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REPORT
2000 MARCH 27

CITY OF BURNABY

ENVIRONMENT & WASTE MANAGEMENT COMMITTEE

HIS WORSHIP, THE MAYOR
AND COUNCILLORS

2000 MARCH 21

RE: DRAFT PROVINCIAL STREAMSIDE PROTECTION REGULATION

RECOMMENDATIONS:

1. **THAT** Council request the Province to respond to local government feedback on the draft Streamside Regulation and involve local governments in further consultations prior to the regulation being forwarded to Cabinet for consideration.
2. **THAT** Council be requested to forward a copy of this report to the Honourable Joan Sawicki, Minister of Environment, Lands and Parks; Mr. Ken Vance, UBCM and Mr. Erik Karlsen, Province of B.C., for consideration as the City's input into the draft Provincial Streamside Protection Regulation.
3. **THAT** a meeting be requested with representatives of Council and the Honourable Joan Sawicki, Minister of Environment, Lands and Parks, to address the concerns outlined in this report.

REPORT

1.0 BACKGROUND

At the open Council meeting held on 2000 February 7, Council received correspondence from the Urban Development Institute (UDI) expressing concern regarding the Ministry of Environment, Lands and Park's (MOELP) draft Streamside Protection Regulation. Arising from the consideration of the correspondence, Council referred this issue to the Environment and Waste Management Committee. Council requested that staff report on the outcome of a UBCM workshop held 2000 February 02 where the draft Streamside Regulation was reviewed, and specifically provide feedback based on a questionnaire on the draft regulation. This report provides the requested information and identifies **serious concerns for the City with the regulation as currently drafted**. These concerns are discussed in detail in *Attachment 1, Workshop Questionnaire*.

2.0 DEVELOPMENT OF A PROVINCIAL STREAMSIDE PROTECTION REGULATION

As outlined in a report of the Environment and Waste Management Committee 1999 April 08, the Fish Protection Act (Bill 25) was passed in the legislature in May 1997 and is intended to provide comprehensive protection to fish and fish habitat. Section 12 of the Act allows the

Provincial government to establish regulations that contain policy directives regarding the protection and enhancement of riparian areas in settings subject to new residential, commercial or industrial development. The regulation will require that local governments protect streamside areas according to management objectives established by the regulations by either including riparian area provisions in accordance with the directive in its zoning and rural land use bylaws, or ensuring that its bylaws and measures provide a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by the directive.

A Memorandum of Understanding (MOU) was signed between UBCM, MOELP and the Ministry of Municipal Affairs and Housing at the UBCM convention in October 1997 to ensure that local government needs are addressed in developing a Streamside Protection Regulation. An extensive consultation process, led by the Province and involving local government, DFO, and stakeholders including UDI, local stewardship groups and others, has ensued. City of Burnaby staff have participated in this process.

Local governments were also invited to test an earlier draft of the Streamside Protection Policy Directives (SPPD's) through the implementation of pilot projects. The City of Burnaby was one of 18 local governments which completed a pilot project. At the October 1999 meeting of the Environment and Waste Management Committee, staff provided a verbal report on the outcome of the pilot project which tested the application of SPPD's on several redevelopment sites along Still Creek and Stoney Creek.

Overall, the pilot project in Burnaby revealed that the required riparian streamside setback designations of 30 m from the top of bank along both watercourses could not be implemented without undue impacts to existing land development capabilities. Further, the two dimensional assessment matrix associated with the draft SPPD could not adequately address the three parameters (riparian status, fish presence and parcel size and zoning) being evaluated. The proposed SPPD approach, which uses a matrix and riparian protection areas with defined widths, was seen overall, as inappropriate for redevelopment scenarios which are typical in Burnaby's urbanized context. A site specific variance approach involving MOELP, DFO and local government which includes a higher level dispute resolution process was recommended through the City's pilot project. Significant ravine areas such as Stoney Creek were recognized to provide substantial riparian protection and streamside setbacks needed to reflect this.

3.0 DRAFT STREAMSIDE PROTECTION REGULATION

UBCM sponsored a workshop on 2000 February 02 to review the current working draft (dated 2000 January 25) of MOELP's Streamside Protection Regulation. City of Burnaby Planning and Engineering staff participated in the workshop.

The proposed regulation is based on a 3-tiered "nested" approach for determining streamside setback areas, including:

- Designated riparian protection areas through numerically-based streamside setbacks based on the status of riparian coverage and the stream classification ("fish bearing or non-fish bearing").

