

# FAQ

## FREQUENTLY ASKED QUESTIONS



Order No. 840.000-2  
June 2011

## AGRICULTURAL BUILDING SETBACKS POTENTIAL LOCAL GOVERNMENT QUESTIONS

### INTRODUCTION

#### 1. How do these setbacks relate to the Riparian Areas Regulations (RAR)?

Restrictions on building in riparian areas have been the topic of discussion between federal, provincial and municipal governments and the agriculture industry for many years. When the *Fish Protection Act* came into force, the agriculture industry agreed to generate guidelines that were comparable to the streamside protection developed under the Act for residential, commercial and industrial uses. In 2003, the Province introduced the *Riparian Areas Regulation* (RAR). It was recognized that agricultural development generally was not as intensive as residential, commercial and industrial. A comparable approach was sought for agricultural land development that takes into consideration the mandated use under the *Agricultural Land Commission Act* while still meeting requirements for riparian protection under the federal *Fisheries Act*. Through the **Partnership Committee on Agriculture and the Environment**, the various stakeholders have agreed to setback distances for agricultural buildings excluding residential buildings on farms. Farm residences will be treated as residential development.

#### 2. Why wasn't agriculture added to the RAR?

It was recognized that agricultural development was generally not as intensive as residential, commercial and industrial development. Most farming activities are subject to the *Farm Practices Protection (Right to Farm) Act* or other provincial legislation, including the **Agriculture Building Setback Standard** found in the "*Guide for Bylaw Development in Farming Areas*".

[http://www.agf.gov.bc.ca/resmgmt/publist/800Series/840000-1\\_GuideforByLawDev\\_TofC.pdf](http://www.agf.gov.bc.ca/resmgmt/publist/800Series/840000-1_GuideforByLawDev_TofC.pdf)

While the RAR does not apply to farming activities, it does apply to farm residences and other non-farming-related developments such as golf courses on Agricultural Land Reserve land. Such developments are regulated by local government bylaws and subject to the RAR.

#### 3. Wouldn't it be easier for local governments to implement agricultural setbacks if they were part of RAR?

The 'agricultural building setbacks' are intended to be included in a local government's zoning bylaw to complement the building setbacks that are already there. Some additional definitions are required to describe the stream classification and the building types. Applying building setbacks in the zoning bylaw will be less expensive in the majority of circumstances for the agricultural industry and represents a simplified approach that is preferred by many stakeholders including some local governments.

#### **4. How will local governments handle stream classification?**

The two categories of constructed ditches and natural streams are quite obvious and these two types of watercourses will apply in many situations. If appropriate mapping is not available to classify a stream according to the watercourse types shown in the “*Agricultural Buildings Setbacks from Watercourses in Farming Areas*” factsheet, then a Qualified Environmental Professional (QEP) trained in the RAR, must be retained to determine the applicable classification if the water course is not a natural stream or a constructed ditch. The QEP’s assessment will determine whether the watercourse in question is either a channelized stream or a constructed channel. In these cases the applicant could opt for the larger setback for natural streams to avoid the cost of a QEP.

#### **5. Are local governments required to adopt the setback standards as a regulation?**

Local governments are encouraged to adopt the standards. They are provincial standards established under Section 916 of the *Local Government Act* and are supported by the federal, provincial, municipal and industry stakeholders involved in the Partnership Committee on Agriculture and the Environment.  
<http://www.al.gov.bc.ca/resmgmt/partners/index.htm>

#### **6. Are these agricultural building setbacks voluntary or mandatory for producers?**

Producers are expected to follow the setbacks throughout the province. Bylaw enforcement of the setbacks would occur where local governments have incorporated the setbacks into a zoning bylaw.

#### **7. How are farm residences treated?**

Farm residences will be treated as residential developments as addressed under RAR.

## **ROLES AND RESPONSIBILITIES**

#### **8. Can the Ministry of Agriculture (AGRI) implement the setback standards since they have the knowledge and expertise?**

The Ministry of Agriculture will provide support in the development of local government bylaws and will assist the BC Agriculture Council in the implementation of the building setbacks in all regions or areas where bylaws do not exist.

For site specific implementation, consultation may be required with Fisheries and Oceans Canada (DFO), Ministry of Forest, Lands and Natural Resources (MFLNR) or a QEP who has been trained in the use of the RAR.

#### **9. What happens if a proposed structure is not listed in Table 1 of the Factsheet?**

Stakeholders and the public should contact the Ministry of Agriculture if they have identified a type of structure not listed in the table. The table could then be amended.

## TRAINING STAFF AND QUALIFIED ENVIRONMENTAL PROFESSIONALS

### 10. If needed, who can be contacted for technical assistance at the Ministry of Agriculture e.g. determining drainage of more than one property?

