

CITY OF BURNABY

ENVIRONMENT AND WASTE MANAGEMENT COMMITTEE

HIS WORSHIP, THE MAYOR
AND COUNCILLORS

RE: REVISED DRAFT OF STREAMSIDE PROTECTION REGULATIONS (SPR)

RECOMMENDATIONS:

1. **THAT** Council authorize the City to work with the Province to prepare an Intergovernmental Cooperation Agreement to address outstanding issues for SPR implementation.
2. **THAT** a copy of this report be forwarded to the Minister of Environment, Lands and Parks; Erik Karlsen, Director of Special Projects, Ministry of Municipal Affairs; and Ken Vance, Executive Director of UBCM.

REPORT

The Environment and Waste Management Committee, at its meeting held on 2000 October 10, received and adopted the *attached* report outlining the revised version of the streamside protection regulations as prepared by the provincial government for review at the UBCM general meeting on 2000 October 26. The Committee noted that the revised regulations include a framework for establishing Intergovernmental Co-operation Agreements to address municipality - specific issues. The Committee further advised, however, that a number of issues remain unresolved in the revised regulations, such as the a critical need for co-ordination between federal and provincial regulations, the matter of a liability protection clause and details regarding Environmental Review Committees, dispute resolution processes and watershed management approaches.

Respectfully submitted,

Councillor D. Johnston
Chair

Councillor C. Redman
Member

: COPY - CITY MANAGER
- DIRECTOR ENGINEERING
- DIR. PLNG. & BLDG.
- DIR. PARKS, REC. & CULT. SERV.
- CITY SOLICITOR

Councillor B. Der
Member

TO: CHAIR AND MEMBERS
ENVIRONMENT AND WASTE
MANAGEMENT COMMITTEE

October 10, 2000

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: REVISED DRAFT OF STREAMSIDE PROTECTION REGULATIONS (SPR)

PURPOSE: To provide the Committee and Council with information on the revised draft of the Streamside Protection Regulation prior to the UBCM Annual General Meeting.

RECOMMENDATION:

1. **THAT** the City work with the Province to prepare an Intergovernmental Cooperation Agreement to address outstanding issues for SPR implementation.
2. **THAT** a copy of this report be forwarded to the Minister of Environment, Lands and Parks; Erik Karlsen, Director of Special Projects, Ministry of Municipal Affairs; and Ken Vance, Executive Director of UBCM.

REPORT

1.0 BACKGROUND

As Council and the Committee will recall, the Province passed the Fish Protection Act (Bill 25) in 1997 to provide comprehensive protection to fish and fish habitat. Section 12 of the Act allows the Province to establish regulations for the protection and enhancement of riparian areas on lands subject to new residential, commercial or industrial development throughout the Province.

Environmental protection is also a key goal of the City's Official Community Plan, and the City has worked hard to protect fisheries values. Recent measures include:

- fish habitat creation, restoration, and enhancement;
- watercourse mapping and classification;
- application of Land Development Guidelines for developments close to streams;
- establishment of an Environmental Review Committee process to review applications for development that are close to streams;
- integrated stormwater management planning;
- environmental requirements within local area plans; and
- support for streamkeepers groups.

While strongly supporting environmental protection, the City is concerned that any new regulations must be clear, feasible to implement, and supported by adequate funding and resources.

In 1999, the Province released the first draft of the Streamside Protection Regulations (SPR). The City provided written and verbal comments on the draft to the Minister of the Environment, Lands, and Parks, ministry staff, and the Union of British Columbia Municipalities (UBCM) (see below for summary of concerns).

On September 29, 2000, the Province provided City staff with a revised version of the SPR, that sought to address local government and other stakeholder concerns. This draft will be reviewed at the UBCM annual general meeting on October 26th, 2000. The following report reviews the revised draft and provides staff comments.

2.0 SUMMARY OF CITY'S CONCERNS WITH 1999 DRAFT SPR

The City forwarded a number of concerns to the Province on the 1999 SPR draft. Primary concerns included:

- numerical widths for setbacks were infeasible in Burnaby and other urbanized communities;
- setback requirements would result in an onerous variance process;
- variance, planning, and dispute resolution processes were unclear;
- lack of financial commitments to effectively implement the SPR;
- revegetation requirements were infeasible;
- the need for DFO to formally endorse the regulation;
- certain land uses were excluded from the SPR;
- the City needed clear protection from liability; and
- definitions within the regulation needed clarification.

