



STAFF REPORT

Date: April 5, 2012

File No.:

To: Denman Island Local Trust Committee
 Gabriola Island Local Trust Committee
 Gambier Island Local Trust Committee
 Hornby Island Local Trust Committee
 Lasqueti Island Local Trust Committee
 Thetis Island Local Trust Committee

From: Chris Jackson, MCIP

CC: Northern Region Planners

Re: Compliance with Provincial Riparian Areas Regulation

PURPOSE

This comprehensive report provides Northern Region Local Trust Committees with:

1. background on the Provincial *Fish Protection Act* and the *Riparian Areas Regulation*;
2. a summary of related Legislation and Policy;
3. a summary of Islands Trust RAR Implementation Progress to Date;
4. a briefing on community consultation and budget considerations;
5. options for compliance with these Provincial Laws; and
6. recommended next steps for each Local Trust Committee.

Note: this report contains information previously provided to some LTCs; for others, this is the first report on this topic. All Northern Region LTCs are receiving this report in order to provide consistent communication. As individual LTCs move forward, future reports will be tailored to each LTC.

Acronyms used in this report:

- DPA - Development Permit Area
- FA - Fisheries Act
- FPA - Fish Protection Act
- LUB - Land Use Bylaw
- LTC - Local Trust Committee
- LTA - Local Trust Area
- MOE - Ministry of Environment
- OCP - Official Community Plan
- QEP - Qualified Environmental Professional
- RAA - Riparian Assessment Area
- RAR - Riparian Areas Regulation
- SPEA - Streamside Protection and Enhancement Area

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FISH HABITAT PROTECTION IN BRITISH COLUMBIA

Please refer to the Attachment 1, which contains a detailed summary of the legal framework of fish habitat protection in British Columbia and the role of local governments. Below is a summary of that attachment.

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 *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.

The Province considers local government land use controls 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 the RAR.

The Riparian Areas Regulation:

- covers any area within 30 metres of a “stream”, referred to as the “Riparian Assessment Area” (RAA).
- defines a “stream” 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.
- includes “streams” where fish could potentially be present in the event that the introduced obstructions were made passable, even if no fish are currently present.
- defines “fish” to include salmonids, game fish and regionally significant fish (these include all salmon species and trout).
- methodology is meant to provide objective Qualified Environmental Professional (QEP) assessments; as a science based approach, assessments are intended to be measureable and repeatable independent of the observer.

Provincial Expectations of Local Government

The Riparian Areas Regulation:

- requires local governments to amend bylaws to ensure that riparian areas are protected.
- requires local governments 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 QEP.
- prohibits a local government from approving or allowing a development to proceed within a Riparian Assessment Area without the provision of a QEP report; such applications that trigger RAR include: rezoning, development variance permit, development permit, temporary use permit and subdivision.

Development within the Riparian Assessment Area (RAA)

The Province allows local governments to approve/permit development within 30 metres of the high water mark of a stream or top of a ravine bank (referred to as the Riparian Assessment Area), provided that a QEP:

- completes an Assessment Report;
- submits the Report to the Province;
- concludes that development will not result in a harmful alteration of riparian fish habitat;
- establishes, on a site-specific basis, a Streamside Protection and Enhancement Area (SPEA).

The Assessment Report may also include QEP recommendations on mitigation or enhancement measures specific to the development proposal, and identify measures to maintain the integrity of the riparian area during the development process.

CURRENT LEGISLATION AND POLICY

Islands Trust Act

Section 3. Object of trust

The object of the trust is 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. [Note: Underlining added for emphasis]

Trust Policy Statement:

Policies for Ecosystem Preservation and Protection

- 3.1.5 *Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the regulation of land use and development to restrict emissions to land, air and water to levels not harmful to humans or other species.*
- 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.*

Policies for Stewardship of Resources

- 4.4.3 *Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address measures that ensure water use is not to the detriment of in-stream uses.[Note: Instream Uses - include water uses such as fish and habitat uses, aesthetic uses, recreational opportunities and the maintenance of water quality in lakes and streams and wetlands.]*

Trust Council Strategic Plan:

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

Northern Region Local Trust Committee Work Programs

All northern Local Trust Committees (LTC) have RAR compliance among their three top priorities.

