April 7, 2011

To:

Salt Spring Island Local Trust Committee

Re – Proposed Changes to Official Community Plan with respect to Riparian Area Regulation ("RAR")

Dear Trustees,

I wish to bring to your attention the following opinion regarding the question -

"Is the SSILTC already in compliance with the RAR?"

Background

Fish Protection Act

In July, 1997, the provincial government enacted Bill 25, the Fish Protection Act (SBC 1997) ("FPA"), to give effect to the Federal government's regulations under the Fisheries Act.

The FPA enabled the province to establish policy directives to local governments regarding the protection and enhancement of riparian areas within their jurisdictions.

Section 12(4) (a) of the FPA [1] requires a local government must include in its zoning and rural land use bylaws riparian area protection provisions in accordance with the directive (e.g. SPR or RAR).

In the alternative, Section 12(4)(b) required local governments to: "….ensure that [their] bylaws and permits under Part 26 of the *Municipal Act…*as applicable, provide[d] a level of protection that, **in the opinion of the local government**, is comparable to or exceeds that established by the directive." (emphasis added)

This is in accordance with other sections of the Local Government Act (e.g. 905.1(6)(c), 948.1(a), 958.1, 959.1, 960.1, etc.) which give local governments some discretion to form their "**own opinion(s)**" on certain matters. In the varying circumstances, it is reasonable to assume those opinions, because they are opinions, may be different than specific standards set by provincial directives, such as the FPA or RAR, otherwise the mentioned sections would not allow for an opinion by the local government to be binding in those matters.

This suggests the Legislature, in the passing of the FPA, was consciously allowing local governments the discretion to think for themselves, and, to form judgments based on local circumstances and considerations.

Official Community Plans Generally

Since amendments made to the Municipal Act in 1997, Official Community Plans ("OCP's"), may designate development permit areas for the "protection of the natural environment, its ecosystems and biological diversity;" (see – LGA Section 919.1(a))

Development Permits Generally

As you know, among other things, OCP's function as the basis and framework for a system of development permits. Development permits are site-specific permits, the issuance of which can be made a condition precedent to alteration or development of a parcel for which a development permit is required by the relevant OCP.

The power to impose requirements or conditions, or to set standards, in a development permit is broad. A development permit may, under section 920 (7), in relation to environmentally sensitive areas:

> (a) ***specify areas of land*** that must remain free of development, except in accordance with any conditions contained in the permit;
> (b) require ***specified natural features or areas*** to be preserved, protected, restored or enhanced in accordance with the permit;
> (c) require ***natural water courses*** to be dedicated;
> (d) require works to be constructed to preserve, protect, restore or enhance ***natural water courses or other specified natural features*** of the environment;
> (e) require protection measures, including that ***vegetation or trees*** be planted or retained in order to
>
> (i) preserve, protect, restore or enhance ***fish habitat or riparian areas***,
> (ii) control drainage, or
> (iii) control erosion or ***protect banks***.

This allows a local government to regulate setbacks, site coverage, tree-cutting, erosion control, drainage control and other matters through the designation of a development permit area ("DPA") and a development permit ("DP") in specific and discrete areas.

Salt Spring Island Official Community Plan (Bylaw #434)

On June 10, 1998, the Salt Spring Island Local Trust Committee, in the passing of its new Official Community Plan, established Development Permit Area 4 ("DPA4"), under the provisions of Section 879 (1) (a) of the Municipal Act (now Section 920.1 of the Local Government Act).

Bylaw 434 at page 25:

> *Development Permit Area 4 is designated according to Section 879 (1) (a) of the Municipal Act to protect the natural environment."*

On page 26, can be found Section *E.4.2 - Reasons for this Development Permit Area:*

> *E.4.2.1 The lakes and streams in this Development Permit Area provide natural fish and wildlife habitat. Many also supply drinking water to individual license holders or community water supply systems. If not carefully managed, development in this Area could result in degradation of water quality. Poor water quality would be detrimental to fish and wildlife populations and could lead to increased costs for remedial drinking water treatment.*
>
> *E.4.2.2 This Development Permit Area contains riparian habitat that is important to many different species and is particularly susceptible to disturbance. Development in this Area could lead to the disturbance or loss of a disproportionately large number of different native plant and animal species.*

Section *E.4.3 Objectives of this Development Permit Area*:

> *E.4.3.1 To protect the quality of drinking water supplies.*
> *E.4.3.2 To protect fish habitat.*

E.4.3.3 To protect sensitive riparian habitat and the unique species that depend upon it.

