



August 18<sup>th</sup>, 2024

**Islands Trust**  
Regional Planning Committee  
C/O Gabriola Islands Trust  
700 North Road, Gabriola Island  
BC, V0R 1X3

Via e-mail (and mail) to [lpatrick@islandstrust.bc.ca](mailto:lpatrick@islandstrust.bc.ca) and [RPC@islandstrust.bc.ca](mailto:RPC@islandstrust.bc.ca)

Attention; Ms. Laura Patrick, Chair Regional Planning Committee

**RE: Proposed Gabriola Island Local Trust Committee Bylaw Compliance & Enforcement Policy Revisions**

Dear Laura,

As you may be aware MICA is group of elected community members from Mudge Island representing the Mudge Island community relative to working with the Islands Trust to address current bylaw infraction issues, the development of new bylaw policies, and to work with the Islands Trust in the development of potential revisions to the current Mudge Islands Bylaws.

As you may also be aware, Mudge Island has had a recent rash of by-law complaints in 2024. Through freedom of information requests, we have determined that there have been 56 complaints as of mid April and the last report we had was that there were over 70 open files. Many of the complaints appear to relate to minor infractions, some have existed for decades and could likely be addressed with some form of discretion. And some of these complaints seem specifically targeted to cause distress, frustration, worry, and financial burden on the community, with some being categorically false.

This has caused considerable angst and distress for the island residents. As mentioned, the island residents have elected the Mudge Island Community Association to collaborate with the Islands Trust and we have to say the trustees and Gabriola Islands Trust Committee members have been responsive, attentive and are working hard to hear the community voice in order to de-escalate and resolve the situation

To that end, on April 18, 2024 the Gabriola Islands Trust Council passed the following motion:

*that the Gabriola Island Local Trust Committee defer enforcement of the Mudge Island Land Use Bylaw No 228 until a full review of policies and procedures for compliance and enforcement is complete and adopted; with the exception of situations where environmental and human health and safety are a significant concern, and these would be brought to the Local Trust Committee for review.*



This was later amended at the August 8th, 2024, meeting to suspend enforcement until review of bylaws has been completed. These motions have reduced some tension.

On July 16, 2024, a Special Meeting of the Gabriola Islands Trust committee was held on Mudge Island. The meeting was attended in person by the Trustees Elliot & Yates, over 100 Mudge Island residents and Compliance and Enforcement Manager Dingman who was remote.

As recorded in the minutes of the meeting (which are available on the IT website) many of the Mudge Island Residents expressed concern that investigations were required to proceed and only enforcement would be suspended. As is noted in the minute's, the community feels investigations tend to be perceived as biased, invasive, and have proven to be extremely unpleasant experiences for the residents. The community suggested that since the bylaws are likely to be amended and that the bylaw enforcement policies will be changed, we should also pause investigations. This would arguably save the Islands Trust considerable money and resources and further reduce the stress on the community. Compliance and Enforcement Manager Dingman indicated that while the Ombudsman Special Report No 36 By law Enforcement Best Practices for Local Governments recommended that Bylaw Officers be given discretion on whether to investigate a file or not, apparently the current Bylaw and policy does not provide this discretion, Mr. Dingmans interpretation of the policy is that complaints "must" be investigated with reporting provided to Trust Council and the LTC.

We have reviewed Islands Trust council policy 5.5.1 Sec 3 which governs investigations and as you will see below, the language in the By-law uses the permissive "may", which after legal consultation would indicate that there is some discretion. Compliance and Enforcement Manager Dingman defended his position that "may" really meant "must" in the context of this document and Islands Trust policy.

#### COMMENCING INVESTIGATIONS

3.1 Bylaw investigations may be commenced and an investigation file opened in one or more of the following circumstances:

3.1.1 in response to written complaints of an alleged contravention made by any person;

3.1.2 bylaw contraventions appear to occur in setbacks from water bodies or in development permit areas;

3.1.3 bylaw contraventions appear to cause health and safety issues;

3.1.4 bylaw contraventions appear to occur as part of a building permit process or other permitting process administered by a local government or the Policy;

5.5.1 Bylaw Compliance and Enforcement Page 2 Islands Trust;

3.1.5 a referral is received from a permitting agency that identifies alleged land use bylaw contraventions associated with the permit request;

3.1.6 advertisements exist for apparently unlawful uses;

3.1.7 a Local Trust Committee directs staff to commence an investigation.



It appears that existing policies that are defined by the Islands Trust Council are supposed to provide an avenue for discretion by by-law enforcement officers which they seem unable or unwilling to avail themselves. We understand that you are reviewing policies in general and in this process, we would ask that you clarify this discretion's existence should you deem that our interpretation is correct. If there is a lack of clarity on when the discretion should be applied perhaps that should be included in the policy or that discretion should be applied by the by-law enforcement team. If the By-law enforcement officers need greater guidance perhaps that discretion should be granted to the Local Trust Councils to ensure community situations can be de-escalated.

We are grateful that Compliance and Enforcement Manager Dingman has drafted a Bylaw proposed policy for Gabriola and Mudge Island, The Mudge Island Community Association has in consultation with the community provided suggested edits to the proposal that we ask you review and consider presenting to Trust Council, and we advise we are in the process of planning a working session with staff and trustees on this policy. For your reference I have included attachments to those documents.

We thank you for your time and the opportunity to make this submission.