These concerns were also communicated to the Minister of the Environment, Lands and Parks in a meeting with Council on May 12, 2000.

3.0 OVERVIEW OF REVISED SEPTEMBER 2000 DRAFT SPR

3.1 Overview

The revised draft SPR addresses many of the concerns identified by the City, UBCM and stakeholders, and is a significant improvement on the 1999 version (see Appendix A for revised draft).

Setback requirements have been reduced. The range of setbacks have been lowered from 5 - 50m to 5 - 30m. Setback calculations were formally based on riparian width and whether

the stream is fish-bearing. The revised draft now also includes stream flow as a criteria (i.e. if the stream is running year-round or just ephemerally). In many circumstances, the SPR will result in smaller riparian setbacks than prescribed under the existing Land Development Guidelines. These reductions should result in fewer variance applications than under the original SPR draft. Due to Burnaby's urbanized nature, however, variance applications will continue to be considerable.

The regulation now focuses on development setbacks, and makes no requirements for riparian vegetation management. (However, the Federal government will likely continue to require riparian vegetation management under the Fisheries Act). Definitions in the revised regulations are much clearer.

The revised SPR also includes a framework for establishing Intergovernmental Cooperation Agreements for addressing municipality-specific issues. This agreement may include provisions for financial and technical support, transition strategies for implementing the SPR, amendments to the prescribed setbacks (either increasing or decreasing depending on the environmental resources and development constraints), information sharing provisions, roles and responsibilities, and a compliance strategy. Such an agreement could be the basis for addressing many of Burnaby's specific concerns, and articulating how variance, watershed management planning, and dispute resolution processes would feasibly work.

3.2 Outstanding Issues

A number of issues remain unresolved in the revised SPR draft. These issues must be resolved either in the final SPR draft or through Burnaby's Intergovernmental Cooperation Agreement. They are as follows:

- 1. Critical need for coordination between Federal and Provincial regulations.** SPR focuses on building setbacks and does not address riparian vegetation management. Nonetheless, the Federal government asks local governments to consider vegetation protection to meet the requirements of the Fisheries Act. The Province must clearly show how the SPR integrates with the Federal Fisheries Act requirements, including the Land Development Guidelines. The Department of Fisheries and Oceans (DFO) and Ministry of Environment, Lands, and Parks (MOELP) must be coordinated, consistent and fair in applying their environmental regulations. Without clarity between the Federal and Provincial agencies, the development community and local governments will have difficulties defining base requirements for development applications. Local governments must clearly understand legal requirements for implementing the regulations, so that they can show due diligence. The dispute resolution process should integrate both Provincial and Federal regulations.
- 2. Inclusion of liability protection clause.** The City has indicated intended levels of development through its Official Community Plan and zoning bylaw. Implementation of

SPR may reduce some of these permitted levels of development. It is conceivable that a landowner may seek financial compensation for this reduction through the courts. The City cannot be liable for impacts of the SPR (or Fisheries Act) on development potential. The SPR must include a clause stating that local governments are protected from liability, so long as they are not acting negligently. The liability protection clause in the Contaminated Sites Regulation is a good model for the SPR.

