Information Note #5:

Implementation Tools for Local Government

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

Section 12(4) of the *Fish Protection Act* directs local governments to use their zoning or other land use management bylaws and permits under the *Local Government Ac*t to implement policy directives established under the Act regarding riparian area protection.

This information note focuses on legislative tools that local government can use to support the Riparian Areas Regulation. These tools include:

Tool	**Legislative Basis**
Official Community Plans	*Local Government Act*, Part 26
Development Permit Areas	*Local Government Act*, Part 26
Zoning bylaws	*Local Government Act*, Part 26
Subdivision bylaws	*Local Government Act*, Part 26 and *Land Title Act,* Part 7
Development approval and information bylaws	*Local Government Act*, Part 26
Covenants	*Land Title Act,* Part 14
Other regulatory bylaws affecting land use	*Local Government Act*, Part 22 and *Community Charter*

Other non-legislative tools for the protection and conservation of riparian areas include information and education about stream stewardship, watershed or "integrated stormwater management" plans, parkland acquisition, tax incentives and landowner agreements. Some of these tools are discussed in the last section of this information note.

Basic requirements

Whatever tools a local government chooses to use to implement the Regulation, there are three basic things that the applicable regulatory process needs to provide:

- definitions of streams and riparian areas that are consistent with the Regulation;
- a means of triggering a regulatory action if a development activity is proposed to occur in a riparian assessment area; and
- a means of requiring a Qualified Environmental Professional (QEP) Assessment Report that complies with the Regulation and its assessment methods.

Local government bylaws and policies do not have to use the same terms that are in the Riparian Areas Regulation. For example, a bylaw may use "waterway" or "watercourse" instead of "stream"; or "leave strip" or "watercourse protection area" instead of riparian area or streamside protection and enhancement area (SPEA). Also a stream may be defined to include a broad range of aquatic habitat and not just fish habitat - and that is fine, as long as it covers the range of water bodies that are included in the Regulation definitions.

The Riparian Areas Regulation has the expectation that the development approval mechanism, such as a rezoning or subdivision approval, a development permit, or development variance permit, would be subject to the Assessment Report conclusions.

Legislative tools

Implementing the Regulation does not necessarily require a "new" set of bylaws, policies or procedures. Many local governments already have riparian protection measures in place, and complying with the Regulation is largely a matter of reviewing and revising existing provisions.

Local governments can also use the tools that are available under other parts of the *Local Government Act* to support implementation of the Regulation. Many of the tools are complementary, and local governments may choose to use more than one method to achieve riparian protection. For example, a municipality may adopt objectives to protect riparian areas in its Official Community Plan (OCP); apply the Regulation's SPEAs, or equivalent, through Development Permit Areas or zoning bylaw setbacks, and use a watershed plan to define specific SPEAs on a stream system.

For more information about the use of these tools, see publications in the Stewardship Series, particularly "Stream Stewardship: A Guide for Planners and Developers" and "Stewardship Bylaws." These are available through the Stewardship Centre website at http://www.stewardshipcentrebc.ca/the-resource-centre/

Official Community Plans (OCPs)

Official Community Plans provide the basic direction for land use decisions in a community. Among other things, OCPs can establish policies for "the preservation, protection, restoration and enhancement of the natural environment, its ecosystems and biological diversity" (*Local Government Act*, section 878(1)(d)).

An OCP can acknowledge streams and riparian areas and establish policies for their protection in future planning or development approvals. OCP policies can set forth the objective of meeting the Regulation, and reference the mechanisms or processes for doing so. These OCP policies then guide land use decisions made under local area plans and other land use bylaws.

Development permit areas (DPAs)

Development permit areas can be designated under OCPs for the "protection of the natural environment, its ecosystems and biological diversity" (*Local Government Act,* section 919.1(1)(a)). Land within a DPA "must not be altered" until a development permit has been obtained (*Local Government Act, s*ection 920(1)(d)). A DPA must be accompanied by guidelines, set out in either the OCP or a zoning bylaw, that address how the objectives of the DPA will be addressed.

