

# RIPARIAN AREAS REGULATION

## Frequently Asked Questions

*This document is broken into 4 sections. Either click on the title or scroll down for the entire document*

[FAQ's about Application, Implementation, Process and Key Concepts](#)

[FAQ's from Qualified Environmental Professionals](#)

[FAQ's from Landowners and Developers](#)

[FAQ's from Local Governments](#)

### FAQ's about Application, Implementation, Process and Key Concepts

- 1) [Application](#)
  - a) [Where does it apply?](#)
  - b) [What activities does it apply to?](#)
  - c) [To what areas does it apply?](#)
  - d) [What is the Scope of the regulation?](#)
  - e) [What about existing local government bylaws or permits?](#)
  - f) [Does the Regulation limit local government's ability to protect streamside areas?](#)
  - g) [Why was it changed from the Streamside Protection Regulation?](#)
  - h) [What are the similarities and differences between the two models?](#)
  
- 2) [Implementation](#)
  - a) [Timelines](#)
  - b) [Roles and responsibilities](#)
  - c) [Training staff and Qualified Environmental Professionals](#)
  - d) [Notification and confirmation](#)
  - e) [Monitoring](#)
  - f) [Cooperate in developing strategies](#)
  - g) [Local government flexibility](#)
  
- 3) [Process](#)
  - a) [The Union of BC Municipalities involvement](#)
  - b) [The Union of BC Municipalities resolution points](#)
  - c) [Relationship to the Federal Fisheries Act](#)
  - d) [Assessment design](#)
  
- 4) [Some Key Concepts](#)
  - a) [Top of Bank vs High Water Mark](#)
  - b) [Channelized Streams](#)

- c) [The Application of Science established on Forested landscapes](#)

### **[FAQ's from Qualified Environmental Professionals](#)**

1. [Who is a Qualified Environmental Professional?](#)
2. [What is the liability associated with performing work as a Qualified Environmental Professional under the RAR?](#)
3. [What is the involvement of professional associations and organizations?](#)
4. [Is there training available?](#)
5. [How do I know if my report has uploaded properly to the RAR notification system?](#)
6. [Does RAR apply if the stream is not fishbearing and drains directly to the marine environment?](#)
7. [What if there are hazard trees on an adjacent property that may pose a danger to my client's development?](#)
8. [When filling out the RAR assessment report forms, which opinion should be signed in section 7?](#)
9. [Has the Department of Fisheries and Oceans \(DFO\) signed off on the RAR science paper?](#)
10. [What happens when a QEP finds that a water system does not provide fish habitat, although it may have other ecological benefits?](#)
11. [How can a QEP monitor a site if they were not the ones to sign off on the original RAR report? What action can a QEP take if the developer is not following the recommendations set out in the report?](#)
12. [Who is responsible for ensuring post-development reporting takes place, and how should these reports be submitted?](#)
13. [There are several Wildlife/Danger Tree Assessor certifications, which one is recognized under RAR?](#)
14. [In the spring/summer of 2007, the BC Conservation Corp students were assessing RAR reports, how were they qualified to do so? Were QEPs notified if a report they submitted was one checked by these students?](#)
15. [What is the protocol for applying for undue hardships? When variance applications are being reviewed, what mitigating factors are considered?](#)
16. [Is 'undue hardship' a legal definition?](#)
17. [What happens if a QEP cannot obtain permission from a neighbouring property owner to gain access in order to complete a RAR assessment?](#)
18. [Is the Malaspina University College's Riparian Areas Regulations course required for QEPs?](#)
19. [Are stormwater detention ponds considered under the RAR?](#)
20. [Are there any provisions made for shoreline trail access?](#)
21. [If a reach is less than 100m long, how should it be assessed using the Detailed Assessment methods?](#)
22. [What do I do if I discover errors in the report after it was submitted to RARNS?](#)
23. [What do I do if an amended report needs to be submitted due to changes in the development proposal?](#)

### **[FAQ's from Landowners and Developers](#)**

1. [What is a 'riparian area' and why is it important to protect it?](#)
2. [How do I know if the Riparian Areas Regulation applies to my development?](#)
3. [What am I required to do if the RAR applies to my development?](#)
4. [What is a QEP?](#)
5. [How do I find a QEP to carry out my assessment?](#)
6. [What is a SPEA and what does it mean for my property?](#)
7. [What can I do if the setbacks don't leave me enough room to build?](#)
8. [There are trees on my property that I'm concerned will pose a hazard- can I have them removed?](#)
9. [The only watercourse on my property is a ditch- why do I have to pay for an assessment?](#)
10. [If other developments along the watercourse have cleared and/or built down to the shoreline, why do I have to follow the setbacks?](#)
11. [Who ultimately approves my development?](#)

### **FAQ's from Local Governments**

1. [What does a local government need to do to implement the RAR?](#)
2. [What types of land are not affected by RAR?](#)
3. [What about lands that are not applicable to the RAR, like agricultural, institutional, and Private Forest Land?](#)
4. [Does RAR apply when a development is being built outside the 30 meter setback, but ancillary activity is anticipated within the 30 meters?](#)
5. [If a property owner asks for a permit 40 meters away from the stream, the municipality may not be qualified to know if building on the lot will impact the 30 meter setback. How do we proceed?](#)
6. [Do RAR approvals come from MOE?](#)
7. [If the local government has the discretion to bend the SPEA, how does the local government approve the area to be bent without the correct expertise?](#)
8. [To whom should local governments address Letters of Flex/Letters of Support?](#)
9. [Will the regulation limit local government's ability to protect streamside areas?](#)

### **1) Application**

#### **a) Where does it apply?**

The Riparian Areas Regulation applies to the same geographic areas that the Streamside Protection Regulation applied to being the following regional districts and all municipalities within them: Capital, Central Okanagan, Columbia-Shuswap, Comox-Valley, Strathcona, Cowichan Valley, Fraser Valley, Greater Vancouver (except the city of Vancouver), Nanaimo, North Okanagan, Okanagan-Similkameen, Powell River, Squamish-Lillooet, Sunshine Coast, Thompson-Nicola and the trust area under the *Islands Trust Act*.

