

Report Summary: Legal Foundations for Municipal Riparian Management (2023) by the Environmental Law Centre



Purpose of the report: Legal framework for riparian-based land use decisions

The critical role of healthy riparian lands makes their conservation and restoration a regulatory and policy concern for all levels of government: federal, provincial, and municipal. Municipalities are the primary land use planner, so they have a central and important role to play in the conservation and restoration of riparian lands.

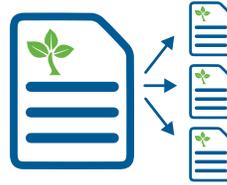
This report:

- Helps municipal leaders understand the rationale and need for riparian planning and policy
- Clarifies the legal foundations of municipal responsibility within federal and provincial legislation
- Provides insights from case law to demonstrate riparian risks and liabilities at each stage of the statutory planning process
- Outlines a municipal policy toolbox

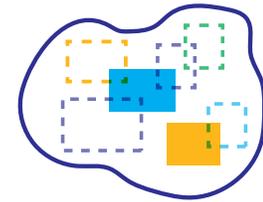
Document Overview



Healthy riparian areas help mitigate legal risks that municipalities have to manage



Riparian regulations function best with aligned plans and policies



Municipalities fit within a legal “ecosystem” including neighboring municipalities and other levels of government

Legal importance & value of restoring and protecting riparian areas

- Safeguarding fish habitat and Species at Risk
- Keeping water quality safe and free from pollutants
- Protecting infrastructure from hazardous areas (e.g. landslides, flooding)
- Reducing cumulative impacts downstream such as flooding and erosion

Municipal Response Tree by land ownership: Options for municipalities to respond to their legal responsibility to protect riparian areas

Legal & Riparian Context			Prioritizing Actions			Municipal Policy Response
Legislation	Land Ownership	Riparian Health	Targets	Mapping	Policy Objective	
Water Act Public Lands Act Fisheries Act Municipal Gov't Act Alberta Land Stewardship Act Migratory Birds Act Species at Risk Act Common Law	Private lands	Riparian intactness (e.g. current = 46% high intactness)	Min. 65% high intactness Max. 25% low intactness	Priority area mapping Riparian Pressures	Conserve	Statutory Plans Bylaws Env. reserve, Env. Res. Easement Conservation reserve Development conditions
	Municipal lands				Restore	Muni incentive programs Partnerships (e.g. stewardship support)
	Provincial lands				Conserve	Statutory Plans Bylaws
					Restore	Restoration Policy & dedicated funds
	Federal lands First Nations lands				Conserve	Development conditions on non-Crown entities
	Restore	Partnerships & Collaborations				

Ownership of riparian areas & relevant legislation



Federal & Provincial Laws that impact riparian areas:

Federal Acts:

Species at Risk, Migratory Birds Convention Act and the Fisheries Act, Pest Control Products Act -- relevant to riparian areas because they protect habitat or prevent the disposal of harmful substances. All have variable setback recommendations.

Provincial:

Acts specific to the environment:

Water Act, Public Lands Act, Alberta Land Stewardship Act, Environmental Protection & Enhancement Act

Acts specific to industry: *Agricultural Operations Practices Act, Oil and Gas Conservation Act, Forests Act*

Riparian legal jurisdiction is complex because they are part of both land and water. With overlapping ownership and authority (as seen above), a variety of legislations apply.

Legal foundations for riparian action within municipalities



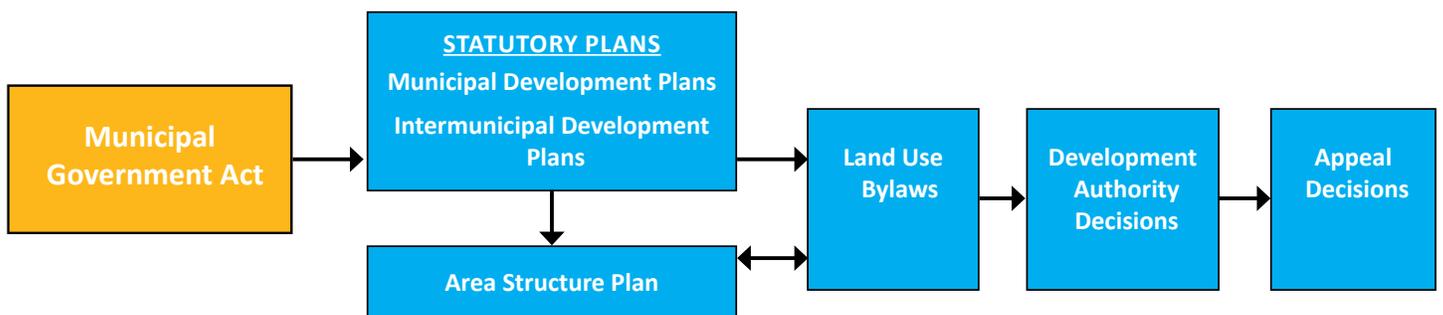
The Municipal Government Act (MGA)

