

**TO:** CITY MANAGER 2004 June 8  
**FROM:** DIRECTOR PLANNING AND BUILDING OUR FILE: 11.210  
 DIRECTOR ENGINEERING  
**SUBJECT:** DRAFT UBCM RESOLUTION ON THE PROPOSED RIPARIAN AREA  
 REGULATION  
**PURPOSE:** To propose a draft UBCM Resolution on the Province's forthcoming *Riparian Area Regulation*.

**RECOMMENDATIONS:**

1. **THAT** the proposed draft Resolution contained in section 3.0 of this report be forwarded to the UBCM for consideration during the 2004 UBCM convention; and
2. **THAT** this report be forwarded to the UBCM, UBCM members, the Provincial Minister of Water, Land and Air Protection (MWLAP) and Federal Minister of the Department of Fisheries and Oceans (DFO), Burnaby's MLAs and MPs, and to the City's Environment Committee.

**REPORT**

**1.0 INTRODUCTION**

On May 12, 2004, City staff attended a briefing on the Province's proposed changes to the *Streamside Protection Regulation*, and its evolution into a *Riparian Area Regulation*. On May 17, 2004, Council received a staff report on the meeting noting the lack of local government consultation on this matter. In response to this report, Council sent letters to the Provincial Ministry of Water, Land, and Air Protection (MWLAP), federal Department of Fisheries and Oceans (DFO) and UBCM requesting that changes to the *Streamside Protection Regulation* be delayed to allow for meaningful open consultation with local government. The City has not received a response from the Provincial or the Federal Government.

Since adoption of that report, Council has received a letter from the Union of British Columbia Municipalities (UBCM), committing to continue to pursue local government concerns in the drafting of the Regulation (see *attachment 1*). City staff have also met with other municipal staff and UBCM, through the Municipal Environmental Managers Committee (MEMC), to discuss specific potential concerns about a revised Regulation. The following report provides an overview of these specific potential concerns and proposes a draft Resolution for the UBCM conference in Fall 2004.

## 2.0 POTENTIAL CONCERNS WITH THE REVISED REGULATION

As Council will recall, the Province agreed to meet with local government environmental managers on May 12, 2004, to brief them on the revised Regulation. The Province emphasized that this was a briefing and not consultation. Copies of the revised Regulation were not available at this meeting, but the elements of the Regulation were discussed. Without seeing the proposed Regulation, meaningful comments were not possible. Furthermore, staff were unwilling to sign the “Confidentiality Agreement” prescribed by the Province to view the draft Regulation.

Following the May 12, 2004 Briefing Workshop, municipal staff met through the Municipal Environmental Managers Committee (MEMC) to discuss collective concerns. At the meeting, the local government staff identified a wide variety of potential issues and questions regarding the Regulation content and implementation. These specific issues were grouped under the five issue areas that UBCM has been pursuing with the Province (as per the 2002 UBCM Resolution) (see *attachment 2*).

In addition to the five issue areas that UBCM is already pursuing, staff identified two other issues - the need to build professional confidence in the proposed assessment model and the need to include other land uses under the Regulation. Staff were particularly concerned about the continued exclusion of institutional land uses from the Regulation, as this explicitly removes federal and provincial lands from the requirements, promoting a fragmentation of riparian protection measures.

## 3.0 NEXT STEPS - UBCM DRAFT RESOLUTION

At the May 12, 2004 Briefing, the Province noted that their next steps would either be Cabinet adopting changes to the Regulation, or Cabinet eliminating the Regulation altogether. Forthcoming changes to the Regulation could be as early as June 2004. Eliminating the Regulation would leave even further uncertainty related to streamside protection and regulatory requirements in the land development process.

If the Province proceeds with the Regulation, they will need to sign a Tripartite Agreement for implementing the Regulation with the federal department of Fisheries and Oceans (DFO) and the UBCM. In preparation for the drafting of such an Agreement, it is proposed that the City submit the following draft Resolution which is similar to draft Resolution being forwarded by other local governments for the Fall 2004 UBCM Conference. This draft Resolution should set conditions for UBCM participating in the Tripartite Agreement, to ensure that local governments’ liability, resourcing, and implementation concerns are met.