Yours truly,  
**Mudge Island Community Association (MICA)**

  
Rich Brooks, Chairman  


cc: MICA Committee Members

*The Mudge Island Community Association acknowledges that Mudge Island is traditional territory of many First Nations, including the Coast Salish peoples and the Hul'qumi'num speaking Nations. We are grateful to have the opportunity to live, learn, work and play in their traditional and unceded territories.*



July 9<sup>th</sup>, 2024

**Islands Trust**

Local Gabriola Island Trust Committee  
700 North Road, Gabriola Island  
BC, V0R 1X3

Via e-mail (and mail) to [GabriolaIslandLocalTrustCommittee@islandstrust.bc.ca](mailto:GabriolaIslandLocalTrustCommittee@islandstrust.bc.ca)

Attention; Local Trust Committee Members    Trustee Mr. Peter Luckman, Chair  
   Trustee Ms. Susan Yates  
   Trustee Ms. Tobi Elliot

**RE: Proposed “Gabriola Island Local Trust Committee Bylaw Compliance & Enforcement Policy Revisions” Revisions**

On behalf of the residents of Mudge Island and The Mudge Island Community Association we would like to thank you for considering our letter of June 7, 2024, and listening to members of MICA and the community address the LTC on June 27<sup>th</sup>, 2024. We believe this to be a positive step relative to the situation on Mudge Island and the recent rash of Bylaw infraction notification letters. The community and MICA look forward to collaborating and developing a positive working relationship with the LTC and staff and moving forward with the creation of new Bylaw enforcement Policies. As we likely agree, these new Policies are a much needed first step to assist in addressing the noncompliance situations within the Mudge community and will undoubtedly form the cornerstone criteria to modifying actual LU Bylaws in the future.

As discussed, on June 27<sup>th</sup> LTC meeting, we are attaching a clean and marked copy of our suggested revisions to the proposed enforcement policy. These revisions are the result of significant community consultation, community member input, and deliberation within our committee capturing common themes and concerns from island property owners. We intentionally made targeted changes only, rather than wholesale revisions.

MICA appreciates and supports the efforts of compliance staff to formalize an enforcement policy for the Gabriola area and Mudge Island in particular. Without the policy, the current complaint system is open to abuse. Complaints can be made by anyone, with any motive, from anywhere, at any time. The sheer number and nature of the current complaints on Mudge suggests that there is an organized campaign that is exploiting the weaknesses of the current system. This campaign has resulted in enormous anxiety in the community, not only among the targets of the complaints, but also those who fear they will be next. The proposed changes, while helpful and sensible, do not assist in addressing the current spate of complaints on Mudge Island and will not measurably assist in reducing the number of enforcement actions. Our targeted suggestions would effectively reduce the number of complaints to those which are adversely impacting the community or certain of its members and which we as a community want to see enforced.



Mudge Island is a unique community. It is a remote island, accessible only by private boat. It was subdivided in the early 1970's, prior to the advent of the Islands Trust, mostly into tiny, half-acre lots. There are no stores or other amenities. We haul in our groceries and fuel and haul out our garbage. We need to travel to Gabriola or Nanaimo for supplies, medical care and education for our children. We often can't get qualified service people to come to the island to assist with construction or other projects. When we can bring them over, we often must put them up while they complete their work. As a result, we have had to develop a community where we act together to support each other and our way of life. A great example of this is the MICS Hall, where the community got together to fund the acquisition of the land and equipment and construction of the building, and through community volunteers, provides emergency medical evacuation and fire services and provides regular training to the community on the use of the vehicles and equipment. Other examples are sharing barges, and sharing the cost of services for multiple residents, such as well drilling, chimney cleaning or septic pumping.

Another aspect of the island is that we have been largely left alone. While we pay taxes to the RDN, we receive minimal on-island services. We have historically received no real oversight from government at all, whether it is the Province, Islands Trust, the RDN or otherwise. While we are subject to land use bylaws, we have had little input into them and are forced to live with bylaws which are out of touch with the reality of life on Mudge. Practically every property on Mudge is non-compliant with the bylaws in some respect, which makes all of us easy targets and which has resulted in a stressful community situation.

MICA has been given access to the response to a Freedom of Information request made by a community member which includes all the recent complaints. From it, we have compiled some aggregate data to analyze the recent complaints. It indicates that there has been a dramatic increase in the number of bylaw compliance complaints in 2024 (see attached graphs) and a shift in the types of complaint. There have been 58 complaint emails (with a total of 132 separate complaints) between January and April 2024. The use of the same wording in the complaint emails and date stamps suggests that two individuals residing on or familiar with Mudge may have made all the 2024 complaints. While the requirement in the proposed enforcement policy that there be complaints by two Mudge residents is helpful, it should go farther to require that at least one of them is a neighbor and is adversely affected by the alleged contravention. This will curtail the 'drive by' nature of the current complaints and is consistent with the best practices guide for local governments published by the BC Ombudsperson. We also suggest that the 'neighbor' must be within 100 meters of the subject property. This is to protect the anonymity of the complainant, as a requirement for the complaint to be made by an adjacent neighbor would make it too easy to identify the complainant.

In addition to the attached, other significant changes that we are requesting are to defer enforcement until the Mudge land use bylaws can be reviewed and be reconsidered. Some of the Bylaws that need to be revised include:

- Ocean setbacks. Mudge is unique among the Gulf Islands in requiring a setback of 30 meters. It is not distinguishable from Gabriola (where the required setback is 7.5 meters) on a geological or geotechnical basis, or other islands in the DeCourcy Group and, given the very small lot sizes, 30 meters is inappropriate. Similarly, there are a significant number of complaints related to decks, stairs and structures within the setback limits which are arguably non-environmentally contentious, visually non-detrimental, and are in keeping with what the community generally feels are reasonable and should be considered for revision within the current bylaw.

- Lot coverage. Again, the 10% lot coverage restriction is inappropriate, given the very small lot sizes. On a half-acre lot, this allows for a maximum ~2,200 square footprint for dwelling, deck and outbuildings etc.
- Mooring buoys. As a remote island without a public dock, a restriction on mooring buoys is particularly inappropriate and unreasonable. The fact that barge landings and docks are permitted is of little help to those with upland (non-waterfront) properties or those without the money and time to acquire the permits and build them. While restrictions on number (two per property) and ownership (property owners only) of mooring buoys are appropriate, an absolute ban is not.
- Home occupation. As a remote island, we rely on local trades, including mechanics, electricians, carpenters, tree fallers, excavators, scissor lift and other heavy equipment operators.

