RIPARIAN AREAS REGULATION

GUIDEBOOK

For Waterfront Home Owners & Property Developers

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Introduction to the Riparian Areas Regulation

BACKGROUND

What are riparian areas and why are they important?

Riparian areas are the areas adjacent to streams, lakes, ditches and wetlands. These areas, found in all regions of the province, support a unique mixture of vegetation from trees and shrubs to aquatic and herbaceous plants. Vegetation in riparian areas directly influences and provides important fish habitat. It builds and stabilizes stream banks and channels, provides cool water through shade, and provides shelter for fish. The leaves and insects that fall into the water are a source of food for fish. Although they account for only a small portion of British Columbia's land base, riparian areas are often more biologically productive than the adjoining upland and are a critical component of the province's biodiversity.

Good quality riparian habitat helps ensure healthy fish populations (see Figure 1). The protection of riparian areas is a vital component of an integrated fisheries protection program. The quality of a riparian area depends on and is influenced by the upland area as well as the upstream environment. British Columbia has lost thousands of kilometres of riparian habitat in the past decades. To reverse this trend in urban and rural areas, the Riparian Areas Regulation (RAR) was enacted to guide and facilitate development that exhibits high standards of environmental stewardship, while protecting riparian habitat.

Note: Terms used in this guidebook in *italics* are those defined in the *Riparian Areas Regulation* (2004) and as amended.

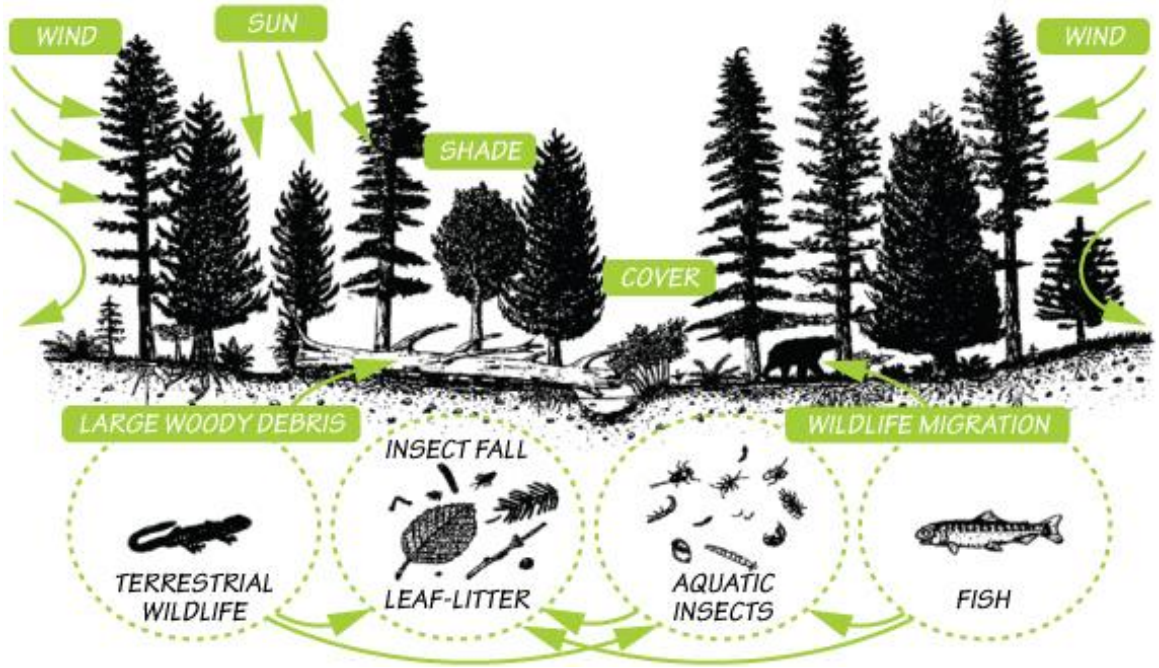

FIGURE 1: *Ways in which healthy riparian areas help to ensure healthy fish populations.*

WHAT IS THE RIPARIAN AREAS REGULATION?

The RAR is enabled by the *Riparian Areas Protection Act* and requires local governments (municipalities and regional districts) to ensure that their bylaws are consistent with the riparian protection standards outlined in the RAR. This supports local governments in achieving improved protection of fish and fish habitat. The RAR applies to riparian fish habitat only in association with residential, commercial and industrial development on land under local government jurisdiction. This includes private land and the private use of provincial Crown land.