3. **Refinement of processes identified in the SPR.** The framework articulated in the revised SPR appear reasonable, but there are many details that remain unrefined or unresolved, including Environmental Review Committees (ERCs), dispute resolution processes, and watershed management approaches. These details must be resolved through the Intergovernmental Cooperation Agreements. For example, the Agreement should clarify funding and resources for ERC and watershed planning processes; the triggers for the ERC process; timing, structure, content and responsibilities of ERC meetings; guidelines for compensation and mitigation for setback relaxations; responsibilities for covenants, bonding and enforcement.
4. **Refining definitions and classifications.** The Province has greatly improved the definitions section and clarity of the draft SPR. There nonetheless remains subjectivity in interpreting aspects of the regulations [e.g. methods for determining a watercourse (as opposed to a Class C ditch), ephemeral streams, and fish-bearing streams]. Senior governments must work to produce manuals that outline scientifically-valid, effective, and cost-efficient methods for determining these features. Without such manuals, implementation of SPR will become subjective and inconsistent.
5. **Available resources to implement the SPR.** This issue has been raised on numerous occasions throughout drafting of the regulation. Local governments are still concerned and distrustful that adequate resources will be provided - both for local governments and internally within senior government agencies. Required resources include development of technical and public educational materials and manuals, staff to run and participate in Environment Review Committees, staff to run and participate in watershed management planning processes, and detailed base-mapping of streams, riparian areas, and watersheds. The Province has made general recognition of the need for increased resources, but presented no specific commitments. Local governments need a clear commitment that senior governments have seriously assessed resourcing needs (both for local and senior governments) and is prepared to commit the long-term resources to adequately and fairly implement the regulations. This resource assessment and long-term financial commitment must be part of the adoption of SPR and Intergovernmental Cooperation Agreement.
6. **Exclusion of institutional, parks and recreation, agricultural and forestry land uses from the regulation.** The discussion paper appended to the SPR acknowledges that other land uses are not covered in the SPR. Ministry of Municipal Affairs staff noted that the

Fish Protection Act only allowed the ministry to set directions for commercial, residential, and industrial land uses. Other land uses must nonetheless be addressed in other legislation and standards, for reasons of both habitat protection and administrative fairness. The Province must make a commitment to develop regulations to address these other land uses.

4.0 CONCLUSION

Staff believe that the revised SPR, with its provision to establish a municipality-specific agreement, is a significant improvement on the previous draft. It is nonetheless important that the Province seriously consider how to address the remaining issues identified in this report. Given the urban nature of Burnaby, many of the development proposals will still require a variance process. Watershed management plans may also reduce the long-term volume of variances. The framework and conditions for these processes must be carefully crafted through an Intergovernmental Cooperation Agreement. As such, it is recommended:

1. That the City work with the Province to prepare an Intergovernmental Cooperation Agreement to address outstanding issues for SPR implementation.
2. That a copy of this report be forwarded to the Minister of Environment, Lands and Parks; Erik Karlsen, Director of Special Projects, Ministry of Municipal Affairs; and Ken Vance, Executive Director of UBCM.

Should Council concur with the approach outlined in this report, City staff will work with staff from senior governments to prepare draft terms for an Intergovernmental Cooperation Agreement. The Agreement will address issues raised in this report. Staff will submit the draft Agreement to Council for approval prior to its finalization.


D.G. Stenson, Director
PLANNING AND BUILDING

RW\sla

cc: City Manager
Director of Engineering
Director of Parks, Recreation and Cultural Services
City Solicitor

2nd Draft Streamside Protection Regulation

IMPORTANT NOTE ABOUT THIS DRAFT

For readability, this draft follows a different format than normally used for provincial regulations. Following consultations in September and October, the resulting draft will be used as the basis for “drafting instructions” and may be reformatted at that time.

2nd Draft Streamside Protection Regulation

Purpose of Regulation

1. The purpose of this regulation is to protect streamside areas from residential, commercial and industrial development so that these areas can continue to provide, or can be restored or enhanced to provide natural features, functions and conditions that support fish life processes.

Cooperative Approach

2. This regulation will be supported by intergovernmental cooperation agreements including the topics listed in section 1 of Schedule 1.

Application

3. This regulation applies to the use of local government powers under Part 26 of the *Local Government Act* by the local governments listed in Schedule 2.
4. This regulation does not apply in respect of a building or structure described in section 911(8) of the *Local Government Act*, if a local government issues a development permit or development variance permit only for the purpose of enabling reconstruction or repair of a permanent structure on its existing foundation.

Establishment of Streamside Protection and Enhancement Areas

5. A local government must establish streamside protection and enhancement areas within 5 years of the enactment of this regulation in accordance with Schedule 3, or as amended by an agreement pursuant to section 1 (c) of Schedule 1.

