

Information Note #4:

What are Local Governments Required to do to Meet the Riparian Areas Regulation?

This Information Note is a guide only. It is not a substitute for the federal Fisheries Act, the provincial Riparian Areas Regulation, or local government bylaws..

Overview

The Riparian Areas Regulation directs local governments to protect riparian areas during new residential, commercial and industrial development, through the use of Part 26 in the *Local Government Act*. The Regulation establishes a science-based process that local governments may apply to achieve riparian area conservation. Implementing the Regulation should be a straightforward process for local governments. They can simply add to their existing permitting and approval process the requirement for the Assessment Report. They can also incorporate into their zoning and general bylaws a level of protection that is consistent with the direction in the Regulation.

Other Legislation Relating to Developments around Streams

The Riparian Areas Regulation does not supersede or eliminate stream-related requirements of other related legislation. When planning a development, a proponent should determine all the federal, provincial and local government regulations that apply. For a development proponent, this can mean going through two or more regulatory processes resulting in differing requirements.

The B.C. *Water Act*, section 9, regulates “changes in and about a stream.” The Act allows persons to carry out activities in and about a stream under the authority of an approval or licence or by following the *Water Act* Part 7 regulation. That regulation allows persons to carry out specified activities without the need for a formal approval or licence. The specified activities can include culvert and clear span bridge installation and minor maintenance of utilities and pipeline crossings. For full requirements and specified activities, see the Part 7 regulation. Section 9 of the *Water Act* generally regulates activities within the stream channel up to the high water mark, while the Riparian Areas Regulation regulates activities in the riparian areas above the high water mark.

It is recommended that prior to any development, as defined in the Regulation, the local government responsible for land use decisions be contacted to determine what specific legislative requirements are in place.

Planning and management of land use

Under the *Fish Protection Act*, section 12(4), a local government affected by a policy directive such as the Riparian Areas Regulation must:

- include riparian area protection provisions in its zoning bylaws and permits, in accordance with the directive, or
- ensure that its bylaws and permits under Part 26 of the *Local Government Act* provide, in the opinion of local government, a level of protection that is comparable to or exceeds that of the directive.

The Regulation does not give local governments any additional powers with respect to streamside protection. Rather, it calls on local governments to use their existing land use planning and management powers under the *Local Government Act* to improve the protection of fish habitat in settlement areas (section 6 of the Regulation¹).

The Regulation calls for a structured, consistent approach to providing a site-specific riparian area assessment for a new development, to ensure the development does not harm fish and fish habitat. Local government remains free to use its powers under the *Local Government Act* to protect other values while directing a new development applicant to follow the Riparian Areas Regulation to address riparian fish habitat issues.

Requirement for Assessment Reports

Under section 4 of the Regulation, a local government may allow development to proceed as long as:

1. a Qualified Environmental Professional (QEP), in an Assessment Report:
 - certifies he or she is qualified to conduct the assessment
 - certifies he or she has followed the assessment methods set out in the schedule to the Regulation; and
 - provides an opinion that no natural features, functions or conditions that support fish life processes in the assessment area will be harmfully altered, disrupted or destroyed; and
2. the local government is notified by the Ministry of Forests, Lands and Natural Resource Operations that the ministry and DFO have:
 - been notified; and
 - received the QEP's Assessment Report that meets the above conditions.

¹ As stated in section 6 of the Regulation, when exercising its powers with respect to development, a local government must protect its riparian areas in accordance with this Regulation.

The Regulation does not restrict a local government's ability to increase the level of protection in riparian areas over that specified in the QEP's Assessment Report. However, a local government cannot reduce the level of protection specified in the Assessment Report. By hiring a QEP to help design the development, proponents can avoid impacts, assess potential impacts and develop mitigative measures. Meanwhile, governments can focus on monitoring and enforcement.

Requirements for developing monitoring, enforcement and education strategies

The Riparian Areas Regulation (section 5) also requires local governments to work with DFO and the ministry to develop strategies for:

- obtaining certificates from QEPs that projects have been carried out as defined in the Assessment report;
- monitoring and reporting, to ensure QEPs have prepared Assessment Reports according to the prescribed assessment methods and that the development has proceeded consistent with the Assessment Report; and
- educating the public on the protection of riparian areas.

This section of the Regulation recognizes that it will take the efforts of all groups involved to plan new development or redevelopment projects so that riparian areas are effectively protected.

Implementation Options for local governments

There are three basic options available to local governments in implementing the Riparian Areas Regulation. They involve utilizing the Transition Option in Section 8 of the Regulation, following the direction in Section 4 of the Regulation or establishing a regime that in their opinion provides a level of protection that meets or exceeds that in the Regulation.

Section 8 of the Regulation gives local governments two lines of recourse with which to manage the transition from the old Streamside Protection Regulation to the new Riparian Areas Regulation:

- If a local government has previously met the requirements of the Streamside Protection Regulation, then the jurisdiction is deemed to be in compliance with the Riparian Areas Regulation.

In other words, if a local government has bylaws or permits that establish streamside protection and enhancement areas (SPEAs) in

accordance with section 6 of the Streamside Protection Regulation, then the local government is considered to have met the requirements of the Riparian Areas Regulation. This means that under the former regulation, the local government will have established SPEAs, consistent with sections 6(1) to 6(4), or established a regime that meets or exceeds a level of protection afforded by these sections of the Streamside Protection Regulation. If this is the case, the jurisdiction will therefore have met or exceeded the Riparian Areas Regulation requirements.

- However, if a local government wants to amend the SPEAs previously set under section 6(1) to 6(4), or a regime established that meets or exceeds a level of protection afforded by these sections of the Streamside Protection Regulation then it must follow the direction in the Riparian Areas Regulation for doing so.

If a local government had not yet provided protection of riparian areas then it must either:

- follow the direction in the Riparian Areas Regulation for doing so, or
- establish a regime that meets or exceeds a level of protection afforded by the Riparian Areas Regulation.

Reducing local government's liability exposure

The approach set out in the Regulation was a risk management approach to liability.

First, the role of local government is clearly defined to make it clear that it is not responsible for the determination of whether a project will result in the harmful alteration of fish habitat. Its role is to ensure projects within the 30-m riparian assessment area do not proceed until it has been advised that the fish habitat requirements of the federal and provincial governments, as set out in the Regulation, have been met.

Second, the model set out in the proposed Regulation is designed to reduce the potential for unacceptable assessments by QEPs and the potential for proponents not to follow direction established in the Assessment Report. The following components were designed specifically to address this major design principle of the model:

- the detailed science-based assessment that is part of the actual Regulation;
- the requirement in the Regulation for notifications to senior governments with the results of the assessment;

- the requirement in the Regulation is for certification by the QEPs that they are qualified and have followed the methodology, and provided their professional opinion of the impact of the development on riparian fish habitat based on the assessment;
- the requirement in section 5 of the Regulation for final review sign-off and reporting back to senior governments by the QEPs on the implementation of the assessment prescriptions;
- compliance and efficacy monitoring; and
- working with the professional associations in the training, responsibility and accountabilities of the members.

Collectively, these measures will reduce the potential for litigation.