



May 23, 2006

Richard Taylor, Executive Director
Union of BC Municipalities
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Dear Richard:

Staff of the Ministry of Environment (MOE) and the federal Department of Fisheries and Oceans (DFO) met March 31, 2006 to discuss what role Environmental Review Committees (ERCs) will play in making amendment or variance decisions in view of the requirement for compliance with the Riparian Areas Regulation (RAR) under the *Fish Protection Act* (BC). Both agencies can now provide the following direction.

1. Those setbacks or Streamside Protection and Enhancement Areas (SPEAS) established by local governments in compliance with sections 6(1)-(4) of the former Streamside Protection Regulation (SPR) under the *Fish Protection Act* (BC) which were in place prior to the RAR coming into force on March 31, 2005 are deemed to be in compliance with the RAR. This is contemplated by section 8(2) of the RAR:

"8(2) If, before this regulation (the RAR) came into force, a local government had established streamside protection and enhancement areas in accordance with the former regulation [SPR], the local government is deemed to have met the requirements of this regulation [RAR] in respect of those areas."

2. However, as provided in section 8(3), any amendment or variance to any of the SPEAS must be consistent with the RAR:

"8(3) Despite section 6 (5) of the former regulation [SPR], an amendment of a streamside protection and enhancement area referred to in subsection (2) of this section must be in accordance with this regulation [RAR]"

3. To ensure compliance, when a local government is considering amending or varying SPR transitioned SPEAs, the RAR must be followed, including the conditions for approval in section 4 of the RAR. Local governments can continue to utilize existing ERCs when considering amendment or variance of SPR

transitioned SPEAs as long as the ERC follows the RAR in making its decision or recommendation. This means that the ERC must when making its decision or recommendation consider the results of a detailed QEP conducted assessment confirmed by MOE as meeting the conditions in section 4(2) of the RAR or a HADD authorization from DFO must be obtained as contemplated by section 4(3) of the RAR.

4. In its deliberation, the ERC needs to ensure that the outcome from amendment or variance will not provide less protection than would result from the detailed QEP conducted assessment (SPEA and measures). However, the ERC may decide on a result that would provide additional protection beyond that required by the RAR, such as at a level that is between the results of the RAR (SPEA and measures) and the results of the SPR transitioned SPEA. In that regard, it is recognized that other variables, factors and values may be, and quite often are, considered by a local government or an ERC in making an amendment or variance decision, and hence the level of protection afforded by the results of the detailed QEP conducted assessment may not address those other values. While the results of the detailed assessment were designed to help ensure that development does not result in a HADD to riparian fish habitat, it is recognized that protection levels in excess of the detailed assessment may be considered to address those other values including fish habitat.

5. However, section 3.4 of the Implementation Guidebook describes three situations where an amendment or variance can provide less riparian area protection than what would result from the application of the detailed QEP conducted assessment. These three are:

- a) A local government avails itself of the "flex option" as described in section 3.4.1 of the Implementation Guidebook, or
- b) DFO provides a letter of advice as per section 3.4.2 of the Implementation Guidebook, or
- c) DFO authorizes a HADD under the *Fisheries Act* (Canada) as per section 3.4.2 of the Implementation Guidebook and section 4(3) of the RAR.

6. If a local government avails itself of the local government "flex option", a letter from the local government (see Implementation Guidebook appendix) must be attached by the QEP to their report and submitted with their report to the MOE RAR notification system.

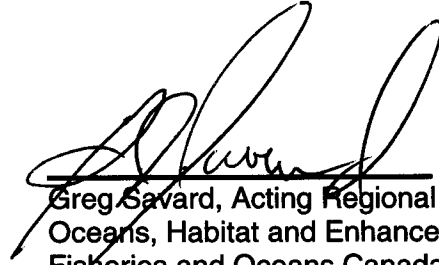
7. DFO may issue a letter of advice if DFO believes that, even though the amendment or variance departs from the results of the detailed QEP conducted assessment, it does not result in a HADD. The QEP is expected to attach the letter of advice to their report and submit it with their report to the MOE RAR notification system.

8. Section 4 of the RAR allows a local government to approve or allow a development to proceed even if the amendment or variance would result in a HADD, provided DFO has issued an authorization for the HADD under the *Fisheries Act* (Canada). DFO will provide the letter of authorization directly to the local government. In this case no letter or QEP report is submitted to the MOE RAR notification system.

We hope this provides the required clarification for the role of ERCs in generating RAR compliant amendments or variances.



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