Official Community Plans and Land Use Bylaws

This report is directed at all Northern Region Local Trust Committees, and as such will not list the various Official Community Plan (OCP) policies and Land Use Bylaw (LUB) regulations relevant to this project.

STATUS OF ISLANDS TRUST RIPARIAN AREAS REGULATION 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 in the Trust Area has 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 2008/9, staff undertook a watershed mapping exercise, derived from 2-metre contour Digital Elevation Mapping, with the Ministry of Environment and the School of Architecture and Landscape Architecture at UBC. The UBC work identified watershed boundaries on most of the 450 islands within the Islands Trust. This mapping provided the platform for MOE staff to indicate which watersheds they believe to be applicable under RAR.

In a letter dated July 20, 2011, Ministry of Forests, Lands and Natural Resource Operations (formerly Ministry of Environment) staff confirmed those watersheds where RAR applies [Note: Hornby, Gambier, and Lasqueti lacked conclusive information]. Since receipt of this letter, mapping of Northern RAR applicable watershed streams have been completed for: Gabriola and Thetis, and partly for Hornby (two of five) and Denman (one of five) Local Trust Areas (LTA).

Two LTAs within the Islands Trust have RAR compliant bylaws: North Pender and Galiano. In 2011, Islands Trust Council endorsed the North Pender Island RAR bylaw as a reference 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.

Status of the Northern Region Local Trust Committees:

Denman: there are five MOE verified RAR watersheds; one of these watersheds is mapped. Next steps include further mapping work, LTC determination of public process and bylaw development.

Gabriola: initial review from MOE indicated one watershed was RAR applicable. Further investigation found that three watersheds are RAR applicable. These watersheds are now mapped. Next steps include LTC determination of public process and bylaw development.

Gambier: the MOE, Vancouver Island Region, does not cover those islands in the Gambier LTA, and as such were unable to provide RAR verification. Next steps include further mapping work, LTC determination of public process and bylaw development.

Hornby: the MOE determined two watersheds were RAR applicable, three lacked information to verify, and the remainder were not RAR applicable. The two verified watersheds were mapped. Next steps include further mapping work, LTC determination of public process and bylaw development.

Lasqueti: the MOE does not have the knowledge base required to determine which watersheds on Lasqueti are RAR applicable. Next steps include further mapping work, LTC determination of public process and bylaw development.

Thetis: the MOE determined that one watershed on Thetis is RAR applicable. That watershed is now mapped. Next steps include LTC determination of public process and bylaw development.

COMMUNITY CONSULTATION and EDUCATION

Typically LTCs go into community consultation processes with a mind to create bylaw provisions that match the expectations and vision of the community. A possible outcome could be that the community does not support a proposal; the LTC could then resolve to not proceed any further given the limited appeal of moving forward. This is not an option with regard to the Riparian Areas Regulation project. Provincial Law requires that local governments must determine which streams the RAR applies to, and then take measures that protect fish habitat.

With this requirement in mind, staff recommends that community consultation focus on appropriate ways to implement RAR and become compliant with Provincial Law, rather than considering whether it should be undertaken.