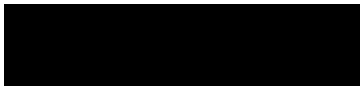
These are all matters which the community requires an amendment to the existing bylaws and should not be the subject of enforcement until they can be fully reviewed with input from the Mudge community. The community supports continued investigation and enforcement of derelict buildings, trailers and vehicles, health and safety concerns, interference with cultural heritage sites or possible environmental damage.

We thank you for your time and the opportunity to make this submission.

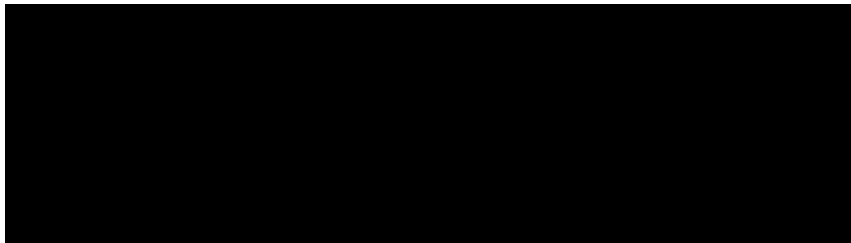
Yours truly,

**Mudge Island Community Association (MICA)**

Rich Brooks, Chairman

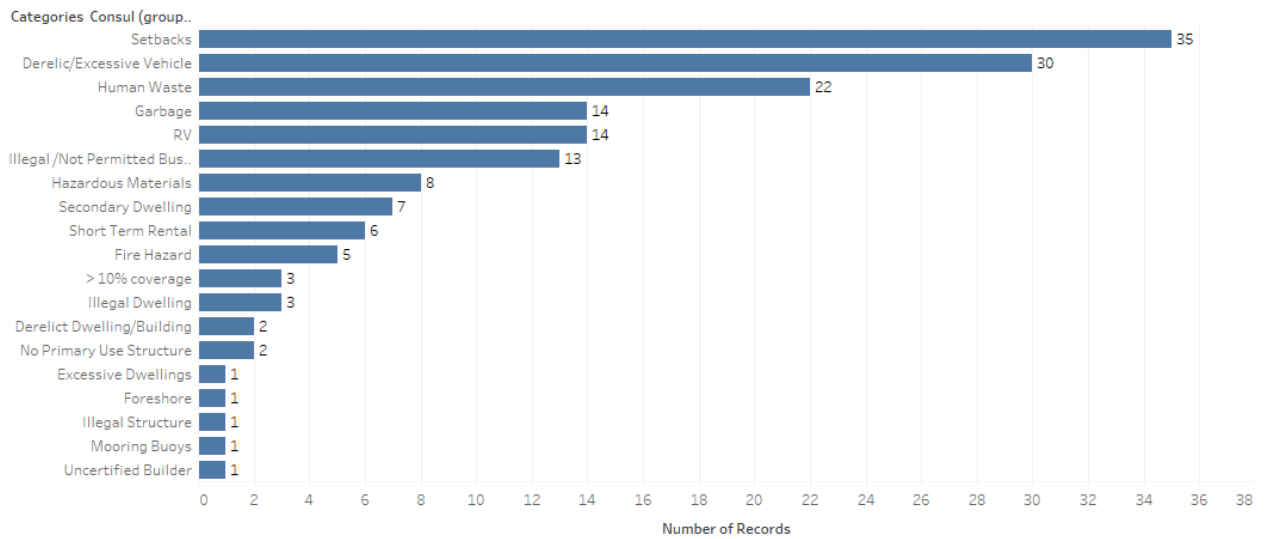


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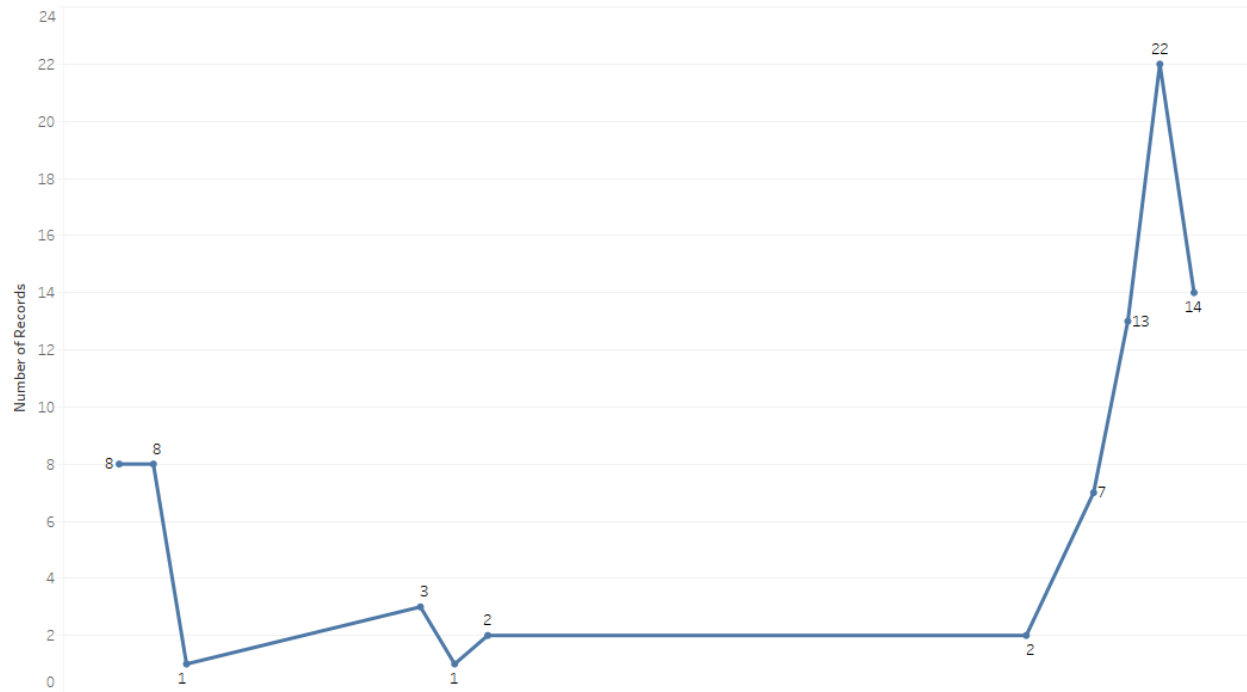