Use of local government powers for protection and enhancement of streamside areas

6. When exercising its powers with respect to residential, commercial and industrial development, a local government must protect streamside protection and enhancement areas

SCHEDULE 1

Intergovernmental Cooperation Agreements

1. An agreement among a local government, the Regional Director of the Ministry of Environment, Lands and Parks and the Area Chief of Fisheries and Oceans Canada, if available, may include provisions for:
 - a. financial and technical support for the implementation of this regulation;
 - b. transition strategy with respect to existing streamside protection measures under Part 26 of the *Local Government Act*, with reference to sections 2. and 3.
 - c. prioritizing the staged establishment of streamside protection and enhancement areas;
 - d. amending streamside protection and enhancement areas required pursuant to Schedule 3;
 - e. providing and sharing information on fish habitat conditions;
 - f. roles and responsibilities;
 - g. dispute resolution; and
 - h. compliance strategy, including education, training, monitoring, reporting, enforcement and auditing..

Existing Agreements

2. Where the Regional Director of the Ministry of Environment, Lands and Parks, or designate, or the Area Chief of Fisheries and Oceans Canada or designate has an intergovernmental agreement with a local government in effect at the date of enactment of this regulation with respect to streamside protection measures, those measures will remain in effect for the term of the agreement or where no term is specified, for a period up to five years from the date of enactment of this regulation.
3. Notwithstanding section 2, with respect to a specific development, streamside protection measures remain in effect for the time specified in writing by the Regional Director of the Ministry of Environment, Lands and Parks, or designate, or the Area Chief of Fisheries and Oceans Canada or designate.

SCHEDULE 2

Local governments subject to this regulation

1 The following regional districts and all municipalities with them:

Capital,
Central Okanagan
Columbia-Shuswap
Comox-Strathcona
Cowichan Valley
Fraser Valley
Greater Vancouver
Nanaimo
North Okanagan
Okanagan-Similkameen
Powell River
Squamish-Lillooet
Sunshine Coast
Thompson-Nicola.

2 The Islands Trust, its local trust committees, the executive committee in its role as a local trust committee, and a municipality in the Trust area.

SCHEDULE 3

Determination of streamside protection and enhancement areas

- 1 Streamside protection and enhancement areas are those areas determined with reference to the following existing or potential vegetation conditions by measuring away from the top of the bank or top of the ravine bank on either side of a stream
 - a. intact and continuous areas of vegetation equal to or greater than 50 metres wide;
 - b. limited but continuous areas of vegetation equal to 30 metres wide or discontinuous but occasionally wider areas of existing or potential vegetation between 30 and 50 metres wide;
 - c. narrow but continuous areas of vegetation equal to 15 metres wide or discontinuous but occasionally wider areas of existing or potential vegetation between 15 and 30 metres wide, and

- d. very narrow but continuous areas of vegetation up to 5 metres wide or discontinuous but occasionally wider areas of riparian vegetation between 5 and 15 metres wide interspersed with permanent structures.
- 2 With reference to vegetation conditions in section (1) streamside protection and enhancement areas must be:
- a. if section (1)(a) or (1)(b) applies, at least 30 metres wide measured from the top of the bank for all fish bearing streams or for non fish bearing streams that are permanent;
 - b. if section (1)(a), (1)(b) or (1)(c) applies, at least 15 metres wide measured from the top of bank for non fish bearing streams that are non permanent;
 - c. if section (1)(c) applies, at least 15 metres wide measured from the top of bank for non fish bearing streams that are permanent;
 - d. if section (1)(c) or (1)(d) applies, equalling that existing or at least 15 metres wide measured from the top of the bank for all fish bearing streams;
 - e. if section (1)(d) applies, at least 5 and up to 15 metres wide measured from the top of the bank for all non fish bearing streams;
 - f. if a stream is in a ravine which is less than 60 metres wide in total width from top of the ravine bank to top of ravine bank, not including the stream channel within its active floodplain boundaries, protection is to be consistent with subsections (a) through (e) where appropriate from the top of the ravine bank,; and
 - g. if a stream is in a ravine which is more than 60 metres in total width from top of ravine bank to top of ravine bank, not including the stream channel within its active floodplain boundaries, a protection and enhancement area of at least 10 metres wide from the top of the ravine bank.