According *Section E.4.1.* "…*within the DPA4 area, prior to development, permission, in the form of a Development Permit, must be obtained from the Islands Trust [respecting] the following activities:*

> *a. Removal of trees within 10 m of the natural boundary of a lake or a stream (or within 300 m of Maxwell Lake).*
> *b. Removal of other vegetation within 10 m of the natural boundary of a lake or stream (or within 300 m of Maxwell Lake) that results in the exposure of a total area of bare soil more than 9 m2 in area.*
> *c. Removal of vegetation in a wetland.*
> *d. Installation of a septic field within 61 m of the natural boundary of a lake (or within 300 m of Maxwell Lake).*
> *e. Development of an impervious surface within 10 m of the natural boundary of a lake or a stream (or within 300 m of Maxwell Lake).*
> *f. Any works or installation of structures within a stream or below the natural boundary of a lake.*
> *g. The subdivision of land parcels that create additional new lots within this Development Permit Area."*

It is clear, DPA4 was created to:

(a) protect fish habitat;
(b) protect sensitive riparian habitat and the unique species that depend upon it;
(c) manage development within sensitive areas;
(d) establish 10 meter – 300 meter streamside protection areas on Salt Spring;
(e) take into account the differences between the fragility of different water bodies.

Streamside Protection Regulation

In January 2001, the first policy directive from the province, under the FPA, the Streamside Protection Regulation ("SPR"), was passed.

Purpose of the SPR

Section 2 of the SPR stated that its purpose was "to protect streamside protection and enhancement areas from residential, commercial and industrial development so that the areas can provide natural features, functions and conditions that support fish life processes…."

Local governments were required to establish protective measures within five years of the enactment of the SPR - that is, by January 19, 2006.

The SPR defined a stream as follows: "includes a watercourse or source of water supply, whether usually containing water or not, a pond, lake, river, creek, brook, ditch and a spring or wetland that is integral to a stream and provides fish habitat."

Under the initial SPR policy directive (Section 6 of the SPR), the minimum Streamside Protection Area ("SPEA") was set at 15 meters. Subsequently, under the RAR, the minimum SPEA was reduced to as little as 2 meters in some instances (see page 45 of Riparian Areas Regulation Assessment Methods).

The decreases in SPEA widths between the SPR and RAR represent a retreat from a "one-size-fits-all" regulation and an adoption of a more nuanced approach to the assessment of SPEA's.

Under Section 12(4)(b) of the FPA (as noted above), local governments that had already established streamside protection areas, which, in the opinion of the local government**,** were comparable to the SPR, were deemed to be compliant with the SPR.

Clearly the question of the "reasonableness" of a local government's opinion of its bylaws' "comparable…level of protection," would be considered by the court in a determination of whether a local government is compliant with the FPA, and therefore with the SPR or RAR.

However, it is worth noting the courts give deference to elected municipal bodies acting under legislative authority in good faith.[4]

And, while bylaws may be examined for bad faith, which includes an examination of improper or ulterior motives and lack of jurisdiction, ulterior motives alone, **if within the scope of the legislative grant to the municipality**, will not invalidate a bylaw. [4]

Further, the onus of proving whether a local government acted for an improper purpose or otherwise beyond its jurisdiction does not rest on the local government. [5]

With respect to the particular question, there is a paucity of case law touching on the narrow issue of "reasonableness" on the part of local governments in their decision making process. And perhaps the explanation for this is the courts tend to defer to local governments when they are operating within the scope of their jurisdiction and not in bad faith. One might reasonably anticipate that (assuming the act is intra vires and not in bad faith) the analysis of the court would be along the following lines:

> (a) had the local government established an opinion?
> (b) was the basis and consideration of the formation of the opinion reasonable?, and,
> (c) on a balance of probabilities, was the opinion reasonable given all of the circumstances?

Salt Spring Island Local Trust Committee ("SSILTC") – 2002 – 2005

In November 2002, Ms. Kimberly Lineger and I were elected to represent the electors of the Salt Spring Island Local Trust Area as Island Trustees. Under the provisions of the Islands Trust Act, Community Charter, and Local Government Act, a quorum of the Local Trust Committee was established as two (2). Therefore, in matters of agreement **not** requiring a formal resolution by the SSILTC, it can be argued an informed opinion, held by the two local trustees, would effectively represent an "opinion" of the local government for the purposes of Section 12(4)(b) of the FPA.

