


ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. → **837** , Approved and Ordered **JUL 27 2004**



Lieutenant Governor


Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 31, 2005,

- 1 *the Streamside Protection Regulation, B.C. Reg. 10/2001, is repealed, and*
- 2 *the attached Riparian Areas Regulation is made.*



Minister of Water, Land and Air Protection



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Fish Protection Act, S.B.C. 1997, c. 21, ss. 12, 13 (1) and 37 (2)

Other (specify):- oic 34/2001

June 9, 2004

Resub 740/2004/8

RIPARIAN AREAS REGULATION

Definitions and interpretation

1 (1) In this regulation:

“**Act**” means the *Fish Protection Act*;

“**active floodplain**” means an area of land that supports floodplain plant species and is

- (a) adjacent to a stream that may be subject to temporary, frequent or seasonal inundation, or
- (b) within a boundary that is indicated by the visible high water mark;

“**assessment methods**” means the methods set out in the Schedule;

“**assessment report**” means a report prepared in accordance with the assessment methods to assess the potential impact of a proposed development in a riparian assessment area and which is certified for the purposes of this regulation by a qualified environmental professional;

“**development**” means any of the following associated with or resulting from the local government regulation or approval of residential, commercial or industrial activities or ancillary activities to the extent that they are subject to local government powers under Part 26 of the *Local Government Act*:

- (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*;

“**development proposal**” means any development that is proposed in a riparian assessment area that is within or partly within the boundaries of an area administered by a local government;

“**fish**” means all life stages of

- (a) salmonids,
- (b) game fish, and
- (c) regionally significant fish;

“**floodplain plant species**” means plant species that are typical of an area of inundated or saturated soil conditions and that are distinct from plant species on freely drained adjacent upland sites;

“**high water mark**” means the visible high water mark of a stream where the presence and action of the water are so common and usual, and so long continued

in all ordinary years, as to mark on the soil of the bed of the stream a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself, and includes the active floodplain;

“ministry” means the Ministry of Water, Land and Air Protection;

“natural features, functions and conditions” include but are not limited to the following:

- (a) large organic debris that falls into the stream or streamside area, including logs, snags and root wads;
- (b) areas for channel migration, including active floodplains;
- (c) side channels, intermittent streams, seasonally wetted contiguous areas and floodplains;
- (d) the multicanopied forest and ground cover adjacent to streams that
 - (i) moderates water temperatures,
 - (ii) provides a source of food, nutrients and organic matter to streams,
 - (iii) establishes root matrices that stabilize soils and stream banks, thereby minimizing erosion, and
 - (iv) buffers streams from sedimentation and pollution in surface runoff;
- (e) a natural source of stream bed substrates;
- (f) permeable surfaces that permit infiltration to moderate water volume, timing and velocity and maintain sustained water flows in streams, especially during low flow periods.

“permanent structure” means any building or structure that was lawfully constructed, placed or erected on a secure and long lasting foundation on land in accordance with any local government bylaw or approval condition in effect at the time of construction, placement or erection;

“qualified environmental professional” means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if

- (a) the individual 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,
- (b) the individual’s area of expertise is 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 that development proposal, and
- (c) the individual is acting within that individual’s area of expertise;

“ravine” means a narrow, steep-sided valley that is commonly eroded by running water and has a slope grade greater than 3:1;

“riparian area” means a streamside protection and enhancement area;

“riparian assessment area” means

- (a) for a stream, the 30 meter strip on both sides of the stream, measured from the high water mark,
- (b) 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

- (c) 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;

“stream” includes any of the following that provides fish habitat:

- (a) a watercourse, whether it usually contains water or not;
- (b) a pond, lake, river, creek or brook;
- (c) a ditch, spring or wetland that is connected by surface flow to something referred to in paragraph (a) or (b);

“streamside protection and enhancement area” means an area

- (a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream, and
- (b) the size of which is determined according to this regulation on the basis of an assessment report provided by a qualified environmental professional in respect of a development proposal;

“top of the ravine bank” means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 meters measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed;

“wetland” means land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, fens, estuaries and similar areas that are not part of the active floodplain of a stream.