## **b) What activities does it apply to?**

The new Riparian Areas Regulation applies to same activities as the repealed Streamside Protection Regulation. It applies to local government regulation or approval of **residential, commercial and industrial activities or ancillary activities** as regulated by Part 26 of the *Local Government Act* 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 or development variance permit issued only for the purpose of enabling reconstruction or repair of a permanent structure described in section 911 (8) of the *Local Government Act* if the structure remains on its existing foundation.

It does not apply to agricultural, or institutional development. Nor does it apply to salt water ecosystems (such as coastal areas or estuaries).

## **c) To what areas does it apply?**

The regulation applies to the “riparian assessment area” adjacent to “streams”. The definition of “stream” includes a watercourse, whether it usually contains water or not, a pond, lake, river, creek or brook; and a ditch, spring or wetland that is connected by surface flow to a watercourse, pond, lake, river, creek or brook that provides fish habitat.

The riparian assessment area for a “stream” is:

- the 30 meter strip on both sides of the stream, measured from the high water mark,
- for a ravine less than 60 meters wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 meters beyond the top of the ravine bank,
- and for a ravine 60 meters wide or greater, a strip on both sides of the stream measured from the high water mark to a point that is 10 meters beyond the top of the ravine bank.

It does not apply to marine and estuary foreshore areas.

## **d) What is the scope of the regulation?**

The Riparian Areas Regulation deals with riparian fish habitat, and only in association with new residential, commercial and industrial development on land under local government jurisdiction (this includes private land and the private use of Provincial Crown land). Other uses are subject to other planning and management approaches.

Although beyond the scope of Section 12 of the *Fish Protection Act*, it is acknowledged that attention also needs to be given to:

- hydrological impacts on fish habitat resulting from land use and development and the associated creation of impervious surfaces;
- water quality impacts on fish from point and non-point source pollution; and
- the role and importance of riparian ecosystems to terrestrial species.

It is anticipated that local governments will choose – as many already have – to address these matters through comprehensive, watershed-based, integrated stormwater and stream corridor planning and management.

#### **e) What about existing local government bylaws or permits?**

The Riparian Areas Regulation is enabled by section 12 of the Fish Protection Act. Subsection 4(b) provides that an applicable local government ensure that its bylaws and permits under Part 26 of the Local Government Act must in its opinion, provide a level of protection that is comparable to or exceeds that of the Riparian Areas Regulation. Therefore if existing bylaws or permits in the local government's opinion meet or beat the Riparian Areas Regulation provisions, then the local government is in compliance with the regulation.

Section 8 of the Riparian Areas Regulation provides that if a local government has bylaws or permits that establish streamside protection and enhancement areas in accordance with the direction in section 6 of the Streamside Protection Regulation, then that local government is deemed to have met the requirements of the Riparian Areas Regulation. However if that local government wants to consider an amendment to those streamside protection and enhancement areas then they must follow the direction in the Riparian Areas Regulation.

#### **f) Does the regulation limit local government's ability to protect streamside areas?**

The regulation will not restrict in any way local governments' ability to increase the level of protection in riparian areas if they so desire. They cannot however reduce it without specific authorization of the Department of Fisheries and Oceans.

The regulation creates a structured, consistent approach to providing what is needed to ensure that development protects fish habitat. Local government remains free to use its powers under the *Local Government Act* to protect other values.

#### **g) Why was it changed from the Streamside Protection Regulation?**

The Streamside Protection Regulation did not provide an efficient and flexible mechanism for site specific determination of appropriate levels of protection of riparian fish values on a consistent basis. The Streamside Protection Regulation was also heavily dependent on government resources for implementation.

The Riparian Areas Regulation approach to urban fish habitat protection is designed to provide certainty and flexibility to development, while not being dependent on limited local, provincial and federal government resources and ensures protection of the province's valuable fisheries resource, and shifting liability to development proponents.

#### **h) What are the similarities and differences between the two models?**

The Streamside Protection Regulation directed local governments to protect riparian areas subject to residential, commercial, or industrial development by establishing streamside protection and enhancement areas in accordance with direction in section 6 of the regulation. The establishment of these streamside protection and enhancement areas was dependent on government resources.

The Streamside Protection Regulation also provided a mechanism for site specific determination of streamside protection and enhancement areas. These were to be determined through direction in an Inter Governmental Cooperation Agreement that each individual local government would have to put in place if they wanted to entertain site specific flexibility. There was no specific direction in the Streamside Protection Regulation on how to determine what an appropriate level of protection on a site specific basis was.

In the Riparian Areas Regulation the cost and responsibility for the determination of streamside protection and enhancement area can be shifted from government to development proponents. With the detailed assessment in the Assessment Methods the Riparian Areas Regulation provides a mechanism for allowing the site specific determination of appropriate levels of protection.

## **2) Implementation**

### **a) Timelines**

The Riparian Areas Regulation came into effect on March 31, 2005. The Ministry of Environment in collaboration with the Union of BC Municipalities and the Department of Fisheries and Oceans has signed the Cooperation Agreement between the Union of BC Municipalities, the Department of Fisheries and Oceans and the Ministry of Environment that sets out the roles and responsibilities of the three partners in implementing the Riparian Areas Regulation

### **b) Roles and Responsibilities**

A Cooperation Agreement in accordance with section 2(b) of the Riparian Areas Regulation has been signed by the Ministry of Environment, the Department of Fisheries and Oceans, and the Union of BC Municipalities that establishes the roles and responsibilities of the three partners in implementation. There is also a description of the roles in the Implementation Guidebook.

