

From: BRIAN MILNE <[REDACTED]>

Sent: Thursday, February 13, 2020 9:03 AM

To: Jason Youmans <jyoumans@islandstrust.bc.ca>; Peter Grove <pgrove@islandstrust.bc.ca>; Peter Luckham <pluckham@islandstrust.bc.ca>; Laura Patrick <lpatrik@islandstrust.bc.ca>

Cc: [REDACTED]

Subject: Re: Application Multiple Housing Park Drive

Dear Mr. Youmans.

Thank you for answering my email with sensible comments.

One issue that the Islands Trust have not addressed is that the application QEP Report is a [REDACTED] document, the document being critical to approval of the application.

I have pointed out that competent legal opinion states that the Judges ruling in the BC Ministry of Transport case is open to appeal on the evidence that the MOT and Islands Trust had in their possession at the time and with the information from Madrone Environmental Services and [REDACTED] in your files.

The remediation matter is a responsibility of the Islands Trust, MOE and DFO.

Sincerely.

Brian Milne

On Feb 4, 2020, at 11:27 AM, Jason Youmans <jyoumans@islandstrust.bc.ca> wrote:

Hello Mr. Milne,

The Salt Spring Island Local Trust Committee (LTC) is responsible for the application and enforcement of bylaws adopted by the Salt Spring Island Local Trust Committee.

If you believe that there has been a contravention of an LTC bylaw at the subject property, please contact Islands Trust Bylaw Enforcement and Compliance [here](#).

The LTC must also meet obligations imposed upon it by senior government agencies. The British Columbia *Riparian Areas Regulation* is one such obligation, which requires local governments to enact bylaws to protect fish habitat in accordance with a methodology prescribed in the regulation. The LTC came into compliance with the *Riparian Areas Regulation* when it adopted Bylaw No. 480 in 2015, thus

introducing Development Permit Area 7 onto the Island. Swanson Pond is not included in Development Permit Area 7.

If you believe that the Salt Spring Island Local Trust Committee is not in compliance with the *Riparian Areas Regulation*, you should contact the provincial government [here](#). Staff there can assess your concern, and doubtless will be in contact with the LTC if they believe that the LTC is not meeting its obligations under the legislation and can recommend appropriate measures.

As you are aware, the diversion of the creek from the subject property was litigated in BC Supreme Court in 2012. At that time, the BC Ministry of Transportation argued that the damming of the stream on the subject property was unlawful. The presiding judge did not agree, finding, in part:

<Picture (Device Independent Bitmap) 1.jpg>

I will grant that the referenced court case was not about the fish habitat value of the stream and pond per se. Nonetheless, given that the judge found against the Province, and in favour of the land owner vis-à-vis the stream diversion, it is difficult to see on what grounds any agency of the Crown would pursue action against the land owner, the desired objective of which would be to undo an action that a justice of the British Columbia Supreme Court has deemed reasonable.

Going forward, the rezoning application and any other development applications submitted for the subject property will be assessed in accordance with applicable local bylaws.

However, through your correspondence, you have apprised the LTC of your concerns about previous alterations to the watercourse on the subject property. The LTC, in the course of considering the rezoning application, may request further clarification from staff on this issue, or explore whether the rezoning application affords some opportunity to negotiate the type of remediation that you suggest. The LTC will direct staff accordingly if they determine this is something they wish to pursue.

Your correspondence to the LTC on this matter will be added to the file for rezoning application SS-RZ-2013.7.

Best,

Jason

Jason Youmans, MAPI
Island Planner
Islands Trust Local Planning Services
1-500 Lower Ganges Road
Salt Spring Island, BC, V8K-2N8
On Salt Spring: 250-538-5603
Enquiry BC Toll-free: 1-800-663-7867
jyoumans@islandstrust.bc.ca

Websites: www.islandstrust.bc.ca | www.islandstrustconservancy.ca
Preserving Island communities, culture and environment since 1974

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

From: BRIAN MILNE <[REDACTED]>

Sent: Wednesday, January 22, 2020 8:00 AM

To: Jason Youmans <jyoumans@islandtrust.bc.ca>; Stefan Cermak <scermak@islandtrust.bc.ca>

Cc: [REDACTED]; Peter Grove <pgrove@islandtrust.bc.ca>; Peter Luckham

<pluckham@islandtrust.bc.ca>; Laura Patrick <lpattick@islandtrust.bc.ca>; [REDACTED]; [REDACTED]

[REDACTED] <[REDACTED]>

Subject: Re: Application Multiple Housing Park Drive

Dear Mr. Youmans.

