

**Date:** January 6, 2011

**File No.:** 38.2(a)

**To:** Salt Spring Island Local Trust Committee for January 14, 2011 meeting

**From:** Kris Nichols, Planning Consultant

**CC:** Leah Hartley, Regional Planning Manager

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**Re: Official Community Plan Update – Riparian Areas Regulations Options for Implementation and Next Steps**

## THE PROPOSAL

The purpose of this report is:

1. To provide the Local Trust Committee with background information on the Provincial Riparian Areas Regulation; and
2. To provide the Local Trust Committee with options and recommendations for its implementation on Salt Spring Island.

## BACKGROUND

### Fish Protection in British Columbia:

The federal *Fisheries Act (FA)*, the provincial *Fish Protection Act (FPA)* and Riparian Areas Regulation (RAR) are used to protect fish habitat in BC. The federal *FA* protects fish habitat through provisions that prohibit activities that cause damage to fish habitat. It governs the management of fisheries and the protection of fish habitat (including both physical habitat and water quality) throughout Canada. The Ministry of Environment (MOE) considers the Riparian Areas Regulation (RAR) as an alternate model for urban riparian management that has been developed under the provincial legislation that satisfies the statutory obligations of the federal *FA*.

The Department of Fisheries and Oceans (DFO) has an agreement with MOE where it accepts the RAR as legislation that protects fresh water fish habitat. If a local government complies with the RAR through its planning policies and regulations it, as a result, complies with both DFO and MOE requirements. If the RAR is not implemented then the local government and landowners may be out of compliance with both federal and provincial requirements.

### What is the Riparian Areas Regulation (RAR)?

Riparian areas are the areas bordering on streams, lakes, and wetlands that link water to land. The blend of streambed, water, trees, shrubs and grasses directly influences and provides fish habitat. The Riparian Areas Regulation (RAR) was enacted under Section 12 of the *Fish Protection Act (FPA)* in July 2004 (amended by Order-in-Council in 2006) and took effect on March 31, 2006 (see Attachment 1). The RAR is to be applied by local governments listed in the

2006 amendments using their Part 26 powers under the *Local Government Act*. The objectives of the FPA are to:

- (1) ensure sufficient water for fish;
- (2) protect and restore fish habitat;
- (3) improve riparian protection and enhancement; and
- (4) provide stronger local government powers in environmental planning.

The RAR requires local governments, including local trust committees, to protect riparian areas during residential, commercial, and industrial development by ensuring that proposed activities are subject to a science-based assessment conducted by a Qualified Environmental Professional (QEP). According to MOE a QEP includes agrologists, biologists, foresters, geoscientists, and technologists who are in good standing with their respective professional organizations and are working in their area of expertise (i.e. fish habitat).

### The Purpose of RAR:

The Ministry of the Environment's website states that the purpose of the Regulation is to protect the features, functions and conditions that are vital in the natural maintenance of stream health and productivity. These vital features, functions and conditions are numerous and varied and include such things as:

- Sources of large organic debris, such as fallen trees and tree roots;
- Areas for stream channel migration;
- Vegetative cover to help moderate water temperature;
- Provision of food, nutrients and organic matter to the stream;
- Stream bank stabilization; and
- Buffers for streams from excessive silt and surface runoff pollution.

RAR Website [http://www.env.gov.bc.ca/habitat/fish\\_protection\\_act/riparian/riparian\\_areas.html](http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/riparian_areas.html)

Section 4 of the RAR prohibits a local government from approving or allowing a development to proceed in a riparian assessment area (RAA) unless the local government is notified by the Ministry of Environment that the developer has provided an assessment report by a qualified environmental professional (QEP) which certifies that the development can be carried out without damaging fish habitat.

### Where Does the RAR Apply?

The RAR applies to an area, "Riparian Assessment Area" (RAA), which is defined in the RAR to mean any area within 30 metres of a "stream". A "stream" is defined in RAR to include a watercourse, whether it usually contains water or not, that provides fish habitat, including ponds, lakes, rivers, creeks and brooks as well as ditches, springs, and wetlands that are connected by surface flow to such watercourses. Even if the watercourse may not currently have fish present, they are still considered a "stream" for the purposes of the RAR if fish could potentially be present in the event that the introduced obstructions were made passable. "Fish" is defined for the purposes of the RAR to include salmonids, game fish and regionally significant fish (these include all salmon species and trout). According the Ministry of Environment while there are no regionally significant fish on Salt Spring Island, there are still 24 RAR designated watersheds supporting salmonids or game fish.

Under the Regulation there is no authority provided to the Ministry of Environment or a QEP to regulate development. The RAR establishes that it is the local government that must amend its bylaws to ensure that riparian areas are protected and that development does not proceed within a Riparian Assessment Area (RAA) without the provision of a QEP report.

However, local governments may allow development within 30 metres of the high water mark of a stream or top of a ravine bank provided the prescribed riparian assessment methods have been followed. The riparian assessment method requires a Qualified Environmental Professional (QEP) to provide an opinion – in an Assessment Report – that the development will not result in a harmful alteration of riparian fish habitat. In the assessment, the QEP will establish, on a site-specific basis, an area within the 30 metre RAA that cannot be developed - termed a Streamside Protection and Enhancement Area (SPEA) and those portions of the site where development may occur within the 30 metre RAA. The QEP may also provide recommendations on mitigation or enhancement measures specific to the development proposal. The Assessment Report can also identify measures to maintain the integrity of the riparian area during the development process. These conditions can become part of a development permit should Development Permit Areas be established to implement RAR. Please see Attachment 2 for diagrams.

#### Role of the Local Government:

Local governments have land use decision making authority under Part 26 of the LGA. The implementation of the RAR through land use control has been seen by MOE as an effective means to protect fish habitat and fish processes. The *Fish Protection Act* (from which RAR stems) states that a local government must provide a level of protection that is comparable to or exceeds RAR.

If a development is residential, commercial or industrial in nature, local governments must either include riparian area protection in its zoning and rural land use bylaws in accordance with the RAR or ensure that its Part 26 bylaws afford protection that compares to or exceeds the RAR. Although agricultural, mining and forestry uses are not regulated by the local government act non-agricultural uses locating in the ALR are subject to the RAR. The regulation encourages environmentally responsible development. The intent is so that activities are conducted responsibly to avoid degrading valuable riparian fish habitat.

Any application to a local government for a rezoning, development variance permit, development permit, temporary use permit or subdivision can trigger the requirement for an assessment by a qualified environmental professional (QEP).

It applies to local government regulation or approval of residential, commercial and industrial activities, or ancillary activities, as regulated by Part 26 of the *Local Government Act* being:

- (a) removal, alteration, disruption or destruction of vegetation;
- (b) disturbance of soils;
- (c) construction or erection of buildings and structures;
- (d) creation of nonstructural impervious or semi-impervious surfaces;
- (e) flood protection works;
- (f) construction of roads, trails, docks, wharves and bridges;
- (g) provision and maintenance of sewer and water services;
- (h) development of drainage systems;
- (i) development of utility corridors;

(j) subdivision as defined in section 872 of the *Local Government Act*;

It does not apply to a development permit (DP) or development variance permit (DVP) issued for -reconstruction of a legal non-conforming use (*Local Government Act* Section 911 (8)) nor does it apply to a land use or development activity under the RAR that is sited beyond the 30m setback requirement. It also does not apply to agricultural or institutional development. Nor does it apply to mining activities or First Nations reserve lands. However, other provincial or federal legislation may still apply in these instances.

