



To: Public Works and Transportation
From: Suzanne Bycraft,
Manager, Emergency and Environmental
Programs

Date: February 11, 2005
File: 10-6125-00/Vol 01

Re: **Recommended Harmonized Approach for Addressing Fisheries Legislation –
Riparian Areas Regulations/Fisheries Act**

Staff Recommendation

1. That the Minister of Water, Land and Air Protection be notified that because its implementation measures are not in place, an extension is required on the date for when the Riparian Areas Regulation (RAR) comes into effect.
2. That this notification be copied to the Premier, local MLAs and the Union of BC Municipalities.
3. That staff proceed with preparing a proposed Memorandum of Understanding with the Provincial Ministry of Water, Land and Air Protection and Federal Department of Fisheries and Oceans to develop a strategic approach for coordinating federal and provincial fisheries legislation with City interests.
4. That staff investigate the measures required to bring the City of Richmond into compliance with the RAR in the event the Minister of Water, Land and Air Protection does not grant the extension or is not receptive to the proposal to develop a Memorandum of Understanding.

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ROUTED TO:	CONCURRENCE		CONCURRENCE OF GENERAL MANAGER		
Law	Y	<input checked="" type="checkbox"/>	N	<input type="checkbox"/>	
Policy Planning	Y	<input checked="" type="checkbox"/>	N	<input type="checkbox"/>	
Development Applications	Y	<input checked="" type="checkbox"/>	N	<input type="checkbox"/>	
REVIEWED BY TAG	YES	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>	REVIEWED BY CAO
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Staff Report

Origin

The Province approved the Riparian Areas Regulations (RAR) on July 27, 2004. These regulations stipulate that specific local governments, including Richmond, cannot approve development occurring on residential, commercial and industrial lands adjacent to many waterways (e.g., sloughs, ditches, Fraser River, etc.) until appropriate setbacks have been determined. The Regulations are to become effective on March 31, 2005. However, the Province has not been able to complete the development of key tools and resources necessary for regulation implementation. In addition to the lack of implementation tools, there remain topics of concern for local governments. These include ensuring harmonization with other community interests and with already existing fisheries protection regulations and management processes (e.g., Federal Fisheries Act, the Fraser River Estuary Management Program).

This report recommends that:

- the City notify the Provincial Minister of Water, Land and Air Protection (MWLAP) that a timeline extension for when the RAR becomes effective is required; and
- the City proceed in developing a Memorandum of Understanding (MOU) to develop a strategic harmonized approach to federal and provincial fisheries legislation and better address City interests; and
- staff investigate the measures necessary to comply with the RAR in the event the legislation is passed on March 31, 2005 or the MOU approach is not acceptable to MWLAP.

Background

1. Provincial Fish Protection Act/ Riparian Areas Regulation - Legislative Requirements

The Provincial Fish Protection Act was enacted in 1997. This legislation identified various provisions for protecting provincially significant fish habitat, including the prohibition of new dams on specific rivers and changes to the Province's water licensing regime. The Act also enables the Province to issue policy directives for the protection and enhancement of riparian areas in specific urban areas during residential, commercial or industrial development. If a policy directive applies, a local government must:

- include in its zoning and rural land use bylaws, riparian area protection provisions in accordance with the directive, or
- ensure that its bylaws and permits under Part 26 of the Local Government Act provide a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by the directive.

The Riparian Areas Regulations were established by the Ministry of Water, Land and Air Protection (MWLAP) as a policy directive under the Fish Protection Act. The RAR directs specified local governments to not approve proposed residential, commercial and industrial development unless an assessment has been conducted to identify appropriate setback widths and

any other necessary fisheries protection measures. This assessment will need to be conducted by a Qualified Environmental Professional (QEP) as identified by the Ministry. It is understood that the City will not be able to approve these developments unless the QEP certifies that, with the identified measures, the development will not result in harmful alteration of riparian fish habitat or the federal Department of Fisheries and Oceans (DFO) grants approval. It is understood that the RAR will apply to residential, commercial and industrial development in Richmond, which is along the foreshore and/or any inland waterway (e.g., slough or ditch). It does not apply to agricultural or institutional land uses.

2. RAR – Implementation Concerns

There are significant concerns pertaining to the implementation of RAR, namely:

- lack of required Provincial implementation measures
- inadequate harmonization with existing legislation/management processes
- insufficient consideration of City interests.

Further elaboration of these concerns is provided in **Attachment 1**.