Riparian Area Regulation ("RAR")

In July, 2004, the Riparian Area Regulation was passed into law, to become effective March 31, 2005. This effectively repealed the SPR as of July 2004.

Section 8(2) of the RAR [2] provides that if a local government had established streamside protection and enhancement areas, on or before July 2004, in accordance with the requirements of the Streamside Protection Regulation (SPR), then that local government is deemed to have met the requirements of the RAR in respect of those areas.

The question of whether, in the opinion of the local government, those pre-established SPEAs, were "in accordance with the" SPR, would depend upon whether the local government, under the FPA, was of the opinion that their existing bylaws provided a "**comparable level of protection**" to the SPR.

Both former Trustee Lineger and I were "of the opinion" that the SSILTC's DPA4 area provisions provided "a comparable level of protection."

I bring to your attention the following explanation of Section 12 4 (b) of the FPA, and Section 8 of the RAR, from the Ministry of Environment's Riparian Areas Regulation Frequently Asked Questions webpage at:

http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/frequently_asked_questions.pdf

> ***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 governments' 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, on or before March 31, 2005, then that local government is deemed to have met the requirements of the Riparian Areas Regulation.*(emphasis added)

Islands Trust Council Meeting, March 7, 2005

On March 7, 2005, Trustee Lineger and I, in our capacities as Islands Trust Trustees, attended the quarterly Islands Trust Council Meeting. After having received advice in the form of a report from Islands Trust staff [3] and, after considering the readiness of the SSILTC for the implementation of the RAR, we were both **of the opinion** that the existing Salt Spring Island Development Permit Area 4 (Streams, Lakes and Wetlands) in the OCP and the setback requirement under Land Use Bylaw 355, already provided a level of protection **comparable to** the Streamside Protection Regulation, and thus, we (a) were also of the opinion that the SSILTC did not have to make any amendments to its local bylaws to be compliant with (i) the FPA, and/or (ii) the Riparian Areas Regulation under the Transitional provisions of the RAR, and, (b) were also of the opinion that **no action was needed to be taken, or resolution made, by the SSILTC to comply with the RAR**, since comparable levels of protection were already in existence in the OCP and Land Use Bylaw.

The attached Islands Trust Staff Report to Trust Council, dated March 7, 2005, and titled RIPARIAN AREAS REGULATION, clearly indicates Staff reported to us:

1. "Assuming that the implementation of the regulation may proceed as scheduled, we have considered our readiness should the regulation be implemented on March 31, 2005."
2. "There is little that local trust committees need to do at this time to prepare for the regulation."
3. "Generally, local trust committees official community plans recognize fish bearing streams as Development Permit Areas and impose setbacks from streams for development proposals."
4. "**With this is place, there is no need to amend planning documents." *(e.g. OCP's or LUB's)***

5. “Additionally, it will be the responsibility of the land owner to hire a Qualified Professional to assess habitat and potential impacts in the riparian area.”
6. “With the introduction of the Regulation local trust committees would not for example issue a Development Permit until they received confirmation from the Ministry of Water Land and Air Protection that they had received a report from a Qualified Environmental Professional or received confirmation that the Ministry of Fisheries and Oceans Canada has authorized alteration of natural features resulting from the proposed development.”

A determination of whether the Salt Spring Island Local Trust Committee had ensured a “comparable level of protection” had been established can reasonably be determined by:

1. asking the effective “majority mind” of the SSILTC –Trustee Lineger and myself – what our opinions were of the subject matter;
2. examining the SSILTC’s actions for both consistency with our opinions and as those actions may indicate compliance with the RAR;
3. determine whether Riparian Area Assessments have been required of land owners prior to development taking place in the DPA4 areas protected by the LTC since March 31, 2006;
4. comparing for “reasonableness” the existing DPA 4 requirements and the Riparian Area Assessments, which have been conducted on Salt Spring since March 31, 2006, with the requirements under the Streamside Protection Regulation.