Community consultation is fundamental to any proposed changes to LTC policies and regulations. Here are several approaches LTCs may consider, alone or in combination:

- Establish a Northern working group made up of trustees and staff for the purposes of information sharing, developing consultation options and educational materials.
- Direct contact with land owners/residents may be a feasible option depending on the number of properties affected, for example, letters providing opportunities to individually contact trustees and staff to have questions answered.
- Information materials and links to on-line information can be provided in letters.
- An open house, where affected and interested persons can drop-in and ask questions specific to their property and their concerns.
- Town hall, where all affected and interested persons can attend and hear others questions and comments, and the answers and responses.
- Use of the new Islands Trust website where a separate RAR page can be developed and maintained, with links connected from each individual LTC.
- Advisory Planning Commission referrals.
- Trustee newsletters and other articles in local papers and community on-line webpages.
- Development of a brochure explaining RAR and DPAs.
- Retain qualified environmental professionals for on-island presentations that focus the technical aspects of RAR and protection of fish and fish habitat.
- Invite Provincial Ministry staff to assist with the process and participate with on-island presentations.

BUDGET ALLOCATION

The recently approved 2012/13 Trust Council budget allocated \$71,000 for LTC work related to RAR. Of this, \$40,000 will be used for stream mapping on Salt Spring Island, and the remaining \$31,000 is divided amongst LTCs for 'public process'.

As noted in the briefing to Trust Council "Riparian Areas Regulation – Funding to Map All Riparian Areas Regulation Streams in the Trust Area to a Consistent Standard" dated February 23, 2012: "With this funding, local trust committees should have the resources to have a discussion with the community on the Riparian Areas Regulation, options to be compliant and development of amendment bylaws to become compliant using existing mapping products available for the local trust area."

Mapping Budget

Over the last several fiscal years, mapping has started on Salt Spring Island and all RAR mapping is now complete for Southern Region LTAs. Northern mapping started last fiscal and is now complete for Gabriola and Thetis. Hornby and Denman are partially complete. Lasqueti and Gambier have not started any mapping work at this time. There is no funding this fiscal for RAR mapping of northern LTAs.

Public Process Budget

During the last previous fiscal years, Salt Spring Island has undertaken public processes related to RAR, and will continue to do so [note: there are 24 RAR applicable watersheds on Salt Spring Island]. There is \$5000 allocated this fiscal for public process on Salt Spring Island.

Mayne and Saturna Islands will undertake public processes this fiscal to become RAR compliant. Each LTA received \$4000 for public process.

Denman, Gabriola, Gambier and Lasqueti were each allocated \$4,000 for public process for RAR this fiscal. Thetis received \$2,000, and Hornby did not have funds allocated for public process.

Public process funds are intended to cover costs associated with: hiring consultants, meeting venues, advertising, mail-outs, printing of informational material, and minute takers.

RIPARIAN AREAS REGULATIONS IMPLEMENTATION OPTIONS

At March, 2010 Trust Council, the following four options on how to comply with RAR were provided in a briefing dated February 10, 2010 (provided as Attachment 2 in this report).

1. Amend the LUB to establish both a 30 metre setback and a landscape strip for all watercourses within the RAR-identified watersheds. This approach is possible but not recommended as it does not establish any certainty with respect to the actual location of streams, any development within 30 metres of a watercourse would require a variance (which could only be approved once a QEP assessment is provided), and conditions cannot be incorporated in the variance.
2. Amend the OCP to designate all RAR-identified watersheds as a Development Permit Area (DPA). This approach may be optimal where there are a limited number of larger properties in the watershed, where subdivision is anticipated, or where it is not anticipated that the watercourse(s) will be mapped. The advantages of this approach is that the flexibility of DPA provisions can be used to establish exemptions for work that is found to be further than 30 metres from a watercourse and a Development Permit (DP)

can incorporate any conditions recommended by the QEP's assessment report. The disadvantage of this approach is that all land within the watershed would be designated as a DPA, regardless of where the actual watercourse is, imposing requirements on landowners to determine if development activity actually requires an assessment and DP. However, as noted previously in this report, the RAR was established to allow the cost of this assessment to be the responsibility of the land developer, allowing governments to focus on monitoring and enforcement within their respective jurisdictions. This approach is recommended for consideration by all LTCs at this time in consideration of the necessity to comply with the RAR, internal budget constraints and land developer responsibilities.