In summary, the Riparian Areas Regulation specifies that:

- local governments must protect riparian areas in accordance with the regulations when exercising their powers with respect to commercial, residential and industrial development; and,
- local governments must meet or better the regulations, but cannot reduce them without specific authorization from Fisheries and Oceans Canada. For example, a local government could not issue a development variance permit for a new residential, commercial or industrial building within a RAA except in accordance with the riparian area regulations.

As the RAR has been in effect for over 4 years, any Part 26 application can trigger the requirements for an assessment. For example, an unrelated variance for work that happens to be within 30 metres of a watercourse within a RAR designated watershed would trigger the requirement for a QEP assessment.

#### Islands Trust RAR Implementation:

In 2006 Trust Council adopted a resolution directing staff to prepare development permit area provisions to implement the RAR. Local Trust Committees were also requested to consider amending setback provisions to correspond with RAR in their Land Use Bylaws as a first step prior to implementing development permit areas.

The implementation of RAR development permit areas in the Trust Area had been delayed since 2006. Principally, the delay was attributable to issues with identifying watercourses that are subject to the RAR and in accurately mapping those watercourses.

In the 2009-10 fiscal year, funding was made available to undertake RAR implementation. The Islands Trust had previously obtained watershed mapping derived from 2-metre contour Digital Elevation Mapping (DEM) for most of the Trust Area. Based on their records and knowledge, the Ministry of Environment regional staff identified those watersheds within the Trust Area that would be subject to the RAR. Part of their research consisted of speaking with local experts on Salt Spring Island's watercourses such as Kathy Reimer who conducted extensive watercourse and fish habitat identification in the mid-1990's. On Salt Spring Island, 24 watersheds were identified by the Ministry of Environment as containing RAR watercourses and therefore designated as RAR watersheds. These designated watersheds substantially overlap with those watercourses identified in the current DPA 4 – Lakes, Stream and Wetlands. However, the current state of watercourse mapping is insufficient to determine the exact locations of all the watercourses or their attributes within these 24 watersheds. While the watercourses exact locations would be optimal, it does not mean that a DPA could not be implemented to protect them.

Mayne and North Pender Islands began consideration of the four RAR implementation options several months ago and as a result are at bylaw adoption/review stage implementing development permit areas (DPAs) to implement RAR. Recently, the Trust Council endorsed the North Pender Island RAR bylaw example (See Attachment 3) as a reference to be considered for all Local Trust Committees. However, given that every island is unique it is imperative that each Local Trust Committee decide how best to proceed with implementing the RAR on their respective Islands. While Mayne and North Pender provide a good example of how the Islands Trust, in general, is proceeding with RAR implementation, it must be remembered that these islands are distinctly different from Salt Spring Island and what works there may not exactly work for Salt Spring. One significant difference is that Salt Spring Island has 24 RAR designated watersheds whereas the other islands have significantly less in the range of 4-6. This has allowed them to hire firms to conduct accurate watercourse identification within the RAR identified watersheds so that their DPAs can accurately reflect each watercourse and their attributes. This has provided them with a level of accuracy and ease of implementation Salt Spring Island will not attain without significant expenditure.

#### RAR Implementation Options:

As noted above, compliance with the RAR is contingent upon LTCs amending their bylaws to include riparian area protection provisions. In a report to the Islands Trust Council in March 2010, four options were provided for consideration in implementing the Riparian Areas Regulation within the Local Trust Committee Bylaws:

1. Amend the Land Use Bylaw (LUB) to establish both a 30 metre setback and a landscape strip for all watercourses within the RAR-identified watersheds.
2. Amend the Official Community Plan (OCP) to designate all RAR-identified watersheds as a Development Permit Area (DPA).
3. Amend the OCP to designate all land within 30 metres of watercourses in RAR-identified watersheds as a Development Permit Area (DPA).
4. Exceed RAR by:
  - a. Designating a DPA within 30 metres of all watercourses, regardless of fish habitat status.
  - b. Designating one DPA within 30 metres of RAR watercourses and a second DPA, with different requirements, over the remainder of the land within the RAR-identified watershed. .
  - c. Designating all watershed areas a DPA, regardless of RAR designation.

When these were introduced, it was intended that planners would review these options with local trust committees during the course of developing bylaws for compliance with the Riparian Areas Regulation. It is recognized that, with respect to each watershed, unique situations exist. Data may not be readily available or suitable, and funding may not be available to complete required mapping and therefore, planning staff will have to assess the advantages and disadvantages of each option listed above and make a recommendation on which option(s) the local trust committee should consider.

## CURRENT POLICY

### Trust Council Strategic Plan:

The current Trust Council Strategic Plan includes “Implementation of Riparian Area Regulations” as the first focus area.

### Trust Policy Statement:

3.3.2 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address means to prevent further loss or degradation of freshwater bodies or watercourses, wetlands and riparian zones and to protect aquatic wildlife.

Salt Spring Official Community Plan: The OCP contains general policies with respect to protection of aquatic habitats and Development Permit Area 4 – Lakes, Streams and Wetlands – which recognizes the importance of protecting lakes, wetlands and streams which provide natural fish and wildlife habitat and also supply drinking water. The OCP also contains a reference map entitled “Potential and Existing Freshwater Fish Habitat” (Map 12) which indicates fish habitat and is of particular reference to RAR implementation.

## COMMUNITY INFORMATION MEETING(S)

It was stated at the launch of the Environmental DPAs Review in June 2010 and advertised on the Salt Spring Island’s website that the review will consist of a “strong component of public consultation”. To date, consultation and public education of RAR and associated DPAs has been limited. It is therefore recommended that one or more information meetings be held to inform residents about the fact that the RAR is in place, that local governments are obliged to protect riparian areas, and the specifics of how the Local Trust Committee intends to implement the provincial requirements locally.

It is also recommended that prior to first reading of any amending bylaws that the Environmental, Agricultural and Advisory Planning Committees be contacted for input as well as possibly other local groups.

In conjunction with these meetings it is recommended that a brochure be developed explaining the RAR and the requirement that it be implemented by local governments. This brochure would be part of a larger endeavour incorporating information on Environmental DPAs and the OCP amendments.

It is also intended that more information regarding this review and implementation process will be made available on the Salt Spring Island website.

## STAFF COMMENTS

The Local Trust Committee has not had an opportunity to consider the best option to implementing RAR. In looking at the four options presented to Trust Council there are limitations and benefits to each option that must be considered.

1. Designating a 30 metre setback and a landscape strip for all watercourses within the RAR-identified watersheds by amending the Land Use Bylaw.

Benefits:

- Clearly establishes a setback consistent with the 30 metre riparian assessment area required.
- Would also establish a 30 m setback for those non-RAR watercourses within the watershed.
- Protect both fish and non-fish habitat by establishing a 30 metre setback on all watercourses within the RAR identified watersheds.

Limitations:

- Only regulates the siting of buildings and structures and would not affect alteration to the land unless a landscape strip provision was incorporated as well to prevent vegetation removal.
- Work within the setback area would require a DVP necessitating public notification and an LTC decision in order to move an application forward and conditions cannot be attached to a variance permit. In addition, a Qualified Environmental Professional (QEP) would have to be hired to provide an assessment on any works within the 30 metres.
- Salt Spring watercourse mapping has not been ground truthed and therefore the setbacks are only as accurate as the mapping. This may raise a concern for some landowners.
- Could possibly increase the number of DVP applications and QEP assessments required given the large number of RAR designated watersheds and therefore increase staff time.