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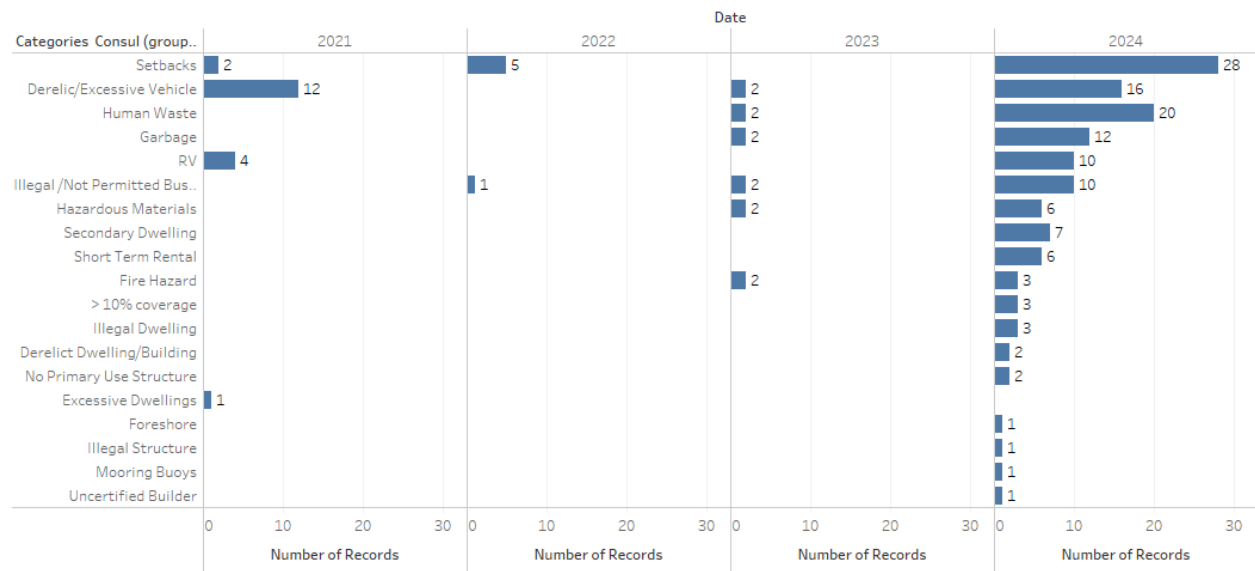
## Complaint Categories



## Trend Of Complaints



## Complaint type over time





## TRUST COUNCIL POLICY

Trust Council Policy 5.5.1, which is attached, provides direction to staff and Local Trust Committees on when compliance and enforcement investigations will be commenced and closed; the priority of investigation; the role of Local Trust Committees in bylaw enforcement; use of mediation; when legal action should be commenced; confidentiality of complainants; and bylaw notice debt.

However, it does not contain policies for the following:

1. Notice of Site inspections
2. Time to Comply
3. Frivolous or vexatious complaints
4. Definition of minor contraventions
5. Use of discretion

Trust Council policy states that Local Trust Committees can close files and adopt policies to address specific issues regarding compliance and enforcement, and the proposed policy document is an opportunity to ensure that those issues are addressed in an open and transparent manner, and to allow the Local Trust Committee the opportunity to provide additional direction to staff on how to conduct bylaw compliance and enforcement activities.

## PROPOSED POLICIES

The proposed policy contains the current policies adopted by standing resolution and it also provides additional policies on when site inspections are to occur, or not occur, and when files should be closed at the discretion of staff. It also includes consideration on whether or not those subject to compliance should face enforcement or penalties if they are financially unable to comply.

This policy also contains a separate section for Mudge Island for the Local Trust Committee to consider. Mudge has no ferry service, or community dock, and there can be additional challenges and expenses when residents are being asked to comply with the adopted Land Use Bylaw. The majority of the greater policy for the Local Trust Area contained in Part A would apply to Mudge but Part B would provide those specific policies that the Local Trust Committee wishes to apply to Mudge.

## RATIONALE FOR RECOMMENDATION

Local governments throughout British Columbia have bylaw enforcement policy documents that provide direction to staff regarding how bylaw compliance will be sought and how enforcement will be conducted. Within the Islands Trust, Local Trust Committees have been establishing such policies piecemeal and for individual issues through the adoption of standing resolutions. Establishing the policies into one document that can be readily accessed by staff and the general public should ensure a more efficient and open and transparent access to information and policies, and a better understanding of how bylaw enforcement is conducted.

## ALTERNATIVES

1. That the Gabriola Island Local Trust Committee direct staff to proceed no further with work on the policy document.

Submitted By:	Warren Dingman, Bylaw Compliance and Enforcement Manager	June 17, 2024
Concurrence:	Renée Jamurat, RPP MCIP, Regional Planning Manager	June 17, 2024

#### Attachments

1. Proposed Denman Island Bylaw Enforcement Policy
2. Trust Council Policy 5.5.1

## PROPOSED

### Gabriola Island Local Trust Committee Bylaw Compliance & Enforcement Policy

Bylaw Compliance & Enforcement Policy No. 1, effective \_\_\_\_XXX\_\_\_\_\_, 2024

#### Revision No. 1 Purpose

To establish policies and procedures for bylaw compliance and enforcement in the Gabriola Island Local Trust Area in accordance with the adopted Trust Council Policies contained in Policy 5.5.1., that are within the authority of the Local Trust Committee to enforce, and that will ensure policies and procedures are efficient, transparent, reasonable, and consistent with local community standards.