3. Amend the OCP to designate all land within 30 metres of watercourses in RAR-identified watersheds as a Development Permit Area (DPA). This approach requires the Islands Trust to map watercourses in RAR-identified watersheds and is currently being undertaken for the Southern Region islands through the use of existing and new watercourse mapping. The advantage of this approach is that it provides greater certainty with respect to actual watercourse locations and limits reviews and applications to work within 30 metres of fish-bearing or potential fish-bearing streams. The disadvantage is that a DPA would not be applied to areas more than 30 metres from a watercourse but still within a RAR-identified watershed. In addition, the quality of existing mapping may vary greatly between Local Trust Areas and contractors will need to be hired to map the watercourses within the identified RAR watersheds to an acceptable standard and confirm that the watershed is fish bearing or potentially fish bearing.
4. Exceed RAR by:
 - a. Designating a DPA within 30 metres of all watercourses, regardless of fish habitat status: this would require mapping of the location of all watercourses with an acceptable degree of certainty, but would not require any confirmation of fish habitat. The advantage of this approach is that all values associated with watercourse protection are addressed, not just fish habitat.
 - 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. This would require mapping of 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 regulation.
 - c. Designating all watershed areas a DPA, regardless of RAR designation. This would result in comprehensive regulation of all watershed areas and not require further mapping of watercourses, but would present a significant impact on landowners and on planning staff to administer such a DPA.

STAFF COMMENTS AND RECOMMENDATIONS

Community consultation and education are areas all LTCs need to address, as noted earlier in this report. An LTC could provide specific direction to staff on proceeding immediately to organize consultation, or direct staff to prepare options for consideration at a later meeting. Given that this project is being undertaken by all northern region LTCs, a working group (made up of trustees and staff) could be established that would assist with developing options and educational materials.

The provincial RAR requires local governments to use their existing land use planning authority to protect fish habitat. Of the four options noted previously, staff seeks direction from each LTC on how they wish to proceed.

Each LTC requires a unique approach to bringing bylaws into compliance with provincial RAR. Below is a preliminary discussion of each LTCs status and recommended next steps.

Denman

The MOE identified five RAR applicable watersheds on Denman Island. The community of Denman Island has had development permit areas in place for many years, so the concept of DPAs as a land use tool is not new. Specifically, DPA-4: streams, lakes and wetlands, in the Denman Island Official Community Plan states the following:

Riparian areas are important because they include ecosystems that support a disproportionately high number of vascular plant, moss, amphibian and small mammal species for the area they occupy.

This development permit area includes streams, lakes, and wetlands that have been identified as important fish, wildlife, and plant habitats and as water supplies for rural and residential use. Trees and shrubs shade streams, preventing high water temperatures that can be harmful to fish and other aquatic animals and providing cover that enables fish to avoid predators. Mature trees along streams provide a source of large organic debris that maintains pools and cascades used by fish. Plant roots and ground-covering vegetation stabilize stream banks and help to maintain high water quality by filtering sediments and pollutants throughout a drainage system. Riparian and aquatic habitats are unique and necessary to many species of plants and animals. Land use practices including land clearing, logging, road building, and location of septic systems in or near riparian areas can jeopardize these habitats and water quality. Protection of riparian vegetation and watercourses is therefore necessary to protect the natural environment, ecosystems and biological diversity of Denman Island.

The current DPA extends out from the natural boundary of a watercourse to 10 or 30 m, depending on how the stream was categorized (i.e. major or minor). The LTC should consider establishing the DPA consistently at 30 m, within those watersheds verified as RAR applicable.

Stream mapping was recently completed for the Morrison Marsh watershed. This mapping can be used to refine the DPA boundaries. Additional mapping should be completed for the four remaining verified RAR applicable watersheds. Funding is required to complete this mapping work, which is not allocated for this fiscal year.