Development permit areas are common tools used by a variety of local governments for protecting riparian areas. They allow a local government to regulate a wide range of development activities that involves any form of site disturbance. A development permit can supplement requirements under zoning or subdivision bylaws, as long as it does not vary the zoned use or density.

A drawback of the DPA option is its limited enforcement measures. Violations of the terms of a development permit, or conducting activities in a DPA without a permit, can be addressed only through a court injunction, which can be a time-consuming process. As a consequence, gaining compliance with the objectives of a DPA is usually done more through education and "persuasion." The requirements in a DPA can also complement the use of other regulatory tools such as the *Fisheries Act* or *Water Act*.

Zoning bylaws

Zoning is the main tool to regulate land use, density, lot sizes and the siting and location of buildings and structures. A zoning bylaw can establish riparian protection in the form of "setbacks" in which structures are restricted. Setbacks are a common requirement of zoning bylaws that define the distance that structures should be from property lines, other structures, special features, between different land uses, and so on.

When used to implement the Riparian Areas Regulation, setbacks could reflect the Riparian Assessment Area or the SPEA standards either by citing them generally, or by applying the SPEA widths and measures on a stream-by-stream basis.

Zoning bylaws can also set lot sizes to protect riparian areas. Some local governments have included a provision whereby the minimum lot size in particular zones must be defined exclusive of the riparian "setback." For example, for most of its designated zones, the City of Nanaimo's zoning bylaw states that "where a lot contains or abuts a watercourse identified in Schedule G, the required leave strip shall not be included in the calculation of minimum lot area."

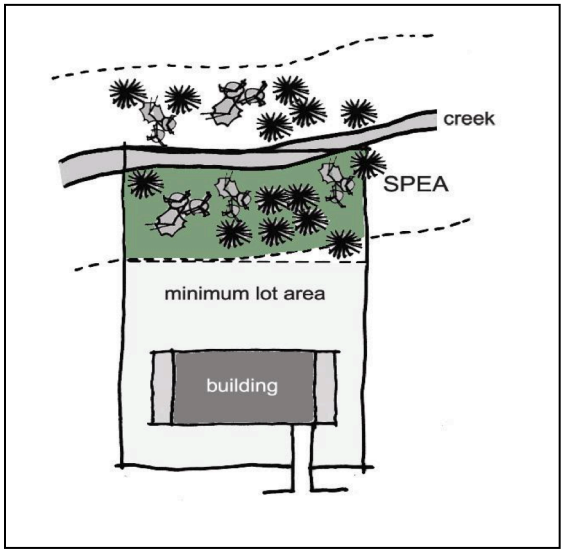
Zoning bylaw requirements are applied in several contexts:

- At time of rezoning, they can be used to achieve riparian protection over an entire parcel.
- At time of subdivision, in directing the size, shape and location of lots to protect riparian areas.
- At time of lot development, in regulating the siting of a building or other structure to avoid a riparian area.

Adjustments from the requirements within a given zone can be considered under a Development Variance Permit, which requires Council or Regional Board approval. Minor adjustments to zoning bylaw requirements can be handled by a Board of Variance, whose primary criterion is the determination of "hardship." Some local governments may also choose to assign authority for minor development permit approvals to the Approving Officer. Proposed adjustments from simple assessment SPEAs, however, would also trigger the need for a QEP detailed assessment and Assessment Report.

On the other hand, adjustment processes could also be used to allow minor adjustments to other zoning bylaw requirements – such as yard setbacks or parking area requirements – that would help to maintain a SPEA and measures.

The sample scenario in Figure 1 shows how the Riparian Areas Regulation requirements could be implemented for someone applying to create a new lot.



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A zoning bylaw can require that the creation of new lots must exclude a SPEA in meeting minimum lot area requirements. For example, if the minimum area for a single-family lot under a residential zone is 600 m^2, the area must be entirely outside the SPEA. The figure illustrates how this might work.

