triggers the RAR....they cannot force someone to comply (to the RAR)."

In addition, you should have been aware, or, should have at least asked the question of Mr. Brodrick, as to what portions of our property were in the DPA 4 area. It is clear you did not. Since RAR is triggered by development permission requests under Part 26 of the Local Government Act, this would have been a rather basic clarifying question.

Your subsequent inaction in responding to Mr. Brodrick's repeated requests for clarification on the applicability of the RAR, effectively delayed our application by approximately nine months. And, your August 24th, 2007 questioning of our biologists' (Mr. Warren Appleton, RPBio, Balanced Environmental Services Ltd.) credentials, opinions and conclusions (which were supported and confirmed twice by MoE Habitat Management Division's staff and by DFO), to the Islands Trust is further proof of apparent procedural, authoritative and professional "misjudgments" on your part.

Had you, prior to bringing your exception to Mr. Warren Appleton, RPBio's credentials and report to the attention of the Islands Trust on August 27, 2007, bothered to contact Mr. Appleton directly, he would have informed you that Mr. Andy Witt, Manager of Habitat Division, had already given support and reasoning for Mr. Appleton's conclusions. This would have not only been in conformity with the College of Applied Biology's ethical practices for professional biologists such as yourself, but, would have brought the matter to a close in short order.

As Ms. Stacey Wilkerson, Riparian Area Regulation Coordinator, stated on October 9, 2007, in her email to you, "This is a situation where people are looking to use the RAR to protect things other than "fish habitat."

In addition, in your May 21, 2008 letter, to myself and Mr. Mark Brodrick, Islands Trust, you consistently referred to our property as a "wetland," and yet you apparently ignored that (if it was in fact defined as a "wetland") it was a **non-fish bearing wetland**. As such it was exempt under Schedule B of the Riparian Area Regulations, which clearly states, "...wetlands are always considered to have permanent flow; if they are non-fish bearing then the RAR does not apply to them." (Page 21, Schedule B, Assessment Methods). As a professional biologist, and someone who makes authoritative statements on behalf of the MoE to other government agencies, such as the Islands Trust, it is incumbent on you to accurately communicate the requirements of the RAR as they may, or may not, apply. It is evident you consistently did not. And, I further submit to you it is clear there is no evidence in this matter a Crown Counsel would ever accept for the filing of a charge of a HADD against Salt Spring Ventures Inc., let alone taking into consideration the actual environmental improvements which have been made to our property to date.

Further, it appears, due to the lack of any correspondence or notes appearing in the FOI, subsequent to your April 2008 site visit, between either yourself (and/or Mr. Peter Law), and Ms. Wilkerson, and/or Mr. Andy Witt, Manager of the Habitat Management Section, I am likely correct in assuming you never discussed your "findings" with them, and how your "findings" were contrary to their previously stated opinions. This brings up a question as to why their qualified opinions, that the long culverts, which represented not only impassable, permanent barriers to fish, but also reductions in any benefits to downstream fish habitat, due to their length, were not taken into consideration in your conclusions. It appears you simply chose to ignore their qualified opinions, and, those of our biologists, in favour of, as Ms. Wilkerson suggested, protecting "things other than "fish habitat."

In the absence of any substantial evidence to the contrary, and, in the light of the fact that the changes we have already made to our property, in the opinions of our Qualified Environmental Professionals, as indicated in the Habitat Balance sheet forwarded to you in December of last year, have actually provided a net improvement in water quality, it is now my opinion SSVI does not **need** to do anything else to improve water quality in the water course. Whether we propose at a future date to make further improvements to our property which may enhance any riparian benefit to "downstream" fish habitat, will be entirely our decision, at our sole discretion.

With thousands of pages of emails and notes obtained through Freedom of Information on this file, I suggest the Ministry of Environment has wasted far too much of our time, and taxpayer' dollars on this matter. I suggest it is long past time it was brought to a close.

On December 18, 2007 you commented to Mr. Law, that *"We have made some big errors with this one but it is too late to revisit without making the Ministry look like an even bigger fool than it already is."*

For the sake of the Minister and the Ministry, I suggest you carefully consider your own advice and do what is right. As you also stated to Mr. Law, nearly two years ago, - *"As far as I am concerned, the issue is dead - fait accompli. Time to move on."*

It is indeed *"time to move on."*

Given your history of past delays associated with responding to this file, and given you have now had ample time to review the Aqion report, I expect the Islands Trust will receive your response and comments in writing no later than November 18th. In absence of your response to the Trust by that time, I will consider myself to have no other option than to take up my above concerns to the Minister's office.

Thank you for your prompt attention to this matter, and if you have any clarifying questions regarding the Aqion report, please don't hesitate to contact me or our engineer, Mr. Wayne Lee, P.Eng. at aqion@telus.net.