### **c) Training staff and Qualified Environmental Professionals**

Training of government staff on their roles and responsibilities in implementing the Riparian Areas Regulation has been delivered. The development of this training occurred in conjunction with the negotiation of a Cooperation Agreement between the Ministry of Environment, the Department of Fisheries and Oceans and the Union of BC Municipalities. Further local government training will be provided as needed.

Training of Qualified Environmental Professionals is available from Vancouver Island University (Malaspina College)([www.mala.ca/faep/aquaculture/courses/rar.htm](http://www.mala.ca/faep/aquaculture/courses/rar.htm)) .

### **d) Notification and confirmation**

The Ministry Environment in collaboration with the Union of BC Municipalities and the Department of Fisheries and Oceans has developed an online electronic system allowing for the submission of and notification to the Ministry of Environment and the Department of Fisheries and Oceans of assessment reports by Qualified Environmental Professionals, and notification back to local governments in accordance with section 4(2)(b) of the Riparian Areas Regulation. The notification system and the template forms for the assessment report can be accessed from the RAR website on the MOE site. There is a description of the system in the Implementation Guidebook.

### **e) Monitoring**

An e-monitoring strategy is being developed to address compliance and effectiveness monitoring. The roles and responsibilities of the three orders of government in conducting and dealing with the results of monitoring are set out in the Intergovernmental Cooperation Agreement.

### **f) Cooperate in developing strategies**

The model is designed to reduce the potential for unacceptable assessments by qualified environmental professionals and the potential for proponents to not follow direction set out in the assessment. This risk management approach was specifically designed to reduce the potential for litigation and minimize local government's liability exposure.

Three major components to this risk management approach are: monitoring to ensure desired results are being attained, post development review and reporting by the Qualified Environmental Professional, and public education in the model and protection of the streamside protection and enhancement areas and measures once implemented. Section 5 of the Riparian Areas Regulation directs local governments to cooperate with the Ministry of Environment and the Department of Fisheries and Oceans in developing strategies to put in place these three components.

### **g) Local government flexibility**

Guidance is provided in the Implementation Guidebook that standardizes this existing practice to allow for site specific flexibility by local governments.

### 3) Process

#### a) **The Union of BC Municipalities involvement**

Section 12 of the *Fish Protection Act* requires that the Ministry of Environment consult with the Union of BC Municipalities. To facilitate this the Ministry of Environment has involved the Union of BC Municipalities on the working group and steering committee in the development of the Riparian Areas Regulation. We believe we have fully met the spirit and intent of the *Fish Protection Act's* requirements for consultation with the Union of BC Municipalities and that we have addressed the issues identified in the 2002 the Union of BC Municipalities Convention endorsement of the proposed regulation (see next question).

#### b) **The Union of BC Municipalities resolution points**

At the Union of BC Municipalities 2002 Annual Convention there was a resolution that supported the proposed new model. Support was subject to resolution of the following issues that the Union of BC Municipalities has consistently emphasized as being important considerations in the development and implementation of the proposed Riparian Areas Regulation.

#### Provide liability protection for local government when making land use decisions based on a report by a Qualified Environment Professional on fish habitat

We have worked within the framework of 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 meter 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 qualified environmental professionals and the potential for proponents to not follow direction set out in the assessment. 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.
- Requirement in the regulation for notifications to senior governments with the results of the assessment.
- Requirement in the regulation for certification by the qualified environmental professionals that they are qualified and have followed the methodology, and their professional opinion on the result of the development on fish habitat from following the assessment prescriptions.
- Requirement in the regulation for final review sign-off and reporting back to senior governments by the qualified environmental professionals on the implementation of the assessment prescriptions.
- Compliance and efficacy monitoring
- Working with the professional associations in the training, responsibility and accountability of their members.

Collectively, these measures will reduce the potential for litigation and minimize local government's liability exposure.

Ensure that no new responsibilities are downloaded on local government and that all training costs and management costs required to implement the new regulation are paid for by either the federal or provincial government

We do not believe that the new model downloads any new responsibilities to local governments and, in fact, anticipate that it will require less local government effort than the current Streamside Protection Regulation. We will be working with the Union of BC Municipalities in the implementation phase of the regulation to ensure that adequate training is delivered to a variety of different parties, including local government.

Ensure the process is timely and cost-effective from the community perspective

The proposed approach will generate consistent and timely advice to local government on whether proposed developments meet federal and provincial fish habitat requirements.

Ensure an integrated approach is implemented to avoid conflicts between the different levels of government

The cooperation agreement among the Union of BC Municipalities, the Province and Fisheries and Oceans Canada will ensure an integrated approach and respect for the roles and responsibilities of each partner in the implementation of the model.

Ensure that a balance is maintained between development and protection of the environment

Protecting riparian fish habitat, while guiding and facilitating urban development that exhibits high standards of environmental stewardship, is a priority for the Government of British Columbia. The proposed approach to urban fish habitat protection provides certainty and flexibility to development, is not dependent on limited local, provincial and federal government resources and ensures protection of the province's valuable fisheries resource.

### **c) Relationship to the Federal *Fisheries Act***

A central design principle for the new Riparian Areas Regulation model was that it satisfy the requirements of the federal *Fisheries Act*. The Department of Fisheries and Oceans has collaborated in the development of the Riparian Areas Regulation to ensure that projects reviewed and constructed in accordance with the Regulation will not result in harmful alteration, disruption, or destruction of riparian fish habitat.