Require a more definitive answer to all parts of my email.

The BC Riparian Area Regulations require remediation for destruction of fish habitat.

The document rescinding this remediation requirement must be part of the application process..

If the BC Government have rescinded this requirement the Islands Trust have an obligation to require REMEDIATION to meet their RAR Obligations.

The Federal Fisheries Act also requires remediation for destruction of fish habitat I have seen no release document from this authority.

I look forward to receiving a detailed response to the various concerns submitted in my emails.

Sincerely.

Brian Milne

> On Jan 21, 2020, at 3:55 PM, Jason Youmans <jyoumans@islandtrust.bc.ca> wrote:

>

> Hello Mr. Milne,

>

> I asked the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) whether the LOU was taken into consideration by their agency during assessment of the well license application for the subject property, and whether FLNRORD considers the LOU to be an obligation on the property owner to fulfill its terms using the licensed well water.

>

> FLNRORD has indicated that they consider the LOU to be no longer valid.

>

> Best,

>

> Jason

>

> Jason Youmans, MAPI
> Island Planner
> Islands Trust Local Planning Services
> 1-500 Lower Ganges Road
> Salt Spring Island, BC, V8K-2N8
> On Salt Spring: 250-538-5603
> Enquiry BC Toll-free: 1-800-663-7867
> jyoumans@islandstrust.bc.ca
>
> Websites: www.islandstrust.bc.ca | www.islandstrustconservancy.ca
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>
> -----Original Message-----
> From: BRIAN MILNE <[REDACTED]>
> Sent: Monday, January 20, 2020 7:54 AM
> To: Jason Youmans <jyoumans@islandstrust.bc.ca>; Stefan Cermak
> <scermak@islandstrust.bc.ca>; Ron Matiussi <rmattiussi@kelowna.ca>;
> [REDACTED]
> Cc: Peter Grove <pgrove@islandstrust.bc.ca>; Peter Luckham
> <pluckham@islandstrust.bc.ca>; Laura Patrick
> <lpattick@islandstrust.bc.ca>; [REDACTED]; Russ Hotsenpiller
> <rhotsenpiller@islandstrust.bc.ca>
> Subject: Application Multiple Housing Park Drive
>
> Dear Mr. Youmans.
>
> I wrote to you in August 2019 and was wondering if you have confirmed the REMEDIATION
requirement of the LOU as still being an obligation of the developer.
>
> The Remediation agreement was in part for the removal of 3500 square meters of fish habitat from
the Swanson Watershed.
>
> As a professional Planner responsible for this development application you have an obligation be fully
cognizant of the past history of the pond.
>
> You have in your file definitive professional opinions, one from
> Madrone environmental services conducted on behalf of Stefan Cermak
> of the Islands Trust, the other by [REDACTED]
>
> [REDACTED] who provides a picture of the original Swanson Creek flowing into the Swanson Wetland
prior to its excavation into Swanson Pond.
>
> If you are generally familiar with the history of the pond you are
> aware of the Reimer RAR on the creek as it entered the pond (now
> damed),you will be aware of the Dunster Report and
>
> you have been made aware of the [REDACTED] report (claimed to be a QEP REPORT) used to process
the development application.

>

> The Islands Trust has time and money to prosecute mythical accusations. The Islands Trust must have funds to prosecute the violations [REDACTED].

>

> A large area of fish habitat was destroyed. The Islands Trust has an

> obligation to submit to the courts that the Swanson Creek entered the

> pond as a legitimate natural creek that

>

> must be returned to its original flow path. Remediation of the pod to provide the original 4500 square meters is also an obligation if no other appropriate remediation is in place.

>

> A private citizen or group of citizens can process this legal proceeding why not the Islands Trust? (the past failure by DOH does not prejudice such a court challenge).

>

> Mr. Youmans I look forward to confirmation from you that the LOU is to

> be enforced and that you have fully reviewed the history of Swanson

> Creek and Swanson Pond prior to

>

> recommending any further approval of this development application.

>

> Sincerely.

>

> Brian Milne.

>

>