Yours truly,

Salt Spring Ventures Inc.
Eric Booth, President

cc -

Mr. Dick Heath, Regional Manager, Environmental Stewardship Dick.Heath@gov.bc.ca
Mr. Brian J. Clark, Director, Regional Operations Branch Brian.J.Clark@gov.bc.ca
Mr. Ralph Archibald, Assistant DM Environmental Stewardship Division c/o Harmony.Vouriot@gov.bc.ca
Mr. Doug Conkin, Deputy Minister, c/o Denise.Moreau@gov.bc.ca



November 17, 2009

File: 72000-45/IT-SALT-SWAN

VIA EMAIL

Eric Booth, President
Salt Spring Ventures Inc.

S22

Dear Mr. Booth:

Thank you for your enquiry regarding the status of our comments on a recent report relating to Lot 10, Park Drive, Saltspring Island. I note from your summary of your recent FOI request that this file has a significant history, but might respectfully suggest that the extracts that you cite could benefit from their context.

It is my understanding that you have received a copy of our recent responses to both the Islands Trust (IT) report and the appended Aqion report through the Islands Trust. I also understand that the Islands Trust is in preparation of a Development Permit; their staff report has been well received by my staff and comments were provided to Islands Trust on October 29th and 30th. This should address the substance of your request.

The remaining interest that MOE has is the management of the flows on and around the site and from Swanson's Pond in relation to the impact on the hydrology of the watercourse and the fish habitat downstream. We accept that the Aqion report has addressed peak flows from the pond as required in a strict reading of the applicable bylaws. The remaining interests relate to both hydrological and water quality impacts on downstream fish habitat that may accrue from changes to the pond and drainage pattern that have been made on site. It is my understanding that these interests have been communicated to you on several occasions and some potential solutions have been discussed with yourself, but that Salt Spring Ventures Inc. has not committed to any firm plan (although potential options are referenced in the IT staff report).

.../2

It is my staff's opinion that a solution may be near to hand, but they have not had any response to correspondence or dialogue since April 2009. I hope that you take the opportunity to meet with staff and finalize your plan such that fish habitat is conserved and so that the construction of your project may be facilitated.

Yours truly,



Bryan Williams
A/Regional Manager
Environmental Stewardship and
Parks and Protected Areas Division
Vancouver Island Region

pc Steve Voller, DFO Steve.Voller@dfo-mpo.gc.ca
 Mr. Ralph Archibald, Assistant DM ESD c/o Harmony.Vouriot@gov.bc.ca
 Mr. Doug Conkin, Deputy Minister, c/o Denise.Moreau@gov.bc.ca
 Brian Clark, Director, ESD Brian.J.Clark@gov.bc.ca
 Mark Brodrick, Islands Trust mbrodrick@islandstrust.bc.ca
 Ron Diederichs, Ecosystems Section Head Ron.Diederichs@gov.bc.ca
 Marlene Caskey, Senior Ecosystems Biologist Marlene.Caskey@gov.bc.ca
 Arnis Dambergs, Water Technical Officer Arnis.Dambergs@gov.bc.ca

Finnegan, Zoe ENV:EX

From: Williams, Bryan ENV:EX
Sent: Tuesday, November 17, 2009 1:53 PM
To: Finnegan, Zoe ENV:EX
Cc: Diederichs, Ron ENV:EX
Subject: Re: Aqion report and Lot 10 Park Drive Salt Spring Island
Attachments: Re: Aqion report and Lot 10 Park Drive Salt Spring Island

Below is a response that I approve for my signature (incoming is attached). I would like to get this response back to Mr. Booth electronically today, and note the cc list. Could you please help me with this?

Much appreciated,

Bryan

Eric Booth, President
Salt Spring Ventures Inc.

Dear Mr. Booth:

Thank you for your enquiry regarding the status of our comments on a recent report relating to Lot 10, Park Drive, Saltspring Island. I note from your summary of your recent FOI request that this file has a significant history, but might respectfully suggest that the extracts that you cite could benefit from their context.

It is my understanding that you have received a copy of our recent responses to both the Islands Trust (IT) report and the appended Aqion report through the Islands Trust. I also understand that the Islands Trust is in preparation of a Development Permit, that their staff report has been well received by my staff and that comments were provided to them on October 29th and 30th. This should address the substance of your request.

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It is my staff's opinion that a solution may be near to hand, but they have not had any response to correspondence or dialogue since April 2009. I hope that you take the opportunity to meet with staff and

finalise your plan such that fish habitat is conserved and so that the construction of your project may be facilitated.

