



**CORPORATION OF THE
DISTRICT OF MAPLE RIDGE**

TO: Her Worship Mayor Kathy Morse
and Members of Council
DATE: March 9, 2005

FROM: Chief Administrative Officer
FILE NO: 5280-30
ATTN: COW

SUBJECT: Update on Provincial Riparian Area Regulation

EXECUTIVE SUMMARY:

At the Council Workshop held February 28, 2005, Council received an update report on the status of the Riparian Area Regulation implementation. The Riparian Area Regulation was passed on July 27, 2004, pursuant to the Fish Protection Act, and will come into effect on March 31, 2005, replacing the Streamside Protection Regulation (SPR).

This report reviews outstanding items pertaining to the implementation of the Riparian Area Regulation and recommends that Council continue to endorse the use of the District's Streamside Setback Classification Map and the classification setbacks established in the Streamside Setback Assessment map for the protection of riparian areas adjacent to watercourses.

RECOMMENDATIONS:

1. That the use of the District's "Streamside Setback Classification Map" continue to be endorsed by Council as a basis for the protection of riparian areas adjacent to watercourses;
2. That a letter be sent to the Minister of Water, Land and Air Protection advising that Council considers the District of Maple Ridge to be in compliance with Section 12(4) of the Fish Protection Act and Section 8(2) of the Riparian Area Regulation as of March 31, 2005, and will therefore not be applying the Riparian Area Regulation; and
3. That a letter to be sent to Fisheries and Oceans Canada (DFO) requesting confirmation of DFO's continued participation in the Environmental Review Committee (ERC).

BACKGROUND

The Province passed a new Riparian Areas Regulation on July 27, 2004. This regulation defines new criteria and a process for the protection of riparian areas adjacent to watercourses. The Regulation is intended to replace the Streamside Protection Regulation which was adopted in 2001. The Riparian Area Regulation is scheduled to come into force on March 31, 2005.

Council at the June 14, 2004 Council meeting, considered a staff memo entitled "Proposed Union of B.C. Municipalities (UBCM) Resolution Regarding the Provincial Riparian Area Regulations", and passed the following resolution:

1. That the draft resolution contained in the body of the report dated June 10, 2004 be forwarded to the UBCM for consideration during the 2004 UBCM convention; and
2. That the Municipal Clerk be authorized to forward a copy of the report dated June 10, 2004 to the Provincial and Federal governments and UBCM with a letter requesting that changes

to the Streamside Protection Regulation be delayed to allow for meaningful open consultation with local government regarding the content and processes for implementing such changes.

These two Council resolutions of June 14, 2004 have been acted upon; namely, the resolution passed by Council was considered at the Union of BC Municipalities (UBCM) Convention in September 2004; and a letter was submitted to senior agencies requesting that adoption of the Riparian Area Regulation be delayed to allow for meaningful consultation with local governments (Appendix 1). To date, staff has not received a response to this letter.

More recently, Council at its workshop held February 28, 2005 instructed staff to write a letter to the Minister of Water, Land and Air Protection, prior to March 1, 2005, requesting an extension to the Riparian Area Regulation implementation deadline from March 31, 2005 to December 31, 2005 as part of the consultation process with local government on the implementation of the Riparian Area Regulation. A copy of this letter is attached to this report as Appendix 2.

UBCM Resolution

The UBCM at its September, 2004 convention passed a resolution that the UBCM not endorse the proposed tripartite agreement between the Federal and Provincial governments and the UBCM for implementing the Riparian Area Regulation unless the following measures are satisfied:

- A comprehensive legal and logistical review of the Riparian Area Regulation by an objective party to identify and assess its implications on local governments;
- Assurance of open involvement of local governments in the development of the compliance, enforcement and implementation strategies associated with the Riparian Area Regulation; and
- Assurance of open involvement of local governments in development of the guidebook for implementing the Riparian Area Regulation.

A recent update from the UBCM on the status of the implementation of the Riparian Area Regulation dated February 18, 2005 is attached as Appendix 3. This update indicates that much work still needs to be completed to fully implement the Riparian Area Regulation in a very short time frame. In this regard, Burnaby Council has passed a resolution to request the Minister of Water, Land and Air Protection to extend the Riparian Area Regulation implementation date from March 31, 2005 to December 31, 2005. In a similar vein, the Technical Advisory Committee of the Greater Vancouver Regional District on February 18, 2005 endorsed a recommendation to communicate to the UBCM staff and the Ministry of Water, Land and Air Protection outstanding issues that need to be addressed prior to the Riparian Area Regulation coming into force and encouraging extension of the March 31, 2005 implementation deadline as part of the consultation process on the implementation of the Riparian Area Regulation.