2. Amend the OCP to designate all 24 RAR-identified watersheds as a Development Permit Area (DPA).

Benefits:

- Development permits can incorporate any conditions recommended in a QEP's assessment report.
- Development Permits can be prepared with dual purpose protect the Island's designated "Community Drinking Water" source watersheds as well as fish habitat.
- Specific watercourses will not have to be mapped and can be done incrementally as resources become available or as development (i.e. subdivision, building permits, etc.) identifies them and their attributes.
- DPA provisions can incorporate exemptions for work that is found to be further than 30 metres from a watercourse.
- Would cover watercourses whether mapped or not, have water present or intermittent.
- DPs can be considered without public notification and decisions can be delegated allowing for faster processing time.

Limitations:

- All land within the 24 RAR designated watersheds would be designated as a DPA regardless of where the actual watercourse is, accounting for approximately 60% (or more) of the Island's land base.
- Regardless of exemptions that may be included with the DPAs, residents may initially be concerned over the breadth of the watershed DPAs. This approach is considered optimal where there are a limited number of large properties.

- Would impose requirements on all those landowners within the DPAs to establish whether the development activity requires an assessment and a development permit.
  - It will impact a large number of lots, especially those smaller lots around the lakes.
3. Amend the OCP to designate all land within 30 metres of defined watercourses in RAR-identified watersheds as a Development Permit Area (DPA).

Benefits:

- Provides greater certainty with respect to where the DPA's location and would limit reviews and applications to work within 30 metres of fish-bearing or potential fish-bearing streams.
- Eliminates the need for watershed DPAs and focuses on the defined watercourses.
- DPs can be considered without public notification and decisions can be delegated allowing for faster processing time.

Limitations:

- Would benefit from improved mapping of watercourses in RAR designated watersheds
- Could proceed with current mapping with the onus of verifying whether development is close to a watercourse up to the landowner. May require some additional staff resources to assist applicants and work with other agencies such as CRD building inspection and MOE.
- Would not address concerns for protection of drinking water source watershed protection not just the watercourses.

4. Exceed the Riparian Areas Regulation By:

- a. Designating a DPA within 30 metres of all watercourses, regardless of fish habitat status.

Benefits:

- All in stream values associated with watercourse protection are addressed, not just fish habitat
- Would not require any confirmation of fish habitat or presence
- Could apply to all watercourses regardless of their watersheds

Limitations:

- Would benefit from mapping of the location of all watercourses with an acceptable degree of certainty
- May raise concerns for those adjacent to non-RAR watercourses and the need for DP when the current setback is 10 m with DPA 4.
- Would require a QEP to assess all development within 30 m of a watercourses to prove that they are not impacted by RAR
- Would not address development concerns outside of the 30 metres.

- b. Designating one DPA within 30 metres of RAR watercourses and a second DPA, with different requirements, over the remainder of the land within the RAR-identified watershed.

Benefits:

- Would enable DPA protection beyond the 30 metres, but not the same as required within the 30 metres (RAA).
- Would effectively add DPA protection to the entire watershed.
- Could also be beneficial for drinking water protection.

Limitations:

- This would require mapping of RAR watercourses, but may be preferred if there is evidence that activities permitted more than 30 metres from a watercourse could affect fish habitat and thus require some sort of regulation
- Increase in staff time to assist in ascertaining which DPA is applicable.
- May not protect non-RAR watercourses.

c. Designating all watershed areas a DPA, regardless of RAR designation.

Benefits:

- Would result in comprehensive regulation of all watershed areas and not require further mapping of watercourses
- Would protect all watersheds including drinking watershed
- Would include most of Salt Spring Island's land base

Limitations:

- Would present a significant impact on landowners and on planning staff to administer such a DPA.
- Impact basically all Salt Spring landowners given everyone lives within a watershed.

The approach taken to date in identifying the RAR streams has been to create watershed mapping and, in coordination with the Ministry of Environment, identify 24 RAR designated watersheds. This indicates that within these 24 watersheds are RAR watercourses. These watercourses have not been GPS'd or definitively proven as to the extent of fish habitat. This could be a concern for many landowners. However, the RAR was established to allow the cost of this RAR assessment to be the responsibility of the land developer, allowing governments to focus on monitoring and enforcement within their respective jurisdictions.

One of the general concerns is regarding the identification of watercourses whether RAR or not, on Salt Spring Island. While the RAR watersheds are identified, the exact location of the watercourses or their attributes (fish or non-fish bearing) is not known. While exact watercourse mapping is inescapable given the current staff and monetary resources that would be required to properly locate all the watercourses, it remains a concern that will have to be addressed as bylaw changes are proposed. However, it is anticipated that over time through development applications (e.g. building, variances, subdivision, etc.) that the exact location of the watercourses and their attributes will be known and properly identified/mapped. This is a common concern with many of BC's rural communities.

Given the options presented to the Islands Trust Council last March and considering the limitations that face Salt Spring's implementation, staff have narrowed the focus to a few options that could be considered further on Salt Spring Island:

1. Amend the OCP to designate all RAR-identified watersheds as a Development Permit Area (DPA).
2. Amend the OCP to designate all land within 30 metres of defined watercourses in RAR designated watersheds as a Development Permit Area (DPA).
3. Designating one DPA within 30 metres of RAR watercourses and a second DPA, with different requirements, over the remainder of the land within the RAR designated watershed.

The first option is the simplest to enact through a bylaw amendment as it would apply to all 24 RAR designated watersheds and all watercourses (mapped or not) within them, but may also have the most public concern given that area of coverage approximately 60% of the Island. The DP could be written in such a way that it would have exemptions for development outside of the RAR applicable areas thereby limiting its applicability. It would, however, require that a QEP be hired for all work within 30 m which will for the most part be inescapable on Salt Spring Island regardless of the option chosen. It will be assumed that all watercourses within a RAR designated watershed are fish supporting unless proven otherwise. This approach may provide the best option for protecting fish habitat and in many instances drinking watersheds. This option may also provide an opportunity to coordinate recommendations stated in the Cushion and St Mary watershed plans as recommended in the March 24, 2010 staff report entitled, *Local Trust Committee Special Project: Watershed Management: Cusheon Watershed Management Plan and St. Mary Lake Watershed Management Plan*

The later two options would benefit from more accurate mapping, but given the cost of doing such mapping for the number of watercourses that Salt Spring Island has, this is unlikely. That being said, it is an option for the Local Trust Committee to consider obtaining quotes to improve the accuracy of the existing watercourse mapping. The OCP could be based on the estimated location of the watercourses with the exact locations being determined by the developer/landowner as required.

It will be necessary regardless of the option chosen that there be wording in the OCP acknowledging the fact that all watercourses may not be exactly as indicated on the mapping. For example, this can be accomplished through specific policy wording through a notwithstanding clause which would state something to the effect that "...notwithstanding the areas identified on Map X, the actual development permit area will in every case be verified and measured on the ground..." or through definitions by defining a stream as "including all watercourses whether mapped or unmapped" along with the RAR definitions. Many local governments include such wording due to the nature of obtaining accurate mapping, especially in the more rural areas. In addition many local governments will make available disclosure statements for landowners/developers that they will sign stating that they are aware of RAR but that the development proposal will not be located in a Riparian Assessment Area. This would make it more palatable for many landowners as they would be responsible and to an extent less reliant on professionals or staff.

