

Retroactive Development and the *Riparian Area Protection Regulation*

WHEREAS the introduction of the Riparian Area Regulation (RAR) in 2006 was intended to improve the protection of riparian areas in British Columbia;

AND WHEREAS the transition to the Riparian Area Protection Regulation (RAPR) in 2019 whereby the Ministry reviews all assessments was not intended to create a burden on local governments;

THEREFORE BE IT RESOLVED that the Union of BC Municipalities request the Province of British Columbia to amend the *Riparian Area Protection Regulation* to allow the minister to issue a notification to a local government regarding an assessment report that has been prepared in relation to a “retroactive development”.

Background Memo:

With the introduction of the *Riparian Area Protection Regulation* (RAPR) in 2019, a local government specified under Section 2 of the regulation is required to receive an Assessment Report from the responsible minister before approving a riparian development.

Shortly thereafter, the Ministry began advising local governments that it was not in a position to approve an Assessment Report where the development being assessed has already occurred without or in contravention of a permit (i.e. “retroactive development”), as doing so would be contrary to RAPR.

This has created a bureaucratic barrier to the resolution of retroactive developments – a common form of development at the local government level – with no identifiable path forward. Property owners can neither gain approval to demolish nor continue their development in the absence of an Assessment Report from the Minister.

To address this, the Ministry has advised qualified environmental professionals (QEPs) to submit a “Condition and Impact Assessment” directly to a local government in order to have a “retroactive development” approved without the need for the required ministerial notification.

It is understood that the basis for this Ministry direction is a short reference in the College of Applied Biology’s *Professional practice guidelines for legislated riparian assessments in BC* that “retrospective assessment is considered to be a condition and impact assessment”.

This approach raises a number of concerns:

- the use of a “Condition and Impact Assessment” is based on a professional association standard and does not appear to be explicitly authorized by the RAPR;
- no guidance currently exists on what form a “Condition and Impact Assessment” should take;
- the use of a “Condition and Impact Assessment” in place of a notification from the Minister under the RAPR creates a significant incentive for works to be undertaken without approvals; and
- ministry staff consider any “retroactive development” to be inconsistent with the RAPR irrespective of whether it has been approved through a “Condition and Impact Assessment”.