Yours truly

Bryan Williams
A/ Regional Manager

Cc

- Mark Brodrick
- Marlene Caskey
- Ron Diederichs
- Arnis Dambergs
- DFO
- Brian Clark

Mr. Ralph Archibald, Assistant DM Environmental Stewardship Division c/o Harmony.Vouriot@gov.bc.ca

Mr. Doug Conkin, Deputy Minister, c/o Denise.Moreau@gov.bc.ca

DeProy, Joyce CSD:EX

From: Diederichs, Ron ENV:EX
Sent: Friday, March 5, 2010 11:32 AM
To: Caskey, Marlene ENV:EX
Subject: RE: RAR Issues- Saltspring Island

Hello, Linda.

I have discussed the questions that you raised with my staff and provide the following additional information:

S13

Ron Diederichs
Section Head
Ecosystems Section
Ministry of Environment
2080A Labieux Road
Nanaimo, BC V9T 6J9 Ph: 250-751-3223 Fax:250-751-3208
 Please consider the environment before printing this e-mail.

From: Diederichs, Ron ENV:EX
Sent: Friday, March 5, 2010 9:10 AM
To: 'executivedirector@cab-bc.org'
Cc: Witt, Andy ENV:EX; Clark, Brian J ENV:EX
Subject: FW: Signed MOU - Salt Spring Ventures

Good Morning, Linda

Regarding your request for information in relation to a complaint on Saltspring Island, I am advised that this letter of agreement is considered a public document and that I am able to release it for your perusal and consideration. I am preparing additional information in relation to your other questions and hope to have it to you by this afternoon. Best regards.

Ron Diederichs
Section Head
Ecosystems Section
Ministry of Environment
2080A Labieux Road
Nanaimo, BC V9T 6J9 Ph: 250-751-3223 Fax:250-751-3208
♻️ Please consider the environment before printing this e-mail.

From: McNeill, Diana A ENV:EX
Sent: Thursday, December 3, 2009 8:11 AM
To: S22
Subject: Signed MOU - Salt Spring Ventures

Eric,
As requested, below is a PDF copy of the MOU signed by Bryan Williams. I will be sending you an original hard copy in the mail today.

Thank you.

<< File: 20091203080406.pdf >>

Diana McNeill
Administrative Assistant
Regional Operations
Environmental Stewardship
and Parks and Protected Areas Division
Ministry of Environment
4th Fl 2975 Jutland Rd Victoria BC V8T 5J9
Ph: (250) 953-4763 Fax: (250) 356-9299
Email: Diana.McNeill@gov.bc.ca

Caskey, Marlene FLNR:EX

From: Magnan, Alain [Alain.Magnan@dfo-mpo.gc.ca]
Sent: Monday, May 16, 2011 10:58 AM
To: Caskey, Marlene FLNR:EX
Subject: FW: Swanson Creek and Swanson Pond

-----Original Message-----

From: Magnan, Alain
Sent: 2011-April-19 3:42 PM
To: Brian Milne
Cc: Butterfield, Sonora; Rutherford, Tom; Leone, Nick; Christensen, Lisa
Subject: RE: Swanson Creek and Swanson Pond

Mr. Milne,

Thank you for your e-mail. You are correct in that I was the Fisheries and Oceans Canada (DFO) representative who walked the site with Marlene Caskey and Pete Law (retired) both with the Provincial Ministry of Environment. My attendance at the site was made at the request of the Provincial staff to confirm with them whether the watercourse in question would be considered fish habitat as defined in the Fisheries Act. This initial determination was required to then confirm whether or not the Riparian Area Regulations (RAR) applied to this watercourse.

Once confirmation was made by myself and the Provincial staff that the Fisheries Act would apply to Swanson Creek, MOE staff took the lead in the review of this project. It's important to note that following this initial site visit, DFO did not have any further role in reviewing this file or approving any modifications to the wetland size or location. As both DFO and MOE have limited resources, and based on fish habitat values, it is accepted practice for either DFO or MOE to take the lead on a project with limited input from the other agency.

Consequently, in regards to your concerns regarding the reduction in size of the wetland, I would recommend that you contact Mrs. Marlene Caskey (MOE) directly as she and Mr. Pete Law (retired) were directly involved in the review of that file.

