Questions & Answers on the Wildfire Act/Regulation

Introduction

In the spring of 2004, the provincial legislature passed the Wildfire Act. This legislation was two years in development prior to the fire storms that hit the Interior of the province in the summer of 2003. Following the 2003 fire season, the government commissioned the Filmon Firestorm Review and subsequently incorporated many of his recommendations into the final drafting of the Wildfire Act. The Wildfire Act was not brought into force until March 31, 2005 when an Order in Council passed the Wildfire Regulation. On April 15, 2005, an amendment to the Wildfire Regulation was deposited. The legislation is now in effect, and significantly changes the governing relationship between local government and the provincial government with respect to the prevention of fire and the use of open fire within the forests and grasslands of British Columbia.

This brief document, through a question and answer format, hopes to identify the significant changes and to provide some insight on how best they can be managed at the local level.

Previously, provincial fire prevention and fire control authorities and powers were imbedded in the Forest Practices Code of British Columbia Act (the Code) and its regulations.

Throughout this paper, when reference is made to the Act it is covering both the Wildfire Act and the Wildfire Regulation. The new Wildfire Act and regulation have a number of fundamental changes, these being:

- The Wildfire Act is stand alone legislation;
- The Wildfire Act was influenced by the Auditor General’s Report “Managing Interface Risks”;
- Includes recommendations in the Filmon Report following the 2003 fire season;
- The Act and regulation are results-based and reduces regulatory burden;
- Establishes costs;
- Establishes response priorities to wildfire, and
- Has application in Provincial Parks.

Are there any new definitions within the Act that should be brought to the attention of local government?

Yes. Two definitions within the Act have changed significantly from previous legislation. The first is the definition of local government. Under the Act, the definition has been broadened and two distinct populations of local government are recognized. There is a clear distinction between

(a) municipalities and the City of Vancouver; and
(b) other forms of local government, mainly regional districts, improvement districts and water improvement districts.

This distinction plays out in numerous provisions within the Act that will be discussed later in this paper. The previous legislation in the Forest Practices Code of BC (the Code) did not distin-
guish between the various types of local government.

The second definition that is noteworthy is the definition of open fire. In the previous legislation, open fire was not specifically defined, rather, it was characterized under a regulatory provision. Open fire was always permitted if it was in a stove (that used a liquid, gaseous or briquette fuel), or was in a permanent campsite fireplace (either within a provincial campground or a supervised private campground). The new legislation defines open fire as one that does not include a fire vented through a structure that has a flue and is incorporated in a building. Confusing? Yes, however, it is significant in that supervised private campgrounds are no longer exempt from campfire bans, and more importantly, the use of portable propane fireplaces, fire pits or portable fireplaces and/or portable campfires are considered (open fires) camp fires and will be subject to open fire prohibitions. Only portable stoves certified for that use and also those which use gaseous fuel or briquettes are not regulated. Local governments with existing bylaws relating to the use of open fire may wish to revisit their definition of an open fire.

**Does the provincially regulated ‘use of open fire’ impact local governments ‘use of open fire’?**

Most definitely **yes.** Previous legislation (the Code) stated that provincial authority on the ‘use of open fire’ applied everywhere in or within 1 km of forest or range land unless a local government had an existing bylaw relating to the use of open fire. If a local government bylaw existed, then it superceded provincial statutes. The reverse is obvious, if no local bylaw existed, then provincial authority applied.

Under the new Act (WR s.3 & Part 4) (and here is one area where the two populations of local government apply), provincial authority on the ‘use of open fire’ does not apply within a municipality or the City of Vancouver. In other words, regardless of the existence or not of a municipal bylaw, provincial authority does not apply. Municipalities, if they are concerned with the ‘use of open fire’, must regulate its use.

The new legislation goes on to state that if the other forms of local government have existing bylaws regulating the ‘use of open fire’ then those bylaws supercede provincial authority. Again the obvious, if no fire use bylaws exist in a regional district, improvement district or water improvement district, then provincial authority applies.

The significant issue here is that there are likely municipalities within the province, or even areas within a municipality, that are not covered by a local bylaw governing the ‘use of open fire’. Therefore, attempting to prohibit the use of open fire, or assign any liability for its misuse (in these areas) is a mute point. These areas theoretically become free burn areas. If there is a concern within a municipality regarding the ‘use of open fire’ (i.e. prohibitions, responsibilities and liabilities of the user) then it must be regulated at the municipal level.