Only the Minister of Fisheries and Oceans or a regulation under the *Fisheries Act* (Canada) can authorize projects that are non compliant with the results of the Riparian Areas Regulation Assessment Methods i.e. will result in harmful alteration disruption or destruction of fish habitat. The Implementation Guidebook includes a chapter that provides direction on how to prepare a proposal for authorization by the Department of Fisheries and Oceans. This helps to provide certainty and consistency in preparing a "no

net loss proposal”, by providing guidance on the situations where a proposal will be considered, and the information required to support a proposal.

#### **d) Assessment design**

The assessment methods include two options, the **simple assessment** and the **detailed assessment**. The simple assessment is basically the direction for developing streamside protection and enhancement areas found in section 6 of the Streamside Protection Regulation. The detailed assessment methodology was developed through consultation with a number of provincial and federal scientists and review of the pertinent literature. In the detailed assessment potential fish habitat impacts are examined in a 30 meter riparian assessment area. The focus of the assessment is on riparian vegetation and its functional role in maintaining fish habitat. It involves a determination of whether and how the site provides those features functions and conditions that maintain fish habitat.

The main functions that the assessment addresses are the role of riparian vegetation in providing wood for in stream channel and fish habitat structure, the role of rooted vegetation in stabilizing the stream banks, the role of the a sites vegetation in providing shade and maintaining stream water temperature, in providing food and nutrients for fish, and in filtering sediment. The assessment also involves developing measures to maintain the integrity of the area providing these functions at the site from the proposed development.

#### **4) Some Key Concepts**

##### **a) Top of Bank vs High Water Mark**

In the Streamside Protection Regulation the streamside protection and enhancement area was measured from the “top of bank” or the “top of the ravine bank”. In the Riparian Areas Regulation the streamside protection and enhancement area and “riparian assessment area” are measured from the “high water mark”. The “riparian assessment area” also goes beyond the “top of the ravine bank”. The high water mark will be located by Qualified Environmental Professionals according to the direction provided in the assessment methods and in the Qualified Environmental Professional assessment training. If a local government has established the “top of bank” according to the Streamside Protection Regulation definition then the “top of bank” can be used in delineating the ‘riparian assessment area’. For the purposes of establishing the “riparian assessment area” the “high water mark” may also be estimated from 1:5,000 or larger scale topographic maps, recognizing the ‘high water mark’ be refined later by the Qualified Environmental Professional when they are conducting their assessment to determine the streamside protection and enhancement area.

##### **b) Channelized Streams**

In the detailed assessment, determining channel type is a key component for determining the role of riparian vegetation in, maintaining channel morphology, and providing fish habitat, along with forming and stabilizing stream banks. The three classic channel morphological types (step-pool, cascade pool, riffle-pool) are easy to distinguish but it becomes more difficult to determine channel types when some form of disturbance is at play: *i.e.* changes in stream flow discharge and sediment/debris loads. This is often

the case with urban streams that have been highly altered. The detailed assessment methodology provides a mechanism to determine channel type using a surrogate for stream power (channel width and slope).

### **c) The Application of Science established on Forested landscapes**

Much of the scientific research and literature investigating and discussing riparian ecosystems and their protection on forested landscapes has application to urban streams because of similarities in ecological values, diversity, hydrology, fish species, and climate. Riparian areas are universally important as fish habitat. The physical properties and functions of water are applicable in urban areas. Fish need clean water, food, and shelter. Riparian vegetation, though varying from species to species, share the same basic needs for light, water, and nutrients whether in the city, the desert, or the mountains.

The functional role of riparian vegetation to aquatic habitats does not change with land use. Different land uses may impact these functions in different ways. The detailed assessment methodology focuses on the determination of the functionality of the riparian vegetation at a site. As a result, the information generated on forested landscapes in determining the functional role of riparian vegetation is applicable to the design and application of the Riparian Areas Regulation Assessment Methods.

## **5) Qualified Environmental Professionals**

### **1. Who is a Qualified Environmental Professional**

A Qualified Environmental Professional is an applied scientist or technologist, acting alone or together with another qualified environmental professional. He or she must be registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association. The applicable professionals are Professional Biologists, Geoscientists, Foresters, and Agrologists. To be able to certify that they are qualified to conduct the assessment methodology, the individual's area of expertise must be recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of the particular development proposal that is being assessed. The individual is considered a Qualified Environmental Professional only for that portion of the assessment that is within their area of expertise, as identified in the assessment methodology.

### **2. What is the liability associated with performing work as a Qualified Environmental Professional under the RAR?**

This model should decrease liability and reduce the potential for litigation from the pre Streamside Protection Regulation situation. The requirement for Qualified Environmental Professionals conducting a science based assessment designed by the two senior governments provides significant liability protection to municipalities. Recognize that in hiring the professional, a relationship is created that attaches liability to the professional. If costs are incurred as a result of the professional negligence of the professional then

there is the ability for civil recourse against them that is generally covered by their Errors and Emissions insurance policy.