- An adaptive approach where numerical setbacks cannot be achieved and a more comprehensive approach is adopted based on a written cooperative agreement between the municipality and MOELP and if available, DFO. A dispute resolution process must be defined as part of the cooperative agreement.
- A site specific variance process involving an environmental review committee (ERC) comprised of local government, provincial and, if available, DFO representatives. A dispute resolution process also applies to the ERC process.

3.1 Determination of the Width of Riparian Protection and Enhancement Areas

The determination of the width of riparian protection and enhancement areas under the regulations from the top-of-bank or top of the ravine bank is as follows:

- For intact and largely continuous areas of riparian vegetation greater than 30 m and up to 50 m wide, **an area at least 50 m wide.**
- For continuous but limited areas of riparian vegetation up to 30 m wide or discontinuous but occasionally wider areas of riparian vegetation greater than 30 m wide, **an area at least 30 m wide.**
- For narrow but continuous areas of riparian vegetation up to 15 m wide and discontinuous wider areas of riparian vegetation between 15 and 30 m wide, **an area at least 15 m wide.**
- For non fish bearing stream, continuous but very narrow areas of riparian vegetation up to 15 m wide interspersed with areas that have permanent structures, **an area of at least 5 and up to 15 m wide.**
- For ravine areas where the ravine is more than 60 m wide plus the width of the stream channel within its natural boundaries, **an area at least 10 m wide.**

3.2 Adaptive Approach

If a local government, using reasonable efforts, cannot achieve the widths of riparian protection and enhancement areas outlined above, the local government may prepare a report to MOELP and if available, DFO, identifying and evaluating findings regarding why the regulation setbacks cannot be achieved including biophysical obstacles, parcel size implications, road implications, etc. Based on the findings, the local government can enter into a cooperative agreement with MOELP to establish alternate streamside setbacks. The regional director of MOELP must approve adaptive approaches.

This approach is intended to accommodate more comprehensive plans as they pertain to riparian and aquatic habitat protection. For example, comprehensive stormwater management plans which define specific riparian protection areas may be approved by MOELP in lieu of implementation of the numerically-based riparian protection areas.

Requirements for submissions using this approach and the site specific variance approach (discussed below) are stipulated in the draft regulation. These include a comprehensive biophysical assessment, assessment of impacts to ground water, assessment of riparian vegetation along the length of the stream, and assessment of the

projected effectiveness of the alternative proposal over 5 and 25 year time frames, among others.

3.3 Site Specific Approach

A site specific approach is proposed where applications to change streamside setbacks from the regulation are requested by land owners. The local government must establish an environmental review committee (ERC) for the purposes of these site specific application reviews. The ERC must include appropriate local government staff, a representative of MOELP and, if available, a representative of DFO.

If the ERC determines that the application provides a level of riparian protection that is comparable to or exceeds the Streamside Protection Regulation, the local government may vary the width of the riparian setback area. Requirements for submissions to the ERC process are consistent with those described in the adaptive approach, as described above.

3.4 Dispute resolution

The draft regulation indicates that the written cooperation agreement between the local government and MOELP (and if available, DFO) must provide for a dispute resolution process to address any conflicts with respect to the determination of the riparian protection area. This applies to the adaptive approach and the site specific ERC approach.

3.5 Exceptions

The regulation does not apply to residential, commercial or industrial reconstruction or repair of a structure *on its existing foundation*. It does apply to all redevelopment. In addition, the regulation does not apply to institutional, park and recreation, agricultural or forestry lands.

4.0 ASSESSMENT OF THE DRAFT STREAMSIDE PROTECTION REGULATION

Overall, the objective of protecting and enhancing riparian habitat is supported and is consistent with Burnaby's environmental policies and plans, including the State of the Environment Report (SOER), the Official Community Plan, the Environmentally Sensitive Areas (ESA) Strategy, the Open Watercourse Policy and the Watercourse Bylaw. Burnaby is considered an environmental leader and many aspects of the draft Streamside Protection Regulation are already being implemented within the municipality.

The draft Streamside Protection Regulation has also developed considerably as a result of ongoing input from local government and stakeholders. In this regard, the current draft regulation reflects input from Burnaby's pilot project in that it includes provision of variance approaches including a site specific ERC review process (Section 6) and an adaptive approach (Section 5). It also includes a dispute resolution mechanism (Section 7) for resolving

disagreements on the outcome of decisions arising from the variance review processes. The regulation also attempts to streamline the review of development proposals associated with the protection of riparian areas and aquatic habitat.