**Are there other provisions that were provincially regulated within a municipality that are no longer governed by provincial statute?**

**Yes.** Again, the distinction between municipalities and the City of Vancouver, and other forms of local government applies here. Under previous legislation, all fire prevention activities within 300 metres of a forest (regardless of local jurisdiction) were governed by provincial statutes. These provisions included such issues as industrial closures, fire tool requirements and preventive activities during high and extreme fire danger. For example, industrial activities were required to go on early shift if the fire danger reached a certain level. This applied even within a municipality if the activity was within 300 m of a forest. These prevention measures still exist under the new Act, however, they no longer apply (WR s.3 & Part 2) within a municipality. If a municipality is concerned with a certain activity taking place during critical fire danger, then the municipality must regulate that activity. If a municipality is concerned with its ability to suppress a fire started by an industrial activity within its jurisdiction, then the municipality must stipulate what precautionary measures (early shift, fire tool or fire watcher requirements) must be in place. The province is no longer regulating these activities within a municipality.

For all other forms of local government, provincial statutes regarding fire prevention apply unless a local bylaw exists respecting a particular prevention issue. In that case, the local bylaw supercedes provincial requirements.

Again for municipal governments, if there is a concern over the potential for a fire start during critical fire danger, or there is a concern over the ability of the person or activity starting the fire to respond and suppress the fire, then it is incumbent on the municipality to locally regulate that activity.

Provincial regulation also requires an
industrial activity (as defined by the regulation) to take fire control action on any fire that occurs within 1 km of the site of their industrial activity. This will no longer apply within a municipality and if this is of concern (quick and initial attack on a fire) to a municipality, then it would be advisable for the municipality to enact bylaws requiring similar action on the part of an industrial operator within their jurisdiction. Also, where a person in carrying out an industrial activity and has an obligation to take initial fire control action. This obligation is further defined in s. 13(2)(a) and (b) to exempt the person from their obligation if the fire is located in a protected area or on another persons private land.

It should also be noted as a point of interest for municipalities that the regulating of railway operations and utility transmission activities is more strictly governed under the new Act (WR s.9 & 10). Stiffer provisions and penalties now apply to these activities. However, these new provisions and penalties (for non-compliance) do not apply within a municipality.

The issue of fire hazard abatement, created by timber harvesting, has always been provincially regulated. Is this still the case?

No. Provincial responsibility for regulating fire hazards created as a result of timber harvesting no longer applies within a municipality or the City of Vancouver. Under previous legislation, the province had the authority to enter on to any land (wherever located) and require the owner or operator to abate a fire hazard. If the person or owner refused, or was unable to abate the hazard, then the government could undertake the abatement of the fire hazard and recover its costs of doing so from the owner or person who created the hazard. This provincial authority was exercised in the best interest of public safety.

The WRs 11 and 12 now prescribe two distinct areas with different intervals which require both hazard assessment and abatement. The area is determined by the distance from a local government boundary or a boundary of a fire protection district in a regional district. The time interval requirements when a fire hazard is created within 2km of these boundaries, require a person to assess within 3 months and abate if there is a hazard within 6 months. This is a significant increase in requirements near communities.

Under the new Act (WR s. 3& 11/12), the province no longer has the authority to exercise this power within a municipality. It is the responsibility of the municipal government to ensure that a fire hazard resulting from any activity is abated to a level that constitutes a minimal public safety issue. Again, if the other forms of local government have existing bylaws regarding fire hazard abatement, then they would supersede provincial authority.

Municipal governments should ensure that they have sufficient authorities within their local bylaw structure to require fire hazard assessments and to require an owner, or the person responsible for creating the hazard, to abate the hazard. Commensurate with this authority would be the authority for the municipality to carry out any abatement necessary and to recover its costs from the responsible party.

It appears that provincial statutes respecting fire prevention, the 'use of open fire' and fire hazard abatement no longer apply within a municipality or the City of Vancouver, and that only provisions respecting provincial authority for direct fire control do apply. Is this true?

Yes. In general it can be stated that the Wildfire Regulation (which contains in detail the fire prevention, fire use and hazard abatement clauses) does not apply within a municipality or the City of Vancouver. As well, these provisions do not apply within the jurisdiction of a regional district, improvement district or water improvement district if that local jurisdiction has a bylaw that relates to fire use, fire prevention or forest protection.

Provincial authority to carry out fire control measures exists anywhere in the province and at the request of a local government (all local governments) may enter on land and carry out fire control within the local government’s boundary or jurisdiction (WA. s.9). This provision of the Act suggests that the local government may request help from the province even though the fire is not endangering life or threatening forest land or grass land.

References: Wildfire Act, Wildfire Regulation:  http://www.for.gov.bc.ca/protect/