Regardless of the option decided upon, it might be beneficial that the RAR DPA be combined within the existing framework of the DP 4 – Lakes, Streams and Wetlands as an overall amendment with associated mapping.

## NEXT STEPS

The Salt Spring Local Trust Committee should discuss the various options presented and decide on a preferred option for implementing the RAR. Once an option has been agreed to it will then be possible for staff to develop the necessary policy and guideline wording that implements RAR as well as providing other watercourse/watershed protection while not being seen as being too restrictive for landowners. At that time, staff will submit the appropriate mapping along with a draft bylaw amendment for review.

## RECOMMENDATION

That the Salt Spring Island Local Trust Committee directs staff to develop a draft bylaw amendment based on LTC direction incorporating the Riparian Areas Regulation and bring it to the LTC's next meeting in February.

That the Salt Spring Island Local Trust Committee directs staff to outline a consultation process for involving the public in this bylaw amendment and present it to the LTC along with a sample 'Landowners Guide to Development Permits' brochure for discussion.

That the Salt Spring Island Local Trust Committee directs staff to forward this report to the Advisory Planning, Agricultural and Environmental Advisory Committees for comment.

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Prepared and Submitted by:

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Kris Nichols

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Date

Concurred in by:

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Leah Hartley, Regional Planning Manager

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Date

### Attachments:

1. Riparian Areas Regulation (BC Regulation 376/2004) and Riparian Areas Regulation (Amendment May 2006)
2. Riparian Areas Regulation Diagrams
3. North Pender Draft Bylaw (No. 184)

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. → 837 , Approved and Ordered JUL 27 2004

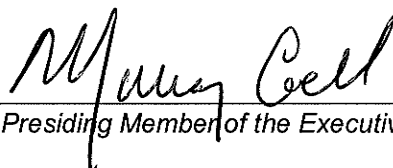
  
Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 31, 2005,

- 1 the Streamside Protection Regulation, B.C. Reg. 10/2001, is repealed, and
- 2 the attached Riparian Areas Regulation is made.

  
Minister of Water, Land and Air Protection

  
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Fish Protection Act, S.B.C. 1997, c. 21, ss. 12, 13 (1) and 37 (2)

Other (specify):- oic 34/2001

June 9, 2004

Resub 740/2004/8

## RIPARIAN AREAS REGULATION

### Definitions and interpretation

1 (1) In this regulation:

“**Act**” means the *Fish Protection Act*;

“**active floodplain**” means an area of land that supports floodplain plant species and is

- (a) adjacent to a stream that may be subject to temporary, frequent or seasonal inundation, or
- (b) within a boundary that is indicated by the visible high water mark;

“**assessment methods**” means the methods set out in the Schedule;

“**assessment report**” means a report prepared in accordance with the assessment methods to assess the potential impact of a proposed development in a riparian assessment area and which is certified for the purposes of this regulation by a qualified environmental professional;

“**development**” means any of the following associated with or resulting from the local government regulation or approval of residential, commercial or industrial activities or ancillary activities to the extent that they are subject to local government powers under Part 26 of the *Local Government Act*:

- (a) removal, alteration, disruption or destruction of vegetation;
- (b) disturbance of soils;
- (c) construction or erection of buildings and structures;
- (d) creation of nonstructural impervious or semi-impervious surfaces;
- (e) flood protection works;
- (f) construction of roads, trails, docks, wharves and bridges;
- (g) provision and maintenance of sewer and water services;
- (h) development of drainage systems;
- (i) development of utility corridors;
- (j) subdivision as defined in section 872 of the *Local Government Act*;

“**development proposal**” means any development that is proposed in a riparian assessment area that is within or partly within the boundaries of an area administered by a local government;

“**fish**” means all life stages of

- (a) salmonids,
- (b) game fish, and
- (c) regionally significant fish;

“**floodplain plant species**” means plant species that are typical of an area of inundated or saturated soil conditions and that are distinct from plant species on freely drained adjacent upland sites;

“**high water mark**” means the visible high water mark of a stream where the presence and action of the water are so common and usual, and so long continued

in all ordinary years, as to mark on the soil of the bed of the stream a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself, and includes the active floodplain;

**“ministry”** means the Ministry of Water, Land and Air Protection;

**“natural features, functions and conditions”** include but are not limited to the following:

- (a) large organic debris that falls into the stream or streamside area, including logs, snags and root wads;
- (b) areas for channel migration, including active floodplains;
- (c) side channels, intermittent streams, seasonally wetted contiguous areas and floodplains;
- (d) the multicanopied forest and ground cover adjacent to streams that
  - (i) moderates water temperatures,
  - (ii) provides a source of food, nutrients and organic matter to streams,
  - (iii) establishes root matrices that stabilize soils and stream banks, thereby minimizing erosion, and
  - (iv) buffers streams from sedimentation and pollution in surface runoff;
- (e) a natural source of stream bed substrates;
- (f) permeable surfaces that permit infiltration to moderate water volume, timing and velocity and maintain sustained water flows in streams, especially during low flow periods.

**“permanent structure”** means any building or structure that was lawfully constructed, placed or erected on a secure and long lasting foundation on land in accordance with any local government bylaw or approval condition in effect at the time of construction, placement or erection;

**“qualified environmental professional”** means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if

- (a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association’s code of ethics and subject to disciplinary action by that association,
- (b) the individual’s area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal, and
- (c) the individual is acting within that individual’s area of expertise;

**“ravine”** means a narrow, steep-sided valley that is commonly eroded by running water and has a slope grade greater than 3:1;

**“riparian area”** means a streamside protection and enhancement area;

**“riparian assessment area”** means

- (a) for a stream, the 30 meter strip on both sides of the stream, measured from the high water mark,
- (b) for a ravine less than 60 meters wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 meters beyond the top of the ravine bank, and

- (c) for a ravine 60 meters wide or greater, a strip on both sides of the stream measured from the high water mark to a point that is 10 meters beyond the top of the ravine bank;

**“stream”** includes any of the following that provides fish habitat:

- (a) a watercourse, whether it usually contains water or not;
- (b) a pond, lake, river, creek or brook;
- (c) a ditch, spring or wetland that is connected by surface flow to something referred to in paragraph (a) or (b);

**“streamside protection and enhancement area”** means an area

- (a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream, and
- (b) the size of which is determined according to this regulation on the basis of an assessment report provided by a qualified environmental professional in respect of a development proposal;

**“top of the ravine bank”** means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 meters measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed;

**“wetland”** means land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, fens, estuaries and similar areas that are not part of the active floodplain of a stream.

- (2) For the purposes of the definition of **“streamside protection and enhancement area,”** vegetation must be considered to be “potential” if there is a reasonable ability for regeneration either with assistance through enhancement or naturally, but an area covered by a permanent structure must be considered to be incapable of supporting potential vegetation.

### **Purposes of this regulation**

2 The purposes of this regulation are

- (a) to establish directives to protect riparian areas from development so that the areas can provide natural features, functions and conditions that support fish life processes, and
- (b) to facilitate an intergovernmental cooperation agreement between the ministry, Fisheries and Oceans Canada and the Union of British Columbia Municipalities including the ability for individual intergovernmental cooperation agreements with local governments for any of the following:
  - (i) the implementation of this regulation;
  - (ii) the confirmation of regionally significant fish by the Ministry of Water, Land and Air Protection;
  - (iii) providing, sharing or confirming information on fish habitat conditions;

- (iv) describing roles and responsibilities with reference to applicable and appropriate use of authority and program mandates;
- (v) dispute resolution;
- (vi) a compliance strategy, including education, training, monitoring, reporting, enforcement and auditing.