Staff recommends that the Denman Island LTC direct staff to proceed with:

- ***establishing a northern working group made up of northern trustees and staff in order to develop community consultation options and education materials for RAR implementation; and***
- ***reviewing Development Permit Area 4 and prepare draft wording and mapping for compliance with RAR.***

Gabriola

The MOE identified one RAR applicable watershed on Gabriola Island. Upon further review, this was expanded to two verified watersheds and two unverified watersheds. Watercourses within the verified watersheds have now been mapped and the unverified watersheds have been assessed and, where applicable, mapped.

The community of Gabriola Island has had development permit areas in place for many years, so the concept of DPAs as a land use tool is not new. Current DPAs include DP-3 Hoggan Lake Area, which serves to protect the riparian habitat within 15m of the natural boundary of the lake. Staff recommends that the LTC consider using DPAs as the land use tool to comply with RAR. The DPA could be based on establishing a 30 m riparian assessment area extending from the recently mapped streams natural boundary.

Staff recommends that the Gabriola Island LTC direct staff to proceed with:

- ***establishing a northern working group made up of northern trustees and staff in order to develop community consultation options and education materials for RAR implementation; and***
- ***preparing draft development permit area maps and provisions for LTC review that would be in accordance with the provincial Riparian Areas Regulation.***

Gambier

The MOE, Vancouver Island Region, was not able to verify which watersheds on Gambier Island are RAR applicable. Without that information or a QEP assessment report, all streams on Gambier Island are considered RAR applicable until proven otherwise.

The Gambier Island Official Community Plan, Schedule F contains a map of watersheds and watercourses (Schedule I illustrates development permit area designations). The text of the OCP states that streamside protection and enhancement areas should be established by DPA. This provides a basis from which to consider implementing RAR.

It may be that some of these streams are not RAR applicable. This can be determined by a QEP. However, funding was not allocated for such work this fiscal year. As an interim measure, implementing DPA guidelines for the watershed and watercourse mapping already within the OCP would bring LTC bylaws into compliance with RAR.

Staff recommends that the Gambier Island LTC direct staff to proceed with:

- ***establishing a northern working group made up of northern trustees and staff in order to develop community consultation options and education materials for RAR implementation;***
- ***reviewing the current Gambier Island Official Community Plan, Schedules F and I, and drafting development permit area provisions for LTC review that would be in accordance with the provincial Riparian Areas Regulation; and,***
- ***exploring other methods that could be used to determine RAR applicability to Gambier Island Local Trust Area watersheds and watercourses.***

Hornby

The MOE confirmed that two watersheds are RAR applicable on Hornby Island, with three other watersheds lacking information needed to confirm or reject RAR applicability. Streams within the two verified watersheds were recently mapped by a QEP.

The Hornby Island OCP has development permit areas in place. Staff recommends the LTC use DPAs as a land use tool to become RAR compliant.

In terms of establishing DPA boundaries, those streams recently mapped can be incorporated into a DPA with a 30 m riparian assessment area extending out from the natural boundary of the stream. The three watersheds that have not been mapped require a different approach.

To be RAR compliant, either a setback regulation needs to be created, or a DPA boundary established that includes all properties within the entire watershed. Staff recommends that the LTC consider using DPAs for all five watersheds. Two watersheds would have 30 m DPAs extending from the natural boundary of the stream, while the other three would establish the DPA boundary along the watershed boundary. Exemptions from the DPA requirement could be further reviewed for those developments more than 30 m from the stream, but still within the watershed. A watershed level DPA could be an interim measure until mapping is conducted, and then a more refined DPA boundary can be established. Funding was not allocated for mapping work this fiscal year.

Staff recommends that the Hornby Island LTC direct staff to proceed with:

- ***establishing a northern working group made up of northern trustees and staff in order to develop community consultation options and education materials for RAR implementation; and***
- ***preparing draft development permit area maps and provisions for LTC review that would be in accordance with the provincial Riparian Areas Regulation.***

Lasqueti

The MOE was unable to verify which watersheds are subject to RAR and which are not on Lasqueti Island, due to a lack of information. The Lasqueti OCP does not have any DPAs. However, the Lasqueti LUB has 30 m setback requirements for buildings and structures from the natural boundary of a watercourse. As an interim measure, expanding on zoning setback provisions would meet RAR requirements, and provide time for QEP assessment reports to be undertaken to determine and map those streams that are RAR applicable.