## PART A

### 1.0 Application

*This policy will apply to the Gabriola Island Local Trust Area and the enforcement of all applicable regulatory bylaws.*

#### 2.0 Definitions & Abbreviations

**Approved septic system** – ~~one that has been~~ a septic system that has been designed or constructed by an accredited professional, or registered with the Vancouver Island Health Authority, as appropriate at the time of construction

**BEN** – bylaw enforcement notice

**Cultural heritage site** – a site identified by local First Nations as being of cultural significance

**Environmentally sensitive areas** - areas which are vital to the survival of biological diversity such as wildlife and marine habitat areas and wetlands

**Health & Safety concerns** – fire, unsafe construction, waste disposal, hazards relating to steep slopes or cliffs

*LUB – Land Use Bylaw*

*LTC – Local Trust Committee*

*Minor structure – any structure that does not require a building permit, and that is not located in a development permit area or located within any other environmentally sensitive area*

*Respondent – a property owner whose property is subject to a bylaw enforcement complaint*

*Health & Safety concerns – fire, unsafe construction, hazards relating to steep slopes or cliffs*

*Approved septic system – one that has been registered with the Vancouver Island Health Authority*

### 3.0 References

*Gabriola Island Land Use Bylaw No. 177*

*Mudge Island Land Use Bylaw No. 228*

*Gabriola Island Local Trust Committee Bylaw Enforcement Notification Bylaw No. 263*

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### 4.0 Priorities

- 4.1 Enforcement on short-term vacation rentals is a priority and proactive enforcement is authorized.
- 4.2 Enforcement on non-compliant dwellings will be deferred unless there are contraventions in development permit areas, or other environmentally sensitive areas, or there are concerns about health and safety, [preservation of cultural heritage sites](#), or the lack of an approved septic system.
- 4.3 [Some factors that staff can reasonably consider when deciding whether or not to investigate include:](#)
  - [the nature of the complaint and alleged violation](#)
  - [the impact of the violation on the community](#)
  - [the impact of the violation on the complainant \(if there is one\) or other individuals](#)
  - [any general directives from the LTC<sup>1</sup>](#)

<sup>1</sup> [See Ombudsperson's Special Report No. 36, Bylaw Enforcement: Best Practices for Local Governments, p.27 \(attached as Schedule D\):](#)

[As a best practice, staff who are deciding whether or not to investigate a complaint should have guidelines to assist them in making consistent and defensible decisions. Those guidelines should define the circumstances in which staff can decide not to investigate a complaint and outline the factors staff should consider when making that decision. Some factors that local government staff can reasonably consider when deciding whether or not to investigate include:](#)

- [the nature of the complaint and alleged violation](#)
- [the impact of the violation on the community](#)
- [the impact of the violation on the complainant \(if there is one\) or other individuals](#)
- [any general directives from council](#)

[Such guidelines can be contained in the local government's broader enforcement policy \(see "Guidelines for Exercising Discretion" in The Role of Council section of this guide for more discussion\).](#)

## 5.0 Inspection

5.1 Bylaw Enforcement Officers are authorized under the Land Use Bylaws to enter any lot at any reasonable time to determine if regulations are being observed.

5.2 At the start of any investigation, Bylaw Enforcement Officers will determine if entry is necessary to investigate the alleged contravention or if the investigation can be conducted from a public road or other lands.

~~5.3~~

5.3 Before conducting an inspection, the Bylaw Enforcement Officer will determine whether it is possible to allow a resident time to comply with the bylaw without the need for an inspection.

5.4 Bylaw Enforcement Officers must provide reasonable advance notice of the inspection to the resident unless the situation is one in which the LTC has stated in a LUB or policy that notice is not necessary.

5.5 Bylaw Enforcement Officers are encouraged to request mutually agreeable times to arrange site inspections.

~~5.4~~5.6 If a Respondent has indicated that they will work towards compliance, and have agreed on a time to comply, a site inspection is only required to confirm compliance.

~~5.5~~5.7 If a Respondent provides photographic evidence, a survey, ~~or~~ a professional report or other reasonable information or evidence that confirms compliance, a site inspection is not required.

5.8 When conducting an inspection, Bylaw Enforcement Officers must be as minimally intrusive as possible, only inspect what is relevant to the bylaw being enforced, and complete the inspection in a reasonable amount of time.<sup>2</sup>

## 6.0 Enforcement Procedures

6.1 If a bylaw contravention is confirmed, there will be notice in writing, and Respondents will be given a minimum of 90 days to comply with the relevant LUB.

6.2 Bylaw Enforcement Officers can use their discretion to consider any reasonable time to comply request from Respondents but the term cannot be for more than one year.

6.3 If there are contraventions in environmentally sensitive areas, or development permit areas, or if there is a risk to health and safety or a cultural heritage site, there will be a demand for the Respondent to cease the use or activity immediately.

6.4 If the Respondent wishes to consider a planning application that will bring the property into compliance, the Bylaw Enforcement Officer will advise planning staff and the Respondent will arrange a meeting to discuss the feasibility of such an application.

6.5 If there is no agreement on time to comply, a Respondent will be provided written notice that enforcement action will be escalated and this may include a request for legal action or the use of the BEN system.

6.6 Respondents will be given a Bylaw Warning Notice with a minimum of 45 days to comply before a Bylaw Violation Notice is issued, unless there are health and safety or cultural heritage concerns, or contraventions in environmentally sensitive areas, that may require more immediate action.

<sup>2</sup> Changes to this section are to adopt the best practices in the Ombudsperson's Special Report. See p. 32.

- 6.7 Bylaw Violation Notices will not be issued more than once per week unless authorized by the Manager of Compliance and Enforcement.