*“WHEREAS the City of Burnaby is supportive of and vitally interested in harmonizing streamside protection measures;*

*AND WHEREAS the provincial government is drafting the Riparian Area Regulation for enactment in late 2004 or early 2005, and has been proceeding without extensive nor open consultation with local governments;*

*AND WHEREAS the UBCM membership resolved, in the 2002 Environment Action Plan, that any new riparian assessment regulation should:*

- Provide liability protection for local government when making land use decisions based on a report by a Qualified Environment Professional on fish habitat;*
- Ensure that no new responsibilities are downloaded on local government and that all training costs and management costs required to implement the new Regulation are paid for by either the Federal or Provincial Government;*
- Ensure the process is timely and cost effective, from the community perspective;*
- Ensure an integrated approach is implemented to avoid conflicts between the different levels of government;*
- Ensure that a balance is maintained between development and protection of the environment.”*

*AND WHEREAS the proposed Regulation will not include institutional land uses, including federal and provincially administered lands, promoting a fragmentation of riparian protection which may compromise the effectiveness of the Regulation:*

***THEREFORE BE IT RESOLVED*** *that the UBCM membership not endorse a tripartite agreement for implementing a Riparian Area Regulation unless the following measures have been satisfied:*

- A comprehensive legal and logistical review of the Regulation by an objective party to identify, assess, and address the implications of the Regulation to local governments; and*
- Assurance of open involvement of local governments in the development of the compliance, enforcement, and implementation strategies; and*
- Assurance of open involvement of local governments in development of the guidebook for implementation for the Regulation.*

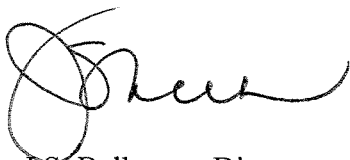
**AND BE IT FURTHER RESOLVED** that the Riparian Area Regulation be extended to apply to institutional land uses, including federal and provincial Crown lands”.

#### 4.0 CONCLUSIONS

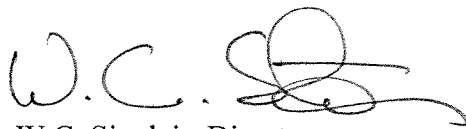
The success of the proposed *Riparian Area Regulation* requires effective partnerships between the local governments, the Province and the DFO. For the *Riparian Area Regulation* to be successfully implemented, open and meaningful consultation is needed with the local governments to ensure that issues, such as liability protection, resourcing, compliance monitoring, enforcement, and roles and responsibilities are addressed. To date, the development of the *Riparian Area Regulation* has not included an open partnership nor discussion with local government.

As such, the proposed / draft UBCM Resolution seeks to ensure that the Province addresses local government issues before implementing the Regulation. It is therefore recommended that:

1. **THAT** the proposed draft Resolution contained in section 3.0 of this report to be forwarded to the UBCM for consideration during the 2004 UBCM Convention; and
2. **THAT** this report be forwarded to the UBCM, UBCM members, the Provincial Minister of Water, Land and Air Protection (MWLAP) and Federal Minister of the Department of Fisheries and Oceans (DFO), Burnaby’s MLAs and MPs, and to the City’s Environment Committee.



J.S. Belhouse, Director  
PLANNING AND BUILDING



W.C. Sinclair, Director  
ENGINEERING

RW/jc  
Attachments (2)

cc: Director Parks, Recreation and Cultural Services  
City Solicitor

: Mayor and Council  
Chair and Regional District Board

FROM: Chair Robert Hobson, Chair, UBCM Environment Committee  
Ken Vance, Senior Policy Analyst

DATE: May 17, 2004

RE: RIPARIAN AREA MODEL: NEW REGULATORY FRAMEWORK

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### GENERAL OVERVIEW

In the fall of 2001 and spring of 2002 the provincial government undertook a review of the current regulation on streamside protection and determined that the regulation needed to be changed as it was not supported by all of the key stakeholders. The provincial government made a decision that it would either develop a new streamside protection regulation based on a 30 metre assessment zone that key stakeholders could work with or it would rescind the old regulation and withdraw from the policy area.

The intent of the regulation that is being developed is to provide a 30 metre assessment zone that is scientifically based and can be used by a qualified professional to determine the distance that development can take place from a stream and still protect fish habitat.