3. Past City Action

Prior to regulation enactment, City Council:

- sent a letter to the Provincial Minister of Water, Land and Air Protection expressing concern over the lack of consultation with local government in the development of the Riparian Areas Regulation and requesting that the RAR not be enacted pending meaningful and open consultation with affected local governments, and
- submitted a resolution to the UBCM that it “not proceed in developing a tri-party agreement until such time as local governments have been provided the opportunity to review the regulations and provide meaningful input to the UBCM.”

Concerns pertaining to the RAR have been shared by numerous affected municipalities, with many sending similar resolutions to the UBCM.

Analysis

1. Understanding “Fish Habitat” in Richmond

In the past, fish habitat was predominately seen as areas where specific species of fish were present. Accordingly, fish protection was largely directed at protecting specific areas, largely in isolation of each other and the broader ecological system of which they are a part.

However, with growing awareness of the interconnectiveness of ecological systems, there is a need to shift to managing aquatic habitat on a broader ecological basis. In particular, there is greater understanding that areas where fish are present are dependent upon water flow from upland areas.

Within Richmond, this means that while the City's ditches are unlikely to provide valuable habitat for most fish with respect to direct inhabitation, they are important for conveying quality water to the Fraser River estuary. Specifically, well-managed open waterways support the delivery of nutrients (e.g., invertebrates, vegetative matter, etc.) and generally convey improved water quality due to their ability to filter pollutants and interact with the groundwater and atmosphere.

2. Effectiveness of Current Regulatory Situation

Managing Richmond waterways has become more challenging as a result of greater involvement by external governmental agencies and an ever increasing number of sectionalized regulations and policies. Concern exists regarding the cost to society with respect to additional burden on the development community and city capital works projects (e.g. storm drainage) to meet multiple environmental requirements – especially when they share the same objective, in this case fish habitat protection. There are further concerns relating to the lack of adequate harmonization with the suite of community interests and needs (e.g., floodplain management, community development, agricultural viability, equitable public interest decision-making, corporate liability protection, etc.).

Staff also has concerns regarding the efficacy of the present fragmented approach from an overall environmental perspective. Despite greater awareness of the need for an ecological-based approach, current regulatory direction continues to address fish protection objectives in isolation from the broader aquatic system. The current emphasis at the individual development or City construction site level further fragments environmental protection works and results in numerous disconnected small projects in the absence of an overall guiding framework or plan.

3. Management Options

Staff considers that there are two viable options available for the City for responding to the Riparian Areas Regulation:

Option 1 – Incorporate Riparian Areas Regulations as an additional layer of regulation.

Staff does not recommend this option as this would result in additional regulatory burden and fails to sufficiently integrate fish protection objectives with the full suite of City interests. However, staff should investigate the measures required for the City to comply with the RAR in the event the province passes these regulations on March 31, 2005 as planned, or does not accept the recommended approach to prepare a MOU, as outlined in Option 2.

Option 2 – Develop Memorandum of Understanding (MOU) with the Federal Department of Fisheries and Oceans (DFO) and Provincial Ministry of Water, Land and Air Protection (MWLAP) to foster a more harmonized and strategic approach and better reflects Richmond's unique estuarine environment (*Recommended*).

4. Recommended Approach

To address the immediate concern of RAR implementation, staff recommends that the City send a letter to the Minister of Water, Land and Air Protection indicating that an extension is required. This extension should correspond to a reasonable timeframe subsequent to the implementation tools being completed.

Staff also recommends that the City adopt a proactive approach and proceed with Option 2 as a basis for establishing a response strategy. Specifically, it is recommended that the City develop a Memorandum of Understanding with DFO and MWLAP which would serve to:

- integrate RAR with existing legislation and management processes to better ensure efficient governance and more cost-effective approach for the Richmond community and City
- more effectively harmonize fisheries protection regulatory requirements with the suite of Richmond community objectives
- result in more meaningful environmental benefit by pursuing an ecosystem-based approach.

It is proposed that the City strive to develop a MOU which would:

1. Acknowledge the unique character of City of Richmond inland waterways and predominately focus fisheries protection responsibilities on supporting Fraser River fish populations and preserving upland water quality.
2. Identify how the City of Richmond will meet its legal requirements under the provincial Fish Protection Act and RAR responsibilities. Staff propose that the City work towards the following agreement:
 - no change in the existing management process for development along the Richmond foreshore (i.e., FREMP would continue to be used to ensure both Federal and Provincial fisheries regulatory compliance)
 - confirmation of Federal DFO approval for inland waterways to meet both Federal Fisheries Act and Provincial RAR legislative requirements.
3. Strengthen current DFO approval mechanisms by identifying a more strategic approach to inland waterway management rather than the current project-by-project approval process. Potential action for consideration would include the development of a compensation banking strategy which would direct any required compensation towards specific targeted areas, enabling the development of larger more meaningful fisheries protection works. A compensation strategy would also facilitate development by identifying pre-approved compensation sites. Additional strategic action could also include the adoption of best management practices to reduce the amount of individual project approval (e.g., city ditch maintenance works).