Comparable Level of Protection

It has been suggested by Ms. Stacey Wilkerson, at the Ministry of Environment (“MoE”), in an email to me dated January 25, 2011, that there must be “**a rational basis** for the local government to conclude that its bylaws and permits provided a level of protection for riparian areas that was comparable to….that established by the directive.” (**emphasis mine**)

Leaving aside the question of the authority, or lack thereof, for Ms. Wilkerson’s assertion, the rationale for the determination that the SSILTC was in compliance with the RAR’s transitional provisions is based on four primary points:

1. The existing DPA4 provisions, as of March 7, 2005, including the minimum 10 meter to maximum 300 meter streamside protection areas (“SPEA’s”) established in 1998, were comparable in Trustee Lineger’s and my opinion to the SPR SPEA’s.
2. The Islands Trust Staff Report to Trust Council on March 7, 2005 clearly stated: “…local trust committees official community plans recognize fish bearing streams as Development Permit Areas and impose setbacks from streams for development proposals…. [therefore] there is no need to amend planning documents.”
3. The science (as referenced below from the MoE website) used as the basis for establishing the RAR methodology indicates the majority of protection afforded by SPEA’s occur within the first 10 meters, and thereafter exponentially lose their effective level of protection.(see as an example page 6 at: http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/RAR_ZOS_%20rational_2007.pdf)
4. The implementation by the SSILTC of the use of Riparian Area Assessments in development permitting process in the DPA4 area, after the RAR’s compliance date (March 31, 2006), is proof the SSILTC (as the March 7, 2005 Staff report stated) “*would not issue a Development Permit until they received confirmation from the Ministry of Water Land and Air Protection that they had received a report from a Qualified Environmental Professional or received confirmation that the Ministry of Fisheries and Oceans Canada had authorized alteration of natural features resulting from the proposed development.”*

It is my understanding, quoting from Ms. Wilkerson's email, dated January 28, 2011, *"a)* ***The first RAR assessment submitted for Salt Spring Island was July 13, 2006*****,** [i.e. more or less immediately following the effective date of the RAR of March 31, 2006, and the resolution from Trust Council referred to above]; and *b)* ***In total 15 assessments have been submitted for the island."***

Science Behind the RAR

I note a review of the science behind the RAR is posted on the MoE's website at http://www.env.gov.bc.ca/habitat/fish_protection_act/riparian/science.html and titled:

1. A review of empirical source distance data for the recruitment of large woody debris to forested streams

2. Riparian Area Regulation (RAR) Scientific rationale: The technical basis of zone of sensitivity determinations under the detailed assessment procedure of the Riparian Areas Regulation (PDF 446KB)

A review of the published science included and referenced within those documents indicates:

1. The RAR methodology appears to have been designed as a one size fits all assessment process, in which "streams" ranging from less than one meter to rivers (also defined as "streams") the width of the Fraser River were to be assessed.

2. The vast majority of effectiveness of protection of riparian areas, including:
    a. Leaf litter
    b. Stream temperature
    c. Shade
    d. Bank stability
    e. Large woody debris
    f. Effects of vegetation

    occurs within the streamside area in the first 10 meters from the natural boundary of a "stream."

3. Smaller streams (like those occurring on Salt Spring) are less affected by reduced setbacks (e.g. 20 meters to 10 meters) than larger streams.

4. The size of streams existing on Salt Spring would be considered relatively small as they relate to required setbacks.

Thus, it can be argued the protection afforded by the existing 10 meter to 300 meter streamside protection areas on Salt Spring are reasonably and scientifically comparable to the protection afforded by both the SPR SPEA's and the RAR 30 meter assessment areas.

Ms. Michele Jones, RPBio, QEP, and the only qualified instructor of RAR in BC, confirmed in response to a question I put to her at a public meeting on February 23, 2011, that a 10 meter SPEA would likely be reasonable for streams on Salt Spring, given that the vast majority of streams are less than 3 meters wide, and that, on average, a SPEA is three times the width of a stream, with a minimum of 10 meters, which is the width of the streamside protection area established in the OCP in 1998.

Implementation of RAR Assessment Methods in Development Permits 2006-2011

I understand that since March 31, 2006 developments on Salt Spring, including subdivisions, rezonings and development permits, occurring within the DPA4 area, have been required by the

SSILTC to supply Riparian Area Assessments which have been prepared by a Qualified Environmental Professional ("QEP") and submitted to the MoE.

As noted above, according to Ms. Wilkerson, the first Riparian Area Assessment on Salt Spring was submitted to MoE on July 13, 2006, and 15 such riparian assessments have been submitted for development approvals on Salt Spring Island.

I consider this further support for my opinion, that a "comparable level of protection" for riparian areas has been in existence since the RAR's compliance date of March 31, 2006.