The provincial government in the development of this new riparian area process made a decision - given that the new regulation still intended to protect fish habitat - not to undertake a broad consultative process on the new regulation, but rather to use the information from the previous consultations and to undertake strategic discussions with affected groups. It has undertaken discussions with the development industry and some environment groups.

At the 2002 UBCM Convention local governments were consulted on the province's decision to develop a new regulation and endorsed the following position outlined in the 2002 Environment Committee Report regarding development of a new riparian assessment regulation:

*Action: UBCM request that a new riparian assessment regulation:*

- *Provide liability protection for local government when making land use decisions based on a report by a Qualified Environment Professional on fish habitat;*
- *Ensure that no new responsibilities are downloaded on local government and that all training costs and management costs required to implement the new regulation are paid for by either the federal or provincial government;*
- *ensure the process is timely and cost effective, from the community perspective;*
- *ensure an integrated approach is implemented to avoid conflicts between the different levels of government;*
- *ensure that a balance is maintained between development and protection of the environment.*

UBCM has been asked to provide comments on the framework for a cooperation agreement (no discussion on details), outline of guidebook, development of the new assessment process and the development of the regulation (under provincial government confidentiality requirements).

## LOCAL GOVERNMENT COMMENTS AND CONCERNS

At the briefing session on the new regulatory framework and assessment model, held on May 12, 2004, local government representatives in attendance raised a number of issues, outlined below is a summary of some of the comments provided:

- Lack of a transparency and open consultation process;
- Concern over the decision by the provincial government not to include the current SPR process as a policy option;
- Volume of regulatory changes being downloaded on to local government;
- Development of the new assessment model – lack of external peer review of model; failure to consider hydrological factors in new model; model does not address erosion issues;
- Need to undertake pilot projects and test the new tools in the assessment model;
- Limited scope of the new regulatory framework – does not address water quality; values other than fish will be lost; does not include institutional development and agricultural areas;
- Concern over the use of Qualified Professionals in approval process – increased liability to local government; lack of accountability; lack of creditability in new process; need for a conflict/resolution mechanism in the event that there are disagreements;
- Timing of reports from qualified professionals to ensure riparian area is protected – design stage, pre-construction and build stage;
- Need for detailed training process for qualified professionals undertaking riparian assessments;
- Concern over limited time frame to implement new model – local government may need to undertake public consultation; amend bylaws and make other policy changes etc.;
- Need to clarify the role of local government in new regulatory framework;
- Lack of federal and provincial resources in implementation of the new regulatory framework and development of the new assessment model;
- Concern over compliance and enforcement monitoring by the federal and provincial government – adoption of new model brings risks; who will ensure that the new methodology is working; what happens if there is non-compliance;
- Loss of working relationship and partnerships – between local government and streamkeepers groups and federal and provincial agencies.

## NEXT STEPS

UBCM will be forwarding the concerns identified by local government to the Minister of Environment, Lands and Parks.

UBCM will be having further discussions with the Ministry of Water, Lands and Air Protection around the development of the regulation and the implementation of the new regulatory framework.

There are a number of specific issues that came out of the briefing session regarding the new riparian area regulation and assessment model that the UBCM will pursue with the province:

- Use of qualified professionals and liability protection for local government;
- Time frame for implementation of the proposed directive;
- Role of local government in implementing the new riparian assessment model;
- Need for additional resources for implementation: training, monitoring and compliance etc.;
- Development of pilot projects.

## Proposed Riparian Area Regulation Potential Specific Issues

*NB The comments outlined in this table are based on an understanding of the draft regulation, as presented at the May 12 "Briefing on Riparian Area Model". Please note that the authors have not been able to review the regulation, as such a review requires signing a confidentiality agreement. As such, some of the questions may already be answered in the regulation.*

