Q & A's
Proposed Development Permit Area for Riparian Areas (Bylaws 265 & 266)
August 28, 2013

This document was developed in response to questions received at and since the Community Information Meeting in June, 2013. For more general, basic background information on the project, please visit our website at www.islandstrust.bc.ca

Q. Why does the RAR only apply to a limited number of regional districts in the province? What about the impacts of the pipelines they're planning up north?

A. The regional districts to which RAR applies are characterized by relatively small lot, relatively dense urban forms which are under increasing development pressure. The rest of British Columbia does not face these same issues. The Riparian Areas Regulation is part of an effort to prevent cumulative impacts that results from intensified land use. While northern BC is under development pressure from natural resource extraction, this is a different sort of development that is subject to its own environmental assessment and permitting process.

Q. Trustees have stated publicly that the Local Trust Committee has no choice but to implement the RAR. What are the consequences if these bylaws are not adopted?

A. The Riparian Areas Regulation is a piece of legislation under BC law and as such the requirements under it for local governments are legal requirements. A local government who refuses to meet its obligations is vulnerable to legal challenge. More immediately, the Minister of Community, Sport and Cultural Development who must approve all local trust committee bylaws that adopt or amend an official community plan, may withhold their approval until the Riparian Areas Regulation is met thus preventing communities from achieving other, unrelated planning work.

Q. Are farming activities outside of the Agricultural Land Reserve but within the Riparian Assessment Area exempt from the RAR?

A. Yes. The land in question must be zoned for the agricultural uses taking place there, but those uses are exempt from the RAR insofar as they can be considered "farm uses" under the Farm Practices Protection Act. The most important consideration in this case is whether those activities are being carried out as part of a "farm business." If the produce is being sold for profit, then the activity is running a farm business, the use is agricultural and is thus RAR exempt. If the produce is being grown only for personal consumption, then the activity is gardening, the use is residential and the RAR applies.

Q. If my septic field is in the 30 metre Riparian Assessment Area and it fails, can I replace it on the same spot without a development permit?

Yes. Replacement of a septic field does not require a development permit.

Q. My lot is tiny and entirely within the RAR. Do you honestly expect me to get a QEP report every time I alter the land?

A. If your activities meet the definition of "development" as defined in the RAR then a report from a QEP is required. If you plan to undertake multiple "developments" on your property over a few years, consider asking a QEP to assess all of the planned developments in a single site visit and include them all in a single report that will inform a single development permit.

Q. To reduce the risk of wildfire, property owners are encouraged by the BC Forest Service and the Office of the Fire Commissioner, Emergency Management BC, to clear a zone around their house to better protect it in case of wildfire. Is a development permit required for vegetation clearing for wildfire protection?

If you have not yet built your house, and you wish to build it in the development permit area, include the vegetation clearing in your plan when you make your application for the house. This way, you don't require any additional development permit or QEP report to clear vegetation for wildfire protection.

If your house already exists, and you already keep an area around it clear for wildfire protection, you can continue to do so after the new development permit area guidelines are adopted.

If your house already exists, is within 30 metres of a RAR stream (the development permit area), and you would like to begin clearing vegetation around it that you have not cleared before, you will require a development permit. The QEP will assist you in striking a balance between protecting your property from wildfire risk and protecting the riparian area.

Q. The draft development permit area (DPA) provides an exemption for "ecological restoration or enhancement projects undertaken or authorized by a public body" What is considered a public body? Can this exemption include local conservation organizations?

A. Neither the RAR itself or the Province's literature on it provide insight into what is a "public body" that can be permitted to undertake this work without the need for a development permit or a QEP report. It is clear that a government agency is a public body, but it is less clear whether or not a non-governmental organization (NGO) with a conservation mandate is.

Staff investigated whether the Local Trust Committee would be compliant with the RAR if it were to allow a NGO with relevant expertise to be considered a "public body" for the purposes of this exemption. At least one other local government already has such a process in place. The advice we have is that if the group proposing the work does has the relevant, science-based expertise, and understands that this exemption would only include work outside the wetted width of the stream (i.e. no instream enhancements, as this is covered under different legislation), then there does not appear to be a conflict with the RAR. Therefore, the Local Trust Committee could, as a follow up step to implementing the new development permit area, direct staff to develop criteria for acceptable "public bodies" and keep a list in the office of those who can undertake restoration or enhancement without the need for a development permit.

Q. Is ditch clearing allowed within watercourses that are covered by the Riparian Areas Regulation?

A. Yes, but these activities could be subject to the *Water Act* where applicable. The Riparian Areas Regulation applies only to land above the high water mark. Proposed Gabriola Bylaw 266 exempts emergency measures to protect property and lives from imminent flood threat from the provisions of the RAR in the 30 metre riparian assessment area. However, non-emergency flood protection measures like dikes, berms, or channels within the riparian assessment area would require a development permit.

Q. Has the Ministry of Forests, Lands and Natural Resources Operations (MFLNRO) secured an agreement with the Ministry of Transportation and Infrastructure (MoTI) and its contractors that they won't damage potential fish habitat in their ditch dredging?

A. In theory, an agreement is not needed, because MoTI and its contractors are expected to operate under a set of Best Management Practices (BMPs) developed by MFLNRO for government agencies and its contractors that guard against deleterious impacts to fish habitat. Those BMPs can be found here: http://www.th.gov.bc.ca/publications/eng_publications/environment/bestpractice.htm These BMPs demand that work in any ditches that support fish habitat are supposed to occur when the watercourse is dry. Furthermore, MoTI and its contractors are held to the same standard as the general public when it comes to creating HADDs (harmful alteration, disruption or destruction of fish habitat). Where HADDs occur, it is expected that DFO, or the province's Conservation Officer Service, will respond appropriately.

Furthermore, remember that the RAR applies only to the streamside area beyond the high water mark. Anything within the actual ditch/stream is governed by the *Water Act*, a separate piece of legislation with a different purpose. We would, of course, hope that the two are complementary and adhered to not only by private citizens but by government as well.