

By-law Number 138-2008 to regulate all matters relating to the flow of watercourses within the MRC Pontiac

- WHEREAS the MRC Pontiac was given exclusive jurisdiction on its territory under Sections 103 to 109 of the Municipal Powers Act (L.Q. 2005, Chapter 6), effective since January 1st, 2006;
- WHEREAS Section 104 of the Act allows the MRC to adopt by-laws to regulate matters relating to water flow in watercourses, including crosspieces, obstructions and nuisances;
- WHEREAS the MRC Council deems it appropriate to adopt such by-law to govern certain watercourses under its exclusive jurisdiction;

THEREFORE, the Council of the Regional County Municipality of Pontiac adopts By-law Number 138-2008, and decides what follows:

DIVISION 1 GENERAL PROVISIONS

Section 1 PURPOSE

The purpose of this By-law is to regulate matters relating to the water flow of certain watercourses located on private lands within the MRC Pontiac, including roads and rights-of-way under the jurisdiction of the Québec Ministry of Transport and local municipalities.

Section 2 DEFINITIONS

For the purposes of this By-law, the following definitions are provided:

“Regulatory act”: Any act (resolution, by-law, minutes or act of agreement) that applies to a watercourse, adopted or approved by a local municipality, county corporation, regional county municipality or board of delegates, whose purpose is to provide standards for the improvement and maintenance of such watercourse; the design standards may be used as a reference even if the act is repealed;

“Improvement”: consists of:

- work to widen, modify, divert, construct, create, fix, stabilize mechanically or close by filling a watercourse;
- work affecting or modifying the geometry, bottom or banks of a watercourse that has never been subjected to a regulatory act;
- work conducted to further deepen the bottom of a watercourse, to modify the course, to channel, to provide dam work, to mechanically stabilize banks for collective use (benefiting several land owners) or install flow control devices.

“Competent authority”: depending on the context, the MRC, the local municipality, the board of delegates, the Quebec Government or the Federal Government, one of their ministers, departments or agencies;

“Watercourse”: all regular or intermittent flow watercourses, including those created or modified by human intervention, with the exception of the following:

- 1° watercourses or parts of watercourses under the exclusive jurisdiction of the Quebec Government, specified by Order 1292-2005 as of December 21, 2005 (2005, G.O.2, 7381 A), that is to say the Coulonge river downstream from the first fall and the Ottawa river downstream from the Dozois reservoir;
- 2° a ditch along a public or private road;
- 3° a common ditch within the meaning of Article 1002 of the Quebec Civil Code;
- 4° a drainage ditch:
 - d) used solely for drainage or irrigation;
 - e) that was artificially created; and
 - f) the watershed of which has an area of less than 100 hectares.

The part of a watercourse used as a ditch is also under the MRC jurisdiction;

“Flow”: volume of run-off water measured on the basis of time unit, shown as litres per second (L/s);

“Jam”: obstruction in a watercourse caused by a certain situation such as snow or ice accumulation;

“Maintenance”: work consisting in the restoration of the original profile of a watercourse where improvement work has already been conducted under a regulatory act, such work involves digging sediments from the bottom of a watercourse in order to restore the original profile, seeding the banks, stabilizing vegetation on shores for collective use (which benefit several owners), the stabilization of surface and underground drainage outfalls, as well as management and discharge of sediment pits;

“Underground or surface outlet”: structure supporting the surface or underground flow of water in a watercourse, such as a ditch, underground drainage, storm drain or any other type of flow system;

“Intervention”: action, work, initiative or project;

“High-water mark”: refers to the line which marks the limits of the littoral zone and the shoreline or riverbank.

The high-water mark is located at the natural high-water mark, namely:

- e) the area where a transition is made from mostly aquatic vegetation to mostly land vegetation, or in the absence of aquatic vegetation, the area where land vegetation stops near the watercourse.

Aquatic plants are all hydrophytes, including submerged plants, floating plants, emerging and emerged herbaceous and woody surface plants typically found in open marshes and swamps along watercourses.