However, there are grave concerns with the Streamside Protection Regulation as currently drafted. Many of these concerns have been identified in previous consultations and have not been addressed adequately in the current draft regulation. Detailed feedback appears in *Attachment 1, Workshop Questionnaire (Question #2)*, where responses to UBCM's questionnaire from the 2000 February 02 workshop are provided. A summary of the critical points of this assessment is as follows.

Numerical Widths Unachievable in Burnaby Context

- The riparian protection areas associated with designated numerical widths in Section 3 of the draft regulation **are not achievable** for the majority of development scenarios in Burnaby. Burnaby is, to a large degree, fully developed, and the most common development scenario is *redevelopment*, not “greenfields” development. While it is agreed that the application of 15 m and 30 m setbacks in undisturbed areas could be pursued, the application of these numerical setbacks in redevelopment scenarios would entail *severe* economic impacts to land values or curtail development for single and two family properties, as well as for industrial lands located adjacent to watercourses.

Exclusion of Institutional, Parks and Recreation, Agricultural and Forestry Land Uses

- **The exclusion of institutional, parks and recreation, agricultural and forestry land uses from the regulation is of serious concern**, as is the uncertainty concerning the definition of those uses. The Committee is of the view that those uses could also have significant impact on riparian areas and as such, should be governed by the same regulations that apply to new residential, commercial and industrial development. This is of particular concern in Burnaby where many significant institutional uses are located near watercourses, such as Simon Fraser University and BCIT.

Role of the Federal and Provincial Governments

- There is a critical need for DFO endorsement of the regulation. Local government needs assurance that the regulation meets requirements of the federal Fish Protection Act and will not result in contraventions of the Act or additional review processes. Written confirmation of DFO support of the draft regulation is strongly recommended prior to it being pursued further.
- There is a need for MOELP and DFO to commit to developing and participating in a dispute resolution process with local government prior to adoption of the Streamside Protection Regulation. The current draft regulation stipulates that the local government is responsible for developing a dispute resolution through a cooperative agreement with MOELP. Local government *must* have assurances that provincial and federal resources will be available for this process.
- The Province must undertake the education of both business and the public regarding the requirements of the regulation. As provincial legislation, it is appropriate that the Province both publicize the new regulations, once adopted, as well as provide information materials about the implementation of the regulations.

Staff Resources

- **There is a serious concern regarding staff resources which will be needed to implement the variance processes advocated in the draft regulation.** Due to the apparently high number of development proposals which will be subject to variance reviews, the Committee is deeply concerned with the lack of resources available to implement the Streamside Protection Regulation in Burnaby. **This issue has been raised repeatedly in consultations with the Province and has not been responded to adequately.** Staff are currently working with MOELP and DFO in an interim ERC process, and while the process is beginning to work effectively to streamline reviews of developments, the staff resources required to implement it are highly significant. Additional resources, including staff time, mapping and assessment are required to implement the adaptive approach of developing more comprehensive approaches in areas where designated riparian setbacks cannot be accommodated. The demand on an ERC process is expected to increase if the current draft regulation is implemented. Commitment of staff resources from MOELP and DFO are also *essential* to effectively implement the adaptive and ERC processes outlined in the draft regulation.

Cumbersome Process(es)

- The inclusion of ancillary facilities and services (i.e. roads, utilities, utilities, etc.) in the regulation will entail significant application of the variance processes. Many, if not most, of these facilities in the Burnaby context will not be able to attain the designated numerical setbacks and will, therefore, be subject to one of the variance processes. Typically, these facilities are constructed in already developed areas, and stream crossings and other impacts often cannot be avoided.
- The regulation as currently structured will result in a large number of proposals being deferred to the variance process. **The regulation should not be structured so that the majority of cases are deferred to a variance process.** This process is resource-intensive and includes extensive requirements such as an assessment of the impact on ground water and an assessment of riparian quality along the entire length of the stream. It will be difficult for proponents to fulfill these requirements for typical residential redevelopment proposals without undue expense.
- The adaptive approach (Section 5, draft Regulation) as drafted is unclear (i.e. definition of "reasonable efforts" to achieve the numerical widths). Of particular concern is that the required approvals under this approach must be granted by the regional director of MOELP *and* the regional director of DFO. This is *clearly* overly onerous and leads to serious concerns regarding the timeliness of response.
- The site specific variance approach must be accessible to all reasonable cases where applicants wish to pursue this approach. It appears that it is an option only where "site obstacles" that can only be addressed through a site specific approach exist, where riparian productivity would be enhanced or where roads and services are needed and infringe on a riparian area. Significant economic impacts to the value of a property should also be considered adequate "obstacles" that provide access to the variance approaches.
- The requirements for submissions for the site specific variance (ERC) process are overly onerous in some situations. Included in the requirements are assessments of the impacts on groundwater and riparian vegetation along the length of the stream, and projected