UBCM Environmental Conference, March 3 and 4, 2005

Staff attended the UBCM Environmental Conference held March 3 and 4 in Richmond. Conference attendees were advised by the Vice-Chair of the UBCM Environment Committee that the UBCM met with the Minister of Water, Land and Air Protection on March 2. At this meeting, the Minister indicated that some extension to the March 31, 2005 RAR implementation date may be possible. However, those local governments that may be ready to implement RAR can do so on March 31, 2005. Attached as Appendix 4 to this report is a copy of a letter from Richard Taylor, UBCM Executive Director to the Deputy Minister, Ministry of Water, Land and Air Protection dated February 28, 2005

requesting an extension to the implementation date based upon the lack of readiness of local governments and the Ministry to implement the RAR, and outstanding legal concerns.

DISCUSSION

The Riparian Area Regulation

Under the Riparian Area Regulation, any new residential, commercial or industrial development proposed within 30 metres of a stream is considered to be within a "Riparian Assessment Area" (RAA) and is subject to the regulation. Through assessment of the RAA, "Streamside Protection and Enhancement Areas" (SPEAs) are determined for protection. The Riparian Area Regulation includes provisions for two types of assessments – "simple" and "detailed".

1. **Simple Assessment Method:** This method is comparable to what is contained in the SPR where standard setbacks apply to streams with similar characteristics and bank vegetation. The main difference between the Riparian Area Regulation Simple Assessment approach and the SPR approach is that Riparian Area Regulation setbacks are measured from high water mark of a stream while SPR setbacks are measured from the top of bank of a stream. The top of bank is the more conservative base of measurement.
2. **Detailed Assessment Method:** This approach allows a developer the option to undertake a technical evaluation of the property to determine a setback that is customized to the site in question. A methodology for undertaking the Detailed Assessment will be contained within the Riparian Area Regulation and must be followed by the assessor. A 'Qualified Environmental Professional' (QEP) must complete the Detailed Assessment and a report must be produced.

Completed assessments would be submitted to the Province and DFO with assurances that the methodology has been followed. Local governments may approve a development upon notification that senior agencies have received an Assessment indicating either: (i) no impact (ii) no impact (with certain measures) or (iii) Notification from DFO of authorized impacts. It is understood that only a portion of these reports would be reviewed for auditing purposes, while other reports may not be reviewed by any agency. The Riparian Area Regulation model does not include any provision for the review of reports by local government.

Staff members from local governments affected by the new regulations have been working together for many months to review the Riparian Area Regulation, assess its ability to protect riparian areas, and communicate to the Province questions regarding the technical and administrative aspects of the new regulations. While the March 31, 2005 implementation date fast approaches, the measures identified in the UBCM resolution have yet to be completed and there remain numerous outstanding issues. Some of the key technical issues are as follows:

- Concern for ravine protection, as Riparian Area Regulation setbacks are reduced from 'Top of Bank' to 'Highwater Mark' which could result in buildings within ravine areas and less protection of the ravine areas;
- The 'Detailed Assessment' method can produce setbacks of 10 meters from 'High Water Mark' for typical salmonid streams of smaller width;
- The lack of information available regarding the scientific basis for the regulation;
- No specific provisions to address active floodplain boundaries for stream channels which could result in bank stability issues;

- Concern regarding the long-term viability of narrow riparian corridors and a potential increase in hazard tree or blowdown occurrences and related management needs;
- The need to integrate Riparian Area Regulation into watershed-scale planning to avoid the piecemeal approach of site by site assessments;
- The short implementation time frame, given the range of outstanding implementation items;
- Broader environmental values and functions are not addressed by the Riparian Area Regulation including wildlife habitat protection, biodiversity and species at risk, greenspace protection, hazard tree management, geotechnical stability, flood hazard management and wild fire buffering; or environmental planning at a scale beyond individual sites (e.g. watershed planning, integrated stormwater management planning); and
- Non-completion of the pilot projects that were to have been completed and reviewed before implementation of the regulations.

District of Maple Ridge Streamside Classification Map

The former Streamside Protection Regulation (SPR) was enacted in 2001 after extensive consultation and scientific review, and in support of the 1997 Fish Protection Act. Local governments were given 5 years (to January 25th, 2006) to fully implement the regulation. The purpose of the regulation was to bring clarity and transparency for protection of streamside vegetation through the development process.