KEY COMPONENTS OF THE RAR

- Under the RAR, local governments may allow development within a *riparian assessment area* only if RAR standards have been met and the prescribed *assessment methods* have been followed where required.
- The *assessment methods* require a **Qualified Environmental Professional (QEP)** to provide an opinion in an *assessment report* that the development will not result in harm to riparian fish habitat. Habitat protection is accomplished through the establishment of a *Streamside Protection and Enhancement Area* (SPEA), which creates a setback for development to protect habitat features. The *assessment report* also identifies measures that will be required to maintain the integrity of the riparian area in the area of development.
- The *assessment methods* are a schedule to the RAR, which means that it is a required methodology under the law. The methods ensure that assessments are conducted to a consistent standard and that a standardized reporting format is followed. The *assessment report* is submitted electronically to provincial, federal, and local governments, facilitating monitoring and compliance.
- The RAR is grounded in the most current science regarding fish habitat and takes into account challenges in achieving science-based standards in an urban environment.

DOES THE RAR APPLY?

- The RAR applies to all streams, rivers, creeks, ditches, ponds, lakes, springs and wetlands connected by surface flow to a waterbody that provides fish habitat.
- The RAR does not apply to marine or estuarine shorelines. These fish habitats are still subject to the federal *Fisheries Act*.
- The RAR does not apply to watercourses that are disconnected from fish habitats.

Fish habitat is defined as spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes. The definition of fish includes salmonids, game fish and "regionally significant" fish.

Where does the RAR apply?

The RAR currently applies to designated municipalities and regional districts in the South Coast, West Coast and Thompson Okanagan regions as well as the Islands Trust area. These regions were designated as they are the areas of greatest population growth and development in the province.

The following regional districts and the incorporated municipalities within them are affected by the Regulation:

- Capital
- Central Okanagan
- Columbia-Shuswap
- Comox Valley
- Cowichan Valley
- Fraser Valley
- Metro Vancouver (except the City of Vancouver)
- Nanaimo
- North Okanagan
- Okanagan-Similkameen
- Powell River
- Squamish-Lillooet
- Strathcona
- Sunshine Coast
- Thompson-Nicola
- the trust area under the Islands Trust Act