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## 7.0 Closing Files

- 7.1 If the identity of a complainant cannot be confirmed during the course of an investigation, or if a complainant used a false name, the file will be closed.
- 7.2 If the contravention is for a minor structure that has only received one written complaint from one person, the file can be closed.
- 7.3 If it is unreasonable for a Respondent to comply, whether due to specific circumstances or finances, Bylaw Enforcement Officers can use their discretion to close the file.
- 7.4 If a contravention has been identified that is subject to deferred enforcement by the LTC, the file can be closed unless there are contraventions that exist in environmentally sensitive areas or there are concerns about health and safety or preservation of cultural heritage.
- 7.5 If a Respondent is financially unable to comply with the LUB, the Manager of Bylaw Compliance and Enforcement can use his discretion to close the file.<sup>3</sup>
- 7.6 If it is determined during an investigation that the complaint was frivolous, repeat, or vexatious in nature, the Manager of Bylaw Compliance and Enforcement can use their discretion to close the file unless there is work on a development permit area, ~~or work in~~ an environmentally sensitive area, a cultural heritage site or there are health and safety concerns.
- 7.7 The LTC and the Respondent will be notified when any file is closed.

## 8.0 Frivolous, Repeat or Vexatious Complaints

- 8.1 Complaints that are false, made in bad faith, made for an improper purpose or for retaliatory purposes may be considered vexatious.
- 8.2 Repeated complaints that form a part of a pattern of conduct by the complainant that amounts to an abuse of the complaint process may be considered frivolous or vexatious.
- 8.3 Frivolous, repeat or multiple complaints about the same issue or a matter that has been investigated with no offence found may be considered vexatious.
- 8.4 If a decision is made to not act upon a complaint that is considered frivolous, repeat, or vexatious, the complainant will be advised of the decision, the reason for it, and may be advised of the circumstances under which it may be reconsidered.

## 9.0 Communications

- 9.1 When a file is opened and an investigation commenced, Respondents will be advised of the Trust Council Policy that authorized the opening of the file and that an investigation has commenced.

<sup>3</sup> Some community members have expressed concern about the exercise of this discretion.



- 9.2 Respondents will receive as much information about complaints against their properties as possible without revealing the identity of the complainant.
- 9.3 The Manager of Compliance and Enforcement will communicate with Trustees or the LTC if there are questions or concerns regarding individual files.
- 9.4 The Manager of Compliance and Enforcement will arrange public information and education sessions regarding bylaw enforcement when appropriate and time permitting. **Alternative:** the Manager of Compliance and Enforcement will be available during regular meeting town hall sessions to answer questions regarding bylaw enforcement.

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## 10.0 Reporting

- 10.1 The LTC will receive regular reporting for open files where investigations have been completed, and the reporting will state whether or not enforcement or legal action of any kind is recommended.
- 10.2 The Manager of Compliance and Enforcement will report to the LTC any concerns, trends, or issues with enforcement that they believe the LTC needs to be aware of.
- 10.3 The Manager of Compliance and Enforcement will maintain the Gabriola Island Bylaw Enforcement Policy and will report to the LTC if amendments are recommended or required.

## PART B

### MUDGE ISLAND

#### 1.1 All of the policies in Part A will apply to compliance and enforcement activities on Mudge Island and the Mudge Island Land Use Bylaw with the following exceptions:

- 1.1.1 ~~Enforcement~~A file will ~~proceed only if~~not be opened unless there are written complaints received from at least two persons ~~residing from separate properties~~ on Mudge, within 60 days of each other, one of whom resides within 100 meters of the subject property and who demonstrates that the alleged contravention has an adverse impact on them, the community or the environment<sup>4</sup>.
- 1.1.2 Enforcement on contraventions that are in environmentally sensitive areas, a cultural heritage site or concern issues of health and safety, ~~or including~~ a lack of septic services, can proceed with one written complaint from any person resident on Mudge.
- 1.1.3 For confirmed contraventions, a minimum of 180 days and up to two years will be given as time to comply unless there are immediate concerns regarding health and safety, cultural heritage or possible environmental damage.
- 1.1.4 Enforcement ~~on garden beds and driveways as structures~~ will be deferred until such time the LTC can complete a review of the LUB unless there are immediate concerns

<sup>4</sup> Consistent with Ombudsperson's Best Practices.

[regarding derelict buildings or vehicles, health and safety, preservation of cultural heritage or possible environmental damage.](#)

## **PART C Bylaw Enforcement Notice Bylaw Screening Officer's Powers and Duties Policy**

### **Appointment of Screening Officers**

Pursuant to section 7.2 of the Gabriola Island Local Trust Committee Bylaw Enforcement Notification Bylaw No. 263, 2011, (the Bylaw) the persons holding the following positions are appointed as screening officers:

- 1) Regional Planning Manager;
- 2) Manager of Compliance and Enforcement; and
- 3) Bylaw Compliance and Enforcement Assistant.

### **Screening Officer Powers and Duties**

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The powers and duties of the screening officer are contained in section 7.3 of the Bylaw. It is the direction of the Gabriola Island Local Trust Committee (LTC) that these powers and duties are only exercised in respect to each of the above positions as follows:

- 1) Regional Planning Manager. In respect to Bylaw Violation Notices issued by the Manager of Compliance and Enforcement, only the Regional Planning Manager, acting as Screening Officer, may exercise all of the powers and duties in Section 7.3 of the Bylaw;
- 2) Manager of Compliance and Enforcement. In respect to Bylaw Violation Notices issued by Bylaw Compliance and Enforcement Officers, only the Manager of Compliance and Enforcement, acting as Screening Officer, may exercise all of the powers and duties in Section 7.3 of the Bylaw;
- 3) Bylaw Compliance and Enforcement Assistant. In respect to Bylaw Violation Notices issued by the Manager of Compliance and Enforcement, and Bylaw Compliance and Enforcement Officers, the Bylaw Compliance and Enforcement Assistant, acting as Screening Officer, may exercise only those powers and duties in Section 7.3(1) and 7.3(2) of the Bylaw.