Yours truly,

Alain (Al) Magnan, R.P.Bio., CPESC
Project Assessment Biologist
Habitat Management
South Coast
Fisheries and Oceans Canada
3225 Stephenson Point Road
Nanaimo, BC V9T 1K3
Alain.Magnan@dfo-mpo.gc.ca
Tel: (250) 756-7021
Cel: (250) 714-9196
Fax: (250) 756-7162

Biologist, Evaluateur de projets
Peches et Oceans
Gestion de l'habitat

Cote sud
3225, chemin Stephenson Point
Nanaimo (C.-B.) V9T 1K3

New Pacific Region, Habitat website - Working Near Water:
<http://www.pac.dfo-mpo.gc.ca/habitat/index-eng.htm>

DFO's Pacific Region Project Review Application Form:
<http://www.pac.dfo-mpo.gc.ca/habitat/steps/praf/index-eng.htm>

-----Original Message-----

From: Brian Milne [mailto:S22]
Sent: 2011-March-28 1:06 PM
To: Magnan, Alain
Cc: Butterfield, Sonora; Rutherford, Tom; Leone, Nick; Christensen, Lisa
Subject: Swanson Creek and Swanson Pond

Dear Mr. Magnan:

I believe you are the DFO representative who walked the Swanson Creek water shed with Ms. Marlene Caskey.

It is my understanding that you both agreed that RAR applied to the whole watershed as it supplied food, nutrients and a more even supply of water to the salmonid in the Ganges Creek.

Ms. Caskey, basis an imaginary delay caused to "Eric" in his development, concluded that mitigation procedures were appropriate while emphasizing the poor management of the watershed by the Islands Trust Planning authorities in the past.

Following issuance of Ms. Caskey's letter, the developer eliminated the Swanson Creek that traversed the property and removed the wetland of 4500 sq. meter, replacing it with a 900 sq. meter pond.

Section 35 of the Fisheries Act prohibits HADD, a circumstance obvious in this instance.

Perhaps you can explain why the Department of Fisheries & Oceans Canada have ignored the matter.

Sincerely

S22

Caskey, Marlene FLNR:EX

From: Magnan, Alain [Alain.Magnan@dfo-mpo.gc.ca]
Sent: Wednesday, May 25, 2011 12:33 PM
To: S22
Cc: Dansereau, Claire; Nick Leone; Caskey, Marlene FLNR:EX
Subject: RE: VIOLATION OF FISHERIES ACT
Attachments: RE: Swanson Creek and Swanson Pond

S22

Further to your request for information on the Swanson's pond development, Saltspring Island, Vancouver Island BC, please note that contrary to your statements, Fisheries and Oceans Canada (DFO) has in fact responded back to your original request for information (e-mail attached). As previously noted in my April 19, 2011 e-mail, the Provincial BC Ministry of Environment (MOE) staff are the lead agency on this file, with DFO having little to no involvement other than a single site visit with Provincial staff as outlined in the attached e-mail.

Based on additional information recently received from the Province, the land owner, Salt Spring Ventures and the Province of BC entered into a Memorandum of Understanding (MOU) for this particular development. This MOU identified the commitments and future improvements that Salt Spring Ventures had to undertake in order to maintain downstream water quantity and quality. In addition, the MOU identified a commitment by the Province to investigate methods to improve water flow into Ganges Creek.

It is important to understand that simply reducing the size of a non fish bearing wetland does not constitute an "obvious violation of Section 35 of the Federal Fisheries Act". For this system, the valuable fish habitat exists some distance downstream of the wetland where fish presence is limited (Ganges Creek). From the wetland (Swanson's Pond) to the fish bearing reaches of the stream, there is over 400 m of impassable culverts, some of which are constructed under buildings which due to their gradient and shallow water depth prevent upstream fish access. In addition, a 2001 study of Swanson's Pond indicated that due to its shallow depth and low dissolved oxygen levels, this wetland would provide poor fish habitat. Consequently, development of the wetland could potentially occur, subject to maintaining water quality and quantity to downstream fish bearing waters, which is what the MOU appears to be directed at achieving.

To reiterate my previous correspondence, the Province of BC is the lead on this project. Provincial staff have appeared to have spent considerable time and effort with the proponent, including entering into an MOU to ensure that development of this property has been undertaken in accordance with applicable Municipal, Provincial and Federal laws. As previously outlined, development of a wetland does not constitute an automatic harmful alteration of fish habitat. Based on the limited fish habitat values of the wetland and the distance to downstream fish bearing waters, development of the wetland could be undertaken in compliance with the habitat provisions of the Fisheries Act.

Should you have any further questions on the development of this property, I would again recommend that you contact Provincial MOE staff directly.

Yours truly,

Alain (Al) Magnan, R.P.Bio., CPESC
Project Assessment Biologist
Habitat Management
South Coast

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New Pacific Region, Habitat website - Working Near Water:
<http://www.pac.dfo-mpo.gc.ca/habitat/index-eng.htm>

DFO's Pacific Region Project Review Application Form:
<http://www.pac.dfo-mpo.gc.ca/habitat/steps/praf/index-eng.htm>

-----Original Message-----

From S22
Sent: 2011-May-25 7:17 AM
To: XNCR, Info
Cc: Magnan, Alain; Dansereau, Claire
Subject: VIOLATION OF FISHERIES ACT

To: The Honorable Keith Ashfield
Minister of fisheries and Oceans

Dear Sir:

I forwarded the attached correspondence to the Deputy Minister and Mr. Alain Magnan of your Habitat Management Branch, Nanaimo, B.C.