Regional Agrologists are available to assist in the implementation of the **Agricultural Building Setbacks**. Ministry offices are listed at: <http://www.agf.gov.bc.ca/ministry/who.htm> and Ministry contacts by local government are described in the following document.

[http://www.agf.gov.bc.ca/resmgmt/sf/atcontacts/Agri-team\\_Provincial\\_Contacts\\_May\\_2011.pdf](http://www.agf.gov.bc.ca/resmgmt/sf/atcontacts/Agri-team_Provincial_Contacts_May_2011.pdf)

DFO, MFLNR and/or QEPs may also need to be contacted for information about specific watercourses.

### 11. Is there a list of approved Qualified Environmental Professionals (QEPs)?

No, but Vancouver Island University ( <http://www.viu.ca/nrep/environment/rar.asp> ) maintains a list of QEPs ( <http://www.viu.ca/nrep/environment/rarwaiverslist.pdf> ) who have taken and passed the Riparian Areas Regulation (RAR) Training Course). Given the similarities between the RAR and the **Agriculture Building Setbacks**, the QEPs who have successfully passed the RAR course may be used for **Agriculture Building Setback** determinations. The College of Applied Biologists ( <http://cab-bc.org/> ) or the Association of Professional Biology: ( <http://www.apbbc.bc.ca/> ) are other sources.

## APPLICATION OF THE STANDARD

### 12. Do the agricultural building setbacks only apply to land within the Agricultural Land Reserve?

This standard has been established under Section 916 of the *Local Government Act* and applies to farming areas as defined in the Act which is generally the ALR. Local governments are encouraged to apply the standard to lands they have zoned for agriculture as well.

### 13. Are the setbacks minimums or maximums?

The setbacks listed in the factsheet and bylaw guide are maximum setbacks to be used for establishing local government bylaws. The watercourse building setbacks do not take into account considerations that may require greater setbacks (e.g. lot lines, species at risk, municipal maintenance access, water used for domestic purposes and floodplain requirements). The setbacks in local government bylaws are minimum setbacks that producer may wish to exceed for their own reasons.

### 14. Do the building setbacks apply only to land developed for agriculture?

The building setbacks apply to agricultural land that is currently growing a crop or fallowed and is therefore considered to be developed. Land clearing or removal of natural vegetation requires additional approvals or authorizations.

### 15. Are existing buildings exempt from the setbacks?

The setbacks apply to new agricultural buildings only and all existing agricultural buildings and structures are exempt. If an existing building is expanded, the expansion must meet the new building setbacks. The legal non-conforming uses rules would apply. If a building is damaged and the damage is not greater than 75% of its value above its foundations as determined by the building inspector, it can be rebuilt.

**16. What setback applies if the structure has multiple uses that are in different categories in Table 1 of the Factsheet?**

The furthest setback would apply.

**17. What avenues does the local government have if they are not comfortable with the measurements of a channelized stream width?**

A local government can establish the stream widths that will be used within their jurisdiction in consultation with agencies prior to implementing bylaws. Alternatively, if a local government believes there is potential non-compliance with the measurements of a channelized stream, they may notify the agencies (DFO, AGRI and MFLNR) for appropriate regulatory recourse.

**18. What happens if a watercourse is not identified and a permit to construct is issued but after construction it is realized that an agricultural watercourse does in fact exist?**

The onus is on the farmer to identify watercourses on his/her property and notify the municipality of such watercourses. Actions may be taken under the *Fisheries Act*, *Local Government Act*, *Water Act* or *Environmental Management Act*. Watercourses built after the facility is constructed must be setback from the facility. Depending on the impact, regulatory recourse may occur.

**19. What happens if a building's use is misrepresented and after construction it should have been in a category with a greater setback?**

If the facility is impacting the integrity of the stream or is raising concern regarding stream pollution, mitigation will likely be required. The designated use for the facility will need to be changed if appropriate mitigation cannot resolve the issue. Note enforcement may occur either through the local government bylaw or under the *Fisheries Act*.

**20. What kinds of activities are permitted in the building setback area (Streamside Protection and Enhancement Area or SPEA) next to the watercourse?**

The vegetation in the SPEA provides the natural features, functions and conditions that support fish life processes. In this regard, activities that have the potential to result in damage are not permitted within the SPEA. Where a SPEA has been previously disturbed and natural vegetation removed, the objective is to allow regeneration of the vegetation either naturally or through enhancement efforts. These voluntary efforts may include instream works with appropriate approvals or fish habitat enhancement activities including riparian planting and removal of invasive species provided that care is taken to minimize impacts on fish habitat and sediment creation. Involvement of agencies or a QEP may be advisable if activities have the potential to harm fish habitat.

**NOTE**

These Questions and Answers are expected to be updated as new questions are posed and as the agriculture building setbacks are implemented by local governments.

Wednesday, 22 June 2011