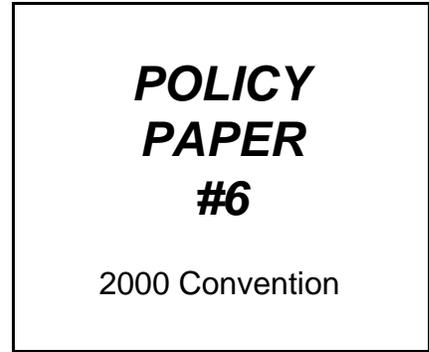


TO: UBCM Members

FROM: **ENVIRONMENT COMMITTEE**
Chairperson Robert Hobson, Chair
Mayor John Kingsbury
Councillor Pat Wallace
Mayor Barbara Sharp
Director Roxanna Mandryk

DATE: October 22, 2000

RE: **STREAMSIDE PROTECTION DIRECTIVE**



NOTE: DRAFT #2 of the Streamside Directive prepared by the Ministry of Environment, Lands and Parks was circulated in advance of the convention. Copies of the new directive will be available at the Ministry of Environment, Lands and Parks Open House on Tuesday and Wednesday. Copies will also be available at the policy workshop on Thursday 10:30 to noon.

DECISION REQUEST

That UBCM consider supporting the Streamside Protective Directive as a positive initiative which will assist in the protection of fish habitat, promote cooperation between the three levels of government, and provide a more effective and efficient framework for decision-making.

LEGISLATIVE BASIS/REQUIREMENTS

During the 1997 sitting of the legislature the province passed the Fish Protection Act (Bill 25). This Act provides for provincial policy directives to be established to protect and enhance riparian areas in settings which may be subject to residential, commercial or industrial development. The Act provides that:

“Directives . . . may only be established after consultation by the Minister with representatives of the Union of British Columbia Municipalities;

Section 12 of the Fish Protection Act states that:

- the province may “establish policy directives regarding the protection and enhancement of riparian areas that the Lieutenant Governor in Council considers may be subject to residential, commercial or industrial development.”
- the policy directives “may be different for different parts of British Columbia and in relation to different circumstances as established by the directives.”
- local government “must include in its zoning and rural land use bylaws riparian protection provisions in accordance with the directive” or “provide a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by the directive.”

A chronology of consultation activities with the UBCM and/or local governments is contained in Appendix A.

SUMMARY OF COMMENTS ON DRAFT #1 – STREAMSIDE DIRECTIVE

A workshop on the first draft of the directive was held on February 2, 2000 and approximately 150 local government officials participated in it.

The workshop was successful in getting member concerns on the table and in identifying issues that required further work. Both the senior officials from the Ministry of Fish and the Ministry of Environment, Lands and Parks felt the workshop was useful.

The workshop indicated that the members accepted the “scientific basis” on which the regulation was developed, but that more work was needed on how the regulation would be implemented before local government might support it.

The big issues identified by local government at the workshop were:

- Liability protection;
- Compensation to private landowners;
- Cost to local government;
- Role of the Environmental Review Committee/Dispute resolution process;
- Ongoing enforcement;
- Staffing commitment from DFO/MOE.

There are a number of general messages which emerged out of the workshop:

- Agree with the concept of streamside protection;
- Generally agree with the science and biological approach;
- Generally agree with the process that the three levels of government work together to solve the problem – MOU process;
- Model for a partnership is not established under the regulation – no autonomy to local government;
- Downloading – local government takes on the responsibility for protecting fish habitat, cost of studies and staff resources as the federal and provincial government provided no long term commitment of financial and staffing resources;
- Public education program to protect fish habitat is needed to ensure buy in;
- Strategic approach is required to implement issue – focus on streams most at risk, MOU process to develop partnership and to coordinate financial and staffing resources;

The transition period needs to be linked to the resources available and size of the community. Two years is not enough time given the amount of work that may be required to implement the regulation – mapping, inventory, technical assistance etc.

The top areas where local government identified the need for federal and provincial resources to implement the regulation were:

Resources

Mapping and inventory of streams
Technical Assistance
Best Practices Guide
Staffing

Financial Assistance

Implementation funding (OCP amendments, bylaws etc.)
Liability/Legal costs
Maintenance of leave strips
Public Education/training

DISCUSSION ON DRAFT #2 – STREAMSIDE DIRECTIVE

A second draft of the directive has been prepared and is the basis of this discussion.

The new directive will allow local government to use a planning approach to address streamside issues and give it the flexibility to determine the type of process which will work best in their community – watershed management plans; stormwater management; development areas etc.

The new directive increases the time frame for implementing the regulation from two years to five years.

The new directive takes significant steps to address a number of the concerns identified by local government:

Liability protection

The new regulation provides for clearer liability protection - “due diligence” defence where a local government follows the directive. Fisheries and Oceans Canada has indicated that the measures outlined for the protection of streamside areas in the regulation meet its requirements.

Compensation to private landowners

The new regulation gives local government the ability to address the protection of fish habitat within a planning context using its existing land use powers. Local government within its current planning powers may establish setbacks or right-of-ways deemed to be in the public interest (i.e. sidewalks, roads, parks etc.) when development is proposed. If a local government chooses to expropriate the land it will need to provide compensation as it does today.