**Application**

- 3 (1) This regulation applies to the exercise of local government powers by local governments under Part 26 of the *Local Government Act* in those local government areas to which this regulation applies.
- (2) This regulation does not apply to a development permit or development variance permit issued only for the purpose of enabling reconstruction or repair of a permanent structure described in section 911 (8) of the *Local Government Act* if the structure remains on its existing foundation.

**Assessment reports required before development**

- 4 (1) In respect of development proposals related wholly or partially to riparian assessment areas within the jurisdiction of a local government, a local government must not approve or allow development to proceed in those riparian assessment areas unless the development proceeds in accordance with subsection (2) or (3).
- (2) A local government may allow development to proceed if
- (a) a qualified environmental professional carries out an assessment and certifies in the assessment report for that proposal that he or she is qualified to carry out the assessment, that the assessment methods have been followed, and provides their professional opinion that
    - (i) if the development is implemented as proposed there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area, or
    - (ii) if the streamside protection and enhancement areas identified in the report are protected from the development and the measures identified in the report as necessary to protect the integrity of those areas from the effects of the development are implemented by the developer, there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area, and
  - (b) the local government is notified by the ministry that Fisheries and Oceans Canada and the ministry have been
    - (i) notified of the development proposal, and
    - (ii) provided with a copy of an assessment report prepared by a qualified environmental professional that
      - (A) certifies that he or she is qualified to carry out the assessment,
      - (B) certifies that the assessment methods have been followed, and
      - (C) provides a professional opinion, that meets the requirements of subsection (2) (a) (i) or (ii), as to the potential impact of the

development on the natural features, functions and conditions that support fish life processes in the riparian assessment area.

- (3) A local government may allow development to proceed if the Minister of Fisheries and Oceans or a regulation under the *Fisheries Act* (Canada) authorizes the harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area that would result from the implementation of the development proposal.

#### **Development of strategies for monitoring, enforcement and education**

- 5 The local government must cooperate in developing strategies with the ministry and Fisheries and Oceans Canada
  - (a) for obtaining certificates by qualified environmental professionals that the conditions set out in assessment reports have been properly implemented,
  - (b) for monitoring and enforcement to ensure that assessment reports have been properly prepared in accordance with the assessment methods and properly implemented, and
  - (c) for public education with respect to the protection of riparian areas.

#### **Use of local government powers for protection and enhancement of areas**

- 6 When exercising its powers with respect to development, a local government must protect its riparian areas in accordance with this regulation.

#### **Preparation of assessment report by qualified environmental professional**

- 7 An assessment report for the purposes of this regulation must employ the assessment methods set out in the Schedule and must report on all of the following:
  - (a) the width of the streamside protection and enhancement area which must be protected, and
  - (b) the measures necessary to protect the integrity of the streamside protection and enhancement area.

#### **Transitional**

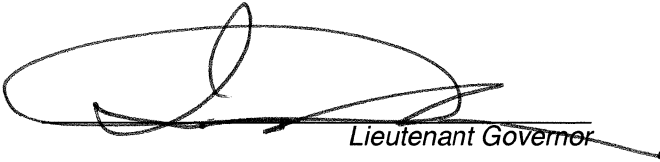
- 8 (1) In this section, “**former regulation**” means the Streamside Protection Regulation, B.C. Reg 10/2001.
  - (2) If, before this regulation came into force, a local government had established streamside protection and enhancement areas in accordance with the former regulation, the local government is deemed to have met the requirements of this regulation in respect of those areas.
  - (3) Despite section 6 (5) of the former regulation, an amendment of a streamside protection and enhancement area referred to in subsection (2) of this section must be in accordance with this regulation.

**SCHEDULE**  
**ASSESSMENT METHODS**

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 378 , Approved and Ordered MAY 19 2006

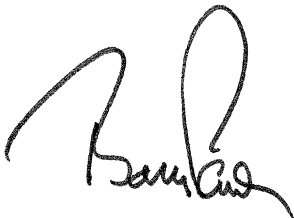


Lieutenant Governor

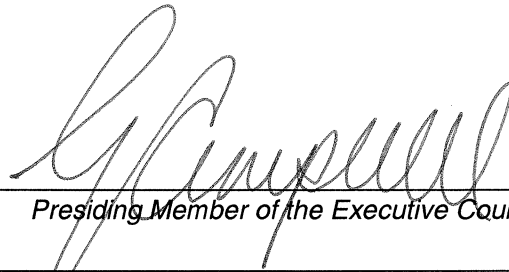
Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

- (a) the definition of "local government" in section 1 (1) of the *Fish Protection Act*, S.B.C. 1997, c. 21, is brought into force, and
- (b) the Riparian Areas Regulation, B.C. Reg. 376/2004, is amended as set out in the attachment.



Minister of Environment and Minister Responsible for Water Stewardship and Sustainable Communities



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Fish Protection Act, S.B.C. 1997, c. 21, ss. 12 and 37 (2)

Other (specify):- oic 837/2004

## SCHEDULE

- 1 Section 2 (b) (ii) of the Riparian Areas Regulation, B.C. Reg. 376/2004, is amended by striking out "by the Ministry of Water, Land and Air Protection;" and substituting "by the ministry;".
- 2 Section 3 (I) is repealed and the following substituted:
  - (1) This regulation applies within the geographic boundaries of the following regional districts:
    - (a) Capital;
    - (b) Central Okanagan;
    - (c) Columbia-Shuswap;
    - (d) Comox-Strathcona;
    - (e) Cowichan Valley;
    - (f) Fraser Valley;
    - (g) Greater Vancouver, other than within the boundaries of the City of Vancouver;
    - (h) Nanaimo;
    - (i) North Okanagan;
    - (j) Okanagan-Similkameen;
    - (k) Powell River;
    - (l) Squamish-Lillooet;
    - (m) Sunshine Coast;
    - (n) Thompson-Nicola.
  - (1.1) This regulation applies to the exercise, in relation to development, of local government powers under Part 26 of the Local Government Act by local governments in those parts of British Columbia described in subsection (1).
- 3 Section 4 is amended
  - (a) by repealing subsection (2) and substituting the following:**
    - (2) A local government may approve or allow development to proceed if the local government is notified by the ministry that Fisheries and Oceans Canada and the ministry have been
      - (a) notified of the development proposal, and
      - (b) provided with a copy of an assessment report, prepared by a qualified environmental professional who has carried out an assessment, that
        - (i) certifies that the qualified environmental professional is qualified to carry out the assessment,
        - (ii) certifies that the assessment methods have been followed, and

(iii) provides the professional opinion of the qualified environmental professional that

(A) if the development is implemented as proposed there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area, or

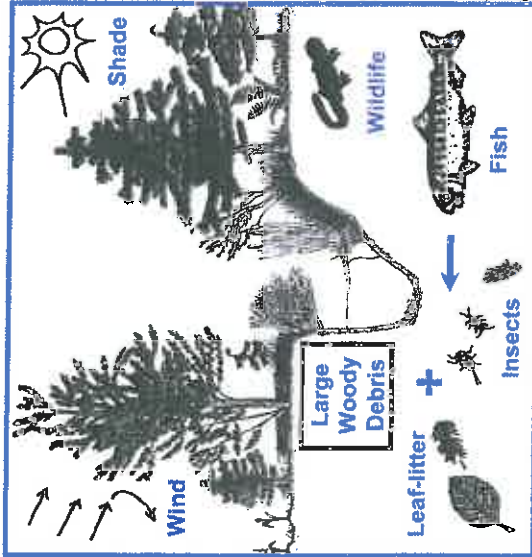
(B) if the streamside protection and enhancement areas identified in the report are protected from the development, and the measures identified in the report as necessary to protect the integrity of those areas from the effects of the development are implemented by the developer, there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area., and

*(b) in subsection (3) by striking out "may allow development to proceed" and substituting "may approve or allow development to proceed".*

**4 The Schedule of Assessment Methods is repealed and the attached Schedule of Assessment Methods is substituted.**

## What is a Riparian Area?

Riparian areas are the areas bordering on streams, lakes, and wetlands that link water to land. The blend of streambed, water, trees, shrubs and grasses directly influences and provides fish habitat.



