

Riparian Area Regulation

WEDNESDAY April 12, 2004

Richmond Hotel and Conference Centre, RICHMOND

GENERAL NOTES

(Please feel free to add your comments and/or elaboration's)

Chair Robert Hobson

Good Morning

I am Chair Robert Hobson, Central Okanagan Regional District and the Chair of the UBCM

Environment Committee.

I would like to introduce the other members at the head table:

- Bruce Morgan, Director, Biodiversity Branch, Ministry of Water, Lands and Air Protection
- Sue Farlinger, Director of Habitat and Enhancement Branch, Fisheries and Oceans Canada

Union of British Columbia Municipalities

I would like to begin by saying a few words about the UBCM.

The Union of British Columbia Municipalities represents all 183 local governments in the province.

The UBCM was formed to provide a common voice for local government and this role is as important today as it was 99 years ago when it was first established. The UBCM Convention is the main forum for policy-making. It provides an opportunity for local governments of all sizes and from all areas of the province to come together, share their experiences and take a united position.

In today's ever changing world, where shifts in senior government policies, or economic, social or political conditions can have an immediate affect on local government, UBCM stands as a "listening post." UBCM initiates, monitors and interprets and reacts where such changes could have an effect on local government and the communities they serve.

BRIEFING SESSION

I would like to take a few minutes to talk about two things:

- The agenda;
- UBCM involvement in riparian area model.

MEETING AGENDA

I would like to very briefly go over the program for today – all of you should have received a copy of the agenda at the door (raise your hand if you don't and staff will bring you a copy).

The first session this morning will be a policy overview on riparian area protection by the federal and provincial government and will provide some context for the changes that are being proposed. There will then be an opportunity for some questions from the audience. I would ask that you go to one of the microphones on the floor and before asking your question identify who you are and your community.

We will then have a short coffee break at 10:00 o'clock (15 minutes).

After coffee we will hear presentations from the Ministry of Water, Lands and Air Protection on the new regulatory framework being proposed and how the new riparian area assessment model is intended to work. There will then be a short opportunity for questions.

Lunch will start at 12 o'clock and will be a buffet.

The first session in the afternoon will look at the potential role of local government under the new regulatory and assessment framework. This will be followed by an opportunity for questions.

The final session will provide an opportunity for the UBCM to get feedback from you on what you heard today and what issues this raised for local government.

UBCM INVOLVEMENT

I would now like to take a few minutes to outline UBCM's involvement in this process to date.

Fish Protection Act

Under the Fish Protection Act passed in 1997 the provincial government is required to consult with the UBCM before the enactment of a streamside protection directive. The legislation 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.”

The province in introducing the legislation was attempting to recognize a number of existing realities. One factor was that Fisheries and Oceans Canada was moving to require 30 metre setbacks before they would approve development along fish bearing streams. This policy shift was taking place whether or not provincial legislation and regulations were introduced. Secondly, both the federal and provincial government were moving away from the referral process as a major regulatory tool in protecting fish bearing streams. Finally, land use management in residential, commercial and industrial development was a local government responsibility.

In the legislation the province attempted to create a process for tri-partite cooperation, recognizing that the:

- federal government is responsible for the management of salmon species in a stream;
- province is responsible for the water quality and quantity in a stream;
- local government is responsible for land use around a stream.

In the earlier consultations with local government that took place between 1997 and 2001 on the development of a provincial directive under the Fish Protection Act there were a number of general messages which emerged:

- Agreement with the concept of streamside protection;
- General agreement with the implementation of a scientific and biological approach;

- General agreement that the three levels of government work together to solve the problem;
- Need to respect local government autonomy over land use;
- Concern over downloading – local government taking 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;
- Concern over liability
- Need for a public education program to protect fish habitat;
- Need for a strategic approach to implement issue – focus on streams most at risk, consultation process to develop partnership and to coordinate financial and staffing resources;

The earlier directive developed by the province was intended to:

- Provide a framework to 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.

A new provincial government was elected in 2000 and in the fall of 2001 and spring of 2002 it undertook a review of the current regulation 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 Minister of Water, Land and Air Protection met with the UBCM Executive in July of 2002 and told it that cabinet had made a decision to develop a new regulation based on a 30 metre assessment zone that was scientifically based and could be used by a qualified environmental professional to determine the distance that a development can take place from a stream. The UBCM Executive indicated that it supported in principle the proposed approach to a riparian assessment area regulation put forward by the Ministry of Water, Land and Air Protection, subject to liability protection for local government and technical assistance to local government.

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.**

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 and this is what is taking place today.

The Ministry of Water, Land and Air Protection in 2002 proceeded to:

- Develop a scientific based assessment process to protect fish habitat, we understand that this has been done with scientists from UBC and Fisheries and Oceans Canada;
- Develop a new regulation based on the scientific based riparian area assessment process.

In the fall of 2002 and spring of 2003 UBCM was asked to provide comments on:

- A series of flow charts that outlined the general approach that the ministry intended to take in the development of a regulation;
- Framework for a cooperation agreement between the three levels of government – no discussions have taken place on the content of this agreement;
- Intended focus of a guidebook to assist local government in implementing a regulation.

In the fall of 2003 UBCM was asked to look at:

- New riparian area assessment process being proposed by the ministry – a local government staff person was asked to participate in this process;
- A draft of a regulation being developed by the ministry.

The UBCM has met with the new Minister of Water, Lands and Air Protection, the Honourable Bill Barisoff, twice on March 4, 2004 and May 7, 2004. The issue of the riparian area protection was raised on both occasions and the Minister made it clear that the province intended to develop a new regulation or withdraw from the policy area.

The new directive proposed by the province is intended to:

- Provide a scientific framework to 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.

The adoption of the new riparian area assessment model and its use by local government raises a number of issues related to:

- Use of qualified professionals and liability protection for local government;
- Role of local government in implementing the new riparian assessment model;
- Potential costs to local government for training and implementation;
- Time frame for implementation of the proposed directive.

I am sure that we will get further clarification on these issues from the various speakers today.

The UBCM is looking for your input and views on the regulatory process proposed by the province and how it may affect local government.

Thank you very much.

I would now like to turn the session over to Bruce Morgan, Director, Biodiversity Branch, Ministry of Water, Lands and Air Protection for some introductory comments.