

MEMORANDUM

File No.: 6500-20
(Denman Farm Regulations Review)

DATE OF MEETING: October 14, 2022

TO: Denman Island Local Trust Committee

FROM: Marlis McCargar, Island Planner
Northern Team

COPY: Sonja Zupanec, Acting Regional Planning Manager

SUBJECT: Update on setbacks to watercourses for Denman Farm Regulations Review Project

PURPOSE

To provide information to the Denman Island Local Trust Committee (LTC) on setbacks from watercourses.

BACKGROUND

The Denman Local Trust Committee passed the following resolutions at the regular business meeting held November 14, 2017:

DE-2017-086

It was MOVED and SECONDED

that the Denman Island Local Trust Committee direct staff to investigate and report on the following matters:

- information about setbacks from streams, lakes and wetlands and the natural boundaries of the sea in relation to fences allowed up to their margins such that livestock may encroach upon these sensitive areas.

CARRIED

The following response was provided in the March 6, 2018 Staff Report:

“The Riparian Areas Regulation does not apply to farm practices as defined in the Farm Practices Protection Act (for parcels in or out of the ALR), including the siting of agricultural fencing. Currently, the LUB allows fences to be constructed within setback areas. While the Ministry of Agriculture does not provide any specific guidance as to what an appropriate setback would be between a fence and a sensitive environmental feature, Section 527 of the Local Government Act states that a local government may require, set standards for, and regulate the provision of screening for “preserving, protecting, restoring and enhancing the natural environment”. Staff recommends that the LTC regulate the siting of fencing for confined livestock from streams, lakes, wetlands and the natural boundary of the sea using the minimum possible setback that could be supported environmentally so that impacts on agriculture can also be minimized. This would be consistent with the current OCP policy: “Zoning regulations should establish sufficient setbacks to ensure that livestock waste does not enter lakes, streams, wetlands or the sea.”

In a Staff Report dated, May 1, 2018, staff suggested proposed bylaw language could require fencing associated with feedlots or used to accommodate domesticated animals other than household pets to be subject to a 30 m setback. All other fencing would be excluded from setback provisions.

The original wording for draft Bylaw 229 was created to address the concern of feedlots sited too close to watercourses. However, under the advice of the Ministry of Agriculture, it was recommended to remove the term feedlot and address agriculture or intensive agriculture more specifically.

During the Denman Island Special Meeting held on October 6, 2022, the LTC requested further information about the setback requirement from watercourses and the natural boundary of the sea. In particular, if fencing is to be allowed within the setback area. **Staff recommend that fencing be excluded from the setback requirement at this time in order to support a full range of acceptable agricultural uses.** An ‘Agricultural Environmental Code of Practice’ (AEM Code) is in effect in British Columbia which regulates setbacks in agricultural areas (see discussion below). This can provide a measure of confidence in watercourse protection in the interim until the LTC undertakes a more comprehensive project to evaluate setbacks to watercourses across Denman Island.

The following Table outlines the recommended change to regulations 1.7 and 1.8 in Denman Island Land Use Bylaw, 2008, Amendment No. 1, 2018:

Proposed Bylaw 229	October 2022 Recommended Change	Current Land Use Bylaw No. 186
<p>Section 1.7</p> <p>The minimum setback from the natural boundary of a stream, a lake other than Chickadee Lake or Graham Lake, or a wetland is:</p> <ul style="list-style-type: none"> 30.0 metres for buildings and structures associated with agriculture, except for a fence, or used to accommodate domesticated animals other than household pets; 	<p>The minimum setback from the natural boundary of a stream, a lake other than Chickadee Lake or Graham Lake, or a wetland is:</p> <ul style="list-style-type: none"> 30.0 metres for buildings and structures associated with agriculture, except for a fence. 	<p>Section 2.3.2</p> <p>The minimum setback from the natural boundary of a stream, lake, or wetland</p> <ul style="list-style-type: none"> for buildings and structures, except for a fence, sewage disposal field or alternate sewerage system, is 15.0 metres, except for Chickadee and Graham lakes in which case the minimum setback is 60.0 metres
<p>Section 1.8</p> <p>The minimum setback from the natural boundary of the sea is:</p> <ul style="list-style-type: none"> 30.0 metres for buildings 	<p>The minimum setback from the natural boundary of the sea is:</p>	<p>Section 2.3.3</p> <p>The minimum setback from the natural boundary of the sea for buildings and structures, except for a boathouse, fence, or access stairway is:</p>

<p>and structures, including fencing, associated with agriculture, except for a fence, or used to accommodate domesticated animals other than household pets;</p>	<ul style="list-style-type: none"> • 30.0 metres for buildings and structures, associated with agriculture, except for a fence. 	<ul style="list-style-type: none"> • 30.0 metres for buildings and structures associated with intensive agriculture or used to accommodate domesticated animal other than household pets;
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Setbacks between Agriculture and Watercourses

Agricultural Environmental Management Code of Practice

Most setbacks for the protection of water resources on farmland are set by the BC Ministry of Environment through the Agricultural Environmental Management Code of Practice (AEM Code) and are therefore not regulated through local bylaws. The AEM Code is a relatively new regulation that was enacted in 2019.