effectiveness of the proposed riparian protection area over a 5 year and 25 year time. Adaptation of the requirements for these submissions is needed to reflect the relative scope and potential impacts associated with proposed developments.

Liability Protection

- There is a need for City staff to have clear protection from liability. Endorsement by DFO is required for protection with regard to the Fish Protection Act.

Clarifications Needed

- The requirements for revegetation of areas of “potential” riparian vegetation remain unclear
- Definitions require further clarification (i.e. “top of bank,” “flexibility”).
- The requirement that a local government must make provision for protecting or replanting riparian vegetation while avoiding disturbing soils or developing impervious surfaces is unrealistic in many situations, and should be rephrased as “consider” or “work to avoid”.

5.0 NEXT STEPS

UBCM and the Province are currently receiving input from local government on the draft Streamside Protection Regulation. This will be assessed and considered by the Streamside Directive Technical Committee at the end of March. It is anticipated that a proposed Streamside Protection Regulation will be forwarded to Cabinet for review later in the Spring of 2000. However, this is unconfirmed at this time.

6.0 CONCLUSION

This report and the attached *Workshop Questionnaire* provide a critical review of the Province's draft Streamside Protection Regulation based on materials presented at a recent UBCM workshop. Overall, the objectives of the draft regulation are consistent with the City's environmental policies and plans, and the current draft regulation responds, to some degree, to input previously provided by local government.

However, the City of Burnaby is deeply concerned about the Streamside Directives Regulation as currently drafted, which is overly complex, cumbersome and resource-intensive. The City of Burnaby has a demonstrated history as an environmental leader - particularly with regard to watercourse protection and enhancement - and yet this regulation is simply not supportable in the Burnaby context. Without resolution of the issues identified in this report and the attached Workshop Questionnaire, implementation at the municipal level is highly questionable, as is whether the draft regulation provides any added value for riparian protection over the current development review processes in Burnaby (which utilize the Land Development Guidelines and a site specific ERC process to develop effective approaches to protect riparian and aquatic habitat).

Based on these outstanding issues, it is recommended that this input be forwarded to the UBCM and the Province for consideration in revising the draft regulation. Further, it is recommended that Council request the Province revise the draft regulation based on input received from the

UBCM and consult further with local government to develop workable solutions. It is further recommended that representatives of Council meet with the Minister of Environment, Lands and Parks to convey the nature and gravity of the City's concerns.

Respectfully Submitted,

Councillor D. Johnston, Chair

Councillor B. Der, Member

Councillor C. Redman, Member

ATTACHMENT 1

DRAFT PROVINCIAL STREAMSIDE PROTECTION REGULATION UBCM February 2, 2000 Workshop Questionnaire

City of Burnaby Response

PART 1: ROLE OF LOCAL GOVERNMENT

GENERAL

1. *What do you like/ support/favour about the draft Streamside Protection Regulation?*

- The objective of protecting and enhancing riparian areas
- The provision of variance approaches
- It attempts to streamline the review process
- It integrates an assessment of existing riparian conditions in the determination of streamside protection areas and is based more on an ecological approach than the current Land Development Guidelines approach

2. *What do you find problematic/unclear about the draft Streamside Regulation and would request changes/amendments to?*

Numerical Widths Unachievable in Burnaby Context

- The riparian protection areas associated with designated widths in Section 3 of the draft regulation are not achievable for the majority of development proposal scenarios in Burnaby. These setbacks, measured from top-of-bank, generally involve 30 m for new residential development or redevelopment. This cannot be achieved in most single and two family developments without severe economic impacts to land values. Similarly, 15 and 30 m setbacks often cannot be achieved on redevelopment sites without significant impacts to the current level of development on the site. The Burnaby pilot project demonstrated that many industrial redevelopment sites along Still Creek have minimal existing riparian areas (i.e. < 5 m). The designated numerical riparian widths contained in the draft regulation result in a minimum 15 m riparian setback on these sites, which cannot be achieved without impacting the current level of development on the site.