### **Authorized Reasons to Cancel Bylaw Violation Notices**

The Screening Officer may cancel a Bylaw Violation Notice if satisfied that one or more of the following reasons exist:

1. Voluntary compliance has been achieved with the LUB.
2. The Bylaw Violation Notice was issued to the wrong person;
3. The Bylaw Violation Notice was not completed properly.
4. The issuance of the Bylaw Violation Notice did not adhere to established Trust Council or LTC policies.
5. It is unreasonable for the person to pay the penalty;
6. An exception specified in the bylaw or related enactment or LTC Standing Resolution exists;

7. The cost of compliance is unreasonable and the effect of non-compliance is minimal;

8. ~~7.~~ A permit exists or has been obtained that authorises the alleged contravention;

9. ~~8.~~ There is poor likelihood of success at adjudication for the Local Trust Committee the following reasons:

- a. The evidence is inadequate to show a contravention;
- b. Incorrect information was relied on in issuing the Bylaw Violation Notice;
- c. The disputant intends to challenge the bylaw with a legal argument that is ill suited to the adjudication process or the legal arguments are too complicated to be decided by an adjudicator.

10. ~~9.~~ It is not in the public interest to proceed to adjudication for one of the following reasons:

- a. The bylaw has changed since the Bylaw Violation Notice was issued and now authorizes the contravention;
- b. An LTC resolution has deferred enforcement on the specific contravention;
- c. The LTC has closed the file.
- d. The offence occurred because of a circumstance that made it unreasonable for the person to comply with the bylaw.



<b>Policy:</b>	5.5.1
<b>Approved By:</b>	Trust Council
<b>Approval Date:</b>	March 11, 1995
<b>Amendment Date(s):</b>	June 6, 1997; June 6, 1998; June 13, 2003; December 5, 2003; December 10, 2004; June 17, 2005; March 10, 2006; March 13, 2019, December 2, 2021
<b>Policy Holder:</b>	Director of Local Planning Services

## BYLAW COMPLIANCE AND ENFORCEMENT

### Purpose

The purpose of the bylaw compliance and enforcement program is to support the object of the Islands Trust to preserve and protect the trust area and its unique amenities and environment for the benefit of residents of the trust area and of the province generally by ensuring compliance with Local Trust Committees' Bylaws.

### A. Definitions

1. "Long-form information" means a complaint sworn before a Provincial Court judge by a bylaw compliance and enforcement officer

### B. Policy

#### 1. COMPLIANCE

- 1.1 Compliance is sought through a combination of education, mediation and enforcement techniques. Bylaw compliance is primarily sought through an attempt to achieve voluntary compliance. Voluntary compliance is indicated by a commitment to corrective action as soon as reasonably possible and the cessation of unlawful activity.

#### 2. BEST PRACTICES MANUAL

- 2.1 The Bylaw Compliance and Enforcement Manager will maintain a best practices operating manual in accordance with the administrative fairness principles outlined in the BC Ombudsperson's report ["Bylaw Enforcement: Best Practices Guide for Local Governments"](#), March, 2016.

#### 3. COMMENCING INVESTIGATIONS

- 3.1 Bylaw investigations may be commenced and an investigation file opened in one or more of the following circumstances:
  - 3.1.1 in response to written complaints of an alleged contravention made by any person;
  - 3.1.2 bylaw contraventions appear to occur in setbacks from water bodies or in development permit areas;

- 3.1.3 bylaw contraventions appear to cause health and safety issues;
- 3.1.4 bylaw contraventions appear to occur as part of a building permit process or other permitting process administered by a local government or the

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Islands Trust;

- 3.1.5 a referral is received from a permitting agency that identifies alleged land use bylaw contraventions associated with the permit request;
- 3.1.6 advertisements exist for apparently unlawful uses;
- 3.1.7 a Local Trust Committee directs staff to commence an investigation.

#### 4. CLOSING INVESTIGATIONS

- 4.1 Bylaw investigation files can be closed in one or more of the following circumstances:
  - 4.1.1 if no contravention existed;
  - 4.1.2 if compliance has been achieved;
  - 4.1.3 on direction of a Local Trust Committee;
  - 4.1.4 if the Director of Local Planning Services concurs with the Bylaw Compliance and Enforcement Manager that the contravention is of a minor character and does not suit the public interest to enforce.

#### 5. PRIORITY OF INVESTIGATION

- 5.1 The workload for bylaw investigations will be prioritized as follows:
  - 5.1.1 by specific direction of a Local Trust Committee;
  - 5.1.2 health and safety issues;
  - 5.1.3 adverse environmental impact that could result in irreversible damage if not prevented in a timely fashion;

~~5.1.4~~

5.1.4 adverse impact on a cultural heritage site that could result in irreversible damage if not prevented in a timely fashion;

5.1.5 contraventions of land use bylaws and other bylaws.

#### 6. MEDIATION

- 6.1 Bylaw investigation efforts to gain compliance should be conducted using the principles and techniques employed in mediation.
- 6.2 Persons alleged to have committed contraventions and complainants may be invited to participate in a process designed to:
  - 6.2.1 provide full information and exchange of information;
  - 6.2.2 confirm facts;
  - 6.2.3 explore opportunities for compliance;
  - 6.2.4 negotiate a timeline for compliance;
  - 6.2.5 reach a compliance solution.



## **7. LEGAL ACTION**

- 7.1 If unlawful activity does not cease or if compliance is not achieved, a bylaw enforcement officer may:
  - 7.1.1 issue a bylaw violation notice; or
  - 7.1.2 make recommendations to the Local Trust Committee on how to proceed, including taking civil action or closing the investigation without compliance.
- 7.2 Immediate legal action may be recommended to Local Trust Committees or bylaw violation notices issued if impacts of unlawful activity risk serious harm to persons or the environment.
- 7.3 Offence Act prosecutions may be recommended to the Local Trust Committees under  
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the following conditions:
  - 7.3.1 Offence Act prosecutions are to be used only for serious land use permit contraventions.
  - 7.3.2 A long-form information may be sworn only after approval by a local trust committee; and
  - 7.3.3 Executive Committee has approved legal funding for the prosecution; and
  - 7.3.4 The long-form information has been reviewed and prepared by legal counsel.

## **8. BYLAW NOTICE DEBT**

- 8.1 Debts incurred as the result of default on bylaw notices may be cancelled if the Director of Local Planning Services and the Bylaw Compliance and Enforcement Manager concur that contraventions on the subject property no longer exist, and it is not in the interest of Islands Trust to pursue the debt.