The District of Maple Ridge responded by investing considerable resources to meet its obligations to establish 'Streamside Protection and Enhancement Areas'. This effort resulted in the District's "Streamside Setback Classification Map". This map was based on the standards of the SPR, and on that basis, was endorsed by Fisheries and Oceans Canada (DFO). This map complements the District's 'Watercourse Integrity Classification Map' and provides information on the location and characteristics of streams in the District. Since that time, these maps have provided guidance for the protection of riparian areas adjacent to watercourses and formed the basis of development permits issued for watercourse protection and enhancement (i.e. Development Permit Area XXX). Any proposed setbacks at variance with the Streamside Setback Classification Maps have been dealt with effectively through the Environmental Review Committee (ERC).¹

The local stream-stewardship community, the Alouette River Management Society (ARMS) and Kanaka Creek Education and Environmental Partnership Society (KEEPS), were both partners with the District in the watercourse mapping and integrity classification initiatives which became a basis for the District's Streamside Protection Classification Map. Both community groups have strongly endorsed this application of the Provincial Streamside Protection Regulation standards and the resulting use of the map as a guideline for development approvals in the District.

Review of Options for Maple Ridge

Local governments have a number of options to meet Provincial streamside protection policy directives. The first option is to begin operating under the Riparian Area Regulation model as of its implementation on March 31, 2004. However, this option is not recommended for the reasons outlined in this report.

¹ The ERC comprises staff from Maple Ridge and the Department of Fisheries and Oceans Canada. The Provincial Ministry of Water, Land and Air Protection withdrew its participation from the ERC in recent years.

The Fish Protection Act allows municipalities to “provide a level of protection that, in the opinion of local government, is comparable to or exceeds that established” by a Provincial directive. In addition, the RAR contains a provision that allows local governments to continue using streamside protection and enhancement areas in accordance with the former Streamside Protection Regulation if established prior to March 31, 2005. In this regard, continuation of the SPR approach through the use of the ‘Watercourse Integrity Classification Map’ and the ‘Streamside Setback Classification Map’ provides the best approach for the protection of riparian areas adjacent to watercourses. This approach supports various past Council resolutions endorsing the use of the “Streamside Setback Classification Map” as a guide during the land development planning and development approval process, and supports the significant investment that has been made by the District.

The use of the ‘Watercourse Integrity Classification Map’ and the ‘Streamside Setback Classification Map’ as a guide during the land use planning and development approval process was most recently endorsed by Council on August 31, 2004.

Based on these By-laws, Council resolutions and the resulting implementation through development permits issued under DPA XXX, the District of Maple Ridge has ensured that it has provided a level of protection that is comparable to or exceeds that established by the directives of the Fish Protection Act.

With the continued application of the SPR standards, the District of Maple Ridge and local community can make use of the extensive work done in streamside setback determination and can more easily continue with the broader environmental management initiatives. As well, this approach provides developers with a level of certainty without delaying development approvals.

Legal Implications

Staff has received a legal opinion indicating that the approach outlined in this report for the protection of riparian areas adjacent to watercourses is comparable to or exceeds the level of protection provided by the Riparian Areas Regulation.


To provide a stronger legal basis for Council’s commitment to watercourse protection through the use of the ‘Streamside Setback Classification Map’, staff has received legal advice that Council may wish to amend the Official Community Plan to include the ‘Streamside Setback Classification Map’ as a schedule to the OCP. However, this would reduce the District’s flexibility in the use of the setback classification map in that it could not be varied without an amendment to the OCP. Staff recommend that the Streamside Setback Classification Map continue to be used as a “guide” during the land use planning and development approval process and that this map not be included as a schedule to the OCP. This will maintain some flexibility in the use of this tool.

Intergovernmental Issues

The Federal Fisheries Act remains the primary statute regarding the protection of fish habitat and DFO's role in RAR implementation will be to assist local governments in their implementation and interpretation of the regulation. The District’s Environmental Review Committee (ERC) will continue to be an important tool for setback determination as DFO input is particularly valuable in evaluating proposed setbacks at variance with the Streamside Setback Classification Map. As such, it is recommended that Council instruct staff to send a letter to DFO confirming its continued participation in the Environmental Review Committee.

CONCLUSIONS:

A number of significant issues remain unresolved with the full implementation of the Riparian Areas Regulation which is scheduled to come into force on March 31, 2005. Notwithstanding the unresolved issues pertaining to Riparian Area Regulation, the District has established an effective and timely SPR-based approach to streamside protection through the 'Streamside Setback Classification Map' and watercourse mapping incorporated into the Official Community Plan (Watercourse Integrity Classification Map). Continued application of the District's "Streamside Setback Classification Map" represents the best opportunity to provide a consistent approach to streamside development approvals, while limiting liability exposure and advancing broader environmental policy objectives.


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JS/bjc

Attachments

- Appendix 1 Letter to Minister of Water, Land and Air Protection (MoWLAP) (July 2, 04);
- Appendix 2 District Letter to MoWLAP (March 1, 05);
- Appendix 3 UBCM 'Riparian Areas Regulation Implementation Update', to GVRD (Feb.18 05);
- Appendix 4 UBCM Letter to MoWLAP (Feb. 28, 05);