My letter of April 18, 2011 has not been responded to.

I still await an explanation as to why an obvious violation of Section 35 of the Federal Fisheries Act has not been addressed by your Department.

Sincerely

S22

Cottam, Nick ENV:EX

From: Wilkerson, Stacey L FLNR:EX
Sent: Monday, July 18, 2011 5:04 PM
To: Cottam, Nick ENV:EX
Subject: FW: RAR on Salt Spring

From: Law, Peter ENV:EX
Sent: Friday, June 20, 2008 4:01 PM
To: 'Eric Booth'
Cc: Fraser, Mac ISLT:IN; Brodrick, Mark ISLT:IN; Caskey, Marlene ENV:EX; Wilkerson, Stacey L ENV:EX; 'MagnanA@pac.dfo-mpo.gc.ca'
Subject: RAR on Salt Spring

Eric

Thanks for your note.

I am sorry you found our letter of May 21st ambiguous (concerning your property on Park Ave).

You are asking for clear guidance from the Ministry about whether RAR applies to the Islands Trust area, and specifically, whether it applies to your development. The answer is yes.

The Riparian Area Regulation came into effect on March 31, 2006. The Islands Trust has been notified that they must:

- include riparian area protection provisions in its zoning bylaws and permits, in accordance with the directive, or
- ensure that its bylaws and permits under Part 26 of the Local Government Act provide, in the opinion of local government, a level of protection that is comparable to or exceeds that of the directive.

As of June 20, 2008, the Islands Trust have not implemented a RAR compliant bylaw for Salt Spring Island, however they (Islands Trust) must ensure that no development proceeds that is contrary to the regulation. It is the activity as defined in the definition of development that triggers the requirement to meet the RAR directives, not the existence of regulatory tools. This is why Mark Brodrick, and all the planners at the Islands Trust must ensure they operate within the scope of this Provincial Regulation and require a riparian assessment by a qualified environmental professional when development is proposed within riparian areas. Without the benefit of a professional assessment which is integral to the RAR approach and related advice to avoid damaging riparian values within riparian assessment areas, property owners are exposed to possible regulatory action, including charges under either the Fisheries Act or the Water Act or both in the event of harmful alteration, disruption and destruction of habitat or other adverse impacts on the environment within riparian assessment areas.

So, let me answer your questions:

*

"Have the Riparian Area Regulations been adopted and/or implemented (your emphasis) by the local government, the Salt Spring Island Local Trust Committee?" Yes or No? Yes, Islands Trust staff must legally operate within the regulation. They cannot ignore it for reasons stated above .

*

"If the Riparian Area Regulations have NOT been adopted and/or implemented (your emphasis) by the Salt Spring Island Local Trust Committee, do the Riparian Area Regulations apply on Salt Spring Island? Yes or No? Yes , as above .

*

"If the Riparian Area Regulations have NOT (your emphasis) been adopted and/or implemented by the Salt Spring Island Local Trust Committee, do only the existing Official Community Plan Development Permit bylaws (which have designated streamside protection areas) apply?" Yes or No? No, The Riparian Area Regulation applies to Saltspring Island at this time. The Streamside Protection Regulation was repealed at the time the RAR (OIC 837) was implemented. The fact that the Local Trust Committee has announced the public hearing on the above proposed change to the OCP is good, but as far as the Ministry is concerned, RAR has been a requirement on Saltspring since April 2006.

Now, a comment concerning our May 21st letter to you, where we state:

"Swanson's Pond is fish habitat and therefore should have been subject to the RAR." and, "...we have come to the conclusion an RAR assessment is not appropriate at this time."

Perhaps we should have used more definitive language. The RAR does apply to your development site. Now, because of the "delays" in getting your development request moved forward, This office is willing to "waive" the need for an RAR assessment, and will work directly with you and Islands Trust in seeking a solution.

Peter Law
Ecosystem Biologist*
Ministry of Environment
Vancouver Island Region
2080 Labieux Road
Nanaimo B.C. V9T 6J9
*Habitat Officer under the Water Act - Section 9

Peter.Law@gov.bc.ca
Phone: (250) 751-3229
Fax: (250) 751-3103

From: Eric Booth [mailto:S22]
Sent: Tue 6/17/2008 8:45 AM
To: Law, Peter ENV:EX; Caskey, Marlene ENV:EX
Cc: Brodrick, Mark ISLT:IN
Subject: RAR on Salt Spring

Dear Marlene and Peter,

Thank you for your letter of May 21, 2008.