<b>UBCM Concern<sup>1</sup></b>	<b>RAR Proposed Approach<sup>2</sup></b>	<b>Specific Issues</b>
<p>1. Provide <b>liability protection</b> for local government when making land use decisions based on a report by a Qualified Environment Professional on fish habitat;</p>	<p>LG has no liability, so long as it follows prescription by QEP. It is expected that LG will simply accept the QEP report and proceed without a review by LG, DFO, or Province. It is proposed that once the Province acknowledges receipt of the QEP report, then the LG can proceed.</p>	<ul style="list-style-type: none"> <li>a. Is liability protection for LG explicitly worded in the Regulation?</li> <li>b. If a LG issues a permit (rezoning, subdivision, building permit) for works, consistent with the QEP recommendations, is the LG non-liable for any subsequent damage to fish habitat?</li> <li>c. Does the LG have any role in "checking" the QEP report, on receipt? Is there an approval process for the QEP report? What is minimum due diligence in process for liability protection?</li> <li>d. What (if any) is the LG liability if they note an error in the QEP report? Are they required to report or respond to the error?</li> <li>e. What (if any) is LG liability for "enforcing" the landscaping prescription in the QEP report (over and above building setbacks)?</li> <li>f. Does the LG have flexibility to vary from the QEP recommendations without liability to meet other LG</li> </ul>

<sup>1</sup> From the September 2002, UBCM resolution

<sup>2</sup> The proposed approach is our understanding of the regulation as presented at the May 12 "Briefing on Riparian Area Regulation"

UBCM Concern <sup>1</sup>	RAR Proposed Approach <sup>2</sup>	Specific Issues
<p>2. Ensure that <b>no new responsibilities are downloaded</b> on local government and that all training costs and management costs required to implement the new regulation are paid for by either the federal or provincial government;</p>	<p>LG just receives QEP recommendations and implements. Very minor administrative role.</p>	<p>requirements?</p> <p>g. How do LGs know if the senior agencies have concerns with QEP report? How long do they have to wait until processing the QEP application? If the LG approves permits after the allotted timeframe, are they non-liable for any subsequent issues?</p> <p>h. Will DFO be available through ERCs to consult on variances to the QEP recommendations to meet LG needs?</p> <p>i. Will the provincial or federal governments sign the restrictive covenants?</p> <p>j. Could developers challenge the legality of the LG implementing the RAR?</p> <p>k. If DFO issues a stop-work order on a project due to a problematic QEP report, is the LG liable for having issued permits (i.e. could the LG be sued by the developer)?</p> <p>l. The LGs agreements are with the developer as opposed to the QEP. What is the legal relationship between the LG, developer and QEP?</p> <p>a. Will a LG need to enact a bylaw in response to the regulation, or will the RAR simply create a new provincial requirement that all development applications must meet?</p> <p>b. If a bylaw is required, this action will require resources (planning, legal, public consultation, etc). Grants must be available.</p> <p>c. Bylaw enactment can be facilitated through Provincially-proposed model bylaws (Guidebook). As the Guidebook has not yet been prepared, and the RAR has had only preliminary field testing, it may be appropriate to phase in</p>



UBCM Concern <sup>1</sup>	RAR Proposed Approach <sup>2</sup>	Specific Issues
		<p>implementation and deadlines for bylaw enactment. For example - Phase 1 (1 year) = test sites, development of draft Guidebook with LG input, training; Phase 2 (1 year) = test with representative municipalities, finalize guidebook. Phase 3 (1 additional years) = timeline for all other municipalities to comply. Funding should be available for adaptive management phase.</p> <p>d. We can expect that RAR will have “teething” pains. How will the Province ensure through the adaptive management process, that problems with the process are not downloaded to LGs (e.g. auditing, enforcement, monitoring).</p> <p>e. Will the Province be providing educational materials on the requirements? The LG could assist by distributing the materials.</p> <p>f. What role (if any) does the LG hold for managing bonding for riparian area protection as prescribed by QEP? Who will authorize release of bonding and conditions? Over what time-period is it expected to be held?</p> <p>g. What (if any) is the LG role for monitoring, auditing, enforcement of the RAR? Will there be ongoing funding for this role? What resources (\$\$ and FTEs) is the Province proposing for these critical tasks? Where will the FTEs be placed (DFO, province, local governments)? How can the Province/ DFO work with LGs and streamkeepers to make optimum use of resources? Who will take and respond to complaints on the RAR process?</p> <p>h. What support do LG's have if they note that requirements have not been met in QEP report? Review process? Is the review process available to the public? The public may review the reports through the Public Hearing process.</p> <p>i. What resources are available for base-mapping, for those</p>