## **9. CONFIDENTIALITY**

- 9.1 Information in regards to a complainant is kept confidential. However, confidentiality cannot be guaranteed should litigation proceed against the violator or where a request for information is received under the *Freedom of Information and Protection of Privacy Act*.

## **10. LOCAL TRUST COMMITTEES, TRUST COUNCIL, AND TRUSTEES**

- 10.1 Trustees will be immediately advised when a bylaw investigation file is opened indicating the type and area where the contravention is alleged to occur but names and addresses of the complainant and alleged violator will not be communicated.
- 10.2 Trustees may make a written complaint alleging a bylaw contravention.
- 10.3 Local Trust Committees and trustees are not to be involved in the investigation of a complaint or the preparation of bylaw enforcement reports.

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10.4 Local Trust Committees may make bylaw enforcement policies to direct compliance and enforcement in regards to specific issues.

10.5 Local Trust Committees may request reports about specific investigations or about general enforcement activity in the Local Trust Area.

10.6 Trust Council will be informed of the volume and type of bylaw enforcement files biannually.

**C. Legislated References**

1. [Islands Trust Act](#)
2. [Offence Act](#)

**D. Attachments/Links to Supporting Forms, Documents, Websites, Related Policies and Procedures**

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- [BC Ombudsperson's report "Bylaw Enforcement: Best Practices Guide for Local Governments", March, 2016](#)

- [BC Local Government Bylaws>Bylaw Enforcement](#)

Document comparison by Workshare 10.0 on Tuesday, July 9, 2024 10:43:53 AM

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Padding cell	

Statistics:	
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Moved to	4
Style changes	0
Format changes	0
Total changes	88





**From:** Tobi Elliott  
**Sent:** Monday, August 19, 2024 11:46 AM  
**To:** Laura Patrick; Robert Kojima; Stefan Cermak; Warren Dingman  
**Cc:** [REDACTED]; Gabriola Island Local Trust Committee  
**Subject:** Re: Proposed Policy comments to consider for both Trust Council and the Gabriola LTC  
**Attachments:** Staff Report Bylaw - v2 MICA Suggested Revisions July 9, 2024.DOCX; Redline - First draft bylaw enforcement policy compared to v2 MICA Suggested Revisions July 9, 2024.PDF; Copy Submission of proposed policy revisions and Rationale for Revisions.pdf; IT Regional Planning Committee submission Aug 18 2024.pdf; Mail Attachment.eml

Dear Chair Patrick, Director Cermak, Planner Kojima, Manager Dingman and Richard,

I support MICA's submissions and their request to have this material considered at our next RPC meeting. There is a very strong example on Mudge Island (pop. Approx 100 year round?) for how our current bylaw enforcement and compliance regime and practices fail to meet the needs of smaller island communities, especially those with a history of little to no oversight, which have been otherwise left to their own devices for decades.

Our system resulted in a sudden increase in the number of complaints (60+) over a very short time, from a very small number of people. Because we have no system to vet or verify if complaints actually are causing hardship to neighbours, or if complaints are frivolous or vexatious, each of them has required a file opened and to be investigated, which caused a shockwave of fear, distress and uncertainty in the otherwise self-sufficient and cohesive community.

I wanted to note that the question of staff's interpretation of TC Bylaw 5.5.1, raised considerable discussion at a special meeting we held on Mudge July 16. BLE Manager Dingman attended the meeting virtually, and he answered most of the questions posed to general satisfaction, except for how much latitude staff have in interpreting section 3.1, Commencing Investigations: the question of whether investigations "may" or "must" be commenced on receiving a complaint. I would say the lack of clarity around investigations and the poor wraparound policy accounts for at least 50% of the concerns we are hearing.

The Gabriola Local Trust Committee is working with MICA on a local Bylaw Compliance and Enforcement policy drafted by staff (attached with their comments). The LTC has supported some temporary solutions not to enforce the LUB until we have this Policy enacted, and a Review of the Mudge LUB is concluded. However, the Gabriola LTC cannot do anything about Trust Council Policies that direct how investigations are begun, as this is Trust Council policy.

So I encourage discussion on this topic at our next RPC meeting, and request that the materials be added to an agenda so it can inform any recommendations we make to Council in Sept.

Thank you very much for your submission, Rich. You and MICA have worked really hard to speak on behalf of your community, and I support working together so we can develop a better process.

Trustee Tob

PS Rich, I have attached MICA's previous 3 attachments separately.

**Tobi Elliott**

Islands Trust

Local Trustee for Gabriola, DeCourcy, Mudge Islands

Vice-Chair for Lasqueti, Mayne, Thetis & South Pender Islands

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**Preserving and protecting over 450 islands and surrounding waters in the Salish Sea**

*I am grateful to live, work and play in the treaty lands and territories of the BOKEĆEN, Cowichan Tribes, K'ómoks, Lyackson, MÁLEXEL, Qualicum, scəwəθən, səliwətał, SEMYOME, shíshálh, Skwxwú7mesh, Snaw-naw-as, Snuneymuxw, Songhees, Spune'luxutth', STÁUTW, Stz'uminus, ɬaʔəmen, Ts'uubaa-asatx, Wei Wai Kum, We Wai Kai, WJOŁŁP, WSIKEM, Xeláltxw, Xwémalhkwa, Xwsepsum, and xʷməθkʷəy̓əm First Nations. Islands Trust is committed to reconciliation and to working together to preserve and protect this ecologically, culturally, and spiritually significant region in the Salish Sea.*

On Aug 18, 2024, at 3:38 PM, [REDACTED] wrote:

Hello Ms. Patrick

We understand that the Islands Trust Regional Planning Committee will be meeting September 4<sup>th</sup> and we ( Mudge Island Community Association – MICA) respectively request that the Committee includes the attached letter and attachments in the addenda and consider the points raised when providing future input to Trust Council and the local LTC.

We look forward to hearing from you and if you have any questions, please do not hesitate to contact me.

Yours Truly,

Rich Brooks, Chair MICA