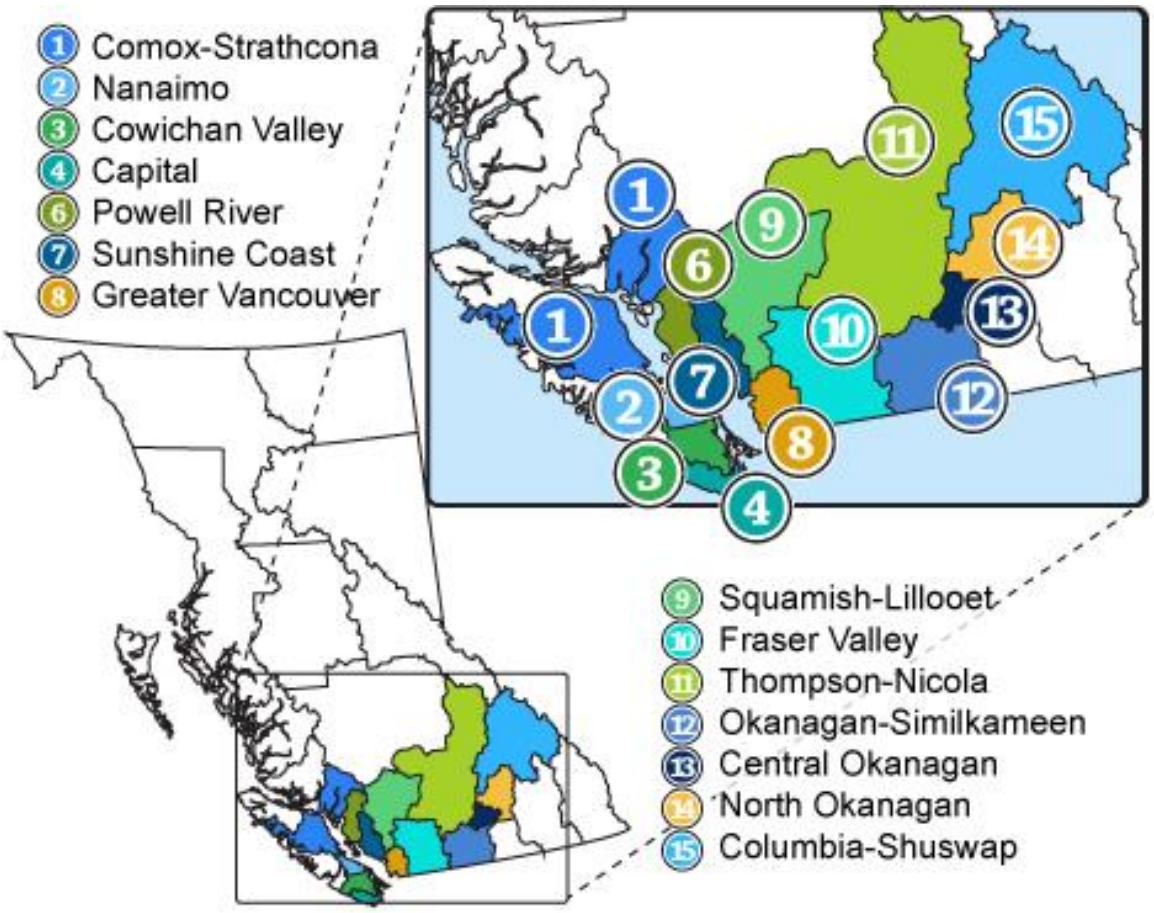

FIGURE 2: *Regional Districts where the RAR applies*

The RAR may be phased in elsewhere in the province in the future as the need arises.

Local governments outside these areas can and in some cases do use the approach set out in the RAR voluntarily as a way to guide development adjacent to riparian areas.

To what types of development does the RAR apply?

As noted above, the RAR applies to local government regulation or approval of residential, commercial or industrial activities and/or ancillary activities; defined under Part 14 of the *Local Government Act* as *development* along *streams*.

Activities include:

- construction or erection of buildings and structures;
- creation of nonstructural impervious or semi-impervious surfaces; and
- subdivision

Ancillary activities that are done in association with residential, commercial or industrial development include:

- removal, alteration, disruption or destruction of vegetation;
- disturbance of soils;
- flood protection works;
- construction of roads, trails, docks, wharves and bridges;
- provision and maintenance of sewer and water services;
- development of drainage systems; and
- development of utility corridors.

To what types of development does the RAR NOT apply?

The RAR only applies to activities that are residential, commercial or industrial activities and/or ancillary activities regulated or approved by local government under Part 14 of the *Local Government Act*. The RAR does NOT apply to the following:

- ***A development permit or development variance permit*** issued only for the purpose of enabling reconstruction or repair of a permanent structure described in section 532(1) of the *Local Government Act* if the structure remains on its existing foundation.
- ***Existing permanent structures, roads and other development*** within SPEAs are "grandparented" for their existing use. For example, a concrete patio within a SPEA may be repaired, but may not be replaced with a different permanent structure, (e.g..: building addition). Landowners can continue to use their property as they always have if a SPEA is designated on it. The RAR also has no effect on any repair, renovation, or reconstruction of a permanent structure on its existing foundation. Only if the existing foundation is moved or extended into a streamside protection and enhancement area (SPEA) would the RAR apply.
- ***Farm Practices*** as defined in the *Farm Practices Protection (Right to Farm) Act* are not subject to the RAR. However, while the RAR does not apply to most farming activities, **it does apply to residential, commercial and industrial activities** on lands that may otherwise be used, designated, or zoned for agriculture. For instance, construction of non-farm-related buildings (e.g. a farm house or farm stand) or development of a golf course on Agricultural Land Reserve land is generally regulated by

local government bylaws and subject to the RAR. Lands that are within the Agricultural Land Reserve (ALR) and/or zoned for agriculture are not summarily exempt from the RAR. Guidance for locating agricultural structures can be found in the Ministry of Agriculture's *Agricultural Building Setbacks from Watercourses in Farming Areas* factsheet.