Note that in this case, the SPEA would become part of the new lot but would be subject to special protective measures (e.g., part of a development permit area, subject to a restrictive covenant).

Figure 1. Sample scenario showing the Riparian Areas Regulation applied to an application to create a new lot.

Subdivision

Under Part 26 (Division 11) of the *Local Government Act*, local governments have the authority to adopt bylaws regarding the provision of works and services as part of subdivision. This authority is the basis for engineering standards that typically apply to the design and construction of roads and utilities. In support of the Regulation, engineering standards can also be used to set requirements for protecting existing vegetation, replanting standards, and erosion and sediment control design standards. All of these measures can support stream and riparian protection.

The Act also requires up to 5% of land to be subdivided to be dedicated as public park. This can be a means by which a local government can acquire, and protect, riparian areas.

The *Land Titles Act* addresses the process of subdivision, including the powers and responsibilities of subdivision approving officers.[1] Subdivision approving officers are obliged to consider local government regulations and policies in reviewing subdivision

[1] In municipalities, the subdivision approving officer is a staff member; outside municipal boundaries, the function of the approving officer is typically held by the Ministry of Transportation, though this is changing as regional districts negotiate the acquisition of subdivision approval authority.

applications, which would include any riparian area protection provisions.

The Act also authorizes subdivision approving officers to consider matters of public interest, including environmental issues, in approving subdivisions. For instance, they can require covenants on environmentally sensitive areas. Subdivision approving officers can also require dedication and improvement of "highways," which are defined as "any way open for public use." This could be used to acquire trail rights-of-way to supplement riparian protection where passive access along the outer portion of a riparian area is envisioned.

Development approval procedures and information requirements

Part 26, section 895 of the *Local Government Act* states that a local government that has adopted an OCP bylaw or a zoning bylaw must also define procedures under which a landowner may apply for an amendment to the bylaw or for a permit under either of those bylaws. Development application procedures bylaws typically set out such things as the application form, basic information requirements, timing and means of notification of the application. Such bylaws could be used to require applicants to indicate whether they propose to undertake activities in a riparian assessment area, and if so, require a QEP Assessment Report as part of the application.

Another means of acquiring this information is provided under section 920.1 of the *Local Government Act*, whereby local governments may require "development approval information" of development applicants, which can include natural environment information. Under this section local governments can also specify policies and procedures for providing that information. Again, this can be used to determine whether development will occur in a riparian assessment area and whether an Assessment Report is required.

Other Part 26 powers

Landscaping

Section 909 of the *Local Government Act* provides the authority to require and set standards for landscaping for the purpose (among others) of "preserving, protecting and enhancing the natural environment." Some local governments have separate landscaping bylaws while others have incorporated landscaping requirements in their zoning bylaws. This can be a source of regulations for preserving and enhancing riparian vegetation.

Surface runoff
Section 907 also allows local governments to set requirements regarding the management of surface runoff, and establish maximum percentages of land area that can be covered by impervious surfaces (roofs, roads, parking lots, driveways, playing courts, etc.). Such powers can assist the protection of streams and riparian areas.

Security
Section 925 authorizes a local government to take security deposits, or bonds, as part of a development permit, development variance permit or temporary use permit. Security deposits can be used for satisfying landscaping conditions that have not been met, correcting an unsafe condition, and correcting damage to the environment resulting from a violation of permit conditions.

Security deposits can help to ensure that riparian protection and enhancement measures are met under any of these permits. However, they need to be of a sufficient amount to act as an incentive to complete the activity required or to cover a local government's costs if they must take corrective action, and not be considered by a permit holder as "just another cost of doing business." Security can be valued on the basis of an estimated cost (e.g., 125% of estimated landscaping costs to restore riparian vegetation), and can be held and/or released over several years (e.g., to ensure long-term survival of planted areas).