The Riparian Areas Regulation has applied risk management strategies to reduce the potential for professional negligence and the potential for litigation. 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.
- Requirement in the regulation for notifications to senior governments with the results of the assessment.
- Requirement in the regulation for certification by the qualified environmental professionals that they are qualified and have followed the methodology, and their professional opinion on the result of the development on fish habitat from following the assessment prescriptions.
- Requirement in the regulation for final review sign-off and reporting back to senior governments by the qualified environmental professionals on the implementation of the assessment prescriptions.
- Compliance and efficacy monitoring
- Working with the professional associations in the training, responsibility and accountabilities of their members

### **3. What is the involvement of professional associations and organizations?**

The professional organizations and associations will be working with us and their members in the implementation of the model. The organizations have a role in ensuring the appropriate accountability mechanisms are in place for their members in undertaking their professional practice. This will involve acting on discipline complaints, and conducting practice reviews and audits. There will be also a training component to the model to help the professionals conduct their responsibilities consistently. The professional associations will be working with us to ensure that training is identified in relation to the needs of their members. The associations will have a role in being a conduit of comments and input from their members in the application of the assessment methodology, which will contribute to the adaptive review of the model. The associations will also have a potential role in providing input on the identification of skill set requirement provided in the assessment methods to help ensure that their members can determine whether they are qualified to undertake the tasks

### **4. Is there training available?**

The RAR training course offered through Vancouver Island University (Malaspina College) is not mandatory for a registered professional to be considered a QEP for the purposes of conducting a riparian areas assessment. The course is strongly recommended so that QEPs can gain specific knowledge on this new regulation and the new level of professionalism it requires. The training course may also qualify as a further education credit that many professional associations require from their membership. Consult with your professional association to confirm.

### **5. How do I know if my report has uploaded properly to the RAR notification system?**

Once a report has been successfully uploaded to the notification system an email will be sent out to MOE, DFO, local governments and to the QEP's email address (as entered into the system). Once you receive the email it is a good idea to check online to make sure that the report uploaded properly. If you do not receive an email, double check the notification system by searching for the report. If you have any doubts that the report uploaded properly, check with ministry staff to make sure there were no problems and that the upload was successful.

[\(Top\)](#)

#### **6. Does RAR apply if the stream is not fish-bearing and drains directly to the marine environment?**

The RAR only applies to watercourses that provide, or connect to, freshwater fish habitat. If it can be proved that the watercourse in question is not fish bearing (presence of impassable barriers or testing following the methods in Appendix 3 of the Assessment Methodology) then the RAR would not apply. Other legislation, such as the *Water Act* or *Fisheries Act* may still apply, and local governments may have bylaws regarding development near the watercourse.

[\(Top\)](#)

#### **7. What if there are hazard trees on an adjacent property that may pose a danger to my client's development?**

Hazard trees are those trees that present a danger to people and/or property and before their removal they must be assessed by a certified hazard tree assessor (who must also be a QEP). If there are concerns with trees on adjacent properties that may be leaning towards the development area, the local government should be contacted as they may have bylaws in place regulating the removal of danger trees.

[\(Top\)](#)

#### **8. When filling out the RAR assessment report forms, which opinion should be signed in section 7?**

When signing the professional opinion to the report two options are given:

- (a) if the development is implemented as proposed there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area, or
- (b) if the streamside protection and enhancement areas identified in the report are protected from the development and the measures identified in the report as necessary to protect the integrity of those areas from the effects of the development are implemented by the developer, there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area

Section 7.2a is signed if the SPEA, as calculated by the assessment methods, is proposed to be varied, either through a Letter of Flex from local government or Letter of Advice from DFO. If section 7.2a is signed, the appropriate letters (letters of support or Letter of Flex from local government, or Letter of Advice from DFO) must be attached and submitted with the report.

If no variance is proposed to the SPEA then section 7.2b should be signed, as it indicates that the SPEA will be protected from development.

If a permit to conduct instream works is obtained under Section 9 of the Water Act, this is not considered a variance to the SPEA setbacks, even though work may be conducted within the SPEA. The opinion should still be signed to section 7.2b.

[\(Top\)](#)

**9. Has the Department of Fisheries and Oceans (DFO) signed off on the RAR science paper?**

The RAR “science paper” describes the scientific rationale for the assessment methodology jointly developed by MOE and DFO. The two agencies have completed the document together.

[\(Top\)](#)

**10. What happens when a QEP finds that a water system does not provide fish habitat, although it may have other ecological benefits?**

If a watercourse does not meet the definition of a “stream” under the RAR, a QEP must still consider other legislation such as the Wildlife Act or Species at Risk Act.

[\(Top\)](#)

**11. How can a QEP monitor a site if they were not the ones to sign off on the original RAR report? What action can a QEP take if the developer is not following the recommendations set out in the report?**

The QEP would monitor the site based on the measures and recommendations set out in the original RAR report. If any changes are made during development that would require a new submission, the report would be linked to the original assessment through the PID which would remain the same for the development property. When submitting an amendment or post-development report the number of the original RAR assessment should be clearly highlighted in the report.

If a developer is not following the recommendations in the report the QEP should inform the developer and report on the developer’s non-performance in the post-development report. If damage to fish habitat has occurred, the QEP should report it to the appropriate authority.

[\(Top\)](#)

**12. Who is responsible for ensuring post-development reporting takes place, and how should these reports be submitted?**

Developers are responsible for ensuring a post-development is submitted by a QEP. In the original RAR report, the QEP needs to clearly state the developer’s obligation to have a post-development report completed and should verbally inform their client of this obligation.

QEPs should submit the post-development report under the original assessment number in the RAR Notification System. If the QEP performing the post-development report is not the same QEP who submitted the original, then they will have to submit it under a new assessment number and clearly state the original RAR number on it.

[\(Top\)](#)

**13. There are several Wildlife/Danger Tree Assessor certifications, which one is recognized under RAR?**

The Parks and Recreation Module.

[\(Top\)](#)

**14. In the spring/summer of 2007, the BC Conservation Corps members were assessing RAR reports, how were they qualified to do so? And, were QEPs notified if a report they submitted was one checked by these students?**

The Conservation Corps members were assessing both the RAR process and compliance with the RAR. If a non-compliance was suspected, it was immediately handed off to MOE Regional staff who would confirm the result. The intention of the Corps monitoring work was not to be punitive, but to provide data for the RAR monitoring program. The lead members of the crew have backgrounds and university degrees in fish biology and stream restoration techniques. All crew members were trained extensively in RAR Assessment methodology prior to beginning the monitoring and Ministry staff randomly confirmed the assessments of the crew.