- (2) For the purposes of the definition of **“streamside protection and enhancement area,”** vegetation must be considered to be “potential” if there is a reasonable ability for regeneration either with assistance through enhancement or naturally, but an area covered by a permanent structure must be considered to be incapable of supporting potential vegetation.

Purposes of this regulation

2 The purposes of this regulation are

- (a) to establish directives to protect riparian areas from development so that the areas can provide natural features, functions and conditions that support fish life processes, and
- (b) to facilitate an intergovernmental cooperation agreement between the ministry, Fisheries and Oceans Canada and the Union of British Columbia Municipalities including the ability for individual intergovernmental cooperation agreements with local governments for any of the following:
 - (i) the implementation of this regulation;
 - (ii) the confirmation of regionally significant fish by the Ministry of Water, Land and Air Protection;
 - (iii) providing, sharing or confirming information on fish habitat conditions;

- (iv) describing roles and responsibilities with reference to applicable and appropriate use of authority and program mandates;
- (v) dispute resolution;
- (vi) a compliance strategy, including education, training, monitoring, reporting, enforcement and auditing.

Application

- 3
- (1) This regulation applies to the exercise of local government powers by local governments under Part 26 of the *Local Government Act* in those local government areas to which this regulation applies.
 - (2) This regulation 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.

Assessment reports required before development

- 4
- (1) In respect of development proposals related wholly or partially to riparian assessment areas within the jurisdiction of a local government, a local government must not approve or allow development to proceed in those riparian assessment areas unless the development proceeds in accordance with subsection (2) or (3).
 - (2) A local government may allow development to proceed if
 - (a) a qualified environmental professional carries out an assessment and certifies in the assessment report for that proposal that he or she is qualified to carry out the assessment, that the assessment methods have been followed, and provides their professional opinion that
 - (i) 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
 - (ii) 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, and
 - (b) the local government is notified by the ministry that Fisheries and Oceans Canada and the ministry have been
 - (i) notified of the development proposal, and
 - (ii) provided with a copy of an assessment report prepared by a qualified environmental professional that
 - (A) certifies that he or she is qualified to carry out the assessment,
 - (B) certifies that the assessment methods have been followed, and
 - (C) provides a professional opinion, that meets the requirements of subsection (2) (a) (i) or (ii), as to the potential impact of the

development on the natural features, functions and conditions that support fish life processes in the riparian assessment area.

- (3) A local government may allow development to proceed if the Minister of Fisheries and Oceans or a regulation under the *Fisheries Act* (Canada) authorizes the harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area that would result from the implementation of the development proposal.

Development of strategies for monitoring, enforcement and education

- 5 The local government must cooperate in developing strategies with the ministry and Fisheries and Oceans Canada
 - (a) for obtaining certificates by qualified environmental professionals that the conditions set out in assessment reports have been properly implemented,
 - (b) for monitoring and enforcement to ensure that assessment reports have been properly prepared in accordance with the assessment methods and properly implemented, and
 - (c) for public education with respect to the protection of riparian areas.

Use of local government powers for protection and enhancement of areas

- 6 When exercising its powers with respect to development, a local government must protect its riparian areas in accordance with this regulation.

Preparation of assessment report by qualified environmental professional

- 7 An assessment report for the purposes of this regulation must employ the assessment methods set out in the Schedule and must report on all of the following:
 - (a) the width of the streamside protection and enhancement area which must be protected, and
 - (b) the measures necessary to protect the integrity of the streamside protection and enhancement area.

Transitional

- 8
 - (1) In this section, “**former regulation**” means the Streamside Protection Regulation, B.C. Reg 10/2001.
 - (2) If, before this regulation came into force, a local government had established streamside protection and enhancement areas in accordance with the former regulation, the local government is deemed to have met the requirements of this regulation in respect of those areas.
 - (3) Despite section 6 (5) of the former regulation, an amendment of a streamside protection and enhancement area referred to in subsection (2) of this section must be in accordance with this regulation.

SCHEDULE
ASSESSMENT METHODS

Pursuant to section 6 of the Regulations Act, the schedule of assessment methods attached to B.C. Reg. 376/2004 is exempt from publication. □□□□