- Outlines how municipal governments can manage waterbodies within their jurisdiction
- Enables the identification of Environmental Reserve during subdivision
- Ravines, floodplains and/or unstable ground can be part of buffer and setback areas around waterbodies

In 2017, the MGA expanded to include “fostering the well-being of the environment”

- Acknowledges the central role that land use planning has on the environment and associated community issues, such as:
 - protecting potable water supplies
 - ensuring safety from land & water hazards
 - enabling quality of life that is fostered by environmental quality
- Recognizes that local environments are essential to the health of communities and that municipalities seek to balance:
 - public and individual interest in environmental outcomes
 - individual and public rights related to property ownership and use

Municipal development and land use planning structure





Intermunicipal Development Plan (IDP) - The broadest policy guide that allows neighbouring municipalities to create shared goals and vision for land use and development.

This is particularly useful for counties that share waterbody boundaries

IDPs *may* create unified goals for:

- setbacks and buffers or riparian health targets
- policy direction for subdivision
- policies regarding infrastructure placement to protect water and riparian areas



Municipal Development Plan (MDP) - A big picture policy guide to the county's vision of land use and development that considers environmental, social, and economic perspectives.

Every municipality must adopt, by bylaw, a Municipal Development Plan (MDP).

MDPs *must* address future land use, proposed development and subdivision within the county.

MDPs *may* address:

- environmental goals and concerns
- development constraints, subdivision policies
- policies regarding environmental or conservation reserves and easements

MDP Limitations: Generally strategic including statements of riparian values and definitions



Land use bylaws – Land use bylaws are a key regulatory tool for managing land use and impacts in riparian areas

- Land use bylaws require the municipality to be divided into districts, or zones, in which permitted and discretionary uses are defined
- Sets out the development permit process, including the nature of “discretion that the development authority may exercise with respect to development permits”.
- Bylaws can require that all development meet locally-determined engineering standards or other standards that are protective of riparian areas
- Bylaws are enforceable through compliance action



Area structure plan (ASP) – A more detailed framework than the MDP, mostly driven by those applying to develop an area.

- Provides greater level of details for proposed land use, define population density, and address location of infrastructure (roads, water structures, commercial areas) and reserves
- Directs setback policies in alignment with MDP riparian values
- Directs subdivision and development processes, including setbacks and require impact assessments



Development Authority– more regulatory and enforceable in nature, but guided or limited by MDPs, ASPs and land use bylaws

- Subdivision is an important stage for riparian areas, as municipalities can use environmental reserves (ER) and environmental reserve easements (ERE) to ensure conservation of riparian areas.
- Can apply development conditions to permits that align with MDP and LUB riparian goals



Case Study: Long Lake ASP Thorhild County

Subdivision applications must include:

- Minimum 30m ER from top of bank of Long Lake, 15m ER from 1 and 100-year flood line of all wetlands and permanent streams.
- ERs and development setbacks may be increased due to steep slopes, erosion, shallow groundwater, or sensitive contamination at the discretion of the Subdivision Authority
- County may require subdivision/developers to provide groundwater studies and/or hydrological assessment designed to identify areas with shallow groundwater susceptible to contamination.
- Individual landowners and/or developers with lands adjacent to the shoreline of Long Lake are not permitted to create artificial beach or plant grass or non-native plants species within any 30m environmental reserve setback.

Municipal Reserves and Easements compared

Tool	Voluntary or Mandatory	Ownership	Taxation	Termination or changes	Limitations
Environmental Reserve (Legislated by MGA)	May be mandated without compensation (at subdivision)	Title is transferred to municipality	Non-taxable	Passage or bylaw	Occurs on non-developable land (e.g. hazard land)
Environmental Reserve Easement (Legislated by MGA)	Voluntary and negotiated without compensation (at subdivision)	Title remains with landowner, easement is registered on land title	Taxable (may be taxed at lower rate)	Bylaw for change Agreement of the parties but must be "natural state"	Occurs on non-developable land (e.g. hazard land)
Conservation Reserve (Legislated by MGA)	May be mandated with compensation (at subdivision)	Title is transferred to municipality	Non-taxable	Where no remaining purpose to protect due to events outside of municipal control	Applies to non ER lands
Conservation Easement (Legislated by AB Land Stewardship Act)	Voluntary and negotiated (anytime)	Title remains with landowner, easement is registered on land title	Taxable (may be taxed at lower rate)	By agreement	

Other topics covered in the report:

- The legal ecosystem of municipal decision making
- How tribunals and courts review and consider decisions made by municipalities
- Embedding support tools into decision making
- Retroactive and proactive riparian management
- Bylaw enforcement challenges

To view the full report, go to:

<https://www.nswa.ab.ca/resource/legal-foundations-for-municipal-riparian-management/>