Designated riparian protection setback areas have been improved to a degree in the current draft, reflecting the increased level of riparian protection afforded in significant ravine areas as well as recommending 15 m setbacks (instead of 30 m) for fish bearing streams where existing riparian vegetation is narrow (15 m or <), or where it is discontinuous but wider (up to 30 m) in some areas. Notwithstanding,

the designated riparian protection areas currently form the basis of the "nested" approach of the draft Streamside Regulation and are inherently problematic because they cannot be reasonably applied to the majority of proposed development scenarios. This phenomenon is most relevant in highly developed municipalities like Burnaby, where redevelopment is the norm.

The setbacks of the draft regulation are not dissimilar to those currently being applied through the Land Development Guidelines. The main difference, however, is that those associated with the draft Streamside Protection Regulation are regulations as opposed to guidelines, and implementation of them is required unless an application can demonstrate sufficient rationale, based on the criteria for triggering the alternative approach (Section 5) or site-specific variance approach (Section 6). Considerable resources are necessary to pursue a variance approach riparian review. Simply put, a regulation should not be based largely on exceptions. It is recommended that the riparian protection area designations outlined in Section 3 of the draft regulation be revised as guidelines. This approach can facilitate the adoption of the revised setback designations while better serving non-conforming proposals.

Exclusion of Institutional, Parks and Recreation, Agricultural and Forestry Land Uses

- As identified at various consultations with local government, the exclusion of other land uses, including institutional, parks and recreation, agricultural and forestry, in the regulation leads to potentially inconsistent levels of protection to fish habitat. As the Streamside Protection Regulation is intended to employ an ecosystems-based approach, this division of regulations is counterproductive. As other processes are underway for agriculture and forestry lands, **strategies for institutional and park/recreation land uses need to be specifically addressed for local government buy-in to the regulation.** Local governments need to be assured that review of provincial development projects will be subject to the same rigour. Furthermore, a definition and clarification of these terms is needed.

Role of the Federal and Provincial Governments

- The endorsement of the draft Streamside Regulation by DFO (now Fisheries and Oceans Canada) is essential yet remains unclear. The draft indicates that DFO will participate in various aspects of the regulation "where available" throughout the draft. While this clause is qualified indicating that the province cannot commit the participation of another government agency in their regulation, local government needs assurance that the regulation meets requirements of DFO's Federal Fisheries Act and will not result in contraventions of the Act or additional review processes. Written confirmation of DFO support of the draft regulation is recommended prior to it being pursued further.

- The provision of a dispute resolution process (Section 7) within the regulation is supported. The process is intended to address disagreements between the various levels of government and/or the proponent on the outcome of a decision through the site specific ERC or adaptive approach. The current draft regulation stipulates that the local government is responsible for developing a dispute resolution through a cooperative agreement with MOELP. It is essential that MOELP and DFO commit to developing and participating in a dispute resolution process with local government prior to adoption of the Streamside Protection Regulation. *(Please refer to Question #9 for additional comments on the dispute resolution process.)*
- The Province should undertake the education of both business and the public regarding the requirements of the regulation.

Staff Resources

- There is a serious concern regarding resources to implement the variance processes advocated in the draft regulation. Due to the apparently high number of development proposals which will be subject to variance reviews, the Committee is deeply concerned with the lack of resources available to implement the Streamside Protection Regulation in Burnaby. This issue has been raised repeatedly in consultations with the Province and has not been responded to adequately. Considerable staff resources are required to coordinate a site specific ERC process internally. Additional resources, including staff time, mapping and assessment are required to implement the adaptive approach of developing more comprehensive approaches in areas where designated riparian setbacks cannot be accommodated. Staff are currently working with MOELP and DFO in an interim ERC process. While the process is beginning to work effectively to streamline reviews of developments and works associated with riparian and aquatic areas and address proposals at an early planning stage, the staff resources required to implement it are highly significant. Formerly, reviews were conducted independently by environmental agencies through the referral process. The demand on an ERC process is expected to increase if the current draft regulation is implemented. Commitment of staff resources from MOELP and DFO are also essential to effectively implement the adaptive and ERC processes outlined in the draft regulation (Sections 5 and 6). *(Please refer to Questions #5 and #13 for additional comments on need for adequate resources and support.)*