## Fish need trees!

The riparian area is fish habitat. It provides shade and shelter from predators, as well as a home and food for the insects that are food for fish. It provides wood to the stream that provides shelter and nutrients. The Riparian Area also protects water quality by filtering rainwater runoff and slowing flow from heavy rains. The spongy soils soak up excess water and release it slowly, protecting you from floods and sudden bank erosion.

Riparian areas are highly productive ecosystems and are a critical source of British Columbia's biodiversity.

## What can I do?

Preventing damage to riparian fish habitat is easier than restoring it if damage has occurred. You can restore damaged riparian areas by allowing natural revegetation to take its course and by re-establishing native plants, as appropriate. Encourage your neighbours to do the same. Fish don't understand property boundaries!

## Value for fish and for people.

Permanently protected natural areas make neighbourhoods desirable and can have a positive impact on your property values.

Protected riparian areas mean:

- Better surface and ground water quality
- Lower water and waste treatment costs
- Higher aesthetic values
- Lower greenhouse gas emissions
- Healthy fish habitat
- Lower flood hazards
- Better air quality, and much more!

It will take all of us working cooperatively in our communities and with all levels of government to keep riparian areas healthy. To verify that our collective efforts are adequately protecting riparian areas, spot inspections and ongoing project monitoring of development will be conducted.



## For more information:

Consult your local government to learn about the permit and approval process for developments in your riparian area. To find out more about how you can protect and conserve riparian areas and obtain the RAR implementation guidebook visit:

- [www.env.gov.bc.ca/habitat/fish\\_protection\\_act/riparian/riparian\\_areas.html](http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/riparian_areas.html)

For a list of regional districts and municipalities where the Riparian Areas Regulation applies visit:

- [www.env.gov.bc.ca/habitat/fish\\_protection\\_act/riparian/documents/TablewithLocalgovernments.pdf](http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/TablewithLocalgovernments.pdf)

For more information about riparian areas visit:

- [www.livingbywater.ca](http://www.livingbywater.ca)
- [www.stewardshipcentre.bc.ca](http://www.stewardshipcentre.bc.ca)

## Do you have a

# Stream, Lake,

# Wetland or Ditch

## on or beside your property?



## You need to know:

Provincial and Federal legislation may apply to you. This brochure is intended to assist land owners & developers who are planning development activities in riparian areas adjacent to streams or other water bodies.

*This pamphlet is a guide only. It is not a substitute for the Federal Fisheries Act, the Riparian Areas Regulation or your local government's bylaws.*

## It's the Law.

You will need to protect riparian fish habitat when your new development or redevelopment project is near a **stream, river, creek, pond, lake, or a connected ditch, spring or wetland**, if it provides fish habitat or provides nutrients to fish habitat.

Valuable riparian fish habitat is protected by the federal **Fisheries Act** and the provincial **Fish Protection Act** (including the **Riparian Areas Regulation (RAR)**, and the **Water Act** and municipal bylaws.

**Fish habitats** are areas on which fish depend on directly or indirectly for a variety of needs including **spawning, nursery, rearing, food supply and migration.**

## If your project is...

...a residential, commercial or industrial activity **within 30 metres of a watercourse, AND** You are planning any of the following:

- Removing or altering plants
- Disturbing soils
- Constructing buildings and structures
- Constructing roads, trails, docks, wharves, bridges
- Creating hard surfaces such as decks and pavement
- Installing works for flood protection
- Developing drainage systems and utility corridors
- Servicing sewage and water systems
- Servicing subdivisions

...the **Riparian Areas Regulation** may affect your development. The regulation encourages responsible development. It helps you conduct your activities responsibly to avoid degrading valuable riparian fish habitat.

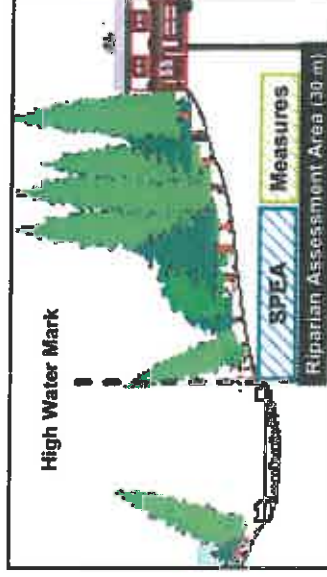
## About the Regulation:

Under the **Fish Protection Act** local governments may ensure the protection of riparian areas in a number of different ways. The Riparian Areas Regulation is provincial legislation that requires local governments in applicable areas to protect riparian areas during residential, commercial, and industrial development.

Consult with your local government to find out how their bylaws require your development project near a watercourse to recognize and protect riparian areas.

## When RAR applies to you:

If the Riparian Areas Regulation applies to your development, you need to have your property assessed by a **Qualified Environmental Professional**. The assessment will determine the **Streamside Protection and Enhancement Area (SPEA)** on your property, which represents the development setback to prevent degradation of fish habitat. Additional measures to maintain riparian fish habitat, such as sediment and erosion control, may be included in the assessment. **SPEA** vegetation must be left in, or allowed to return to, a natural, undisturbed state. Formal trails and landscaping may be restricted in **SPEAs** if they have the potential to damage vegetation and/or interfere with the ability of the riparian area to provide fish habitat.



**Qualified Environmental Professionals (QEPs)** include agronomists, biologists, foresters, geoscientists, and technologists who are in good standing with their respective professional organizations working in their area of expertise. To find a QEP who has undertaken training specific to the Riparian Areas Regulation, contact the Fisheries Extension Program at Malaspina College or visit [www.mala.ca/faep](http://www.mala.ca/faep).

## To get your project approved:

### Step 1

Check with your local government for the rules that apply to developing property within the riparian area (30 metres of a stream, shore or ravine bank)

### Step 2

(a) If your local government has determined setbacks based on fish values in their bylaws, you need to abide by them. Go to Step 6.

OR

### Step 2

(b) Where your local government is willing to consider development in riparian areas and has not established setbacks, a Qualified Environmental Professional (QEP) will be required to assess the development site to determine the setbacks and protection measures. The QEP's assessment should be completed early in the development process so your project is designed to avoid impact on riparian area including for fish habitat.

### Step 3

The QEP completes the assessment report that evaluates the riparian area (see diagram previous panel) using a standard procedure. The assessment determines how to protect riparian fish habitat.

If it is not possible to accommodate the development based on the QEP report, the development proposal can usually be adjusted:

- By developing outside the riparian area,
- Through redesign of the development to avoid impacts on the riparian area, or
- Through the local government's flexibility option or relaxing of other setbacks (for more information see Implementation Guidebook).