The zoning provisions in the LUB should be expanded to include landscape strips and drainage requirements.

Staff recommends that the Lasqueti Island LTC direct staff to proceed with:

- ***establishing a northern working group made up of northern trustees and staff in order to develop community consultation options and education materials for RAR implementation;***
- ***preparing draft Land Use Bylaw provisions for LTC review that would be in accordance with the provincial Riparian Areas Regulation.***

Thetis

The MOE identified one RAR applicable watershed on Thetis Island. Currently, Thetis Island bylaws do not include DPAs, however Thetis Island OCP policy introduces DPs as appropriate land use planning tools.

Staff recommends that the LTC consider using DPAs as the land use tool to comply with RAR. Recent stream mapping can be used to accurately define a DPA. As well, staff is aware that the small number of affected landowners have developed long term plans for their property, with

stewardship and conservation in mind. Staff could work with these land owners during the development of DPA guidelines.

It is understood that a QEP report was recently completed that comments on a lack of fish presence within the stream identified by MOE as RAR applicable. The argument is that this disqualifies the stream from being RAR applicable. It is important to note that RAR applies in order to protect fish habitat for watercourses that have the potential for fish presence. The RAR does not require that fish be present year round in order to apply.

Staff recommends that the Thetis Island LTC direct staff to proceed with:

- **establishing a northern working group made up of northern trustees and staff in order to develop community consultation options and education materials for RAR implementation; and**
- **working with the landowners of the RAR affected properties; and**
- **preparing a draft development permit area map and provisions for LTC review that would be in accordance with the provincial Riparian Areas Regulation.**

Prepared and Submitted by:

Chris Jackson

April 5, 2012

MCIP, Regional Planning Manager

Date

ATTACHMENT 1

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)?

RAR Website: http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/riparian_areas.html

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. 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.

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 to the Ministry of Environment, while there are no regionally significant fish on Northern Local Trust Area islands, there are still 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.

Role of the Local Government:

Local governments have land use decision making authority under Part 26 of the *Local Government Act* (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 LGA 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.

ATTACHMENT 2

ISLANDS TRUST
BRIEFING

DATE: 10 February 2010

TOPIC: RIPARIAN AREA REGULATION IMPLEMENTATION IN THE ISLANDS TRUST AREA

DIRECTED TO: Trust Council

CONFIDENTIAL: No

DESCRIPTION OF ISSUE: To inform the Islands Trust Council (through the Local Planning Committee) of the status of implementation of the provincial Riparian Area Regulation in the Islands Trust Area.

BACKGROUND: The provincial Ministry of Environment website (www.env.gov.bc.ca/habitat/fish_protection_act/riparian/riparian_areas) provides the following overview of the Riparian Area Regulation.

The Riparian Area Regulation (RAR), enacted under section 12 of the Fish protection Act in July 2004, calls on local governments 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).

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.

The RAR implementation model detailed in the Regulation uses QEPs, hired by land developers, to:

- Assess habitat and the potential impacts to the habitat;
- Develop mitigation measures; and
- Avoid impacts from development to fish and fish habitat, particularly riparian habitat.

The cost of this assessment is the responsibility of the land developer, allowing governments to focus on monitoring and enforcement within their respective jurisdictions. By conscientiously following the assessment procedure set out in the Regulation, the QEP and the land developer will have applied due diligence in avoiding a harmful alteration, disruption or destruction (HADD) of riparian fish habitat. If a HADD cannot be avoided, an application for an authorization must be submitted to Fisheries and Oceans Canada.

The assessment methods are attached to the Regulation as a schedule and are a key component of the regulatory regime for riparian protection that is clear and measurable, but does not rely exclusively on default setbacks. The assessment is based on the best available science with respect to riparian habitats.