Cost to local government

The current system is costing local government time and resources due to bottlenecks in the decision making process with the agencies, lack of consultation between the three levels of government and general inefficiency in the process. We need to find a better way to do business in this area and the directive provides an opportunity to do that through the development of partnerships.

Cooperation/Consultation

The directive takes a cooperative approach to the implementation of the directive and allows through the development of MOU's for each of the parties to identify its concerns and how these matters will be addressed – provides a framework for determining how each level of government will work with the other.

Strategic Approach

The process outlined in the directive would allow local government to approach the issue in a strategic manner, focusing on those streams most at risk, an MOU process to ensure that a partnership is established and the technical and financial resources are in place to implement the initiative.

The federal and provincial government have indicated that they will continue to provide funding for:

Mapping and inventory of streams

Technical Assistance

Best Practices Guide

The directive does not address all of local government concerns related to the provision of technical assistance and the provision of the resources needed to implement the regulation. The directive does however provide a framework for local government to identify these needs and to focus its efforts in the community on those areas where a partnership can be developed.

RECOMMENDATION

To be presented at the Thursday, October 26th Streamside Directive workshop for consideration and based on the response forwarded to the plenary session on Friday morning.

UBCM indicate that it has been consulted on the Streamside Protection Regulation, and if the federal and provincial government provide the technical assistance and financial resources required for local government to implement the regulation at the community level,

it is willing to consider support for the regulation currently outlined.

APPENDIX 1**BACKGROUND: CONSULTATION**

The following local government consultations have taken place on this issue since the Fish Protection Act was passed by the British Columbia legislature:

- a Steering and a Technical Committee was created with UBCM involvement and the UBCM signed an Memorandum of Understanding with the Ministry of Environment, Lands and Parks on the implementation of streamside directives under the Fish Protection Act in 1997;
- a local government workshop was held in December 1997;
- a series of regional workshops were held in local communities around the province in the spring and summer of 1998;
- workshops were held at the 1997, 1998 and 1999 UBCM Conventions;
- a series of technical workshops were held in 1998 and 1999 with local government staff;
- pilot projects were undertaken in the summer of 1999 to test the implementation of a streamside directive;

At the 1997 and 1998 UBCM Convention local government requested that the directives developed under the Fish Protection Act provide the following:

- clear liability protection;
- flexible approach to local circumstances;
- technical assistance;
- financial assistance to implement the directives.

As part of the 1999 Environment Action Plan the delegates at the 1999 UBCM Convention endorsed the following action:

1. FISH PROTECTION ACT

ACTION: UBCM request that the following implementation issues be addressed prior to the implementation of directives under the Fish Protection Act:

- development of a standard mapping, inventory and classification process;
- development of a best management practices guide;
- coordinated planning and management process (MELP/DFO);
- clarification of roles and responsibilities (i.e. MOU at local level/general procedures for approval of projects);
- development of enforcement and compliance system.
- coordinated funding and support.

A total of fifteen pilot projects were undertaken by local governments in the summer of 1999 to test the applicability of the streamside directives proposed by the provincial government. The studies indicated that the process was complex, detailed mapping and inventory information on the streams in the local communities was required if the directive was to be applied, technical ambiguities in the directives needed to be corrected, staff at all levels of government would require training to use the directives and the

directives needed to address the use of these corridors for other purposes (wildlife, recreational trails, service corridors etc.).

The pilot projects also indicated that there needed to be in place MOU's between the federal, provincial and local governments around the application of the directives to avoid future misunderstandings and a system of Environmental Review Committee's needed to be established to address non-conforming situations.

A meeting was held on November 22, 1999 which was attended by staff representatives from fourteen communities in the lower mainland who participated in the pilot projects and a new draft of the Streamside Protection Policy Directive was presented.

A meeting was held between on May 19, 2000 between UBCM, the Ministry of Environment, Lands and Parks, and the Ministry of Municipal Affairs and the following six action items were agreed to:

1. *The directives along with these action items will be discussed at the next Protocol Steering Committee meeting;*
2. *The directives will be refined based on feedback to date. The next draft of the directives will clarify the use of basic planning and regulatory approaches relative to watershed and stream corridor-based adaptive and site specific approaches;*
3. *One-on-one consultations with individual local governments will continue over the next few months and efforts will be focussed on reaching five or six draft municipal/agency agreements on how to apply the directives in different local government settings over the Summer;*
4. *A five-year "phased-in" implementation strategy will be developed that includes:*
 - ◆ *sample intergovernmental agreements (with examples noted above);*
 - ◆ *an approach to jointly develop a "Best Management Practices Guide";*
 - ◆ *a plan to work with the federal Department of Fisheries and Oceans, UBCM and local governments to develop a compliance strategy; and*
 - ◆ *a supporting mapping and inventory program.*
5. *The Ministry of Environment, Lands and Parks, the Ministry of Municipal Affairs and UBCM will co-host regional workshops on the streamside protection policy directives in September to help consolidate local government comments prior to UBCM's annual conference in late October; and*
6. *UBCM will arrange to have the streamside protection policy directives discussed during the annual conference this Fall to help ensure that we have achieved a mutual understanding on how best to proceed with the directives prior to consideration by Cabinet.*