UBCM Concern 1	RAR Proposed Approach <sup>2</sup>	Specific Issues
<p>3. Ensure the process is <b>timely and cost effective</b>, from the community perspective;</p>	<p>QEP recommendation can be quickly incorporated into RZ, SD, BP</p>	<p>sites which simply wish to follow SPR. Base-mapping should ideally show stream locations, permanent vs non-permanent streams, fish bearing vs non-fish-bearing. If no base-mapping funding, will all sites need a QEP to interpret SPR setbacks?</p> <p>j. What training has been budgeted? Training needs include the following: undertaking the assessment; administering the applications; liaising with agencies.</p> <p>k. Are LGs expected to track submission of assessments over time for specific properties?</p> <p>a. At what stage in the development process is the QEP report expected - design stage, pre-construction and build stage?</p> <p>b. What is the process for varying from the QEP recommendations, if the design changes (e.g. servicing requirements lead to increased incursions into the riparian areas?) How is the QEP's RAR notification amended? How are LGs satisfied that the amendment is satisfactory to the Province / DFO?</p> <p>c. How will the QEP report and recommendations integrate the potential impacts with other aspects of the environment and other legislation (e.g. SARA, wildlife, water quality, stormwater management)?</p> <p>d. Will single lot redevelopment or renovations within the 30m setback boundary require QEP reports? What size of redevelopment would trigger a report (e.g. a deck)?</p> <p>a. What timely/cost-effective conflict resolution process is available for those sites where LG "disagrees" with QEP report? Are inadequate reports simply addressed reactively (i.e. after damage occurs)?</p> <p>b. When / how are site audited? What (if any) is the LG role in</p>
<p>4. Ensure an <b>integrated approach is implemented to avoid conflicts</b> between the different levels of government;</p>	<p>DFO signs off that RAR meets their requirements.</p>	

UBCM Concern <sup>1</sup>	RAR Proposed Approach <sup>2</sup>	Specific Issues
<p>5. Ensure that a <b>balance</b> is maintained between <b>development and protection of the environment.</b></p>	<p>The proposed approach is a suitable balance</p>	<p>the auditing?</p> <ul style="list-style-type: none"> <li>c. How does the RAR fit with existing inter-agency programs (e.g. FREMP and BIEAP)?</li> <li>d. How does RAR relate to other issues (e.g. flood management)?</li> <li>e. Are there provisions for LG to determine additional fisheries and wildlife habitat compensation requirements for developments over and above QEP recommendations?</li> </ul>
<p><b>Other Issues</b></p>	<p>Confidence in new proposed model</p>	<ul style="list-style-type: none"> <li>a. What are the variance opportunities for sites where a net environmental gain can occur with a lesser setback - e.g. a RAR prescription of 15m, but where setback is entirely asphalt. Could the setback be reduced to 10m, so long as asphalt area is revegetated?</li> <li>b. The RAR report may not have considered some critical LG issues (e.g. servicing). How can the LG be assured that their issues are incorporated into the prescription?</li> <li>c. What is the process for ensuring the credentials of the QEPs?</li> </ul>
<p>Model will be adapted based on the implementation experiences.</p>	<p>Confidence in new proposed model</p>	<ul style="list-style-type: none"> <li>a. What test studies / monitoring is proposed? Testing should occur in representative habitat types. How are LGs involved? How will the Province evaluate the effectiveness?</li> <li>b. What external peer review is proposed for the model? Peer review is critical for a "science-based" approach.</li> <li>c. Does the model consider hydrological factors?</li> <li>d. Does the model address erosion issues?</li> <li>e. How will the long-term monitoring on the ecological impacts of the RAR implementation be undertaken for adaptive management purposes?</li> </ul>

UBCM Concern <sup>1</sup>	RAR Proposed Approach <sup>2</sup>	Specific Issues
Exclusions		<p>a. Why does the RAR not address non-fish bearing watercourses that drain to the sea? How else are these watercourses protected? The Fisheries Act presumably still addresses these watercourses.</p> <p>b. Will RAR be extended to institutional (including federal and provincial crown) land uses?</p> <p>c. How is agriculture addressed?</p> <p>d. How are marine areas treated?</p>
		<p>Some LGs have already adopted SPR default setbacks. Is this sufficient, or will additional RAR process required?</p>

**Acronyms**

LG = Local Government

RAR = Riparian Area Regulation

SPR = Streamside Protection Regulation

DFO = Department of Fisheries and Oceans

QEP = Qualified Environmental Professionals