The assessment methodology provides clear direction to QEPs on:

- *How to assess impacts;*
- *How to determine setbacks based on site conditions; and*
- *The measures that need to be employed to maintain the integrity of the setbacks.*

QEPs submitting RAR assessments must certify that they have the qualifications, experience and skills necessary to conduct the assessment. The assessment will form the content of notifications by development proponents to regulatory agencies. The Ministry of Environment provides local governments with confirmation that an assessment report has been received, enabling local governments to move forward in approving development without taking on the liability for reviewing and approving riparian setbacks.

To increase the accountability of the QEP and to permit compliance monitoring, the assessment methodology will yield outcomes that are measurable, repeatable, and independent of observer. The assessment methodology will also enable effectiveness monitoring to be undertaken to determine whether impacts from development on riparian habitats are being fully avoided when the assessment methodology is used correctly.

The Islands Trust and Islands Trust Fund staff identified a program in 2006 to proactively undertake watercourse mapping. Review of the potential scope of work for this mapping identified a workload that exceeded the requirements of the RAR and would provide an information base appropriate for the unique responsibilities and challenges of the Islands Trust.

To achieve this higher standard of information procurement, it was proposed to ground truth every aquatic watercourse in the Islands Trust Area through a multi-year program with a cost of \$30,000/year for an undefined number of years.

In 2007, a review of this program identified an opportunity to expedite compliance with the RAR by determining which of the approximately 450 watersheds in the Islands Trust Area fall under the RAR requirements through an interpretative watershed mapping project in conjunction with the University of British Columbia and the provincial Ministry of Environment. Watercourse mapping has been completed in some watersheds through independent work initiated by Islands Trust and other groups. The interpretative watershed mapping project has now been completed for the Islands Trust Area except for the Hornby, Lasqueti and Gambier Local Trust Areas, Mudge/Link and De Courcy Islands in the Gabriola Local Trust Area, and Valdes and Ruxton Islands within the Thetis Local Trust Area. Mapping of these remaining LTAs required the completion of the Digital Elevation Mapping acquisition program which was completed in late 2009. The work to complete the interpretative watershed mapping set for the remaining LTAs will start shortly and should be done before the March Islands Trust Council meeting.

The interpretative watershed mapping project for the entire Islands Trust Area will cost \$42,000 in total (\$37,000 in Fiscal Year 2008/2009 and \$5,000 in Fiscal Year 2009/2010) and has to date identified 48 of the 385 watersheds (or 12.5%) as falling under the requirements of the RAR. The corollary to this is that, for the areas mapped to date, 87.5% of the watersheds do not benefit from the regulatory protection of the RAR. There are, to-date, two Official Community Plans covering areas with no identified RAR watersheds: the North Pender Associated Islands OCP and Piers Island OCP. Despite the focus on RAR compliance, it is submitted that the Islands Trust (and Local Trust Committees) must seriously consider if, and how, to further preserve and protect watersheds not falling under the RAR requirements.

A meeting on January 22nd between Islands Trust planning managers and Ministry of Environment staff responsible for the RAR in their Vancouver Island Region re-confirmed the methodology and validity of this interpretative watershed mapping approach. The Ministry of Environment will provide a letter confirming that the Islands Trust will be fully compliant with the RAR following the completion of the interpretative watershed mapping and Local Trust Committee amendments to their bylaws to protect Riparian Areas. It may be of interest to know that of the 28 local governments in the Ministry of Environment Vancouver Island Region, only the Islands Trust and the newly formed Strathcona Regional District are currently non-compliant with the RAR.