Restrictive covenants
There are two types of covenants that can be used to protect riparian areas and other environmental features: restrictive and conservation covenants. Restrictive covenants, which can be imposed by local governments, and conservation covenants, which are voluntary agreements, are discussed under "Long term protection of the SPEA**,"** below.

Other powers under the *Local Government Act* and *Community Charter*

Powers under other parts of the *Local Government Act* or more recently, under the *Community Charter* are not referred to in the *Fish Protection Act* as a means of implementing riparian directives. However, in association with an OCP policy to protect riparian areas, some key regulatory powers from these other sources could be used to meet or beat the Riparian Areas Regulation, or act as effective supplements to Part 26 powers. These additional powers include:

Authority	**Legislative Basis***
Soil deposit and removal	CC, sec.8(3)(m) (municipalities) LGA, sec.723 (regional districts)
Tree protection and management	CC, sec.8(3)(c) (municipalities) LGA, sec.923 (regional districts regarding tree cutting in hazardous areas)
Protection of the natural environment	CC, sec.8(3)(j) (municipalities)

*CC – *Community Charter*; LGA – *Local Government Act*

Under any of these authorities, a local government could recognize riparian assessment areas, establish SPEAs and/or require Assessment Reports to evaluate SPEAs and their protective measures. Using these powers allows enforcement by ticketing and fines, which is an advantage in the eyes of some local governments who prefer this more immediate enforcement tool to court proceedings.
The District of North Vancouver provides an example of a unique approach to protecting streams and riparian areas. In 1996, it combined powers under various sections of the former *Municipal Act* to pass its Environmental Protection and Preservation Bylaw. The bylaw, designed to "protect, preserve and conserve our natural setting and ecological systems" as they relate to aquatic areas, sloping terrain, soil and trees, addresses each of these four areas, with a permitting process that is adapted to each of these four areas and a common enforcement section.

Long-term protection of the SPEA

The Riparian Areas Regulation sets out SPEAs which must be adhered to during the development. Long-term riparian protection requires a form of legal protection of setback areas that resides with the land through successive owners of the property. Local governments are encouraged to use their authorities and tools to gain long-term

protection of SPEAs. Legal protection can take several forms: dedication of riparian areas as park or greenspace, conservation covenants, restrictive covenants and dedication to a land conservancy organization.

Covenants

There are two types of covenants that can be used to protect riparian areas and other environmental features: restrictive and conservation covenants. Restrictive covenants can be imposed by local governments. Conservation covenants are voluntary agreements. Both are discussed below.

Restrictive covenants

Restrictive covenants are meant to prevent something from happening to a piece of property. They are provided for under section 219 of the *Land Title Act* and have been used to protect environmentally sensitive lands, in particular stream and riparian areas. Registered on land title such that they "flow with the land," covenants have been applied as a condition of rezoning, subdivision or development permit approval to inform landowners and developers of environmental values.

However, restrictive covenants are variable in their effectiveness as they need to be monitored by the government agency holding the covenant, usually the Ministry or the local government, but rarely are. On re-sale of a covenanted property, a new property owner may not always be aware of or understand the implications of a restrictive covenant. It is only when a complaint is lodged, usually by another landowner or resident, that covenant violations come to light.

Conservation covenants

Conservation covenants are legally binding agreements registered on title of a property to conserve land or features on that property. They have been developed as a means of protecting ecologically sensitive lands of all types, including riparian areas. Unlike restrictive covenants, conservation covenants are entered into voluntarily and allow landowners to permanently preserve natural features of their property while still retaining ownership and use. Also unlike restrictive covenants, conservation covenants can be held by designated conservation organizations or land trusts as well as local governments.

Conservation covenants can trigger some property tax reductions for landowners in jurisdictions that offer this as an incentive (see below). However, conservation covenants can have significant initial costs for both the organization that will be holding the covenant and the

landowner, for legal and administrative assistance in setting them up. Therefore, for a variety of reasons, both conservation organizations and landowners are selective in determining whether a conservation covenant is desirable on a given property.