In the absence of vegetation, the high-water mark must be determined on a neighbouring property and transferred onto the property with no such vegetation:

- f) where a water retaining structure exists, the maximum operating water level of the hydraulic structure for the upstream portion of the watercourse. In the absence of such level, the high-water mark is the line that is established after work is performed;
- g) where there is a legally erected retaining wall, at the line established in paragraph a) of subparagraph 2, on a neighbouring property and transferred onto the property where the said wall is erected.

Where the high-water mark cannot be determined using the above criteria, it may be sited as follows:

- h) where the information is available, the two-year flood limit, considered to correspond to the mark established according to the botanical criteria defined in paragraph a), subparagraph 2

“Littoral zone”: portion of a watercourse that extends from the high-water mark to the centre of the watercourse;

“Law or Act”: Municipal Powers Act (L.Q. 2005, Chapter 6);

“Notify”: send a notice delivered in hand to the recipient, by certified mail, by public or private messenger or by a bailiff;

“Aerial or underground structure crossing a watercourse”: temporary or permanent structures such as pipelines, power lines, aqueduct, storm and/or domestic sewer;

“Fording”: occasional passage of animals on a littoral zone;

“Designated officer”: MRC or municipal employee in charge of applying regulations and by-laws by virtue of an agreement, in accordance with Section 108 of the Act;

“Culvert”: structure installed in a watercourse to create a permanent crossing for users;

“Bridge”: structure provided, with or without abutment piers, to create a permanent crossing for users;

“River bank”: strip of land bordering a watercourse and extending inland from the high-water mark; the width of the river bank is measured horizontally;

The bank is at least 10 metres wide, where:

- the slope is less than 30 %, or ;
- the slope is greater than 30 % with a bank less than 5 metres high.

The bank is at least 15 metres wide where:

- the slope is continuous and greater than 30 %, or;
- the slope is greater than 30 % with a bank over 5 metres high.

“Waterproofing surface”: land surface excluding that covered with vegetation;

“Time of concentration”: period of time required for a particle of water to travel from the most remote point of the watershed to the outlet, or to a downstream point taken into consideration;

“Crossing”: place or the watercourse crossing.

Section 3 GENERAL PROHIBITION

Any action by a person that may affect the normal water flow, such as improvement or maintenance work, is strictly prohibited, unless the following requirements are met:

- d) the project is authorized under this By-law;
- e) the project is authorized under a specific and urgent MRC decision and in accordance with the Law;
- f) the project is supported by a certificate or permit delivered by another competent authority, as required;
- d) the project is supported by a certificate or permit issued by another local municipality in accordance the Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains enforced by the said local municipality under the planning by-laws.

DIVISION 2 CONSTRUCTION AND CREATION OF WATERCOURSE CROSSINGS

Section 4 CROSSING MAINTENANCE

The real property owner where a structure or a crossing is located is required to periodically monitor its condition, especially in the spring or following heavy rainfall.

The owner must ensure that pathways leading to the crossing are not deteriorating and in presence of erosion, he must immediately initiate proper corrective action in compliance with this By-law.

The owner who neglects to properly maintain his crossing is in violation of this By-law and may be ordered, by the designated officer, to conduct maintenance work. Should the owner fail to conduct such work within the time limit granted, the provisions of Sections 18 and 19 will apply, and will be adapted as necessary.

SPECIAL STANDARDS FOR BRIDGES AND CULVERTS

Section 5 EXECUTION OF BRIDGE OR CULVERT WORK

Unless the MRC decides otherwise when improvement or maintenance work is called for on a watercourse and under the conditions set by the MRC, the construction or improvement of a bridge or culvert is and remains the responsibility of the owners of land bordering on the watercourse.

The landowner is responsible for conducting the work required to build or repair the said bridge or culvert, or for having the work done by a competent firm, at his own expense.

Section 6 PRIVATE USE CULVERTS

A private use culvert may be circular, arched, elliptical or square, or any other shape, if the design provides for free water flow.

The use of a pipe with an inside strip as a culvert is prohibited.