SCHEDULE 4

Definitions

In this regulation:

“Act” means the *Fish Protection Act*;

“active floodplain” means the boundary that is indicated by the visible high water mark or water level of a stream that is reached during annual flood events, as indicated by the presence of soil which is subject to regular inundation or able to support vegetation that is typically adapted for life in submerged, semi submerged, saturated or seasonally inundated soil conditions;

“existing vegetation” is considered to be native and non native vegetation;

“fish” means all life stages of salmonids, other game fish, regionally important fish, and fish designated by COSEWIC or pursuant to the *Wildlife Act* as endangered, threatened or vulnerable;

“fish bearing stream” means a stream in which fish are present or potentially present if introduced barriers or obstructions are either removed or made passable for fish;

“fish habitat” includes spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly to carry out their life processes;

“natural features, functions and conditions that support fish life processes” include:

- a. large organic debris that falls into the stream, or streamside area, such as logs, snags and root wads;
- b. areas for channel migration, including active flood plains and alluvial fans;
- c. side channels, intermittent streams, seasonally wetted contiguous areas and floodplains;
- d. the multi-canopied 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 streambanks thereby minimizing erosion
 - iv. buffers streams from sedimentation and pollution in surface runoff;
- e. natural source of stream bed substrates; and
- f. pervious surfaces that permit infiltration and moderate water volume, timing and velocity and maintain sustained water flows in streams, especially during low flow periods.

“non fish bearing stream” means a stream that

- a. is not inhabited by fish; and
- b. provides water, food and nutrients to a downstream fish bearing stream or other water body

as confirmed by a qualified professional in cooperation with the Regional Director of the Ministry of Environment, Lands and Parks or designate, or the Area Chief of Fisheries and Oceans Canada, or designate, if available;

“non permanent stream” a stream that typically contains surface waters or flows for periods less than 6 months in duration, as confirmed by a qualified professional in cooperation with the Regional Director of the Ministry of Environment, Lands and Parks or designate, or the Area Chief of Fisheries and Oceans Canada, or designate, if available;

“permanent stream” a stream that typically contains continuous surface waters or flows for a period more than 6 months in duration as confirmed by a qualified professional in cooperation with the regional director of the Ministry of Environment, Lands and Parks or designate, or the Area Chief of Fisheries and Oceans Canada, or designate, if available;

“permanent structure” means any building or structure which 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;

“potential vegetation” is considered to exist if there is a reasonable ability for regeneration either with assistance through enhancement or naturally, and is considered to not exist on that part of an area covered by a permanent structure;

“qualified professional” means an applied scientist or technologist specializing in a relevant applied science or technology including, but not necessarily limited to, agronomy, biology, engineering, geology, hydrogeology or landscape architecture, and

- a. who is registered in BC with their appropriate professional organization, and acting under that association's Code of Ethics and subject to disciplinary action by that association, and
- b. who, through demonstrated suitable education, experience, accreditation and knowledge relevant to the particular matter, may be reasonably relied on to provide advice within their area of expertise;

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

“regionally important fish” means fish designated as regionally important by the Regional Manager of Fish, Wildlife and Habitat Protection of the Ministry of Environment, Lands and Parks, or designate;

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

- a. removal, alteration, disruption or destruction of vegetation;
- b. disturbance of soils;
- c. construction or erection of permanent or temporary 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 of on site or off site 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*;

- k. placement of deleterious substances; and
- l. creation of pollution;

“riparian area” means the area adjacent to a stream that may be subject to temporary, frequent or seasonal inundation, and supports 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 because of the presence of water;

“stream” includes a permanent, or non permanent watercourse or source of water supply, whether usually containing water or not, a pond, lake, river, creek, brook or ditch and a spring or wetland that is integral to a "stream" and provides fish habitat;

“streamside area” means an area adjacent to a stream that links aquatic to terrestrial ecosystems and includes both the riparian area and the adjacent upland vegetation that exerts an influence on the stream;

“top of the bank” means

- a. the point closest to the boundary of the active floodplain of a stream where a break in the slope of the land occurs such that the grade beyond the break is flatter than 3:1 at any point for a minimum distance of 15 metres measured perpendicularly from the break, as confirmed by a qualified professional, and

- b. for a floodplain area not contained in a ravine, the edge of the active floodplain where the slope of the land beyond the edge is flatter than 3:1 at any point for a minimum distance of 15 metres measured perpendicularly from the edge, as confirmed by a qualified professional;

“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 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed, as confirmed by a qualified professional; and

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