[\(Top\)](#)

**15. What is the protocol for applying for undue hardships? When variance applications are being reviewed, what mitigating factors are considered?**

The proponent, with the QEP, should seek support from the local government. If there are no opportunities to relax other setbacks to accommodate the SPEA, then the local government can provide support of an undue hardship. This letter of support should accompany the application made to DFO to reduce the setback. If DFO grants approval through a Letter of Advice, this letter should accompany the submitted RAR assessment. When variance applications are being reviewed existing habitat deficiencies and undue hardship are the two mitigating factors considered.

[\(Top\)](#)

**16. Is 'undue hardship' a legal definition?**

No, but it is a legal principle. Discretion is always up to the LG when a property owner feels that the land cannot be used in the way it was intended. It is important to note that sterilization of the land constitutes an undue hardship, maximizing economic potential does not. Please see the RAR website for more information on undue hardship.

[\(Top\)](#)

**17. What happens if a QEP cannot obtain permission from a neighbouring property owner to gain access in order to complete a RAR assessment?**

They should work with the local government, as the local government can give permission to access the land.

[\(Top\)](#)

**18. Is the Malaspina University College's Riparian Areas Regulations course required for QEPs?**

No, but it is highly recommended.

[\(Top\)](#)

**19. Are stormwater detention ponds considered under the RAR?**

An assessment would need to be done, but it is recommended that the local government be contacted for clarification and consultation.

[\(Top\)](#)

**20. Are there any provisions made for shoreline trail access?**

No, the DFO expects that the shoreline will be left in a natural state. If a trail must be located within the SPEA, DFO must provide a Letter of Advice.

[\(Top\)](#)

**21. If a reach is less than 100m long, how should it be assessed using the Detailed Assessment methods?**

The RAR Assessment Methods state that 11 Bank Full Width measurements must be taken at 10m intervals, and the 9 median measures used to determine mean BFW. If a reach is less than 100m long, it is recommended that 11 measurements be taken at shorter intervals (e.g. at 5m or 2m) so that outliers can still be discarded when calculating the mean. If this is still not feasible, then as many measurements should be taken as possible.

[\(Top\)](#)

**22. What do I do if I discover errors in the report after it was submitted to RARNS?**

When errors are discovered in the report an amended report can be submitted to the system under the same assessment number as the original report. When the RARNS receives the modified assessment report a notification is sent to the government staff. All versions of the assessment reports are retained on the system.

[\(Top\)](#)

**23. What do I do if an amended report needs to be submitted due to changes in the development proposal?**

To submit an amended report see question above.

## **Landowners and Developers**

**1. What is a 'riparian area' and why is it important to protect it?**

Riparian areas are the areas bordering on ditches, streams, lakes and wetlands that link aquatic to terrestrial areas. The blend of trees, shrubs and grasses directly influences and provides in-stream fish habitat. Trees provide shade and shelter from predators, as well as a home and food for the insects that are food for fish. The riparian area provides wood and debris, such as leaves, to the stream that provide shelter and nutrients. A healthy riparian area also protects water quality by filtering rainwater and runoff, slowing flow from heavy rains. Spongy soils soak up excess water and release it slowly, protecting against flooding and erosion. The Riparian Areas Regulation was enacted under Section 12 of the *Fish Protection Act* to maintain British Columbia's valuable fisheries resources, but protecting these sensitive areas is also beneficial to many other types of wildlife, including rare plants, amphibians and birds. Riparian areas are often more productive than adjoining upland and are a critical source of British Columbia's biodiversity.

[\(Top\)](#)

**2. How do I know if the Riparian Areas Regulation applies to my development?**

A list of local governments where the RAR applies is listed on the RAR website ([http://www.env.gov.bc.ca/habitat/fish\\_protection\\_act/riparian/documents/TablewithLocalGovernments.pdf](http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/TablewithLocalGovernments.pdf)). Before beginning any development, it is important to check with your local government to determine all applicable regulations and requirements for developments within their jurisdiction. If you live within a district where the RAR applies, and your development activity will be within 30m of the high water mark of a stream, river, creek, ditch, pond, lake, spring or wetland then the RAR will apply to your development. If there is a watercourse in a ravine on your property, and the ravine is less than 60m wide then the RAR applies and an assessment is required if activities will occur within 30m of the top of the ravine bank. If the ravine is more than 60m wide then an assessment is required if development activities will be within 10m of the top of the ravine bank.

The types of developments to which the RAR applies are **residential, commercial and industrial activities, or ancillary activities**, as regulated by Part 26 of the *Local Government Act* 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 or development variance permit issued only for the purpose of enabling reconstruction or repair of a permanent structure described in section 911 (8) of the *Local Government Act* if the structure remains on its existing foundation.

It 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.

### **3. What am I required to do if the RAR applies to my development?**

If the RAR applies to a development activity then an assessment must be performed by a Qualified Environmental Professional (QEP) to determine setbacks from the watercourses and measures to protect them. Both the QEP and developer are required to sign off on the assessment report, which is then submitted to the local government, Ministry of Environment, and Fisheries and Oceans Canada via the RAR notification system. By agreeing to follow the recommendations outlined in the assessment report, liability under the federal *Fisheries Act* is reduced, as this is considered due diligence against causing a Harmful Alteration, Disruption or Destruction (HADD) of fish habitat.

Once the original report is prepared and agreed to, the recommendations for monitoring outlined in the report must be followed by the developer during development. At the completion of the project, the landowner must ensure that a QEP submits a post-development report indicating whether or not the measures and setbacks were adhered to during development.