Cumbersome Process(es)

- The draft regulation includes all ancillary facilities such as roads, drainage works, trails, utilities, etc. within the definition of development which requires application of the Streamside Protection Regulation. While it is recognized that riparian habitat

must be protected in the development of these facilities, it is also recognized that many, if not most, of these facilities in the Burnaby context will not be able to attain the designated numerical setbacks and will, therefore, be subject to one of the variance processes. Typically, these facilities are constructed in already developed areas and stream crossings and other impacts often cannot be avoided. These proposals are currently reviewed by DFO and MOELP with the City and site specific solutions which offer the greatest protection and enhancement are implemented. DFO review of these projects often requires Section 35(2) approval under the Fisheries Act which authorizes “harmful alteration of fish habitat” where impacts cannot be avoided but can be mitigated. Implementation of the Streamside Protection Regulation as drafted will result in most of these proposed works requiring review through the site-specific variance approach (Section 6, draft regulation) or through the adaptive approach (Section 5, draft regulation). DFO endorsement of this approach and the commitment of necessary resources from senior environmental agencies is essential in the review of capital work projects and ancillary facilities, and in effectively implementing the regulation in this regard.

- Based on the numerical riparian width setback regulations, a 30 m setback would generally be required on undeveloped residential properties. This would be unachievable in the majority of single and two-family redevelopment proposals and result in significant impacts to property values. **The regulation should not be structured so that these cases are deferred to a variance process.** This process is resource-intensive and includes extensive requirements such as an assessment of the impact on ground water and an assessment of riparian quality along the entire length of the stream. It will be difficult for proponents to fulfill these requirements for typical residential redevelopment proposals without undue expense. The current Land Development Guideline setback of 15 m is a more realistic benchmark for these scenarios. Inclusion of parcel size and zoning considerations from the previous draft Streamside Directive (September 1999) were beneficial in addressing these scenarios.
- The Adaptive Approach (Section 5, draft regulation) as drafted is unclear and needs further explanation. The required approval of proposals under this approach by the regional director of MOELP appears overly onerous and leads to concerns regarding the timeliness of response.
- As drafted, it is unclear if the site specific variance approach (Section 6, draft regulation) can be accessed in all cases. It appears that it is an option only where “site obstacles” that can only be addressed through a site specific approach exist, where riparian productivity would be enhanced or where roads and services are needed and infringe on a riparian area. As it appears, a limited number of redevelopment scenarios can achieve designated numerically based riparian areas, therefore, it is important that both the site specific variance approach and the adaptive approach are

accessible to all reasonable cases where applicants wish to pursue this approach. Significant economic impacts to the value of a property should be considered adequate "obstacles" that provide access to the variance approaches.

- Requirements for submissions for the site specific variance (ERC) process are considered overly onerous in some situations. Included in the requirements are an assessment of the impacts on groundwater, assessment of the status of riparian vegetation along the length of the stream and projected effectiveness of the proposed riparian protection area over a 5 year and 25 year time. These assessments would not be easily completed and would be costly for small scale proposals such as residential development. The current regulation directs most of these proposals through this approach. Adaptation of the requirements for these submissions is needed to reflect the relative scope and potential impacts associated with proposed developments.

Liability Protection

- There is a need for City staff to have clear protection from liability from implementation of the Province's Streamside Regulation. Endorsement by Fisheries and Oceans Canada is required for protection in regard to the Fisheries Act.

Clarifications Needed

- Areas of "potential" riparian vegetation are described within Section 1, Definitions of the draft regulation. It remains unclear however, what requirements will be made for revegetation of these areas. As suggested in Burnaby's pilot project recommendations, it is felt that riparian enhancements should be accounted for in determining riparian protection areas to ensure fairness to the proponent. For example, a 30 m setback within an area of limited invasive vegetation along Still Creek might be reduced to 20 m with significant riparian enhancement planting. The draft regulation currently provides no specific explanation on the enhancement of potential riparian areas.
- While the draft regulations have refined the definitions, additional clarification of the term "top of bank" is desirable.
- Section 2 of the draft Streamside Protection Regulation requires that a local government in exercising its powers for planning and development must make provision for protecting or replanting riparian vegetation to achieve numerous ecological functions (listed in the regulation) while avoiding disturbing soils or developing impervious surfaces. This requirement as drafted, is unrealistic in many situations where development is proposed. It is recommended that this section be revised to indicate that local government must consider all of the listed ecological functions and work to avoid disturbances that may lead to riparian impacts. As currently written, the requirements are extremely difficult to achieve and would not be evaluated through implementation of the regulation in any event.