Staff Report, January 6, 2011 - Official Community Plan Update – Riparian Areas Regulations Options for Implementation and Next Steps

In the January 6, 2011, staff report, to the current SSILTC, Mr. Kris Nichols reported:

> "*In 2006 Trust Council adopted a resolution directing staff to prepare development permit area provisions to implement the RAR. Local Trust Committees were also requested to consider amending setback provisions to correspond with RAR in their Land Use Bylaws as a first step prior to implementing development permit areas*."

"Trust Council" is not a "local government" for the purposes of either the FPA or the RAR, and any "recommendations" made to LTC's by Trust Council were not, and, are not, "requirements."

As Mr. Nichols correctly noted, LTC's were "…***requested*** (by Council) to ***consider amending*** setback provisions…"

Since none of Mr. Nichol's recommendations or options, provided to the SSILTC, refer to the aforementioned information regarding the 2002-2005 SSILTC's opinion on the matter, and the fact that Mr. Nichols has evidently been brought in as an independent consultant, I assume no one has brought to his attention the fact that I have attempted on a number of occasions over the past few years to clarify the historical facts pertaining to the SSILTC's compliance with the RAR to Islands Trust staff (all of whom I understand are no longer in the employ of the Islands Trust).

Conclusion

There is no case law which I can find which would indicate how the Province would allege a local government's "opinion" of the level of protection, provided for under its local bylaws, was inadequate to the point of charging the local government with an offence under the Offence Act (Section 41.1(f)) for omitting to do an act that a provincial statute requires (it being noted the punishment for such an offence under 41.1(f) is a fine of not more than $2,000 or imprisonment for not more than six months, or both.)

In the absence of any reasonable evidence, it is extremely unlikely the Province would proceed with an Offence Act charge against a local government that:

(a) had established a level of protection for fish habitat;
(b) considered the level of protection provided within its bylaws, given all circumstances, including local conditions, to be "comparable" to FPR policy directives;
(c) had complied with the reporting requirements of the RAR policy directive since the policy directive's effective date;
(d) demanded Qualified Environmental Professional's opinions from those who sought permission to develop within protected areas

Therefore, it is my position that:

1. The SSILTC, as of March 7, 2005, was in compliance with the FPA;
2. The SSILTC, as of March 7, 2005, was therefore in compliance with the RAR;
3. The SSILTC, as a result of (1) and (2) is currently in compliance with the RAR Transitional provisions;
4. **The SSILTC, contrary to the opinion expressed in the Islands Trust staff report to the SSILTC of January 6, 2011, is not required by the province to change its OCP or Land Use Bylaws to provide a greater level of protection than the current DPA4 requirements, unless, the SSILTC desires to do so.**

Given the above legislative and historical context, it is misleading to the electors of Salt Spring Island, their current elected representatives under the Islands Trust Act (Trustee George Ehring and Trustee Christine Torgrimson) and the Chair of the SSILTC, Trustee Sheila Malcolmson, for Islands Trust staff, and/or it's contracted consultants, and/or the Ministry of Environment to emphatically state that the SSILTC has no choice other than to adopt more restrictive RAR requirements, when in fact, there is a legitimate alternative.

The SSILTC has the full right and discretion to decline making any changes to the existing DPA4 area requirements.

It is important to note that changes to an OCP require public hearing and consultation. If the consultation process with the public is misinforming, or misleading, it is reasonable that the members of the public will not be able to form a reasonable and informed decision as to whether they are in support or opposition of a proposed OCP amendment.

Currently the public has been led to believe the RAR requirements **must** be implemented, and, that the SSILTC has no other option other than to implement them in some form. Unless corrected, this misinformation, by itself, may form the grounds for overturning an amendment to the OCP at either the Ministerial level, or, in the courts.

I suggest the Salt Spring Island Local Trust Committee carefully consider the above information, and may wish to seek legal counsel regarding the facts contained within this opinion.

Regards,

Eric Booth
Former Salt Spring Islands Trust Trustee (2002-2005)
109 Frazier Road
Salt Spring Island, BC
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Legislation referred to:

1. Salt Spring Island Official Community Plan Bylaw No. 345 -1997
2. Salt Spring Island Land Use Bylaw No. 355 - 2001
3. Fish Protection Act [SPC 1997]
4. Streamside Protection Regulation [BC Reg. 10/2001]
5. Riparian Areas Regulation [B.C. Reg. 376/2004]
6. Municipal Act [RSBC] Chapter 323
7. Local Government Act [SBC 2000] [RSBC 1996] Chapter 323
8. Islands Trust Act [RSBC 1996] Chapter 239
9. Offence Act [RSBC 1996] Chapter 338