[\(Top\)](#)

#### **4. What is a QEP?**

A Qualified Environmental Professional (QEP) is defined under the Riparian Areas Regulation as an applied scientist or technologist, acting alone or together with another qualified environmental professional, who is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association's code of ethics and subject to disciplinary action by that association.

The applicable professionals are Professional Biologists, Geoscientists, Foresters, Agrologists, and Technicians in the ASTTBC. To be able to certify that they are qualified to conduct the assessment methodology, the individual's area of expertise must be recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of the particular development proposal that is being assessed. The individual is considered a Qualified Environmental Professional only for that portion of the assessment that is within their area of expertise.

[\(Top\)](#)

#### **5. How do I find a QEP to carry out an assessment?**

To find a QEP who has undertaken training specific to the Riparian Areas Regulations you can contact the Fisheries Extension Program at Vancouver Island University (Malaspina College) or visit <http://www.mala.ca/nrep/environment/rar>. The yellow pages or other business listings for your area can also direct you to environmental consulting companies who may have staff qualified to perform the assessments.

[\(Top\)](#)

#### **6. What is a SPEA, and what does it mean for my property?**

The Streamside Protection and Enhancement Area (SPEA) is determined by the QEP when conducting an assessment. This area is determined based on the characteristics of the watercourse and is designed to protect the features, functions and conditions of the riparian area that provide fish habitat, such as shade, nutrients, food, bank stability and cover. No development, including vegetation removal or alteration of soils and dumping, is allowed within the SPEA. Some activities, such as restoration or planting of native species are permitted within this area; for more information on allowed activities see the RAR Implementation Guidebook:

[http://www.env.gov.bc.ca/habitat/fish\\_protection\\_act/riparian/documents/ImplementationGuidebook.pdf](http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/ImplementationGuidebook.pdf)

Any prior uses that exist within the SPEA, for example regular maintenance of a yard or lawn, or pre-existing permanent structures, may remain in use as long as their use and footprint doesn't change. These structures and uses are considered to be 'grandparented' and regardless of whether they are now located within a SPEA they can continue to be used as they have always been.

[\(Top\)](#)

#### **7. What can I do if the SPEA doesn't leave me enough room to build?**

It is strongly recommended that a QEP assessment be completed early in the development process so that the project is designed to avoid impacts to fish habitat by remaining outside of the SPEA. Once the SPEA width is established, if the project cannot be redesigned to accommodate the setback, other options may be explored with the local government, such as variances to other setbacks for the front, side or back yards, changes in height restrictions and other conditions for development. The SPEA boundary may also be 'bent' or 'flexed' by the local government if certain conditions can

be met. If the SPEA setback prescribed through the methodology restricts the site so that there is no buildable area, with a letter of support from local government DFO can be consulted to determine other options. For more information on varying the SPEA to accommodate development, see the RAR Implementation Guidebook:

[http://www.env.gov.bc.ca/habitat/fish\\_protection\\_act/riparian/documents/ImplementationGuidebook.pdf](http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/ImplementationGuidebook.pdf)

[\(Top\)](#)

#### **8. I have trees on my property that may cause a hazard- can I have them removed?**

If the trees are within 30m of the high water mark of a watercourse that connects to or provides fish habitat, removing trees is considered to be 'development' and is subject to the RAR. It is important to check with your local government to determine what permits they require for the removal of hazard trees. In order for a tree to be removed it must first be assessed by a certified danger tree assessor (who must also be a QEP) and determined to be hazardous to people and/or property. If the tree is within the Streamside Protection and Enhancement Area it must be left on the ground after being felled to provide nutrients and large woody debris to the stream. All trees removed must be replanted according to provincial criteria. Regardless of the timing, guidelines for hazard tree removal should follow Section 3.7.1 of the RAR Assessment Methodology: ([http://www.env.gov.bc.ca/habitat/fish\\_protection\\_act/riparian/documents/assessment\\_methods.pdf](http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/assessment_methods.pdf)) and the RAR Implementation Guidebook.

[\(Top\)](#)

#### **9. The only watercourse on my property is a ditch- why do I have to pay for an assessment?**

Any watercourse that is connected by surface flow to fish-bearing water is considered a 'stream' under the RAR, including ditches. Many ditches are actually not 'ditches' at all, but naturally occurring streams that have been straightened or channelized. These would be treated as streams using the RAR assessment methods.

Even true ditches that are man-made and do not have significant natural headwaters, but are fed by groundwater or runoff, provide important nutrients and flow to downstream fish habitat. Some ditches actually provide important habitat themselves, and serve as rearing and over-wintering places for fish. Having an assessment performed by a QEP will set a SPEA width that is appropriate for the watercourse in question, and this setback will help ensure that runoff water will be filtered before entering the ditch, prevent bank erosion, and provide a supply of important nutrients.

Setbacks for ditches will never exceed 10m, and for ditches that are not fish bearing or directly provide fish habitat, the setback will never exceed 2m in width. The assessment provided by the QEP will also provide important guidelines to follow during development to prevent sediment and other substances from entering the watercourse, provide tree protection, proper management of stormwater and other applicable measures.

[\(Top\)](#)

#### **10. If other properties along the watercourse have cleared and/or built down to the shoreline, why do I have to follow the setbacks?**

Past developments, which were approved prior to enforceable guidelines regarding watercourse protection, may have been constructed to standards that were not environmentally sustainable. RAR setbacks are determined through science-based methodology that takes into account the characteristics of the watercourse and

vegetation type, which reflects the potential site conditions, not current site conditions. By not allowing the placement of new permanent structures within the SPEA the RAR helps to preserve these areas for future restoration. Additionally, even if most of the riparian area bordering a watercourse has been compromised, preservation of riparian area on one property can still provide shade, nutrients and cover to part of the watercourse.