The AEM Code defines "watercourse" as:

- (a) an area of land that perennially or intermittently contains surface water, other than
 - i. puddles,
 - ii. groundwater and dugout ponds for livestock watering, and
 - iii. furrows, grassed waterways and other temporary ponded areas that are normally farmed, and
- (b) drainage ditches that lead to an area described in paragraph (a);

Sections 15-19 of the AEM Code specify setbacks required from areas where livestock or poultry are being kept and/or fed (either intensively or non-intensively), where by-products, nutrients, or wood residue are being stored, and where composting structures and/or piles are located.

Section 64 (1) of the AEM Code states that "a person responsible for a grazing area, seasonal feeding area or temporary holding area in which livestock or poultry have direct access to a watercourse must ensure that effective controls are in place to minimize (a) trampling and erosion of soil into the watercourse, and (b) contaminated runoff, leachate and solids entering the watercourse."

Development Permit Areas

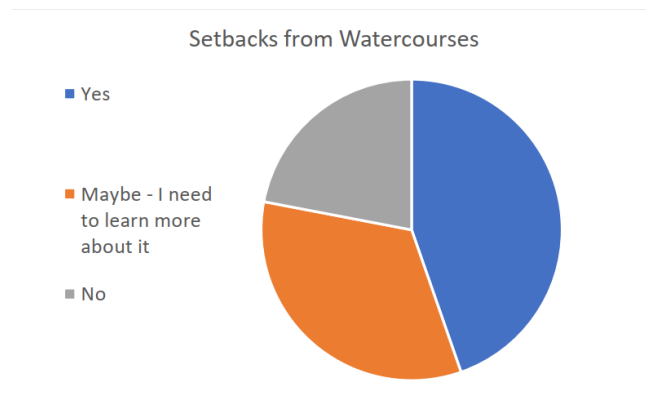
Islands Trust can require that agriculture in the Agricultural Land Reserve (ALR) adhere to local Development Permit Area (DPA) Guidelines for environmental protection near waterways, wetlands, waterbodies, shorelines, and other sensitive ecosystem areas. Local bylaws can't be so restrictive as to prohibit agricultural production completely. For example, local bylaws could require fencing to prevent livestock from entering ponds, streams, wetlands, lakes, or other waterbodies but could not prohibit livestock from grazing on the property entirely. As per the LTC Project Charter, designation of new DPAs, review or amendment of existing DPAs and water management issues were **out of scope for this project**.

Denman Island Farm Regulations Review Project Questionnaire

The Denman Island Farm Regulations Review Project Questionnaire, that was available in Spring 2022, received 164 responses from community members. Under the direction of the LTC, the Consultant included one question on the Questionnaire about setbacks between agriculture and watercourses:

Q12). Would you support updating Denman Island’s Development Permit Area #4 (Streams, Lakes, and Wetlands) to include requirements for fencing and/or other measures to keep livestock and poultry out of waterways and/or to establish riparian buffers within specific setback areas?

A majority (78%) of respondents were open to updating Denman Island’s Development Permit Area #4 (Streams, Lakes, and Wetlands) to include requirements for fencing and/or other measures to keep livestock and poultry out of waterways and/or to establish riparian buffers within specific setback areas. However, of those not in full support of the DPA update there was a desire for more information, clearer definitions, and wider protection for watercourses. Many also pointed to existing regulations and restrictions imposed by other levels of government and questioned the ability for compliance and enforcement.



The recommendation from the Consultant to the LTC earlier this year was to revisit DPAs and setbacks to watercourses during a future Land Use Bylaw update.

Denman Island Advisory Planning Commission (APC)

During the June 14, 2022 meeting of the APC, setbacks from watercourses were discussed. APC members agreed with the approach to revisit this topic at a future date, when the Denman Island land Use Bylaw is updated and revised, along with consideration of other Development Permit Areas. An APC member expressed that watercourse setbacks should be a priority issue.

There was not comprehensive community consultation done on the issue of setbacks between agriculture and watercourses as it was out of scope for this project; however, it is clear from the response to Question 12 and the APC recommendation that there is an interest in exploring the issue further as another project.

Submitted By:	Marlis McCargar, Island Planner	October 12, 2022
Concurrence:	Sonja Zupanec, RPP, MCIP, Acting Regional Planning Manager (Northern Region)	October 12, 2022