Unfortunately, your letter appears to be ambiguous with regards to the RAR question. You have not unequivocally stated that the Riparian Area Regulations apply either to our property, or, to the Salt Spring Island Local Trust Area, just that, in your opinion, "Swanson's Pond is fish habitat and therefore should have been subject to the RAR." and, "...we have come to the conclusion an RAR assessment is not appropriate at this time."

Since last August, on a number of occasions, you have been asked by both Islands Trust Planner, Mr. Mark Brodrick, and myself, in writing and/or telephone conversations, to answer the question as to whether the Riparian Area Regulations have been implemented within the Salt Spring Island Local Trust Committee Area.

While I believe the question has been made exceedingly clear, none of your correspondence to date has actually answered this underlying question.

Therefore, for clarity, I am asking for yes or no answers to the following questions:

1. "Have the Riparian Area Regulations been adopted and/or implemented by the local government, the Salt Spring Island Local Trust Committee?" Yes or No?
2. "If the Riparian Area Regulations have NOT been adopted and/or implemented by the Salt Spring Island Local Trust Committee, do the Riparian Area Regulations apply on Salt Spring Island? Yes or No?
3. "If the Riparian Area Regulations have NOT been adopted and/or implemented by the Salt Spring Island Local Trust Committee, do only the existing Official Community Plan Development Permit bylaws (which have designated streamside protection areas) apply?" Yes or No?

I trust the above questions are clear enough for you to respond with yes or no answers, and additional comments if you wish.

If you need the questions to be clarified in any way, before responding, please don't hesitate to contact me for clarification.

As you are likely aware, the Local Trust Committee is now proposing the following changes to the Official Community Plan which would possibly see the implementation of the Riparian Area Regulations:

"A.5.2.8 (a.) The Local Trust Committee will update watercourse mapping and development permit area designations and guidelines to comply with provincial Riparian Area Regulations (RAR)."

This appears to be more support for my argument the RAR's have not yet been implemented on Salt Spring, and that existing OCP Development Permit guidelines DO NOT comply with the provincial RAR's, but DO comply with the previous Streamside Protection regulations.

Your answers to the above questions will help form the basis upon which the electorate of Salt Spring Island makes its decision as to whether to our community supports including the above proposal or not. As such, any information you supply must accurately reflect the existing legislation.

As the Local Trust Committee has announced the public hearing on the above proposed change to the OCP will likely occur early in July, time is now of the essence in this matter.

Thank you once again for your assistance, and I look forward to your prompt reply.

Yours truly,

Eric Booth
Salt Spring Ventures Inc.

Cottam, Nick ENV:EX

From: Wilkerson, Stacey L FLNR:EX
Sent: Monday, July 18, 2011 5:07 PM
To: Cottam, Nick ENV:EX
Subject: FW: "Stream" under RAR

From: Wilkerson, Stacey L ENV:EX
Sent: Monday, December 03, 2007 9:51 AM
To: S22
Subject: RE: "Stream" under RAR

Culverted streams are still considered surface flow.

From:
Sent: Monday, December 3, 2007 9:48 AM
To: Wilkerson, Stacey L ENV:EX
Cc: Law, Peter ENV:EX
Subject: Re: "Stream" under RAR

Unfortunately, it repeats my question. I guess, I was wondering if the "surface flow" requirement in RAR negates all waters that provide fish habitat (in that they provide stream flow, nutrients, etc for fish downstream) where they travel subsurface for a distance. MoE says on its website that "fish habitat includes watercourses, streams, ditches, ponds and wetlands that provide water, food or nutrients into a fish-bearing stream even if they do not contain fish and/or if they only have temporary or seasonal flows". (eg: whether I drink water straight out of the glass or through a straw does not alter the benefit I receive from it). Anyway, I'll check with S22

On Dec 3, 2007 12:17 PM, Wilkerson, Stacey L ENV:EX <Stacey.Wilkerson@gov.bc.camailto:Stacey.Wilkerson@gov.bc.ca> wrote:
If a watercourse is fish habitat (i.e. directly or indirectly) then it is a stream under the RAR. For example, if a roadside ditch was connected by surface flow to a fish bearing stream, then the RAR would apply to the ditch...even if there were not fish in it. We require local governments to have definitions that are consistent with the RAR- if they don't then their bylaws are not in compliance with the RAR and they need to include consistent definitions so that they are meeting or beating the level of protection set out in RAR. If there is evidence that a watercourse is fish habitat, then the RAR applies. If there is uncertainty, it should default to fish habitat.

Hope that helps,
Stacey

-----Original Message-----

From: S22
Sent: Friday, November 30, 2007 8:19 AM
To: Wilkerson, Stacey L ENV:EX
Subject: Re: "Stream" under RAR

Sorry, I have two other questions. One that I forgot to ask and the other that just came up.