Section 7 PRIVATE USE BRIDGE OR CULVERT DESIGN

The design of a bridge or culvert in a watercourse must provide for peak water flow recurring every 10 years at minimum.

Section 8 MAXIMUM LENGTH OF PRIVATE USE CULVERTS

The maximum length of a private use culvert in a watercourse is 15 metres.

Section 9 BRIDGE AND CULVERT INSTALLATION STANDARDS

The following standards must be observed when installing a bridge or culvert:

- the bridge or culvert is installed without interfering with the hydraulic regime of the watercourse and must not impede the natural water flow during ice melting and high water periods;
- the culvert must be installed in the direction of the water flow;
- the river banks must be stabilized upstream and downstream from the bridge or culvert by using recognized technical practices;
- littoral zones must be stabilized at the entrance and exit of the installation;
- the ends of the installation are to be stabilized with stones or any other recognized technique to prevent erosion;
- the culvert must be installed in line with the slope of the littoral zone and the base must be located at a depth that allows restoration of the original profile or, where applicable, set out in the regulatory act. Furthermore, if the culvert is a closed pipe, it must be buried at a depth of at least 10 % of its diameter.

Where a culvert or bridge is installed on a public road, managed by the government or one of its ministries, the installation must comply with the standards established by this authority.

SPECIAL STANDARDS FOR FORDING

Section 10 CREATING A CROSSING FOR FORDING

The real property owner where farming activities are practised may create a crossing for fording in a watercourse, provided that the requirements of Sections 11 and 12 are observed.

Section 11 DETERMINING THE LOCATION FOR FORDING

The crossing must be located in such a way as to limit the number of crossings in the watercourse and be installed:

- in a narrow section;
- in a straight area;
- on a littoral zone providing a firm and solid surface, able to provide strong support, without risks of altering the area;
- as far away as possible from the mouth or confluence of a watercourse.

Section 12 IMPROVING THE SHORELINE AND CROSSING ACCESS POINTS

If improvement of the shoreline and access points is required prior to installing a fording crossing, the following conditions must be met at all times:

Littoral zone:

- the watercourse crossing must be installed at a right angle;
- the fording pathway must not exceed a 5-metre width;

Watercourse access:

- the access must be provided at a right angle;
- the access pathway must not exceed 5 metres wide;
- the access to be stabilised with stones or other recognized technique to prevent erosion.

DIVISION 3 IMPROVEMENT OR CONSTRUCTION OF AN OVERHEAD, UNDERGROUND OR SURFACE STRUCTURE

Section 13 STANDARDS FOR IMPROVEMENT OR CONSTRUCTION OF OVERHEAD, UNDERGROUND OR SURFACE STRUCTURES

Any person attempting to improve or construct an overhead, underground or surface structure involving temporary or permanent implementation above, under or in the banks of a watercourse or that involves a watercourse crossing for machinery, must carry out the work in conformity with the good engineering practices and applicable standards.

The project design must take into consideration the features of the watercourse so as to not alter such features or the water flow at any time. Furthermore, the person in charge of the project must restore the normal layout of the area at completion.

The general authorization granted under this By-law does not relieve the person from any other requirement applicable under a regulatory act, law or competent authority.

DIVISION 4 OBSTRUCTION

Section 14 PROHIBITION

For the purpose of this By-law, is said to be an obstruction and is prohibited for the owner or occupant of a riverside real property to allow or tolerate the presence of any object or material or to commit an act that affects, or may affect, the natural water flow in a watercourse, such as:

- h) a bridge or culvert of which proportions are insufficient;
- i) the presence of sediments or other material on the shore following the subsidence of an unstable or poorly stabilized river embankment, or due to work improperly carried out according to this By-law or to another regulatory body with jurisdiction over the watercourse;

- j) allowing farm animals to access a watercourse, except for the purpose of fording;
- k) shoving or dumping snow in a watercourse during snow clearing operations or for any other unauthorized purpose;
- l) dumping waste, garbage, scrap metal, tree branches or trunks, animal carcasses, or any other object or material that obstructs, or may obstruct the normal water flow;
- m) building a dam;
- n) to channel a watercourse for private purposes.