If there is no buildable area outside of the setback, with support from your local government you can consult with Fisheries and Oceans Canada (DFO) to explore other options.

### Step 4

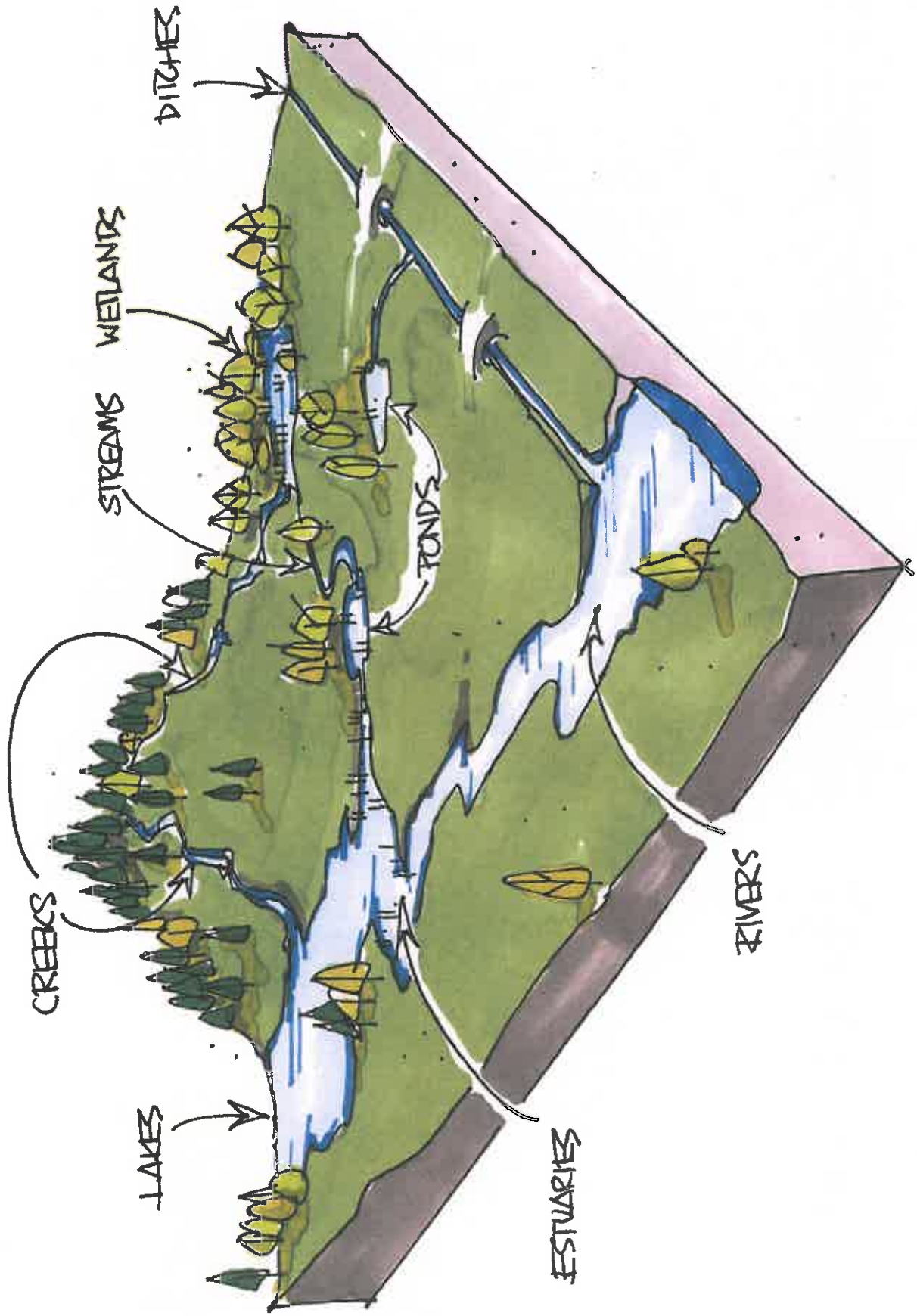
The QEP submits the report to Ministry of Environment (MoE) to notify them of the development. MoE then notifies the local and federal governments that the QEP report has been received.

### Step 5

If the **SPEAS** in the riparian areas can be protected, your local government may now approve your development subject to other conditions and bylaws.

### Step 6

When you fully and carefully implement the **Streamside Protection and Enhancement Areas (SPEAs)** and related measures within riparian areas, as provided by a Qualified Environmental Professional (QEP) following a RAR Assessment, you should not, in the opinion of Fisheries and Oceans Canada (DFO), cause a harmful alteration, disruption or destruction (HADD) of riparian fish habitat.



RIPARIAN AREAS ARE...

**NORTH PENDER ISLAND LOCAL TRUST COMMITTEE  
BYLAW No. 184**

\*\*\*\*\*

**A BYLAW TO AMEND NORTH PENDER ISLAND OFFICIAL COMMUNITY PLAN  
BYLAW NO. 171, 2007**

\*\*\*\*\*

WHEREAS the North Pender Island Local Trust Committee is the Local Trust Committee having jurisdiction on and in respect of the North Pender Island Local Trust Area, pursuant to the Islands Trust Act;

AND WHEREAS Section 29 of the *Islands Trust Act* gives the North Pender Island Local Trust Committee the same power and authority of a Regional District under Part 26, except sections 932 to 937 and 939, of the *Local Government Act*;

AND WHEREAS the North Pender Island Local Trust Committee wishes to amend the North Pender Island Official Community Plan Bylaw No. 171, 2007;

AND WHEREAS the North Pender Island Local Trust Committee has held a Public Hearing;

NOW THEREFORE the North Pender Island Local Trust Committee enacts as follows:

CITATION

1. This Bylaw shall be cited as the "North Pender Island Official Community Plan Bylaw No. 171, 2007, Amendment No. 2, 2010".

ORGANIZATION

2. North Pender Island Local Trust Committee Bylaw No. 171, 2007 is altered as shown on Schedules 1 and 2 of this amending bylaw.

SEVERABILITY

3. If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

READ A FIRST TIME this                    10th                    day of                    November, 2010

PUBLIC HEARING HELD this                    day of                    , 2011

READ A SECOND TIME this                    day of                    2011

READ A THIRD TIME this                    day of                    , 2011

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this  
day of                    , 2011

APPROVED BY THE MINISTER OF COMMUNITY, SPORTS AND CULTURAL DEVELOPMENT this  
day of                    2011

ADOPTED this                    day of                    , 2011

\_\_\_\_\_  
**SECRETARY**

\_\_\_\_\_  
**CHAIRPERSON**

**NORTH PENDER ISLAND LOCAL TRUST COMMITTEE**  
**BYLAW No. 184**  
**SCHEDULE 1**

North Pender Island Official Community Plan No. 171, 2007 is amended as follows:

1. By amending Policy 5.1.3 of Schedule A (Policy Document) by deleting the words “use of zoning regulations” and replacing them with the words “designation of a development permit area.”
2. By amending Schedule A (Policy Document) by inserting the following as a new Subsection 5.2.11:

“5.2.11 DEVELOPMENT PERMIT AREA TEN - RIPARIAN AND AQUATIC  
DEVELOPMENT PERMIT AREA

5.2.11.1 Authority

This development permit area is established, pursuant to Section 919.1(1)(a) of the *Local Government Act*, for the protection of the natural environment, its ecosystems and biological diversity. Terms used in this section that are defined in the Riparian Areas Regulation (RAR) are intended to be interpreted in accordance with the definition given in the Regulation, as it may be amended from time to time.