In the interim, until the Ministry of Environment confirms full compliance with the RAR, the, on those islands where watershed mapping has been completed, the watershed mapping is being used by planning staff to ensure that any application made to an LTC that affects lands within an RAR-identified watershed is reviewed for the presence of a watercourse within 30 metres of any residential, commercial or industrial development activity. Until the watershed mapping is completed on the remaining islands, Staff will review all applications to the LTC for the presence of a watercourse within 30 metres of any residential, commercial or industrial development activity. The presence of a watercourse within 30 metres would trigger the requirement for a report from a qualified environmental professional (QEP) and the LTC cannot approve an application in the absence of such an assessment.

As noted above, compliance with the RAR is contingent upon LTCs amending their bylaws to include riparian area protection provisions. An LTC has options with respect to meeting this legislative requirement as follows:

1. Amend the LUB to establish both a 30 metre setback and a landscape strip for all watercourses within the RAR-identified watersheds. This approach is possible but not recommended as it does not establish any certainty with respect to the actual location of streams, any development within 30 metres of a watercourse would require a variance (which could only be approved once a QEP assessment is provided), and conditions cannot be incorporated in the variance.
2. Amend the OCP to designate all RAR-identified watersheds as a Development Permit Area (DPA). This approach may be optimal where there is a limited number of larger properties in the watershed, where subdivision is anticipated, or where it is not anticipated that the watercourse(s) will be mapped. The advantages of this approach is that the flexibility of DPA provisions can be used to establish exemptions for work that is found to be further than 30 metres from a watercourse and a Development Permit (DP) can incorporate any conditions recommended by the QEP's assessment report. The disadvantage of this approach is that all land within the watershed would be designated as a DPA, regardless of where the actual watercourse is, imposing requirements on landowners to determine if development activity actually requires an assessment and DP. However, as noted previously in this report, the RAR was established to allow the cost of this assessment to be the responsibility of the land developer, allowing governments to focus on monitoring and enforcement within their respective jurisdictions. This approach is recommended for consideration by all LTCs at this time in consideration of the necessity to comply with the RAR, internal budget constraints and land developer responsibilities.
3. Amend the OCP to designate all land within 30 metres of watercourses in RAR-identified watersheds as a Development Permit Area (DPA). This approach requires the Islands Trust to map watercourses in RAR-identified watersheds and is currently being undertaken for the Southern Region islands through the use of existing and new watercourse mapping. The advantage of this approach is that it provides greater certainty with respect to actual watercourse locations and limits reviews and applications to work within 30 metres of fish-bearing or potential fish-bearing streams. The disadvantage is that a DPA would not be applied to areas more than 30 metres from a watercourse but still within a RAR-identified watershed. In addition, the quality of existing mapping may vary greatly between Local Trust Areas and contractors will need to be hired to map the watercourses within the identified RAR watersheds to an acceptable standard and confirm that the watershed is fish bearing or potentially fish bearing.
4. Exceed RAR by:

- a. Designating a DPA within 30 metres of all watercourses, regardless of fish habitat status: this would require mapping of the location of all watercourses with an acceptable degree of certainty, but would not require any confirmation of fish habitat. The advantage of this approach is that all values associated with watercourse protection are addressed, not just fish habitat.
- 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. This would require mapping of 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 regulation.
- c. Designating all watershed areas as a DPA, regardless of RAR designation. This would result in comprehensive regulation of all watershed areas and not require further mapping of watercourses, but would present a significant impact on landowners and on planning staff to administer such a DPA.

Planners will be reviewing these options with local trust committees during the course of developing bylaws for compliance with the Riparian Area Regulation. Planning staff recognizes 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; therefore, planning staff will assess each watershed and for each, outline the advantages and disadvantages of each options listed above and make a recommendation on which option the local trust committee should consider.

ATTACHMENT: No

FOLLOW-UP: DLPS will ensure the completion of the Islands Trust interpretative watershed mapping project and that all Local Trust Committees receive staff reports for amending LTC bylaws to become compliant with the Riparian Area Regulation as soon as possible.

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REVIEWD BY: Local Planning Committee, Feb
10, 2010
Executive Committee Feb 24,
2010

SUBMITTED BY: Mac Fraser, DLPS