References:

1. Provincial directives on streamside protection from Fish Protection Act.

> **12** (1) Subject to subsection (2), the Lieutenant Governor in Council may, by regulation, establish policy directives regarding the protection and enhancement of riparian areas that the Lieutenant Governor in Council considers may be subject to residential, commercial or industrial development.
>
> (2) Directives under subsection (1) may only be established after consultation by the minister with representatives of the Union of British Columbia Municipalities.
>
> (3) Policy directives under subsection (1) may be different for different parts of British Columbia and in relation to different local government powers and different circumstances as established by the directives.
>
> **(4) If a policy directive under subsection (1) applies, a local government must**
>
> (a) include in its zoning and rural land use bylaws riparian area protection provisions in accordance with the directive, or
>
> (b) ensure that its bylaws and permits under Part 26 of the *Municipal Act* or Part XXVII of the *Vancouver Charter,* as applicable**, provide a level of protection that, in the opinion of the local government, is comparable to** or exceeds that established by the directive.

2. RAR - 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.

3. Islands Trust Staff Report, March 7, 2005 attached

ISLANDS TRUST
BRIEFING

DATE: March 7, 2005

TOPIC: RIPARIAN AREAS REGULATION

DIRECTED TO: Trust Council

CONFIDENTIAL: No

DESCRIPTION OF ISSUE: To provide Trust Council with an update on how the Islands Trust needs to ready itself for introduction of the Regulation on March 31, 2005.

BACKGROUND: The Riparian Areas Regulation introduced under the *Fish Protection Act* is a tool to protect riparian fish habitat particularly in those streams and water courses where a high standards of environmental stewardship is to be achieved as part of a development process.

At the time this briefing is presented to Trust Council, there is a good possibility that the implementation of this regulation may be postponed until the end of 2005. Discussions with the Ministry of Water, Land and Air Protection revealed that a number of pre requisites to the enactment of the regulation are not complete at the time of this briefing. These include a Cooperation Agreement with UBCM, WLAP, and Fisheries and Oceans Canada regarding roles and responsibilities of these three parties after implementation of the regulation. As well, an implementation guidebook for local governments and Qualified Environmental Professionals has not been completed. Malaspina College has agreed to deliver the academic program leading to the certification of Qualified Environmental Professionals.

The Trust is also aware of an extensive letter writing campaign by local governments, and regional districts asking the Minister to delay implementation of the regulation. UBCM has issued a questionnaire seeking input about local government readiness around this regulation.

Assuming that the implementation of the regulation may proceed as scheduled, we have considered our readiness should the regulation be implemented on March 31, 2005. There is little that local trust committees need to do at this time to prepare for the regulation. Generally, local trust committee official community plans recognize fish bearing streams as Development Permit Areas and impose setbacks from streams for development proposals. With this in place, there is no need to amend planning documents. Additionally, it will be the responsibility of the land owner to hire a Qualified

Environmental Professional to assess habitat and potential impacts in the riparian area. Procedures governing Qualified Environmental professionals under the regulation are cited in the attachment to this briefing. The local government role will focus on monitoring and enforcement although the procedures around enforcement are not identified at this stage and need further examination.

With the introduction of the Regulation local trust committees would not for example issue a Development Permit until they received confirmation from the Ministry of Water Land and Air Protection that they had received a report from a Qualified Environmental Professional or received confirmation that the Ministry of Fisheries and Oceans Canada has authorized alteration of natural features resulting from the proposed development.

ATTACHMENT(S): YES

AVAILABLE OPTIONS: 1. Process development applications in fish bearing stream Development Permit areas in accordance with the requirements of the Riparian Areas Regulation.
2. Invite Water Land and Air Protection Ministry staff to a future Trust Council session to explain/confirm procedures for the Islands Trust under this Regulation.
3. Explore local government enforcement procedures.

FOLLOW-UP: Monitor March 31, 2005 implementation/postponement.

PREPARED BY: Wayne Quinn, MCIP, Director, LPS

REVIEWED BY EXECUTIVE COMMITTEE: February 22, 2005

SUBMITTED BY: Director, LPS

REVIEWED BY: (Chief Administrative Officer)

OTHER REVIEW:

4. MacMillan Bloedel, supra.

5. Columbia Estate Co. v. Burnaby (District), [1974] 5 W.W.R. 735 (B.C.S.C.). Hauff v. City of Vancouver (1981), 28 B.C.L.R. 276 (B.C.C.A).