- ***Mining activities, hydroelectric facilities and forestry (logging) activities*** are not subject to the RAR, as these land uses are regulated by other provincial and federal legislation and not by local governments. However, a local government can regulate how and where mineral or forest products may be processed. For instance, processing activities are usually considered as industrial for the purposes of a zoning bylaw and thus fall within the definition of development that can be regulated under the RAR. As for these resource extraction activities, all such land uses are still subject to the federal *Fisheries Act*.
- ***Federal lands and First Nations reserve lands*** are not subject to the RAR but only to the extent that they are already exempt from local government bylaws. Activities on these lands are still subject to the federal *Fisheries Act*. With regard to treaty Settlement Lands, compliance with the RAR and local government bylaws will be negotiated in each treaty. The policy of the ministry is to seek to include the standards set out in the RAR in treaties.
- ***Parks and parkland*** are subject to other legislation and the RAR may not apply in some cases. In other cases, activities such as commercial development within park land may still be subject to the RAR. As well, activities that are ancillary to residential, commercial, or industrial development may be subject to the RAR. For example if as part of a

residential development an area is designated as a park, then trails within the park would be subject to the RAR as it is ancillary to that development. Many of these projects will require review on a case-by-case basis.

- ***Institutional development*** is not subject to the RAR but is still subject to all applicable local government bylaws. Institutional development generally includes public schools, civic facilities, assembly/places of worship, hospitals and other public buildings. Local government will specifically define what developments are classified Institutional as part of their zoning and land use bylaws and proponents should ensure they are aware of this information. Institutional development must also comply with the federal *Fisheries Act*, the *Water Sustainability Act* and all other applicable legislation.

Waterfront Home Owner & Property Developer Responsibilities

ADHERE TO LOCAL GOVERNMENT SETBACKS

Where local governments have pre-established riparian setbacks or streamside buffers based on either the *Riparian Areas Protection Act* and/or values other than fish (stormwater management, recreation, other wildlife values etc.), the proponent – a landowner or developer – must adhere to these requirements.

Where riparian setbacks have not been pre-established, the proponent will require the services of a QEP to conduct an assessment of the riparian area and prepare an *assessment report*. The proponent is required to abide

by the recommendations made by the QEP and the content of the *assessment report* typically forms part of a local government's approval of development permits.

Some local governments have put in place riparian development conditions that exceed the standard of the RAR. In these cases the proponent is required to abide by these conditions.

Process for Seeking Project Approval under the RAR

OVERALL PROCESS

If you are in an area subject to the RAR, your local government will have enacted bylaws and/or policies to meet the requirements of the *Riparian Areas Protection Act*. Proponents should contact their local government as early as possible in the development of a proposal to understand their requirements. Proponents have a responsibility to ensure their project meets RAR standards by complying with the local government bylaw(s) enacted to implement the RAR.

Some local governments have created more detailed community-level plans for protecting greenways and habitat values, maintaining drainage corridors, creating park space, mitigating stormwater impacts, etc. Where these standards exist, any conditions of development that exceed those of the RAR must still be adhered to. This may add to the proponent's assessment requirements or increase the riparian protection beyond RAR standards. The ministry will respect decisions by local governments within the RAR jurisdiction to set higher standards for environmental protection, including those that exceed the RAR.

Where a local government follows the RAR directives, a QEP is required to prepare an *assessment report* to determine the appropriate SPEA width and measures required to maintain the features, functions and conditions that support fish life processes in the riparian area.

It is strongly recommended that the QEP assessment to determine the SPEA and mitigation measures be undertaken before detailed design of the development – ideally in the planning stage.

A RAR assessment report determines a SPEA and appropriate measures so that proposed development will not impact habitat. For this reason, the development must be designed in consideration of the SPEA and not the inverse. Ideally, a proponent will enlist the expertise of the QEP before a development design is finalized, in order to avoid conflicts between desired development and the SPEA. Modifications or adjustments to the SPEA are justified only in very limited and specific circumstances and are not discretionary.

If the development can be accommodated with the SPEA width and measures, a QEP is then in a position to provide the opinion in section 4(2)(a)(ii) of the RAR. Proponents should be aware that local government approval of a development proposal will often be contingent on multiple conditions above and beyond those necessary to comply with RAR standards. Receipt of a RAR assessment does not compel a local government to approve a given development.

REVISIONS TO AN ASSESSMENT REPORT

If a project is revised for any reason, the proponent's QEP must assess if these changes impact the SPEA and/or the measures in the current *assessment report*. In doing so, the QEP must assess if any additional measures or revision to existing measures are required as a result of the changes to the development plan. The QEP must then submit a revised *assessment report* to reflect the development that is being proposed.