5.2.11.2 Development Approval Information

The Riparian and Aquatic DPA is designated as an area for which development approval information may be required as authorized by Section 920.01 of the *Local Government Act*. Development approval information in the form of a report from a qualified environmental professional (QEP) may be required due to the special conditions and objectives described herein.

5.2.11.3 Application Requirements

The applicant must, in addition to any other application requirements enacted or imposed by the Local Trust Committee, provide at their expense an assessment report from a Qualified Environmental Professional (QEP) which has been reviewed and approved by the Ministry of Environment.

5.2.11.4 General Applicability

The following activities shall require a development permit whenever they occur within the DPA, unless specifically exempted below:

- a) removal, alteration, disruption, or destruction of vegetation;
- b) disturbance of soils;
- c) construction or erection of buildings and structures;
- d) creation of non-structural impervious or semi-impervious surfaces;
- e) construction of flood protection works;
- f) construction of roads, trails, docks, floats, ramps and bridges;
- g) provision and maintenance of residential sewer and water services;
- h) development of residential drainage systems;
- i) development of residential utility corridors;

- j) subdivision as defined in section 872 of the *Local Government Act*.

A separate development permit, or additional development permit conditions in a single permit, may be required or imposed if the development is occurring in another development permit area designated in this plan.

#### 5.2.11.5 Development Permit Exemptions

The following activities are exempt from any requirement for a development permit:

- a) development where an assessment report prepared by a qualified environmental professional provides an unqualified certification that if the development is implemented as proposed there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area;
- b) the reconstruction, repair or maintenance of a pre-existing permanent structure on its existing foundation.
- c) forest management activities, as defined in the Private Managed Forest Land Regulation, on land classified as managed forest land under the *Private Managed Forest Land Act*;
- d) forest management activities on land that is the subject of a woodlot license or tree farm license under the *Forest Act*;
- e) agricultural activities conducted in a manner consistent with normal farm practices as defined in the *Farm Practices Protection (Right to Farm) Act*;
- f) mining activities regulated by the *Mines Act*;
- g) for certainty, all uses that are not residential, commercial or industrial or accessory to such a use;
- h) for certainty, actions undertaken by the Crown or an agent of the Crown;
- i) the removal of trees that have been examined by an arborist and certified to pose an immediate threat to life or property;
- j) gardening and yard maintenance activities, not involving the cosmetic application of pesticides, within an existing landscaped area, including mowing, pruning, planting and minor soil disturbance that does not alter the general contours of the land;
- k) the construction of a fence if no native trees are removed and the disturbance of native vegetation is restricted to 0.5 metres on either side of the fence;
- l) the construction of a trail if all of the following apply:
  - the trail is 1 metre wide or less;
  - no native trees are removed;
  - the surface of the trail is pervious;
  - the trail is designed to prevent soil erosion where slopes occur; and
  - where the trail parallels the stream or waterbody, the trail is more than 5 metres away from the high water mark;
- m) ecological restoration and enhancement projects undertaken or authorized by a public body;
- n) work that is authorized by Fisheries and Oceans Canada by permit under section 35 of the *Fisheries Act*;
- o) changes in or about a stream authorized under Section 9 of the *Water Act*;

#### 5.2.11.6 Designation

This development permit area includes all land designated on Schedule P of this plan as being within the Riparian and Aquatic DPA. This DPA includes the riparian assessment areas related to the watercourses and water bodies identified on Schedule P, consisting of the stream and:

1. for a stream, a 30 metre strip on both sides of the stream measured from the high water mark;
2. for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank; and
3. for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the high water mark to a point that is 10 metres beyond the top of the ravine bank; and
4. for all other water bodies, an area encompassing the water body and 30 metres around the water body measured from the natural boundary of the water body.

and Schedule P shall be so interpreted. Development Permit Area Ten is shown in a generalized representation on Schedule P. The designation and delineation of Development Permit Area Ten consists of a digital record compiled by means of air photograph interpretation. This digital record is stored and maintained in a Geographic Information System (GIS) at the offices of the Islands Trust. The actual location of the streams, water bodies and the DPA may need to be determined on a site-specific basis by a qualified environmental professional or a surveyor.

#### 5.2.11.7 Special Conditions and Objectives that Justify the Designation

It is the Object of the Islands Trust to “Preserve and protect the Trust Area and its unique amenities and environment for the benefit of the residents of the Trust Area, and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia.”

It is a policy of the Islands Trust Council that local trust committees shall in their official community plans and regulatory bylaws, address means to prevent further loss or degradation of freshwater bodies or water courses, wetlands or riparian zones and to protect aquatic wildlife.

Furthermore, the province of British Columbia’s *Fish Protection Act*, requires that local governments establish regulations to protect riparian areas. The reason for this designation is to protect riparian areas from development so that the areas can provide natural features, functions and conditions that support fish life processes.

#### 5.2.11.8 Guidelines

Prior to undertaking any development activities within the Riparian and Aquatic DPA an owner of property shall apply to the LTC for a development permit, and the following guidelines apply:

- a) In general, all development in this DPA should be undertaken in a manner that minimizes impacts on the riparian area and on aquatic ecosystems, including from the application of pesticides and other chemicals for non-essential cosmetic purposes. Where a QEP has made recommendations for mitigation measures, enhancement or restoration in order to lessen impacts on the riparian area and aquatic ecosystems, the LTC may impose permit conditions, including a requirement for security in the form of an irrevocable letter of credit, to ensure the protection of riparian areas and aquatic ecosystems, consistent with the measures and recommendations described in the report.
  - b) The development permit should not allow any development activities to take place within any Streamside Protection and Enhancement Area (SPEA) identified by the QEP, and the owner should be required to implement a plan for protecting the SPEA over the long term through measures that may be implemented as conditions of the development permit.
  - c) Where the QEP report describes an area as suitable for development with special mitigating measures, the development permit should only allow the development to occur in compliance with the measures described in the report. Monitoring and regular reporting by a QEP at the applicant's expense may be required during construction and development phases, as specified in a development permit.
  - d) The following guidelines are applicable to floats and associated structures within the development permit area:
    - i) floats should not be placed in areas identified as important to fish life processes where installation of a float would compromise the functioning of the feature;
    - ii) a ramp or float should not rest on the bed of the water body;
    - iii) the use of treated wood in the waterbody should be avoided;
    - iv) floatation material should be contained within a durable shell to prevent disintegration;
    - v) semi-transparent surfacing should be used on ramps and floats (e.g. grating or separated boards);
    - vi) any areas disturbed during installation should be restored;
    - vii) where a float is being replaced, all old materials should be removed.
  - e) If the nature of the proposed project in a riparian assessment area or the surface of a waterbody changes after the QEP report has been prepared such that it is reasonable to assume that the QEP's assessment of the impact of the development may be affected, the LTC may require the applicant to have the QEP update the assessment at the applicant's expense and DP conditions may be revised accordingly.
  - f) The LTC may consider variances to subdivision or siting or size regulations where the variance may result in enhanced protection of a riparian assessment area or aquatic ecosystem in compliance with recommendations of a QEP report.”
3. By inserting Schedule 2, attached to and forming part of this amending bylaw, as a new Schedule P (Development Permit Area Ten (Riparian and Aquatic Development Permit Area)).

**NORTH PENDER ISLAND LOCAL TRUST COMMITTEE  
BYLAW No. 184  
SCHEDULE 2**