Does the Fisheries Act definition of "stream" still apply in the context of RAR? For example, if fish indirectly depend on a watercourse in order to carry out their life processes, is this a stream under RAR, even if it does not match the limitations of the definition in RAR?

On a related note, where two definitions conflict, does the more specific definition prevail for the purposes of the Ministry of Environment or the local government? RAR would seem more specific than the Fisheries Act, yet I understand that it is intended to implement the Fisheries Act definition. However, it is meant to take effect through local bylaws. If the local bylaw incorporates the definition of RAR, but also another bylaw designates a particular stream as "existing or potential fish habitat", it would seem that the bylaw defining the stream as fish habitat would be the more specific than RAR and should remove any questions or difficulty of interpretation. I believe that the bylaw identifying fish habitat in this local government area was drafted using DFO data. Would that have any bearing on its authority?

Thanks again, and sorry for all of these questions.

S22

On Nov 30, 2007 12:13 AM,
wrote:

S22

- > Hi Stacey,
- >
- > I assume you are the one who asked Craig Rosser to give me a call
- > regarding the QEP Assessment Reports, thanks. I look forward to
- > getting those. I have some other questions that I am having difficulty
- > getting answers to. If you know anyone that can help, I would be
- > grateful.
- >
- > Under s.4(1) of the Riparian Area Regulations a local government must
- > not approve or allow development to proceed in riparian assessment
- > areas unless the development proceeds in accordance with subsection
- > (2) (obtaining a QEP Assessment Report) or (3) (Approval from DFO). I
- > am told that one of the two QEP Assessment Reports that I've requested
- > found that Swanson Creek is not a stream and is not a riparian
- > assessment area. But in the Schedule to RAR this includes streams that
- > are "currently or potentially fish-bearing." I understand that the
- > schedule is a legally binding part of RAR. I checked local Salt Spring
- > bylaw 345 which governs development and Map 12 lists Swanson Creek up
- > to and above Swan Pond as "Existing and Potential Fish Habitat." As
- > well, Map 21 lists the same Creek area as "Lakes, Streams and
- > Wetlands". Someone told me that Swanson Pond was just beyond the
- > identified areas on the maps, but I enlarged both maps and overlaid
- > them with a cartographer's map and this creek up to and beyond the
- > pond was captured by both bylaw maps. Is it possible for the local
- > government to issue a development approval under the authority of a
- > bylaw when that same bylaw designates that property as a "stream" and
- > "existing and potential fish habitat"? There must be some conflict
- > with its RAR responsibilities, is there not?
- >
- > If approval is on the basis of one of the QEP Assessment Reports, I am

> wondering how a QEP determination of whether it is a stream and fish
> habitat can override the bylaw determination, especially when the BC
> Fish Protection Act requires municipalities to meet or exceed RAR
> standards. Shouldn't the more stringent protection prevail?
>
> Isn't it possible for a local government to designate "streams" under
> the RAR? What if those streams were already designated as "existing
> and potential fish habitat" before RAR came into existence?
>
> I notice also that SSI Local Trust Committee has not yet implemented
> its obligations under the BC Fish Protection Act or RAR by amending
> its bylaws with respect to development and zoning. Is there a deadline

> for compliance?
>
> If a watercourse was previously fish-bearing, does it maintain its
> status as "potentially" fish-bearing if man-made obstacles, such as
> culverting, are introduced? I have a 2001 report concerning a proposed

> development on one of the properties, and it provides accounts of both

> native trout and introduced small mouth bass in Swanson Pond.
> Ironically, one of the authorities cited for that information is one
> of the current developers (Eric Booth).
>
> If you can help me find answers to these questions, I would be most
> grateful. Thanks.
>
> S22
>

Cottam, Nick ENV:EX

From: Wilkerson, Stacey L FLNR:EX
Sent: Monday, July 18, 2011 5:05 PM
To: Cottam, Nick ENV:EX
Subject: FW: Issues Alert: Salt Spring Island OCP controversy related to RAR

From: Law, Peter ENV:EX
Sent: Friday, July 04, 2008 3:02 PM
To: Heath, Dick ENV:EX; Clark, Brian J ENV:EX
Cc: Teskey, Judy ENV:EX; Caskey, Marlene ENV:EX; Wilkerson, Stacey L ENV:EX
Subject: Issues Alert: Salt Spring Island OCP controversy related to RAR

Prepared for Dick Heath and Brian Clark to inform you of a growing controversy concerning the application of the Riparian Areas Regulation on Saltspring Island.