3. ***Do you feel that the draft Streamside Protection Regulation would be well received in your community?***

It is anticipated that stewardship groups and some members of the general community would likely support it. It is also anticipated that the development community and some members of the general community would likely not support it due to conflicts with other values such as the value of land, reduced recreational opportunities, etc.

Section B - LOCAL GOVERNMENT ROLE

4. ***Will the draft Streamside Protection Regulation improve the protection of fish habitat and reduce the overlap and potential conflict between the three levels of government over the identification of riparian areas?***

It is anticipated that the regulation will enhance the protection of fish habitat in some local government areas. However, in Burnaby where all applications for developments associated with riparian areas are reviewed based on the Land Development Guidelines and an ERC approach involving DFO and MOELP has been implemented, it is anticipated that the Streamside Regulation will not significantly change the level of protection for fish habitat. The introduction of the new regulation, if adequately supported with appropriate educational materials, may raise the awareness of the municipality, developers and members of the community which could result in improved protection of fish habitat. The regulation may result in more comprehensive protection of fish habitat as a result of considering the components associated with ecological functions or riparian areas outlined in Section 2 of the regulation during the planning and development process. These relatively marginal gains in protecting fish habitat will only be realized if the process is adequately supported and funded by provincial and federal levels of government.

The regulation should reduce the overlap and potential conflict between the three levels of government if DFO endorsement and support of the process is provided and adequate resources are provided by all levels of government to implement the regulation.

5. ***Will the draft Streamside Protection Regulation provide a framework for ongoing "consultation and cooperation" between local government, the province and the federal government in protecting fish habitat?***

Yes, if all levels of government endorse it and provide adequate resources for its implementation. The adaptive approach (Section 5, draft regulation) appears particularly conducive to interagency cooperation. It needs to be less onerous, not requiring the approval of the regional director in all cases, to be effective. It is recommended that applications under the adaptive approach be approvable through the ERC (Section 6, draft regulation) which is associated with the site-specific variance process. In this manner, all three levels of government have input in the review and approval of applications and representatives who

are familiar with site specific conditions are involved in decision-making processes. As discussed above, the site specific variance process must be accessible for applicants who wish to pursue this approach for adequate reasons which include reasonable concerns regarding the potential impacts on the development capability of their land.

6. ***Will the regulation provide local government with the "certainty" required to identify and classify those areas of the community that would require riparian protection?***

The draft regulation is not expected to provide any more certainty in defining streamside protection areas than the current process based on the Land Development Guidelines which recommends that all streams associated with fish habitat have riparian setback areas based on the guidelines. There is some change to the width of setbacks from the current approach. The regulation proposes the width for undeveloped residential sites as 30 m generally. As discussed above, this is unworkable for most single and two family residential development proposals. The width of riparian protection areas on sites with existing narrow (15 m wide) or discontinuous (between 15 - 30 m wide) riparian vegetation is to be at least 15 m wide. Under the current Land Development Guidelines, these sites would be associated with 30 m setback guidelines for industrial, commercial and high density residential development. The proposed regulation is therefore seen to better reflect the site conditions and can be more readily adopted in these circumstances. The draft also differentiates ravine conditions which is an improvement over the current approach.

Overall, Burnaby's pilot project revealed that few cases were able to achieve the numerical riparian setbacks which are consistent with the draft regulation due to the typical conditions associated with redevelopment activities. As a result, certainty of riparian protection is poor.

7. ***Will the regulation provide local government with the "flexibility" to address redevelopment issues where setbacks would have to be varied?***

Yes. However, the variance process (Section 6, draft regulation) must be more accessible to applicants who choose to pursue it for reasons including significant economic impacts to a site. Requirements for site specific reviews need to reflect the type of development proposed and the ecological significance of the stream. For example, residential applications will not be able to readily fulfill the application requirements of intensive biophysical assessments which include impact assessment to groundwater resources and riparian integrity on the entire length of the stream.