As soon as the designated officer is informed about or notices the presence of an obstruction in a watercourse, he notifies the owner of the immovable property of his obligation to remove this obstruction, at his own expense, and the time allowed for such action, and to take the necessary measures to prevent any reoccurrence of such obstruction, if necessary.

More specifically, the designated officer may require that the owner stabilize the banks to prevent erosion along the watercourse or carry out some work to repair the banks in the area where animal crossing is prohibited.

If the owner does not carry out the required work to remove an obstruction within the specified time limit, the provisions of Sections 17 and 18 will apply, in consideration of the necessary adjustments.

Notwithstanding the provisions of this Section, when the obstruction blocks or affects the natural water flow and is considered a threat to the safety of persons or property, the designated officer may remove the obstruction immediately, without prejudice to the rights of the municipality to recover the removal costs from the responsible individual or individuals.

DIVISION 5 ADMINISTRATIVE PROVISIONS

Section 15 BY-LAW APPLICATION

The designated officer is responsible for administering and applying this By-law.

Section 16 AUTHORITIES OF THE DESIGNATED OFFICER

A designated officer may:

- 16.1 except in an emergency case and with proper identification, visit, examine, between 7:00 a.m. and 7:00 p.m. any property or building to determine if the provisions of this By-law are respected;
- 16.2 issue a notice to the owner, renter, occupant or representative, to correct a situation that is in violation of this By-law;
- 16.3 issue and sign notices of violation against any individual at fault;
- 16.4 stop any project in violation of this By-law or that poses a threat, in his opinion, to the safety of persons or property;
- 16.5 require a certificate of compliance stating that the work is being carried out in compliance with the laws and regulations of all other governing authorities;

- 16.6 report all permits issued or refused to the MRC as well as infractions to this By-law;
- 16.7 if the person at fault refuses to conduct work required under this By-law, have the work done at the expense of this person.

Section 17 ACCESSES

The owner or occupant of the property must allow the designated officer or any other MRC or municipal employee or representative, including all experts requested for the work, to have access to a watercourse for the purpose of carrying out inspections and monitoring activities in the course of their mandate.

The owner or occupant must also allow access to machinery and equipment required to carry out the work. Prior to conducting any work, the designated officer must notify the owner or occupant at least 48 hours in advance, unless the urgency of the situation dictates otherwise.

The owner or occupant of a property who refuses to give access is said to be in violation of this By-law.

Section 18 WORKS CONDUCTED AT THE EXPENSE OF A PERSON

If a person does not carry out work required under the provisions of this By-law, the designated officer may have the work conducted at this person's expense.

For the purposes of this By-law, fees include all costs incurred for the execution of the work, including the fees of a professional who is a member of the Quebec Order of Engineers, if applicable.

Any amount owed by an owner as a result of an intervention under this Section shall be treated as property tax and will be recovered in the same way. Interest will be calculated for all amounts owed, based on the applicable interest rate.

Section 19 PENALTIES AND SANCTIONS

Notwithstanding the existence of civil remedy, a person who fails to comply with a provision of Sections 3 to 14 of this By-law commits an offence and is liable to a fine, in addition to applicable fees:

As a first offence, if the offender is an individual, the minimum fine is \$300 and the maximum fine is \$1,000; in the case of a corporation, the minimum fine is \$600 up to a maximum of \$2,000.

For a second offence, the amounts stated above are doubled.

The fine may be applied for each day of the violation period, if it is a continuing violation.

Any person who violates a provision of Section 17 of this By-law commits an offence and is liable to a fine, in addition to applicable fees:

For a first offence, if the offender is an individual, the minimum fine is \$100 and the maximum is \$500 and, if it is a corporation, the minimum fine is \$200 up to a maximum of \$1,000.

For a second offence, the amounts stated above are doubled.

The fine may be applied for each day of the violation period, if it is a continuing violation.

Section 20 EFFECTIVE DATE

This By-law shall come into effect in accordance with the Law.

ADOPTED

CERTIFIED COPY



Rémi Bertrand
Director General and Secretary-treasurer

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