

CITY OF NEW WESTMINSTER

Bylaw No. 7033, 2005

RIPARIAN AREAS PROTECTION BYLAW

WHEREAS the City may preserve, protect, restore and enhance the natural environment near streams that support fish habitat from harmful conditions associated with commercial, industrial and residential development,

The Council of the City of New Westminster, in open meeting assembled, ENACTS AS FOLLOWS:

1. CITATION

Bylaw No. 7033, 2005, may be cited as “Riparian Areas Protection Bylaw, 2005”.

2. DEFINITIONS

For the purposes of this Bylaw:

“*active floodplain*” means an area of land that supports floodplain plant species and is

- (a) adjacent to a stream that may be subject to temporary, frequent or seasonal inundation, or
- (b) within a boundary that is indicated by the visible high water mark;

“*assessment methods*” mean the methods set out in the Schedule to the *Riparian Area Regulation*;

“*assessment report*” means a report prepared in accordance with the assessment methods to assess the potential impact of a proposed development in a riparian assessment area and which is certified for the purposes of the Riparian Areas Regulation by a qualified environmental professional;

“*City*” means the City of New Westminster;

“*development*” means any of the following associated with or resulting from the City’s regulation or approval of residential, commercial or

industrial activities or ancillary activities to the extent that they are subject to the City's 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*;

"development proposal" means any development that is proposed in a riparian assessment area that is within or partly within the boundaries of the City;

"fish" means all life stages of salmonids, game fish, and regionally significant fish;

"fish habitat" means the areas in and about a stream, such as spawning grounds and nursery, rearing, food supply and migration areas, on which fish depend directly or indirectly in order to carry out their life processes;

"high water mark" means the visible high water mark of a stream where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the stream a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself, and includes the active floodplain;

"Minister" means the Minister of Water, Land and Air Protection of the Province of British Columbia;

"natural features, functions and conditions" include, but are 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 multi-canopied 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.

“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 of the City’s bylaws or approval conditions in effect at the time of construction, placement or erection;

“qualified environmental professional” means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if

- (a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association’s code of ethics and subject to disciplinary action by that association,
- (b) the individual’s area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal, and
- (c) the individual is acting within that individual’s area of expertise;

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

“riparian area” means a streamside protection and enhancement area;

“Riparian Areas Regulation” means B.C. Regulation 376/2004 and any amendments or successive regulation made under the *Fish Protection Act*, S.B.C. 1997, c. 21;

“riparian assessment area” means

- (a) for a stream, the 30 meter strip on both sides of the stream, measured from the high water mark,
- (b) for a ravine less than 60 meters wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 meters beyond the top of the ravine bank, and
- (c) for a ravine 60 meters wide or greater, a strip on both sides of the stream measured from the high water mark to a point that is 10 meters beyond the top of the ravine bank;

“stream” includes any of the following that provides fish habitat:

- (a) a watercourse, whether it usually contains water or not;
- (b) a pond, lake, river, creek or brook;
- (c) a ditch, spring or wetland that is connected by surface flow to something referred to in paragraph (a) or (b);

“streamside protection and enhancement area” means an area

- (a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream, and
- (b) the size of which is determined according to the Riparian Area Regulation on the basis of an assessment report provided by a qualified environmental professional in respect of a development proposal;

“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 meters 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 that under normal conditions does support, 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.

3. DEVELOPMENT

4.1 *Development* is prohibited in a *streamside protection and enhancement area*, except as follows:

- (a) for a development permit or development variance permit that would permit the reconstruction or repair of a *permanent structure* described in section 911 (8) of the *Local Government Act* if the structure remains on its existing foundation; or
- (b) in accordance with section 4.1 or 4.2 of this Bylaw.

4. DEVELOPMENT PROPOSALS

4.1 In respect of *development proposals* related wholly or partially to *riparian areas*, the City may approve or allow *development* to proceed in those *riparian areas* if the following conditions are met:

- (a) The *development proposal* is in accordance with an *assessment report* prepared by a *qualified environmental professional* in accordance with the *Riparian Areas Regulation*, and who has certified that he or she is qualified to carry out the assessment; that the *assessment methods* have been followed; and has provided their professional opinion that:
 - (i) if the *development* is implemented as proposed there will be no harmful alteration, disruption or destruction of *natural features, functions and conditions* that support fish life processes in the *riparian assessment area*, or
 - (ii) if the *streamside protection and enhancement areas* identified in the report are protected from the *development* and the measures identified in the report as necessary to protect the integrity of those areas from the effects of the *development* are implemented by the developer, there will be no harmful alteration, disruption or destruction of *natural features, functions and conditions* that support fish life processes in the *riparian assessment area*, and

(b) the City has received notice from the Ministry that the Department of Fisheries and Oceans (Canada) and the Ministry have been notified of the development proposal and provided with a copy of the *assessment report* described in paragraph (a).

4.2 Despite section 4.1, the City may allow *development* to proceed if the Minister of Fisheries and Oceans (Canada) or a regulation under the *Fisheries Act* (Canada) authorizes an alteration, disruption or destruction of *natural features, functions and conditions* that is or may be harmful to fish life processes in the *riparian assessment area* that would result from the implementation of the *development proposal* in a *riparian area*.

5. CONFLICTS

If a *development* permitted under this Bylaw is inconsistent with the provisions of other bylaws of the City, the more restrictive provision applies to that *development* to the extent of the inconsistency.

Adopted June 27, 2005