Early indications were that the Saltspring OCP Update was going to be a bitter battle between conservationists and defenders of property rights, but the trustees responded to a wave of bad press by removing from consideration all of the most controversial measures. One of the items that they deferred was establishing development permit areas to meet their RAR requirements. This led to complaints from MoE and conservationists, and then to a place-marker policy promising to implement RAR later. Eric Booth, a former Saltspring trustee, has now launched a vociferous attack on this RAR commitment. Here is his website;
<http://www.islandstrust.com/>

Eric Booth is a local Saltspring Island land developer who has been the recipient of much attention in the Ganges area concerning the development of a 3 acre parcel of land with a 1.5 acre man-made wetland located on it (Swansons Pond). This development was assessed by a biologist and a letter was generated that provided an opinion that a RAR assessment was not required on this wetland. Mr. Booth accepted this letter as confirmation that he had full development opportunity on the site (and planned fill the wetland). WSD staff from Nanaimo attended the site at the request of Islands trust, and provided an opinion that the wetland was not a "stream" under the Water Act, which added to Mr. Booth's understanding that plans to fill the wetland were legally sanctioned by MoE. Mr. Booth brought in a machine and blocked off the inlet to the wetland, diverting water from Swanson's Creek (which is not a stream) into ditchlines around the property. Flooding occurred to various houses in the area this winter, which raised the profile of whether the property should be developed.

In March 2008, the Islands Trust Board (for Saltspring) contacted Ecosystem staff (Marlene Caskey and Peter Law) to provide a determination of whether RAR and the Federal Fisheries Act should apply to Swanson Pond. This assessment (done with DFO Habitat staff) concluded that the Pond does substantially influence (downstream) fish habitat, so we communicated this back to Mr. Booth. We have indicated in our correspondence that the Ministry considers the filling in of the pond as a Fisheries Act HADD, and indicated a willingness to work closely with him to resolve the matter.

Mr. Booth has now launched a campaign in the local newspaper to fight the proposed amendments to the local OCP to require application of RAR (see attached articles from the Driftwood). Mr. Booth is incorrectly portraying how the RAR works and alleging that this is a sneaky and underhanded attack against property rights. Marlene provided a response letter to Mr. Booth's position to the Islands Trust to attempt to clarify the issue. In his latest (July 1st amendment to his website) he calls for a "legal opinion" on whether RAR is a requirement. This will push any amendment of the local OCP to include RAR to a point after the fall local government elections.

Marlene and Peter have stayed in touch with the Islands Trust staff concerning this issue, and will attempt to work with Mr. Booth concerning Swanson Pond.

Contact

Peter Law
751-3229

Marlene Caskey
751- 3220

Cottam, Nick ENV:EX

From: Wilkerson, Stacey L FLNR:EX
Sent: Monday, July 18, 2011 5:06 PM
To: Cottam, Nick ENV:EX
Subject: FW: RAR-related question

From: Wilkerson, Stacey L ENV:EX
Sent: Friday, April 18, 2008 10:28 AM
To: Caskey, Marlene ENV:EX
Cc: Law, Peter ENV:EX; Teskey, Judy ENV:EX
Subject: RE: RAR-related question

Hi Marlene,

A biologist-in-training can perform an RAR assessment but cannot sign off on it. Often, QEPs will send junior staff into the field, do the assessment and then the QEP will sign off. Has a legitimate QEP concurred with the BIT's assessment?

Stacey

From: Caskey, Marlene ENV:EX
Sent: Thursday, April 17, 2008 6:09 PM
To: Wilkerson, Stacey L ENV:EX
Cc: Law, Peter ENV:EX; Teskey, Judy ENV:EX
Subject: RAR-related question

The situation is this (and Peter might have mentioned it to you, as it is connected to the Swanson's Pond issue on Salt Spring Island).

Last spring, a biologist went to SSI and measured a number of culverts in Swanson's Creek, and made a visual determination of whether or not he felt they were fish-passable. Using this information and a general statement through Andy Witt and Karen Calla that extensive culverted stretches could 'disconnect' an upper watershed from fish habitat downstream, he decided that no RAR was required for the development site upstream. When I questioned his credentials (as the College of Applied Biology - CAB - site listed him as a Biologist-in-Training - BIT), I was told by his environmental company that he WAS a QEP.

Recently I revisited this question, as the CAB web site still lists him as a BIT. The CAB tells me that he is still a BIT, although they have received the necessary paperwork to be upgraded to R.P.Bio status.

So, the question is: Can someone other than a QEP make a determination as to whether or not a site is fish habitat as defined by the RAR?

(And, for the record, Peter Law, Alain Magnan (DFO) and myself went over to SSI on the 7th, and we have decided that the upper watershed IS definitely contributing to fish habitat.)

P. Marlene Caskey, B.Sc., R.P.Bio
Senior Urban Ecosystem Biologist
Environmental Stewardship Division,

Vancouver Island Region, Ministry of Environment Nanaimo
(250) 751-3220