

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

- 1 The following provisions of the *Fish Protection Act*, S.B.C. 1997, c. 21, are brought into force by this regulation:
 - (a) the definition of “fish habitat” in section 1 (1);
 - (b) section 12.
- 2 The definition of “local government” in section 1 (1) of the *Fish Protection Act*, S.B.C. 1997, c. 21, is brought into force by this regulation for the following areas of British Columbia:
 - (a) the following regional districts and all municipalities within them: Capital, Central Okanagan, Columbia-Shuswap, Comox-Strathcona, Cowichan Valley, Fraser Valley, Greater Vancouver, Nanaimo, North Okanagan, Okanagan-Similkameen, Powell River, Squamish-Lillooet, Sunshine Coast, Thompson-Nicola;
 - (b) the trust area under the *Islands Trust Act*.
- 3 The attached Streamside Protection Regulation is made.

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- *Fish Protection Act*, S.B.C. 1997, c. 21, ss. 12, 13 (1) and 37 (2)

Other (specify):-

January 25, 2001
Minister of Environment, Lands and Parks
Presiding Member of the Executive Council

/2000/21

Fish Protection Act

STREAMSIDE PROTECTION REGULATION

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Definitions

1 In this regulation:

“**Act**” means the *Fish Protection Act*;

“**active floodplain**” means an area of land within a boundary that is indicated by the visible high water mark or water level of a stream that is reached during annual flood events as evidenced by riparian area conditions described in the definition of “riparian area”;

“**existing vegetation**” means native and non-native vegetation;

“**fish**” means all life stages of

- (a) salmonids,
- (b) game fish, and
- (c) regionally significant fish;

“**fish bearing stream**” means a stream in which fish are present or potentially present if introduced barriers or obstructions are either removed or made passable for fish;

“**non fish bearing stream**” means a stream that

- (a) is not inhabited by fish, and
- (b) provides water, food and nutrients to a downstream fish bearing stream or other water body;

“**non-permanent stream**” means a stream that typically contains surface waters or flows for periods less than 6 months in duration;

“**permanent stream**” means a stream that typically contains continuous surface waters or flows for a period more than 6 months in duration;

“**permanent structure**” means any building or structure that was lawfully constructed, placed or erected on a secure and long lasting foundation on land

in accordance with any local government bylaw or approval condition in effect at the time of construction, placement or erection;

“potential vegetation” is considered to exist if there is a reasonable ability for regeneration either with assistance through enhancement or naturally, and is considered to not exist on that part of an area covered by a permanent structure;

“ravine” means a narrow, steep sided valley that is commonly eroded by running water and with slope grades greater than 3:1;

“residential, commercial and industrial development” means any of the following associated with or resulting from the local government regulation or approval of residential, commercial or industrial activities or ancillary activities to the extent that they are subject to local government powers under Part 26 of the *Local Government Act*:

- (a) removal, alteration, disruption or destruction of vegetation;
- (b) disturbance of soils;
- (c) construction or erection of buildings and structures;
- (d) creation of nonstructural impervious or semi-impervious surfaces;
- (e) flood protection works;
- (f) construction of roads, trails, docks, wharves and bridges;
- (g) provision and maintenance of sewer and water services;
- (h) development of drainage systems;
- (i) development of utility corridors;
- (j) subdivision as defined in section 872 of the *Local Government Act*;

“riparian area” means the area adjacent to a stream that may be subject to temporary, frequent or seasonal inundation, and supports plant species that are typical of an area of inundated or saturated soil conditions, and that are distinct from plant species on freely drained adjacent upland sites because of the presence of water;

“stream” includes a watercourse or source of water supply, whether usually containing water or not, a pond, lake, river, creek, brook, ditch and a spring or wetland that is integral to a stream and provides fish habitat;

“streamside protection and enhancement area” means an area adjacent to a stream that links aquatic to terrestrial ecosystems and includes both the riparian area vegetation and the adjacent upland vegetation that exerts an influence on the stream, the width of which is determined according to section 6;

“top of the bank” means

- (a) the point closest to the boundary of the active floodplain of a stream where a break in the slope of the land occurs such that the grade beyond the break is flatter than 3:1 at any point for a minimum distance of 15 metres measured perpendicularly from the break, and
- (b) for a floodplain area not contained in a ravine, the edge of the active floodplain of a stream where the slope of the land beyond the edge is

flatter than 3:1 at any point for a minimum distance of 15 metres measured perpendicularly from the edge;

“top of the ravine bank” means the first significant break in a ravine slope where the break occurs such that the grade beyond the break is flatter than 3:1 for a minimum distance of 15 metres measured perpendicularly from the break, and the break does not include a bench within the ravine that could be developed;

“wetland” means land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and under normal conditions that supports vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, fens, estuaries and similar areas that are not part of the active floodplain of a stream.

Purpose of regulation

- 2 The purpose of this regulation is to protect streamside protection and enhancement areas from residential, commercial and industrial development so that the areas can provide natural features, functions and conditions that support fish life processes including, but not limited to, the following natural features, functions and conditions:
 - (a) large organic debris that falls into the stream or streamside area, including logs, snags and root wads;
 - (b) areas for channel migration, including active floodplains;
 - (c) side channels, intermittent streams, seasonally wetted contiguous areas and floodplains;
 - (d) the multicanopied forest and ground cover adjacent to streams that
 - (i) moderates water temperatures,
 - (ii) provides a source of food, nutrients and organic matter to streams,
 - (iii) establishes root matrices that stabilize soils and streambanks thereby minimizing erosion, and
 - (iv) buffers streams from sedimentation and pollution in surface runoff;
 - (e) a natural source of stream bed substrates;
 - (f) permeable surfaces that permit infiltration to moderate water volume, timing and velocity and maintain sustained water flows in streams, especially during low flow periods.

