

TO: 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

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).

The UBCM has met with the new Minister of Water, Lands and Air Protection, the Honourable Bill Barisoff, 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.

BRIEFING SESSION

Attached is a copy of the presentation made by the Ministry of Water, Land and Air Protection on the regulatory framework and new assessment model at the briefing session held on May 12, 2004 in Richmond which was attended by approximately 40 local governments.

Ministry staff indicated that the province did not intend to expand the geographic scope of the regulation (Vancouver Island, Sunshine Coast, Squamish Lillooet Area, Thompson-Nicola Area, Columbia-Shuswap Area, Okanagan Valley, Fraser Valley and Lower Mainland) at this time, however, it may be expanded province wide at some point in the future.

Ministry staff implied that they were contemplating a one year implementation time frame for the new regulatory framework and assessment model.

Both the Ministry of Water, Lands and Air Protection and the Fisheries and Oceans Canada indicated that they were facing a different regulatory environment today and that they intended to implement this new assessment model by re-allocating existing resources.

The Ministry of Water, Land and Air Protection and Fisheries and Oceans Canada stated that they have been working together to:

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

The Ministry of Water, Lands and Air Protection outlined a number of steps in implementing the new regulatory framework for the protection of riparian areas:

- Cabinet approval of new riparian assessment regulation (June);
- Development of Cooperation Agreement between Water, Lands and Air Protection, Fisheries and Oceans Canada and UBCM;
- Development of Guidebook and training to assist users in implementing the new regulation;
- Implementation of pilot projects to test new assessment process and regulatory framework;
- Development of monitoring and compliance strategy.

The ministry has indicated that the new directive 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.

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.