Property tax exemptions

Property tax exemptions can be used as an incentive for riparian area protection. One example is the Islands Trust Natural Area Protection Tax Exemption Program (NAPTEP) (http://www.islandstrust.bc.ca). The Sunshine Coast and Capital Regional Districts are also participating in the program.

Approaches to implementing the Riparian Areas Regulation

The tools that any local government may choose to use to implement the Regulation will depend on the legislative framework for stream and riparian protection, and the level of information it has at hand regarding streams in its jurisdiction.

Given these factors, this section looks at three general approaches to implementing the Regulation and suggests some of the tools that could be used to apply that approach. The approaches offer increasing levels of "pre-determined SPEAs", depending on the level of stream-related information and mapping that is available. The suggested approaches are discussed below and summarized in Table 1.

Table 1. Summary of approaches and bylaw options for implementing the Riparian Areas Regulation

Approach	Explanation	Role of applicant/QEP	Implementation tool options
1. Adopt the riparian assessment area only	Establish an area that is 30 m from the *top of bank* or 10 m from the *top of ravine bank* on all watercourses, within which a SPEA will be defined according to the Regulation assessment methods.	1. BC Land Survey identifies top of bank (and/or top of ravine bank) 2. a) QEP determines SPEA according to simple assessment. OR b) QEP determines SPEA according to detailed assessment.	Official Community Plan Zoning bylaw Development permit area (requires a map) Environmental/stream protection bylaw
2. Adopt the riparian assessment area and SPEAs generally	Adopt Table 2-4 from the Regulation assessment methods, along with applicable definitions.	1. QEP determines which SPEA applies on site specific basis – i.e., conducts a simple assessment or 2. If applicant wishes to vary from applicable SPEA determined by simple assessment, QEP determines	Official Community Plan Zoning bylaw Development permit area Environmental/stream protection bylaw

Approach	Explanation	Role of applicant/QEP	Implementation tool options
		SPEA according to detailed assessment.	
3. Adopt and designate (pre-determine) SPEAs	Establish/designate SPEAs on streams according to Table 2-4 from the Regulation assessment methods and adopt applicable definitions.	1. BC Land Survey identifies top of bank (and/or top of ravine bank) as RAA boundary; or 2. If applicant wishes to vary from designated SPEA, QEP determines SPEA according to detailed assessment.	Local Area Plans, Watershed Plans Zoning bylaw Development permit area Environmental/stream protection bylaw

Approach 1: Adopt riparian assessment areas *only*

A local government can establish an area around its streams that reflects the riparian assessment area defined in the Regulation's assessment methods – that is, 30 m from the top of the bank on all streams and ravines less than 60 m in width, or 10 m from the top of the ravine bank for ravines larger than 60 m in width.

Any development proposed in this area would trigger the need for the applicant to have the SPEA defined by a QEP according to the assessment methods. The applicant, in consultation with a QEP, can choose whether to use the simple or detailed assessment to define the SPEA. The QEP would be responsible for completing and submitting an Assessment Report.

The riparian assessment area, and the need to define SPEAs at time of development application, could be established in several ways:

- As a policy in an OCP.
- As a Development Permit Area under an OCP. This would require a map of the streams to which the DPA would apply. The DPA guidelines could refer to the Regulation's assessment methods in its application requirements. Note that streams that may be missed or not shown on the map could be covered by an omnibus statement such as "the SPEAs apply to all streams shown on Schedule X or as determined by the {local government authority}."
- Under a zoning bylaw setback provision.
- In an environmental protection bylaw. The bylaw could refer to the Regulation's assessment methods in its permit application requirements.