[\(Top\)](#)

### **11. Who ultimately approves my development?**

In order to meet the requirements of the provincial and federal governments for protecting fish habitat, a developer or landowner must have an assessment conducted by a QEP to determine development setbacks and measures to protect riparian areas on their property. This assessment is one part of the development permit review process of local governments. The decision to approve the development is ultimately with the local government and depends on many factors, of which RAR compliance is only one.

[\(Top\)](#)

## **Local Governments**

### **1. What do local governments need to do to implement the RAR?**

The Riparian Areas Regulation directs local government to use as a minimum either inclusion of riparian area provisions in zoning bylaws in accordance with the direction in the RAR Section 4, or to use the tools available to them under section 26 of the Local Government Act that in the opinion of the local government provides a level of protection that is comparable to or exceeds that established by RAR Section 4.

RAR Section 4 specifies that the following conditions must be met prior to allowing development to occur in the “riparian assessment area” (as defined):

- 1) A qualified professional:
  - a) certifies that they are qualified to conduct the assessment (attached as a schedule to the regulation),
  - b) certifies that the assessment methods have been followed and
  - c) provides their professional opinion that there will be no harmful alteration, destruction, or disruption of natural features, functions and conditions (as defined) that support fish life processes in the riparian assessment area, and
  - d) the local government is notified by the Ministry of Environment, that the Ministry of Environment and the Department of Fisheries and Oceans have been notified of the development proposal, and provided with a copy of the assessment report prepared by a qualified environmental professional that meets the conditions in a), b), and c), or
- 2) A Department of Fisheries and Oceans authorization for the development.

**In order for a local government to begin receiving notifications from the Ministry of Environment the local government obtain a Business BCeID account. For more information, contact the [RAR administrators](#).**

[\(Top\)](#)

## **2. What types of land are not affected by RAR?**

Federal lands and First Nations reserve lands are exempt from the RAR to the extent that they are already exempt from local government bylaws. Marine areas and estuaries are not subject to the RAR, but all of the above are still subject to the federal Fisheries Act. Otherwise, it is not the land zoning, but the development activity that triggers RAR. RAR applies to residential, commercial, and industrial activities that are regulated by local government. Therefore institutional developments, mining activities, hydroelectric facilities and forestry activities are not subject to the RAR. While the Regulation does not apply to some farming activities, it does apply to non-farming activities on lands that are designated for agriculture. For example, a house built on ALR land would be subject to the RAR, but a barn would not. For more information on what types of development the Regulation does not apply to, see Section 1.4 of the RAR Implementation Guidebook:

[http://www.env.gov.bc.ca/habitat/fish\\_protection\\_act/riparian/documents/ImplementationGuidebook.pdf](http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/ImplementationGuidebook.pdf)

[\(Top\)](#)

## **3. What about lands that are not applicable to the RAR, like agricultural, institutional, and Private Forest Land?**

These lands are regulated, but not through the RAR. It is important to note that the *Water Act* and *Fisheries Act* will still apply. If issues arise on PFL those concerned can file a complaint to the Private Forest Land council. Regardless of how the land is zoned, RAR is triggered by development activity, as defined in the regulation. For example, construction of a single family residence on land zoned for agriculture would be subject to RAR, since it is a residential development activity, but construction of a barn or other outbuildings used for agriculture would not be subject to RAR.

[\(Top\)](#)

## **4. Does RAR apply when a development is being built outside the 30 meter setback, but ancillary activity is anticipated within the 30 meters?**

Yes, the Regulation applies to residential, commercial or industrial activities or ancillary activities within 30 m of a stream (as defined in the Regulation). Ancillary activities are considered development under the RAR.

[\(Top\)](#)

## **5. If a property owner asks for a permit 40 meters away from the stream, the municipality may not be qualified to know if building on the lot will impact the 30 meter setback. How do we proceed?**

If there is no development proposed within the 30m Riparian Assessment Area, then the RAR is not triggered. This does not preclude the local government from providing more riparian protection if they choose to. The local government should ensure that the developer understands that if development is proposed to occur within 30 m of the watercourse, then the RAR applies.

[\(Top\)](#)

## **6. Do RAR approvals come from MOE?**

No. During the initial implementation phase, MOE is reviewing all assessments and notifying local governments when the individual reports have been accepted for content. Once a local government receives this notification, they may issue a development permit at their discretion.

[\(Top\)](#)

**7. If the LG has the discretion to bend the SPEA, how does the LG approve the area to be bent without the correct expertise?**

The QEP provides the expertise and the local government ensures the criteria are met as outlined in Section 3.4.1 of the Implementation Guidebook.

[http://www.env.gov.bc.ca/habitat/fish\\_protection\\_act/riparian/documents/ImplementationGuidebook.pdf](http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/ImplementationGuidebook.pdf)

[\(Top\)](#)

**8. To whom should local governments address Letters of Flex/Letters of Support?**

Letters of Flex should be addressed to the Province of British Columbia, and the name of the Ministry of Environment staff person for regions or headquarters should be used. The standard format for a Letter of Flex can be found in Appendix 3 of the RAR Implementation Guidebook. Letters of Support indicate that the local government considers the proponent unable to use their property for its intended use, and is used when applying to DFO for a Letter of Advice. As such, these letters may be addressed to the regional DFO staff responsible for RAR or to the QEP responsible for submitting the application.

[\(Top\)](#)

**9. Will the regulation limit local government's ability to protect streamside areas?**

The regulation will not restrict in any way local governments' ability to increase the level of protection in riparian areas if they so desire. They cannot however reduce it without specific authorization of the Department of Fisheries and Oceans.

The regulation creates a structured, consistent approach to providing what is needed to ensure that development protects fish habitat. Local government remains free to use its powers under the *Local Government Act* to protect other values.

[\(Top\)](#)