Preliminary discussions with representatives from DFO have resulted in favourable response. There has also been indication from MWLAP representatives that the FREMP process may also be considered acceptable. An interdepartmental City team with staff from Engineering Planning,

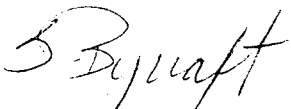
Environmental Programs, Development Applications and Policy Planning would be involved in developing the proposed MOU and would report back to Council. Timeframes for next steps will be dependent upon whether the Province grants an extension and availability of senior government participation.

Financial Impact

There are no direct costs associated with the development of the proposed Memorandum of Understanding.

Conclusion

The Provincial Riparian Areas Regulation requires specific local governments to protect riparian areas during residential, commercial, and industrial development. While approved July 2004, the regulations were not to become effective until March 31, 2005 in order to enable the Province to develop its necessary tools and resources for regulation implementation. Because these tools have not been completed, this report recommends that the City indicate to the Ministry of Water, Land and Air Protection that an extension to the March implementation date is required. In addition, rather than wait for further regulatory direction, the City should pursue a proactive strategy and develop a Memorandum of Understanding (MOU) with provincial and federal authorities. The report further recommends that staff investigate measures required to comply with RAR in the event the regulations are passed as planned on March 31, 2005, or the MOU process is not feasible.



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Attachment 1: Implementation Concerns

Lack of Provincial Implementation Instruments

Upon enactment of the RAR, the Province identified that it would develop a number of instruments to enable regulation implementation by the fall of 2004, including:

- An intergovernmental cooperation agreement with the Federal Government and the Union of BC Municipalities to identify respective roles and responsibilities
- The development of a tested standardized and effective assessment methodology and implementation guidebook
- Development of a QEP program for identifying, certifying and registering appropriate environmental professionals
- Training for government staff and QEPs.

While efforts have begun, none of these necessary tools have been completed. In particular, there are no QEPs that have been identified.

Lack of Adequate Harmonization with Existing Legislation/Management Process

Another key challenge for municipalities in implementing the RAR is to reconcile the new regulatory requirements with existing fisheries protection legislation and management approval processes. Richmond waterways - foreshore and inland sloughs and ditches - are already required to be in compliance with the **Federal Fisheries Act** as administered by the Federal Department of Fisheries and Oceans (DFO). The Federal Fisheries Act prohibits the harmful alteration of fish habitat and unlike the RAR, which is specific to certain types of land uses, applies throughout Richmond. At present, to ensure compliance, City's capital works and maintenance projects that may have an adverse fisheries impact on Richmond waterways are submitted for approval by DFO. Where impacts are unavoidable, DFO works with the City to identify appropriate compensation. Development applicants whose proposals may impact inland waterways are also referred to DFO. The Province currently has no involvement in administering fish habitat protection.

Development along the Fraser River foreshore undergoes multi-regulatory environmental review and approval via the Fraser River Estuary Management Program (FREMP). FREMP does not have any regulatory authority on its own but acts as a linked management structure enabling a "one-window" approach to coordinate regulatory approval. Both the Federal Department of Fisheries and Oceans and the Provincial Ministry of Water, Land and Air Protection are participatory members of FREMP and already provide their approvals through this management process for foreshore development in Richmond.

Lack of Sufficient Consideration of Community Needs

Richmond inland waterways serve multi-functions. Most importantly, Richmond ditches and sloughs serve as community drainage systems to avoid property flooding. In addition, Richmond waterways are used to support the agricultural community through provision of drainage and irrigation. Richmond foreshore and inland sloughs are also recognized as environmental sensitive areas providing important habitat to a variety of aquatic and terrestrial wildlife. Unfortunately, the Riparian Areas Regulation is uni-objective focus and places decision-making pertaining to a singular objective to the private industry without any mechanism to integrate and reconcile fish protection objectives with the suite of other important community objectives. In addition, the RAR are based on fisheries protection measures which predominately reflect best management practices for major spawning channels and are less applicable to Richmond's estuarine environment.