Intergovernmental cooperation agreements

- 3 (1) This regulation is to be supported by intergovernmental cooperation agreements that include provisions for any of the following topics:
 - (a) financial and technical support for the implementation of this regulation;
 - (b) a transition strategy to give effect to existing agreements and approved streamside protection measures;
 - (c) the staged establishment of streamside protection and enhancement areas;
 - (d) the confirmation of regionally significant fish by the appropriate regional

- director of the Ministry of Environment, Lands and Parks;
- (e) the amendment of streamside protection and enhancement areas determined under section 6;
 - (f) providing, sharing or confirming information on fish habitat conditions;
 - (g) advice by qualified professionals with reference to the operation of this regulation;
 - (h) describing roles and responsibilities with reference to applicable and appropriate use of authority and program mandates;
 - (i) dispute resolution;
 - (j) a compliance strategy, including education, training, monitoring, reporting, enforcement and auditing.
- (2) For the purposes of subsection (1), an intergovernmental cooperation agreement is an agreement made by the Ministry of Environment, Lands and Parks with the authorized representative of the appropriate local government, which may include agreement with Fisheries and Oceans Canada.

Application

- 4** (1) This regulation applies to the use of local government powers under Part 26 of the *Local Government Act* by local governments.
- (2) This regulation does not apply in respect of a building or structure described in section 911 (8) of the *Local Government Act*, if a local government issues a development permit or development variance permit only for the purpose of enabling reconstruction or repair of a permanent structure on its existing foundation.

Establishment of streamside protection and enhancement areas

- 5** A local government must establish streamside protection and enhancement areas within 5 years of the enactment of this regulation in accordance with section 6.

Determination of the width of riparian protection and enhancement areas

- 6** (1) Streamside protection and enhancement areas are those areas determined with reference to the following existing or potential vegetation conditions by measuring perpendicularly away from the top of the bank or top of the ravine bank on either side of a stream:
- (a) intact and continuous areas of existing or potential vegetation equal to or greater than 50 metres wide;
 - (b) limited but continuous areas of existing or potential vegetation equal to 30 metres wide or discontinuous but occasionally wider areas of existing or potential vegetation between 30 and 50 metres wide;
 - (c) narrow but continuous areas of existing or potential vegetation equal to 15 metres wide or discontinuous but occasionally wider areas of existing or potential vegetation between 15 and 30 metres wide;

- (d) very narrow but continuous areas of existing or potential vegetation up to 5 metres wide or discontinuous but occasionally wider areas of existing or potential vegetation between 5 and 15 metres wide interspersed with permanent structures.
- (2) With reference to vegetation conditions in subsection (1), streamside protection and enhancement areas must be:
- (a) if subsection (1) (a) or (b) applies, at least 30 metres wide measured perpendicularly away from the top of the bank for all fish bearing streams or for non fish bearing streams that are permanent;
 - (b) if subsection (1) (a), (b) or (c) applies, at least 15 metres wide measured perpendicularly away from the top of bank for non fish bearing streams that are non-permanent;
 - (c) if subsection (1) (c) applies, at least 15 metres wide measured perpendicularly away from the top of bank for non fish bearing streams that are permanent;
 - (d) if subsection (1) (c) or (d) applies, the greater of the widths determined under subsection (1) (c) or (d) or at least 15 metres wide measured perpendicularly away from the top of the bank for all fish bearing streams;
 - (e) if subsection (1) (d) applies, at least 5 and up to 15 metres wide measured perpendicularly away from the top of the bank for all non fish bearing streams.
- (3) If a stream is in a ravine that is less than 60 metres wide in total width from top of the ravine bank to top of ravine bank, not including the stream channel within its active floodplain boundaries, protection is to be consistent with subsection (2) (a) through (e), where appropriate, from the top of the ravine bank.
- (4) If a stream is in a ravine that is more than 60 metres in total width from top of ravine bank to top of ravine bank, not including the stream channel within its active floodplain boundaries, a protection and enhancement area must be at least 10 metres wide measured perpendicularly away from the top of the ravine bank.
- (5) In determining a streamside protection and enhancement area a local government may make allowances for one or more of the following if supported by an agreement under section 3:
- (a) the potential to provide greater opportunity for streamside protection and enhancement than what would be achieved under subsections (2) to (4);
 - (b) the existence of obstacles that impair the ability to designate streamside protection and enhancement areas in accordance with subsections (2) to (4) including, but not limited to the following:
 - (i) biophysical conditions;
 - (ii) existing parcel sizes;
 - (iii) existing roads, works or services;

- (iv) proposed roads, works and services needed to provide access or services to otherwise developable land;
- (v) the existence of artificial controls on the high water mark or water level of a stream.

Use of local government powers for protection and enhancement of areas

- 7 When exercising its powers with respect to residential, commercial and industrial development, a local government must protect streamside protection and enhancement areas.

[Provisions of the *Fish Protection Act*, S.B.C. 1997, c. 21, relevant to the enactment of this regulation: sections 12 and 13]