Approach 2: Adopt riparian assessment areas and SPEAs *generally*

A local government could establish riparian assessment areas as well as indicate how SPEAs are to be defined in these areas by adopting the equivalent of Table 2-4 under the simple assessment in the Regulation's assessment methods. This table sets out SPEA widths and measures based on certain stream characteristics: fish-bearing, stream flows and the nature of riparian vegetation.

Applicants proposing development within an assessment area would commission a QEP to determine which of the SPEA widths would apply to their property. If the proposed development occurs outside the applicable SPEA width, then further assessment is not necessary, and the QEP can submit the applicable Assessment Report. If the proposed development encroaches into the defined SPEA, the applicant may choose to: have a detailed assessment carried out to see if an alternative SPEA can be defined that allows for the development as proposed; modify the development plan to avoid the SPEA;.

The riparian assessment area and pre-defined SPEA widths and measures could be established in the same ways:

- As a policy in an OCP.
- As a Development Permit Area under an OCP. This would require a map of the streams to which the DPA would apply. The DPA guidelines could refer to the Regulation's assessment methods in its application requirements. Note that streams that may be missed or not shown on the map could be covered by an omnibus statement such as "the SPEAs apply to all streams shown on Schedule X or as determined by the {local government authority}."
- Under a zoning bylaw setback provision. Proposed adjustments to a defined SPEA setback (requiring a detailed assessment) would be handled under a Development Variance Permit process.
- In an environmental protection bylaw. The bylaw could refer to the Regulation's assessment methods in its permit application requirements.

Approach 3: Adopt and designate (pre-determine) SPEAs

This approach might be considered by local governments who have mapped and classified the streams in their jurisdiction using methods that reflect the former Streamside Protection Regulation or the simple assessment in the assessment methods of the Riparian Areas Regulation. A local government could designate SPEA widths and measures, based on Table 2-4 in the Regulation's assessment

methods, on identified streams for which they have sufficient information to conduct a simple assessment.
For those streams with predetermined SPEA widths and measures, a development applicant would not need to hire a QEP to define the applicable SPEA. They would be required to locate and survey the top of the bank (and/or top of the ravine bank, as applicable) to show where the predetermined SPEA is relative to the proposed development. If the proposed development encroaches into the predetermined SPEA, the applicant may choose to: have a detailed assessment carried out to see an alternative SPEA can be defined that allows for the development as proposed; modify the development plan to avoid the SPEA

If sufficient information is not available for all streams, a local government could "blend" the approaches – for example, using approach 3 on streams that are well documented, and approach 2 on all other streams.

This approach lends itself to being implemented through more detailed Local Area (or Sector) Plans, Watershed Plans or Integrated Stormwater Management Plans. Often adopted under OCPs, these plans then guide rezoning, subdivision and other permitting decisions. Other methods for implementing this approach are similar to those for approach 2:

- *As a development permit area* – In this case, if a DPA is established based on the predetermined SPEA width, any activity proposed within the DPA would require a detailed assessment to justify an alternative SPEA. The DPA guidelines could refer to the Regulation's assessment methods in its application requirements.
- *Under a zoning bylaw setback provision* – Proposed adjustments to a defined SPEA setback (requiring a detailed assessment or RAR HADD would be handled under a Development Variance Permit process.
- *In an environmental protection bylaw* – The bylaw could refer to the Regulation's assessment methods in its application requirements.

Several local governments have adopted stream maps and classifications regarding fish habitat sensitivity, which they then use to establish riparian protection measures in land use decisions. For example, the City of Chilliwack has adopted a Fisheries Sensitive Map that applies five classes of streams based on fish habitat significance and assigns SPEAs accordingly.

Stream classification maps can be powerful tools to assist in implementing the Regulation. However, while these maps may reflect the Regulation's SPEA "standards" regarding fish-bearing potential and/or stream permanence, they may not specifically address riparian vegetation conditions. Local governments who have stream classification maps, or other predetermined riparian protection classes, may need to review their classifications either universally or when applied on a site-specific basis, to ensure that all the stream characteristics used in the Regulation are taken into account.