8. ***Will the draft regulation provide "flexibility" for local government to address competing land use interests in the community (recreation, greenways, development of community infrastructure, etc.)?***

Not adequately. As drafted, it does not support these uses within streamside protection areas unless approved through an adaptive or variance review. Within the variance approaches,

these uses will only be considered within streamside protection areas if it can be demonstrated that they cannot be accommodated outside of the streamside protection areas or that their implementation would lead to enhanced riparian conditions. Amenities such as trails may be proposed in streamside protection areas because they bring users in closer contact with positive experiences that raise environmental awareness and encourage stewardship. Less sensitive areas of streams may accommodate recreational amenities such as trails without impacting the integrity of riparian habitat. Recommendations within "The Access Guide to Aquatic Areas" produced by DFO and MOELP do not preclude public access in riparian areas, but recommend means of facilitating it through environmentally sensitive design approaches. Therefore, the variance approaches of the regulation need to support the inclusion of applications associated with these facilities.

DISPUTE RESOLUTION

9. *What issues should be dealt with in the dispute resolution process and what kind of dispute resolution process should be implemented?*

As indicated in local government's pilot projects, a dispute resolution process needs to be established to address variance case reviews where the outcome is not acceptable to the proponent or the local, federal or provincial government for adequate reasons.

A dispute resolution process needs to be supported in principle by all three levels of government as part of any adopted regulation and not left to local government to resolve through cooperative agreements with the province following the adoption of the regulation. The commitment by all parties to provide resources for this process is also needed prior to adopting the regulation. Following adoption of the regulation, terms of reference defining the details of the dispute resolution process need to be resolved jointly by the three government agencies. The dispute resolution process must function in a timely manner to be effective.

10. *Is the two year transition period sufficient time to implement the streamside protection regulation?*

The transition period for implementing the process in regards to reviewing new development applications is adequate. The regulation could be incorporated into the City's ERC process in this regard. The transition period is not seen as adequate however, in terms of establishing streamside protection areas throughout the municipality which have been approved by the province and DFO. This would require considerably more time. It is recommended that priority streams be defined (based on the highest value streams and those which require the greatest and most immediate protection) and streamside protection areas for these be determined initially.

11. Should the transition period be subject to the provision of financial and technical assistance from the province to implement the regulation?

Yes, financial and technical assistance is essential to effect the transitional period. Specifically, staff resources are needed to coordinate ERC reviews, provide technical assistance in mapping and determining streamside protection areas and developing appropriate bylaw changes. Staff resources are also required for the ongoing implementation of the regulation.

GEOGRAPHIC SCOPE

12. Is the geographic application of the streamside protection regulation appropriate in phase one? What changes, if any, would you suggest to the geographic application of the regulation? (i.e. Would you like to see the scope of the regulation expanded or reduced in phase one - See schedule of regional districts).

Yes, the Geographic application of the regulation, which includes the GVRD, is appropriate. However, consideration might be given to test the regulation out in a developed municipality, assess the outcome and resources required, adapt the regulation appropriately then institute widespread adoption. Resources and support from provincial and federal agencies would be necessary to implement such as pilot.

PART 2 - RESOURCES AND IMPLEMENTATION

13. The following preliminary list of resources has been developed. Rank which resources are needed based on order of importance (with 1 being most important, 6 least important).

Resources

- 4 Mapping and inventory of streams in local watersheds (including priority for protection)
- 2 Technical assistance (hotline, legal advice, biological advice, landscaping, model bylaws, etc.)
- 3 Best Practices Guide - including methods of achieving required leave strips
- 5 Public education (private landowner, developers, etc.)
- 1 Staff training program for local government
- 6 Financial assistance guide (note: financial *support* needed, not only financial guide)

Financial Assistance

- 1 Implementation funding for amending OCPs and drafting new bylaws associated with fish protection direction
- 4 Ongoing funding for maintenance of leave strips
- 3 Ongoing funding for liability/ legal costs associated with leave strips
- 5 Ongoing funding for community groups to monitor activity around local streams (neighbourhood watch program) and for local governments to enforce regulations
- 2 Ongoing funding for education and training related to fish protection

Comments:

Financial assistance needs to specify staff resources to coordinate and implement the regulation within the municipality. The transference of these responsibilities, particularly in regard to the site-specific variance (ERC) process is associated with considerable staff time. In addition to the above resources, commitments of staff support from MOELP and DFO are required to effectively implement the regulation.